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The following issue is dedicated to the bright memory of the prominent representative of Georgian legal science, Professor Emeritus Guram Nachkebia



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Tamar Diogidze*

The Essence and General Conditions of an Off-premises Contract

The respective paper is dedicated to defining the essence and general conditions of an off-premises contract. The key objective of the paper is to discuss the essence of a contract concluded off-premises and make a contribution to developing doctrine of scholars in Georgia. Also, identify problematics of exercising consumer rights through study of Georgia's consumer market; hence, make an analyses of Georgian and European legislative frameworks on the respective matter in order to develop recommendations for approximation of these frameworks. The paper will also aim at making analyses of similar institutions in frames of the European Union Law and will develop the model, which will be adjusted to Georgia's reality to a greater extent and will be resulted from a synthesis.

Key words: an off-premises contract, consumer law, consumers' rights, protection of consumers' rights, consumer, trader (entrepreneur).

1. Introduction

An off-premises contract happens to be a quite well-spread practice in numerous countries of the contemporary world; the latter contract is closely tied to consumer law. Each one of us is a consumer, hence protection of consumers' rights is a primary objective of any legal state.

Diversity of consumer market's scope of action and a possibility to conclude a contract "in a non-contractual environment" is not a rare case in the 21st century. Nowadays, the latter contracts are quite frequent in Georgia, however, absence of legislative regulation of this matter hinders the process of ensuring high guarantees for consumers' rights protection.

An off-premises contract became part of the Civil Code of Georgia (later to be referred to as the CCG) in 1997, when the new CCG entered into force. However, the respective article has not been applied in Georgia's legal reality, which has been caused by vagueness of the respective norm's essence. The essence, location of conclusion, and the parties' rights-obligations are all vague. It shall be noted that the Law of Georgia on "Consumers' Rights Protection" of 1996 was abolished in 2012; hence, there are no laws in Georgia on consumer rights' protection.

With all due respect to the above-mentioned, the paper will offer detailed review of the essence, location of conclusion, and the parties' rights-obligations of an off-premises contract. The final chapter of the paper will focus on findings identified through analyses of the issues covered.

2. The Legislative Acts Governing an Off-premises Contract

Prior to performing analyses of the essence and general conditions of an off-premises contract, one shall review all those legal acts, which are being utilized as guides for legally governing such type of contracts; it is crucial to consider both, the way Georgian legislation governs it, as well as how countries of the European Union Law regulate the respective matter. Special emphasis shall be made on the German law, as the CCG was developed based on the model of the German Civil Code (later to be referred to as the GCC). Hence, majority of the norms were implemented from the GCC and other laws of Germany. Georgia, similarly to countries, such as Austria, Lichten-

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stein, Switzerland, Greece and other countries, has been influenced by the “German legal tradition”.¹ Therefore, Georgian civil law has also been heavily influenced by the German civil law, thus an off-premises contract derives from such practice; however, it shall be highlighted that this norm has a drastically different essence in the Georgian legislation.

Besides, focusing on the European Union Law is important due to the country’s foreign policy priorities and also, due to ensuring those obligations, which Georgia became part to in 2014. Georgia took numerous obligations, including ensuring compliance of Georgia’s legislation with the European standards to a greater extent following signing an Association Agreement on 27 June, 2014 between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part (later to be referred as AA²). The part on cooperation policies of the AA, namely chapter №13 of the Title VI (Consumer Policies), (articles 345 – 347), cover the issues related to the consumer policy. As set forth in the articles 345 – 347, Georgia shall ensure a high level of consumer protection and aim at fundamental amendments to the legislation with respect to protection of consumers’ rights. The latter objective has served as the reason for initiating the draft law on “Consumers’ Rights Protection” by the Committee on European Integration of the Parliament of Georgia (later to be referred to as the draft law); the key objective of the draft law is to create the legislation focused on protection of consumers’ rights in Georgia through sharing the practice of countries of Europe.

The priority of the countries part to the European Union Law is to create the legislation, which is focused on consumers’ rights, due to the fact that “contemporary law recognizes superiority of the person, while definition of the superiority of the person is practice of one’s rights and freedoms with a greater effectiveness”.³ One shall mention that the first time an off-premises contract and the corresponding matters were governed with respect to contracts negotiated away from business premises (as set forth by the Georgian legislation – a contract concluded in the street) was through the Council Directive 85/577 EEC of 20 December, 1985 to protect the consumer.⁴

Later, the latter Directive was supplemented with the 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, which did somehow complement the previous Directive.⁵

However, development of modern technologies and broadening of consumer market has resulted into the need for developing relatively new regulations. Hence, the European Parliament developed new directive and at this stage, an off-premises contracts and the corresponding matters are regulated by the countries part to the European Union Law through the Directive 2011/83/EU of the European Parliament and of the Council of 25 October, 2011 on consumer rights. (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 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council⁶) (Later to be referred to as the Directive).

¹ *Khubua G.*, Theory of Law, Tbilisi, 2004, 213 (in Georgian).

² 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://eeas.europa.eu/sites/eeas/files/association_agreement.pdf>.

³ *Kardava. E.*, Comparative Law Analysis of the European Standards on Consumer Protection on the Example of Contracts Negotiated away from Business Premises, Georgian Law Review – special ed. Tbilisi., 2007, 122 (in Georgian).

⁴ Council Directive 85/577 EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31985L0577:en:HTML>>.

⁵ Directive 97/7/EC of the European Parliament and of the Council of May 1997 on the Protection of Consumers in Respect of Distance Contracts, <<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31997L0007&from=en>>.

⁶ 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

The goal of the new Directive was to eradicate those flaws and incompliances, based on the existing practice, which did exist. Besides, the Directive established general rules in regard to contracts concluded away from business premises and in the street, which enable member states to ensure compliance of their respective legislation with the Directive and hence, guarantee high level of consumers' protection.

3. Objective and Subject-matter of an Off-premises Contract

The article 336 of the CCG sets forth that: A contract concluded in the street, at the doorstep or in like places between a consumer and a person conducting sales within his/her trade shall be valid only if the consumer has not rejected the contract in writing within a week, unless the contract is performed upon its conclusion.⁷

One shall highlight that the wording of the article 336 of the CCG completely ignores the issue of defining the subject-matter. According to the Georgian norm, a consumer may reject any type of contract, which is concluded "in a non-contractual environment", namely "in the street, at the doorstep or in like places". However, the German law sets forth that a subject-matter of a contract concluded in the street shall be a contract of sale. Such type of contracts may be bilaterally binding; also, we shall not perceive a contract of sale as a money, honorarium or award. A contract of sale lays out the terms of payment in kind as well as provision of goods. The primary essence of "a contract of sale" implies a contract of sale, however it may also be a contract of rent and etc.⁸ The Directive's article 3 indicates on those contracts, which it does not apply to, such as social services, lotteries, gambling, betting and etc.

With all due respect to the abovementioned, it becomes clear that the GCC's article 336 is incomplete and vague, hence the scope of action in it shall be expanded in a way that it shall ensure protection of both, consumers' and traders' interests to a greater extent. It shall be highlighted that creation of a legislation focused on protection of interests' of the parties of the civil circulation is a primary objective of any legal state.

An off-premises contract is a contractual ground for subject of obligation. A consumer and a trader are enabled to act in their capacity to decide whether or not to enter into contractual relationship and undertake the obligations, which derive from such relationship. The key aspect for differentiating this contract from other types of contracts is that the location of conclusion of a contract is "in a non-contractual environment";⁹ it takes place unexpectedly for a consumer, who does not have time for consideration. Hence, the effect of taking a customer by surprise (Überrumpelungseffekt) has a crucial importance in such type of contracts.¹⁰ „As a matter of fact, such contracts are concluded accidentally, so that a customer does not have a full understanding about a contract to be concluded as well as information on market prices.”¹¹ A customer does not have a possibility to make a comparison of a product with other types of products; therefore, one shall not exclude that another party may offer uneven terms of a contract. Decision of a customer to engage into contractual relationship with another party is a mere spontaneous decision.¹² Based on the latter, Georgia's legislation provides a customer with a right to reject such contract and through granting such right it somewhat protects him/her from a possible damage. As set forth in the article 336 of the CCG, a consumer may reject a contract concluded in the street in

Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_2011.304.01.0064.01.ENG>.

⁷ Civil Code of Georgia, article 336 (in Georgian).

⁸ *Zerres Th.*, Bürgerliches Recht, Eine Einführung in das Zivilrecht und die Grunzüge des Zivilprozessrechts, 6. Aufl., Berlin 2010, § 312, 109.

⁹ *Dauner-Lieb B., Heidel Th., Ring G.*, Anwaltkommentar, Band 2, Teilband 1: §§241 bis 610, Köln 2005, Rn.7.

¹⁰ *Brox H., Walker W-D.*, Allgemeines Schuldrecht, 35. Aufl., München 2011, Rn.2.

¹¹ *Chanturia L.*, Comments to the Civil Code of Georgia (CCG), Book №3, Tbilisi., 2001, 150 (in Georgian).

¹² *Tsertsvadze L.*, Contractual law, Tbilisi., 2014, 192 (in Georgian).

writing within a week; in such circumstances, the sphere of interests of a customer is protected.¹³ However, it shall be noted that due to absence of being fully informed, a customer still attracts such type of contracts, “he/she has a feeling of satisfaction while being approached with an individual attention, especially upon being visited at home”.¹⁴ Hence, in such liaisons, a customer is a “weak” party for having a little protection from any risks that may arise;¹⁵ therefore, during such type of interactions, focus shall be made on a customer, who is a less protected party of the liaison.¹⁶

According to the Georgian legislation, validity of such type of contract is based on whether or not a customer utilizes the right to object or will reject it in writing. It is also important, that a customer shall reject a contract in a writing form, since verbal refusal does not have a legal power. Despite of such right of a customer, Georgian legislation sets forth the clause, which practically opposes the objective of the norm – protection of consumers’ rights. As set forth by the article 336 of the CCG, rejecting a contract in writing has no power if a contract has entered into force upon its conclusion; such circumstances undermine consumers’ rights, since consumer contracts enter into force upon their conclusion in the vast majority of cases; the practice of concluding a contract between the parties and agreeing on enforcing it afterwards is rare.¹⁷

The Directive also serves the purpose of consumers’ rights protection, as the article 1 lays out that purpose of this Directive is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by approximating certain aspects of the laws, concerning contracts concluded between consumers and traders.¹⁸

Implementing an off-premises contract in the CCG resulted into Georgian legislation being focused on consumers’ rights, however, the vague wording of the norm and artificial obstacles in the definition does not complement enforcement of the norm’s objective, but hinder application of it in practice. Therefore, approximating of this article is crucial for it to become applicable in practice to a greater extent.

4. The Parties and Possible Third Parties of an Off-premises Contract

One of the characteristics of an off-premises contract are the parties. As set forth by the article 336 of the CCG, the parties are “a consumer” and “a person conducting sales within his/her trade”.

The Law of Georgia on “Consumers’ Rights Protection” of 1996 defined a consumer as a physical entity, purchaser, customer or who orders a good (work, service) for personal consumption, or an individual having such an intention. The decree №3 (article 3, paragraph “k”) of the Georgian National Communications Commission (GNCC) of March 17, 2006 also lays out definition of a consumer, which is a physical entity, who is or intends to use and not to sell to other consumer a service delivered through electronic communication networks and means, which are in public use. As set forth by the legal encyclopedia, a customer is a citizen, who wishes to purchase or order any good, service procurer, customer or consumer for personal, household or any other need, which is not

¹³ *Jacoby F., Hinden M., Kropholler J.*, Bürgerliches Gesetzbuch, Studienkommentar, 13 neubearbeitete Auflage, München 2011, Rn.2.

¹⁴ *Kardava. E.*, Comparative Law Analysis of the European Standards on Consumer Protection on the Example of Contracts Negotiated away from Business Premises, *Georgian Law Review – special ed.* Tbilisi., 2007, 134 (in Georgian).

¹⁵ *Erman*, Bürgerliches Gesetzbuch Handkommentar mit AGG, EGBGB (Auszug), ErbbauRG, LPartG, ProdHaftG, UklG, VbVG, VersAusglG und WEG, Band 1., 13. neu bearbeitete Aufl., Köln 2011, Rn.2.

¹⁶ *Staudinger J.*, Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen, Buch 2, Recht der Schuldverhältnisse, §§ 311, 311a, 312, 312a-f (Vertragschluss) Neubearbeitung Berlin 2005, Rn. 1.

¹⁷ *Chechelashvili Z.*, Contractual Law, 2nd revised ed. (Comparative-Legal Study on Key Fundamentals of Georgian legislation), Tbilisi., 2010, 102 (in Georgian).

¹⁸ 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 185/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, Article 1.

related to carrying out trade activity.¹⁹ The banking sector defines a consumer in a completely different wording; namely, the order №35/04 (article 2, paragraph “a”) of 2011 of the President of the National Bank of Georgia on “establishing rules for providing consumers with the necessary information by the commercial banks upon providing banking service” lays out that a consumer is a physical entity, who has intentions of receiving not only banking, but also trade, entrepreneurial and professional services, upon having such an intention.²⁰

Unfortunately, the respective law on “Consumers’ Rights Protection” does not define what does “a person conducting sales within his/her trade” implies. Most probably, it means an entrepreneur (trader), also, the term “entity” is arguable as it is not clear whether it implies only a physical entity, or we shall also consider a legal entity. According to the CCG, a person can be both, physical and legal. Obviously, the essence of the terminology is not that crucial, however, it would have been desirable if Georgian legislation made direct and clear indication of the parties of a contract, thus offer definition of these. The vague terms are always “victims” of suspicious attitudes.

The above-mentioned law underlines that the parties of an off-premises contract are a consumer” and “a trader”; namely, the article 3, paragraph “a”, defines consumer as a physical entity, which is being offered or purchases, or later consumes goods or services for personal use and not for commercial or other professional purposes; while paragraph “b” of the same article defines “trader” as a an entity making an offer and/or trading goods in frames of commercial or other professional activities, also, physical or legal entity providing services. Unlike the existing norms of nowadays, the draft law already covers detailed definitions of the parties.

Unlike Georgian legislation, the German law provides a very specific definition of the norm similar to the Georgian one, and defines the parties of an off-premises contract as a consumer and an entrepreneur; these definitions are set forth in the GCC’s section 13 as a consumer (Verbraucher) and section 14 as an entrepreneur (Unternehmer). According to the German law, a consumer means every natural person who enters into a legal transaction for purposes that predominantly are outside his trade, business or profession.²¹ While an entrepreneur means a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession; a partnership with legal personality is a partnership that has the capacity to acquire rights and to incur liabilities.²²

As set forth by the Directive, the parties to such type of contract are a consumer and a trader; article 2 lays out that a consumer means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession. While a trader means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive.

As for engagement of any other party in an off-premises contract except for a consumer and a trader, the CCG does not indicate anything; while the Directive’s article 2 (2) makes a direct indication while defining a “trader”, which also means a person, who is acting, including through any other person acting in his name or on his behalf; there are no clauses of such in regard to a consumer in the Directive.

¹⁹ *Tezelashvili S.*, Legal Encyclopedia, Tbilisi., 2008, 373 (in Georgian).

²⁰ The order №35/04 of 2011 of the President of the National Bank of Georgia on “Establishing Rules for Providing Consumers with the Necessary Information by the Commercial Banks upon Providing Banking Service”, <http://nbg.gov.ge/cp/uploads/legal_acts/35_NEW_FOR_WEB.PDF> (in Georgian).

²¹ § 13 BGB - Verbraucher ist jede natürliche Person, die ein Rechtsgeschäft zu einem Zwecke abschließt, der weder ihrer gewerblichen noch ihrer selbständigen beruflichen Tätigkeit zugerechnet werden kann.

²² § 14 BGB - (1) Unternehmer ist eine natürliche oder juristische Person oder eine rechtsfähige Personengesellschaft, die bei Abschluss eines Rechtsgeschäfts in Ausübung ihrer gewerblichen oder selbständigen beruflichen Tätigkeit handelt. (2) Eine rechtsfähige Personengesellschaft ist eine Personengesellschaft, die mit der Fähigkeit ausgestattet ist, Rechte zu erwerben und Verbindlichkeiten einzugehen.

It would be greatly appreciated if Georgian legislation considers existing practice and will regard those persons acting on behalf and in his/her name of a consumer or a trader as parties of an off-premises contract.

5. Location and Time of Conclusion of an Off-premises Contract

According to the article 336 of the CCG, an off-premises contract is in power, unless a consumer rejects a contract in writing within seven days; also, in case the latter contract didn't enter into force upon its conclusion. Contracts concluded in the street are among voidable contracts of hesitant nature, since they enter into power only after the time period given to a consumer for exercising the right to reject a contract expires.

In regard to the norm in the Georgian legislation, one shall consider two cases in regard to determining the time of conclusion of a contract: when a contract enters into force upon its conclusion and when a contract is concluded but enforced few days later. It shall not be argued that during the first case, the time of conclusion of a contract and entering into force does not coincide, since according to the article 336 of the CCG, a consumer shall no longer have a right to reject a contract. As for the second case, one shall determine from which date the seven-day period needs to be calculated, from the moment of conclusion or from the moment it has entered into force? The Georgian legislation does not provide a specific answer on the respective question, however, based on the general legal principles and objective of the article, calculating the seven-day period shall start from the moment of entering a contract into force, since the focus shall be made on a consumer as he/she is a less protected party.

Similarly to the Directive, German legislation lays out that an off-premises contract enters into force upon the period of time given to a consumer for rejecting it expires. Namely, such contract is in power, unless a consumer rejects it during a period of 14 days. Besides, article 9 of the Directive sets forth detailed description on what is regarded as the time of enforcing a contract, and the period of calculating a period of 14 days; for example: in case of service contracts, the day of conclusion of a contract; in case of sales contracts, the day on which a consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the goods; in case a subject-matter of a contract are multiple goods - the day on which a consumer or a third party indicated by a consumer acquires physical possession of the last good; in case of contracts for the supply of water, gas or electricity - the day of conclusion of a contract and etc. Also, the Directive directly indicates that States shall not prohibit the contracting parties from performing their contractual obligations during the withdrawal period; nevertheless, the States have a right maintain existing national legislation, which for example prohibits the trader from collecting the payment from the consumer during the given period after the conclusion of the contract.

According to the article 336 of the CCG, the location of a contract may be "in the street, at the doorstep or in like places", which "requires definition, as the literal perception of the street may cause numerous misunderstandings"²³. Exhibition-sales of goods may be organized in the street, at the doorstep and etc.; purchasing goods at a such location is indeed an off-premises contract, however, it cannot be governed by the article 336 of the CCG, since a consumer was ready for conclusion of a contract. The term "within his/her trade" is generally regarded as a permanent location of a person conducting sales or provider of goods, however in such case "it is not a permanent location of trade held in a specific space"²⁴.

As set forth by the draft law, a contract is regarded as an off-premises contract, if it is concluded away from business premises of a trader (away from his/her place of trade) and requires simultaneous physical presence of a trader and a consumer; also, if a contract is concluded on the business premises of a trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which are not the business premises.

²³ *Chanturia L.*, Comments to the Civil Code of Georgia (CCG), Book №3, Tbilisi., 2001, 151 (in Georgian).

²⁴ *Ibid.*

It shall be noted that on June 13, 2014 the Federal Republic of Germany enforced the law in regard to implementation of the Directive on consumer rights,²⁵ which has caused fundamental amendments into the norms governing an off-premises contracts. The German legislation has fully reflected the Directive developed by the European Union and almost made a reception of the latter into the national legislation.²⁶ The name of such type of contracts has also been changed; the new name was used as a bases for establishing the term in Georgian legislation – a contract concluded in the street. Namely, the latter contract was called *Hautsürgeschäft* (a contract concluded at a doorstep) in the German legislation, however in a current version it is referred to as *Außerhalb von Geschäftsräumen geschlossene Verträge* (a contract concluded off-premises, which is not the business premises of the trader), or as its European analogue (off-premises contracts) states.²⁷ It would be greatly appreciated if the Georgian legislation will consider the latter international practice and will review the possibility of changing name of the norm for avoiding misunderstandings in regard to an off-premises contract.

Detailed definition and location of a contract concluded in the street is discussed in the directive, which lays out that an off-premises contract means any contract between a trader and a consumer concluded in the simultaneous physical presence of a trader and a consumer, in a place which is not the business premises of a trader and can take place in a location, such as home and/or working space of a consumer. The definition of such type of contract shall also consider case, when a consumer receives an offer for concluding a contract personally and individually, in a place which “is a non-contractual environment”, however a contract was concluded immediately in a place which is not the business premises of a trader, or without simultaneous physical presence of the parties, through means of distance communication. The definition of this article shall not imply situations when a trader pays an initial visit to a consumer at his/her home for providing consultation, budgeting, or perform measuring and only after these and following a certain period of time - conclude a contract in frames of commercial work of a trader or through means of distant communication. In the latter case, a contract shall not be regarded as an immediately concluded one, since a consumer had sufficient amount of time, prior to concluding, to consider assessment delivered by a trader. A contract concluded away from business premises (in the street) also covers purchase of those goods, which are bought by a consumer during exhibitions organized by an entrepreneur, and upon making an offer for purchasing products respectively.

Unfortunately, the Georgian analogue of the respective norm doesn't lay out similar detailed definition. From a scholar perspective, the respective matter has not been studied yet. The CCG's comments do contain three cases, which explain on what does a place of concluding a contract mean. It shall be mentioned that a vague wording and title of the norm do confuse consumers a lot; these all results into application of the respective norm in practice. Therefore, usage of the article in Georgian reality does not happen, almost at all.

6. Rights-obligations of the Parties

Each one of us, is part to numerous legal relationships on a daily bases, without even realizing it. Hence, one does not even realize legal essence or possible outcome of such relationships. By all means, majority of such citizens can't imagine the consequences, which can result from violating the obligations imposed by the respective relationship. “It is absolutely natural, since people liaise with each other not because of fear of legal norms or laws, but because this is their natural need, vital for life.”²⁸

²⁵ Gesetz zur Umsetzung der Verbraucherrechtlinie und zur Änderung des Gesetzes zur Regelung der Wohnungsvermittlung (VerbrRRLUG), <<http://www.buzer.de/gesetz/10934/index.htm>>.

²⁶ *Prütting H., Wegen G., Weinreich G.*, Bürgerliches Gesetzbuch, BGB, Kommentar, 11 Aufl., 2016, §312 Rn. 1.

²⁷ German Civil Code, <https://www.gesetze-im-internet.de/englisch_bgb/>.

²⁸ *Chanturia L.*, Comments to the Civil Code of Georgia (CCG), Book №3, Tbilisi., 2001, 23 (in Georgian).

Upon concluding any contract, each party becomes part to certain rights and obligations. The principle of freedom of contract sets forth that the parties, outside of the scope of the rights and responsibilities determined by the respective law, shall have a possibility to determine their own rights and responsibilities upon concluding any specific contract.

Based on disposition of the CCG's article 336, one may conclude that through the definition of rights and responsibilities of the latter article, we encounter only one right in an off-premises contracts – withdrawal from a contract. However, one shall mention that this right is not an absolute one – a consumer shall not withdraw from a contract if it has been implemented upon conclusion.

Unlike the Georgian legislation, the Directive offers quite a diverse list of rights and obligations; the latter focuses on an “informed consumer” – which implies that a consumer shall decide on his/her own whether or not to conclude a contract based on the relevant information. It shall be noted that the rights and obligations of the parties in contracts concluded in the street are somewhat specific; namely, the key rights and obligations of the parties arise prior to concluding a contract and are mainly connected to provision of the information to a consumer from a trader.

For instance, Chapter III (article 6) of the Directive (Consumer Information and Right of Withdrawal for Distance and Off-Premises Contracts) lays out that before a consumer is bound by an off-premises contract, a trader shall provide a consumer with the information on the main characteristics of the goods or services in a clear and comprehensible manner: the identity of a trader, such as his/her trading name; the geographical address at which a trader is established and a trader's telephone number, fax number and e-mail address, where available, to enable a consumer to contact the trader quickly and communicate with him/her efficiently; the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges that are needed for a trader to deliver goods of provide service to a consumer and etc.

The Directive's article 7 lays out additional information supplementing the above-mentioned with respect to an off-premises contracts - a trader shall give the information to a consumer on paper or, if a consumer agrees, on another durable medium. That information shall be legible and in plain, intelligible language. A trader shall provide a consumer with a copy of the signed contract or the confirmation of the contract and etc.

Also, there is a direct indication in the Directive, which sets forth that Member States may decide not to apply this paragraph. By all means, the Directive doesn't limit the Member States from the list of obligations laid down in this Directive, hence, each of the States has a full freedom to decrease or enlarge the list.

As already mentioned, the article 336 of the CCG provides little information about the parties' obligations, which has somewhat been fixed by the draft law. Namely, the parties' rights and obligations will be governed by the articles 2, 7 and 8 of the draft law. It shall be highlighted that the existing version of the draft law fully covers rights of a consumer to withdraw from a contract, as well as an obligation for a trader with respect to providing information. However, some of these articles shall be more precise, for example: the paragraph “e” of the article 7 (1) provides information on full price of goods and service, however, unlike the Directive, it does not specify whether or not the cost includes taxes; also, more clarity is required with respect to contracts concluded with an unlimited period of time, or in regard to contracts which are related to subscription (magazine, newspaper, and etc.) of anything and whether or not full costs of every reporting period shall be covered in a total price. As for the Directive, the latter determines fixed cost for the above-mentioned case, which also implies that complete monthly payments are covered in a total price.

7. Conclusion

One of the key functions of the law is to ensure equality among the parties of any type of relationship. A consumer is a less protected party with respect to an off-premises contract; therefore, the Georgian legislation utilizes self-defensive mechanisms within legal acts to make an effort for ensuring protection of consumers' rights, as they are "weak" parties of such relationship.

As mentioned above, the wording of the article 336 of the CCG is quite vague, general and incomplete; however, the efforts of the Georgian legislation to ensure protection of consumers' rights, hence, it is crucial to approximate the norm so that the latter can be applied in practice.

The issues discussed in the respective paper enable to develop certain set of recommendations, namely:

- At first, it is crucial to define a location of concluding a contract; the following wording of the article 336 of the CCG - "in the street, at the doorstep or in like places", shall be specified in order to achieve the objective of the norm. A consumer shall have an exact information on where shall a contract be concluded so that he/she can withdraw from it and what is the period of time determined for this matter;
- In order to avoid misunderstanding, it will be highly positively evaluated if a contract's title will change from "a contract concluded in the street" into "a contract concluded in a non-contractual environment";
- Also, it will be quite an important amendment with respect to changing a compulsory form of withdrawing from a contract from a consumer, which is a written form. Besides the fact that this requirement is quite a routine for consumers, it also contradicts the fundamental values of civil law, such as freedom of contract. As set forth by the general principles of the civil circulation, withdrawing from a contract shall be performed through the same form as upon concluding the latter;
- It is quite crucial to approximate the terms defining the parties of a contract. Especially, the meaning of the following wording shall be explained "a person conducting sales within his/her trade".

We may conclude stating that an effort of the Georgian legislation to ensure protection of consumers' rights is quite important; under no doubt, upon approximating the legislation, it will be widely applicable in consumer market, hence the main objective of this norm is to ensure protection of consumers' ("weak party") rights.

Consideration of the above-mentioned recommendations will support a better realization of both, traders' and consumers' rights and interests. Creation of a legislation focused on interests of consumers and guaranteeing high level of consumers' rights protection is a primary objective of any legal state.

Bibliography

25. Civil Code of Georgia, 26/06/1997 (in Georgian).
26. 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, 27/06/2014.
27. The decree №3 of the Georgian National Communications Commission (GNCC) of March 17, 2006, 17/03/2006 (in Georgian).
28. The order №35/04 (article 2, paragraph "a") of 2011 of the President of the National Bank of Georgia on "Establishing Rules for Providing Consumers with the Necessary Information by the Commercial Banks upon Providing Banking Service", 13/05/2011 (in Georgian).
29. Bürgerliches Gesetzbuch Deutschlands, 18/08/1896.
30. Directive 85/577 EEC of 20 December 1985 to Protect the Consumer in Respect of Contracts Negotiated away from Business Premises.

31. 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.
32. 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 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.
33. *Brox, H., Walker, W-D.*, Allgemeines Schuldrecht, 35. Aufl., München 2011, Rn.2.
34. *Chanturia L.*, Comments to the Civil Code of Georgia (CCG), Book №3, Tbilisi., 2001, 23, 150-151 (in Georgian).
35. *Chechelashvili Z.*, Contractual Law, 2nd revised ed. (Comparative-Legal Study on Key Fundamentals of Georgian legislation), Tbilisi., 2010, 102 (in Georgian).
36. *Dauner-Lieb, B., Heidel, Th., Ring, G.*, Anwaltkommentar, Band 2, Teilband 1: §§241 bis 610, Köln 2005, Rn.7.
37. *Dzlierishvili Z., Tsertsvadze G., Robakidze I., Svanadze G., Tsertsvadze L., Janashia L.*, Contractual law, Tbilisi., 2014, 192 (in Georgian).
38. *Erman*, Bürgerliches Gesetzbuch Handkommentar mit AGG, EGBGB (Auszug), ErbbauRG, LPartG, ProdHaftG, UklG, VbVG, VersAusglG und WEG, Band 1., 13. neu bearbeitete Aufl., Köln 2011, Rn.2.
39. *Jacoby, F., Hinden, M., Kropholler, J.*, Bürgerliches Gesetzbuch, Studienkommentar, 13. neubearbeitete Auflage, München 2011, Rn.2.
40. *Kardava. E.*, Comparative Law Analysis of the European Standards on Consumer Protection on the Example of Contracts Negotiated away from Business Premises, Georgian Law Review – special ed. Tbilisi., 2007, 122, 134 (in Georgian).
41. *Khubua. G.* “Theory of Law”, Tbilisi, 2004, 213 (in Georgian).
42. *Prütting H., Wegen G., Weinreich G.*, Bürgerliches Gesetzbuch, BGB, Kommentar, 11. Aufl., 2016, §312 Rn. 1.
43. *Staudinger, J.*, Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen, Buch 2, Recht der Schuldverhältnisse, §§ 311, 311a, 312, 312a-f (Vertragschluss) Neubearbeitung Berlin 2005, Rn. 1.
44. *Tezelashvili S.*, legal encyclopedia, Tbilisi., 2008, 373 (in Georgian).
45. *Zerres, Th.*, Bürgerliches Recht, Eine Einführung in das Zivilrecht und die Grundzüge des Zivilprozessrechts, 6. Aufl., Berlin 2010, 109.
46. <<https://matsne.gov.ge/ka/document/view/63556>>
47. <http://eeas.europa.eu/georgia/pdf/eu-ge_aa-dcfta_en.pdf>
48. <http://nbg.gov.ge/cp/uploads/legal_acts/35_NEW_FOR_WEB.PDF>
49. <<http://www.gesetze-im-internet.de/bgb/>>
50. <<http://eur-ex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31985L0577:en:HTML>>
51. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2011.304.01.0064.01.ENG>
52. <https://www.gesetze-im-internet.de/englisch_bgb/>