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## National Case Law Regarding Judicial Stamp Duties in Disputes between Consumers and Professionals from the Perspective of European Jurisprudence

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### Abstract

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The article analyses the relevant legal provisions from the GO no. 80/2013 regarding stamp duties published on 29 June 2013 in disputes between consumers and professionals.

According to doctrine and jurisprudence, in disputes between consumers and professionals, usually the consumers don't pay any duties; therefore we will make a particular characterisation of the obligation of taxation from the perspective of the professionals.

In the case law of the European Court of Human Rights, the Court decided in several occasions if national law violates the conditions of proportionality from the perspective of article no. 1 of the First Additional Protocol of the European Convention, and the present study aims to search arguments for the exemption of taxations for the professionals.

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**Keywords:** Judicial stamp duties; consumers; professionals.

## **1. Introduction**

The judicial stamp duties were substantially amended by GEO no. 80/2013 regarding the judicial stamp regulations which came into force on 29 June 2013.

The normative act changes the whole system of the judicial stamp tax, the old regulations in this field, Law no. 146/1997 on judicial stamp and Government Ordinance no. 32/1995 regarding the judicial stamp being repealed. New rules in matters of judicial stamp duties were necessary following the entry into force of the New Code of Civil Procedure, although on the consumer protection rights, the same derogating provisions are broadly resumed.

The hypothesis analysed in this article concerns the unequal legal regime in terms of collecting stamp taxes in disputes regarding consumer protection by the two entities, the consumer and the professional.

## **2. Contents**

The consumer, as defined in national legislation, G.O. no. 21/1992 (definition resumed in Law no. 193/2000 on abusive clauses in contracts between professionals and consumers and the GEO no. 34/2014 on consumer rights in contracts with professionals, amended by Law no. 157/2015), is any individual or group of individuals constituted in associations, acting for purposes outside of trade, industrial or manufacturing activities, craft or liberal activities.

At European Union level, the consumer rights are protected through legislation, enabling rapid and effective settlement of disputes with traders, including alternative means of dispute resolution and through the European Consumer Centres.

Moreover, even the fundamental Treaty certifies that the European Union contributes to health protection, safety and economic interests of consumers, as well as to the promoting their right to information, education and to organize in order to defend their interests (art. 169 of the Lisbon Treaty).

In litigation matters regarding the consumers, the Union held by the legislative framework particularly adopted by Directive 93/13/EEC of 5 April 1993 on unfair terms in contracts concluded with consumers (EU Official Journal L 095/29 of 21.04.1993), as amended by Directive 2011/83/EU (EU Official Journal OJ L 304, 22.11.2011) that individuals or organizations that are regarded under national law as having a legitimate interest in protecting consumer contractual rights should be entitled to initiate proceedings, either before a court or an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings.

Commission Recommendation of 11 June 2013, on common principles applicable to collective actions for injunction and damages introduced in the Member States for breach of rights conferred by EU law (Article 4 (3) of Directive 2009/22 / EC), shows that the procedures of collective actions must be fair, equitable, fast, allowed in terms of costs.

In domestic legislation, disputes regarding consumer protection, according to art. 29, para 1, letter f of the GEO no. 80/2013, lawsuits and requests are exempt from paying the judicial stamp tax, including those for exercise of appeals, ordinary and extraordinary, concerning the protection of

consumers' rights when individuals and associations for consumer protection are plaintiff against companies that have infringed the rights and legitimate interests of consumers.

Based on legal text can be identified cumulative conditions required to operate the exemption:

- To be a legal action in the protection of consumer rights, the protected subject being a consumer;
- The applicant is an individual or an association for consumer protection;
- To be a legal action directed against an economic operator that has damaged the legitimate rights and interests of consumers.

In practice, sometimes occurred the question whether stamp duty depends on the basis of law or fact in the legal action, in other words, if, along with general coverage of consumer protection, other legal institutions are also incidental, as those of common law to possibly attract stamp tax.

Most courts consider that as a prerequisite to protect a legitimate right (meaning stipulated by the law, no matter its exact identification) of an individual who is a consumer, regardless other incidental institutions.

We find in practice also minority views, which consider, for example, that "in the circumstance that the applicant understands to provide for review of the court the validity of the clause in the contract, the validity of the addendum and contract fidejussion in the report *and the provisions of ordinary legislation* (lack of consent and dolus, grounded in fact widely in demand summons not only from the perspective of unfairness of terms), *the obligation to pay court fees is legally established, special provisions for exemption from the tax court stamp being incidental strictly regarding the terms of verifying the validity of legal documents indicated by the applicant in relation to the conditions regulated by Law no. 193/2000.* (Georgescu, 2015)

Similarly, in another issue is raised the absence of the stamp tax of the request of the applicant, provided that the claim is the annulment of a clause in a fidejussion contract (personal guarantee) and not in a credit one to make incidental the provisions of the article no. 29 para. 1, point F of GEO no.80/2013 and Law no.193/2000. The appeal court points out that the legal text invoked exempts from stamp duty on any consumer, without distinguishing between categories of judicial acts which generate those rights. The fidejussion contract, as any bilateral juridical relation, raises both obligations and individual rights for each party.

It is shown in the judgment that the fidejussor, signatory to a fidejussion agreement that guarantees a bank loan contracted by another person cannot be seen only as a "bound" to the bank, meaning that he signed the convention exclusively securing the credit, without claiming 'a consumption'. The fidejussor gains from the legal contract generated by the fidejussion agreement not only the obligation to guarantee the loan, but also subjective rights liable to the nature of his contract becoming a consumer towards the bank. (Decision no. 275/2014 of Gorj Court, Civil Division)

Similarly, the majority considers that it is wrong the differentiated application of the stamp duties law in relation to the civil liability of the defendant, when in reality had to be correctly applied, according to the quality of consumer of the applicant. Thus, in a decision (Decision no. 1900 of 5 December 2003), the court finds that it is irrelevant in this case the nature of the two defendants'

liability to the consumer complainant, reported to the stamp duties that obviously the complainant is exempt having the same quality against both defendants, namely consumer.

Questioning the interpretation of the provisions of articles 28 and 29, letter f of G.E.O. no. 80/2013, the legal issue which requires to consider is whether while interpreting a legal text which provides an exemption from the judgment at first instance to a person - in consideration of its special quality - the exemption solution should be extended to the appeal exercised by the opposing party (which would not have been exempt from stamp duty if it had initiated the litigation), under the provisions of art. 28 do not operate any distinction in this respect. The hypothesis is based on the need to verify the principle of proportionality, often reflected in the jurisprudence of the ECHR, in terms of compliance with Article 1 of the First Additional Protocol.

In favour of the opinion that the professional (usually banks have this quality in practice) should be required to pay stamp duty, was brought also as an argument the fact that being in a subject specific to the consumer protection - which provides expressly that there is no equal treatment - the text of art. 29 letter f should not be interpreted extensively, exemption from stamp duty being provided exclusively in favour of the consumer.

A view was expressed in the sense that banks should be exempted from stamp duties, motivated by the fact that these fees would be carried out by the consumer in circumstances where he lost the appeal (Curtea de Apel Craiova, 2015).

For the professional that is incumbent on paying stamp duties in the appeal, the review request, provided by art. 39 of GEO. 80/2013 is the only remedy at law through which can be censured the existence and extent of the obligation to pay court fees, interested parties not having a right to opt for a request for review and exercise appeal or recourse, as applicable.

If the part is dissatisfied with the determination of the judicial stamp tax by the court, including determining whether the request is able to bear a stamp tax, it has the opportunity to submit reexamination, remedy at law for answering these incidents related to stamp duties. As highlighted in a decision covering appeal on points of law upheld (Decision no. 7 of December 8, 2014 the High Court of Cassation and Justice published the Official Gazette no. 137 of 24 February 2015), such criticism cannot be supported through appeals, since the special law puts at hand of the interested part another clear, precise and predictable remedy at law.

In judicial practice across Suceava Court of Appeal, the position of the courts after the entry into force of GEO no. 80/2013 has fluctuated in terms of stamp duty in the appeal promoted by a professional. Some courts held that for a professional must be operated an exemption from stamp duties in the appeal, based on the combined provisions of art. 28 and 29 letters f of GEO. 80/2013, according to the idea that the legal text does not distinguish between individuals exempt from court fees in remedies at law (for this purpose, conclusion of 31 October 2014 File 3469/193/2013 / a1 of Botosani Court unpublished conclusion no. 453 / 17.09.2014 of the file 159/334/2014 / a1 of Suceava Court, unpublished).

Recent practice has returned to tax stamping the appeal by a professional, on the ground that the provision of exemption from the stamp duties is purely personal, being specific to individuals that are consumers and the appeal brought by the economic operator is not within the text of art. 29 of GEO no.

80/2013 (in this sense, the Conclusion from 06/11/2015 of File no. 1659/222/2014 /a1 of Botosani Court, unpublished and the Conclusion no. 70 / 05.05.2016 of the file 941/314/2015 /a1 of Suceava Court, unpublished).

### 3. Conclusions

Article 169 of the TFEU has introduced a legal basis for a variety of actions at European level in the field of consumer protection by providing that ‘to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and **economic interests of consumers, and promoting their right to information, education and to organize to defend their interests.**’

Also, as shown in official documents of the European Union (Maciejewski, Piaguet, Hayer, 2016), the legal text invoked emphasizes the importance of protecting consumers’ interests in the framework of the other EU policies. In this regard, Article 169 of the TFEU strengthens Article 114 and broadens its scope beyond the single market, to include, in addition to access to goods and services, the access to the courts.

Analysis of jurisprudence on stamp duties in the area of consumer protection shows, on one hand, that national access to the courts is not conditional on payment of court costs, and on the other hand, results the idea of a distinct regime of tax charging for professionals, motivated by the fact that legal, national and European protection considers only the consumers, as defined in the legislation.

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