alman
əməkdaşlığı
DEUTSCHE ZUSAMMENARBEIT

Implemented by:
giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

ALMANİYA BEYNƏLXALQ ƏMƏKDAŞLIQ CƏMİYYƏTİ (GIZ)

AZƏRBAYCAN RESPUBLIKASI ƏDLİYYƏ NAZİRLİYİNİN ƏDLİYYƏ AKADEMİYASI

BAKI DÖVLƏT UNİVERSİTETİ HÜQUQ FAKÜLTƏSİ

"KEÇID DÖVRÜNDƏ OLAN ÖLKƏLƏRİN İNKİŞAFINDA HÜQUQ VƏ İQTİSADİYYAT" MÖVZUSUNDA BEYNƏLXALQ ELMİ KONFRANS

(Bakı, 25-26 Oktyabr 2018)

***

GERMAN INTERNATIONAL COOPERATION (GIZ)

ACADEMY OF JUSTICE AT THE MINISTRY OF JUSTICE OF THE REPUBLIC OF AZERBAIJAN

LAW FACULTY OF BAKU STATE UNIVERSITY

INTERNATIONAL SCIENTIFIC CONFERENCE ON "LAW AND ECONOMICS IN THE DEVELOPMENT OF TRANSITION COUNTRIES"

(Baku, October 25-26, 2018

MÜNDƏRİCAT / CONTENT

Elçin Xələfov
Ədliyyə Akademiyasının prorektoru
Hüquq elmləri üzrə fəlsəfə doktoru, dosent
(Khalafov.elchin@gmail.com)

PUBLİK HÜQUQİ ŞƏXSLƏRİN FƏALİYYƏTİNİN HÜQUQİ TƏNZİMLƏNMƏSİNİN BƏZİ MƏSƏLƏLƏRİ

Annotasiya: *Məqalə publik hüquqi şəxs probleminə həsr edilib, burada xarici ölkələrin publik hüquqi şəxslərinin hüquqi mövqelərinin əsasları təhlil edilir, bu anlayışın məzmunu, onun müxtəlif hüquqi sistemlərdə xüsusiyyətləri müəyyən edilir. Postsovet ölkələrində müasir hüquqi doktrinada publik hüquqi şəxsin konsepsiyası aktiv inkişaf edir və çoxlu sayda tərəfdaşları var.*

Açar sözlər: *publik hüquqi şəxslər, ictimai maraqlar, dövlət.*

Son zamanlar publik hüquqi şəxslərin hüquqi statusu haqqında məsələyə təkcə nəzəriyyəçilərin deyil, rəsmi orqanların da marağı artmaqdadır. Bu ondan irəli gəlir ki, müasir mülki qanunvericiliyin tətbiqi zamanı bir sıra problemli məsələlər meydana çıxıb və onların rəsmi şərh aktları hesabına ardıcıl həll olunması çətinlik yaradır. Müəyyən hakimiyyət səlahiyyətləri verilmiş hüquqi şəxslərin mülki münasibətlərdə birbaşa iştirakı hallarını dövlət orqanları, bələdiyyə adından onların nümayəndəlikləri hallarından ayırmaq və müvafiq tələblər irəli sürülməli öhdəlikdə həqiqi borclunu tapmaq kifayət qədər çətindir.

Hüquqi ədəbiyyatda publik hüquqi şəxsə konstitusiya və ya inzibati hüquq alimləri deyil, sivilitlər nəzər yetirmişdir. Puplik hüquqi şəxslər kateqoriyası hüquqi nəzəriyyədə mövcud olduğuna görə ilk növbədə xarici qanunvericiliyə və xarici elm və praktikada onun məzmununun dərk olunmasına borcludur.

EUROPEAN UNION CONSUMER LAW: EVOLUTION AND CHALLENGES IN CONSUMER DISPUTE RESOLUTION

Olesea Plotnic
Associate Professor, PhabD in law (Academy of Economic Studies of Moldova)
plotnicolesea.aum.@gmail.com
Elena Ciochina
PhD Student(Academy of Economic Studies of Moldova)
ciochina.elena.law@gmail.com

Abstract

The aim of this paper is to make a large analysis of the changes in the field of consumer protection law in the EU in the last 25 years. In the beginning, consumer protection was an exception to the logic of the internal market. The development and implementation of consumer protection policy in the EU have been established in a gradual process, conducted in line with the dynamics of the internal market, and accelerated after the adoption of the Single European Act in 1986. The increasingly diverse range of products and services offered on a wider market and the anti-competitive practices of some producers and traders that have often caused EU consumers damages and put them in the impossibility to protect their interests in an environment where trade transparency was insufficient. Fundamental rights have played a limited role in EU consumer law. There is an increasing number of regulations that directly set contractual rights for consumers, and alternative dispute resolution has gained momentum with the adoption of ADR directive and an ODR regulation. The European Union consumer protection regulatory framework is based on directives including a minimum harmonization clause, which allows the Member States to maintain/adopt stricter consumer protection rules. A brief outline of the history of the shaping of consumer protection policy in the EU is presented to demonstrate how the problem of amending consumer protection law has evolved in the European Union as well as the increasing importance of the regulations in this field.

Over the years, member countries of the European Community introduced in national legislation its own rules to meet the requirements of consumers but with the progress of integration national markets and market consolidation internal unique emerged the necessity of European institutions empowered to ensure a high and uniform level of protection consumers at Community level, notably through legal instruments and action programs to be targeted harmonizing conditions and requirements trade within the European Union and to confer a fair position market participants.

Our research involved a deep and profound analyses of the Directives of EU, Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, EU Consumer Policy strategies, different proposals for regulations within the field of consumer protection in EU, as well as opinions of notorious experts in the field of consumer protection in EU.

Key Words: European Union, consumer law, evolution, challenges, directives, protection

Introduction

EU consumer law is largely a creation of the last 25 years. The first consumer directives (off premises sales and misleading advertising) were adopted in the mid-eighties of the last century, but the first important consumer directive came to light in 1993: Directive 93/13/EC on Unfair Contract Terms in Consumer Contracts. Other important steps in the evolution of

substantive EU consumer law were the adoption of the Distance Sales Directive 97/7/EC in 1997, the Consumer Sales Directive 1999/44/EC in 1999, the Unfair Commercial Practices Directive 2005/29/EC in 2005 and, finally, the Consumer Rights Directive 2011/83/EU, in 2011. In the area of enforcement, the first piece of specific EU legislation came in 1998 with the Injunctions Directive 98/27/EC. More recently in the area of enforcement, the Consumer Cooperation Regulation 2006/2004/EC have been adopted.

The emergence of EU consumer law is linked to the internal market program. The internal market (now governed by Article 26 TFEU) was scheduled to be completed 25 years ago, by 31 December 1992, but it is only after the expiry of the time limit for the completion of the internal market that the European Commission has really tackled consumer protection as an element to improve the functioning of the internal market. The Commission became increasingly concerned with the lack of consumer confidence to shop in the internal market. Consumer confidence, so it was said, was impaired by several legal obstacles, notably by disparities in consumer protection laws.

In its 2007 Communication on EU Consumer Policy Strategy 2007–2013, 'Empowering Consumers, Enhancing Their Welfare, Effectively Protecting Them [128] ', the Commission said that the consumer dimension of the internal market and retail markets, in particular, needed to be further reinforced. The resulting proposals focused on harmonization of substantive provisions. Wilhelmsson has criticized what he called the 'abuse of the confident consumer': the substantive

[128] Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, EU Consumer Policy strategy 2007–2013, Empowering consumers, enhancing their welfare, effectively protecting them, COM (2007) 99 final, summary, p. 1.

minimum harmonization measures seem to be relevant to stimulate confidence only to a limited extent. Consumers may indeed be reluctant to acquire goods and services abroad because of a lack of protection offered in foreign markets, but there is empirical evidence that this has more to do with difficulties linked to the exchange and repair of goods or the settlement of disputes than with substantive differences[129].

The newest policy document of the Commission in the area of consumer protection is a Communication to the European Parliament, the Council, and the Economic and Social Committee and the Committee of the Regions, entitled 'A European Consumer Agenda-Boosting Confidence and Growth' [130]. It contains the same Leitmotiv of improving consumer confidence in cross-border shopping (online). But this principle is now embedded in a broader context: 'Well designed and implemented consumer policies with a European dimension can enable consumers to make informed choices that reward competition, and support the goal of sustainable and resource-efficient growth whilst taking account of the needs of all consumers.' Consumer policy is put at the heart of all EU policies as means to achieve the Europe 2020 goals. In this regard it is useful to mention the 'integration principle' in primary law. According to Article 12 TFEU (for example Article 153(2) EC), consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities. It can be noted that in its 2012 Communication the Commission identifies the following key

[129] T. Wilhelmsson, 'Abuse of the Confident Consumer', 27 Journal of Consumer Policy 3 (2004), p. 317– 337

[130] Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, A European Consumer Agenda – Boosting confidence and growth, COM (2012) 225 final, p. 1.

challenges: improving consumer safety, enhancing knowledge, improving implementation, stepping up enforcement and securing redress and aligning rights and key policies to economic and societal change including adapting consumer law to the digital age.

The consumer confidence argument that is still present in the latest policy documents has even been used to justify the move from minimum harmonization to full harmonization. Recital 7 to Directive 2011/83 on consumer rights considers: Full harmonisation of some key regulatory aspects should considerably increase legal certainty for both consumers and traders. Both consumers and traders should be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the Union. The effect of such harmonisation should be to eliminate the barriers stemming from the fragmentation of the rules and to complete the internal market in this area. Those barriers can only be eliminated by establishing uniform rules at Union level. Furthermore consumers should enjoy a high common level of protection across the Union. The move to full harmonization has also been criticized. However, in the same period, awareness has grown among policymakers those substantive rights for consumers will mean nothing if effective remedies and procedures fail. Progressively, the principle of effectiveness has been given more weight than the principle of procedural autonomy. During this period 'positive integration' has gained momentum in consumer affairs, while the importance of 'negative integration', id est, the breaking down of national consumer laws that form an unjustified (disproportionate) obstacle to free movement, has lost its importance.

As described above, consumer law in the EU has developed according to two tracks: *the recognition of the consumer interest* as the most prominent general interest that can justify

measures which form an obstacle to free movement and *the adoption of consumer protection legislation*, originally only in the form of directives, but more recently also in the form of regulations. In at least two ways, general principles of Union law play a role in consumer law. *First*, fundamental rights (that since Lisbon form a source in their own right) are sometimes invoked by traders to resist application of national laws that aim to protect consumers, for example, the freedom of expression against restrictions of advertising and methods of sales promotions, but generally without success.*Second*, the recent proposal for a directive on consumer ADR (alternative dispute resolution) is based on principles of impartiality, transparency, effectiveness and fairness[131]. With regard to fundamental rights it can also be observed that the Charter of Fundamental Rights has elevated consumer protection to the status of a fundamental right in the chapter on solidarity (in Article 38: a high level of consumer protection is guaranteed by the policies of the Union). This provision combines two existing principles, *the integration principle,* now in Article 12 TFEU (formerly Article 153(2) EC) and the principle of a '*high level of consumer protection'* in Article 169 TFEU (formerly Article 153(3) EC). The status of a fundamental right, however, is new. But it is doubtful that this upgrading will have any effect. In particular one may wonder how an individual consumer could rely on such a vague and general principle.

Innovative Governance. *Innovation governance* is a system of cross-functional decision-making processes that define, align, and manage innovation activities across the entire product lifecycle, ensuring the achievement of strategic growth goals.The contribution of EU consumer law to

[131]Proposal for a Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/ EC (Directive on consumer ADR), COM (2011) 793 final.

innovative governance has long been far from spectacular. In the field of substantive law, consecutive directives have led to the harmonization of national laws without changing the EU's or the Member States' roles. However, in 2004 the CPC Regulation had important consequences for both the enforcement of consumer rights at the national level, and for cross-border enforcement and cooperation. The CPC Regulation will be discussed in the next section on enforcement. More recently, the Commission's proposal for a Common European Sales Law (CESL)[132] contains an optional instrument, a technique that has already been used in company law[133]. CESL is not limited to B2C relations, but this is obviously its focus. CESL creates an 'opt-in' for businesses and consumers (see Articles 3 and 8 'Chapeau') (as opposed to the Vienna Convention or CISG which is an 'opt-out' instrument). It remains to be seen whether the regulation will ever be adopted. The project is far from uncontroversial. Consumer protection is also prominently present in EU private international law instruments, in particular in the Brussels I Regulation (jurisdiction and enforcement in civil matters) and the Rome I Regulation (the law applicable to contractual obligations). In an interesting recent article, Norbert Reich[134] argues that the consumer provisions of Article 6(2) Rome I Regulation 593/200833 should not be regarded as an impediment to trade.

If interpreted by the principle of equivalence and allowing a trader's choice of his home law under harmonized EU provisions it could encourage business to develop soft law

[132] Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law, COM (2011) 635 final.

[133] Council Regulation (EC) No 2157/2001 on the Statute for a European company (SE), [2001] OJ L 294/1.

[134] N. Reich, 'EU Strategies in Finding the Optional Consumer Law Instrument', 8 ERCL 1 (2012), p. 1.

instruments to allow consumers a high level of protection, namely by providing for adequate remedies in case of non-conforming delivery and quality, and by including ADR/ODR mechanisms. Finally one should mention the increasing recourse to regulations instead of directives in areas that touch upon consumer rights. In some instances, the choice for a regulation may be explained by the fact that the legislation makes part of a common policy, such as a transport policy (see the regulations on passenger rights) or that it organizes cooperation between the EU and Member States (for example, the CPCRegulation). But in other areas, such as sales law, (the proposal for CESL), thelabeling of foodstuffs[135]or roaming[136] seem rather to be inspired by the wish to avoid discrepancies in the implementation (which is typical for directives). For consumers, one of the advantages of regulations over directives is that they can rely on the provisions of the regulation whereas in case of non- or defective implementation of provisions of a directive in the national legal order they cannot derive rights directly from these provisions, even if these provisions are clear, unambiguous and would lend themselves perfectly to direct effect. The Court of Justice has, until now, systematically refused to confer horizontal direct effect on

[135] Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2 006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004, [2011] OJ L 304/18.

[136] Regulation(EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (2012) OJ L 172/10, replacing Regulation (EC) No 717/2007, [2007] OJ L 171/32.

directives. The direct imposition of contractual rights on consumers by way of regulations would seem a far reaching interference in national contract law, which many would resist. In view of its optional character, CESL (which indeed interferes very much and directly with national contract law) should not attract a lot of criticism, at least in this respect, but the provisions on consumer rights in the transport regulations would seem to be more problematic in this respect.

The prohibition of discrimination on the basis of nationality in Article 23(2) is not surprising as business to consumer relations are definitely within the scope of application of the Treaty within the meaning of Article 18 TFEU. However, although it can be assumed that this general prohibition of discrimination on the basis of nationality has horizontal direct effect (id est, an individual can rely on it against another individual) there is no express case law to corroborate this point. The prohibition of consent by default in Article 23(1), last subparagraph of the Regulation, has been introduced for all consumer contracts in Directive 2011/83/EU on consumer rights, in Article 22:

Before the consumer is bound by the contract or offer, the trader shall seek the express consent of the consumer to any extra payment in addition to the remuneration agreed upon for the trader's main contractual obligation. If the trader has not obtained the consumer's express consent but has inferred it by using default options which the consumer is required to reject in order to avoid the additional payment, the consumer shall be entitled to reimbursement of this payment.

Initially, consumer law, especially in the field of enforcement, has been one of the fields of competence of the Union where soft law instruments (recommendations) have been used (before binding legislation has been proposed) and where alternative modes of dispute resolution are presently

strongly advocated. These initiatives will be discussed in the next section on enforcement.

Enforcement of consumer law.*Four levels* can be distinguished, on how to modernize enforcement mechanisms and what its key outcomes are, this being probably the field in which the contribution of consumer law is the largest.

The first is the effectiveness of individual in-court procedures where the Court has been rather activist, especially in the area of unfair contract terms. Here the Court has imposed on national judges an obligation to examine of their own motion the unfair character of a non-negotiated term in a business to consumer contract. From its first preliminary ruling on the UCTD (Directive 93/13), Océano Grupo[137], the Court of Justice stressed that the system introduced by the Directive is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge. This leads to the consumer agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of those terms.The Court has also stated that the imbalance which exists between the consumer and business may be corrected only by positive action unconnected with the actual parties to the contract. Thus the national court has to examine, if need be, and of its own motion, the unfair character of a non-negotiated term in a business to consumer contract. Thus, it seems that in no other fields than competition law and consumer law has the Court ruled that national courts have to apply the EU secondary law of their own motion.[138]

---

[137]Joined Cases C-240/98 and C-244/98, Océano Grupo [2000] ECR I-4941; see annotation J. STUYCK, (2001) 38 *CMLRev* 719 et seq

[138]Jules Stuyck, *Consumer concepts in eu secondary law*, presented at an interdisciplinary workshop on "Consumer images" organised on February

The second is that of *Alternative Dispute Resolution*(ADR) which is now systematically promoted.ADR includes procedures such as mediation, conciliation or arbitration, whether offered by public ombudsmen or complaints boards, or provided by private entities. When they are carried out online, they are called *Online Dispute Resolution* (ODR).

A number of sector specific EU directives encourage or require Member States to establish adequate and effective ADR (for example, telecom, energy, payment services)[139]. At this stage, one should also mention the ECC Net (European Consumer Centers Network). In 2001, the EU launched the Extra-judicial Network (EEJ-Net), consisting of national '*clearing houses*' that assisted consumers to settle cross-border disputes. In 2005, the network was merged with the European Consumer Centers ('Euroguichets') and became the ECC-Net. It consists of a single European Consumer Centre in every Member State, funded by the European Commission. The centers are public or private not-for-profit. The centers advise consumers and can assist them in resolving cross-border disputes. Their role is seen as very valuable, but the lack of ADR schemes in Member States has rendered effective dispute resolution difficult.[140]For that, the Commission has made two

12th and 13th by the Law Faculty of the Ruhr Universität Bochum (professors Fabian Klinck and Karl Riesenhuber),p.11

[139] C. Hodges and I. Benöhr, *Consumer ADR in Europe* (Hart Publishing, Oxford 2012), p. 10–11.

[140]Ibidem 14-15

proposals in this area: a proposal [141] for a directive on alternative dispute resolution (ADR) for consumer disputes[142]

[141]The Commission explains: this proposal, together with the proposal for a regulation on consumer ODR, has to be seen in the context of efforts to improve the functioning of the retail internal market, and more particularly to enhance redress for consumers.In its Explanatory Memorandum to the first proposal, A substantial proportion of European consumers encounter problems when buying goods and services in the internal market. In 2010, this was the case for approximately 20% of European consumers. Despite a generally high level of consumer protection guaranteed by legislation, problems encountered by consumers are often left unresolved. In addition to having recourse to traditional judicial means of redress, consumers and businesses in some Member States have the option to refer their complaints to alternative dispute resolution entities ('ADR entities'). These entities aim at resolving, out-of-court, disputes arising between parties, through the intervention of an entity (for example, an arbitrator, conciliator, mediator, ombudsman, complaints board). The Commission recalls that it has adopted two Recommendations on consumer ADR and established two networks dealing with ADR (ECC-NET4 and FIN-NET5). A number of EU sector-specific legislation contains a provision on ADR, and the Mediation Directive promotes the amicable settlement of disputes, including consumer disputes. However, the analysis of the current situation identified the following main shortcomings which hinder the effectiveness of ADR: gaps in the coverage, the lack of consumer and business awareness as well as the uneven quality of ADR procedures. Under the proposal, Member States shall ensure that all disputes between a consumer and a trader arising from the sale of goods or the provision of services can be submitted to an ADR entity, including through online means. In order to fulfill their obligation, Member States may use existing ADR entities and adjust their scope of application, if needed; or they may create new ADR entities or a residual cross-sectoral entity. According to the Explanatory Memorandum to its proposal for an ODR Regulation, an ODR platform will be established. This ODR platform takes the form of an interactive website which offers a single point of entry to consumers and traders who seek to resolve an out-of-court dispute which has arisen from a cross-border e-commerce transaction. The platform can be accessed in all official languages of the EU and its use is free of charge. ADR schemes established in the Member States which have been notified to the Commission in accordance with the 'Directive on consumer ADR' will be registered electronically with the ODR platform.

and a proposal for a regulation on online dispute resolution (ODR) for consumer disputes[143] which had a success with the adoption of *ADR Directive 2013/11/EU* and *ODR Regulation 524/13/EU*[144].

The *ADR Directive 2013/11/EU* aims to ensure that consumers have access to ADR for resolving their contractual disputes with traders established in the European Union. Disputes covered by the Directive (only disputes regarding health and public providers of further or higher education are excluded) extend to online and offline transactions, irrespective of whether the trader is established in the consumer's Member State or in another Member State. Each Member State is required to list all the ADR entities that meet the mandatory quality requirements set out in the Directive.The ADR Directive was transposed in Ireland by means of the European Union (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015, S.I. No. 343/2015 and the European Union (Alternative Dispute Resolution for Consumer Disputes) (No. 2) Regulations 2015, S.I. No. 368/2015.

The Competition and Consumer Protection Commission (CCPC) is designated as the competent authority in Ireland for the purposes of the ADR Directive and the enforcement of the transposing Regulations. The CCPC is responsible for the list of notified ADR entities which fulfil the relevant conditions. The CCPC is also assigned other functions, such as encouraging consumer and professional organisations to raise

[142] COM (2011) 793 final

[143] Proposal for a Regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes (Regulation on consumer ODR), COM (2011) 794 final.

[144] REGULATION (EU) No 524/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR)

awareness of ADR and their procedures, and promote the use of ADR, as well as reporting to the European Commission. Under the Regulations, ECC Ireland is also tasked with the provision of information and assistance to consumers to access ADR entities operating in another Member State which are competent to deal with a consumer's cross-border dispute.

The *ODR Regulation 524/13/EU* provides for an ODR platform. This is a web-based platform designed to help consumers to submit to an ADR entity their disputes in relation to online transactions with traders established within the EU. The ODR platform allows the conduct of the ADR procedure online through the ADR entities listed by each Member State. It can be used in all 23 official languages of the European Union and is free of charge.

Under the European Union (Online Dispute Resolution for Consumer Disputes) Regulations 2015, responsibility is conferred on ECC Ireland to host the Irish ODR contact point and carry out the functions set out in article 7 of the ODR Regulation. These functions include providing information on the functioning of the ODR platform and facilitating communication between the consumer, trader, and competent ADR entity, if requested.

The third is that of *administrative cooperation* which led to an obligation on Member States where this type of enforcement was unknown in consumer matters to introduce public enforcement. Indeed, traditionally two different models of enforcement of consumer law existed in the EU Member States: private enforcement, such as in Germany, Austria, the Netherlands and Belgium, and public enforcement, such as in the UK, France and the Scandinavian countries. The CPC Regulation, by imposing on Member States the obligation to cooperate in public enforcement has prompted the creation of a consumer supervisory authority in the Netherlands (where since April 1, 2013 it has been integrated into one authority,

together with the national competition authority, NMa (Netherlands Competition Authority) and the NRA for electronic communications OPTA: the 'Autoriteit Consument en Markt'): and in Germany (although the German authority's powers are limited to cross border disputes).

The fourth is that of (new forms of) *individual and collective remedies for consumers*. At the level of individual remedies it should first be noted that the consumer law directives (unfair contract terms, unfair commercial practices and so on) only contain an obligation for the Member States to provide for effective redress. As an example, see Articles 6 and 7 of the UCTD (quoted hereafter). While respecting the principle of procedural autonomy, the EU legislature and the Court of Justice have stressed the necessity of effective sanctions and remedies (*principle of effectiveness*) and developed certain principles underlying remedies and procedures: the obligation on national courts to examine of their own motion the unfair character of a contract term in a consumer contract, and the power of these courts to rule to a certain extent *erga omnes*[145] in case of actions for injunctions against unfair contract terms.

Indeed the Court recognized that the judicial declaration of invalidity of an unfair term in consumer contracts upon a group action for injunctive relief brought on behalf of consumers can have effects with regard to consumers who were not party to the injunction proceedings. In addition, where the unfair nature of a term in the general business conditions has been acknowledged in such proceedings, national courts are required, of their own motion, and also with regard to the future, to draw all the consequences which are provided by

[145] *Erga omnes* is a Latin phrase which means "towards all" or "towards everyone". In legal terminology, *erga omnes* rights or obligations are owed toward all. For instance, a property right is an *erga omnes* entitlement, and therefore enforceable against anybody infringing that right.

national law in order to ensure that consumers who have concluded a contract with the seller or supplier to which those general business conditions apply will not be bound by that term. How far the duty of national courts to ensure the (relative) *erga omnes* effect of such judgments (declaring a contract term unfair in a collective injunction procedure) reaches is not yet clear and this is dependent on national law ('to draw all the consequences which are provided by national law'). Nevertheless, the Court has made an important additional step in securing the effective application of EU consumer law by the national courts.

Consumer protection policy in Republic of Moldova, Germany and Azerbaijan.

Republic of Moldova. Compared to the other EU member states, Republic of Moldova does not have a very deepened history when it comes to the consumer protection legislation, this being a recent fair state policy which occurred in response to the situation in which the consumers where facing an abundance of goods and services in a growing market, that besides the obvious advantages hides a lot of difficulties. Previously, during the last decades of existence of the Soviet Socialist Republic of Moldova, such a notion as the protection of consumers' interests, as a physical person, basically did not exist. At that time it was intended to protect all consumers as a whole, as citizens. Given the problem the main socialist economy was the saturation of the market, product quality and consumer interests remained on the second plan. Thus, although existing even until 1991, the interest on consumer protection in Moldova is viewed with a great deal of seriousness only starting with the most recent years, being fed by the desire to integrate into European Union. As a result, in Moldovan law for the first time is given the concept of "consumer" in art.1 paragraph (1) of the Consumer Protection Law No.1453-XII of 25.05.1993. Operating a few changes and

taking the example of the French law systems the legislature abrogates the 1993 Act and adopts in the new Consumer Protection Law No.105-XV of 13.03.2003. The new law has a net superiority in consumer relations, taking into account the content and the transposition of the Community Directives, dynamizing thus the activity in the field of consumer protection and increasing consumer confidence in the system of protection offered by the state. Harmonization of Article 5 of the Law of March 13, 2003 (on Fundamental Rights) to "Principles of Directors on consumer protection "of the United Nations organization is, the first step towards adjusting national legislation to international law. Republic of Moldova, thanks to visa liberalization, has made a great deal of commitment to harmonizing legislation, especially in the field of consumer protection law, with a view to unifying consumerist legislation in a Consumer Code, which the country is currently lacking.

Germany. The evolution of German consumer law and the evolution of the German economy took place simultaneously. Although the birth of consumer law in Germany has generally been linked with the enactment of the *Abzahlungsgesetz* (Hire Purchase Act, hereafter AbzG) in 1894, it was intended as a measure to protect domestic workers only and wich is older than the BGB itself. It was not until the creation of 'the Consumer Society' after the Second World War that consumer law developed into a coherent body of law. The heyday of consumer law came in the 1970s and saw the arrival of broadly considered legal texts, the Gesetz zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen (German Act on General Terms and Conditions of Trade, henceforth AGBG), the Haustürwiderrufsgesetz (German Doorstep Selling Act, henceforth HTWG), the Arzneimittelgesetz. The lack of an Consumer Code in Germany is not seen as a big failure but the legislator, as the civil code contains all the consumer

protections regulations within the Civil Code - the BGB (The Bürgerliches Gesetzbuch).

There is no doubt that among the member states the consumer protection is adapted and adjusted to the local necessities and specifics of each country. The EC Directives on Consumers Protections have their limited influence. Although it cannot be underestimated, the influence of them on German consumer protection legislation is also limited. All legal acts in consumer protection in Germany appear as pure German acts, thus there is no obligation for the national legislator to quote the directives transposed intro the transposition acts.

Consumer protection policy in Germany is considered a part of the integrated policy of the general economic decisions policy. In fact, the federal government defines in the annual economic report the political orientations and implementations to be made in this area.The report on safeguarding the German market (*Bericht zur Zukunftssicherung des Standortes Deutschland*[146]) envisages suppression of the regulations that are contrary to market laws. After unification, the actions were focused on setting up consumer organizations and then general information on rights and opportunities that the market economy offers to consumers. In Germany, there are several activities to ensure consumption monitoring through the Wiesbaden Statistical Office and the Federal Bureau German Cartels (Bundeskartellamt), which is responsible in matters of competition. Since January 1998 there has been a new government body for telecommunication and postal issues; on the supply of food there are some supervisory bodies (*Lebensmittelueberwachungsaemter* [147]),and especially for organizations to monitor unfair competition consumers.

---

[146] https://docplayer.org/13302953-Bericht-der-bundesregierung-zur-zukunftssicherung-des-standortes-deutschland.html

[147] Translates as "food inspection"

International cooperation is highly developed - for consumption goods is appropriate to mention exchanges of information on warning against harmful products, and for food products are laid the foundations for cooperation under the Codex Alimentarius (*Codex Alimentarius*). This cooperation also exists within the OECD (*Organization for Economic Cooperation and Development*), several organizations increasing contacts at European and world level, participating through international development working groups in updating projects with PECO (*Central and Western European countries*) and third world countries.The Federal Ministry of Economics has made a "Europhone" to allows consumers free of charge to inform themselves about the domestic market and to Asks for information about community regulations on personal issues.

Certain consumer organizations estimate that the EU remains for most of the Germans an unfamiliar, rather negative, factor. For this reason, the Commission's initiatives in favor of consumers are not known, and the consumer does not therefore perceive the effects of the Community regulating measures taken in its favor. This means that, according to art. no. 153 of the Treaty of Rome, Germany does not consider it necessary for any specific action that the European Commission could / should have propose to support and, if necessary, to complement state policy of the Member States in favor of consumers, opposing to the taking over by the commission of actions in areas not mentioned in art.153 of the treaty.

Azerbaijan. Situated at the crossroads of East and West-the South Caucasus region, bordered with Turkey, the Republic of Azerbaijan regained its independences in 1991, just as Republic of Moldova. As the other former socialist countries, Azerbaijan is facing a number of problems in transformation of their national economy and legal organization. The admission to the Council of Europe in January 2001 markets an important

benchmark in the transition to the democracy and committed Azerbaijan and to the implementation of a wide range of reforms. In 1995 passed The Law on Protection of Consumer Rights which was a big step to protection the consumer's interests.

The responsibility for enforcing all competition and consumer protection policy/ laws was placed with the Department of Antimonopoly Policy (DAP) within the Ministry of Economic Development (MED). The DAP is at its initial stage of development and its goal is to become a modern regulatory body following modern standards for competition and related policies. The main functions of the DAP include the implementation of measures to promote competition; the prevention of both unfair competition and abuse by firms with dominant market positions; and protection of consumer right.

The only NGO in Azerbaijan working in the field of consumer protection is the Independent Consumers' Union (ICU), established on January 31, 1997. It works to defend consumers' rights; to increase their awareness; identify and promote the proper interests of consumers and the means of their protection; and provide a medium for consumer opinion and representation. The purpose is to create conditions, which promote the interests of consumers by improving the standards of goods and services of all kinds, and to ensure that those who make decisions affecting consumers have a balanced and authoritative view of their users' interests before them. Protection of consumer rights is one of the important problems of the transition countries, including Azerbaijan, but one that the Government has indeed attempted to solve. Specific legislation in this field, such as on food standards and safety, has to be improved. Additionally, some changes in the Administrative Code of Azerbaijan offer other opportunities for the protection of consumer rights. The DAP pays special attention to consumer protection, among others, in it is daily

activities. The DAP has different programs and plans for the advocacy of the protection of consumer rights, at both the horizontal and vertical levels. The DAP tries to improve and change policy-making and the general situation in regard to consumer protection. It attempts to promote competition and consumer rights issues in the society, as much as it can, with its limited resources. In only the last six months, the Department has created its website, established international relations, activated contacts with non-government organisations (NGOs) and media, and organized different seminars and conferences (international and domestic). There are projects for staff and structural development, as well as the promotion of the competition and consumer rights issues.[14]

As seen, two different countries with similar past have known a very different way of evolution in the consumer protection field, both countries having special laws that regulate this field, opposed to Germany that does not have a special law as all the regulations concerning consumer protection are within the civil code. A similar situation can be traced and observed in Republic of Moldova, as lately the legislator is trying to combine all the laws concerning consumer protection into an amended modernized new civil code, without tacking in consideration of writing a Code of Consumption.

We consider the path to and Europeanization and Globalization of consumer protection would be the implementation of a Code of Consumption,following the example of France, into all the EU member states that do not have one, but also within all the other neighboring countries that have signed treaties with the EU.

Conclusion.

Looking at the broader picture of the development of EU consumer law over the last 20 years, one is first struck by the

enormous increase of the importance of this field of the law. In the early 70's this branch of the law was something for consumer advocates and weird scholars. The interest of the business community in consumer law was very low. Two divergent phenomena have changed the picture: the emergence of disparate consumer laws in the Member States as a result of the increasing complexity of the consumer society, and the action of the EU (then the EC) to avoid obstacles to the internal market as a result of these disparities. The Court for its part has put in a lot of effort to set aside obstacles for the internal market as a result of national measures that were often presented as necessary to protect consumers, but which in reality were not. Later when EU legislation was adopted in the field of, for example, unfair contract terms, distant selling and consumer sales, the Court showed itself to be one of the best advocates of the consumer cause, stressing the fact that the consumer is the weaker party in a contractual relationship with a business. But at the same time, all EU consumer legislative acts have been adopted in the framework of the internal market project. EU consumer legislation therefore contains a tension between two sometimes conflicting goals: fostering the confidence of business in the internal market by removing existing obstacles and fostering consumer confidence and protection by guaranteeing a high level of consumer protection. This is a fine balance to be struck, but it couldn't be otherwise. But all in all, consumer protection has become more genuinely a matter for the EU and especially a matter for the Court of Justice, which is at the forefront in recognizing the asymmetry in bargaining power and information between businesses and consumers.

REFERENCES

1. Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, EU Consumer Policy strategy 2007–2013, Empowering consumers, enhancing their welfare, effectively protecting them, COM (2007) 99 final, summary, p. 1.https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007DC0099

2. T. WILHELMSSON, *'Abuse of the Confident Consumer'*, 27 Journal of Consumer Policy 3 (2004), p. 317–337 (eBook)

3. Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, A European Consumer Agenda – Boosting confidence and growth, COM (2012) 225 final, p. 1.http://ec.europa.eu/transparency/regdoc/rep/1/2012/EN/1-2012-225-EN-F1-1.Pdf

4. Proposal for a Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/ EC (Directive on consumer ADR), COM (2011) 793 final.

5. Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law, COM (2011) 635 final.http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462472/IPOL-JURI_NT(2012)462472_EN.pdf

6. Council Regulation (EC) No 2157/2001 on the Statute for a European company (SE), [2001] OJ L 294/1.https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001R2157

7. HANS-W. MICKLITZ / NORBERT REICH, *The Commission Proposal for a "Regulation on a Common European Sales Law (CESL)" – Too Broad or Not Broad Enough*?, EUI Working Paper LAW 2012/04 ERPL-03 http://cadmus.eui.eu/bitstream/handle/1814/20485/LAW_2012_04_ERPL_03.pdf?sequence=3%26isAllowed=y

8. J.DEVENNEY, M.B.KENNY, *European Private Law – Harmonisation,Consolidation,Codification or Chaos?*,CAMBRIDGE UNIVERSITY PRESS,2013 (Online publication)

9. Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2 006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004, [2011] OJ L 304/18.https://www.fsai.ie/uploadedFiles/Reg1169_2011.pdf

10. Regulation(EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (2012) OJ L 172/10, replacing Regulation (EC) No 717/2007, [2007] OJ L 171/32.https://www.comreg.ie/media/2016/02/2015-2017-Roaming-Regs-Consolidated.pdf

11. C. HODGES and I. BENÖHR, *Consumer ADR in Europe* (Hart Publishing, Oxford 2012), p. 10–11.http://www.fljs.org/files/publications/ConsumerADR-PolicyBrief.pdf

12. J. STUYCK, *Consumer concepts in eu secondary law*, presented at an interdisciplinary workshop on "Consumer

images“ organised on February 12th and 13th by the Law Faculty of the Ruhr Universität Bochum (professors Fabian Klinck and Karl Riesenhuber)

13. Proposal for a Regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes (Regulation on consumer ODR), COM (2011) 794 final.
http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2011)0794_/com_com(2011)0794_en.pdf

14. http://competitionregimes.com/pdf/Book/Asia_Pacific/3-Azerbaijan.pdf

15. https://docplayer.org/13302953-Bericht-der-bundesregierung-zur-zukunftssicherung-des-standortes-deutschland.html

Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH
Almaniya Beynəlxalq Əməkdaşlıq Cəmiyyəti (GİZ)

Şirkətin oturum yeri
Bonn və Eşborn (Eschborn)
Cənubi Qafqazda Avropa Standartlarına Hüquqi Yaxınlaşma Regional Proqramı (LatESt)

Gənclər meydanı 1
Tel. +994 (12) 497 15 88
Fax. +994 (12) 497 49 63
Email: giz-aserbaidschan@giz.de
https://www.giz.de/en/worldwide/367.html

Çap edilib
Fevral 2019

Almaniya Beynəlxalq Əməkdaşlıq Cəmiyyətinin (GİZ) "Cənubi Qafqazda Avropa Standartlarına Hüquqi Yaxınlaşma"(LAtESt) regional proqramı Almaniya Federal İqtisadi Əməkdaşlıq və İnkişaf Nazirliyinin (BMZ) maliyyə dəstəyi ilə həyata keçirilir. Bu kitab Almaniya Beynəlxalq Əməkdaşlıq Cəmiyyətinin (GİZ) maliyyə dəstəyi ilə çap edilmişdir.

Açıqlama: Kitabın məzmununa və orada ifadə olunmuş fikirlərə görə BMZ və GİZ məsuliyyət daşımır.

Qeyd: Bu kitabda 25-26 oktyabr 2018-ci ildə Bakı şəhərində Almaniya Beynəlxalq Əməkdaşlıq Cəmiyyətinin (GİZ) "Cənubi Qafqazda Avropa Standartlarına Hüquqi Yaxınlaşma"(LAtESt) regional proqramı", Azərbaycan Respublikası Ədliyyə Akademiyası və Bakı Dövlət Univeristetinin Hüquq fakültəsi tərəfindən birgə keçirilən beynəlxaq konfrans materiallarından istifadə edilmişdir.

"Universal Nəşriyyat və Çap Evi" MMC.
Ünvan: Sumqayıt şəhəri, 8-ci mk, 10/9
Tel: (+99470) 763 78 78

Ofset üsulu ilə çap edilmişdir.
Formatı 84x108 1/16.
Şərti çap vərəqi: 11,75. Sayı 100.