

GENERAL CONSIDERTIONS REGARDING INTERMEDIATION ACTIVITY

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Abstract

Economic development of society has led to an increase in the volume of commercial trade with different products so that traders, both to be able to expand the business, and to meet market demands, they turned to intermediaries. Intermediation institution has great importance in trade activity because through it, traders are able to expand their activities in different geographical areas.

Key words: intermediation, contract, international trade, intermediaries, commercial activity

INTRODUCTION

By December 1989 the foreign commercial trade of our country could not be carried out directly by the companies, except those ones who were authorized. Thus Law No. 1 of 17 March 1971 on the foreign trade, economic and technical scientific cooperation, Romania provided that economic authorized units to operate in foreign markets by making specific transactions from the scope of the services, market research, launching tenders negotiations to find foreign partners that provides the best Romanian units producing or beneficiary. (7, p.75)

Modern era, especially contemporary, generated development, diversification and specialization of production of goods and services. The only achievement of a state by its own means the full range of products and services required to meet economic and social needs became impossible as technically and economically inefficient, thus creating an interdependence between national economies of the different countries, which was the foundation of international economic exchanges. (4, p. 12-13)

MATERIAL AND METHOD

The material used for the realization of the paper work is composed of monographs, handbooks, courses and internet addresses. The methods used are legal formal method, historical method, comparative method, sociological method, the method logical and analytical methods that were aimed at the systematic analysis of information extracted from the sources studied in order to develop opinions and conclusions.

RESULTS AND DISSCUSIONS

The increase trade and promote products, capital and services in the Member States of the European Union and carried out by agents. Attention it gives traders European Union is of utmost importance. As this also reduces competition, and while there is a closer integration of markets. Since the legal status of commercial agents is governed by the law of the Member States, there was concern for harmonizing regulations. (9)

Diversification and expansion of private legal relations between subjects of contemporary as able to participate more actively in their conduct, thereby option to choose with whom, where and when to enter certain legal acts. Usually, their conclusion is made directly by the subjects as interested, thereby direct legal connection between the person who decides to enter a specific legal act and other legal subjects. After 1990, in the current market economy, intermediation has acquired a considerable extension, only limited foreign trade relations, so any natural or legal person may use this form of representation. The role of intermediation in international trade relations has been established since the legislative Decree No. 1971 15 of 25 January 1971 on the authorization and operation of representative offices in Romania commercial firms and foreign organizations, highlighting the necessity and usefulness of intermediaries in trade activity. Even before the adoption of the new Constitution, the principle of state monopoly on foreign trade was implicitly repealed by the several laws issued after December 22, 1989 (6, p.75). These laws are the Law 15/1990 on the reorganization of state entities as autonomous and companies updated on 14/12/2011; Law 31/1990 on trading companies, republished, with subsequent amendments; Law 54/1990 on the implementation of economic activities based on free enterprise, as amended by Law no. 507/2002 the organization and development of economic activities by individuals; Law. 122/1990 the authorization and operation of representative companies in Romania and foreign economic organizations; Law 33/1991 on commercial companies as amended by Law 58/1998 bank, which in turn amended by Emergency Ordinance no. 99/2006; Law 58/1991 on the privatization of companies. At Community level, mediation was

governed by the adoption of Council Directive EEC no. 86/653 of 18 December 1986 on the approximation of the laws of Member States relating to self-employed commercial agents. The Romanian legal system, mediation has acquired its own configuration by Law no. 509/2002 on permanent commercial agents, which was repealed by Law no. 71/2011 on the implementation of Law no. 287/2009 the Civil Code.

The economic and legal context of intermediation has gained importance, both through diversification of exploration and penetration of foreign markets and the negotiation and conclusion of transactions safe trade.

Using the intermediation in international trade means, in practice, saving time and money and ultimately not able swift conclusion of international trade agreements. International trade is in the phase distribution of goods by doing the link between production and consumer. Such legal instruments through which the trade operations and specific contracts are conventional international trade.

In Romania, businesses appearances became increasingly active in international trade. Association Agreements agreed with the European Union and EFTA Organization - European Free Trade Association, opened Romania and romanian participants to international trade relations major perspectives of involvement in the world circuit of values and knowledge. But it meant aligning our legislation with E.U. law in the field, with priority to Community law and assimilation regulatory provisions of international conventions ratified by Romania, being contents as part of national law regulations.

Intermediation can be defined as the activity that a person (agent) a render on behalf of another person (the principal) is the name of the principal, either individually or in the name and on behalf of itself, but the realization of a common interest principal activity is the intermediary servant intermediate parties or independent of them and is only negotiation or negotiation and conclusion of legal documents with third parties. (6., p. 4)

Intermediation can be regarded as an operation carried out by the intermediary (agent) only in material facts and not in legal agreements. The intermediation bears only on the material facts and is not intended conclusion of legal documents. The conclusion drawn from art. 2096 Civil Code, that the intermediation is an agreement beetwen the intermediary to the client, undertakes to make in connection with a third party to conclude a contract. The same article also provides that the intermediary is not intermediated servant and independent parties in the execution of its duties as an independent auxiliary merchant (2, p. 79).

The origin of intermediation in commercial trade activity is found in the Middle Ages, when it was used routinely to remotely conduct trade

practice. The X -XII centuries emerged in Italy and northern Europe similar forms of the commission contract like they are today. Distance commercial trade conducted to an frequent exchanges that were made in large European medieval fairs, and were the premise appearance of early forms of intermediations. Developing a brisk trade transactions in the activity that took place during the Renaissance, led to the need to adapt the techniques of trade, in order to facilitate cooperation between professionals and improve concrete means of achieving trade in goods. During this period, developed the contract of warrant (6., p.1-2).

But outside, as an expression of the extension principle, freedom of commercial trade, have become increasingly common other intermediary, like contracts and agency commission today (4. p. 20-24). Indeed, ever increasing complexity of completed operations and obstacles given the extensive geographic areas taking birth these trade relations, with barriers of language, culture and significant differences in legislation have led over time to the imperative discovery of traders advantageous ways for easy penetration and expanding markets in other countries, international contracts perfecting light conditions and maintenance of lasting economic links. (1, p. 106-113)

One such way that has been used frequently as a result of trade development was brokering contracts as commission contract. Entering a professional on a foreign market for the sale of his goods was required to be made with the development of trade, known by the local people, who enjoyed the confidence and prestige , thus ensuring publicity and personal guarantee of the products. (3, p. 185)

Individuals, become intermediaries in the agreements concluded with foreign traders, carry out all necessary preparatory operations and effectively ended contracts in its own name or on behalf of clients, contracts whose effects spill over to foreign traders. (6., p.2)

The concept of intermediation has experienced over time a significant development because of legislative changes and economic developments of the society.

Following the extension of the principle of free trade(6, p.2) have become increasingly common other intermediary, like contracts and agency commission today. Complex character made and obstacles encountered operations given the extensive geographic areas which arose trade relations, difficulties of knowledge of language, culture and differences in legislation led to the discovery of ways while advantageous for traders, easier to penetrate and expand markets in other countries, in order of drawing up international contracts on terms much easier. (1., p. 106-113)

International intermediation doesn't have a sufficiently uniform rules of law which is the reason why they made efforts in this direction at

the Institute for the Unification of Private Law - UNIDROIT. Thus, in 1979 took place in Bucharest UNIDROIT Diplomatic Conference for the adoption of the International Convention on the Law of uniform sales representation in matters of international trade. (8)

Along with the development of trade, entering on a foreign market of professionals to sell his goods by people who were already known in the local market and enjoyed prestige and trust has become easier. (3., p. 185)

Intermediation can be seen in two aspects, a classic aspect and a modern aspect.

Regarding the classic aspect, mediation is an activity performed by a person other than the holder of the economic interest at the expense of the latter, whether working in his name or on his behalf. The basis of this concept lies the idea of representation that can be defined as a legal technical process by which a person (the representative) is authorized to enter into a legal act in the name and on behalf of another person (the proxy), the effects of the legal act occurring directly the person represented. Representation is in the Romanian right institution the basis term for contract, and at the same time, the element of distinction between it and the fee contract (designed as a mandate without representation). Representation in anglo-saxon legal system comes as the agency contract on the continental system is perfect distinction between perfect representation (the warrant) and imperfect representation (fee contract). (3., p. 185)

Regarding the modern aspect, mediation is no longer reduced to contracts and fees term, but also know a number of other contractual forms in which the institution of representation, even indirectly, does not appear.

In conclusion, representation is no longer based on representation but rather the pursuit of a trade intermediary in the interest of another person. In the modern sense, mediation is no longer reduced mandate and commission contracts involving direct or indirect representation, but know a number of other contractual forms such as franchising or exclusive distribution representing the institution or indirectly, not may found. In these types of contracts, the intermediary enters into contractual relationships with third parties and on behalf of his own, and not as agent or broker. However, the work is also in the interest intermediary contracting party brokerage contract, which ensures a more efficient sales of goods or services. In conclusion, it is now the criterion intermediation least idea of representation, especially as the intermediary to conduct an activity in the interests of others. (5, p. 20)

CONCLUSIONS

Economic development of society has led to an increase in business volume so much that the parties can not directly participate in contracts , which led to the development of intermediation and use a larger scale it.

Participation in commercial trade legal relations of individuals who wish to pursue different trade operations, is hampered by lack of information and knowledge about the other party. There are times when one or more people who would like to buy or sell the same commodity, but no sellers can not find buyers or sellers can not find buyers want. In such situations it is very useful and important intervention of third persons, due to the conditions and circumstances under which they act , and their status, are best informed about the relationship between supply and demand in a given market. Thus, any person who has failed in a bid to find a business partner, and thus establish legal relationships, use the services of those who are called middlemen, and they grant their assistance in this area. Unlike other retailers that produce goods or services generating economic value, distinct intermediates activity was attributed to the doctrine that facilitates dynamic merchant class circuit in trade, as these agents, commission agents, carriers, insurers. Thus, in the context of globalization which now characterizes the world economy and trade, requires the activity of the spaces becoming larger, the existence of transnational companies, the diversity of trade relations and the people who participate in them, there is the imperative need for intermediaries through their work contribute to the approximation traders and facilitates entry into economic relationships through prospecting actions of markets, providing information about people operating in those markets. In practice of commercial trade of various countries, the terms used to describe the activity of intermediaries are different. We therefore used *handlesmaklers* in german, *courtiers* (courir - to run) used in French and the Italian used terms are *mediatori* and *sensali*.

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