



New Vision University

Comparative Private and International Law

Consumer Protection Standards in Distance Contracts
and E-Commerce According to the European Union
Directives and Georgian Legislation

By

Ana Gegeshidze

Supervisor: Lika Sajaia

A thesis submitted for the degree of Masters of Law
at the New Vision University.

2021, Tbilisi

Table of Contents

Table of Abbreviations

Abstract

Introduction	1
I. Concept and Legal Aspects of E-commerce, Distance Contract and Consumer.....	3
1. Concept of E-commerce.....	3
1.1. Types of E-commerce	4
1.2. E-commerce: Advantages and Disadvantages	5
2. Definition of Distance Contracts and Its Legal Aspects	6
2.1 Definition of Distance Contracts	6
2.2 Types of Distance Contracts	7
2.3 Distance Contracts: Advantages and Disadvantages.....	8
3. Notion of Consumer	8
II. Consumer Protection Standards in Distance Contracts and E-commerce under the European Union Directives	10
1. Introduction	10
2. Directive of the European Parliament and of the Council on the Protection of Consumers in Respect of Distance Contracts.....	12
2.1 The Right of Withdrawal for Distance Contracts.....	13
2.2 Information Requirements for Distance Contracts.....	14
3. Directive of the European Parliament and of the Council on Electronic Commerce	15
4. Directive of the European Parliament and of the Council on Consumer Rights	18
4.1 Information Requirements for Distance Contracts.....	19
4.2 The Right of Withdrawal for Distance Contracts.....	20
5. Conclusion.....	20

III. Consumer Protection Standards in Distance Contracts and E-commerce in Georgia	21
1. Introduction	21
2. Consumer Protection Mechanisms under Georgian Law	24
3. Analysis of the Draft Law on Consumer Protection	26
4. Is E-commerce Regulated in Georgia?	30
5. Conclusion.....	31
IV. Consumer Protection and COVID-19 Challenges for Consumers: E-commerce and Distance Contracts	32
Conclusion.....	34
Bibliography	37

Table of Abbreviations

art.	article
B2A	Business-to-Administration
B2B	Business-to-Business
B2C	Business-to-Consumer
C2A	Consumer-to-Administration
C2B	Consumer-to-Business
C2C	Consumer-to-Consumer
CSRDG	Center for Strategic Research and Development of Georgia
EU	European Union
etc.	et cetera
fn.	footnote
KAS	Konrad Adenauer Stiftung
OECD	The Organization for Economic Co-operation and Development
p.	page
par.	paragraph
TFEU	The Treaty on the Functioning of the European Union
U.C.C	Uniform Commercial Code
WTO	The World Trade Organization

Abstract

Consumer protection is becoming increasingly important with the growth of e-commerce and the increase in the number of distance contracts. With the expansion of international commercial transactions in response to modern challenges, it is vital to be prepared for legal regulations in this regard and to eliminate its weaknesses, particularly when the country is a developing one.

The aim of this master thesis is to explore the legal aspects that are required to fully protect consumer rights.

The purpose of this paper is to look into the legal aspects that are required for comprehensive consumer protection. Summarize the international directives that adequately defend consumers' rights within the European Union, particularly the right of withdrawal from the contract and information requirements for distance contracts and investigate Georgian legislation in this field, identify gaps and necessities, analyze the draft law on consumer rights, as well as recommendations that will improve the Georgian resolution of the issue. The challenges that consumer protection faced during the Covid Pandemic are discussed at the end of the paper.

The paper consists of 42 pages and includes: Introduction, four chapters, conclusion and bibliography.

Introduction

“Consumers, by definition, include us all”¹ - so addressed the President of the United States, John Kennedy² to Congress. Consumers are the largest group of the economy and vulnerable part of society. So, protecting their (our) rights is a significant challenge for the world.

The development of the digital world in the twenty-first century has changed every field, including consumer relations, and has inspired the possibility of concluding a distance contract, which is becoming more relevant and frequently used as a result of technological advances. A commercialization and development of e-commerce, the consumer world has changed fundamentally. The development of the virtual world has created a new platform for business and for consumers, anyone can run a business without much expense and consumers can purchase the desired goods or services without leaving home. Distance contract allows the parties to enter into a contractual relationship quickly and easily. Virtual communication has changed not only the format of contractual relationships, but also the level of trust and expectations of consumers. Entering into a contract in this way also carries risks and the consumer may appear to be a vulnerable party to the agreement. Within such a relation, it is possible to establish a legal relationship of a vertical nature, which leads to the violation of equality inherent in private legal relations and the restriction of consumer rights in relation to the business. One of the parties to the agreement is the consumer, who is assumed to be in less

¹. JOHN F. KENNEDY, Special Message to the Congress on Protecting the Consumer Interest, 1962 <https://www.presidency.ucsb.edu/documents/special-message-the-congress-protecting-the-consumer-interest?fbclid=IwAR0BqjniHu9bFvBTpnlP374DDGJW11VVUP7D-tWsnZwGA2-9a1th1yypdjk>

² JOHN F. KENNEDY 35th President of the United States: 1961 - 1963

favorable conditions than the other party. Thus, technological development in recent decades have posed new challenges to the law, the development of e-commerce and the growing role and number of distance contracts made consumers an important market player, so there occurred necessity of the development of effective legal mechanisms/legislation at both, the national and international levels, which significantly ensures the protection of consumer rights.

The thesis will discuss how the European Union directives and Georgian legislation ensure the protection of consumer rights. The focus will be on the right of withdrawal and information requirements for distance contracts.

The first chapter seeks to define e-commerce and its types, what benefits and drawbacks does it have. In the same chapter is also given information about distance contracts: definition of distance contracts, types of distance contracts and what advantages and disadvantages does it characterize. Last part of the first chapter refers to the consumer, who is meant as a consumer within the framework of consumer protection.

The second chapter is about the consumer protection standard in distance contracts and e-commerce under the European Union directives. In the first paragraph of this chapter is reviewed directive of the European Parliament and of the Council on the protection of consumers in respect of distance contracts and a special attention is paid to the right of withdrawal and information requirements for distance contracts. The second paragraph of the second chapter, contains information about directive of the European Parliament and of the Council on electronic commerce. There is discussed about the legal basis of this directive in terms of consumer protection. The last paragraph of this chapter is about directive of the European

Parliament and of the Council on consumer rights. The main focus is on the right of withdrawal and on the information requirements for distance contracts.

The third chapter discusses consumer protection standards in Georgia for distance contracts and e-commerce. This chapter describes consumer protection mechanisms under Georgian law: information requirements and right of withdrawal for distance contracts according to the Georgian legislation, In addition, the thesis assesses the problems in the Georgian legal space and provides an overview of Georgia's draft law "On Consumer Rights Protection."

Before the conclusion, there is a chapter that discusses the main challenge for humanity, which has an impact on every field, including consumer rights, so this chapter is about consumer protection and COVID-19 challenges for consumers: e-commerce and distance contracts. The final chapter is a conclusion that summarizes the issues addressed in the thesis.

The master thesis uses comparative legal, analytical, normative, doctrinal, systematic, and logical research methods.

I. Concept and Legal Aspects of E-Commerce, Distance Contract and Consumer

1. Definition and Types of E-commerce

Fast development of digital technologies caused increasing numbers of distance contracts and development of electronic commerce (e-commerce). Nowadays there is no borders between countries to sell and buy goods and/or services. E-commerce is popular due to the several reasons: the consumers can buy and the sellers can sell anything from anywhere, the consumers can investigate global market, product price and products features and make a convenience

decision.

It is interesting what we mean when we are talking about e-commerce. There is no universally recognized definition for the e-commerce. In general e-commerce is a trading process that takes place through the internet. The World Trade Organization (WTO) and its members, the European union and its members, other international organizations, business entities and other relevant stakeholders using different definitions, there is the WTO work program on e-commerce, which refers to “the production, distribution, marketing, sale or delivery of goods and services by electronic means”³, e-commerce shall be defined as “a commercial activity whose main purpose is to make a profit and which is based on the complex automation of the commercial cycle using computing techniques”⁴.

1.1 Types of E-Commerce

There are different types of e-commerce, such is Business-to-Business (B2B); Business-to-Consumer (B2C); Consumer-to-Consumer (C2C); Consumer-to-Business (C2B); Business-to-Administration (B2A); Consumer-to-Administration (C2A).⁵ For my studying purposes B2C type of e-commerce is interesting and crucial, because the parties of the relationship are, on the one hand, the business and, on the other hand, the consumer. This is the most common e-commerce model - the business delivers the product directly to the customer, without an intermediary. This business is engaged in traditional retail, simply, the buying and selling process is carried out through the Internet.

³ Yasmin Ismail, E-commerce in the World Trade Organization: History and latest developments in the negotiations under the Joint Statement, 2020, 2

⁴ ციური ნოზაძე, ელექტრონული კომერციის ინფორმაციული ტექნოლოგიები, 2010, 3

⁵ Blooidea – Types of e-commerce

<https://blooidea.com/en/blog/types-e-commerce>

Examples of this model are: Amazon.com, Aliexpress, eBay, Taobao.com, etc. In a B2C relationship a consumer is considered as a “weaker” part of the contract, who needs more legal control and protection in order to not violate their rights, due to the reason, legal regulations of consumer rights is essential.

1.2 E-Commerce: Advantages and Disadvantages

There are several reasons why nowadays e-commerce is popular, to start with, e-commerce gives the consumers and the sellers chance to reach a global market without obstacles. There is no necessity to have a large financial investment, there is no geographical boundaries, the consumers can explore the global marketplace and then make a decision, it is easy to buy and pay, parties can consume time, also e-commerce increases competition and efficiency between businesses, which is profitable for the consumers who gets better goods and services at a lower costs.

However, e-commerce can have many negative aspects, such as lack of domestic and international legislation which regulates e-commerce, infringement of privacy and financial electronic transactions insecurity, on the part of the consumer, it can be considered as a disadvantage that they cannot touch, test and directly evaluate the good.

Despite these negative aspects the growth trend of e-commerce is an unstoppable process, because e-commerce gives a chance for small retailers to sell their products and reach a broader audience online, and the consumers have the opportunity to shop in the international market.

2. Definition of Distance Contracts and Its Legal Aspects

2.1 Definition of Distance Contracts

According to the directive⁶ of 25 October 2011: “The definition of distance contract should cover all cases where a contract is concluded between the trader and the consumer under an organized distance sales or service-provision scheme, with the exclusive use of one or more means of distance communication (such as mail order, Internet, telephone or fax) up to and including the time at which the contract is concluded⁷. In such case, parties are absent persons.

Following transactions are regulated under the consumer rights directive: “contracts for the sale of goods; contracts for the supply of services; contracts for the supply of digital content in an intangible medium; contracts for the supply of electricity, water and gas not supplied in limited volumes or set quantities and contracts for the supply of district heating⁸.”

Under the definition of distance contract may implied wide range of contracts, such as: contracts made through the internet, fax, mail and telephone.⁹ This segment of contracts is somehow artificially merged and the common sign by which they are grouped is the use of an electronic device. Such transactions are equated with simple written contracts.¹⁰

⁶ DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011

⁷ DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011, Preamble (20)

⁸ Paul McMahon, Article: Dinstance Contracts

<http://mcmahonsolicitors.ie/distance-contracts/> ⁹

Paul McMahon Article: Dinstance Contracts

¹⁰ თ. დარჯანია, სამოქალაქო სამართლის ონლაინკომენტარი, civilcode.ge, 2017, მუხლი 69, ველი 5.

2.2 Types of Distance Contracts

Signing a contract by e-mail is currently one of the most practical and relevant forms that can be concluded in simple written form. By e-mail, the parties can agree on the essential terms of the contract and bind themselves within the framework of the contractual relationship. Risks in relation to such a contract may be related to the issues of the contract and the will of the parties, the authenticity of the signature, the proper fulfillment of the obligations, the acceptance of the subject of the contract.

The contract can be concluded by telephone, both in writing and orally. The written form implies the implementation of an offer and acceptance through short text messages. The signing of an oral agreement implies the agreement of the parties to the terms of the contract by telephone.

Contracts entered into through catalogs should indicate contracts entered into as a result of the acceptance of the terms (information about goods, value, etc.) posted on the enterprise site. In particular, the user selects the desired product after browsing the website and buys it according to the terms of the contract.¹¹

Contracts concluded through advertising in the press, radio and television are concluded in cases where they indicate the telephone number or e-mail address of the person offering the goods and services.¹²

Contract made through internet is one of the most widely used forms in consumer relations. Purchasing items through various internet sites, or receiving services, is the most popular type of relationship of

¹¹ თამარ ლაკერბაია, ხელშეკრულების უარყოფის უფლება, ქართული და ევროპული სახელშეკრულებო სამართლის შედარებითი ანალიზი, თბილისი, 2016, 101.

¹² R. Stone, The Modern Law of Contract, fifth edition, Cavendish Publishing limited, Portland, Oregon, USA, 2002, 64

the 21st century. For visuals, for example, the following sites can be cited - www.amazon.com; ebay.com; 6pm.com; forever21.com and many more. Among these, the leader is the company - Amazon, which was the first which played an important role in establishing this practice in the field of consumers.

2.3 Distance Contracts: Advantages and Disadvantages

The popularity of a distance contract is due to the "harmless" nature and ease of implementation,¹³ but at the same time there are growing risks that can be posed to the customer, if the risks are not taken into account. In distance contracts, it is difficult to identify the contractors and establish the veracity of their will, which is directly related to the questioning and invalidity of the contract and complicates the exercise of the right of restitution.

The second problem we face is the risk of material defect in the goods. In direct communication, the consumer has the opportunity to check the quality of the item, and in el communication, the user is limited in this part as well. The risk of being violated the consumer's right to receive an item of agreed quality and features is high.

3. Notion of Consumer

The notion of 'consumer' is crucial for determining scope of consumer-protection rules. Despite the serious importance, there is no single consumer concept in the European Union, and amongst the Member States¹⁴.

¹³ Dr. Shashi Nath Mandal, PROTECTION OF E-CONSUMERS RIGHTS IN ELECTRONIC TRANSACTION, 2011, 6

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1880958

¹⁴ Rafał Mańko, The notion of 'consumer' in EU law, Library Briefing Library of the European Parliament, 2013, 1

[https://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130477/LDM_BRI\(2013\)130477_REV1_EN.pdf](https://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130477/LDM_BRI(2013)130477_REV1_EN.pdf)

Despite different definitions accordingly to the EU law¹⁵ – “a consumer is a only natural person, none of the legal persons, even non-profit associations are not considered as consumers, who is acting outside the scope of an economic activity” (trade, business, craft, liberal profession).¹⁶

Some national rules have a different legal approach. For instance, In German legislation, employees are also accustomed to being consumer, except for self-employed persons.¹⁷ As for the Georgian legislation, the Law of Georgia on Consumer Protection defined consumer as a citizen who buys goods/services for personal use, buyer, customer, or with such intention,¹⁸ this law is not in force for today and the draft law on the " Protection of the Right of Consumers offers the following notion of consumer: “Consumer is any natural person who offers or who acquires or subsequently uses a product, primarily for personal or household use and not for commercial, entrepreneurial, professional or other professional activities”¹⁹.

The popularity of e-commerce and increasing numbers of distance contracts, led to the need for special legislation. It was primarily needed for regulating this field and for protecting consumer, as a weak part of relationship, rights.

¹⁵ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997, Art2.2

¹⁶ Rafał Mańko, The notion of 'consumer' in EU law, Library Briefing Library of the European Parliament, 2013, 1

¹⁷ Rafał Mańko, The notion of 'consumer' in EU law, Library Briefing Library of the European Parliament, 2013, 2

¹⁸ საქართველოს კანონი მომხმარებელთა უფლებების დაცვის შესახებ

¹⁹ საქართველოს კანონი მომხმარებლის უფლებების დაცვის შესახებ (პროექტი)

<https://info.parliament.ge/file/1/BillReviewContent/224285?>

II. Consumer Protection Standards in Distance Contracts and E-commerce Under the European Union Directives

1. Introduction

The development of e-commerce has reached its peak in Europe. Germany, France and the United Kingdom are leading the world in terms of the number of distance contracts concluded online. This tendency has been observed since 1996, when the number of online users exceeded 100 million, and the total value of online contracts exceeded \$289 million.²⁰ Increasing the importance of e-commerce led to the need to regulate this field, and The Organization for Economic Co-operation and Development (OECD) in 1999 has established regulations to regulate e-commerce and protect consumer rights (“1999 Recommendation”)²¹. The main principle of European consumer protection legislation was stipulated in this recommendation, in particular that “the same level of protection provided by the laws and practices that apply to other forms of commerce should be afforded to consumers participating in commercial activities through the use of global networks”²².

Nowadays many regulations for consumer protection have been developed and are working effectively in European countries. For instance, the common law of contracts and the Uniform Commercial Code (U.C.C.) afford traditional safeguards to consumers. Consumers

²⁰John Rothchild, Protecting the digital consumer: The limits of cyberspace utopianism, 1999, 896

²¹Consumer Protection in E-commerce: OECD Recommendation, OECD Publishing, Paris, 2016

<http://dx.doi.org/10.1787/9789264255258-en>

²²OECD, DSTI/CP, DRAFT RECOMMENDATION OF THE COUNCIL CONCERNING GUIDELINES FOR CONSUMER PROTECTION IN [THE CONTEXT OF ELECTRONIC COMMERCE] 1998, 27

[https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP\(98\)4&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP(98)4&docLanguage=En)

may rescind bargains induced by misrepresentations,²³ avoid unconscionable terms in agreements²⁴ and collect damages for nonperformance or breach of warranty.²⁵ Consumers may also recover in tort when injured by defective or unreasonably dangerous products²⁶. Even though these regulations, consumers are facing with a lot of problems. E-commerce is attractive for time saving, for giving a chance to become part of global marketplace, it is true that the choice of the products for online users is much larger and diverse, and is not limited by territorial boundaries, but these advantages come with risks. The issue of personal and banking data protection is also noteworthy and the contractor is virtually unknown, which hinders the building of trust between the parties to the contract.²⁷ With the European Union approach, consumers entering into such a distance relationship have every right to expect the kind of protection they would enjoy when entering a local store.²⁸ As already mentioned, the consumer is even more vulnerable when concluding a distance contract, so the EU imposes additional regulations on them. This area has always been at the forefront of the EU, with the launch of the Consumer Program in the European Economic Community in 1975, followed by a 1986 resolution and a number of directives adopted

²³ Restatement (Second) of Contracts par. 164, 1981

²⁴ U.C.C. 1995, par. 3-302

²⁵ Restatement (Second) of Torts par. 402A (1965)
U.C.C. 1995, par. 2-713 -715

²⁶ Gregory E. Maggs, Internet Solutions to Consumer Protection Problems, 1998,3

²⁷ According to the E-commerce statistics for individuals 73 % of internet users in the EU shopped online in 2020

https://ec.europa.eu/eurostat/statistics-explained/index.php?title=E-commerce_statistics_for_individuals

²⁸ Citizens Information, Online Shopping

<http://www.citizensinformation.ie/en/consumer_affairs/consumer_protection/consumer_rights/distance_selling.html>

since then.²⁹ Despite the harmonization of EU directives, its member states also regulate the operation of consumer protection mechanisms in domestic law (in some cases, the policies of the EU and the member state are quite different, which confuses consumers even more), including Georgia's Association Agreement with the EU, which will be discussed in more detail in the following chapters.³⁰

Consumer laws, policies, and practices put a stop to deceptive, misleading, and unfair commercial practices. Such safeguards are critical in fostering consumer trust and establishing a more balanced relationship between businesses and consumers in commercial transactions. Because the digital networks and computer technology that make up the electronic marketplace are fundamentally worldwide, a global approach to consumer protection is required as part of a clear and predictable legal and self-regulatory framework for electronic commerce. The global network environment tests each country's or jurisdiction's ability to adequately address consumer protection issues in the context of electronic commerce.³¹

2. Directive of the European Parliament and of the Council on the Protection of Consumers in Respect of Distance Contracts

The first example of a legal settlement of on the protection of consumers in respect of distance contracts is Directive 97/7EC

²⁹ Hans-W. Micklitz and Stephen Weatherill, Consumer Policy in the European Community: Before and After Maastricht *Journal of Consumer Policy*, Vol. 16, 1993, 235

³⁰ ASSOCIATION AGREEMENT between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part

[https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830\(02\)](https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830(02))

³¹ Recommendation of the Council concerning Guidelines for Consumer Protection in the Context of Electronic Commerce

<https://legalinstruments.oecd.org/en/instruments/183>

adopted in 1997 in the European Union.³² Directive was not originally focused on e-commerce. In 1997, online contracting tools were not yet fully developed. E-commerce, with its modern forms and content, did not exist at all in that time. In this regard, the focus was first on distance concluded contracts, such as telemarketing and catalog purchase agreements and then on e-commerce.

2.1 Right of Withdrawal for Distance Contracts

This directive granting special importance to the right to withdrawal from contract. The European legislature provided the consumer with an additional right to receive the purchased item, inspect it, determine its true value and decide whether the contract is finally concluded.³³ The same directive determined the term of withdrawal from the contract according to which “the consumer has a period of at least seven working days in which to withdraw from the contract is possible without penalty and without giving any reason”.³⁴ With the right of withdrawal, the consumer is given the right free from material preconditions, unilaterally enforceable and also unilaterally released from the contract.³⁵ The right of withdrawal allows the consumer to avoid an outcome based on unequal negotiations. This is an exceptional regulation that guarantees consumer protection.

As a result, the withdraw from the contract results in the retroactive

³² Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts

³³ თ. ლაკერბაია, ვ. ზაალიშვილი, თ. ზოიძე, მომხმარებელთა უფლებების დაცვის სამართალი, ევროპულ სამართალთან ჰარმონიზაციის გზა, თბილისი, 2018, 110

³⁴ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, Art6.1

³⁵ ი. კროპჰოლერი, გერმანიის სამოქალაქო კოდექსი, სასწავლო კომენტარი, ჭეჭელაშვილი ზ. (თარგმ.), მე-13 გადამუშავებული გამოც., თბილისი, 2014, 250.

cancellation of the agreement as a result of the restitution.³⁶

2.2 Information Requirements for Distance Contracts

The principle of civil law, that each party to the contract must be sufficiently interested in obtaining the relevant information for the conclusion of the contract, has lost its original and universal meaning, today, a number of contracts have different rules for obtaining and exchanging information. In the case *Content Services Ltd v Bundesarbeitskammer*³⁷, the court clarified that the business trader is obliged to provide comprehensive information to the consumer, the role of the user is passive in the process of finding information. It is true that a contract is made on the basis of the free will expressed by individuals, but often this will is caused by incorrect, misleading information, which is why one party to the contract may be deceived and enter into an agreement that was not in his interest at all. Therefore, the circle of certain persons at the stage of concluding a distance contracts and after it needs and deserves special protection, equipped with legal protection mechanisms that will be able to prevent abuse of rights by one party. We often come across an example that clearly shows the disadvantages of a distance contract, most often it refers to products ordered online that do not reach the customer to the quality and feature of "imagined", this particular example clearly shows the importance of providing correct and complete information to the customer, due to the reason that this factor directly determines the issue of concluding/not concluding a

³⁶ თ. ლაკერბაია, ხელშეკრულების დადებაზე გამოვლენილი ნების უკან გამოთხოვის უფლება ევროპის მომხმარებელთა უფლებების დაცვის სამართალში, ი. ბურდული (რედ.), სამართლის ჟურნალი N1, თბილისი, 2014, 112.

Cited: Loos M., Rights of Withdrawal, Centre for the Study of European Contract Law Working Paper Series No. 2009/04 ,3, [12.1.2014].

³⁷Case C-49/11 JUDGMENT OF THE COURT (Third Chamber) 5 July 2012

contract.

The European Parliament Directive of 20 May 1997 stipulates the minimum information that must be provided to the consumer during of conclusion any distance contract. First of all, it is information about the goods and services that are allowed on the market, are the object of free circulation and meet safety standards. Second, the customer needs to know who they are dealing with. In this regard, information about the identity, reputation and credibility of the manufacturer is crucial. Third, the customer must be thoroughly informed about the terms of the contract and, finally, certain distance type contracts are subject to special legal regulation where the consumer is given additional rights against the trader.

It is important that the information provided should be accurate, transparent, comprehensive and easily accessible to the user. Thus, the obligation of disclosure implies the provision of information, and transparency - the provision of information in such a way that it is adequately understood by the user, who is likely to have no specific knowledge of the issue unlike the entrepreneur

As already mentioned, a distance contract is characterized by to the right of withdrawal from the contract, therefore it is necessary to provide information to the consumer about the existence of this right and explain the rules and conditions of its implementation, as well as who to turn to in case of problem or dispute.³⁸

3. Directive of the European Parliament and of the Council on Electronic Commerce

European Directive on electronic commerce (Directive 2000/31/EC)

³⁸ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts

is the basis for the regulation of distance contracts, and more specifically for electronic contracts. It establishes standard rules in the EU on various issues related to electronic commerce. The purpose is to open the economic and territorial boundaries between the inhabitants of different countries and to offer a safe space for the customers. It was this directive that regulated e-commerce and established its legal boundaries. This document is one of the most important in the law of consumer protection and emphasizes the reservation that the online user must be protected when concluding a distance contract. It defines such important rights as transparency, compensation, access to information. According to the article 21 of the Directive, the European Parliament must meet every two years after its adoption and hear the report of the relevant structures on the validity of the Directive.³⁹ Every report which was submitted till to date reflects the expansion of e-commerce and the increase in risks. The e-commerce directive directly regulates websites, online book services, travel package sales, online advertising, professional services (lawyer, doctor services), entertainment services, free services etc.⁴⁰ According to the same directive, countries are obliged to regulate and harmonize the issue of online orders, e-contracts, advertising, producer responsibility at the level of domestic legislation. Interestingly, under the imperative reservation of the directive, the consumer can in no case waive the rights granted to him. Thus, the possibility of conceding rights by agreement is excluded. According to the directive, an online contract must have equal force in the contract between the parties to all the EU member states. However, the conditions must be clearly defined in the distance concluded

³⁹ European Directive on electronic commerce (Directive 2000/31/EC), Art.21
<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32000L0031>

⁴⁰ Directive on electronic commerce (2000/31/EC), Introduction

contract. It is important, that in every EU country, electronic contracts must be given equivalent legal status to paper contracts. These contracts must also spell out the following, in clear and understandable terms: the technical steps consumers must follow to conclude the contract; whether or not the contract will be filed by the service provider; and whether consumers can view it at a later stage; how consumers can identify and correct typing errors before placing their order; the languages in which the contract can be signed.⁴¹ Consumers must be able to save and print out contracts and general conditions. The steps that the customer must follow to enter into a contract must be given and this information must be available to determine whether a contract will be conducted or not. There should be an indication of how the customer corrects a typo before entering into a transaction. The Languages which can be used for conducted contract should be listed.⁴² According to the directive, when concluding a contract, the indication in the online store "Add to cart", "Purchase" must be expressed in such a way that the consumer realizes the obligation to pay the contract price. The total value must be directly indicated in the chosen currency, including state taxes, along with shipping costs, it is not allowed to charge a covered amount. Otherwise the customer will not be obliged to pay the amount not specified in the agreement. No pre-notation may be made to the articles of the contract. The seller (manufacturer, performer) must notify the customer in a comprehensible manner of consent to the contract, for which the directive sets a reasonable time

⁴¹E-commerce - standard EU rules SUMMARY OF: Directive 2000/31/EC – electronic commerce in the EU

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legisum%3A124204&fbclid=IwAR3yKkVZwY9yLdl25QA-kt2MO94ZnZ8eEWVHjRiAfXoEoWsOUE_0eWMZIZ8

⁴² E-commerce; Standard EU rules

limit.⁴³ Due to the obligation to provide information, it is necessary to know who is the seller (manufacturer, executor) (address, if payment is made in person), full description of the contract item or service, including taxes, total price, how the agreed price is paid and how the customer will receive the purchased item.⁴⁴

4. Directive of the European Parliament and of the Council on Consumer Rights

An important part of the EU consumer protection legislation is the 2011 Consumer Rights Directive (Directive 2011/83/EU of the European Parliament and of the Council).⁴⁵ The document relates to almost all types contracts between the seller⁴⁶ (manufacturer, performer) and the customer except for financial services, health, travel package, social services, gambling.⁴⁷ The directive's goal is to improve consumer safety by standardizing numerous essential components of national legislation on customer-seller contracts, as well as to boost trade between EU countries, particularly among online sellers and buyers.⁴⁸ The introductory part of the Directive sets out the European Union's approach to such rapid development of e-commerce. It is noted that the organization sees benefits associated with the use of cyberspace for trade, but also does not deny the obvious dangers and adopts this directive to ensure that the risks are

⁴³ Directive on electronic commerce (2000/31/EC)

⁴⁴ Directive on electronic commerce (2000/31/EC) Art. 5

⁴⁵ DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85;

⁴⁶ ["Implementing the Consumer Rights Directive 2011/83/EU". Department for Business, Innovation & Skills, 2013](#)

⁴⁷ DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT, Art. 3.3

⁴⁸ Strengthening EU consumer rights SUMMARY OF: Directive 2011/83/EU on consumer rights

minimized.⁴⁹ This directive further regulates the problems raised in the 2000 Electronic Communications Directive (2000/31 /EC) and also regulates issues that were not previously addressed. It establishes guidelines for providing information for distance contracts, also governs the right of withdrawal for distance contracts and harmonizes certain provisions governing performance and other aspects of business-to-consumer contracts.⁵⁰

4.1 Information Requirements for Distance Contracts

A minimum standard has been set for the seller (manufacturer, performer) to disclose personal information to a personal user.⁵¹ If the Electronic Communications Directive required an indication of his name and geographical location, the 2011 Directive provided for an obligation to provide an additional telephone number, trade name, e-mail, fax the address on which the customer can file any kind of complaint and receive an immediate response.⁵² “Before concluding a contract, traders must provide to consumers, in clear, understandable language, information, such as: their identity and contact details; the product’s main characteristics; and the conditions that apply, including payment terms, delivery time, performance and duration of the contract and termination conditions”⁵³. Information requirements, particularly on the right of withdrawal, are more detailed for contracts concluded at distance (such as via post,

⁴⁹ DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT, Art. 1-67

⁵⁰ DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT, Preamble 9

⁵¹ EUROPEAN COMMISSION, DG JUSTICE, 1 DG JUSTICE GUIDANCE DOCUMENT, 2014

⁵² DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT, Art 5 1.B-6.1.C

⁵³ Strengthening EU consumer rights SUMMARY OF: Directive 2011/83/EU on consumer rights

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legisum%3A0904_4&fbclid=IwAR2FdB3q6gJ9tZV4AQMszJgbBQuFpniXk658ja-H5nvKCh6U9NmZuuF07eM#keyterm_E0001

telephone or online) and for contracts concluded off premises.⁵⁴ The same directive establishes the rule for calculating communication costs. According to this regulation, the seller (manufacturer, performer) is obliged to provide information to the customer if the communication costs due to location must be calculated at the usual high tariff, otherwise he will be responsible for the difference.⁵⁵ As for the product description, it must be fully relevant to the actual condition of the product.⁵⁶

4.2 Right of Withdrawal for Distance Contracts

According to the directive the right to withdrawal from the contract is regulated as follows: Consumers can withdraw from distance and off-premises contracts within 14 days of the delivery of the goods or the conclusion of the service contract, subject to certain exceptions, without any explanation or cost. A standard withdrawal form provided by the seller suffices. If the consumers are not made aware of their rights, the withdrawal period is extended by 12 months. Exemptions apply in several circumstances, for example, for rapidly perishable goods, sealed goods opened by the consumer which cannot be returned for health or hygiene reasons, and hotel reservations or car rentals which are tied to specific dates. Exceptions also apply, under certain circumstances, for contracts for the supply of digital content which is not supplied on a tangible medium if the performance has begun. When consumers withdraw from a contract, they must refrain from using the digital content or digital service and from making it available to third parties.⁵⁷

⁵⁴ Directive on electronic commerce (2000/31/EC)

⁵⁵ DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT, Art 6.1.F

⁵⁶ DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT, Art 5.1.a- 6.1.a

⁵⁷ Directive on electronic commerce (2000/31/EC)

5. Conclusion

To summarize, the EU directives provide some effective legal framework for the protection of consumer rights. Full harmonization of key regulatory aspects significantly increases the legal confidence of both consumers and traders. Both consumers and traders have the opportunity to adhere to a regulatory framework based on clearly defined legal concepts governing certain aspects of business-to-consumer type agreements throughout the EU. As a result of this harmonization, there is an opportunity to eliminate the barriers caused by the fragmentation of rules and to fill the internal market in this area. Only the introduction of uniform rules at EU level makes it possible to eliminate these barriers. Consumers also have the opportunity to enjoy an overall high level of protection within the EU.

Consumer protection is a fundamental and priority issue for the legislation of developed countries, therefore, the current trend in these countries does not change and consumer protection guarantees are constantly increasing and improving.⁵⁸

III. Consumer Protection Standards in Distance Contracts and E-commerce in Georgia

1. Introduction

The accelerated pace of life, caused that highly developed countries have long preferred online shopping. So, e-commerce, concluding distance contracts is becoming more and more popular.

E-commerce and Consumer Protection under Association Agreement
Growing e-commerce in Georgia requires economic stability and

⁵⁸ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, (7)

adoption of relevant EU law legislation. It is necessary to define the terminology, to create a safe legal environment for businesses and consumers.

Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, was signed on June 27, 2014, which fully entered into force on July 1, 2016.⁵⁹ The process of association with the European Union has a special importance for Georgia, because it expresses desire for Georgia's European, political, economic and cultural integration, willing to contribute to the political, socio-economic and institutional development of Georgia, harmonization of law, by signing the Association Agreement with the European Union Georgia has made commitments in areas such as democracy and the rule of law, human rights and fundamental freedoms, good governance, market economy and sustainable development. At the same time, the agreement imposes on Georgia an ambitious commitment to reform in areas such as security policy, trade, economic recovery and growth and, also, governance.⁶⁰ The process of association with the European Union leads to significant changes in the domestic legislation of the country in accordance with its European standards in order to be similar to the EU law. Among other important fields there is the obligation to ensure protection of consumer rights. Chapter 13 of the Association Agreement deals separately with Consumer Policy and defines the area of cooperation. According to the Article 345-346: "The Parties shall cooperate in

⁵⁹ASSOCIATION AGREEMENT between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part

⁶⁰თამარ ლაკერბაია; ვახტანგ ზაალიშვილი; თამარ ზოიძე, მომხმარებელთა უფლებების დაცვის სამართალი (ევროპულ სამართალთან ჰარმონიზაციის გზა) თბილისი, 2018, 84

order to ensure a high level of consumer protection and to achieve compatibility between their systems of consumer protection”. “In order to achieve these objectives the cooperation may comprise, when appropriate: (a) aiming at approximation of consumer legislation while avoiding barriers to trade; (b) promoting exchange of information on consumer protection systems, including consumer legislation and its enforcement, consumer product safety, information exchange systems, consumer education/awareness and empowerment, and consumer redress; (c) training activities for administration officials and other consumer interest representatives, and (d) fostering the activity of independent consumer associations and contacts between consumer representatives.”⁶¹ The same agreement stipulated that Georgia will carry out approximation of its legislation to the EU acts and international instruments referred to in Annex XXIX⁶², among them are directives: Product safety, Marketing, Contract law, Financial services, Consumer credit, Redress, Enforcement, Consumer protection cooperation.⁶³

Section 6 of Association Agreement is about electronic commerce. In the field of e-commerce, the parties agreed to promote the development of electronic commerce between them. Also, the parties agreed that “the development of electronic commerce must be compatible with the international standards of data protection in order to ensure the confidence of users of electronic commerce”⁶⁴. According to the Association Agreement, cooperation in electronic commerce includes “the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border

⁶¹ ASSOCIATION AGREEMENT: Chapter 13, Art 345-346

⁶² ASSOCIATION AGREEMENT: Chapter 13, Art 347

⁶³ ASSOCIATION AGREEMENT, ANNEX XXIX TO THIS AGREEMENT - CONSUMER POLICY

⁶⁴ ASSOCIATION AGREEMENT: Sec.6, art.127

certification services; (b) the liability of intermediary service providers with respect to the transmission, or storage of information; (c) the treatment of unsolicited electronic commercial communications; (d) the protection of consumers in the ambit of electronic commerce, and (e) any other issue relevant for the development of electronic commerce”.⁶⁵ It is remarkable that the protection of consumers in the ambit of electronic commerce was the European Union’s priority for 2014-2020 strategy, which should also be taken into account during reforming this field in Georgia.⁶⁶

2. Consumer Protection Mechanisms under Georgian Law

Constitution of Georgia contains a special record that “consumer rights shall be protected by law”.⁶⁷ From 1996 to 2012, the Law on Consumer Protection was in force in Georgia, which defined the legal, economic and social bases for the protection of consumers' rights on the territory of Georgia, which was outdated and failed to meet the standards of consumer protection in the modern world.⁶⁸ However, it included the right of the consumer to cancel the contract in case of purchase of a defective product, as well as the right to exchange the defective (and unused) product for another similar (appropriate, ie of the same quality) product within 14 days after purchase, and if such goods were not for sale Consumers could protect these rights in court before the law was repealed⁶⁹. From 2012 entered

⁶⁵ ASSOCIATION AGREEMENT: Sec.6, art.128

⁶⁶ თამარ ლაკერბაია; ვახტანგ ზაალიშვილი; თამარ ზოიძე, მომხმარებელთა უფლებების დაცვის სამართალი (ევროპულ სამართალთან ჰარმონიზაციის გზა), თბილისი, 2018, 91

⁶⁷ Constitution of Georgia, Art: 26.4

⁶⁸ საქართველოს კანონი მომხმარებელთა უფლებების დაცვის შესახებ

⁶⁹ საქართველოს ეკონომიკისა და მდგრადი განვითარების სამინისტრო რეგულირების გავლენის შეფასება საქართველოს კანონის პროექტზე „მომხმარებლის უფლებების დაცვის შესახებ“, 2016.

into force Law of Georgia - Product safety and free movement code, but of course it cannot regulate properly protection of consumers.⁷⁰ At the same time, the Georgian legislature began to work the draft law on the "Protection of the Right of Consumers", which, according to the Association Agreement, must be in harmony with the practice of the European Union countries in this field and unfortunately, it is still in process. Georgia under the Association Agreement has made a commitment, that would protect the rights of consumers and create a legal background for this. Consumer protection covers two major areas of this field: Ensuring the safety/security of consumer products on the market and protect the consumers from being misled. Issues to protect consumers from misleading are regulated by Chapter 13 of Chapter VI of the Association Agreement and Annex XXIX⁷¹ and 15 acts of the European Union should have been transposed into Georgian legislation by 2019, the purpose of which is to provide special protection to the consumer as a “weak” party to the contract, among them is a directive on the protection of consumers in respect of distance contracts,⁷² which can be used to regulate e-commerce. For protection of the right of consumers two drafts were made, the discussion of the 2015 draft law was stopped after one hearing in the Parliament. The discussion of the 2018 draft law has not started in the parliament yet. According to the web page “asocireba.ge”⁷³

⁷⁰ Law of Georgia - Product Safety and Free Movement Code

⁷¹ ANNEX XXIX TO Association Agreement, CONSUMER POLICY

⁷² DIRECTIVE 97/7/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

<<https://eur-lex.europa.eu/eli/dir/1997/7/2007-12-25>>

⁷³ <https://www.asocireba.ge/> is a webpage which is designed within the project “Center for Strategic Research and Development of Georgia (CSR DG)”, which is funded by The European Union and Konrad Adenauer Stiftung(KAS). CSR DG’s mission is “to promote good governance, stable and inclusive economic development, and the formation of an active civil society for the welfare of Georgian society, they [CSR DG] contribute to the sustainable development of the country by promoting democratic values, strengthening active civil society,

information consumer protection commitments are performed almost 39%.⁷⁴ Although the obligations under the Association Agreement are fulfilled with a delay in terms of consumer protection, we should not have the feeling that the consumer is completely vulnerable, in favor of consumer protection is indicated the fact that in the Constitutional Court of Georgia's explanation is mentioned that the current legislation protects the consumer as a "weak" part of the relationship.⁷⁵ Despite the fact that Georgian Civil Code (Code) does not defines meaning of the consumer, it includes some norms, which functionally make legal guarantee for the consumer protection. For instance, article 319 is about the abuse of a dominant position,⁷⁶ article 336 regulates Doorstep contracts⁷⁷. Also, the Code regulates liability of the manufacturer of defective products.⁷⁸ Consumer protection can be ensured by the principle of good faith, which is a general principle of civil law. ⁷⁹ Law of Georgia - Product safety and free movement code is to some extent protects the rights of consumers.⁸⁰

3. Analysis of the Draft Law on Consumer Protection

The Committee on European Integration of the Parliament of Georgia has developed a draft law on the protection of consumer rights, in which the main and important provisions are derived from the

encouraging socially responsible business and supporting good governance.”.

<http://new.csrdg.ge/mision/>

⁷⁴ ასოცირება.გე, მომხმარებელთა დაცვა

https://www.asocireba.ge/show_article.php?id=7

⁷⁵ Decision of the Constitutional Court 2002,30 December №1/3/136. Available in Georgian:

<https://www.matsne.gov.ge/ka/document/view/1367934?publication=0>

⁷⁶ Georgian Civil Code, art.319

⁷⁷ Georgian Civil Code, art.336

⁷⁸ Georgian Civil Code, art.1009

⁷⁹ Georgian Civil Code, art. 8.3

⁸⁰ "Implementing the Consumer Rights Directive 2011/83/EU". [Department for Business, Innovation & Skills](#). 2013-03-25.

European Directive. The draft proposes to regulate such important issues as civil legal relations between the consumer and the trader and the observance of general human rights principles when it enters into a contractual relationship with the trader. Let us briefly review the norms that serve the protection of consumer rights, to what the initiators of the draft saw as a weakness of the Civil Code and see how much it was necessary to stipulate additional protective norms in this field.

The draft initially focuses on the aims of the law, that in addition to protecting the rights of consumers, it is also important to establish a culture of behavior based on respect for the consumer.⁸¹ The issue of the obligation to provide information, as in all contractual relationships in general, as well as in specific types of contracts. It should be noted that, as in the European directives, this law also specifies in detail what information should be provided, such as the name of the product, detailed information about the manufacturer and essential characteristics, information on the requisites and place of submission of the person authorized to review the customer's claim, information on the terms of payment, delivery and fulfillment of the obligation, information on the terms and conditions of targeted and safe use of the product, as well as special storage conditions, information on the term of the contract, as well as the terms of termination of the contract for life and automatic extension of the term, etc. It should also be noted that in the case of distance contracts, there is an additional obligation to provide other information, such as the costs of distance communication used at the time of concluding the contract, if it is not included in the basic price, the minimum

⁸⁵ კანონპროექტი - საქართველოს კანონი მომხმარებელთა უფლებების დაცვის შესახებ, 2015

period during which the trader assumes the obligations under the contract, if any, in case of rejection of the contract, the reimbursement of the costs required for the return of the product by one of the parties, and so on.⁸² Chapter 3 covers the issue of providing information at pre-contractual stage of relationship. One of the goals of the draft is to protect consumers better by providing access to relevant information. Research has shown that consumers need access to adequate information when purchasing a product or service to make informed decisions. A five-criteria test is used in this report to test the adequacy of the information, which means that the information must be correct, transparent, relevant, complete and timely.⁸³

In addition to these and other important issues, the draft also provides for the introduction of several mandatory norms, such as the right of the consumer to withdraw from the contract within 7 days of ownership of the goods or services, if it is a contract in a building (shop, market) and this term is 14 days in case of a distance and off premises contract⁸⁴.⁸⁵ The first option of the draft was defined 14 days return period of the purchased product, but the Sector Economy and Economic Policy Committee and the Business Ombudsman of Georgia made remarks during the discussion of the draft to reduce 14 days return period, which recommendation was shared and in case of

⁸² კანონპროექტი - საქართველოს კანონი მომხმარებელთა უფლებების დაცვის შესახებ, 2015

⁸³ რეგულირების ზეგავლენის შეფასება საქართველოს კანონპროექტზე „მომხმარებლის უფლებების დაცვის შესახებ“ 2019, 153

⁸⁴ DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL. (21)

“An off-premises contract should be defined as a contract concluded with the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader, for example at the consumer’s home or workplace”.

⁸⁵ კანონპროექტი - საქართველოს კანონი მომხმარებელთა უფლებების დაცვის შესახებ, 2015

a distance contract and off-premises contracts, the 14-day period for returning the product will remain unchanged as provided by the directive, in other cases, the term of withdrawal from the contract without any grounds is reduced to 7 days.⁸⁶ In the case of distance contracts, the right to withdrawal, without penalty and without giving any reason, from the agreement, causes a mixed reaction in Georgia. The consumer saves money as a result of returning the product and service which do not want, but the right of withdrawal will have a negative impact on relatively new and small traders, who are more sensitive to cash flow than large companies.⁸⁷

Also, the proposed draft established the Consumer Ombudsman Institute. According to the project, the function of the ombudsman is to protect the interests of consumers and help them to restore their violated rights. The Consumer Ombudsman should ensure that consumer rights are investigated across the country, that statistics are collected, and that consumer rights are analyzed. The Consumer Ombudsman will have representation in court to protect consumer rights. The ombudsman also has the opportunity to prepare legislative initiatives for submission to parliament and to raise awareness.⁸⁸

⁸⁶ საქართველოს პარლამენტის ევროპასთან ინტეგრაციის კომიტეტის მიერ საკანონმდებლო ინიციატივის წესით წარმოდგენილი „მომხმარებლის უფლებების დაცვის შესახებ“; „საქართველოს სამოქალაქო კოდექსში ცვლილების შეტანის შესახებ“; „პროდუქტის უსაფრთხოებისა და თავისუფალი მიმოქცევის კოდექსში ცვლილების შეტანის შესახებ“ და „საქართველოს პარლამენტის რეგლამენტის პროექტი „საქართველოს პარლამენტის რეგლამენტში ცვლილების შეტანის შესახებ“ კანონპროექტების განხილვისას გამოთქმული შენიშვნების გათვალისწინების მდგომარეობის ამსახველი ფურცელი. Text Available: <https://info.parliament.ge/file/1/BillReviewContent/120603?>

⁸⁷ რეგულირების ზეგავლენის შეფასება საქართველოს კანონპროექტზე „მომხმარებლის უფლებების დაცვის შესახებ“ 2019, 154

⁸⁸ საქართველოს ეკონომიკისა და მდგრადი განვითარების სამინისტრო რეგულირების გავლენის შეფასება საქართველოს კანონის პროექტზე „მომხმარებლის უფლებების დაცვის შესახებ“, 2016
კანონპროექტი - საქართველოს კანონი მომხმარებელთა უფლებების დაცვის შესახებ, თავი III, 2015

The right of consumers to withdraw from the contract in case of on-site sales within 7 days, also the right of consumers, without any grounds, to withdraw from the contract during the distance or off-premises contracts for 14 days and to establish the Office of the Consumer Ombudsman, would be new and very crucial for the Georgian legislation.

This draft shares the principles that are mandatory by European directives and international agreements and treaties. Outline the rights of consumers, the goals of the country in this field, consumer awareness and consumer education, including the means and procedures for the protection of their rights,⁸⁹ which is a significant and effective step forward. The norms of the Civil Code do not independently manage to fully regulate all relations related to the consumer protection, therefore the adoption of this law would complement the norms of the Civil Code and the protection of consumers, like in EU countries, would be possible.

4. Is E-commerce Regulated in Georgia?

Georgia should adopt the e-Commerce Law by the end of 2020 - this was Georgia's agenda, to fulfill an obligation of which Georgia has committed to by signing an association agreement with the European Union. The working version of the draft law has been ready for a long time, but has not been approved by the parliament so far. At this stage, there is no single specialized law on e-commerce in Georgia, the private sector has to look for norms related to this activity in various laws and regulations.⁹⁰ In order for the consumers to receive the

⁸⁹ კანონპროექტი - საქართველოს კანონი მომხმარებელთა უფლებების დაცვის შესახებ, 2015

⁹⁰ სალომე მეცხვარიშვილი, "ელექტრონული კომერციის შესახებ კანონი" მიღებული ისევ არ არის - ვადა 2020-ის ბოლომდე, 2020
<https://bm.ge/ka/article/quotelqtronusi-komercii-sheaxe-b-kanoniquot-migebuli-isev-ar-aris---vada-2020-is-bolomdea/61161>

desired goods and/or services through e-commerce, they have no choice but to use the offered electronic services, regardless of whether they share the terms offered to them, therefore, there is a high risk of the rights of service recipients/consumers have been violated by the service provider.⁹¹ Lack of legal regulations hinders the development of e-commerce because the risk of consumer rights violations is high and in turn neither business will feel protected.

5. Conclusion

After analyzing the issues discussed, we conclude that there is no special law in Georgia that regulates consumer rights. The general regulation allowed by other laws, of course, is not effective and does not meet EU standards. The current legislation does not provide for the establishment of a framework that safeguards consumer interests. Consumers today only have the option of defending their rights in court. It should be noted that due to time constraints, the customer often has to make decisions quickly, so that he is not able to obtain accurate and comprehensive information about the goods and/or services he wants, which in fact puts at risk the efficient use of the user's limited resources. This is especially acute in distance and off premises contracts when the consumer does not have complete information about the properties and nature of the goods and cannot evaluate the goods before the contract is executed. Thus one of the major problems is the lack of a return service, right of withdrawal. In this regard, the problem would have been solved if the draft law on consumer rights had entered into force.

In order to develop e-commerce, consumers, as well as businesses, to

⁹¹ Portal Your Govern, საქართველოს კანონი „ელექტრონული კომერციის შესახებ“

<http://www.you.gov.ge/?pg=current-reforms&sid=13>

feel safe and protected in both distance and any other type of agreements, it is necessary to have special legislation that will be in harmony with the European directives.⁹²

IV. Consumer Protection and COVID-19 Challenges for Consumers: E-Commerce and Distance Contracts

The popularity of e-commerce is growing. Highly developed countries have preferred online shopping due to their fast-paced lifestyles. The impact of COVID-19 on e-commerce was investigated, and two main key difficulties were identified: delivery issues and fraud. As e-commerce has grown in popularity, so have delivery issues. Web shops and delivery services were not prepared for this challenge, and deliveries took longer than expected due to insufficient stock. Concerning the second point, it was stated that the increasing reliance of consumers on e-commerce during the pandemic has opened the door to higher levels of fraud. For instance: Consumers' money was taken by fraudulent web shops for masks and hand gels which have never been delivered.⁹³

The European Commission adopted on 13 November 2020 the New Consumer Agenda, an updated overall strategic framework of the EU consumer policy⁹⁴, which primary goal is that to protect vulnerable consumers more effectively in the new economic realities of the

⁹² საქართველოს ეკონომიკისა და მდგრადი განვითარების სამინისტრო რეგულირების გავლენის შეფასება საქართველოს კანონის პროექტზე „მომხმარებლის უფლებების დაცვის შესახებ“, 2016, 4-5.

⁹³ Milieu Consulting SRL, The impact of COVID-19 on the Internal Market and consumer protection, Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies, 2020
[https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/658212/IPOL_IDA\(2020\)658212_EN.pdf?fbclid=IwAR11nLIapqXAmURir-TbHvmnGHmq1eBOjvbihAu4MnLMpEY_UEQUydWavs#page18](https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/658212/IPOL_IDA(2020)658212_EN.pdf?fbclid=IwAR11nLIapqXAmURir-TbHvmnGHmq1eBOjvbihAu4MnLMpEY_UEQUydWavs#page18)

⁹⁴ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL New Consumer Agenda, Strengthening consumer resilience for sustainable recovery, 2020, Brussels

COVID-19 crisis and its likely aftereffects address the new challenges to consumer rights and opportunities for consumer empowerment posed by the green and digital transitions and plans for post-COVID recovery⁹⁵.

As for Georgia, the growth of the role of e-commerce in Georgia was given a significant impetus by the COVID-19 pandemic. Until now, online trading platforms were neither very popular nor fully functional. Consequently, this area of services is now entering an active phase of development. According to 2020, the share of e-commerce in retail trade turnover in Georgia was less than 2%. However, the number of online stores is growing more and more. Also, in 2020, the e-commerce Association “Voice of Ecommerce” was established, its main purpose is to promote the development of this direction in Georgia.⁹⁶

The research, which was published by Leading Investment Company “Galt & Taggart” is important in terms of reviewing and analyzing local e-commerce trends. According to the study, in 2020 the size of the local e-commerce market increased 3.2 times and amounted to a total of 137.9 million GEL,⁹⁷ which was triggered by Covid19 pandemic. However, despite the positive and growing trend, Galt & Taggart believes that e-commerce accounts for only 1.1% of total retail trade in Georgia, which is quite a low figure. For reference, the

⁹⁵ Consumer strategy The European consumer agenda is the European Commission's strategic vision on consumer policy, The New Consumer Agenda https://ec.europa.eu/info/policies/consumers/consumer-protection-policy/consumer-strategy_en

⁹⁶ თინათინ ბაქრაძე, რა გზას ადგას E-commerce საქართველოში? 2021 https://businessfeed.ge/ra-gzas-adgas-e-commerce-saqarthveloshi/?fbclid=IwAR1M5KEPQdj5SpPIwatSAHRVjEWtIH8GgA0Ahu_VAtFzvzo6F0jDFLWMPw

⁹⁷ Galt & Taggart Reaserch,2021, საქართველო https://api.galtandtaggart.com/sites/default/files/2021-07/report/e-commerce-in-georgia_july-2021_geo.pdf

same figure in Europe is about 12%.⁹⁸

The development tendency of e-commerce has made the issue of consumer protection even more acute. Despite this development tendency there is no progress at the legislative level, which hinders the further development of this field.

Conclusion

The subject of the master thesis was to seek the standard of consumer protection in the European Union and Georgian legislation, whether existing legislation provides guarantees for the protection of consumers' rights.

The issue was actually investigated further, and it was discovered that the European Union directives creates a reasonably effective legal framework for the protection of consumer rights, among the rights is especially important right of withdrawal and information requirements for distance contracts.

The Treaty on the Functioning of the European Union (TFEU)⁹⁹ defines consumer protection as an important, principal area for the EU, in relation to which the European Union shares competence with the Member States.¹⁰⁰

The first major directive which made a significant change in

⁹⁸ დავით ბერაძე, „გალტ & თაგარტის“ კვლევა საქართველოში ადგილობრივი ელ-კომერციის შესახებ, 2021

⁹⁹ “The Treaty on the Functioning of the European Union (TFEU), as a result of the Lisbon Treaty, was developed from the Treaty establishing the European Community (TEC or EC Treaty), as put in place by the Treaty of Maastricht. The EC Treaty itself was based on the Treaty establishing the European Economic Community (TEEC), signed in Rome on 25 March 1957. The creation of the European Union by means of the Treaty of Maastricht (7 February 1992) marked a further step along the path to the political unification of Europe”.

¹⁰⁰ CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

consumer protection was Directive 97/7/EC, which was repealed by the Directive 2011/83/EU. It is these directives which defined the right of withdrawal and established a standard for receiving information, which noticeably protects the consumer.

During the study of the issue, it was revealed that, in fact, the field of consumer rights and e-commerce is not regulated in Georgia. In order for the Georgian regulation of consumer rights to be able to deal with the challenges and not hinder the development of e-commerce, however, a positive tendencies are observed in the development of e-commerce, which was largely facilitated by Covid19, which makes the need to protect the rights of consumers even more fundamentally important. First of all, it is important to eliminate the failings and fill the gaps in Georgian legislation.

As a result, it is critical to pay attention to the future development of this field and its refinement at the legislative level, so that it does not impede progress in this field at the Georgian level.

Despite the Association Agreement's obligations, no significant progress has been made in providing a proper legal basis for the protection of consumer rights, the current legislation does not provide for the existence of a structure that ensures the protection of the interests of consumers. Today, consumers have the opportunity to defend their rights only in court.¹⁰¹ The draft law, which more or less implements the existing regulations in the EU¹⁰², has not entered into

¹⁰¹ საქართველოს ეკონომიკისა და მდგრადი განვითარების სამინისტრო რეგულირების გავლენის შეფასება საქართველოს კანონის პროექტზე „მომხმარებლის უფლებების დაცვის შესახებ“, 2016

¹⁰² According to the following Directives: Directive 97/7/EC of the European Parliament and of the Council on the Protection of Consumers in Respect of Distance Contracts; Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'); Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights.

force. Despite the absence of a specific law, consumers can protect their violated rights under the Civil Code of Georgia and the Law of Georgia on Product Safety, which, of course, is not enough and does not fully reflect the needs and problems faced by consumers.

In general, the existing national legislation of Georgia in the field of consumer protection is characterized by a general regulation of the issue, there is no specific legislation that governs this area, while domestic legislation should be a complementary tool to the framework established by international documents.

In practice, it is critical that the meaning of consumer protection in distance contracts and e-commerce should be properly assessed, with its practical significance and the risks, the characteristics of the field should be deeply understood, and the legal gaps caused by international approaches that impede its practical implementation should be filled, it requires fulfillment of the obligations of the Association Agreement and the implementation of special legislation which will be in harmony with the EU directives.

Bibliography

ASSOCIATION AGREEMENT between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part;

Bloimedia – Types of e-commerce ;

Case C-49/11 JUDGMENT OF THE COURT (Third Chamber) 5 July 2012;

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL New Consumer Agenda, Strengthening consumer resilience for sustainable recovery, 2020, Brussels

CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION;

Constitution of Georgia;

Consumer Protection in E-commerce: OECD Recommendation, OECD Publishing, Paris, 2016;

Decision of the Constitutional Court 2002,30 December №1/3/136

DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011;

DIRECTIVE 97/7/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 1997;

DIRECTIVE 2000/31/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce');

Dr. Shashi Nath Mandal, PROTECTION OF E-CONSUMERS RIGHTS IN ELECTRONIC TRANSACTION, 2011;

EUROPEAN COMMISSION, DG JUSTICE, 1 DG JUSTICE GUIDANCE DOCUMENT, 2014;

E-commerce - standard EU rules SUMMARY OF: Directive 2000/31/EC – electronic commerce in the EU;

Georgian Civil Code;

Gregory E. Maggs, Internet Solutions to Consumer Protection Problems, 1998;

Hans-W. Micklitz and Stephen Weatherill, Consumer Policy in the European Community: Before and After Maastricht Journal of Consumer Policy, 1993;

John Rothchild, Protecting the digital consumer: The limits of cyberspace utopianism, 1999;

Law of Georgia - Product Safety and Free Movement Code;

Loos M., Rights of Withdrawal, Centre for the Study of European

Contract Law Working Paper Series No. 2009/04;

Milieu Consulting SRL, The impact of COVID-19 on the Internal Market and consumer protection, Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies, 2020;

Paul McMahon, Article: Distance Contracts;

R. Stone, The Modern Law of Contract, fifth edition, Cavendish Publishing limited, Portland, Oregon, USA, 2002;

Rafał Mańko, The notion of 'consumer' in EU law, Library Briefing Library of the European Parliament, 2013;

Recommendation of the Council concerning Guidelines for Consumer Protection in the Context of Electronic Commerce;

Restatement (Second) of Contracts;

Restatement (Second) of Torts;

Strengthening EU consumer rights SUMMARY OF: Directive 2011/83/EU on consumer rights;

Uniform Commercial Code, 1995;

Yasmin Ismail, E-commerce in the World Trade Organization: History and latest developments in the negotiations under the Joint

Statement, 2020.

„გალტ & თაგარტის“ კვლევა საქართველოში ადგილობრივი ელ-კომერციის შესახებ (სექტორის მიმოხილვა), 2021;

დავით ბერაძე, Forbes საქართველო, „გალტ & თაგარტის“ კვლევა საქართველოში ადგილობრივი ელ-კომერციის შესახებ, 2021;

თამარ ლაკერბაია, ხელშეკრულების უარყოფის უფლება, ქართული და ევროპული სახელშეკრულებო სამართლის შედარებითი ანალიზი, თბილისი;

თამარ ლაკერბაია, ხელშეკრულების დადებაზე გამოვლენილი ნების უკან გამოთხოვის უფლება ევროპის მომხმარებელთა უფლებების დაცვის სამართალში, ი. ბურდული (რედ.), სამართლის ჟურნალი N1, თბილისი, 2014;

ციური ნოზაძე, ელექტრონული კომერციის ინფორმაციული ტექნოლოგიები, 2010;

თამარ ლაკერბაია, ხელშეკრულების უარყოფის უფლება, ქართული და ევროპული სახელშეკრულებო სამართლის შედარებითი ანალიზი, თბილისი;

თამარ ლაკერბაია, ვახტანგ ზაალიშვილი, თამარ ზოიძე, მომხმარებელთა უფლებების დაცვის სამართალი, ევროპულ სამართალთან ჰარმონიზაციის გზა, თბილისი, 2018;

თინათინ ბაქრაძე, რა გზას ადგას E-commerce საქართველოში?
2021;

ი. კროპკოლერი, გერმანიის სამოქალაქო კოდექსი, სასწავლო
კომენტარი, ჭეჭელაშვილი ზ. (თარგმ.), მე-13 გადამუშავებული
გამოც., თბილისი, 2014;

რეგულირების ზეგავლენის შეფასება საქართველოს
კანონპროექტზე „მომხმარებლის უფლებების დაცვის შესახებ“
2019;

სალომე მეცხვარიშვილი, "ელექტრონული კომერციის შესახებ
კანონი" მიღებული ისევ არ არის - ვადა 2020-ის ბოლომდეა,
2020;

საქართველოს კანონი მომხმარებელთა უფლებების დაცვის
შესახებ (1996-2012);

საქართველოს კანონი მომხმარებლის უფლებების დაცვის
შესახებ (პროექტი);

სამოქალაქო სამართლის ონლაინკომენტარი;

საქართველოს ეკონომიკისა და მდგრადი განვითარების
სამინისტრო რეგულირების გავლენის შეფასება საქართველოს
კანონის პროექტზე „მომხმარებლის უფლებების დაცვის

შესახებ“, 2016;

საქართველოს პარლამენტის ევროპასთან ინტეგრაციის კომიტეტის მიერ საკანონმდებლო ინიციატივის წესით წარმოდგენილი „მომხმარებლის უფლებების დაცვის შესახებ“; „საქართველოს სამოქალაქო კოდექსში ცვლილების შეტანის შესახებ“; „პროდუქტის უსაფრთხოებისა და თავისუფალი მიმოქცევის კოდექსში ცვლილების შეტანის შესახებ“ და „საქართველოს პარლამენტის რეგლამენტის პროექტი „საქართველოს პარლამენტის რეგლამენტში ცვლილების შეტანის შესახებ“ კანონპროექტების განხილვისას გამოთქმული შენიშვნების გათვალისწინების მდგომარეობის ამსახველი ფურცელი;

Declaration:

The Master Thesis is all my own work and all sources are referenced.

Signature: Ana Gegeshidze