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European Model of Protection of the Consumers' Rights in Distance Contracts – on the Example of Withdrawal Right

Article provides discussion of the characteristics of contracts made with participation of consumers via distance communication. It describes European standards of the consumers rights' protection in distance contracts that is the right of withdrawal. Article analyses the characteristics of formation of consumers will in the contractual relations and protective effect of the right of withdrawal.

Key words: consumer, right of withdrawal, distance contracts.

1. Introduction

Protection of the consumers' rights is the central pillar of the European contract law. Regarding characteristics of the contract formulation and participation of the consumers in this process, whole set of the protection mechanisms was adopted in the European contractual law to secure the interests of the party recognized as the “weak” one. The characteristic feature of protection of the consumers' rights is that special protection mechanisms are oriented towards prevention of the specific dangers and are associated with the relevant contractual relations. Therefore, the right of the withdrawal is applicable to certain contractual relations, one type of which is the distance contracts.

Currently, neither Georgian Civil Code and nor any other legislative act contains any provisions dealing with distance contracts. For development of the mentioned sphere of contractual relations, it is significant to study practices adopted in the European Union and taking it into consideration. It is notable that according to the Association Agreement of 27 June 2014, between Georgia and the European Union,¹ one of the preconditions for Georgia's entry to the European market is ensuring protection of the consumers' rights in the e-commerce and improvement of their confidence.

2. Consumer in the Distance Contracts

In the contracts where one of the parties is a consumer, the contractual freedom is focused on the consumers' private interest.² The reason for this is that consumer has been considered as a weak party of the contract³. “Weakness” is presented in both, objective and subjective factors. The former implies the power, awareness marketing policies of the entrepreneurs – attract the consumers by any

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¹ Association Agreement of 27 June 2014, between Georgia on one side and European Union and European Atomic Energy Union and member states on the other side, <www.gov.ge>, Section 2, Article 127, Subsection “d”, Section 1, Article 128.

² *Kropholler J.*, Civil Code of Germany, Comment for Learning, GYLA Legal Education Support Fund, with GIZ assignment, Tbilisi, 2014, 316.

³ *Antoniolli L.*, Consumer Law as an Instance of the Law of Diversity, Vermont Law Review, Vol. 30:855, 2006, 856, <<http://Lawreview.vermontLaw.edu/files/2012/02/antoniolli.pdf>> [3.12.2013].

means and methods and persuade them to make the contract;⁴ briefly, the entrepreneurs' inherent aspiration to gain advantages against the buyer⁵. In this respect, the consumer's position is less safe, in the relations with the skilled entrepreneur. He/she has no sufficient knowledge and experience to deal with the information imbalance or imposed contracts. On the other hand, the consumer-consumer is not required to have the trade skills. His/her only purpose is to satisfy his/her needs. Consumer's participation in the contract formation is of formal nature. He/she only accepts the offered terms and conditions, without understanding of the relevant obligations, resulting in his/her objective "weakness" in the contractual relations⁶.

Subjective "weakness" implies personal qualities of the consumer consumers⁷. Hesitation in making decisions is the inherent quality of the consumer consumers⁸. In addition, not all are equally firm against the trade methods imposed by the entrepreneurs. In many cases the consumers are under the entrepreneurs psychological influenced – they feel satisfied by the individual approach, are charmed by the offered terms and conditions or goods' description, frequently exacerbated while the actual value and the quality of goods are overlooked resulting in disappointment of the consumers⁹.

Therefore, in the contracts made with the consumers' participation, particular attention is paid to their self-determination freedom. And the scopes of the contractual freedom are measured by the expectations of the average consumer,¹⁰ implying, primarily, freedom of choice and opportunity of making reasonable decision¹¹.

Thus, protection of the consumers' rights relies on the idea of protection of the contracting rights. Here we should note that the law of protection of the consumers' rights is characterized with categorization of the protection measures¹² – protection of the consumers from the danger related to the specific relations, regarded by the law as a substantial one. Hence, the scopes of the consumers' contractual freedom are measured by the nature of relations comprising the object to protection in the specific case.

⁴ *Kessler F.*, Contract of Adhesion – Some Thoughts About Freedom of Contract, Faculty Scholarship Series, Paper 2731, 11, <http://digitalcommons.Law.yale.edu/fss_papers/2731_630> [28.02.2014].

⁵ *Howells G., Ramsay I., Wilhelmsson Th.*, Consumer Law in its International Dimension, Handbook of Research on International Consumer Law, Published by Edward Elgar Publishing Limited, Cheltenham, UK, 2011, 7.

⁶ *Kessler F.*, Contract of Adhesion – Some Thoughts About Freedom of Contract, Faculty Scholarship Series, Paper 2731, 3 <http://digitalcommons.Law.yale.edu/fss_papers/2731_630>, [28.02.2014].

⁷ *Dani M.*, Assembling the Fractured European Consumer, A New Concept of European Federalism, LEQS Paper, № 29/2011, <<http://www.lse.ac.uk/europeanInstitute/LEQS/LEQSPaper29.pdf>>, [22.07 2013] 19.

⁸ *Solomon M., Bamossy G., Askegaard S., Hogg M. K.*, Consumer Behavior, A European Perspective, third edition, Pearson Education Limits, Harlow, England, 2006, 22.

⁹ *Luzak J.A.*, To Withdraw or not to Withdraw? Evaluations of the Mandatory Right of Withdrawal in Consumer Distance Selling Contracts Taking into Account its Behavioral Effects on Consumer, Amsterdam Law School Legal Research Paper № 2013-21, Centre for the study of European Contract Law working Paper № 2013-04, 6, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2243645>, [20.01.2015].

¹⁰ *Kropholler J.*, Civil Code of Germany, Comment for Learning, GYLA Legal Education Support Fund, with GIZ assignment, Tbilisi, 2014, 43.

¹¹ *Twigg-Flesner Ch., Schulze R.*, Protection Rational Choice: Information and the Right of Withdrawal, Handbook of Research on International Consumer Law, Published by Edward Elgar Publishing Limited, Cheltenham, UK, 2011, 130.

¹² *Dzlierishvili Z., Tsertsvadze G., Robakidze I., Svanadze G., Tsertsvadze L., Janashia L.*, Contracts Law, Publisher: Meridian, Tbilisi, 2014, 29 (in Georgian).

3. Consumer in the Remote Communication World

Innovative means for making contracts, development of the distant and e-commerce, unprecedented progress of electronic media and internet have necessitated adjustment of the economic and legal institutes to the new technologies and commerce rules.¹³ Technological progress has impacted the contracts made with the consumers' participation as well. Relations between the consumer and online service provider are not identical to those between the shop consultant and his/her client. One could say that virtual communication has changed not only the format of contractual relations but also the level of the consumers' trust and expectations¹⁴.

In this respect, European contractual law has focused initially on the distance contracts distance and later – on e-commerce. Promotion of distance contracts on delivery of the goods and services is intended, primarily, for development of the trans-border trade and common European market¹⁵. The stated goal could not be achieved without consumers active involvement, just like without protection of the consumers' rights in such trade relations. Therefore, the European legislator has paid particular attention to the consumers' rights in the distance transactions.

In its wide sense, contracts made through any form of distance communication are the integral part of private law. This form of trade allows the entrepreneurs performing of any activities not prohibited by the law. In the narrow sense, there are two key directions of e-commerce: contracts between the entrepreneur subjects and those made between the entrepreneurs and consumers¹⁶. E-contracts' differentiation by the subjects results in their different regulation. E-contracts made between the entrepreneur subjects are regulated by the international and domestic contractual regimes. While the contracts made with participation of the consumers are subject to relatively narrow regulations. These are included into the internal state and regional acts (e.g. EU directives), as the legal mechanisms for regulation of the protection of consumers' rights. In both cases the approach to the validity of contracts and their fulfillment are uniform and rely on the general principles of private law. Only the parties' rights and obligations are different. In the contracts made with consumers' participation the entrepreneurs obligation of acting in good faith and with due care is ensured by the additional imperative norms¹⁷.

¹³ *Katz A.W.*, Is Electronic Contracting Different? Contract Law in the Information Age, <<http://www.columbia.edu/~ak472/papers/Electronic%20Contracting.pdf>>, [12.03.2014]; *Kaufmann Winn J., Haubold J.*, Electronic Promises: Contract Law Reform and E-Contracts in Comparative Perspective, *European Law Review*, 27, 2002, 568-569, <http://www.Law.washington.edu/Directory/docs/Winn/Electronic_Promises_Revised.pdf>, [11.05.2014].

¹⁴ *Nimmer R.T.*, The Legal Landscape of E-commerce: Redefining Contract Law in an Information Era, *Journal of Contract Law Conference, Contract and the Commercialization of Intellectual Property*, Singapore Academy of Law and Singapore Management University, 2006, 5.

¹⁵ *Macsim A.R.*, The New Consumer Rights Directive, A Comparative Law and economics Analysis of the Maximum Harmonization Effects on Consumers and Businesses, The Case of the Cooling-off Period from Online contracts, <<http://pure.au.dk/portal/files/44659752/Thesis.pdf>>, [27.11.2013].

¹⁶ *Schmidt W-A., Priess M.*, Germany, *Spindler G., Borner F.*, E-Commerce Law in Europe and the USA, Springer, Verlag Berlin Heidelberg, 2002, *Schmidt W-A., Priess M.*, Germany, 181.

¹⁷ *Daunel-Lieb B.*, A Special Private Law for B2C? Silver Bullet or Blind Alley? New Features in Contract Law, R. Schulze sd. pub. Mucchen, Sellier, European Law Publishers, 2007, 107-117; *Wang F.F.*, Law of Electronic Commercial Transactions, Contemporary Issues in EU, US and China, Routledge Research in IT and E-Commerce Law, Taylor & Francis Group, New York 2010, 14.

While the e-commerce provides innovative means for making effective contracts, it causes new problems related to the contract validity. The way of avoiding possible negative outcomes of the contracts made through distance communication methods comprises one of the key issues in the legal doctrine¹⁸. Therefore, together with the common principles of protection of rights, in unequal contractual relations (and the distance made contracts with the consumer's participation are regarded as such) the consumers are additionally protected by the right of withdrawal, as the adequate and effective means in case of neglecting of the principles of trust and honesty towards him/her.¹⁹ Though, in the e-commerce, beyond providing the withdrawal rights, there is apparently seen the goal of the consumers' involvement into the electronic commerce and their stimulation.

4. Distance Contracts

Distance form of communication implies any form of relations not associated with the face to face between the parties. It includes contracts made through phone, mail, electronic mail, catalogues or via internet. Contracts made through advertising through press, radio and television belong to the same group, if they contain the special phone number or e-mail address of the person offering goods and services.²⁰

Transactions are regarded as distance contracts when they are made between the consumer and entrepreneur subjected to one and the same or different jurisdictions through any communication means (including internet).²¹

One can say that in the contemporary world these forms of relations are regarded as simplified forms of offering of the goods and services in time and space. They create unique opportunities of making legal relations for both contracting parties. This is particularly convenient for the consumers allowing them to satisfy their interests without leaving their homes. Regarding this factor, distance and e-commerce became the integral part of contracts law for the last decade and protection of the rights of one of the parties of such relation – the consumers was recognized as the priority of the modern civilized law²².

¹⁸ *Wang F.F.*, Law of Electronic Commercial Transactions, Contemporary Issues in EU, US and China, Rutledge Research in IT and E-Commerce Law, Taylor & Francis Group, New York 2010, 13.

¹⁹ *Twigg-Flesner C.*, A Cross-Border-Only Regulations for Consumer Transactions in the EU, A Fresh Approach to EU Consumer Law, Springer Briefs in Business, 2012, 5, <<http://www.springer.com/cn/book/9781461420460>>, [10.11.2013]; *Micklitz H.W.*, The Target Full Harmonization Approach Looking Behind Curtain, Modernizing and Harmonizing Consumer Contract Law, Sellier, ELP, Munich, 2009, 48-51; *Ben-Shahar O., Posner E., A.*, The Right to Withdraw in Contract Law, Journal of legal studies, Vol. 40, January 2011, 116, <<http://www.jstor.org/stable/10.1086/658403>>.

²⁰ *Stone R.*, The Modern Law of Contract, 5th edition, Cavendish Publishing limited, Portland, Oregon, USA, 2002, 64.

²¹ *Twigg-Flesner C.*, A Cross-Border-Only Regulations for Consumer Transactions in the EU, A Fresh Approach to EU Consumer Law, Springer Briefs in Business, 2012, 5.

²² *Loos M., Helberger N., Guibaut L., Pessers L.*, Digital Content Contracts for Consumers, Amsterdam Law School Legal Studies Research Paper № 2012-66, Centre for the Study of European Contract Law, Working Paper Series №2012-05, University of Amsterdam, The Netherlands, 2-5; *Twigg-Flesner C.*, A Cross-Border-Only Regulations for Consumer Transactions in the EU, 7.

The right of withdrawal is admitted as one of the guarantees for protection of the consumers' interests in the distance concluded contracts.²³ For effective exercising of such right, defining of what could be regarded as the distance made contract is decisive. Directive of 2011/83 on the Consumers' Rights define the distance contracts as "any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded".²⁴ Given definition off the distance contracts includes number of significant elements.

4.1. Transaction Validity

Primarily, all contracts made in such manner shall comply with the conditions of transaction validity regulated independently from EU directives by the national legislations of the member states.²⁵

4.2. Absence of Communication

To regard the contract as the distance made one and hence, for justification of the protective function implying withdrawal right it is significant to demonstrate special nature of the contracts of such type. "Special nature" primarily means agreement on the contract terms and conditions without face to face communication between the parties, as well as the fact of contract execution. Distance trade has the special characteristic feature – the seller makes contractual relations with the buyer so that the parties not only do not meet face to face but, in many cases, acceptance of the offer is limited to pressing the relevant button only and this is sufficient for recognition of the contract conclusion and self-binding.²⁶

Notably, if at any stage of contracting, the consumer can meet the trader face to face or physically examine the desired product and further agree upon the terms and conditions, such contract could not be regarded as the distance concluded one and the consumer cannot enjoy the right of withdrawal.²⁷

²³ *Loos M.*, Right of Withdrawal, Modernizing and Harmonizing Consumer Contract Law, Sellier, European Law Publishers, Munich, 2009, 244-250.

²⁴ Directive 2011/83/EU of The European Parliament and of The Council of 25 October 2011, <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0083>>, [26.04.2014].

²⁵ *Fina S.*, The Consumer's Right of Withdrawal and Distance Selling in Europe: A Consumer Stronghold in European Distance Selling and E-Commerce, in Festschrift Franz Zehetner, Markus Haslinger, Arthur Kanonier and Sylvia Zehetner eds. 2009, 31; *Spindler G., Borner F.*, E-Commerce Law in Europe and the USA, Springer, Verlag Berlin Heidelberg, 2002, *Schmidt W-A., Priess M.*, Germany, 164-176, *Renard I., A., Barberis M. A.*, France, 97-101.

²⁶ *Fina S.*, The Consumer's Right of Withdrawal and Distance Selling in Europe: A Consumer Stronghold in European Distance Selling and E-Commerce, in Festschrift Franz Zehetner, Markus Haslinger, Arthur Kanonier and Sylvia Zehetner eds., 2009, 31.

²⁷ *Ibid.*

4.3. Contracting Method

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The consumer shall enjoy withdrawal right if the contract is made using remote communication regulations. Distance communication implies making offer to conclude the contract, as well as accepting of such offer and agreeing upon the substantial terms and conditions by phone, fax, internet, e-mail or any other remote communication methods.³⁰

Here we should note that expansion of the mobile phone functions have arisen the issue of making contracts by their means. There were some different opinions in this respect but recent technological achievements in the field of mobile communication showed that in current conditions the mobile phone could be freely used as the instrument for contracting. Moreover, internet access or being source of electronic communication is not a necessary condition. In current reality, even SMS is sufficient for expression of the contractors' will and hence, for emergence of the binding power of the contract.³¹

As for the contracting electronically, it is notable that International Chamber of Commerce defines electronically executed contracts as the automated process of contracting by the parties with their computers, through the network or electronic mails.³² There are three forms of electronic contracting. The most widespread one is contracting via electronic mail. E-mail can be used for sending of both, the offer and acceptance. The other form of electronic contracting is contracting via global

²⁸ *Fina S.*, The Consumer's Right of Withdrawal and Distance Selling in Europe: A Consumer Stronghold in European Distance Selling and E-Commerce, in Festschrift Franz Zehetner, Markus Haslinger, Arthur Kanonier and Sylvia Zehetner eds. 2009, 31.

²⁹ *Ibid.*

³⁰ *Fina S.*, The Consumer's Right of Withdrawal and Distance Selling in Europe: A Consumer Stronghold in European Distance Selling and E-Commerce, in Festschrift Franz Zehetner, Markus Haslinger, Arthur Kanonier and Sylvia Zehetner eds., 2009, 31.

³¹ *Henderson K., Poulter A.*, The Distance Selling Directive, 238, <http://www.cis.strath.ac.uk/cis/research/publications/papers/strath_cis_publication_238.pdf>, [09.05.2014].

³² International Chamber of Commerce (ICC), General Usage for International Digitally Ensured Commerce (GUIDEC), Version II, <www.iccwbo.org>.

network. In such cases, the trader provides the catalogue of his/her products, together with the information about their characteristics and prices on his web site. The consumer views the web site and selects the desired goods and by giving consent to the contract terms and conditions, buys such goods. Third form of the e-commerce includes the contracts terms and conditions of which are provided on the trades' web site through link, so called redirected contracts. Their characteristic feature is that the consumer has to give his/her consent to several complex or independent contracts for the purpose of buying the desired product.³³

4.4. Products with Digital Contents and Withdrawal Right

Scales of e-commerce and technological progress have impacted the services and goods demand and supply format as well. In addition to the traditional classification of the movable and immovable properties, there appeared the "goods" not belonging to either class with their nature. Here we mean the assets with digital contents being the subject of various contracts every day. These are so called online transactions that are not only concluded electronically but performed electronically as well. For example, ordering of the software via internet where delivery is provided through downloading of the software from the web site or electronic information supply etc.³⁴

Directive on the Consumer's Rights of 2011/83 specifies digital contents, as data which are produced and supplied in digital form, like computer software, application forms, games, music, video or text, irrespective of whether they are available through downloading or used directly, from the material (physical) carriers or any other sources. And where the digital content is delivered from the physical carriers like CD/DVD or USB, they are regarded as common movable property.³⁵

Discussing of this issue is of particular significance, in relation with the right of withdrawal as in the contracts where the subject is digital content the consumer's withdrawal right is limited. In particular, in such contracts the consumer is entitled to enjoy opportunity of withdrawal of his/her consent until the download process commences and/or completes. Once the process of downloading starts or ends, the consumer loses the right of withdrawal. In such cases, delivery shall be preceded by the consumer's informed consent on commencement of downloading and the trader shall provide

³³ Wang F.F., *Law of Electronic Commercial Transactions*, Contemporary Issues in EU, US and China, Rutledge Research in IT and E-Commerce Law, Taylor & Francis Group, New York 2010, 34; Nimmer R. T., *The Legal Landscape of E-commerce: Redefining Contract Law in an Information Era*, Journal of Contract Law Conference, "Contract and the Commercialization of Intellectual Property", Singapore Academy of Law and Singapore Management University, 2006, 15.

³⁴ Loos M., Helberger N., Guibaut L., Pessers L., *Digital Content Contracts for Consumers*, Amsterdam Law School Legal Studies Research Paper № 2012-66, Centre for the Study of European Contract Law, Working Paper Series № 2012-05, University van Amsterdam, The Netherlands, 3; Loos M., *The Regulation of Digital Content B2C Contracts in CESL*, Amsterdam Law School Legal Studies Research Paper № 2013-60, Centre for the Study of European Contract Law, Working Paper Series № 2013-10, University van Amsterdam, The Netherlands, 1-2; *Erkvania T.*, *European Standards of Consumers' Rights Protection in the Sphere of E-Commerce and Georgian Legislation*, magazine "Law and Justice" (Martlmsajuleba da Kanoni"), № 3 (30), 2011, 49.

³⁵ Directive 2011/83/EU of The European Parliament and of The Council of 25 October 2011, <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0083>>.

warning that the consumer shall lose the right to withdraw from the contract as soon as product download starts.³⁶

It is notable that such provision protects the trader from unfair buyers. In particular, it is not excluded that the consumer abused the withdrawal right, download the desired software or information, get familiarized with it, make the copy and then desire to return it with the demand of repayment of the paid about.³⁷ Taking such situations into consideration the legislator limits application of the withdrawal right for the products with digital contents. Naturally, such approach should be regarded as reasonable as the products with the digital contents are mostly protected with the copyrights (e.g. e-books). If the consumers had unrestricted rights to use such products with relatively low costs, primarily, this would cause violation of the others' rights (those holding the copyrights) and this is unacceptable for the fundamental principles of private law.³⁸

4.5. Auction as the Form of Distance Trade and The Right of Withdrawal

Auction is a form of trade, tradition of which has emerged as early as in 500s, BC, in Babylon, where the women were sold in lieu of the most generous proposal. Since then, the auctions have not lost their significance, though unlike Babylonian traditions, currently the auction means offering of the goods and services through competition, where the highest bid has the contractual binding force. For the centuries, this type of trade has been developed in various forms. Some of them are organized by the public institutions, some – by the courts and some – by the professionals while sometimes these are arranged directly by the merchants.³⁹

Many years ago the auctions were held in the premises specially arranged for this purpose. Development of the modern technologies has impacted this form of trade as well. Currently the auction can be arranged via internet resulting availability of such form of trade for wide audience. Consequently, the virtual auction could be regarded as one of the forms of distance contracting.⁴⁰

Simplified access to the auctions has resulted in the whole set of inconveniences for the consumers. In some cases this is absence of direct communication and hence impossibility of adjustment of the terms and conditions. In other cases this is discrepancy between the description provided in the offer and the products, problems with delivery, delivery of damaged or broken products or deliv-

³⁶ *Roinn Post A., Nualaichta F.*, Consultations on the Implementation of Directive 2001/83/EU On Consumer Rights, <<http://www.djei.ie/publications/commerce/2013/CRD.pdf>>, [10.02.2014].

³⁷ *Riefa Ch.*, The Reform of Electronic Consumer Contracts in Europe: Towards an Effective Legal Framework?, 39, <http://www.lex-electronica.org/docs/articles_244.pdf>, [08.05.2014].

³⁸ *Loos M., Helberger N., Guibaut L., Pessers L.*, Digital Content Contracts for Consumers, Amsterdam Law School Legal Studies Research Paper №2012-66, Centre for the Study of European Contract Law, Working Paper Series №2012-05, University van Amsterdam, The Netherlands, 12-14.

³⁹ *Riefa Ch.*, A Dangerous Erosion of Consumer Rights: The Absence of a Right to Withdraw from Online Auctions, Modernizing and Harmonizing Consumer Contract Law, *Howells G., Schultze R.* (eds.), Sellier European Law Publishers, 177-188, 2009, 1, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1374063>, [15.01.2015].

⁴⁰ *Riefa Ch.*, A Dangerous Erosion of Consumer Rights: The Absence of a Right to Withdraw from Online Auctions, Modernizing and Harmonizing consumer Contract Law, Geraint Howells and Reiner Schultze, eds., Sellier European Law Publishers, 177-188, 2009, 1, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1374063>, [15.01.2015].

ery of the other goods. Therefore, the internet auctions were included into the area of applicability of the legislation regulating protection of the consumers' rights. Though there is no uniform approach to this issue in the legislations of EU member states.⁴¹

This was particularly apparent in relation with the withdrawal right. For example, in France and Luxemburg, the consumers were protected by the rules applicable to the distance concluded contracts and hence, they had the opportunity to enjoy the right of withdrawal. In these countries the protection regulations for the distance made contracts were not applicable to the public auctions only. In Belgium and Greece E-bay auctions were included into the remote trade regime, as national legislations of these states did not take into consideration the restrictions provided by the directive dealing with the distance made contracts. In Germany, for example, the participants enjoyed the adequate protection in case of participation in internet auctions, as provided by the decision of German federal court, allowing exercising of withdrawal right to the contracts made as a result of internet auctions.⁴²

For the purpose of ensuring uniform approach to the withdrawal rights in internet auctions, Directive on Consumers' Rights of 2011/83 directly states that the Directive and hence, the right of withdrawal shall not be applicable to the public auctions only. In addition, the content of public auction was defined. In particular, the 'public auction' means a method of sale where goods or services are offered by the trader to consumers, who attend or are given the possibility to attend the auction in person, through a transparent, competitive bidding procedure run by an auctioneer and where the successful bidder is bound to purchase the goods or services; Use of the internet platforms for the auctions at disposal of the consumers and trades shall not be deemed as the public auction, for the purposes of the Directive.⁴³

Hence, if the auction is held through internet, so that the parties have no opportunity to directly attend it, this should be regarded as the distance concluded contract and the consumer shall be entitled to the right of withdrawal, if he/she desires so. However, the consumer shall be informed about such rights after auction completion, announcing of the results and identification of the winner. Such regulation takes into account the characteristic features of internet auctions. In particular, in the course of auction, before making contract with the specific person, it is actually impossible to provide individual explanation of the rights to unknown person, potential contractor. The consumer is given the additional opportunity to unilaterally terminate the contract only in case of contractual binding. In addition, as the consumer shall be informed about the rules and conditions of withdrawal immediately, upon contract execution, the entrepreneur shall provide written explanations about the

⁴¹ *Twigg-Flesner Ch., Metcalfe D.*, The Proposed Consumer Rights Directive – Less Haste, More Thought? European Review of Contract Law, 2009, 9, <<http://ssrn.com/abstract=1345783>>, [20.01.2015].

⁴² *Riefa Ch.*, A Dangerous Erosion of Consumer Rights: The Absence of a Right to Withdraw from Online Auctions, Modernizing and Harmonizing Consumer Contract Law, Geraint Howells and Reiner Schultze, eds., Sellier European Law Publishers, 2009, 177-188, 3, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1374063>, [15.01.2015].

⁴³ Directive 2011/83/EU of The European Parliament and of the Council of 25 October 2011, <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0083>>, [26.04.2014].

withdrawal rights at the earliest possible opportunity. Non-compliance with this obligation results in extension of the term of contract revising.⁴⁴

5. Conclusion

Thus, withdrawal right serves to protect consumers in distance concluded contracts. Protection, as such, implies support to consumer's self-determination and making right choice. One could say that withdrawal right protects the consumer from inadequate choice and comprises effective mechanism for its overcoming. At the same time, possibility of further revising of the contract cannot protect the consumer from disappointment but it adds to the distance concluded contracts the reversal effect. Withdrawal right can protect the consumer from the sense of regretting about concluded contract and stimulate him/her to make further remote contracts. Therefore, this exclusive regulation is regarded as effective tool for protection of the consumers' rights, serving, on one hand, to improvement of the consumers' confidence and trust and on the other hand – promotes distance concluded contracts and their further development.

⁴⁴ *Kropholler J.*, Civil Code of Germany, Comment for Learning, GYLA Legal Education Support Fund, with GIZ Assignment, Tbilisi, 2014, 251-252.