



NON-JURIDICAL METHODS FOR RESOLVING ECONOMIC CONFLICTS

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ABSTRACT

Nowadays, the social conflicts of all kinds have an increasingly tangible impact on the functioning and development of socio-economic systems. With particular importance are the economic conflicts arising in society. The various existing juridical and mainly non-juridical methods for timely prevention, regulation and resolution of the economic conflicts are not sufficiently developed in Bulgaria. Regarding the possibilities for the using and development especially of non-juridical methods, it is appropriate to pay particular attention to further research both on the present state of existing applications instruments and the various options for their future development in the specific Bulgarian environment and conditions. In this paper I will briefly present my views on the concerned issues.

Key words: negotiations, arbitration, regulations, mediation, conflictology, juridical and quasi juridical approaches

INTRODUCTION

Scientists and experts give more often diverse evidence from practice in support of emerging tendency of super complex modern social systems to operate and to develop in the terms of increasing conflicts, crises, chaos and catastrophes. The modern society is directly involved in the parallel processes of globalization and regionalization (localization) that inexorably gives rise to new relations, relationships and the corresponding normative frameworks and social structures. Under these conditions, the state of the traditional institutions (governmental, public, private), not uncommon to be defined as a crisis in terms of the preparedness and their ability to respond to the new, characterized by a high degree of unpredictable challenges (1). The wide variety of

challenges at the end of XX and the beginning of XXI century determine the need for new concepts and approaches in finding solutions to the issues related to these challenges at their different levels and all aspects.

Numerous unsolved problems at global, regional and national level in the economic, social, political and spiritual spheres of activities await their decisions. Crisis state of the various governmental, public and private institutions, together with mentioned problems in a lesser or greater extent, create real preconditions for the emergence of various conflicts. The new manifestation forms of the conflicts require to look for new ways and approaches to solving them constantly. They gave an impetus about the birth of new directions in the basic sciences and at the same time of new interdisciplinary sciences among which its place conquered the science of social conflict - the conflictology.

The conflict

From a philosophical point of view, the conflict is a kind, a grade, a form, a sharpness of the

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manifestation of a particular conflict. At the core of the cause of each social conflict stands a determined conscious need that manifests itself as interest. Not every interest leads to a conflict between the entities, the social groups, etc., but merely the one that is related to the satisfaction of certain deficient necessities. A decisive position among the network of connections and relations arising on the occasion of the satisfaction of the various deficient necessities falls on the economic relations and interests.

The economic conflicts and their prerequisites

If we accept the thesis that the production of goods and services is the basis for the existence and the development of human society, the most important, are the economic and social relations as such they determine the nature of all other social order - political, spiritual and social. On the occasion of the realization of economic social order inevitably are manifested the most different economic conflicts. They are generated by the dynamics of the processes in the business and the numerous participants in them with their different interests. They take place in various directions - in the competitive struggle, relationships between different businesses and state institutions, within the individual enterprises on the consumer market. Or if we summarize, in the production sphere, the distribution, consumption and exchange of the tangible and intangible resources necessary for creation of the products and services.

One of the prerequisites for the emergence of economic conflicts is usually the causes of internal and external character which determine any economic crisis. Another reason for the emergence of economic conflicts can be the clash between the contradictory interests mainly of provider organizations and consumers on the occasion of allocation and utilization of the different types of production resources - material, technological, financial, labour and information. The competition is a major element forming the market relations. So far as it suggests, confrontation and competition between the various stakeholders naturally produces economic conflicts. It is another question which is not covered here, to what extent these conflicts could be constructive or destructive. Another reason that contributing to the emergence of economic conflicts could be the inefficient

structuring on the system of connections and relations between business and the state institutions, which lead to a direct negative impact on the economic activity. Here we can talk about untimely or even abusive interference of the state in the economic activity, the various existing administrative and even political barriers on one hand, and the creation of a number of secret monopolistic formations falling under the blows of the antitrust laws on the other hand. Competition and economic conflicts are also affected by the processes of demonopolization, the liberalization of the foreign economic relations. The processes of privatization in the economy are another prerequisite for the emergence of economic conflict. Conflicts also arise on the consumer market, which is one of the most conflicts generating areas so far. Most frequently exactly on the consumer market the different interests of sellers, buyers and their formal and informal organizations are in tough struggle. Usually the contradictions there are generated by the unequal forces of these entities resulting in differing degrees of information about the object of their relationship. On the side of the seller are the tools of marketing, advertisement, the direct contacts with manufacturers and others, while the buyer remains substantially limited to make a choice which is based mostly on the information about the cost of the product or service. The protection of consumer rights, protecting the interests of sellers and manufacturers are activities in the performance of which the interests of all those subjects of marketing activities are affected and inevitably create contradictions and conflicts. Another field in which the economic interest is hardly to be met is labour. The direct cause for the occurrence of such conflicts are the changes in the relationship of the employed toward work. Therefore these conflicts can be defined not only as labour but also as production ones. We associate them to the remuneration for the work done, to the efficient performance of the assigned tasks, the assessment of work performance, the working conditions and many others. The reasons for labour conflicts are very different, but fall outside the scope of the present statement. It should not be forgotten that labour conflicts are related to some of the most acute conflicts capable of leading to serious social shocks. The most dangerous and negative consequences of

the development of such conflicts is that they combined with other factors, mainly economic and political, may lead to an extraordinary crisis situation in a particular organization.

The existence of conflict in an organization does not mean that it is in crisis, as the conflict is not inevitable, but even could bring use. And if we accept that it is a method of dealing with the controversies, method of interactions between the complex socio-economic systems. The frequent outburst of conflicts would not mean a serious problem if they are promptly diagnosed and are looking for their decision. Otherwise, the organization could not be successful and could fall in crisis.

For these reasons, the management of the conflicts within and between the organizations is a complex component of the process of regulation of social-production relations. This is one of the conditions necessary for the anti-crisis management. (2)

The role of the conflictology

Against the background of so identified in the various spheres of economic activity contradictions and conflicts, the role of conflictology will be increased in the processes not only of their management but as well of their regulation, preventing, predicting, stimulation and resolving. Our awareness with the mechanisms by which these relationships are regulated in the different countries and communities, make us think that in the specific Bulgarian conditions for the legal and the quasi legal conflictology will be revealed even more widely scoped. We need to look at juridical and non-juridical methods to resolve the existing and the potential economic conflicts. In their application it could be looked for contribution in finding solutions for the specific conditions in Bulgaria, with lasting effects. What do we mean when we use these two terms?

Juridical conflictology as a base for resolving economic conflicts

Social relations in a given country are legally regulated on the basis of its constitution, laws and the secondary legislation. The implementation and the development of the social relations inevitably lead to very different types of contradictions and conflicts. Their negative impact could and should be avoided by

implementing in practice different techniques. A problem in Bulgaria is that we are finding a low level of good faith observance of the Constitution and laws. Although all legislation could be adapted to meet the specific objective social need, common occurrences practically are the interests of the parties concerned not only to be protected but many times also to be impaired. Everyday life shows us through various examples that social, economic and other consequences of developing and adopting legal normative acts and other regulations are rarely comprehensive analysed in their preparation or subsequent evaluation of their real impact.

The conflicts, as well as all other social relations, in one way or another are governed by the norms of the public behaviour. The normative approach has particularly importance in the regulation of the conflicts. But it remains outside the focus of our attention.

The importance of managing conflicts rapidly grows in market conditions with the development of the competitive relationships. That is why in the field of public-economic relations is necessary their regulation in one degree or another. All this makes the creation of new mechanisms for realization of the relationship between economic entities which take into account the limitations of the state in a market environment to have a direct impact on them inevitable.

In general terms the juridical methods of dealing with conflicts and the mechanisms for their implementation are well known and are built in Bulgaria, but if we assume that regulating includes rules of behaviour established by the legislation. Then in its content (regulating) falls within the scope of the juridical conflictology*.

Non-juridical methods for resolving economic conflicts

In this paper we will pay attention primarily on the quasi-juridical side of the issue related to economic conflicts, although it together with the

***Juridical conflictology** – a scientific discipline which deals with regularities in the emergence, development and completion of the various types of legal conflicts, the forms for their constructive resolution and prevention within the legal system of the society

juridical one constitutes a composite whole. Due to their specificity, these two approaches – the legal and the quasi-juridical are often intertwined.

The modern understanding of regulation of the economic activities, in the broad sense of the term, shall also include rules of conduct established by the normative act and voluntary regulatory tools such as codes of conduct, standards for services, framework agreements with the professional organizations, etc. (3). When using the term “regulation”, we mean the combination of alternative approaches to the government regulation, whose main structural elements can be the normative regulation, co-regulation, and self regulation.

One of the most significant public issues that emerge in the process of development of the market economy and its corresponding legislation is that of the place and role of the branch organizations. It is missing generally accepted normative model for the delegation of control powers of branch organizations. This very serious range of issues brings to the fore the need to use above all non-judicial methods of dealing with the existing problems between the State and the business. All they need is to find their answers in moving towards practical resolving of occurring individual economic conflicts, and even more than - practical solutions in the overall economic activity in the country.

In order to realize such practice, according to our opinion, it should open a dialogue between the responsible governmental authorities and the business in the face of its organizations, and even on separate key business entities, related to the establishment and application of new forms of cooperation. It is necessary the active participation of all stakeholders in the process of optimizing the national procedures, mechanisms, legislation, structures and policies of enhancing the national capacity for cooperation in the economic activity, both at national level as well as within the EU.

We repeat - the arising various problems, contradictions and conflicts could hardly be solved only by using the juridical conflictology. The instruments of quasi juridical conflictology

would be useful to be applied *. What does that mean? In particular Bulgarian environment, arbitration would be useful, negotiations and mediation as a tool of resolving contradictions and conflicts. In certain extent to the whole tools of the juridical and non-judicial methodology refer some other mechanisms, such as public-private partnership. The availability of purely juridical, and non-judicial methods for its realization, requires special consideration beyond the present disclosure.

Low level of confidence in the Bulgarian court could be overcome through the dissemination of non-judicial mechanisms for solving business and commercial conflicts. The alternative (non-judicial) methods are simpler, more flexible and allow faster and cheaper conflicts resolution. Despite the obvious advantages of these methods, they have very limited application to date because they are unpopular among the business sectors and citizens (4). For these reasons, the development and application of these methods proper attention should be given in the research and public practice. Undoubtedly, the arbitration, the negotiations and mediation are able to find their place in this process.

Arbitration

The first of the tools that should be used in resolving economic conflicts is arbitration. In the most general sense, arbitration is a consideration and resolution of a conflict by a third person (s) designated by the parties to the case. As a non-judicial method of conflict resolution the arbitration is widely used in private law, especially in the area of economic (trade) relations (5). Most widespread causes of conflicts in the economic activity are the disorganization of economic relations (especially in transitional periods), crisis states in the economy, and the imperfection of the legislation - its desuetude, contradictiveness and often the availability in it of significant omissions. Outside the scope of this statement remains the clarification of the legal nature of the arbitration. We note only that it has two important characteristics - it is both a contractual and

***Quasi juridical conflictology** – beneath it is meant generally non-judicial conflictology. Its subject and object are non-legal conflicts falling outside the scope of the legal system.

judicial procedure, performed in special arbitration courts. On a practical level, the possibility of an arbitration consideration of the conflicts exists if there is an arbitration clause in a particular contract.

So far in principle it was thought and quite rightly, that not all of conflicts are subject to an arbitration consideration, especially those which arise in the sphere of the direct state governance, which ensure the functioning of the state - national security, public order, etc. A significant part of the administrative acts go beyond the scope of direct state governance and reflected in the field of the private economic activity. These are the cases of issuance of permits for doing business, on the issuance of licenses, of the conclusion of administrative contracts for the carrying out operations on behalf and on account of the state, public-private partnerships, outsourcing of administrative services and more. Probably for this reason, the application scope of the arbitration is constantly expanding.

Benefits of the increasing of the widespread introduction of the arbitration would be tangible. And if only because of that the conflicts arisen could be solved quickly, effectively, transparently, confidentially and last but not least - cheaper.

The negotiations and the mediation

Other non-judicial methods for resolving conflicts are the negotiations and the mediation. The use of the negotiations, direct or through any intermediary intervention to the resolution of conflicts has as old history as the conflicts themselves. They become the object of extensive research in the second half of XX century. The negotiations as a form of social interaction have their specificity which will be omitted in the present exposure. There is plenty of literature from Bulgarian and foreign authors concerning the issues of negotiation and the negotiation process (6). The practice shows that they are on track to become an effective instrument of the management (7).

The public practice in our country so far demonstrates as if a certain disregard and understatement of the negotiations as a tool for dealing with the conflicts.

Not always the situations in the conflicts and in the negotiation process are being composed so that the parties are willing to be involved in direct talks with each other. In this case it may be attracted neutral third party. Thus comes to the fore the mediation. As a special form of involvement of a third party (the other two are court and arbitration) it could help for regulating and resolution of the conflicts in order to assist in the negotiation process of the parties involved.

How and where units will be structured, which will be engaged in the negotiations and mediation in the economic activity, so that their work to be effective is a complex question. The application of this approach, however, objectively is necessary in the practice. Some of the obstacles to its implementation are many factors influencing the effectiveness of a mediators, including and the specific requirements for them. Most important ones are competence, impartiality, authority and the knowledge of the issues. Basing their work on these principles, and binding them to some extent with those of the arbitration, these mediation units could operate within one of the three (or any combination thereof) models of mediation. Namely, the facilitation, the consultative mediation, and mediation with elements of arbitration.

In Bulgaria, almost a decade, a lot of steps are made to the strengthening of the mediation as an alternative conflict resolution. The Law on Mediation (8) and three regulations for its implementation were adopted (9). Unified register of mediators was created.

The introduction of mediation is welcomed by businesses because it saves time and money while maintaining the strengthening the trading relationship between the parties (10). Experience shows that most conflicts can be resolved by mediation within a week, bearing in mind that the lawsuits could continue for years.

Resolving of the administrative conflicts through mediation allows the problems to be settled and contributes to the convergence of the administrative authorities to the society. Separately in conflicts between the administrative authorities and private parties, the role of the third party to the conflict may play the Institution Ombudsman, such as that party

does not compete with the mediation, but complements it and allows for much more complete clarification and convergence of the conflicting interests.

CONCLUSION

All of the methods discussed here would be particularly useful in the development of the voluntary codes of conduct that, the present proves every day is extremely important, even fundament of the modern established system of relations in the economic sphere.

The perception and implementing in the Bulgaria of all considered non- juridical methods of tackling the economic conflicts in our opinion is an objective necessity. It must be used by the fact that with the transition of our economy to a market basis and the withdrawal of the state from the operational management of the business dropped out these for years used legal means for predetermination in a binding manner of the content of a number of contracts relating to the operation of the business. In their own way, compulsory normative administrative legislation acts approved by the competent authorities, these contracts now have more and more limited role (11).

To make full implementation of those methods, we need continuously to carry out the analysis with managerial, legal, organizational and conflictological aspects. Looking basically on the organizational and legal and also conflictological problems that arise in the economic field, using juridical and none-juridical methods it may to assess the state of a particular surveyed object.

In this way, details will reveal the existing and potential conflicts, the economic consequences will be registered, the sources of the disorganization and the chaos will be registered too and, not infrequently and the helplessness of the legal system to solve the problems. And in the end the mechanism by which all this reflects on the economic activity will become visible.

Another important issue is to strengthen and promote the cooperation of the conflictology with the other sciences and the modern management practices. One of the effects will be the ability to draw on the gained positive experience, to adapt it and to be applied here. For instance, it is possible to start an approach for construction of appropriate

governance mechanisms for crisis and conflict management of the systems. That is something which is objectively needed. In this relation the conflictology has a lot to contribute, especially through the use of the tools of non-judicial conflictology.

REFERENCES

1. Димитров, Д. Й. Юридическа и квазиюрдическа конфликтология. Велико Търново, 2008, с. 9
2. Пискунова, Л.П. Экономическая конфликтология, Екатеринбург, 2007
3. Пашев К., Н. Вълев, Р. Брусарски. Оценка на въздействието на регулациите – практически наръчник. С., Асоциация за мониторинг на управлението, 2007, с. 7-13
4. Подобряване на икономическата среда чрез въвеждане на арбитража като съвременен, бърз и ефективен способ за разрешаване на спорове между бизнеса и администрацията. Статията е достъпна в Интернет на адрес: <http://ced.bg/project.php?ProjectID=109> [21.05.2013]
5. Марев, М., М. Славова. Концепция относно необходимостта от въвеждане на арбитраж в административното правораздаване. Статията е достъпна в Интернет на адрес: - <http://ced.bg/publication.php?PublicationID=129> [20.05.2013]
6. Фишер, Р., У. Юри. Изкуството на преговорите: Да достигнем до да. С., Издателство ВЛ, 1992
7. Одебер-Лароша, П. Как да преговаряме. Пълно ръководство за безупречни и печеливши преговори. С., Princers, 2002, с.11
8. Обн., ДВ, бр. 110 от 17.12.2004 г.
9. Заповед № ЛС-04-364 от 17.06.2005 г. за приемане на Процедурни и етични правила за поведение на медиатора, ЗАПОВЕД № ЛС-04-365 от 17.06.2005 г. за приемане на Правила за условията и реда за вписване в Единния регистър на медиаторите, ЗАПОВЕД № ЛС-04-363 от 17.06.2005 г. за приемане на Стандарти за обучение на медиатора
10. Георгиева, М. Медиацията – бърз и евтин начин за разрешаване на спорове. в-к “Капитал”, бр. №36 от 10.09.2005 г.
11. Сукарева, З. Общи условия на договора. УИ “Стопанство”. С., 2002. с.5