LESION IN CONTRACTS BETWEEN PROFESSIONALS

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Abstract

The current study aims to bring to the foreground a practical perception of lesion, both as a vice of consent and as a mechanism for balancing a contract, by putting this institution in the context of modern economic reality. Section I offers a short historical analysis of lesion in Romanian law, presenting the innovation brought by the Civil Code in force and the applicability of lesion in professional relationships. Section II aims to explain the particularities of this vice of consent regarded as a contractual imbalance. Section III offers an analysis of the conditions of existence of lesion, by contextualizing them in relations between professionals. Section IV introduces an analysis of the way in which the institution of lesion, when correctly put into practice by the interpreter of the law, could influence business actors when making decisions in the phase of concluding the contract. Section V refers to the application of lesion by courts and to the effects produced by this institution.

Keywords: *lesion; professionals; business medium; contractual balance; economic analysis of contract; disproportion of benefits.*

JEL Classification: K12

1. Preliminaries

The authors of the Romanian Civil Code of 2011, inspired by the civil legislation of Germany[2], Switzerland[3], Quebec[4] and also by Principles of European Contract Law[5] and other such instruments for the unification of private law at European and global level, operated a substantial change in the juridical regime of lesion in contracts, by extending its scope. While in the previous legislation lesion could only occur in the case of the minor with limited capacity to contract (Art. 1165 Civil Code of 1864 expressly stated: *"Adults cannot exercise the action in rescission for lesion"*), the Civil Code of 2011 radically changes the paradigm by including lesion in the category of vices of consent, with general applicability, therefore applicable for all persons. In the current regulation[6], *"lesion is the vice of consent that consists of the damage suffered by one party (usually found in a weaker position) and that, according to the law, may result in legal sanctions at the disposal of the protected party."*[7]

This legislative novelty has been well-received by doctrine[8], which considered the new regulation to be more in line with economic and social realities, while offering a mechanism for

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[2] §138 par. (2) German Civil Code: *"In particular, a legal transaction is void by which a person, by exploiting the predicament, inexperience, lack of sound judgement or considerable weakness of will of another, causes himself or a third party, in exchange for an act of performance, to be promised or granted pecuniary advantages which are clearly disproportionate to the performance."*

[3] Art. 21 par. (1) Swiss Code of Obligations: *"En cas de disproportion evidente entre la prestation promise par l'une des parties et la contre-prestation de l'autre, la partie lesee peut, dans le delai d'un an, declarer qu'elle resilie le contrat et repeter ce qu'elle a paye, si la lesion a ete determinee par l'exploitation de sa gene, de sa legerete ou de son inexperience."*

[4] Art. 1406 Quebec Civil Code: *"La lesion resulte de l'exploitation de l'une des parties par l'autre, qui entraîne une disproportion importante entre les prestations des parties; le fait meme qu'il y ait disproportion importante fait presumer l'exploitation. Elle peut aussi resulter, lorsqu'un mineur ou un majeur protege est en cause, d'une obligation estimee excessive eu egard a la situation patrimoniale de la personne, aux avantages qu'elle retire du contrat et a l'ensemble des circonstances."*

[5] Art. 4:109 PECL: *"(1) A party may avoid a contract if, at the time of the conclusion of the contract:*
(a) it was dependent on or had a relationship of trust with the other party, was in economic distress or had urgent needs, was improvident, ignorant, inexperienced or lacking in bargaining skill, and
(b)the other party knew or ought to have known of this and, given the circumstances and purpose of the contract, took advantage of the first party's situation in a way which was grossly unfair or took an excessive benefit."

[6] Art. 1221 Romanian Civil Code: *"(1) Lesion occurs when one of the parties, taking advantage of the state of need, lack of experience or lack of knowledge of the other party, stipulates in its or other person's favour a benefit that is considerably larger than the value of its own benefit, at the time of the conclusion of the contract.*
(2) Lesion must also be assessed by considering the nature and scope of the contract.
(3) Lesion may also occur when a minor assumes an obligation that is excessive in relation to its assets, to the advantages gained from the contract or to the overall circumstances."

[7] G-A. Ilie, *Leziunea în reglementarea noului Cod civil*, "Revista Română de Drept Privat" no. 6/2016.

[8] S. Neculaescu, *Leziunea – viciu de consimţământ sau dezechilibru contractual?,* "Revista Română de Drept Privat" no. 3/2010.

contractual balance and protection for the party which is economically or informationally disadvantaged in relation to the stronger party.

The applicability of lesion between persons with full capacity to contract, with no distinction between professionals and non-professionals, paves the way for the possibility of applying lesion in professional contracts. The technique utilized by the legislator of the Civil Code clearly distinguishes between the lesion in general and the lesion of minors, establishing a general rule in Art. 1221 paragraph (1) Civil Code, which contains general conditions for lesion, followed by paragraph (3) of the same article, which provides that the lesion *may also* occur in case of minors, under conditions that are derogatory from the general rule. Thus, an institution that, for a long time, has been regarded as marginal in our judicial system, having a small area of application[9], is being reconfigured and generalized.

Nevertheless, it can be observed that the initial rationale of this institution has been preserved: providing a mean to protect the vulnerable contractual party. The legislator of the Civil Code of 2011 considered that not only persons with limited capacity to contract may enter into unbalanced contractual relationships, but even persons with full capacity to contract may fall victim to unbalanced contracts.

Moreover, it was acknowledged[10] that such unbalance may occur in contracts between professionals, which are often characterized by economical and logistical inequities and by the aim to conclude agreements in a very expeditious manner.

Therefore, in order to analyse lesion in business contracts, one must reconcile the legislator's desire to establish a balance between obligations and contractual benefits, considering the potential vulnerabilities of the weaker party with regard to the specifics of the activity performed by the professionals – activity which is often based on speculating certain vulnerabilities with the aim of maximizing profits.

For a better understanding of the practical application of this institution in contracts between professionals, we need to look at several aspects of business features that interfere with the goals of this institution, such as:

Why would a professional choose to take advantage of the vulnerability of the other party? What is the standard of due diligence the stronger party must provide in the context of precontractual information obligation? What is the boundary between a very good deal and a lesionary deal? These are just some questions raised by the analysis of lesion as a vice of consent in contractual relationships between professionals. We will try to answer these questions and analyse the interference between the conduct of business players and the institution of lesion in Section IV of the present study.

2. Lesion as a primary contractual imbalance

Romanian literature[11] has been in long-standing disputes regarding the juridical nature of lesion, whether it is a vice of consent or a special ground for relative invalidity. Even after the entry into force of the 2011 Civil Code, that expressly places lesion in the section regarding vices of consent, the controversy persisted, with numerous authors[12] claiming lesion is not a vice of consent, but a special cause to invalidate a contract.

In our view, lesion is a vice of consent in the system of the current Civil Code. This expressly follows from the provisions of Art. 1206 Civil Code[13], which is the general provision regarding the vices of consent and also from the placement of lesion in the section dedicated to vices of consent. However, it must be noted that, through the method of regulating this institution, which seeks to find a solution for primary contractual imbalances, a new ground for invalidity is shaping up, one that is

[9] L. Pop, *Tratat de drept civil. Obligațiile*, vol. II, Universul Juridic, Bucharest, 2009, p. 313.
[10] B. Oglinda, *Dreptul afacerilor: Teoria generală. Contractul*, Universul Juridic, Bucharest, 2012, p. 237.
[11] L. Pop, *op. cit.*, p. 312.
[12] See: L. Pop, *op.cit.*, p. 312; I. Reghini, Ș. Diaconescu, P. Vasilescu, *Introducere în dreptul civil*, Hamangiu, Bucharest, 2013, p. 520; D. Chirică, *Leziunea - între reglementarea vechiului şi noului Cod civil*, "Studia UBB" no. 4/2013.
[13] Art. 1206 par. (2) Civil Code: *"Consent is also tainted in case of lesion."*

substantially different from the rest of the vices of consent, because lesion seems to protect values such as economic equity, the well-being of business life etc., rather than the concept of legal equity *stricto sensu*, in the context of forming a voluntarily given consent and in full awareness of the consequences.

Apart from these scholastic approaches, an important part of the doctrine[14] considers lesion to be a primary imbalance of the contract – an imbalance regarding the extent of benefits incurred at the moment of concluding a contract, as is expressly stated in Art. 1221 Civil Code. The legislator sought to guarantee contractual balance in both the forming and the execution of the contract, by utilizing two distinct instruments: lesion sought to sanction imbalances occurring during the formation of the contract, while discrepancies occurring during the execution of the contract are regulated by the institution of hardship[15]. Therefore, the moment in which the imbalance occurs is what differentiates lesion from hardship[16].

The disproportion of benefits occurring at the conclusion of contract must be considerable, manifestly excessive for any reasonable person. Therefore, a simple disparity in the benefits assumed by both parties cannot be regarded as grounds for lesion. Especially in professional relationships, situations may occur in which the benefits obtained by contractual means are disproportionate, but this cannot lead to the conclusion that all such contracts must be affected by lesion. Admitting that any quantitative or qualitative difference between contractual benefits is lesionary, would amount to freezing the economic activity of the respective parties. It is only natural for economic operators in a market economy to seek to maximize profits and minimize losses. Concluding profitable commercial agreements is one of the main instruments for achieving such goals. The scope of lesion begins where the scope of a very good deal ends – a deal in which both contractual partners harmonise their respective economic interests.

3. Conditions for lesion

3.1. Disproportion of benefits

The role of lesion is not to sanction so-called "natural" imbalances, borne out of economical operators' ability to capitalize on favourable conditions of the market. Lesion aims to remedy excessive contractual imbalances that exceed a reasonable level and are borne out of a culpable attitude of one of the parties. Precisely for these reasons, the legislator has established a mathematical threshold for assessing the disproportion of benefits in the event of lesion between adults: according to Art. 1222 par. (2) Civil Code, the disproportion must amount to more than half of the value of the benefit agreed or performed by the victim of lesion at the moment of concluding the contract.

Imposing a criterion based on a precise mathematical formula might seem to come in contradiction to the sources of inspiration of the current regulation of lesion (e.g., UNIDROIT Principles[17], Principles of European Contract Law[18], Draft Common Frame of Reference[19] - all refer to the concepts of unfair advantage or excessive benefit, without contextualizing these notions), but it is welcome in the context of current Romanian legal practice, because it offers to the judge a predictable criterion for assessing the lesionary character of a convention. In the matter of lesion, our legal system doesn't provide the judge with the possibility of assessing equity in such a way as the common law does – therefore, imposing a mathematical threshold in case of lesion provides to the judge an objective criterion for verifying the applicability of this institution without requiring additional efforts in order to determine the reasonable or unreasonable nature of the disproportion of

[14] See: G. Boroi, C.A. Anghelescu, *"Curs de drept civil: partea generală",* Hamangiu, Bucharest, 2012, p. 159; C. Zamșa, in Fl.A. Baias, E. Chelaru, R. Constantinovici, I. Macovei (coord.), *"Noul Cod civil. Comentariu pe articole",* C.H. Beck, Bucharest, 2012, p. 1282 and the following.
[15] Gh. Piperea, *Introducere în teoria solidarismului contractual,* "Revista Română de Drept al Afacerilor" no. 3/2011.
[16] L. Bercea, *O analiză a leziunii în contractele de afaceri,* "Revista Română de Drept Privat" no. 1/2019.
[17] Art. 3.2.7 UNIDROIT 2010.
[18] Art. 4:109 PECL.
[19] Art. II – 7:207 DCFR.

benefits.

3.2. Special circumstances in which the injured party is found

The state of need referred to in Art. 1221 par. (1) Civil Code has not been offered a detailed analysis in the doctrine and the case law is not widespread in this respect. Thus, the incidence of this condition should be considered on a case-by-case basis. The need in case of professionals is most likely to be economical, caused by a sever lack of resources (financial, human, technical), which determines the party in need to conclude lesionary agreements[20]. It is not relevant whether the injured party has a clear representation of the fact that it concludes a lesionary contract, but, considering the hypothesis of a professional, it is very possible that such party may be completely aware that it agrees to an imbalanced contract, but it does so in hope of recovery – e.g., a company on the brink of insolvency rents a building of its property in return for a rent well below the market price, in the hope that it could at least partly cover a severe lack of funds.

The state of need should not be confused with the state of necessity, regulated by Art. 1218 Civil Code. The state of necessity is in fact a particular duress, in which duress does not come from an individual, but is caused by a natural event.

The state of necessity is rather external in nature, as an absolutely unpredictable element (the literature gives examples such as natural disasters, floods, shipwrecks, storms), which puts the one affected by such state of necessity in a situation in which he is unable to do otherwise. On the other hand, the state of need is of an internal nature, it is judged on a case-by-case basis, depending on the circumstances in which the affected party was under at the time of the conclusion of the convention. One could say that in case of state of necessity, it was impossible for the party to find another solution than the one consented under the influence of this state, while in case of state of need, the person had other options, but it was affected by this circumstance in such a way that it preferred to conclude a lesionary agreement[21].

Lack of experience or ***lack of knowledge*** are rather hard (but not impossible) to imagine in the case of professional contracts, because it is supposed that professionals take economical decisions based on considered and informed analyses, according to market conditions. Of course, the reality is often different.

There may be situations in which economic actors make hasty decisions without informing themselves before, especially if we consider the vast amount of actions that a professional undertakes in its day-to-day activity. Moreover, situations may arise where the professional enters into a contractual relation that exceed its area of expertise. In such situations, the party that "knows the market" may be in a favourable position from which to take advantage of the other party's lack of experience or lack of knowledge. Of course, in order to be in the presence of lesion, this lack of experience or knowledge must exceed a reasonable level.

In particular, the mere negligence or indolence of the disadvantaged party cannot be invoked by the latter as grounds for lesion.

The lack of experience or knowledge must be such as to constitute a genuine obstacle for the party to be able to prefigure the true value of the benefits arising from the contract. As in the case of the state of need, it is essential that the beneficial party takes concrete advantage of these shortcomings, creating certain advantages directly from the circumstances in which the contractual partner is found.

It is interesting to note that in the case of state of need, unlike the other two circumstances for lesion, situations can be imagined where the injured party takes decisions in a way that is assumed to be disadvantageous, motivated by the hope of recovery. Contracts concluded under such circumstances may still be affected by lesion, even if the party assumed the disproportion of benefits,

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[20] L. Bercea, *op.cit.*

[21] B. Oglindă, during the debate *"Vătămare (din culpă?) a libertății de a contracta: LEZIUNEA",* organised by *Societatea de Științe Juridice,* available online and accessed at 30.10.2019: https://www.juridice.ro/468680/bazil-oglinda-oricum-intre-starea-de-necesitate-si-starea-de-nevoie.html.

because what matters most is the unlawful way in which the infringer took advantage of the state of need[22].

In case of lack of experience or lack of knowledge, we are talking about an impossibility for the injured party to pre-figure the disproportion between benefits – the impossibility comes from the fact that the party could not reasonably know about the imbalance, with normal due diligence in relation to the specific nature of its activity. If the party assumed such discrepancies *ab initio,* it would mean it knew about them, therefore, it couldn't be found in a state of lack of experience or lack of knowledge, for the other party to take advantage of.

3.3. Subjective attitude of the infringer

The condition of the mathematical criterion regards the objective side of lesion. However, lesion between adults can only work if the objective side is completed by a subjective element: ***taking advantage*** *of the other party's need, lack of experience or lack of knowledge.* This element is a key in analysing the lesionary nature of a contract concluded by a professional in the activity of an enterprise.

The act of *taking advantage* when the contract is concluded is a concept that must be carefully studied, especially in the context of professional relationships because, as stated above, there is a very thin boundary between exploiting certain favourable market conditions and unlawfully taking advantage of the other party's special circumstances.

Specifically, how can this condition be met? Is it enough for one party to obtain an advantage from a mismatch in benefits in relation to the other party?

We believe that the subjective attitude of the infringer is decisive in establishing the lesionary nature of the contract. Romanian case-law confirms this point of view[23]. The party in advantage does not actively deceive the other party in such a way as to taint its consent – such conduct would amount to fraud – but it voluntarily imposes certain clauses or takes advantage of certain favourable circumstances deriving from its dominant position. Thus, it is important that the party in advantage acts with intent – most of the time in the form of indirect intention. The infringer does not directly intend to damage the other party, it only looks to maximize its own profit, but it does so by accepting the likelihood of damaging the other party through its conduct[24].

Therefore, the subjective attitude of the infringer must be verified on two fronts: firstly, the infringer must be aware of the other party's state of need, lack of experience or lack of knowledge and secondly, the infringer must know that the benefits deriving from the contract are grossly disproportionate.

The institution of lesion implies that the infringer is taking advantage of a vulnerability it is not responsible for, a so-called "natural" vulnerability. In such context, the action or non-action of "taking advantage" must be seen in the light of the principles which govern business ethics. Once again, there can be observed the ethical element which underlies the institution of lesion and the way in which ethics can interfere with business law[25].

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[22] For the contrary opinion, in the sense that the purpose of lesion is not to sanction the illicit conduct of the infringer, but to alleviate the disproportion between benefits, see S. Neculaescu, *op.cit.*

[23] "*The objective element as per Art. 1222 Civil Code (the existence of a considerable difference, of an imbalance between the parties' benefits at the moment of the conclusion of the contract) is not by itself sufficient for the existence of lesion. For this, as per Art. 1221 par. (1) Civil Code, it is necessary for the party in advantage to get to profit because of the state of need, lack of experience or lack of knowledge of the other party at the conclusion of the contract. The imbalance of benefits must result from a situation in which one of the parties is in a more favourable position than the other, the first party exploiting it, taking advantage of it in a manner contrary to the principle of good will."* (Civil Sentence no. 3858/2017, Bucharest Tribunal, source: www.sintact.ro); Along the same lines: *"Therefore, the party that claims its consent was tainted by lesion must not only prove the material damage caused by the disproportion of benefits, but also the fact that the other party took advantage of its state of need, lack of experience or lack of knowledge in order to determine it to accept the stipulation of a disproportionate benefit."* (Civil Sentence no. 9386/2017, Timisoara Courthouse, source: www.sintact.ro).

[24] G-A. Ilie, *op. cit.*

[25] L. Bercea, *op. cit.*

4. How and why should professionals prevent lesion?

We determined above that lesion may occur in business relationships, but more relevant from a practical standpoint would be to study how this contractual imbalance can be prevented and, more importantly, what would motivate a professional to take (or not take) advantage of its partner's vulnerabilities.

Business relationships have specific particularities. They are characterized by dynamism and standardization. Most contracts concluded by professionals are agreed by proposing and accepting standard clauses – a fact justified by considerations of efficiency and swiftness in transactions. Therefore, it is very likely for lesionary stipulations to "sneak" into these clauses. Moreover, business relations in the context of capitalism are based on economic operators' desire to profit as much as possible at the expense of other actors. A great deal is to accomplish high reward with low effort. In this context, lesion can be understood as a restraint mechanism against economic operators looking to gain profit at all costs. Lesion in business contracts functions as an instrument to bring balance to grossly unjust disproportions that exceed a reasonable standard.

As discussed above, the legislator imposed a mathematical threshold to determine this reasonable standard. Of course, it would be absurd to believe equity can be expressed through a mathematical formula. The purpose of this threshold is to guide the market to minimal standards of fairness and balance in professional relations, relations that far too often tend to fall in the trap of greed.

The aspiration for fairness and good will must not lead to economic blockage. This is why courts endowed with applying the rules of lesion in business contracts must apply these provisions very carefully and try to prevent consequences even more severe than those imagined by the legislator[26]. After all, the purpose of lesion is to bring balance to the benefits arising from the contract, but the balance sought is not absolute, abstract – it must be reported to the concrete circumstances of the parties, which cannot be analysed outside the organic mechanisms of the market they act upon.

It would be absurd for the sanction of lesion to operate in contracts in which one party gains an advantage simply from utilizing resources more efficiently or from being better informed about the market. The problem arises in those cases in which the advantages exceed the precepts of economic fairness, in relation to the circumstances of the parties. In such cases, the need for balance is essential, and this balance must be achieved through the intervention of courts by applying legal provisions with care, considering the status quo of the parties, not by mechanically enforcing the rules.

The parties themselves have a significant role in preventing lesion and this role can be observed in the precontractual phase. The duty to disclose information and the duty of good will in negotiations are instruments used by the legislator for ensuring that all participants to the legal circuit have equal opportunities when entering into a contractual relation. In practice, not all actors in a market economy are equal, nor are the positions they hold in contractual negotiations. The duty to disclose information when entering a contract[27] is important because it has the role to ensure transparency in business relations, but very often this duty is not fully complied with. After all, in competition, professionals have no interest in making sure the other party understood contractual terms correctly and completely and the strategic decisions behind their agreements are issues relating to their internal organisation.

Furthermore, there are many instances in which professionals knowingly accept certain informational imbalances, for reasons of economic efficiency and cost containment. Professionals that utilise standard clauses for thousands of conventions successfully minimize their efforts in the phase of forming the contract. Most of the time, the other party has a superficial outlook in this phase, considering it would be much too time-consuming to make all efforts necessary in order to conclude a fair contract, so it accepts pre-imposed terms and, consequently, it discovers that this superficiality

[26] Art. 1221 par. (2) Civil Code: *Lesion must also be assessed by considering the nature and scope of the contract.*

[27] For a detailed study of the precontractual duty to disclose information, see: C. Paziuc, *Tăcerea este de aur? Despre îndatorirea de informare ca premisă a dolului prin reticenţă,* "Revista Română de Drept Privat" no. 1/2019.

resulted in consenting to an unbalanced contract[28].

What are the motivations that would push a professional to prevent lesion in contracts? What would restrain a professional from taking advantage of a favourable situation and not conclude a business that would increase its profit? In application of game theory in contractual relationships between professionals, it has been stated[29] that *"businesses are games of competition"*, in which all players seek to win in detriment of others. In such context, the natural tendency of players is (or should be) to pursue balance, because only this way can the competition mechanism work in advantageous conditions for all players in the market. Only through balance can exist a competitive medium in which all players look to gain profit, while at the same time lose as little as possible and have a certain stability in relation to other business actors.

However, one cannot assume that all players are eager to follow the rules of the game. In such cases, the preventive and penalising function of lesion intervenes, as it is regulated by Art. 1222 Civil Code.

5. The effects of lesion

The mechanism constructed by the legislator offers the damaged party two optiona: to invalidate the contract or to preserve the contract while balancing the benefits, as per Art. 1222 Civil Code[30]. As any sanction, this provision also has a role of prevention, because it cautions subjects of the law about the consequences of not complying to the rules regarding lesion. Specifically, if a professional were tempted to knowingly take advantage of the vulnerable state of his contractual partner, it should be well aware of the fact that the resulting contract could be avoided in the future on grounds of relative invalidity or it could be adapted in a manner that would balance the benefits.

Thus, the advantage gained by concluding such a lesionary convention would be nullified and the infringer might be put in an even worse situation than if he had concluded the contract under normal circumstances.

In our opinion, the mechanism arranged by the legislator of the Civil Code should discourage lesionary contracts and safeguard the precepts of economic equity in professional relationships, but practice will prove to what extent the rule fulfils this preventive function. The fact that case law after the entry into force of the Civil Code is very poor in regard to admitting claims of avoiding or adjusting professional contracts on grounds of lesion might indicate that the provision is quite efficient so far in preventing lesionary contracts, but this could also mean that professional contractors are not entirely aware of the protection they could benefit from resorting to this institution.

6. Conclusions

Understanding lesion as a mechanism for correcting contractual imbalances between professionals is particularly valuable when seen as a way to empower business actors in regard to the decisions they make. Substantiating lesion on grounds of equity might seem incompatible with the realities of modern capitalism, but the fact that this institution can be found in a fairly consistent manner in most modern regulations proves that lesion is not only an idealistic construct, but a useful and flexible instrument for correcting certain unfair imbalances that often arise in business relations

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[28] M. Ebers, *EC Consumer Law Compendium. Comparative Analysis.Unfair Contract Terms Directive (93/13)*, in H. Schulte-Nolke, C. Twigg-Flesner, M. Ebers (ed.), *EC Consumer Law Compendium. The ConsumerAcquis and its Transposition in the Member State*, Sellier, 2008, p. 351, available online and accessed at 30.10.2019: http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.183.3328&rep=rep1&type=pdf.

[29] Gh. Piperea, article available online and accessed at 30.10.2019: https://www.juridice.ro/essentials/1062/echilibrul-contractual-ii.

[30] *"(1) The party whose consent was tainted by lesion may claim, at its disposal, to avoid the contract or to reduce its own obligations with the value of the damages it would be entitled to.*
(2) With the exception of the case referred to at Art. 1221 par. (3), the action for annullability is admissible only if the damage amounts to more than half of the value of the benefit promised or performed by the damaged party, at the moment of the conclusion of the contract. The disproportion must subsist until the moment of the writ of summons.
(3) In all cases, the court may preserve the contract if the other party agrees to offer a fair reduction of its own benefit or an increase of its own obligation. The provisions or Art. 1213 regarding the adaptation of contract apply accordingly."

at the time of the conclusion of the contract.

Bibliography

1. Baias Fl.A., Chelaru E., Constantinovici R., Macovei I. (coord.), "*Noul Cod civil. Comentariu pe articole"*, C.H. Beck, Bucharest, 2012.
2. Bercea L., *O analiză a leziunii în contractele de afaceri,* "Revista Română de Drept Privat" no. 1/2019.
3. Boroi G., Anghelescu C.A., *"Curs de drept civil: partea generală",* Hamangiu, Bucharest, 2012.
4. Chirică D., *Leziunea - între reglementarea vechiului şi noului Cod civil*, "Studia UBB" no. 4/2013.
5. Ilie G-A., *Leziunea în reglementarea noului Cod civil*, "Revista Română de Drept Privat" no. 6/2016.
6. Neculaescu S., *Leziunea – viciu de consimţământ sau dezechilibru contractual?, "*Revista Română de Drept Privat" no. 3/2010.
7. Oglindă B., *Dreptul afacerilor: Teoria generală. Contractul,* Universul Juridic, Bucharest, 2012.
8. Paziuc C., *Tăcerea este de aur? Despre îndatorirea de informare ca premisă a dolului prin reticenţă,* "Revista Română de Drept Privat" no. 1/2019.
9. Piperea Gh., *Introducere în teoria solidarismului contractual*, "Revista Română de Drept al Afacerilor" no. 3/2011.
10. Pop L., *Tratat de drept civil. Obligațiile*, vol. II, Universul Juridic, Bucharest, 2009.
11. Reghini I., Diaconescu Ș, Vasilescu P., *Introducere în dreptul civil*, Ed. Hamangiu, Bucharest, 2013.