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# ABUSIVE CLAUSES IN THE BANK LOAN CONTRACTS

553.01 Civil Law

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The doctoral thesis and the summary can be consulted at the Central Library of the State University of Moldova, on the website of the Faculty of Law of the State University of Moldova (http://drept.usm.md) and on the website of ANACEC (https ://www.anacec.md/).

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# CONCEPTUAL MARKINGS OF THE RESEARCH

**The actuality of the theme** is demonstrated by the fact that the economic model of contemporary society is based on the interdependence relationship between demand and supply, which determines the way in which the circulation of capital is carried out. Players on the capital market specialized in crediting economic operations aim to grant loans under conditions that ensure them the highest possible profits, while natural or legal persons who borrow to be able to carry out the economic operations they propose pursue to obtain the most advantageous conditions to borrow.

Because the number of lending transactions has grown exponentially in number, lending professionals have begun to widely use pre-formulated documents to simplify the loan granting procedure, especially in the field of consumer lending. Following these socio-economic changes in terms of the way of concluding bank contracts for granting consumer loans, the specialized doctrine began to notice the emergence of the phenomenon of the use of abusive clauses.

Therefore, the liability of professionals for the use of abusive clauses in credit contracts is a challenging scientific research topic in terms of the correct demarcation between what is legally allowed in the field of commercial practices and what is prohibited. Under these conditions, it is necessary to analyze in its entirety the institution of abusive contractual clauses and to be related to the most common contractual clauses, viewed in essence. This paper justifies its scientific importance by the fact that it is based on an in-depth study, based on the legislation of the Republic of Moldova, the primary and secondary legislation of the European Union, the jurisprudence of the national courts of the Republic of Moldova, the jurisprudence of the Court of Justice of the European Union and elements of comparative jurisprudence , by observing the practice of the Romanian national courts on the typology of abusive clauses in bank credit contracts.

**The description of the situation in the field of research and the identification of the research problem** consists in the analysis of the way in which the national legislation is interpreted in the specialized literature from the perspective of the specificity of abusive clauses in bank credit contracts for consumers.

Thus, the legislation at the national level is quite consistent, being identifiable both normative acts that regulate bank credit and credit contracts for consumers, and these are partially analyzed in the doctrinal sources that researched the bank credit contract, being studied the

scientific works of authors from the Republic of Moldova and Romania such as Băieșu A, Grigoriţă C., I. Turcu, Кайряк И.Н., Postolachi G., Postolachi M., L. Smarandache, Dodocioiu A., , Marian N. and the scientific works of foreign authors as Gavalda C., Stoufflet J., Liefmann R, Агарков М.М, Алексеева Д.Г., Пыхтин С.В., Хоменко Е.Г, Бычкова Н.П., Авагян Г.Л., Баяндурян Г.Л., Викулин А.Ю., Гравин Д.И, Калин В.

In addition to the theoretical approach, we checked whether an applied source of information can be identified, meaning that the jurisprudence of the courts in the Republic of Moldova and Romania was checked, after which we found that the jurisprudence of the courts in the Republic of Moldova is not as abundant in cases concerning the determination of the abusive nature of clauses in bank credit contracts, such as the jurisprudence of the courts in Romania. However, we were able to note the opinion of the specialized doctrine expressed by the authors Aurel Băieșu and Olesea Plotnic, Octavian Cazac, Dorin Cimil, in several scientific works dedicated to these cases that specifically targeted the issue of combating abusive clauses.

After the analysis of the state of the current research on the subject of this work, we can say that the research object has not yet been exhausted, as it presents real possibilities for carrying out scientific research focused on the analysis of the typology and peculiarities of abusive clauses used in bank credit contracts, in order to complete this niche. This goal became the research problem of this paper, also motivated by the fact that the social utility of bank credit contracts is increasing, and the research of ways to combat the illegal behavior of traders can be of real use for the development of correct commercial practices in relation to the legitimate interests of consumers.

**The purpose and objectives of the work** reside in conducting scientific research in order to substantiate, identify and analyze the general conditions but also the particularities of abusive contractual clauses in bank credit contracts from the perspective of the legislation and jurisprudence of the Republic of Moldova, Romania and the European Union.

**The research hypothesis** pursued by the study consists in elucidating the particularities of abusive clauses in bank credit contracts, highlighting legislative gaps, legislative parallels and even a conflict between national regulation and European Union directives. Recommendations and proposals for improving the existing legislative framework were formulated in order to increase the degree of cohesion between the national legislation and the legislation of the European Union, considering the fact that through the Association Agreement with the European Union, it was established that the national legislation of the Republic of Moldova is to be harmonized with primary European legislation in several areas, including the standardization of consumer rights protection.

**The scientific research methodology** used in the preparation of this paper can be briefly determined as being composed of the historical method, the logical method, the systemic analysis method, the

examination method, the description method, the synthesis method, the comparative legal method and the normative analysis method, all of which are oriented and towards the analysis of the relevant jurisprudence in order to achieve a multilateral approach to the researched topic.

**The scientific novelty and originality** lies in the fact that the paper carries out a definition and research of the distinctive features of abusive clauses in bank credit contracts. The work represents an attempt to carry out an extensive scientific investigation of the institution of abusive clauses in the matter of bank credit contracts, because this was less subject to research in the domestic theoretical framework.

**The theoretical significance** of the work consists in identifying all the particularities and conditions necessary to establish the abusive nature of the clauses in the bank credit contracts and the engagement of civil liability for the insertion of these clauses in the credit contracts, through the prism of the legislation of the Republic of Moldova. This contributed to highlighting and clarifying the specific aspects and conditions of these legal institutions, with a view to the uniform application of the legal regulations in this field.

**The applicative valorization of the work** consists in the elaboration within the scientific community of the indigenous doctrine of a scientific work based on the study of abusive clauses and civil liability for the use of this type of clauses in bank credit contracts. Also, the conclusions obtained can be used in the development of law textbooks, monographs and scientific publications. At the same time, the ferenda law proposals can contribute to the improvement of the legislative framework in the concerned matter.

**The scientific results submitted for support** refer to the analysis of the characteristics of abusive clauses in the typology of bank credit contracts, through which the determining features of abusive clauses were identified from the perspective of national and European legislation and national and European jurisprudence.

The theoretical foundations necessary for the analysis of the abusive nature of abusive clauses are presented and the jurisdictional and administrative mechanisms for the protection of consumer rights were analyzed.

The scientific results find their materialization in the ferenda law proposals and in the recommendations to improve the legislative fund and the activity of the public authorities competent in the matter.

**The implementation of the formulated scientific results** can facilitate the activity of interpretation and application of the legislation aimed at civil liability for acts of using abusive clauses in bank credit contracts.

Some of the conclusions and recommendations reflected in the thesis have been published

in scientific articles from specialized magazines at home and abroad, as well as presented in communications at national and international scientific conferences.

**The approval of the results** was carried out within the Doctoral School of Legal Sciences of the Village University of Moldova. The results of the research were approved by the Guidance Committee within the Doctoral School and by the Department of Private Law of the State University of Moldova.

**Publications on the topic of the thesis** – 10 publications.

**The volume and structure of the thesis**: 171 pages of text, composed of the introduction, 4 chapters, general conclusions and recommendations, the bibliography is composed of 198 titles and 5 appendices.

**Keywords:** abusive clause, bank credit, professional, consumer, bank commission, absolute nullity, consumer rights, enforcement appeal.

## THESIS CONTENT

### Chapter 1. Analysis of the situation of scientific research in the field of consumer protection in bank credit contracts

In order to create the historical anthology of banking activity and the forms of bank credit contracts, we resorted to the analysis of legal and historical sources signed by the authors of research in the field of roman law: Volcinschi V., Baieş S., Roşca N., Hanga V., Bob M.D., Ciucă V. M., Sanfilippo C., Schiller A. A., Molcuț E., Oancea D, Murzea C, Перетерский И.С. . Краснокутский В.А., Новицкий И.Б., Розенталь И.С., Флейшиц Е.А și Барон Ю.

For the documentation of the study regarding the research stage of bank credit contracts in addition to the normative acts that regulate bank credit (Law 202/2017, entitled "Law on the activity of banks", published in the Official Journal of the Republic of Moldova No. 434 -439 of 15.12.2017, Law 202/2013, entitled "Law on credit contracts for consumers", published in the Official Journal of the Republic of Moldova No. 191-197, on 06.09.2013). We also drew attention to the doctrinal sources that researched the bank credit contract, having studied the scientific works of authors from the Republic of Moldova and Romania such as Băieșu A, Grigoriţă C., I. Turcu, Кайряк И.Н. , Postolachi G., Postolachi M., L. Smarandache, Dodocioiu A., , Marian N. and the scientific works of foreign English, German and Russian authors such asGavalda C., Stoufflet J., Liefmann R., Агарков М.М., Алексеева Д.Г., Пыхтин С.В., Хоменко Е.Г, Бычкова Н.П.,

Авагян Г.Л., Баяндурян Г.Л., Викулин А.Ю., Гравин Д.И, Калин В.

To research the connection between the emergence of the phenomenon of "consumerism", which the specialized legal literature positions this moment from a temporal point of view at the beginning of the 50-60s of the 20th century. The sources of law that were the basis for shaping consumer protection law were identified by researching foreign legislative sources in states such as Italy (1942), Israel (1964), Sweden (1971), Denmark (1974), Germany (1977), Great Britain (1978) and later at the level of the European Community states by adopting Directive no. 93/13/CEE regarding unfair terms[1]. For this purpose, reference bibliographic sources from domestic and abroad, developed by authors such as Avner S., Diamond A., Hondius E, Goicovici J., Miler D., Peglion-Zika C.M., Plotnic O.,Shalev G., Кузнецов Д. А.

On the occasion of the comparative research of theory and jurisprudence, we found that jurisprudence represents an innovation factor in the field of consumer protection law and traces the main trends in the dynamics of the development of legislation in the matter, establishing new possibilities in consumer protection. For this purpose, more than 80 court decisions were examined, with increased attention being paid to the decisions on the resolution of preliminary issues by the Court of Justice of the European Union, and based on these decisions we formulated a series of conclusions and proposals for a constructive development of the means protection of consumer rights within the limits and spirit of the law. Although the jurisprudence of the courts in Romania is noticeably richer in judicial cases regarding the determination of the abusive nature of the clauses in bank credit contracts, we were still able to determine the legal consequences of the finding of the abusive nature of the clauses in bank credit contracts, being corroborated by the jurisprudential opinion on these problems with the optics of the specialized doctrine expressed by the authors Aurel Băieșu și Olesea Plotnic[2], Octavian Cazac, Dorin Cimil.

## Chapter 2. The bank credit agreement in the context of the use of abusive clauses

The legislative definition of the bank credit agreement is provided in art. 1763 para. (1) from the modernized Civil Code of the Republic of Moldova. Through the bank credit agreement,

[2] Băieșu A., Plotnic O., ”Eliminarea clauzelor abuzive în contractele de consum prin prisma conflictului de legi”, published în Revista Moldovenească de Drept Internațional și Relații Internaționale Nr. 4 (30), 2013; Băieșu A., Plotnic O., ”Procedura judiciară de soluţionare a litigiilor de consum prin înaintarea acţiunilor individuale”, published în Revista Națională de Drept Nr. 10 (156), 2013;

the bank undertakes to make a sum of money available to a person as a loan, subject to its repayment, payment of interest and other related payments, or undertakes any other commitment to acquire a debt or to make a payment, extend the debt repayment term or issue any guarantees. The same definition, in general terms, results from national (Băieșu A.[3], Kaireak I.N.[4], Marian N.[5]) and foreign (Erpîleeva N. Iu.[6], Gavalda Christian and Jean Stoufflet[7], Gravin D.I..[8], Vikulin A. Iu.[9], Kalin V.[10]) researches dedicated to banking law.

Section 2.2. regarding bank credit subjects is composed of two subsections, one of which is dedicated to the analysis of the notion of professional, and the other being dedicated to the analysis of the notion of consumer.

Section 2.2.1, entitled "Professional" emphasizes the fact that it is of the essence of the bank credit contract that the lender necessarily has the quality of a bank, therefore the lender has the quality of a duly authorized professional according to the rules of the National Bank of the Republic of Moldova. Thus, the lender has a dually qualified quality (both professional and banking entity), and it acts as an enterprise that pursues the goal of obtaining profit including from the activity carried out in the field of lending through bank credit contracts, this being one of the main functions of banks.

Section 2.2.2, entitled "Consumer" shows that although the quality of lender in the field of bank loans can be held by both a natural or legal person, regardless of whether he is a professional or a consumer, in the case of the consumer bank credit contract the category of persons who can have the quality of the borrower is narrower and refers only to consumers.

The consumer is also commonly defined by the provisions of art. 3 paragraph (1) of the Modernized Civil Code of the Republic of Moldova, as any natural person who, within a civil legal relationship, acts predominantly for purposes not related to entrepreneurial or professional activity. The natural person does not have the status of consumer if the other party to the civil legal relationship does not have the status of professional.

Section 2.3, entitled "the form and object of the bank credit agreement" highlights the fact that according to the legal provisions on banking activity, it is mandatory that any bank credit agreement be concluded in written form, with the mandatory mention of the essential conditions of the credit, and the written form it is required to demonstrate the contractual conditions, i.e. "ad probationem" and not as a condition of validity.

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[3] Gheorghe Chibac, Aurel Băieșu, Alexandru Rotari, Oleg Efrim, DREPT CIVIL. CONTRACTE ȘI SUCCESIUNI Ediția a III-a, Chișinău, 2010, Ed. Cartier, pag. 323;
[4] Кайряк И.Н. Банковское право. Chișinău: Tipografia „Balacron" SRL 2008. pag. 74;
[5] Marian N., "Mijloacele juridice de protecție a drepturilor în contractul de credit bancar", teză de doctorat, Chișinău, 2018, p. 69;
[6] Ерпылеева Н.Ю. Международное банковское право. Москва: Дело, 2004. pag. 125;
[7] Gavalda Christian, Jean Stoufflet, "*Droit Bancaire*", Ed. Lexis Nexis, Ediţia a 9-a, Paris, 2015, pag. 52.
[8] Гравин Д.И. Кредитный договор по английскому и российскому праву. Москва, Инфотропик медия, 2014. pag. 52.
[9] Викулин А.Ю. и др. Банковское право Российской Федерации. Общая часть, Москва: Юристь, 1999, pag. 87.
[10] Калин В. Анализ формы договора банковского кредита, : Закон и жизнь, 2011, № 9, pag.49.

As mentioned previously, in the tendency to simplify the credit granting procedure, banks began to widely use standardized forms of credit contracts, which led to the assessment that these types of contracts are most often and adhesion contracts, just like the other contracts used in banking. The adhesion contract is currently characterized, in the specialized literature[11], by the fact that it is a contract composed of pre-formulated clauses, proposed by a professional to the consumer and which, due to its rigid nature, does not allow the negotiation of the contract in terms of its clauses, the only possibility the consumer being only accepting it in full or rejecting the contracting offer.

As regards the object of the consumer bank credit contract, it consists in the granting of a sum of money, as a loan, according to the conditions stipulated in the contract, in exchange for a consideration from the borrower, consisting of the payment of interest and other payments related to the interest (bank commissions, fees for banking services associated with the credit, premiums for guarantee insurance and others).

Section 2.4 entitled "clauses of the bank credit agreement" is dedicated to the analysis of the particularity of the imperative regulation of Law no. 202/2013, which denotes a tendency of legal dirigisme regarding the content of the credit agreement, in that it establishes a number of 21 categories of mandatory information that must be brought to the attention of the consumer before the conclusion of the credit agreement.

Section 2.5 entitled "the effects of the bank credit agreement" carries out an analysis divided into several subsections, through which an analysis of the obligations of the parties to the credit agreement, the liability of the parties to the credit agreement in case of breach of these obligations is carried out.

Subsection 2.5.1. entitled "obligations of the debtor" emphasizes the fact that the main obligation of the debtor is to repay the loan within the term established in the contract. The loan repayment term is calculated from the date the loan was made available to the debtor and can be set in days, months or years.

The payment of the loan can be broken down into three categories[12]: payment of the loaned amount (principal capital), payment of the consideration for the use of the loaned amount (interest) and payment of the loan costs (the commissions and bank fees established by the terms of the loan agreement).

Subsection 2.5.2 entitled "obligations of the creditor" contains an analysis of the correlative and interdependent obligations of the parties to the bank credit agreement, among which are listed the bank's obligations to make available to the borrower the amount of money that is the derivative material object of the credit agreement, in the form and conditions established in advance by the contract, the obligation of confidentiality regarding the data and information entrusted by the debtor or accumulated about him in the course of contractual relations, the obligation to inform the debtor and the obligation to properly assess the creditworthiness of the customer who contracts

[11] Berlioz Z – Le contract d'adhesion, LGDS, ED 2, Paris, 1976, pag. 14;
[12] Marian N. Unele aspecte cu privire la prețul contractului de credit bancar. În: Revista națională de drept, nr. 2 din 2014, p.79.

the bank loan . In relation to the last two obligations, jurisprudential arguments were brought to support this point of view, highlighting the jurisprudential details of C 26/13 (Árpád Kásler, Hajnalka Káslerné Rábai v. OTP Jelzálogbank Zrt.) and C- 348/14 (Bucura v. SC Bancpost SA), by which it was decided that the obligation to verify the creditworthiness and to provide information rests imperatively on the creditor bank, and otherwise, the negative consequences are to be borne by it, without falling on the consumer debtor.

Subsection 2.5.3 entitled "liability of the debtor" consists in the analysis of the provisions regarding the liability of the debtor for the repair of all the damage caused by the non-execution of the obligation, unless the debtor demonstrates that the non-execution is justified, according to art. 934 of the modernized Civil Code. On the other hand, in accordance with the provisions of article 1770 para. (1) of the modernized Civil Code, if the credit contract is terminated for the reason that the obligations assumed by the debtor were unjustifiably not executed, the bank will not have the right to demand the interest that it will miss from the reason for the early termination of the credit agreement, but this allows the bank to demand reparation of the other damages caused by the non-execution of the contract (additional costs of recovery of outstanding sums of money, late payment interest, costs caused by the forced execution procedure, etc.).

Subsection 2.5.4 entitled "liability of the creditor" is composed of the analysis of the consequences of not complying with the obligation to make the agreed amount available to the debtor or if he resorts to the termination of the contract unjustifiably.

Section 2.6 entitled "contract resolution" analyzes both the general cases of contract resolution and the special cases for the resolution of bank credit contracts. Regarding the special cases of resolution of bank credit contracts, it was found that in the specialized doctrine there is a first opinion[13], according to which they can also be established conventionally, through the bank credit contract, while a second doctrinal opinion[14] considers that the resolution of bank credit contracts can only be in the cases expressly provided by law and thus exclude the possibility that commercial creditors could be used to establish conditions different from those expressly set forth in art. 1242 para. (1) lit. a-c of C. civ. modernized to be able to build a position of superiority and abuse it.

## Chapter 3 Definition of the notion of unfair clause in bank credit contracts

Section 3.1 entitled "Doctrinal reflections on the implications of the principle of contractual freedom in the phenomenon of the use of abusive clauses" establishes the fact that by

[13] Octavian Cazac. Instituția rezoluțiunii și rezilierii contractelor – metodă de soluționare a raporturilor contractuale patogene. Autoreferatul tezei de doctor în drept. Chișinău, 2013, p. 16.
[14] Marian N. Libertatea decizională a părților contractante cu privire la rezilierea contractului de credit bancar. Aspecte comparative. Published in: Legea și viața, nr. 10/2014, p. 39

their purpose Directive 93/13/EEC and Directive 2008/48/EC establish a proportional limitation of the principle of contractual freedom to protect consumers against abusive use by traders of the right to freely establish contractual conditions. Thus, the protection of consumers against abusive clauses takes on a strong shape as an object of the sub-branch of consumer protection law, which establishes its own rules and asserts among the protected values and consumer rights.

Section 3.2 of the doctoral thesis, entitled "Pre-formulated clauses in contracts used by professionals" analyzes the national legislative fund that ensures the protection of consumer rights within the contractual relationships concluded with traders, if abusive clauses are inserted on the basis of pre-formulated clauses in the contract. More detailed regulation in this area appeared after the adoption of the Civil Code of the Republic of Moldova, through Law 105/2003 on the protection of consumer rights and Law 256/2011 on abusive clauses in contracts concluded with consumers. Subsequently, the provisions of Law no. 256/2011, regarding abusive clauses in contracts concluded with consumers were repealed, as a result of their introduction within the provisions of the Modernized Civil Code of the Republic of Moldova regarding abusive clauses in contracts concluded between traders and consumers.

Section 3.3. from the paper, entitled "legal nature of abusive clauses" carries out an analysis of the constitutive components of the features of abusive clauses provided by national and European legislation in the field of consumer protection.

Subsection 3.3.1, entitled "contractual clause not to be negotiated individually with the consumer" carries out an analysis of the fact that as it follows from the provisions of art. 1 of Law 105/2003, a clause can be considered abusive when it was not negotiated privately with the consumer and when individually or together with other clauses in the contract it creates a state of imbalance to the detriment of the consumer.

In addition, art. 1069 para. (3) of the modernized Civil Code establishes a relative presumption in the sense that a clause will be considered not to have been individually negotiated if it was drafted in advance, the consumer not being able to influence its content. The presumption may be rebutted by evidence to the contrary by the merchant, who bears the burden of proof. Therefore, the fact that a contractual clause was not negotiated directly with the consumer does not automatically lead to the conclusion that it would be abusive.

A contractual clause will be considered not to have been directly negotiated with the consumer if it was established without giving him the opportunity to influence its nature. The

legislator does not sanction the contractual clauses inserted in the contracts concluded between professionals and consumers if they were not negotiated, but if they were not negotiable, if they did not allow the consumer to negotiate them in any way. Otherwise, it would lead to the conclusion that any professional is penalized for failing to negotiate the terms of the contract with his consumer client, even though both contracting parties may have agreed on the terms of the contract.

In order to be in the presence of a negotiation, it is necessary that, after the presentation of credit offers by professionals, the presentation of counter offers by consumers should follow, an aspect which, if not done, should not lead to the conclusion that there was no proof of negotiation. Therefore, as long as there was no counter-offer, no disagreement on the terms of the contract, whatever they were, the professional was not in a position to propose negotiating his own offers. That is why we consider that the second thesis of art. 4 para. (2) of Law 105/2003 should be amended in the sense that the presumption of the preformulated character of a contractual clause in this legal text should be removed.

In a praetorian way, at the confluence between the criterion of negotiation and the criterion of good faith in the stipulation of contractual clauses in loans between consumers and professionals, the Court of Justice of the European Union also brought into discussion the clear and intelligible character of the clauses in the contract concluded between the professional and the consumer, in judgments rendered in cases C 26/13 (Árpád Kásler, Hajnalka Káslerné Rábai v. OTP Jelzálogbank Zrt.), C 81/19 (NG, OH v. SC Banca Transilvania SA), C-621/17 (Gyula Kiss v: CIB Bank Zrt), C- 348/14 (Bucura v. SC Bancpost SA) and others.

Subsection 3.3.2 entitled "the clause be contrary to good faith" analyzes the condition that a contractual clause is contrary to good faith by reference to the subjective attitude of the professional, i.e. if the insertion of the clause is based on his intention to obtain an advantage as a result of the exploitation of the special position in which he would have been at the time of the conclusion of the contract. The advantage obtained by circumventing the obligation of good faith must create a contractual imbalance between the parties and allow the professional to hold a position of superiority over the consumer within the contract as well.

On the other hand, hypotheses can be identified in which certain types of clauses contained in the bank credit contract are contrary to good faith, when they were not proposed in consideration of reasonable reasons, justifiable from an objective point of view and which would

tends to unduly oppress the party bound by such clauses.

Subsection 3.3.3 entitled "the clause, by itself, or together with other provisions in the contract, creates a significant imbalance between the rights and obligations of the parties, to the detriment of the consumer" describes the fact that there is an interconnection between the condition of establishing a non-negotiated contractual clause in good faith and respecting the balance between the rights and obligations of the parties, without significantly distorting the balance to the detriment of the consumer.

The significant imbalance between the rights and obligations of the parties achieved by the negotiated clauses to the detriment of the consumer, according to art. 4 para. (3) from Law 105/2003 and art. 1072 of the Civil Code, does not involve a mathematical check but a check of compliance with the legal balance.

Subsection 3.3.4. entitled "clauses prohibited by law" analyzes the clauses considered to be abusive, by the will of the legislator, who instituted an absolute presumption that a series of contractual clauses will be considered abusive, if they were not negotiated by the contracting parties.

Art. 1078 of the modernized Civil Code provides a list of clauses considered abusive only in contracts concluded between professionals and consumers, if they were not individually negotiated and which have as their object or effect the creation of the assumptions listed in the article in question, to the detriment of the consumer.

## Chapter 4. Control over abusive clauses

In approaching the methods of exercising control over abusive clauses, a comparative analysis of the administrative mechanism for controlling abusive clauses and the jurisdictional mechanism for controlling abusive clauses in bank credit contracts must be carried out.

Section 4.1 entitled "Administrative control mechanism of abusive clauses" shows the fact that according to art. 27 para. (2) index 1 of Law 105/2003, the Agency for Consumer Protection and Market Surveillance is the administrative authority that coordinates at the national level the control of compliance with consumer protection legislation.

Section 4.2 entitled, "Judicial control mechanism of abusive clauses" shows that in the situation where the mediation of the conflict situation generated by the violation of the legal provisions prohibiting the use of abusive clauses in the field of credit contracts fails, in order to end the violation of his rights, the consumer has the right to address the courts in order to protect his rights by judicial means, a brief description of the judicial path of cases of this type being made. It is important to underline the fact that in this section the insufficiency of the procedural means was highlighted to combat foreclosures initiated on the basis of abusive clauses in bank credit contracts or of foreclosures for the recovery of debts calculated on the basis of abusive clauses.

Section 4.3 entitled "Limits of judicial review of abusive contractual clauses and the effects of establishing the abusive character of contractual clauses" notes the fact that according to the

jurisprudence of the Court of Justice of the European Union in case C-618/10 (Banco Espanol de Credito), in the interpretation of Article 6 paragraph (1) of Directive 93/13/EEC, it should be noted that European legislation opposes a national regulation that allows the national court to complete the said contract, modifying the content of that clause, when it finds its abusive nature.

Regarding the effects of finding the abusive nature of the clauses denounced as abusive, in addition to the fact that they are considered to be abolished with retroactive effect and do not produce any kind of effects between the parties, according to the provisions of art. 331 para. (1) of the modernized Civil Code, which provides that: "the void legal act is considered, with retroactive effect, to have produced no legal effect from the moment of its conclusion". Also, according to art. 331 para. (5) of the Civil Code, benefits executed pursuant to the void legal act, as well as other enrichments obtained from those benefits are subject to restitution according to the legal provisions on unjust enrichment.

Section 4.4, entitled "The non-prescription of the right to request the determination of the abusive character of the contractual clauses" emphasizes the fact that, in view of the effects produced by the finding of the abusive nature of a contractual clause and the fact that this is equivalent to the absolute nullity of the abusive clause, the action in the determination the abusive nature of these clauses is imprescriptible, but the restoration of the previous situation if it is not requested as a petit accessory - may be granted if it is requested within the general statute of limitations.

Section 4.5, entitled "Contraventional liability of professionals for the use of abusive clauses in contracts" shows the fact that in addition to the civil liability of professionals in connection with which it is found that they have used abusive clauses in one or more contracts, we must also expose the possibility engaging the contraventional liability of professionals for violating the obligation not to use abusive clauses in its commercial practice, we show that the legislation in force provides in the framework of art. 33 para. (2) of Law 105/2003 that the violation of contraventional rules attracts the application of contraventional sanctions for non-compliance with consumer protection legislation according to the procedures established by the Contraventional Code.

It should be noted that the very use of abusive contractual clauses is not criminalized as a contravention, as such, but on the occasion of going through the series of contraventions to the security and consumer protection regime, we were able to identify a series of contraventional violations that can be committed on the basis of contractual clauses abusive or in order to create favorable conditions for the provision of contractual clauses against consumer rights in bank credit contracts.

## GENERAL CONCLUSIONS AND RECOMMENDATIONS

The result obtained, which contributes to the solution of an important scientific problem, resides in the development of the tools for identifying the distinctive signs of abusive clauses in bank credit contracts, a fact that led to the clarification for theorists and practitioners in the field of civil law of the respective features, in order to apply the rules national and European researched in this field.

1. The legal regime of consumer protection against abusive clauses is relatively new. It is less than 50 years since its appearance in the Western European states, and in the Republic of Moldova this regime has been regulated since 2003, meaning that we can see that improvements are still needed to the institution of consumer protection against abusive clauses.

2. One of the main material sources of the legal regime of consumer protection is the consumerist movement and the social need to protect consumers against the risk of being subjected by professionals to bear abusive contractual conditions and create a state of economic-legal exploitation for them . Examples of such situations could be the establishment of costs that are not clearly explained, vague legal wording that does not allow consumers to verify that the professional's contractual obligations are being met, or contractual clauses that unduly limit the professional's contractual liability and increase the consumer's contractual liability .

3. From the analysis of the national and European jurisprudence we can find that there is a constant concern for the nuance of the interpretations given to the European legal norms in order to delimit and apply the relevant legislation in accordance with the purpose pursued by the legislator, so that until now the notion of consumer and professional does not have a uniform definition in national legislation. We find that there are two definitions of the notion of consumer, and the definition given to the term consumer in the Modernized Civil Code of the Republic of Moldova is more nuanced and broader than that provided by Law 105/2003 on consumer protection. We argue that harmonization of national legislation is necessary and that it should also include legal entities entering into contracts for non-commercial purposes within the scope of consumer protection.

4. Although at first sight, the clauses in the contracts concluded between consumers and professionals, if they are not negotiated by the parties, could be considered abusive by the simple fact of the lack of a negotiation before signing the bank credit contract, but in essence such of the idea is contradicted by the legal provisions and the relevant jurisprudence in this field.

Thus, the recent jurisprudence of the Court of Justice of the European Union in the Case Kiss v. CIB Zrt and Case 81/19 (Banca Transilvania), demonstrates that although certain contractual clauses are not negotiated, they do not represent ab initio abusive clauses as long as they are transposed provisions of the supplementary national legislation or as long as the costs assumed based on the examined clauses are foreseeable from their wording.

5. These points of view are particularly important in the case of verifying the abusive nature of clauses in bank credit contracts because mainly, when clauses in bank credit contracts are criticized as being abusive, they usually refer to the clauses that establish costs borne by

consumers, such as, for example, contractual clauses regarding interest, how the loan interest may vary, bank commissions and penalties in case of delay in repayment of the loan or in case of early repayment. Since these clauses are part of the main object of the bank credit agreement or are related to the main object of the bank credit agreement, it is necessary to clarify whether or not they can also be analyzed economically in terms of the existence of the imbalance or the analysis it must be only of a legal nature, without taking into account the concrete costs.

As a consequence, it can be deduced that a contractual clause that does not explain for which operations the costs stipulated by it are specifically charged is not always abusive. Also, the proportionality between the costs borne by the consumer and the quality or type of services provided to him cannot serve as an indicator according to which to analyze the existence of the contractual imbalance in order to retain the abusive nature of the contractual clauses subject to control, when they have a clear character.

6. It should also be highlighted the fact that a new stage can be attested in the analysis of the issue of contractual balance between the parties, in order to protect equity as an ideal of social relations, in the legislator's approach to gradually implement legislative elements specific to the protection of consumer rights and in legal relations concluded between professionals, probably for reasons related to the fact that even in the category of professionals one can distinguish between strong subjects who can impose their own conditions by using the dominant position in negotiations and vulnerable subjects who cannot defend their own interests in negotiating with a professional who benefits from more resources to impose his will.

7. However, we believe that major changes are necessary in the judicial procedures to make the control over abusive clauses more efficient, as well as the support of relevant institutions necessary for informing and protecting consumers, these aspects being analyzed in the form of proposals before following the work of developing the research activity scientific.

**Following the realization of the doctoral scientific research approach, I arrived at the foundation of the following general proposals:**

1. A legislative clarification of the notion of "consumer", provided for in art. 3 of the Modernized Civil Code and of art. 3 point 2 of Law no. 202/2103, in the sense that it should also include legal entities that conclude contracts for non-commercial purposes, because at the moment the notion of consumer refers only to natural persons who do not contract in professional or commercial interest, an aspect that was confirmed including in the relevant jurisprudence of the Court of Justice of the European Union in Case C-110/14 (Judgment Costea v. Volksbank S.A.). We cannot overlook the fact that such a legislative intervention would also put an end to the legislative contradiction within art. 3 of the Modernized Civil Code of the Republic of Moldova and could contribute to the standardization of legislation.

2. The obligation of professionals to inform consumers could be perfected by harmonizing Law 202/2013 with the provisions of the Court of Justice of the European Union from the Decision pronounced in Case C-679/18 (OPR Finance s.r.o. v. GK), in the sense that if the professional violates the obligation to properly evaluate the consumer's financial creditworthiness, he will have

to suffer the unfavorable consequences, in the sense that he will not be able to benefit from the full repayment of the loan as a result of the cancellation of the credit agreement for this reason, but from a staggered repayment of the borrowed capital , without interest. Currently, the provisions of Law 202/2013 do not contain such rules, nor do they provide for sanctions for not properly assessing the creditworthiness of the consumer client, an aspect that we believe could be perfected in the proposed way argued in the respective chapter.

3. We also believe that it should be introduced by the same legislative provision and the prohibition that the contractual clauses do not establish more drastic conditions for the resolution of the contract by the creditor, under the penalty of absolute nullity, because otherwise it could be on the way contractual provisions, which were not negotiated beforehand, to establish a regime less favorable to the debtor than the minimum legal guarantees included in art. 1769 para. (1) lit. a) - d) of the Civil Code modernized by using the legal provisions contained in art. 1769 para. (1) lit. e) of the Civil Code, which provides that the resolution of the credit contract can take place under other conditions provided for in the contract.

4. We believe that it is also important to strengthen extrajudicial mechanisms to protect consumer rights, as we can see that the activity reports of the Agency for Consumer Protection and Market Surveillance do not present a large number of interventions in bank credit contracts in order to protect the interests of consumers , although from the official statistics of the National Bank of the Republic of Moldova it can be seen that the sector of bank credit products is important in terms of volume. A good way to improve the activity of the Agency for Consumer Protection and Market Surveillance is to allow the remedial measures established by this institution to order the refund of the amounts collected based on abusive clauses.

5. Also, in order to completely counteract the problem of abusive clauses in bank credit contracts, we believe that it would be beneficial to carry out an inventory and check of all models of credit contracts used in the banking sector, by the Agency for Consumer Protection and Market Supervision , in order to carry out a global analysis of the credit contract models, so that in the situation where abusive clauses are found, they can be ordered to be removed from the contract model. At the same time, to ensure a prior control, we consider that the same way of checking the contract models should be carried out for the new types of contracts that would be introduced in the civil circuit by professionals.

6. We believe that it is necessary to implement an open execution appeal procedure against foreclosures started on the basis of enforceable titles represented by credit contracts. We believe that this procedure must be aimed at combating foreclosures started as a result of the declaration of early maturity based on abusive contractual clauses or in the situation where the foreclosed debt is illegally increased by calculating additional sums of money to the debt balance based on abusive clauses (commissions, penalty interest, interest increases). Thus, the promotion of the enforcement appeal could stop the foreclosure or could lead to the recalculation of the foreclosed debt by subtracting the wrongly calculated amounts as a result of the use of abusive clauses and could lead to the protection of the rights of consumer debtors and guarantors.

7. Last but not least, another problem that requires a solution is represented by the fact that it is necessary to clarify the legislation regarding the remedies used with regard to abusive clauses, because in the context of the decision of the Court of Justice of the European Union in the Case C-269/19 (Case A.A. v. Bank B), the possibility of the court ordering the obligation of the creditor to summon the consumer to a negotiation for the renegotiation of clauses that present an abusive character must also be taken into account.

## SELECTIVE BIBLIOGRAPHY

### A. Romanian language:


1. BAIEȘ, S., CEBOTARI, V., CREȚU, I., MÎȚU, G., BRUMĂ, S., TABUNCIC, T., CAZAC, O., ROBU, O., CARA, A. *Drept Civil. Teoria Generală a Obligațiilor*, Chișinău, Ed. Cartier, 2015, 752 p., ISBN 978 – 9975 – 79 – 620 - 0;
2. CAZAC, O. *Instituţia rezoluţiunii şi rezilierii contractelor – metodă de soluţionare a raporturilor contractuale patogene*, autoreferatul tezei de doctor în drept. Chişinău, 2013, 30 p.;
3. CHIBAC, G., ROBU, O., BRUMĂ, S., CHIBAC, N. *Drept Civil – Contracte și Succesiuni. Curs Universitar*, ediția a IV-a, Chișinău, Tipografia Centrală, 2019, 471 p., ISBN: 978-9975-146-39-5;
4. GOICOVICI, J. *Dreptul consumaţiei*, Cluj-Napoca, Ed. Sfera Juridică, 2006, 190 p., ISBN: 978-973-87831-4-0;
5. HANGA, V., BOB, M.D. *Curs de drept privat roman*, ediția a V-a, revizuită și adăugită, București, Ed. Universul Juridic, 2013, 265 p., ISBN: 978-973-127-626-7;
6. MARIAN, N. *Libertatea decizională a părților contractante cu privire la rezilierea contractului de credit bancar. Aspecte comparative*. În: *Legea și viața*, 2014 nr. 10(12), pp. 34-39, ISSN 1810-309;
7. MARIAN, N. *Mijloacele juridice de protecție a drepturilor în contractul de credit bancar*, teză de doctor în drept, Chișinău, 2018, 212 p;
8. MURZEA, C. *Contractele reale în dreptul roman*. În: *Acta Universitatis George Bacovia Juridica*, 2012, nr. 2 (4), pp. 307-318, ISSN: 2285-0171;
9. PLOTNIC, O. *Modalităţi de apreciere a caracterului abuziv în cazul unei clauze contractuale de consum*. În: *Revista Naţională de Drept*, 2011, nr. 10 (11), pp. 57-62, ISSN: 2587-411;
10. PLOTNIC, O. *Respectarea autonomiei de voinţă a părţilor în încheierea contractelor de consum*. În: *Revista Naţională de Drept,* 2010, nr. 9(10), pp. 82-85, ISSN: 2587-411;
11. POSTOLACHI, G., POSTOLACHI, M. *Contractul de credit bancar în activitatea întreprinderilor*. În: *Moldoscopie,* 2000, nr. 1 (13), pp. 180-184, ISSN: 2587-4063;

**B. French language:**


1. GAVALDA, C., STOUFFLET, *Droit Bancaire*, Paris, Ed. Lexis Nexis, Ediţia a 9-a, 2015, p. 772, ISBN: 9782711020997;
2. PEGLION-ZIKA, C.M., *La notion de clause abusive au sens de l'article L. 132-1 du Code de la consommation*, teză de doctor în drept, Paris, 2013, p. 420;


**C. Russian language:**


1. АГАРКОВ, М.М. *Основы банковского права. Учение о ценных бумагах,* Москва, Изд-во БЕК, 1994, p. 350, ISBN: 5-466-00147-3;
2. АЛЕКСЕЕВА, Д.Г., ПЫХТИН, С.В., ХОМЕНКО, Е.Г. *Банковское право,* 4-е издание, Москва, Издательство Юрайт, 2020, p. 410, ISBN: 78-5-534-00289-8;
3. ВИКУЛИН, А.Ю. и др. *Банковское право Российской Федерации. Общая часть*, Москва, Юридическое издательство Норма, 2021, p. 336, ISBN: 978-5-00156-093-7;
4. КАЙРЯК, И.Н. *Банковское право*, Chișinău, Ed. „Balacron", 2008, p. 357, ISBN: 978-99-75-9955-4-2;
5. КАЛИН, В. *Анализ формы договора банковского кредита*. În: *Закон и жизнь*, 2011, nr. 9(12), pp.48-52, ISSN 1810-3081;
6. КУЗНЕЦОВ, Д. А., *Предмодернизационный этап развития потребления*. În: *Научный потенциал: работы молодых ученых*, 2009, nr. 4(4), pp.195-200, ISSN 001.89:316.628;


**Electronic sources (internet):**


1. http://curia.europa.eu
2. http://jurisprudenta.csj.md/
3. https://eur-lex.europa.eu

**LIST OF RELEVANT PUBLICATIONS**
**OF THE AUTHOR**

*1."Considerații cu privire la obligațiile instituțiilor bancare de a informa consumatorii în etapa prealabilă semnării contractului de credit bancar (comparație între stadiul actual al legislației și propunerile de modificare ale Legii nr. 202/2013 privind contractele de credit pentru consumatori"* - publicat în cadrul volumelor manifestării științifice Conferinței naționale cu participare internațională "Integrare prin cercetare și inovare", 2018. pag. 182-184, Chisinau, Republica Moldova. ISBN 978-9975-142-50-2.

2. *"Sancțiunile legale pentru remedierea clauzelor cu caracter abuziv în contractele de credit bancar"* - publicat în cadrul volumelor manifestării științifice Conferinței naționale cu participare internațională "Realități și perspective ale învățământului juridic național", Vol.1, 2019, pag. 491-493, Chişinău, Republica Moldova, ISBN 78-9975-149-79-2.

3. "*Posibilitatea analizării caracterului abuziv al clauzelor contractuale referitoare la comisioane în contractele de credit bancar"* - publicat în cadrul volumelor manifestării științifice "Integrare prin cercetare și inovare", 2019, pag. 347-350 Chisinau, Republica Moldova. ISBN 978-9975-149-46-4.

4. "*Cenzurarea judiciară a cuantumului dobânzii penalizatoare prevăzută de contractele de credit bancar încheiate cu consumatorii"* publicat în cadrul volumelor manifestării științifice "Integrare prin cercetare și inovare" – Științe juridice și economice Vol.2., p. 309-312, 2020. Chisinau, Republica Moldova, ISBN 978-9975-152-48-8.

5. *"Definirea noțiunilor de "consumator" și "profesionist" în domeniul contractelor de credit bancar, fundamente juridice și evoluții în legislația Republicii Moldova, României și Uniunii Europene"* - publicat în cadrul volumelor manifestării științifice Conferinței Internaționale a Doctoranzilor în Drept, Ediția a IX-a, Timisoara, 2017, p. 172-181, București, Ed. Universul Juridic, 2017 ISSN 2066--6403

6. "*Analiza critică privind conformitatea art. 1071 C. C. RM modernizat cu liniile directoare ale Directivei 93/13/CEE în domeniul protecției consumatorilor în contractele de credit bancar"*, publicat în Revista Studia Universitatis Moldaviae Nr. 8 (138) (2020) – Secțiunea Drept p. 224-227, ISSN 1814-3199 / ISNe 2345-1917;

7. *"National Case Law in Setting Bail Suspending Credit Enforcement in Disputes between Consumers and Professionals from the Perspective of Art.1 of Additional Protocol no.1 of th Convention"* publicat în The European Proceedings of Social & Behavioural Sciences" EpSBS, Vol. XV, (Septembrie 2016), p. 444-447, ISSN - 2357-1130;

8. *"The European Court of Justice Jurisprudence in Árpád Kásler vs. Otp Case and its Interpretation in the Jurisprudence of National Courts"* publicat în European Journal of Law and Public Administration, 3(1) (2016), p. 61-67, ISSN - 2360 - 6754;

9. "*Considerations on the national case law regarding the control of abusive clauses regarding the currency of credit loan repayment*" European Journal of Law and Public Administration (2017); Vol. 3(2), p. 19-26, ISSN - 2360 - 6754;

10. *"European case-law approach to the removal of the consequences of the non-essential abusive clauses in bank loan contract"* - în curs de publicare în cadrul volumelor manifestării științifice "State security and human rights in digital era" - 6th Edition. Republica Moldova, Chișinău, 8.12.2021-09.12.2021.

## ADNOTARE

**Grozavu Mircea, ”Clauzele abuzive în contractele de credit bancar”. Teză de doctor în drept. Școala doctorală de științe juridice a Universității de Stat din Moldova. Chișinău 2023**


**Structura tezei**: introducere, 4 capitole, concluzii și recomandări, bibliografie din 198 titluri, 5 anexe, 171 pagini de text de bază. Rezultatele obținute se conțin în 10 publicații științifice.

**Cuvinte cheie**: clauze abuzive, protecția consumatorului, consumator, profesionist, contract de credit bancar, răspundere, negociere, dezechilibru.

**Domeniul de studiu**: dreptul civil și dreptul protecției consumatorilor referitor la trăsăturile clauzelor abuzive folosite în domeniul contractelor de credit bancar și a modalității de contracarare a acestora.

**Scopul lucrării:** lucrarea își propune ca scop efectuarea cercetării științifice în vederea fundamentării, identificării și analizei condițiilor generale dar și a particularităților clauzelor contractuale abuzive din contractele de credit bancar din prisma legislației și jurisprudenței din Republica Moldova, România și Uniunea Europeană.

**Obiectivele lucrării**: analiza și definirea conceptului de clauză contractuală abuzivă și a particularităților determinate de natura contractului de credit bancar; determinarea și analiza condițiilor stabilite de legislație și jurisprudența comparată pentru ca o clauză contractuală să fie considerată abuzivă; concretizarea și argumentarea particularităților clauzelor contractuale abuzive folosite în cadrul contractelor de credit.

**Noutatea și originalitatea lucrării:** teza abordează evidențierea trăsăturilor clauzelor abuzive prin analiza legislației și a practicii instanțelor de judecată din Republica Moldova, România și practica Curții de Justiție a Uniunii Europene. Noutatea cercetării constă și în identificarea imperfecțiunilor legislative.

**Semnificația teoretică:** conținutul lucrării poate servi în calitate de ghid teoretic pentru perfecționare și suport didactic în cadrul disciplinelor: drept civil și dreptul protecției consumatorilor.

**Valoarea aplicativă:** lucrarea dă posibilitatea transpunerii în practică a studiului elaborat, a recomandărilor și propunerilor de *lege ferenda* efectuate în vederea îmbunătățirii cadrului normativ din domeniu.

# ANNOTATION

## Grozavu Mircea, "Abusive clauses in bank credit agreements". Doctoral thesis in law. Doctoral School of Legal Sciences of the State University of Moldova. Chisinau 2023

**Thesis structure**: introduction, 4 chapters, conclusions and recommendations, bibliography of 171 titles, 5 annexes, 186 pages of basic text. The results obtained are contained in 10 scientific publications.

**Keywords**: unfair terms, consumer protection, consumer, professional, bank loan agreement, liability, negotiation, imbalance.

**Field of study:** civil law and consumer protection law regarding the features of abusive clauses used in the field of bank credit agreements and how to counteract them.

**Purpose of the thesis**: the paper aims to conduct scientific research to substantiate, identify and analyze the general conditions and the peculiarities of abusive contractual clauses in bank credit agreements in terms of legislation and jurisprudence in the Republic of Moldova, Romania and the European Union.

**The objectives of the the thesis**: the analysis and definition of the concept of abusive contractual clause and of the particularities determined by the nature of the bank credit contract; determining and analyzing the conditions laid down by law and comparative case law for a contractual term to be considered unfair; concretization and argumentation of the particularities of the abusive contractual clauses used in the credit agreements.

**Novelty and originality of the thesis**: the thesis addresses the highlighting of the features of abusive clauses by analyzing the legislation and practice of the courts of the Republic of Moldova, Romania and the practice of the Court of Justice of the European Union. The novelty of the research also consists in identifying the legislative imperfections.

**Theoretical significance**: the content of the paper can serve as a theoretical guide for training and teaching support in the disciplines: civil law and consumer protection law.

**Applicable value**: the thesis gives the possibility to put into practice the elaborated study, the recommendations and proposals of lege ferenda made in order to improve the normative framework in the field.

# АННОТАЦИЯ

**Грозаву Мирча, « Несправедливые условияв договорах банковского кредита». Докторская диссертация по юриспруденции. Докторская школа юридических наук Государственного Университета Молдовы. Кишинев 2023**

**Структура диссертации**: введение, 4 главы, выводы и рекомендации, библиография из 198 наименований, 5 приложений, 171 страниц основного текста. Полученные результаты содержатся в 10 научных публикациях.

**Ключевые слова**: неправедливые условия, защита прав потребителей, потребитель, профессионал, договор банковского займа, ответственность, торг, несоответствие.

**Область исследования**: гражданское право и право защиты прав потребителей в части особенностей несправедливых условий, применяемых в сфере банковских кредитных договоров, и способов противодействия им.

**Цель работы**: диссертация направлена на проведение научного исследования для обоснования, выявления и анализа общих условий и особенностей несправедливых условий в договорах банковского кредита с точки зрения законодательства.

**Задачи диссертации**: анализ и определение понятия несправедливых условий и особенностей, определяемых сущностью договора банковского кредита; определение и анализ условий, установленных законом и сравнительным прецедентным правом, для признания условия договора несправедливым;

**Новизна и оригинальность диссертации**: в диссертации рассматривается выделение признаков несправедливых условий путем анализа законодательства и практики судов Республики Молдова, Румынии и практики Суда Европейского Союза.

**Теоретическая значимость**: содержание диссертации может служить теоретическим пособием при подготовке и учебно-методическом сопровождении по дисциплинам: гражданское право и право в области защиты прав потребителей.

**Прикладная ценность:** диссертация дает возможность применить на практике разработанное исследование, рекомендации и предложения сделанные для улучшения нормативной базы в этой области.

**GROZAVU MIRCEA**

**CLAUZELE ABUZIVE ÎN CONTRACTUL DE CREDIT BANCAR**

**553.01 Drept Civil**

**Rezumatul tezei de doctorat în drept**
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