

Can Drought be considered a Case of Force Majeure That Can Due to Exemption from Liability for the Debtor?

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Abstract

Provided that the prejudice is determined by a case of force majeure, the liability of debtor arising from the unfulfilled obligations is exempted. Force majeure has always an external nature and is defined as an unpredictable, unavoidable and unsurpassable event. The judicial practice indicates as force majeure events natural calamities or other catastrophes. Such events, however, cannot be considered as absolute events of force majeure and they should be analyzed in each individual case, evaluating if they meet or not the requirements of such event that can exonerate the debtor from the liability. The signatory parties of the contract can decide under a deed that certain events will be considered cases of force majeure. Proving an event of force majeure does not result into the exemption of liability if the debtor was put in delay as regards the fulfillment of the obligations undertaken by the contract and if the debtor has undertaken the liability as per a contractual convention or clause. In our opinion, the contracting parties should protect themselves by stipulating in their contract provisions regarding the details concerning the events of force majeure, but as well on the measures to be taken by the parties under such circumstances (immediate notifications, emergency measures implemented to mitigate the effects of the force majeure and losses, documents from the relevant authorities).

Key-Words: Drought, liability, force majeure, debtor, obligation, in future contract

1. Introduction

Text of the article no. 1351 of the New Romanian Civil Code defines the concept of force majeure. Paragraph 1 of the aforementioned law stipulates as follows: If the law does not stipulate otherwise or the parties do not agree on the contrary, the liability is exempted provided that the prejudice arises from a case of force majeure or unforeseeable circumstances. Further, paragraph no. 2 of the same law indicates: Force majeure is defined as any external, unpredictable event that is completely invincible and unsurpassable.

Paragraph no. 4 stipulates that, according to the law, the debtor is exempted from the liability arising from the contract in case of an event of force majeure. Under the provisions of article 1351 paragraph 2 of the Civil Code, "force majeure is seen as any external, unpredictable event that is completely invincible and unsurpassable", the occurrence of a case of force majeure exempts the liability in full if the said cause is the exclusive reason of the damage.

Unlike unforeseeable circumstances, force majeure has always an external nature and is defined as an unpredictable, unavoidable and unsurpassable event. In order to be taken into consideration as cause of an event of force majeure, the event shouldn't be only external, related to the will of the parties involved, and unforeseeable, but need to be unpredictable and impossible to overcome by such parties. Therefore, force majeure needs to be objectively impossible in nature. This provision concerning the impossibility of an event can be deemed in comparison to the prudent party carrying out their work diligently.

The judicial practice indicates that the events of force majeure have been considered to be natural calamities (earthquakes, droughts, storms, floods) or other catastrophes (wars, spontaneous strikes, embargo etc.). Such events, however, cannot be considered as absolute events of force majeure and they should be analyzed in each individual case, evaluating if they meet or not the requirements of such event that can exonerate the debtor from their liability.

As regards the cause of the force majeure agreed upon under the contract, the signatory parties can decide under a deed that certain events will be considered cases of force majeure.

We have to add, however, that including the liability case in the contract, proving an event of force majeure does not result into the exemption of liability under the following circumstances:

- The debtor was put in delay as regards the fulfillment of the obligations undertaken by the contract (i.e. the debtor did not fulfill the contractual obligations in due time) and the event of force majeure occurred after this moment; thus the debtor will be compelled to undertake the liability as if they had fulfilled their obligations in due time, the event of force majeure would have occurred after the fulfillment of such obligations;
- When the debtor has undertaken the liability as per a contractual convention/clause.

2. Cases under discussion

2.1. Presentation

In all the cases presented below, the plaintiff is the same trading company SC B that took legal action in court against the trading companies SC A1, A2, C, N, S, U.

On June 20, 2012, the plaintiff, SC B, as Purchaser, and the defendant, SC A, as Seller, concluded a purchase agreement for a bulk purchase of Romanian black oil sunflower seeds from the crop of 2012, amounting to metric tons, for a price of \$500 per metric ton. The delivery was to be made in the period August 10, 2012 – September 30, 2012. According to the contract above, the Seller undertook the obligation to deliver the product, without any stipulation for the Purchaser to make any down-payment.

According to the writ of summons filed with the Court of Law from Buzau, the plaintiff company B, requested the court to compel the defendant company A to pay the amount of \$..... as damages incurred by SC B following the failure of SC A1, A2, C, N, S, U, to fulfill the contractual obligations by their own fault.

On July 30, 2012, all the purchasers sent a notification by fax, informing SC B about the occurrence of an event, classified as force majeure, and which hindered the seller company to deliver the products on the deadline agreed upon. In such case, because of the aggressive and extended drought, the production of oilseed sunflower was affected in a percent of 99% and

thus made the delivery of the products impossible. Moreover, SC A1, A2, C, N, S, U filed a document, the so-called “force majeure certificate”, issued by the Chamber of Commerce, Industry and Agriculture from Giurgiu County, from the headquarters of SC A1, A2, C, N, S, U. The said certificate certified that July 2012 experienced an aggressive and extended drought and affected the crops on the Territory of Giurgiu County. To substantiate their writ of summons, the plaintiff showed that, as sunflower oil producer, they had to comply with a number of sunflower oil delivery orders and they showed that they had to find other suppliers of sunflower seeds to cover the shortage of 300 metric tons that had not been delivered by company A. On September 19, 2012 concluded a purchase contract with SC X for a quantity of ... metric tons of oil sunflower seeds for a price of \$665 per metric ton in an attempt to avoid further damage.

The plaintiff considered that the difference between the price decided upon and the price paid by the third company was the damage incurred by the action of the defendant companies, representing the failure to observe the obligation to deliver the product.

2.2. The occurrence of force majeure and the failure to meet contractual requirements

The defendant companies claimed that they were experiencing an event of force majeure which made *the fulfillment of their obligations impossible*.

They sustained that drought is an actual event of force majeure and a certificate was issued by the Chamber of Commerce and Industry from Giurgiu. Thus, drought considered force majeure discharges the parties of their liability regarding the fulfillment of their obligations

It is well-known that in 2012, rain shortage and, implicitly, insufficient river flow had extremely severe effects for the Romanian economy and thousands of farming hectares were affected by severe draught, damaging the most part of the farmers’ crops.

From the plaintiff’s perspective, force majeure involves objective and absolute unpredictability and the possibility to foresee the occurrence of a certain event is construed as fault of the debtor since, although they could, they did not foresee that such event would occur. The defendant – a professional in the field of agriculture – did not face an unpredictable, absolutely unpredictable and unavoidable event since they could prevent such events. Drought is a predictable natural event and measures can be taken to mitigate its effects.

Force majeure can be claimed as exonerating both in case of tortious and contractual liability, with a single difference regarding predictability: in case of tortious liability, this requirement is analyzed upon the occurrence of the damaging event while in case of the contract, the event of force majeure is analyzed according to the moment of the contract’s conclusion given that at that moment the debtor had undertaken predictable risks. Thus, the debtor will not be discharged of their liability when, upon the conclusion of the contract, they could foresee the danger of the future damaging event’s occurrence. On the contrary, if the event occurred following this moment, the obligation of the debtor is settled. However, if according to the information they held at that moment, the debtor might or could have foreseen the occurrence of the damage related to the actual circumstances of the case, they will not be able to claim, in their defense, force majeure. Unpredictability is, in this respect, the core argument of their innocence and thus, they cannot be held accountable.

As regards the absolutely unavoidable and invincible nature of force majeure, it is deemed that they must be cumulatively met given that even if the event could not be objectively foreseen, their occurrence and adverse effects could not be avoided despite the fact that the debtor took all measures in this respect (Baiaş *et al.*, 2012).

The events of force majeure, in a narrow sense, refer to those *natural events* unrelated to human activity (such as natural calamities, earthquakes, volcanic eruptions, landslides). Certain collective human actions of severe extent and seriousness (such as wars, terrorist attacks, coups d'état) are similar to such circumstances.

According to the definition of the New Civil Code, the main feature is the unpredictability of *force majeure* which removes the debtor's liability.

Taking into account the provisions under art 1351 of the Civil Code, namely an external, unpredictable, invincible and unavoidable event and considering the characteristics of the obligations undertaken by means of the contract by the defendant, the plaintiff considered that such liability exonerating cause does not apply in the case hereby.

Although the defendant points out drought as event of force majeure that removes all liability, the plaintiff claimed that, according to the relevant case law, drought had never been and it is not considered an event of force majeure, but a foreseeable natural event.

Therefore, the courts of law pointed out that summer drought is a natural calamity, but not an event of force majeure despite the warnings of force majeure as long as professionals had the possibility to irrigate crops and, thus, to protect them (Decision no. 698/2009).

In this respect, the specialized doctrine construed the concept of "unpredictability" as likely to remove the debtor's liability if *the debtor was objectively hindered in foreseeing both the occurrence of the event and its damaging effects*.

3. Juridical Solution

The defendants believe that the action of the plaintiff is not substantiated and should be denied based on the following reasons: The plaintiff claimed that the principle *genera non pereunt* can be used in the case. This principle shows that if the products making object of the contract cease to exist, but they are products of a certain type *res genera*, i.e. they can be replaced, the debtor is compelled to observe their liability and to replace such products and to deliver products of the same type (Terzea, 2014).

The aforementioned principle had to be implemented in comparison to the provisions under the previous Civil Code, but the Romanian lawmaker decided to enact this principle under the New Civil Code, more precisely in article no. 1658 (2) which shows that "when a product or, as the case may be, the limited type is not achieved, the contract shall not produce any effects." Taking into account that the New Civil Code stipulates the concept of products of limited type, without providing, however, any definition or characterization for the two concepts, we consider that a definition is required: products of a certain type and products of limited type.

The products of a certain type or range products belong to a certain category (e.g. alcohol, apparel, grain etc.) without any sort of particularization within the batch they are part of, they are deemed interchangeable/exchangeable and, in case of the sale of products of a

certain type, the seller is entitled to deliver to the purchase any such products and thus the contractual obligations are considered validly carried out. Thus, in our opinion the existence of a product of certain type cannot cease and we have a case of *genera non pereunt*. Some authors believe however that the limited type products can disappear even if the products of certain type cannot.

Provided that the sale-purchase contract has as object products of a certain type, *genus limitatum*, they are particularized, i.e. from generic/ determinable (e.g. grain, seeds – in our case), the products are individualized (corn, sunflower, etc.) and then they are categorized as sale of limited type products, i.e. sale of products of certain type, limited to those in a well-determined place and which are comprised within a certain batch – in our case the oil sunflower seeds produced by SC A.

As far as the products of a certain type are concerned, the principle of *genera non pereunt* applies hereto; this principle cannot be however applied to products in limited type. To detail further, we take the example of 200 tons of corn sold without indicating their origin and the corn considered by the seller as fulfilling the obligation ceases to exist – the seller is still a debtor, as they can at any moment to procure other corn from a different place.

We deal here with an entirely different situation when speaking about the sale of limited type merchandise. In our cases the oil sunflower seeds from the crop of 2012 obtained by SC A1, A2, C, N, S, U.

We are, thus, under the provisions of art no. 1658(2), second thesis of the Civil Code which stipulates that if a product of limited certain type was not obtained because of an event of force majeure, in our case drought, the arising liability exemption of the seller, who cannot be held accountable for the failure to obtain the goods, renders the contract null and void.

The most important argument invoked by the defendants is the existence of the force majeure and the failure to fulfill contractual obligations. During all the trials, SC A asked for the event of force majeure to be acknowledged, as it made it impossible to comply with their contractual liability.

3.1. Case no. 1

In our first case, drought was considered to be the reason of the force majeure and a certificate in this respect was issued by the Chamber of Commerce, Industry and Agriculture from Giurgiu County. Thus, given the aforementioned, drought – when classified as event of force majeure according to the law - leads to the exemption of liability of the parties who failed to comply with their obligations.

The plaintiff claimed during the trials that the certificate of force majeure was not true evidence of the event, but we would like to show that such certificate is issued by the authorities only based on supportive documents indicating the occurrence and the effects of such event, the place of its occurrence and its termination. It is of public knowledge that in Romania in 2012 the absence of rains and the natural river courses had severe effects on the national economy, thousands of hectares of agricultural lands were affected by drought, as well as most part of the crops from that year. The event of force majeure from 2012 was

acknowledged at national level under Government Decisions which stipulated the natural calamities affecting the national agriculture, as caused by the drought all over Romania.

Moreover, as per article 28 paragraph 2 letter i of Law no. 335/2007, the Chambers of Commerce and Industry acknowledge the existence of force majeure and related effects as concerns the execution of contractual obligations upon the request of Romanian companies, request substantiated by supportive documents. Furthermore, compensatory measures were taken at European level, namely the European Commission offered compensations to Romania, under the form of aids meant to cover the costs for the damage incurred because of the drought and wood fires occurred in the summer of 2012. Therefore, in our opinion, this case meets all the conditions of an event of force majeure, respectively:

- The event is not connected to the action or inaction of SC A;
- The extent and effects of the drought could not be foreseen given that SC A did not have the possibility to take measures to prevent or remove the hazard of its occurrence;
- The drought from the summer of 2012 was unsurpassable and beyond the control of the party affected.

It is true, however, that the plots planted with oil sunflower seeds could be irrigated, but in this case the said plots are located in an area without irrigations systems and thus SC A1, A2, C, N, S and U did not have the possibility to actually irrigate the crops in order to mitigate the effects of the drought.

Going back to our case, the plaintiff claims that on September 9, 2012, following the infringement by the defendant of their contractual obligations, the plaintiff found themselves forced to acquire 2000 metric tons of oil sunflower seeds for a price of \$165/metric ton, which was more than the price decided upon initially. The purchase was meant to cover the 300 metric tons undelivered by SC A. The defendant filed in the case's file documents showing that they had purchased oil sunflower seeds from other sellers from other regions, particularly Constanta, and not from Giurgiu where the crops were completely destroyed by drought.

In our opinion the evidence for an actual damage cannot be submitted in this case and, thus, there are not met the conditions required to entail the contractual civil liability.

As regards the requirements for the existence of damage, the requirement under discussion is that the damage must be certain, namely it has to exist and to be evaluated. In our case, the damage claimed by the plaintiff is not certain as we cannot state that the tons purchased from other sellers was actually acquired to replace the tons that had not been delivered according to the contract. We have reached this conclusion taking into account the difference between the quantities of 300 metric tons. Hence, the requirement is not met.

As concerns the fault of the party, although the contractual liability is implied according to the contract, such assumption is not confirmed and the adverse was proven, namely the defendant had no fault while observing their contractual obligations.

The matters above have been acknowledged by the court of law that denied the legal action filed by SC B, based on the arguments of the force majeure occurred and which exempted the liability of the company. Analyzing the contractual provisions, the court held that, considering the date on which the contract was concluded, namely 20.06.2012, the

sunflower harvest of 2012 was not yet harvested, but the harvest was to be subsequently harvested, in accordance with article no. 1267 of Civil Code and article no. 1658 of Civil Code.

Even if we admit that there was not a sale of future goods, according to article no. 1350 of New Civil Code, any person must fulfill the obligations undertaken when unreasonably fails to fulfill this duty, such party is responsible for the damage caused to the other party and is compelled to compensate this damage, according to the law and according to article no. 1351 of Civil Code, unless the law provides otherwise or the parties agree otherwise, the liability is removed when the damage is caused by force majeure or unforeseeable circumstances.

The defendant obtained the Certificate of force majeure issued by the Chamber of Commerce and Industry, showing that during 01.06.2012-31.07.2012, there were unforeseeable and unavoidable events that led to the failure to carry out the contract. With regard to the applicant's defense, the drought cannot be force majeure as per article no. 1351 of the New Civil Code, the court considers that prolonged drought is a case of force majeure making it impossible to fulfill the contract, when there are high temperatures and lack of rainfall for a long period of time.

Compared to these issues, the court considers that the applicant's request is unfounded and will be dismissed in its entirety. The defendant SC A claimed and proved that they were not capable of fulfilling the contractual obligations for reasons that could not be attributable to them because the existence of an event of force majeure, namely an extended drought that affected the sunflower seed crop. The defendant notified the plaintiff about the existence of this fact before the expiry of the delivery deadline.

The Court will thus notice the existence of an exonerating case of liability, the event of force majeure consisting of a natural, external and inevitable event, proven by the defendant with the documents submitted in the file, namely the certificate of force majeure issued by the Chamber of Commerce, Industry and Agriculture from Giurgiu.

The court will reject the plaintiff's defense that the drought cannot be regarded as an event of force majeure because it is a predictable natural phenomenon, because although it can be deemed that this phenomenon is predictable, it is however an external and inevitable natural event, its effects cannot be removed by means available to the debtor of the obligation.

Therefore, considering that the defendant was faced with an objective unpredictability proving that the prolonged drought destroyed the sunflower crops, situation likely to exonerate its contractual responsibility to deliver the products, the Court will consider the action brought by the plaintiff SC B SRL as unfounded. On the basis of the factual and legal considerations set out, the court is to dismiss the action brought by the plaintiff SC B SRL, under all its counts (Buzau County Court of Law, 2013).

However, the court of appeal notices that, in this case, the defendant has failed to fulfill their obligation undertaken by means of the purchase contract. The Court finds that the court of first instance wrongly admitted the existence of this exonerating liability cause because, although the drought can be deemed a foreseeable phenomenon, it is an external and inevitable natural event, whose effects cannot be removed by means available to the debtor of the obligation. In this respect, according to the provisions of article no. 1351 paragraph 2 of the Civil Code, force majeure is any external, unpredictable, absolutely invincible and inevitable

event, the parties defining the event of force majeure in the same way in the contract concluded between them.

To exonerate the liability, the debtor must prove that it was impossible to fulfill the contractual obligation, according to the provisions of article no.1634 paragraph 4 of the Civil Code; in this case, this involves, additionally to the external, unpredictable and absolutely invincible and unavoidable nature of the event considered force majeure, to prove the consequences arising from the event, namely the impossibility to fulfill the contractual obligations – impossibility arising from the event of force majeure – in other words to be proven the casual relation between the event and the non-fulfillment of the obligation.

However, in this case the defendant did not file such proof. The court finds that summer drought is not an unpredictable and unavoidable event since it can be foreseen by the meteorology and hydrologic institutions and there is the possibility to avoid the consequences affecting the crops by means of an irrigation program, even more since the phenomenon is frequent in Romania during summers.

According to the court, the certificate of force majeure issued by the Chamber of Commerce and Industry cannot lead to the cessation of the creditor's right to ask the court of law to acknowledge a situation contrary to the conclusions arising from this document as long as the contracting parties did not agree that the mere existence of such document would remove the debtor's liability (Ploiesti Court of Appeal, 2014).

3.2. Case no. 2

Following the established commercial relations between the parties in the sale contract no. 618686/11.06.2012, the defendant was obliged to deliver to the applicant the amount of 1,500 metric tons of bulk sunflower harvest of 2012 at a price of 500 USD/tonne with the period 10.08.2012- 30.09.2012. The Chamber of Commerce Industry and Agriculture from Giurgiu issued the certificate of force majeure no. 449, thus proving unable to execute their contractual obligations. Moreover, in the contract, the parties have provided force majeure which invokes the obligation to disclose documents within 5 days, proof issued by the Chamber of Commerce and Industry. This obligation was fulfilled by the defendant before the delivery date. The applicant's claim that drought cannot be considered a case of force majeure will be removed from the court because drought is a natural phenomenon, exterior and inevitable, because its effects could not be removed by means staying out of reach debtor. The certificate issued by the Chamber of Commerce and Industry is also substantiated by another item issued by NAFA - Giurgiu County Branch of 17.02.2014 which shows that in 2012 the irrigation systems did not work, being under a conservation condition.

The court considered that the existing agricultural drought of 2012 over the country and mainly in Giurgiu cannot be qualified as a force majeure situation. According to art. 1351 paragraph Civil Code. Force majeure is any external event, unforeseeable and absolutely unavoidable. Although defendant attached to the case certified by a major force issued by the Chamber of Commerce, Industry and Agriculture Giurgiu proving the existence of drought in Giurgiu in the summer of 2012 as the cause excused from liability, the court is sovereign in verifying that the necessary conditions are met for the incidence of such cases of contractual

liability removal. Moreover, this phenomenon is not absolutely invincible and inevitable, farmers being able to conclude insurance policies to cover the risks incurred during the drought. They can also organize to spray crops to fight the effects of high temperatures and lack of precipitation.

Drought is not a case of force majeure or fortuitous impossibility to execute obligations. Art. 1351 of the Civil Code shall be excused from liability for the following reasons:

"(2) - Force majeure means any external event, that is unforeseeable, unavoidable and absolutely invincible." According mandatory rules mentioned above, the main characteristics of force majeure as the cause excused from liability are: an external event that is unforeseeable, unavoidable and absolutely invincible. The Court held that the court rightly held found that drought is not a force majeure exemption from liability, in accordance to the relevant case law that the drought was not and is not considered a case of force majeure, but a predictable natural phenomenon.

Both the doctrine and case law hold that although summer drought is a natural disaster, it cannot be regarded as force majeure, despite the existence of force majeure, as long as the crops are irrigated by professionals and thus the crops would be protected. The notion of unpredictability has been interpreted that "is capable of removing only the debtor's liability in the event that it was objectively impossible to provide both the event and the damaging effects caused to the party." The exceptional nature of the circumstances in which the consequences occurred should eliminate any suspicion that the debtor could not intervene to prevent them and to avoid the danger of their occurrence, where, according to the information in their possession at that time, the debtor could infer with certainty or perhaps only the danger of causing injury, according to the specific circumstances of the case, it may invoke the defense force majeure. In terms of the absolutely invincible and inevitable character of force majeure, it is considered that they should be fulfilled, because even if the event could not have been anticipated, objectively, its occurrence and devastating effects could not be avoided, despite the fact that the debtor had taken all measures.

It will be noted that the defendant, a professional in the field of agriculture, was not faced with unpredictable and absolutely invincible and inevitable circumstances, given that the company was able to prevent such events and thus to protect crops by implementing an irrigation system. In express terms, lacking the essential requirements of the existence of Force Majeure - the unpredictable and inevitable nature - cannot be regarded as invincible drought invoked by the defendant a case of force majeure, unable to give legal effectiveness of any certificate of force majeure.

The certificate of force majeure is a document issued by an institution authorized to do so, according to article no. 28 (i) of Law no. 335/2007 on Chambers of Commerce from Romania. It is an act of legal relevance, but its technical and legal relevance is that of creating a presumption that can be rebutted by the relative rebuttable technical assumptions underlying brought his release.

Regarding the manner in which the liability of the defendant can be entailed, the court finds that according to the provisions of article no. 1350 (1 & 2) of the Civil Code, "any person has to perform the undertaken obligations." If they fail to do so without due reason, they are

liable for the damage caused to the other party and is obliged to compensate for the damage, according to the law". Thus, in order to entail the contractual liability, the following conditions must be met cumulatively: the existence of an unlawful deed consisting in the non-observance of a contractual obligation, the existence of damage, the causal relation between the deed and the damage and the guilt of the debtor. At the same time, for the damages resulting from contractual liability to be granted, the debtor needs to be in delay and there should not be a clause of non-liability. The vendor did not fulfill the obligation to deliver the merchandise, claiming an event of force majeure, namely the drought in the summer of 2012.

Analyzing the contractual provisions, the court notices that the parties agreed to sell and buy 500 metric tons of black sunflower seed, of Romanian origin, in bulk from the 2012 harvest for a price of USD 500/metric ton. At the same time, the defendant declared on their own responsibility and under the sanction of the law that they are the producer of the contracted merchandise or that the batch of goods originates from authorized storage spaces according to GEO no. 12/22.02.2006. Thus, following the systematic construal of the contractual provisions, according to the provisions of art. 1267 Civil Code, it follows that the object of the defendant's obligation consists of type goods, and not of a future crop as the defendant claimed. According to the provisions of article no.1634 of the Civil Code, if the obligation relates to goods of a certain type, the debtor cannot rely on the forcible impossibility of execution, so that the defense of the defendant relative to the existence of force majeure is not relevant.

Even if the contrary is accepted, the court finds that according to the provisions of article no. 1351 paragraph 2 of the Civil Code, force majeure is any external, unpredictable, absolutely invincible and inevitable event, in the same sense being defined by the parties in the concluded contract. With respect to these provisions, drought cannot be circumscribed to force majeure, as long as it can be predicted by meteorological institutes, the defendant being capable of taking measures to avoid or mitigate its adverse consequences or to insure the crop.

For liability exoneration, the debtor has the obligation to prove the impossibility to execute the contractual obligation, according to the provisions of article no. 1634 of the Civil Code, in this case this involves, in addition to the proof of the external, unpredictable and absolutely invincible and inevitable nature of the event referred to as force majeure and proof of the consequences generated by the event, namely the impossibility to carry out the undertaken obligations, the impossibility arising from the event of force majeure - in other words to prove the causal relation between the event and the non-fulfillment of the obligation. There has not been any such proof or an objective impossibility of putting in place an irrigation system. Consequently, the action brought by the plaintiff is considered to be well-substantiated and will be allowed in court (Buzau Court of Law, 2014).

3.3. Case no. 3

The following is noticed on the merits: the claims of the defendant, namely that drought cannot be considered an event of force majeure, will be dismissed by the court since drought is a natural, external and unavoidable event in the case under trial given that its effects could not be removed by means available to the debtor of the obligation. The certificate issued by the Chamber of Commerce and Industry is substantiated by another document issued by ANAF –

Giurgiu Branch which shows that in 2012 the irrigation systems managed by the party did not work as they were in conservation. Therefore, the defendant faced an objective impossibility likely to exonerate their contractual liability to deliver the seed quantity as per the provisions of article no. 1351 of the Civil Code and the action of the plaintiff was dismissed (Buzau County Court of Law, 2014).

3.4. Case no. 4

The merit court found that, according to the contract concluded by the parties, they expressly stipulated that “force majeure protects the party claiming it only if the party communicates it in 48 hours from its occurrence by fax, phone or registered letter, with the obligation to submit in maximum 5 days the supportive documents issued by the Chamber of Commerce and Industry according to the legal provisions in force”. The defendant sent to the plaintiff the certificate of force majeure issued by the Chamber of Commerce and Industry as stipulated under the contracts and it was noticed that from June 1, 2012 to July 31, 2012 unpredictable and unavoidable events occurred which led to the non-fulfillment of the contractual provisions. Moreover, the court finds that the defendant notified the plaintiff on July 30, 2012 about the occurrence of the event of force majeure during their occurrence.

The court does not admit the claim of the plaintiff that the defendant could purchase the products from the free market and subsequently fulfill their contractual obligations, taking into account that it is well-known that the plaintiff concludes such contracts with sunflower producers. Moreover, given that the defendant’s 180 ha were plated with sunflower, it is understood that, upon the conclusion of the contract with the plaintiff, the defendant agreed to sell the sunflower production and not to buy from other parties. Therefore, there cannot be taken into account the defense of the plaintiff that the goods making object of the contract are type goods, but it is deemed that there was taken into account only the production to be harvested by the defendant from their fields.

As regards the defense of the plaintiff that drought cannot be deemed force majeure as per the provision of art 1351 of the Civil Code, the court finds that prolonged drought is an event of force majeure which made impossible the execution of the contract given the high temperature and the absence of rainfall. These matters arise from the notification issued by the National Administration of Meteorology. Therefore, the court deemed that the plaintiff’s action is unfounded (Buzau Court of Law, 2014a).

3.5. Case no. 5

The court deems that the drought is a predictable phenomenon that can be predicted by the meteorological institutes as well as avoided by installing irrigation systems and the crops can be insured against this phenomenon. According to the provisions of article no. 1351 paragraph 2 of the Civil Code, force majeure is any external, unpredictable, absolutely invincible and inevitable event, in the same sense being defined by the parties in the concluded contract.

For the debtor to be exonerated of liability, the debtor has the obligation to prove the impossibility of executing the contractual obligation, according to the provisions of article no. 1634 paragraph 4 of the Civil Code, in this case this involves, in addition to the proof of the

external, unpredictable and absolutely invincible and inevitable character of the event referred to as force majeure, the proof of the consequences of the event, namely the impossibility to carry out the undertaken obligations, impossibility arising from the event of force majeure - in other words, to prove the causal relation between the event and the non-fulfillment of the obligation. There has been no such proof in this case and no objective impossibility has been proven regarding the implementation of an irrigation system.

At the same time, it was noticed that the party had the opportunity to buy the quantity of sunflower seed contracted and to deliver it to the plaintiff in order to fulfill the undertaken obligation. Under this circumstance, the defense of the defendant in the sense of selling the future harvest - a good of a limited kind and the incidence of article no 1658 paragraph 2 of the Civil Code is irrelevant. As a result of the non-fulfillment of the obligation to deliver the merchandise, the plaintiff purchased the sunflower seed from another producer.

According to the contract concluded by the parties under litigation (the chapter on the delivery terms – letter (e), first intent), if the seller fails to deliver the entire cargo within the set deadline, the purchaser has the right, starting from the first day after the expiry of the delivery deadline to buy the entire quantity of merchandise undelivered by the seller from third parties at the sole discretion of the buyer. *In this case, the seller has the obligation, upon the buyer's written request, to compensate them for the amount representing the difference between the price paid for the purchase of the non-delivered quantity from third parties and the price established by the contract.*

The damage caused to the plaintiff is certain, determined according to the contractual clauses, being the direct and necessary consequence of the non-fulfillment of the obligation to deliver the merchandise, and the guilty non-execution of the obligation to deliver the merchandise is the defendant's fault while the alleged force majeure cannot be retained or the forcible case for relieving the accountable person, the parties not establishing the fortuitous case as a case of exonerating liability. According to the provisions of art 1547 of the Civil Code, the debtor must compensate the damage caused intentionally or by fault, given that our case meets cumulatively the requirements of the contractual civil liability of the defendant based on the aforementioned reasons.

Consequently, the action brought by the plaintiff is considered to be well-founded and will be admitted by the court. The court considers that the existence of the drought in the 2012 agricultural year throughout Romania and predominantly in Giurgiu County cannot be deemed as an event of force majeure to exonerate the party from the contractual liability that is intended to be entailed in this case. According to art 1351(2) of the Civil Code, force majeure is any external, unpredictable, absolutely invincible and inevitable event. Although the defendant submitted in the case file a certificate of force majeure issued by the Chamber of Commerce, Industry and Agriculture from Giurgiu proving the drought in Giurgiu County in the summer of 2012 as an exonerating cause of liability, the court is sovereign in verifying the fulfillment of the necessary conditions to be met for the occurrence of such a cause of removal of contractual liability. Thus, the drought as a meteorological phenomenon is not unpredictable and can be foreseen and predicted by the meteorological institutes with the help of specialized equipment. Moreover, this phenomenon does not have an absolutely invincible and inevitable character,

the agricultural producers having the possibility to conclude insurance policies to cover the risks of drought. Crop irrigation facilities can also be arranged to fight the effects of high temperatures and lack of rainfall. The court also notes that according to art. 1634 (4) of the Civil Code the proof of the impossibility of execution is in the charge of the debtor, and in this case the defendant did not agree to file any evidence to prove that the failure to fulfill their obligation to deliver the goods to the buyer is due to the drought that directly caused the impossibility of fulfilling the undertaken contractual obligations (Buzau Court of Law, 2014b).

3.6. Case no. 6

The court considered that the existence of the drought in the 2012 agricultural year throughout Romania and predominantly in Giurgiu County cannot be considered as an event of force majeure which can exonerate the party from the contractual liability that is intended to be entailed in their charge. According to article no.1351 paragraph 2 of the Civil Code, force majeure is any external, unpredictable, absolutely invincible and inevitable event. Although the defendant submitted in the case file a certificate of force majeure issued by the Chamber of Commerce, Industry and Agriculture from Giurgiu proving the existence of the drought in Giurgiu County in the summer of 2012 as an event of exonerating liability, the court is sovereign in verifying the fulfillment of the necessary conditions to be met for the incidence of such a cause of the removal of contractual liability. Thus, drought as meteorological phenomenon is not unpredictable and can be foreseen and predicted by the meteorological institutes with the help of specialized equipment. At the same time, this phenomenon does not have an absolutely invincible and inevitable character, the agricultural producers having the possibility to conclude insurance policies to cover the risks of drought. Crop irrigation facilities can also be arranged to fight the effects of high temperatures and lack of rainfall. The court also notes that according to article no. 1634 paragraph 4 of the Civil Code the proof of the impossibility of execution is the charge of the debtor, and in this case the defendant did not understand to administer any evidence to prove that the failure to fulfill their obligation to deliver the merchandise to the buyer is due to the drought that directly caused the impossibility of fulfilling the undertaken contractual obligations. For these reasons, the court will allow the claim for damages (Buzau Court of Law, 2014c).

4. Conclusions

In each individual case, there are facts that can lead to the exemption of contractual liability. For instance, such facts comprise the circumstances which are not fully unforeseeable or unavoidable, but can be actual hinders in the execution of the contractual obligations. This approach requires tolerance for the classic opinion on the force majeure. The theory is explained by the idea that certain new circumstances make the contractual obligations impossible to be fulfilled under reasonable and habitual circumstances (Buzau Court of Law, 2014). In conclusion, we believe that the contracting parties should protect themselves by stipulating in their contract provisions on the details concerning the events of force majeure, but as well on the measures to be taken by the parties under such circumstances (immediate notices and notifications, emergency measures implemented to mitigate the effects of the

force majeure and losses, documents from the relevant authorities meant to confirm the event of force majeure etc.).

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