



The Principles of the Consumer Right Protection in Electronic Trade: A Comparative Law Analysis

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ABSTRACT

This paper investigates the specifics of electronic trade and the issues of protecting the rights of online-consumers, considers their rights and obligations, since we all face a radically new phenomenon in the sphere of trade – An unprecedented boom of electronic trade (e-commerce), based on the use of the Internet for concluding transactions and operations in the systems of wholesale and retail trade. The means of electronic communication provide broad opportunities for direct contacts between individuals from different countries. The development of electronic communications poses new tasks before the system of international private law, and one of them is the protection of the consumer rights, when conducting electronic trade. The main goal of this research is to explore the contemporary state of electronic trade worldwide and to outline the principles of the online consumer protection. Writing this paper, the following scientific methods were employed: The method of collecting and examining individual facts, of generalizing, of abstract scientific conceptualization, the methods of discovering the general rule. As a result of the analysis conducted, we can present a list of the basic principles of protecting the rights of the online consumers – the principle of the right to return the goods bought via the internet; the right to address complaints, when buying goods via the Internet; the principle of recognition of online contracts; the principle of providing effective protection; the principle of protecting the personal data of the online consumers. The paper suggests a definition of electronic trade by the authors. We conclude that it is necessary to devise an efficient structure for the judicial system, as well as the legislation that would be really applicable, in the implementation of the consumer right protection in electronic trade.

Keywords: Buyers, Business Operators, Electronic Trade, Principles, Transaction

JEL Classifications: L81, D18

1. INTRODUCTION

Today, all across the world, new legislation and rules are being developed, regarding the utterly new type of transactions – The so-called services of the information community era. Such rules determine the legal status of the suppliers of the information community services and govern their obligations to clients (like providing information on the procedures for concluding contracts or cancelling mistaken orders, providing a real opportunity to study the contract clauses beforehand, by means of a technological referral (link) to another document, among other ways, and so on).

Individuals can acquire and realize their rights and obligations in the sphere of electronic trade of their own volition and pursuing their own interests. They are free to state their rights and obligations on the basis of a contract and to specify any of its clauses that do not contradict the legislation (Aldhouse, 1999).

The UNO-member states and international organizations are currently planning to revise the principles regarding electronic transactions, in order to provide guarantees by law to the participants of electronic trade, who make transactions in the Internet, and then suggest the revised principles to the international

community. Special attention is paid to the issues of the consumer right protection in the sphere of electronic trade, and to the problems of international cooperation in the consumer right protection (Wang et al., 2015).

It should be noted that the retail trade in the Internet and via the Internet is growing, even in spite of the financial crisis, there is not a slightest trend to reduction, and this is caused by the growth of the number of sites, selling goods and services (Figure 1).

The global electronic market brings about new and complicated issues in the sphere of consumer right protection. Until recently, the consumer right protection was a domestic matter in most countries: For instance, the US consumers traditionally dealt with the US firms, relied on the legal systems of protection that were familiar to them, and applied for the protection to the courts nearby. American companies that could face numerous obstacles in direct retail sales to the consumers in foreign markets, in most cases, sold their goods directly to the consumers in the USA, in accordance with the American legislation on markets. And the American agencies of consumer right protection, both at the states and the federal levels, focused their effort on American frauds, who aimed at American consumers (Strzębicki, 2015).

The new type of market challenges the national regimes of consumer right protection and appeals for some new structure that would safeguard the consumers effectively and provide a predictable legal environment to business operators (Kirillova and Blinkov, 2015). Without mutual trust between consumers and business operators, the market will not be able to fulfill its potential.

Devising a structure that works, for both the judicial system and in applied legislation, is just a part of the task of safeguarding the consumer right on the global scale. The market competition, the alternative solutions to touchy issues, the partial overlapping of the legislation of different countries, the initiatives of the private sector, and international cooperation – are also the keys to creating a safe global electronic market. Still, becoming global presents a number of complicated challenges before a market. Like the trade with substandard products, for instance, since electronic trade did not only create an opportunity for the growth of the turnover of the “digital” goods, but of the forged goods as well. According to the data of the US Federal Trade Commission, in 2014, the ratio of the various kinds of fraud in

the Internet to the number of all fraud transactions amounted to 42% (which equals to the sum of 55.7 million dollars), in 2012 – 45% (110.3 million dollars), and in 2013 this figure was equal to 55% (166.6 million dollars) (Falk and Hagsten, 2015). Therefore, consumers face a problem of the lack of legal protection and of means of redress. Business operators deal with the problem of costs and unpredictability of the juridical and legislation environment of operation and, therefore, the principles of the consumer right protection specifically for the electronic market must be developed, which would contain utterly new provisions, apart from the traditional principles of consumer right protection, that would safeguard the protection of the rights and interests of the online consumers.

Many foreign researchers examined these problems (like D. G. Bowersocks, B. Gates, D. G. Closs, K. Patel, L. Reymann, F. Trilivan) and suggested their projects in this area.

The international electronic trade is now at the stage of its early development. The correct approach to devising the principles of electronic trade will not only allow to protect the consumer right, but will also guarantee the achievement of the full extent of the consumer benefits that are inherent to the global market.

2. METHOD

In the context of globalization, the international legislation systems became the object of our research, both at the international and regional levels. This process uncovered new options for applying the systematic approach and the methods that service it – of structural and functional analysis. This research employed the following methods:

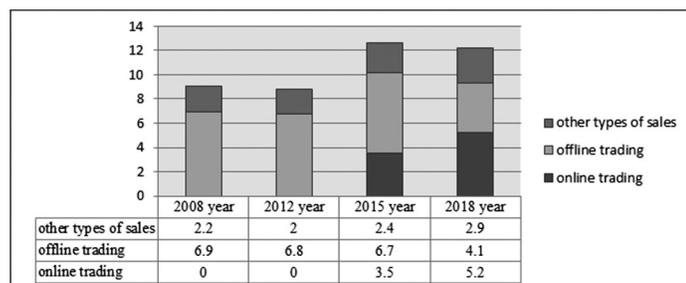
- Of collecting and examining individual facts;
- Of generalization;
- Of scientific abstract conceptualization;
- Of discovering the general rule.

At the stage of collecting and examining individual facts, we used the methods of explaining law, by means of which we clarified the content of the legislation norms and the volition of the legislator that is reflected in the legislation acts; we used the particularizing sociological methods (observation, the written sources analysis, questionnaires and interviews); sociology and psychology methods – tests, scales, as a kind of the particularizing sociological methods, modified for studying the psychology and mentality of citizens, regarding law, the motivations of their law-abiding or deviant behavior.

The theoretical analysis was carried out by means of the methods of abstraction, of the systemic analysis of progressing from the concrete to the abstract.

The prognostic method allowed to make the scientifically justified forecasts about the future development of the sources of law, and to outline the basic principles of the consumer right protection in electronic trade. Also, the logical and semantic analysis was used, in addition to the methods listed above, which allowed for a detailed examination of the sources of law.

Figure 1: The prognosis of the growth rate of the online trade in Russia



3. RESULTS

The issue of the consumer right protection grew internationally important back in the April of 1985, when the United Nations General Assembly, taking into account the legislation of the EEC on the consumer right, adopted the Guiding Principles on the consumer right protection, as a ground for elaborating the policy and the legislation in this sphere by the governments. In the UN's Assembly's Resolution, called "The guiding principles in the consumer right protection," eight basic rights of the consumer are highlighted: Right to Choice, Right to Safety, Right to be Heard, Right to Information, Right to consumer education, Right to satisfy the basic needs, Right to Quality, Right to Redress.

The global market of e-commerce is rapidly developing and, according to the estimations of the Forester Research Company, in 2016 its size will have amounted 1.4 trillion US dollars (Purnhagen and Meulen, 2016). In Europe, the e-commerce is estimated to amount 17 billion euros, and it is expected that the figure will have amounted to 340 billion by the year 2016 (Hunt, 2015). Taking into account the perspectives of the global online trade growth, the world of the consumer right protection is changing accordingly. The consumers can learn about goods and services at any moment and buy them almost everywhere, without having to leave the house. However, during the transactions with the participation of consumers, a multitude of problems arise that have to do with the necessity to protect consumer rights, regardless of the technical means that are used to perform a transaction. A number of problems are very characteristic for both the national and the international private law. Particularly, these are the problems of returning a product, of filing complaints by consumers, and some others. Buyers should be sure to act in a safe environment, so that e-commerce could continue developing.

The international law highlights the following principles of electronic trade:

1. The principle of the freedom of a network contract, since it is prohibited to force anybody to conclude a network contract or the imposition of onerous conditions in the process of concluding such contracts;
2. The principle of the appropriate interference of the state in the sphere of the internet. The state has to utilize only those measures of regulation that are truly necessary for solving the urgent tasks in the sphere of high technologies development, and to introduce limitations and prohibitions, only if it is not possible to use other regulating mechanisms;
3. The principle that the dispositive methods take priority in legal regulation. The imperative norms can be applied only for the protection of the crucial rights and legal interests of the personality, the community and the state. The priority should belong to the dispositive methods of regulation of the interactions in the sphere of electronic trade;
4. The principle of free development of electronic trade and of supporting free competition. The legislative acts that are in elaboration must not create obstacles to free competition, nor any barriers to the international electronic trade.

The researches justly note that apart from the eight basic consumer rights, fixed in the UN's Assembly's Resolution, the principles of the online consumer right protection need to be highlighted (Velentzas et al., 2012).

The legislative regulation of electronic trade, just like that of traditional trade, is based on the principles of the equality of the participants of the interactions, governed by them, of the freedom of contract, of unimpeded entrepreneurial activity, of the free movement of goods, services and finances over the entire territory, as well as on the guarantees of legal protection of the rights of the participants of electronic trade.

The generally acknowledged and crucial legal principle of consumer right protection in electronic trade is that the parties that conclude a transaction cannot doubt its reality and binding character only because it was concluded electronically. Many researchers agree that the principle of recognition of an online contract is of the utmost importance. In Russia, this principle is implemented by means of an additional agreement of the participants of a transaction that is made or executed electronically.

According to the principle of the consumer being informed, the seller is to provide the consumer with the necessary and reliable information on the product (work, service) that meets the requirements to its content and to the ways of its provision, stated by law.

In online trading, the consumer is to be provided with the data about the supplier of information services, besides the official name of the supplier, there has to be given the geographical position of the place of the supplier's registration. Law practitioners also note that there has to be the information about the register of organizations, where suppliers are registered, and the e-mail address (Saraf et al., 2013). The legislation presumes the presence of a license, and where the services, provided by the supplier, belong to a sphere of a regulated professional activity, there has to be the information about the professional organization, in which the supplier has a membership.

The information on the services, provided by the supplier, presumes that electronic messages are a part of information goods or services. It is specified, which amount of information is sufficient for them, to allow the consumer to make an informed choice, including the explicit and exact information on the companies themselves, on the goods they sell and the services they provide, as well as on the conditions of a sale. They also should provide mechanisms to safeguard the payment and clear procedures of confirmation of the transactions.

So, information is one of the objects of civil rights. As a rule, the protection of information is supposed to have place regarding classified information (official secrets) or trade secrets. In turn, in consumer interactions, information is one of the criteria for making a choice for consumers. The consumer can choose the product that possesses all the necessary, for him or her, qualities only on the basis of full and reliable information. Therefore, the consumers' right to information is intertwined with their right to choose. As justly

notes Sarabdeen Jawahitha, the information has to contain what is generally required of the content of information about any product (the price, the rules and conditions of safe and effective usage, the addresses of the manufacturer, and so on), as well as the what is specially required of the information about food, non-food items, work and services (Jawahitha, 2005). Therefore, the principle of providing the consumer with the full information about the product and about the business operator, when selling goods by distant methods, is one of the main principles of the online trade.

The unimpeded commercial activity and the implementation of the principle of interactions within the civil law are especially important in trade via the internet; the main purpose of the civil law is providing a free initiative of the participants of the civil turnover, bound by none and nothing other but law – since everyone has a right to free use of their abilities and property for entrepreneurial or other economic activity, if the latter is not prohibited by law (Rowe, 1998).

The principle of “overlapping” means that consumers should be provided with effective and transparent protection in electronic trade, which is by no means less than that guaranteed in other kinds of trade. Besides, in electronic trade, we have the principle of being able to return the goods, purchased via the internet. The possibility to return a product without any explanations arises namely when buying goods via the internet, or by some other distant method (for example, when ordering by phone or by mail). If a product was bought by a consumer personally, he or she can return the goods only if they have some defect. If a consumer receives a defective product, or not the one he or she had ordered, they have a right to address a complaint to the supplier.

There has been controversy on the necessity to pay attention to the citizens’ personal data protection, the data of the potential online buyers. Therefore, in the first place, sellers have to obtain permission from their buyers, to collect and use their personal data, to inform them on the ways of collecting it, and keep the received data confidential. The disclosure, selling or other illegal transfer of the personal data of the buyers are forbidden. Secondly, it is forbidden to send spam: Business operators do not have the right to send the buyers any commercial information without their agreement to receive it, or with the direct refusal to receive such information.

4. DISCUSSION

The term “electronic trade” was first coined in the middle of the 1990s, in connection with the new possibility of carrying out buying and selling transactions via the Internet. There is a narrow and a broad meaning of the term “electronic trade”. In the narrow meaning, it is advertising and sales of goods by means of telecommunication networks that is understood under electronic trade (Lee and Phang, 2015). In the broad sense of the term, electronic trade means a wider range of functions that are not limited to buying and selling transactions. According to the definition of the UN Commission on the Law in International Trade, by means of electronic trade, a variety of transactions can be performed: Those of buying and selling, of supplying,

as well as factoring, leasing, consulting, engineering, and other transactions in the sphere of industrial and business cooperation (Alyoubi, 2015).

Many researchers justly note that the online consumers must be guaranteed the effective protection that is not less than the protection provided to the offline consumers. They have revealed three major problems of the online consumers that are the most alarming: The anonymity of the sellers, who can be difficult to trace; the impossibility for the consumer to check the products and the labels, and obstacles to settling disputes (Taylor et al., 2004). It can be noted that the need in disclosing the information on business operators in the Internet trade, on the products and services they offer, and on the terms and conditions of the transactions is growing. Experts revealed a need in the mechanisms that would confirm and guarantee that consumers, who are clicking their mouse on a web-site, would not end up bound by terms of a contract that they did not intend to conclude. The consumer right advocates also insist on the right to cancel an order, on the protection to do with the delivery of a product, and on the appropriate distribution of the risk of loss that is dependent on the technology of identification (Purnhagen and Meulen, 2016).

The innovative initiatives of the private sector, on solving the consumers’ problems, could be especially highlighted – including certification programs, the codes of conduct within an industry, and insurance programs. Some lawyers argue whether these efforts of industries are sufficient for solving the problems, however, they realize the value of these business practices that stimulate making decisions on the basis of being informed and on the basis of trust of consumers to electronic trade (Hale and McNeal, 2011).

The most difficult problem is introducing an effective system of applied legislation and jurisdiction. Many experts give reasons in favor of “the country of origin” structure, when companies are subject only to the legislation and the court judgements of their own country, regardless of the location of the buyers (Kaustia and Rantapuska, 2015). The advocates of this approach support it as the best resolution of the problems of business operators to do with the difficulties of application of the current legislation to electronic trade, with the unpredictability of the legislative environment of operation, and with the high costs of meeting the legislation requirements that can prevent the start-up of small and medium-sized companies in a market. Others support the approach of “the country of destination,” when consumers would be protected by the laws, law-administration bodies and the courts of their own countries. The supporters of this approach argue that it will provide effective protection to consumers, and the possibility of regressive redress (Alexandru and Cristina, 2013).

One can draw the conclusion that an alternative form of settling disputes should be defined that would provide a practical solution, achievable in the short-term period, because even if buyers will be able to sue foreign business operators in the courts of their countries, applying the local law, trials on the Internet transactions to do with low sums of money do not make much practical or economic sense. Even if a national court would make

a decision in favor of a consumer, it would be difficult, if not impossible, to achieve its execution abroad (Strzembicki, 2015). The initiatives of the private sector that offer the consumers a tangible assess to just and effective compensation can suggest a practical solution in the short-term period. There is a number of perspective programs, already in implementation, that help to solve the disputes of the online consumers – such programs as an intermediary in the online, the programs of blocking and the overdraft on credit cards.

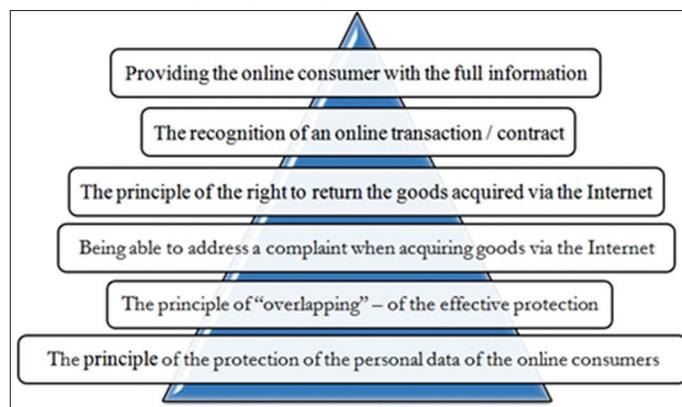
There has to be taken effort aimed at the convergence of the effective legislation in the area of the consumer right protection, at the development of coordination and information exchange among the law-administrating bodies in consumer right protection, and in the work on achieving agreements on recognizing and providing the execution of court judgments on consumer right protection cases at the international level.

A number of new concepts should be introduced into the legislative practice by the corresponding international conventions. The central among them is the concept of “electronic trade.” It appears to be correct to differentiate electronic trade and the trade via the internet, which are related as a part and a whole, and electronic trade is a bigger concept and a kind of entrepreneurial activity, in the process of which the subjects of law conclude, change, execute and end contracts, by means of exchanging electronic messages. The trade via the Internet is an entrepreneurial activity, conducted by means of exchanging electronic messages, but, here, already via the information and telecommunications network, called “the internet”; it does not have to be a special kind of entrepreneurial activity in the case, when the internet infrastructure is used by the commercial bodies exclusively as a means of communication. In this case, it is appropriate to talk only about a special kind of conducting entrepreneurial activity in the territory of the internet. A number of authors understand under electronic trade not only entrepreneurial activity, but also any other economic activity that is closely related to it and is not prohibited, and conducted in electronic form. The interaction instrument of the participants of the privities in question are the electronic means of network communication (Xu and Yuan, 2009). This position appears to be more exact and well-reasoned.

5. CONCLUSION

1. The legislation on electronic trade should be based on the following principles: The equality of the participants of the interactions that the principles regulate, the freedom of contract, unimpeded commercial activity, the free movement of goods, services and finances across the entire territory, the parties that concluded a transaction cannot doubt its reality and binding character solely on the ground that it was concluded electronically, and the guaranteed legal protection of the rights of the participants of electronic trade.
2. The principles of protection of the online consumers (Figure 2):
3. The right of the consumer to information, when conducting electronic trade, has to include the obligatory provision with the information about the supplier of the information services:

Figure 2: The principles of protection of the online consumers



- a. The official name of the supplier;
- b. The geographic address of the place of the supplier's registration;
- c. The e-mail address;
- d. The register of organizations, or another register, where the supplier is registered, and his registration number;
- e. The presence of a license, in case this is demanded by law;
- f. If the services, provided by the supplier, belong to a professional activity under regulation – there should be the information about the professional organization in which the supplier has a membership.

The obligatory information about the services, provided by the supplier, presumes that electronic messages that are a part of the information goods or services have to meet, at least, the following requirements:

- a. Be very clearly stated;
 - b. The individual or organization, from whom they are addressed, has to be clearly identified;
 - c. The promotion suggestions concerning a product – such as discounts, awards, gifts, have to be clearly specified, and the conditions that are to be met in order to get them, have to be formulated clearly and unambiguously;
 - d. Advertising contests and games have to be clearly specified, and the formulations of the conditions that are necessary in order to participate in them have to be clear and unambiguous.
4. Electronic trade means concluding, by means of electronic instruments (though not limited to this), the following contracts: Of buying or selling, of supplying, of paid services, of carriage, of a loan or credit, of financing on the terms of a financial liability concession, of a deposit account, of a bank account, of payments, of storage, of insurance, of order, of commission, an agency agreement, of attorney management of property, of franchising, of general partnership, as well as acquiring and realizing, utilizing electronic means, other rights and obligations in the sphere of entrepreneurial activity.

Using the principles of the consumer right protection of the online consumers, due attention should be paid to providing that they would not create obstacles to international trade and would correspond to the international trade obligations.

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