Romania

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Introduction

Product liability emerged as a stand-alone branch of law in Romania only during the last few decades. However, it is essentially grounded on "classical" civil law, which has acknowledged and regulated fundamental principles such as tort liability and contractual liability for more than a century. Product liability is thus based on the traditional civil law under the New Civil Code[1] and the special statutes regulating product liability. The major laws establishing the relevant legal framework in this field are:

- Law Number 296/2004 on the Consumption Code, as amended;[2]
- Law Number 240/2004 on producers' liability for damages caused by defective products;[3] and
- Government Ordinance Number 21/1992 on consumer protection, as amended.[4]

The Consumption Code represents the general statutory framework regulating consumer protection, including product liability, while Law Number 240/2004 and Government Ordinance Number 21/1992 provide for more specialized rules regarding the terms and circumstances for product liability. The main rules governing product liability are currently harmonized with the European Union (EU) regulations.

Traditional Sources of Product Liability

Tort Liability

Article 1349 of the New Civil Code provides for the principle of integral reparation of damages caused to a third party due to willful or negligent faulty

1 Law Number 287/2009 on the Civil Code was republished in the *Official Gazette of Romania*, Part I, Number 505 of 15 July 2011 (the "New Civil Code") and entered into force on 1 October 2011. The outdated statutory provisions of the old Civil Code (adopted in 1864) were repealed.
2 Republished in the *Official Gazette* of Romania, Part I, Number 224 of 24 March 2008.
3 Republished in the *Official Gazette* of Romania, Part I, Number 313 of 22 April 2008.
4 Republished in the *Official Gazette* of Romania, Part I, Number 208 of 28 March 2007.

actions or inactions. A faulty behavior is assessed in relation to the objective standard of bonus pater familias, which is the standard of care of a diligent and prudent person.

Prior to the New Civil Code, the sources of tort liability were found in articles 998 and 999 of the Civil Code. However, the provisions of the former regulations on tort liability were broadly the same as that of the New Civil Code. When seeking reparation for damages under the general principles of tort law, the following elements must be proven:

- The damage;
- The faulty act (i.e., the defect of the product);
- The causal nexus between the damage and the defect of the product; and
- The fault of the seller.

Generally, the fault of the seller is the most difficult element to prove, as sellers are seldom also the manufacturers of the product. This major shortcoming was alleviated by the integration into the legal framework of EU principles of product liability.

Contractual Liability

Under the civil law, contractual liability applies to claims arising between parties to a contract that has been validly concluded and in connection with the non-performance or improper performance of the parties' obligations under a given contract.

In a sale contract, only the purchaser may enforce the contractual liability of the seller for hidden defects of the purchased good,[5] lack of the agreed qualities of the purchased product,[6] and the malfunctioning of the purchased product within a period of time determined contractually or by special laws.[7] The occurrence of the first two cases entitles the purchaser to request from the seller the following:

- Removal of the defects by the seller or for his account;
- Replacement of the purchased product with another similar product;
- Proportionate reduction of the price; and
- Termination of the agreement.

Upon the seller's request, the court, assessing the level of the defect and the scope for which the agreement was concluded, may impose any other measure than that requested by the purchaser, to the extent that such measure is one of those available to the purchaser. Under article 1712 of the New Civil Code, if

5 New Civil Code, articles 1.707 *et seq*.
6 New Civil Code, article 1.714.
7 New Civil Code, article 1.716.

the seller was aware of the existence of the defects or the nonconformity when the agreement was concluded, he also will cover the entire damage caused to the purchaser.

As regards liability for the good operation of the purchased product, article 1716 of the New Civil Code provides that the seller should repair the product within 15 days from the date the purchaser requested for such repair, or within the term provided by the law or contract concluded by the parties. The seller should replace the product if he cannot repair the product or if the repair exceeds the period necessary for such. If the seller fails to abide by the obligation to replace the defective product, the purchaser may request reimbursement of the paid price, subject to the return of the purchased product to the seller.

The major drawback of contractual liability as regulated by the New Civil Code is that it may be sought only by the parties to the agreement, thus, in principle, preventing third parties from having a redress against the seller of a defective product for prejudice incurred. However, such limitation applies only to agreements concluded with the purchaser deemed as "non-consumer". Article 1177 of the New Civil Code provides that contracts concluded with consumers are subject to specific norms regulating consumer protection and product liability, which may be supplemented by the general statutory rules of civil law.

Product Liability under Consumer Law

In General

Traditional statutory sources regulating liability for defective products contain inherent disadvantages in the protection of the buyer, as general civil law naturally must ensure a balanced allocation of rights and obligations between the seller and the buyer.

In contrast, contracts concluded with a special category of buyers (i.e., end-consumers) require special treatment. As consumers are non-professional individuals legally assumed as having limited knowledge and experience compared to the manufacturer or seller, a special legal framework offers customized tools aimed at easing the exercise of consumer rights and triggers the liability of manufacturers for defective products.

In this regard, article 3 of Law Number 240/2004 holds the producer liable for present and future damages caused by the defects of his product. Thus, the person incurring the damage caused by a defective product only must prove the damage, defect of the product, and causal nexus between the damage and the defect, but not the fault of the seller. The "traditional" fault-based liability is thus replaced by the seller's strict liability (*i.e.*, liability without any proof of specific negligent acts or omissions).

Even prior to the implementation of the EU rules on product liability, specific laws (*i.e.*, Government Ordinance Number 21/1992) already regulated the strict liability of the seller or producer. However, jurisprudence only gradually accepted

such shift of perspective and continued to apply the general principles of tort liability set forth by the Civil Code.[8] Article 1349(4) of the New Civil Code specifically makes reference to laws on consumer protection in what concerns liability for the damage caused by defective products, thus specifically imposing the full application of the objective liability principle. Still, the general statutory rules of the New Civil Code will apply when the special provisions of consumer law do not provide a solution for a specific matter.

Products Subject to Special Liability

According to article 2(1)(b) of Law Number 240/2004, the concept of product means "any movable asset, even though it is incorporated into another asset whether movable or immovable; product also means electrical power". Thus, the scope of the law includes only movable assets, whether processed products, raw materials, or an asset incorporated into another.

Considering that the law does not distinguish as to the type of movable assets, legal doctrine asserts that the category of "products" also should include goods such as medicines, parts of the human body (e.g., organs for transplants), or even products of the human body (e.g., blood, male or female reproductive cells).[9] Legal scholars do not have a unanimous view on whether the notion of "products" also should include intangible assets. It may be inferred that, since the law only included electrical energy among the notion of "products", it should be regarded as an explicit derogation, and any other intangible movable asset should be excluded from the category of products.

A different and (probably) correct opinion posits that even intangible movable assets (e.g., software) should be included in the category of products in the meaning of Law Number 240/2004 as they also may cause deaths, harm corporal integrity or health, or generate pecuniary damages.

Concept of Defect

The legal framework on product liability transposed almost identically the concept of "product with defect" as regulated under European Union (EU) Directive 85/374/EEC (the "Product Liability Directive").[10] According to article 2(1)(d) of Law Number 240/2004, a product with defect is one which does not provide the safety which an individual is entitled to expect, by taking in consideration all circumstances, including its manner of presentation, its reasonable utilization, and the date it was put into circulation. Article 36 of the Consumption Code prohibits putting into circulation products which are not safe.

8 Decision Number 548/R/2004 of Cluj Tribunal, 6/2005 *Pandectele Române* (2005), at p. 127. The court retained as grounds of the producer's liability the provisions of articles 998 and 999 of the Civil Code, although the claimant sought the liability of the producer based on the provisions of Government Ordinance Number 21/1992.

9 Chirică, *Treatise of Civil Law, Special Contracts Sale and Exchange* (2008), at p. 443.

10 *Official Journal* 1985 L 210/29-33.

Thus, the concept of defect under the consumer protection law should not necessarily render the product unsuitable for use, as is the case under civil law. The concept of defect is assessed by reference to the general and objective obligation not to put into circulation products which may affect public safety and assets. The "defect" mentioned by law refers to any deficiencies of the product, such as a manufacturing defect, design defect, or simply that the product does not offer the security which an individual would reasonably expect, by taking into consideration the foreseeable and normal utilization of the product. A simple occurrence of the defect is thus a breach of the security obligation in itself, which may trigger the liability of the producer.

Notably, this concept received a broader interpretation in case of equipment which are expected to meet very high safety requirements (such as pacemakers). Accordingly, the European Court of Justice upheld that "where it is found that such products belonging to the same group or forming part of the same production series have a potential defect, it is possible to classify as defective all the products in that group or series, without there being any need to show that the product in question is defective".[11]

However, article 2(2) of Law Number 240/2004 provides that the product will not be deemed defective for the sole reason that a similar improved product has been placed on the market. Thus, the existence on the market of a similar but better product will not constitute sufficient grounds for triggering producers' liability. Instead, the prejudiced consumer will have to apply the criteria in article 2(1)(d) of Law Number 240/2004 when seeking to enforce the product liability of the producer.

The concept of "defect" is not equivalent with that of "dangerous". There may be certain products which are dangerous *per se* (*e.g.*, rifle or knife), but this does not mean that such products are defective should the consumer be properly informed of the associated dangers. This is because the product will be deemed defective only if it does not provide the safety which an individual is entitled to expect. Hence, a consumer who was informed of the associated risks is in a position to knowingly decide whether to use the product. If he chooses to use the product, it may be inferred that he undertook the risk that dangerous events may occur during such use, and the producer may not be accused of putting a defective product on the market.

Prudence Obligation as to Defective Products

Warning or Information

One of the elements of the producers' obligation to launch only safe products on the market is the related obligation to adequately inform consumers of the risks related to the use of such products, as required by article 36(2) of the

11 Judgment of 5 March 2015, Joined Case C-503/13 and C-504/13, *see* http://curia.europa.eu/juris/document/document.jsf?text=&docid=162686&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=66695.

Consumption Code. In addition, article 15 of the Consumption Code requires sellers or producers to inform competent authorities of any newly identified danger related to the products and of which they were not aware upon the date of the products' placement on the market, and to make public such information.

Considering that the supply of complete product information is essential for the assessment of a product's safety, failure to comply with such obligation may give rise to the producer's liability, as the product may be regarded as dangerous or defective. However, the injured person bears the burden of proving the causal nexus between the lack of or errors in the instructions or warnings provided by the producer and the damage actually incurred.

Obligation to Recall

The obligation to recall defective products is regulated by the Consumption Code and Law Number 245/2004 on the general safety of products. Under the Consumption Code, producers and/or suppliers are required to recall defective products from the market, to replace them, or to repair them, as the case may be. If such measures cannot be taken within a reasonable period of time, the producers must adequately indemnify the consumers.

Law Number 245/2004 establishes stricter obligations as regards recall of "dangerous products", defined as products which, under normal or predictable conditions of use, present a high degree of risk for the health or safety of the consumers. In the case of dangerous products, the producer does not have the option to grant compensations to consumers or to repair them, but he is at all times required to recall them from the market.

In addition to recall at the initiative of the producer of the dangerous product, a recall operation also may be imposed on the producer by the National Authority for Consumer Protection (Autor*itatea Naţională pentru Protecţia Consumatorilor*). Various sectorial laws also state the obligation to recall defective products at the request of the relevant watchdog authorities, such as the National Sanitary-Veterinary and for Food Safety Authority (*Autoritatea Naţională Sanitar Veterinară şi pentru Siguranţa Alimentelor*) for defective or dangerous food or the National Agency for Drugs and Medical Devices (*Agenţia Naţională a Medicamentului şi a Dispozitivelor Medicale*) for defective or dangerous pharmaceutical products.

Defenses Available to Producer

In General

Articles 7 and 8 of Law Number 240/2004 provide for the defenses that may be presented by the producer to eliminate or reduce his liability. Other types of defenses not specifically listed in Law Number 240/2004 also may be used by the producer in his defense.

Product Not Put on Market by Producer

As per article 7(1)(a) of Law Number 240/2004, the producer of a defective product may be exempt from liability if he can prove that he was not the person who released the product on the market. Although the legal framework does not clarify the meaning of "release of the product on the market", legal scholars are of the opinion that in order to trigger the producer's liability, a product should be willingly launched on the market. Thus, the producer will not bear the responsibility for the defect of products released on the market where such products were stolen or were seized by a public authority.

Defect Occurred after Product Was Released on Market

Under article 7(1)(b) of Law Number 240/2004, the producer will not be held liable if the defect which caused the damage did not exist at the moment the product was put on the market, or if the defect occurred afterwards due to causes for which the producer bears no responsibility.

The defect is thus presumed to exist at the date the product was released on the market. However, the producer can overthrow this presumption by proving that the defect actually did not exist at the date it was put on the market or that it occurred afterwards.

Product Not Manufactured for Sale or Distribution

Under article 7(1)(c) of Law Number 240/2004, the producer will be exempt from liability when "the product has not been manufactured for sale or distribution for lucrative purposes and such product has not been manufactured or distributed in the exercise of the producer's business operations".

Thus, the producer may be held liable only for products destined to be placed on the market, and not for those destined for his own consumption or manufactured occasionally. The liability will apply only to professionals and only with respect to their professional activity.

Defect Results from Observance of Mandatory Regulatory Provisions

Under article 7(1)(d) of Law Number 240/2004, the producer will be exempt from liability if the defect is the result of the observance of certain mandatory conditions that have been imposed on the basis of regulations issued by the relevant authorities. This exemption will operate only when the imperative regulation confines the producer's freedom of decision as to manufacturing the product.

State of Scientific and Technical Knowledge

Article 7(1)(e) of Law Number 240/2004 provides that the level of scientific and technical knowledge existing at the time the product was released on the market, and which prevented the producer from discovering the defect, is a defense that can be asserted by the producer to be exonerated from liability.

However, the producer should prove that the defect was impossible to be discovered at the date of the product's release on the market. The concept of the state of scientific and technical knowledge ("state of art") was clarified by the European Court of Justice in that the notion is "not specifically directed at the practices and safety standards in use in the industrial sector in which the producer is operating, but, unreservedly, at the state of scientific and technical knowledge, including the most advanced level of such knowledge, at the time when the product in question was put into circulation" subject to the fact that "the scientific and technical knowledge must have been accessible to at the time when the product in question was put into circulation".[12]

Defect Caused by Consumers' Actions

Under article 7(1)(f) of Law Number 240/2004, the producer of a defective product may be exempt from liability if he can prove that the defect is the result of the consumer's failure to observe the instructions provided as part of the technical documentation that accompanies the product, the existence of which must be proved on the basis of a technical survey.

In addition, article 8 provides that the producer's liability will be reduced *pro rata* if the damage is caused both by the defect of the product and the faulty behavior of the injured consumer or of another person the deeds of which the injured consumer is held liable.

Defect Caused by Third Party

Under article 4 of Law Number 240/2004, the producer cannot assert as a defense the fact that the fault or defect was due to the actions of a third party. The defendant thus faces full liability for the entire damage vis-à-vis the claimant. However, the producer may seek an indemnity from the third party who contributed to the damage, even within the same legal proceedings.

The legal framework allows the defendant to file, within the same proceeding initiated by the claimant, a so-called "request for warranty" (*cerere de chemare în garanţie*). This is a request addressed by the defendant to the court to also call a third party against whom the defendant may seek redress or indemnity, in case the defendant would be required by the court to pay damages to the claimant. Nevertheless, the producer may opt to file a separate lawsuit against such third party.

A third-party action also may be filed on the basis of article 7(2) of Law Number 240/2004, which exempts the producer of components from liability if he proves that the defect was caused by the design of the product into which the component was integrated or by the wrong instructions given by the manufacturer of the product into which the component was integrated. The

12 Judgment of 29 May 1997, Case C-300/995, *see* http://curia.europa.eu/juris/showPdf.jsf?text=&docid=100708&pageIndex=0&doclang=EN&mode=doc&dir=&occ=first&part=1&cid=212510.

producer also should prove the external cause which determined the occurrence of the defect.

Force Majeure

Law Number 240/2004 does not include *force majeure* among the producer's defenses, but a significant part of legal doctrine considers *force majeure* as an exoneration of liability as it represents a fundamental ground for exemption of liability under civil law.

Proof of Causation

As an application of the Roman law principle *probatio incumbit actor* ("the claimant has the burden of proof"), the applicable statutory provisions on product liability explicitly state that the person incurring the damage resulting from a defective product bears the burden of proving the damage, the defect of the product, and the causal nexus between the damage incurred and the defect.

Although Law Number 240/2004 establishes a relative presumption of defectiveness of the product released on the market, the victim is required to show proof of causation between the defect of the product and the incurred prejudice. While various tests for the proof of causation have been proposed by legal scholars, case law generally prefers a specific method for verifying the coexistence of the "proximate cause" (*cauza necesară*), which is considered to be the event in the absence of which the damage would have not occurred, and the conditions which, although not decisive for the occurrence of the damage, nevertheless have favored such occurrence.

Thus, as a general rule, both the "necessary cause" and the favoring conditions are taken into account by the courts when establishing the causal nexus and the liability. As a result, the producer of the defective product will be liable irrespective of whether the defect was the necessary cause of the damage or merely a collateral condition which contributed to the occurrence of the damage.

Subjects of Product Liability

Beneficiary

Under article 12 of Government Ordinance Number 21/1992, the consumer has the right to file a legal action against the seller to seek compensation for damages caused by defective products. The term "consumer" includes not only the person who purchased the product from the producer or seller, but also the person who subsequently acquired the product from the initial purchaser (*i.e.*, the one who uses or consumes the product), only if such product is normally destined for private consumption.

However, Law Number 240/2004 provides that when the damage is related to death, harm to health, or bodily integrity of a person, the liability will operate regardless of whether the victim is a private consumer or a professional.

Entities Held Liable

Law Number 240/2004 provides that the liability for defective products is borne by the "producer", which is defined under article 2(a) thereof as:

- The manufacturer of the finished product, raw material, or components of the product;
- Any person presenting himself as the producer by putting his name, trade mark, or other distinctive element on the product;
- The importer of the product, who will be liable on the same terms as the manufacturer; and
- Any supplier, if the producer or importer cannot be identified and the supplier fails to provide the consumer with information necessary for the identification of the manufacturer or importer within a reasonable period of time.

The Consumption Code provides for a broader definition of the term "producer", and additionally includes the following categories of entities:

- The economic operator reconditioning the product;
- The economic operator or distributor who, in the context of his business, alters the features of the product;
- The domestically registered representative of an economic operator headquartered outside Romania;
- The economic operator importing products for the purpose of a subsequent sale, lease, or any other form of distribution specific to his business;
- The distributor of an imported product, in case the importer is unknown, even if the manufacturer is being mentioned; and
- The distributor of the product, if the importer cannot be identified and the distributor fails to inform the injured person within 30 days from his request of the identity of the importer.

It thus follows that product liability will apply only to professionals and not to private individuals. Article 5 of Law Number 240/2004 provides that, if two or several entities are held liable, each of them will be liable up to the full amount of the relevant obligation. Romanian scholars analyzed whether such joint liability applies equally to all entities listed in article 2(a) of Law Number 240/2004, or whether there should be a specific order among them for triggering their liability.

In such a case, the joint liability under article 5 of Law Number 240/2004 will exist only between the same categories (*i.e.*, manufacturers, importers, suppliers), as a reasonable interpretation of the relevant law leads to the conclusion that the liability of importers or suppliers is only subsequent, and only if the producer may not be identified.[13]

13 Chirică, *Treatise of Civil Law, Special Contracts, Sale and Exchange* (2008), at pp. 441 and 442.

Recoverable Damage under Product Liability Statutes

In accordance with general statutory provisions, the injured person who seeks indemnity for product liability should prove the damage incurred due to the defective product. In contrast to common law legal systems, Romanian statutory liability provisions only allow the award of damages actually incurred, thus punitive damages may not be awarded. Under article 2(1)(c) of Law Number 240/2004, only the damage caused by the following is covered:

- Death, bodily injury, or health injury, regardless of whether the person was a contracting party; and
- Degradation or destruction of an asset other than the defective product, provided that the asset is of a type ordinarily intended for private utilization or consumption, and the value of the damage is not less than the equivalent in RON of €500.

Under the law, any damage which occurs as a result of bodily injury, health injury, or physical destruction of an asset will be subject to reparation, regardless of whether the damage is pecuniary or not. If the claim is grounded on contractual liability, the consumer may request compensation for both actual incurred damage (*damnum* emergens) and loss of benefits (lucrum cessans) from the breach of contract by the seller of the product.

Legal scholars also have asserted that product liability will cover both direct and indirect damage, but indirect damage will be covered only in case of damage caused by death, bodily injury, or health injury.[14] Although the Product Liability Directive allowed EU member states to set up a threshold for the indemnification to be awarded in product liability, the Romanian lawmaker opted for a traditional treatment of reparation value, without limiting the amount of damages that can be awarded.

Conventional Alteration of Product Liability

Article 10 of Law Number 240/2004 prohibits the limitation of product liability through conventional waivers. If a limitation or exoneration clause was inserted in an agreement, the nullity of such clause will not affect the entire agreement. However, parties may provide for stricter rules of product liability in the sale agreement.

Statute of Limitations

The statute of limitations for bringing into court claims for product liability is three years under Law Number 240/2004. This term starts running from the date the claimant knew or should have known of the existence of (a) the damage, (b) the defect, and (c) the identity of the producer. According to scholars, the

14 Chirică, *Treatise of Civil Law, Special Contracts, Sale and Exchange* (2008), at pp. 447 and 448.

term will start to lapse from the date when the last of these elements became known or should have been known by the victim.

Article 11 of Law Number 240/2004 provides that, in any case, any claim on product liability should be filed within 10 years from the date the producer put the product on the market. After the lapse of this 10-year term, the right to initiate legal proceedings and the right to indemnification will cease.

Apart from actions brought in court that are based on special product liability laws, an injured party may bring actions for compensation based on contractual liability under the provisions of civil law. A distinction should thus be made between defects which occurred within the warranty or validity period and those which occurred within the average product life. The consumer may require the seller to remedy defects which occur within the warranty or validity period, to replace the defective product, or to reimburse the purchase price of such defective product.

However, the lapse of the warranty period does not exonerate the seller of his liability and he would continue to be liable for latent defects during the entire average life of the product. However, the latent defects would have to be acknowledged by a technical expert.

Transfer of Product Liability to Corporate Successors

The consumer law does not regulate the transfer of product liability to corporate successors. However, Companies Law Number 31/1990 regulates the matter of company reorganization via spin-off and/or merger.[15] A spin-off and/or merger results in the global transfer of the entire patrimony or the transfer of a portion of the patrimony to the beneficiary company.

The patrimony or fraction thereof represents the bundle of rights and obligations binding upon a company. Hence, the corporate successor of a spin-off or merger may acquire the product liability obligation incumbent on the predecessor company, and will thus be held liable for product liability under the same conditions as its predecessor-in-interest.

The allocation of liabilities among several corporate successors is provided in the spin-off or merger project (*i.e.*, the fundamental corporate document which details the terms and conditions thereof, such as the allocation of shares among shareholders of the involved entities).

However, if the spin-off or merger project does not provide for the distribution of liabilities, the Company Law provides that the corporate successors will be held jointly liable.

15 Republished in the *Official Gazette of Romania*, Part I, Number 1066 of 17 November 2004.

Insurance Policies and Product Liability

Article 9(2) of Law Number 240/2004 provides that insurance companies have rights of redress against producers, in accordance with the law, for the amounts paid to injured persons to ensure that insurance companies receive compensation from the producer for the amount paid in relation to the defective product. Naturally, this provision is not applicable when the beneficiary of the insurance policy is the producer himself.

The law allows producers to contract insurance policies covering tort liability for damages caused to third parties. Hence, they may conclude insurance policies which also may cover product liability. Unlike insurance liability for car accidents,[16] the value of the damages covered by an insurance policy on product liability is not predetermined, but varies depending on the contractual clauses agreed upon by the producer and the insurance company.

Court Proceedings in Product Liability Litigation

Frequency

Product liability litigation in Romania is not very frequent (although there is an upward trend during the past years). This is primarily due to a relatively low level of awareness of consumers' rights, and the fact that court proceedings are rather cumbersome and time-consuming (*e.g.*, complex cases may take up to two years before a final and enforceable court decision is passed). Consequently, consumers are rather keen on solving disputes amicably, and usually only bring court cases with significant value.

The lengthy procedure for passing a final decision is mainly determined by the fact that civil lawsuits are subject to a three-tier jurisdiction control. As a general rule, a first-instance judgment may be appealed on factual and legal grounds, while decisions passed by appeal courts may subsequently be challenged under a second-appeal procedure (limited to technical and procedural grounds).

For product liability claims based on tort or contractual breach of producers under the Code of Civil Procedure,[17] the first litigation tier is judged by the relevant Lower Courts (*judecătorie*) if the value of the claim is lower than RON 200,000, and by the relevant Tribunals (*tribunal*) if the value of the claim exceeds such amount. The decisions of courts of first instance (*i.e.*, lower courts or tribunals) can be appealed under the second litigation tier at the relevant

16 According to Norm Number 23/2014 of the Financial Supervisory Authority published in the *Official Gazette of Romania*, Part I, Number 826 of 12 November 2014, the mandatory insurance policies for liability in case of car accidents may not provide a compensation threshold lower than €1,000,000 in case of physical damage of assets and €5,000,000 in case of damage caused by death or bodily injuries.

17 Law Number 134/2010 on the Code of Civil Procedure was republished in the *Official Gazette* of Romania, Part I, Number 247 of 10 April 2015 and entered into force on 15 February 2013.

Tribunals and Courts of Appeal (curtea de apel), respectively, depending on the court that has ruled in the first instance.

Finally, decisions passed by Tribunals or Courts of Appeal within the second litigation tier may be challenged once more in a third litigation tier (recurs) at the Appeal Court or High Court of Justice and Cassation (Înalta Curte de Justiţie şi Casaţie), respectively. Parties may agree on a settlement to end litigation, as provided for under article 2267 of the New Civil Code. Thus, the parties may — at any time prior to or during the litigation — conclude a settlement of their claims regarding an eventual product liability. Due to certain advantages offered by this mechanism (i.e., costs and time saving), lawyers very often recommend this path.

By Government Ordinance Number 38/2015,[18] Romania has transposed Directive 2013/11/EU on alternative dispute resolution between consumers and traders.[19] This legal framework allows the out-of-court settlement of such disputes, by deferring it to independent and impartial extrajudicial resolution bodies. Under the law, general competence on disputes between consumers and traders (including potential disputes concerning the product liability) was granted to an independent department of the National Authority for Consumer Protection (Autoritatea Naţională pentru Protecţia Consumatorilor, the Department for Alternative Dispute Resolution (Direcția de Soluționare Alternativă a Litigiilor), specially created for this purpose in October 2016.

The main feature of the alternative dispute resolution is that, in order to be implemented, both the consumer and the trader should first agree on such manner of dispute settlement. The solution issued by the alternative dispute resolution entity will become binding upon the parties if the parties expressly accept it, or if the parties do not challenge it within a specific deadline.

Resolving disputes through alternative dispute resolution is easier, less expensive (as it does not involve any special fees for alternative dispute resolution entity), and faster (generally, 90 days, and only exceptionally does the procedure exceed this term). Yet, given the novelty of the system in Romania, both the consumers and the traders are rather reluctant to let their disputes be solved under the alternative dispute resolution mechanism and still prefer the traditional methods of dispute settlement.

Variable Compensation

The actual amounts awarded by courts of law depend on the actual damage incurred by the victim on a case-by-case scenario, which naturally must be proven by the claimant. While there is no maximum amount of compensation that may be awarded, article 2(1)(c)(3) of Law Number 240/2004 establishes a *de minimis* threshold of €500 for the requested damage.

18 Government Ordinance Number 38/2015 on alternative dispute resolution between consumers and traders, published in the *Official Gazette of Romania* Part I, Number 654 of 28 August 2015.

19 *Official Journal* 2013 L 165/63-79.

Legal Assistance

It was only recently that law firms started to develop specialized practice in the area of product liability. Large local law firms have developed teams trained in consumer protection. There is no unified practice as to the level and type of lawyer fees. The law allows lawyers to apply hourly or flat fees without setting up a limit.

The value of the fees depends only on the complexity of the litigation and the amount of work to be carried out by the lawyer. However, where a person proves that he cannot afford to pay the expenses in connection with the proceedings without jeopardizing his own or his family's means of subsistence, the court may grant legal aid. A lawyer will be appointed ex officio and will be paid by public funds. In this case, the law provides for a maximum amount to be granted to the lawyer as fees for his legal services.

Relevant laws explicitly prohibit a quota litis pact, where the entire attorney's fees constitute a portion of the amount awarded by the court in favor of the client. However, "success fees" consisting of an amount payable in case the litigation is won are allowed. Such success fees can be established only as complementary fees, in addition to the agreed retainer or hourly fees.

Applicable Law

On 11 January 2009, the provisions of Regulation (EC) Number 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (the "Rome II Regulation") became enforceable in Romania.

Pursuant to article 5 of the Rome II Regulation, the applicable laws in case of litigation include the law of the country where the victim has his habitual residence, the law of the country where the product was acquired, the law of the country where the damage occurred, or the law of the country where the producer is a resident.

Thus, when a court will be vested with jurisdiction over a product liability claim, it should apply the criteria provided by the Rome II Regulation to find out the applicable law on the merits of the litigation. The parties may not derogate from these rules in order to appoint a law of another country different from those enumerated in the Rome II Regulation.

Conclusion

As part of the effort to harmonize the local legal framework with EU law, the most important piece of legislation regulating the field of consumer protection is the Consumption Code, which entered into force when Romania joined the EU (*i.e.*, 1 January 2007).

The Consumption Code sets forth the main principles and rules regulating legal relationships between consumers and the entity which manufactures,

imports, stores, transports, or trades products or parts thereof or provides services. It provides for relevant standards and obligations aimed at ensuring product safety, ensuring proper education and information of consumers, establishing clear and fair pricing policies, and regulating product advertising practices. In addition, Law Number 240/2004 transposes the provisions of the Product Liability Directive and is a fundamental statute regulating product liability in Romania.