

THE CONCEPT OF CONSUMER PROTECTION IN THE CONTEXT OF ONLINE TRADING

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Abstract: In the article, the author examines the main problems of protecting rights in the field of online trade. Moreover, the rapid development of digital commerce and its impact on buyers is examined, identifying gaps in legislation, difficulties in refunding funds and threats of leaking personal information. Based on the study of domestic and foreign experience, as well as regulatory acts and scientific works, proposals are put forward to improve legal regulation. The key task is to adapt the legislation to new conditions in order to make online commerce more reliable and transparent.

Keywords: consumer, consumer protection, online trade, seller, purchase and sale agreement, goods, online store.

The modern phase of development of commercial relations is associated with the rapid expansion of online trade as one of the main forms of the retail sale, which predetermines the modern evolution of traditional mechanisms of consumer rights. On the one hand, virtualization of trading activities opens unprecedented opportunities to implement consumer choice and optimize the process of acquiring goods and, on the other hand, highlights the issue of improving the mechanisms of legal regulation of distance transactions.

Particular scientific and practical value is gained by studying the issues of providing the guarantee of protecting the rights of consumer relations in conditions of the digitalization of economic processes, that imposes the necessity of the development of specialized legal instruments, adapted to the specifics of industry and commerce in electronic media. A. V. Yurasov defines e-commerce itself as “a sphere of the economy that includes all financial and trade transactions carried out using computer networks, and business processes associated with the implementation of such transactions.”¹ The modern paradigm of the legal regulation should take into consideration the hybrid nature of the internet trade which combines both the traditional features of the relations based on the contract, and the peculiarities that depend on the virtual environment the commercial operation may be implemented.

¹ Yurasov A.V. Fundamentals of electronic commerce. Textbook. M.: Tempus; 2016. 500 p. ISBN 978-5-9912-0333-3.

The given problematic gains some sort of a special topicality against the backdrop of the necessity to find a balance between the freedom of entrepreneurial activity in the cyberspace, on the one hand, and an efficient protection of the rights of the most unprotected part of the contractual relations, that is, consumers, on the other hand, which is a significant issue of modern civil law and has to be solved in a complex, interdisciplinary way.

The methodological basis of the conduct of the given work lies in the complex analysis of scientific literature, normative-legal acts and analytical materials dedicated to the issue of electronic commerce. During the process of investigation works of leading specialists in the given field were subjected to thorough analysis, including scientific articles by L.E. Bokhan, Yu.M. Gorbunov, V.I. Orel and other scientists, whose research raises topical issues of legislation and practical activities in the digital environment.

As L.E. Bokhan notes in his research, modern marketplaces demonstrate a high degree of legal protection for consumers, expressed in well-established mechanisms for returning goods and resolving disputes.² At the same time, the author notes the fact that there are critical gaps in the legal regulation of the activities of the subjects of small entrepreneurship in the field of e-commerce.

M.A. Gorbunov in his works focuses on the transformative impact of digital technologies on the very nature of legal regulation, which, in his opinion, requires a rethinking of traditional legal paradigms. Of particular importance is the study by V.I. Orel, V.G. Puzyrev and I.V. Vasilyeva, who substantiate the need to develop specialized educational platforms aimed at raising the level of legal culture and digital competence of e-commerce participants.³

The key regulatory legal act governing consumer rights is considered to be the Law "On Protection of Consumer Rights"⁴, along with this, the rules governing aspects of online trading exist in the Civil Code of the Republic of Uzbekistan, in the Laws "On Advertising", "On Electronic Commerce"⁵ "On the Protection of Personal Data". Moreover, the processes of digitalization of economic processes are recognized as a strategic priority of the socio-economic development of the Republic of Uzbekistan. In this context, the regulatory and legal consolidation of the foundations of digital transformation is of particular importance, which is reflected in the Decree of the President of the Republic of Uzbekistan dated 05.10.2020 No. UP-6079 "On approval

² Bokhan L.E. Problems of consumer protection in online trade // Agrarian and land law. 2023. No. 12 (228). Pp. 157-158.

³ Orel V.I., Puzyrev V.G., Vasilyeva I.V. Features of consumer protection in the remote sale of goods // Medicine and organization of health care. 2023. Vol. 8. No. 4. Pp. 103-110.

⁴ Law of the Republic of Uzbekistan "On Protection of Consumer Rights" dated 04/26/1996 No. 221-I. <https://lex.uz/ru/docs/146433>.

⁵ Law of the Republic of Uzbekistan "On Electronic Commerce" dated 09/29/2022 No. 3PY-792, <https://lex.uz/ru/docs/62134284>.

of the Strategy" Digital Uzbekistan - 2030 "⁶. This strategic document defines as a key task the formation of a modern legal framework that ensures the introduction of digital technologies and regulation of economic activity in the digital environment. We will also cite the Decree of the President of the Republic of Uzbekistan "On measures to strengthen the protection of the rights of consumers of digital products (services) and the fight against offenses committed through digital technologies."⁷

However, despite the comprehensiveness of the legislations and the laws that govern this sector, it is common that the existing laws lack the capacity to meet the complexities that are encountered in the field.

The recent example of improving the ways of protecting the rights of consumers abroad is the association Ecommerce Europe which works in the E.U. This association works to increase consumer confidence and among other things, to be avoided when shopping as a buyer on online marketplaces. It is also worth to give an example of a domestic market place Uzum market, where, also, the conditions of delivery of goods and its retraction are quite clearly spelt out, this online shop is directed at protecting the interests of the consumer.

Moreover, there are large Russian marketplaces such as Ozon, Wildberries, YandexMarket, where the issues of product returns are more regulated and built on customer loyalty, while the issues of delivery or product returns in small online stores are more difficult.⁸

One of the obvious issues is that the Law of the Protection of Consumer Rights does not provide a clear set of rules to enter into an online contract and peculiarities in the delivery, returning, or guarantees. The current legislation reflects a significant lag behind the rapidly evolving market realities. There is the lack of a legal definition of the notion of the internet-store, the specifics of forming an electronic contract are not regulated, the standard forms of contracts related to the distant commerce are not developed. Particular complication is provided by the regulation of the cross-border deals in the digital environment.

Moreover, it is not clear which online platforms should be subject to regulation within the framework of the law, which obviously includes social networks, messengers and aggregator services.

Secondly, online-trade, one of the most important issues remains the impossibility to verify the authenticity of the seller. Unlike a traditional retail market,

⁶ Decree of the President of the Republic of Uzbekistan On Approval of the Strategy "Digital Uzbekistan-2030" and Measures for its Effective Implementation dated 10/05/2020 No. УП-6079, <https://lex.uz/docs/5031048>.

⁷ Decree of the President of the Republic of Uzbekistan "On measures to strengthen the protection of the rights of consumers of digital products (services) and the fight against offenses committed through digital technologies" dated November 30, 2023, No. RP-381, <https://lex.uz/ru/docs/6681115>.

⁸ Bokhan L.E. Problems of consumer protection in online trade // Agrarian and land law. 2023. No. 12 (228). Pp. 157-158.

where the legal status and grounds of the seller are verified and confirmed by a document, in the Internet the buyer is often faced with anonymous interlocutors or sellers who operate under the model of drop-shipping, when, as sellers, naturally legal entities are regarded as buyers, who do not possess the status of an individual entrepreneur (a typical example is the activities of the companies of Oriflame and Avon), which significantly complicates the submission of claims and the defense of their rights in court because, according to article 72 of the Civil Procedural Code of Republic of Uzbekistan: “each party is obliged to prove the circumstances to which it refers as the basis for its claims and objections.”⁹

It is also concerning how the weak regulation of a set of issues that involve the protection of the personal information of consumers is also a cause of concern. The questions like volume of acceptable usage of such data, responsibility to leak such information under the fault of the internet-platforms, and compensation order in the event of fraudulent operations remain unanswered in the circumstances when one has to provide the personal data (i.e., name and address and payment information) to perform the very purchase.

The lack of efficient mechanisms of the out-of-court settlement of disputes also complicates the protection of the rights of buyers. Unlike in Europe (as with the example of ODR systems in the European market), in Uzbekistan a special online platform that would provide the possibility to resolve conflicts between online consumers and sellers in a timely manner has not yet been developed.

Besides, there are serious gaps in the regulation of international cross-border internet commerce. When ordering goods on the foreign marketplaces, such as AliExpress or Amazon, the consumer has to face uncertainty in whether or not the norms of Russian legislation can be applied, as well as with difficulties to return the goods and recover the money in case flaws are discovered.

It is also important to present the example of modern practice of the electronic commerce, where a common scenario is the like when the consumer following the description that has been provided by the seller of the product in the catalogue of the merchandising marketplace has encountered the fact that the product received essentially does not correspond to the promised specifications. The issue becomes especially legal in the context of the study of the conditions of the Civil Code of the Republic of Uzbekistan.

According to Article 429 of the Civil Code of the Republic of Uzbekistan, the parties may conclude a contract for the sale and purchase of goods based on a sample (description, catalog, etc.). The execution of the contract for the sale of goods based on a sample is carried out in accordance with the rules of Article 431 of this Code. Before

⁹ Civil Procedure Code of the Republic of Uzbekistan dated April 1, 2018 No ZRU-460 <https://lex.uz/docs/3517334>.

the transfer of the goods, the buyer has the right to refuse to execute the retail sale and purchase contract, subject to reimbursement to the seller of the necessary expenses incurred in connection with the actions to fulfill the contract.¹⁰

Checked lawful analysis points out the significant rightful collision that despite the fact that the consumer was misled with the help of providing inaccurate information about this product there is certain statutory lawful regulation that puts loads of the responsibility on private individual to reimburse the seller with actually incurred costs in the event of withdrawal of services as contracts. The specified legislative construction reveals an evident imbalance in dividing legal risks among the parties of the civil turnover, placing a good-faith buyer in an obviously disadvantageous situation.

The issue of low degree of legal awareness among customers remains as sharp. Many citizens do not have the information that, according to Part 1 of Article 433 of the Civil Code, the buyer has the right, within ten days from the moment of transfer of a non-food product to him, unless a longer period is announced by the seller, to exchange the purchased product of proper quality at the place of purchase or other places announced by the seller for a similar product of a different size, shape, dimensions, style, color, configuration, etc., having made the necessary recalculation with the seller in the event of a difference in price.¹¹

In such a way, particular attention should be paid to the fact of archaic nature of the existing legislation, which, since it is based primarily on regulating the traditional forms of trade, does not reflect the specifics of digital commerce. This is what predetermines the actual necessity of the complex normative-legal base modernization considering the modern technological realities and the best international experience in this field.

Since online trade is one of the types of retail trade, these legal relations are divided into two categories, namely: legal relations between consumers and sellers; state regulation of entrepreneurial activity. As M.A. Gorbunov rightly notes, the development of individual institutions of the information society affects the essence of the state.¹² According to Article 425 of the Civil Code of the Republic of Uzbekistan, a retail sale and purchase agreement implies an obligation of the seller - a business entity - to transfer to the buyer a product intended for personal, family or other use not related to commercial activity. It is important to emphasize the public nature of this type of contractual relationship, which is directly enshrined in legislation. In accordance with Article 426 of the Civil Code, an offer of goods containing all the

¹⁰ Civil Code of the Republic of Uzbekistan (part two) dated March 1, 1997 No. 256-I. <https://lex.uz/docs/180550>.

¹¹ Civil Code of the Republic of Uzbekistan (part two) dated March 1, 1997 No. 256-I. <https://lex.uz/docs/180550>.

¹² Gorbunov M.A. State and law in the era of digital transformation of society: a new paradigm or loss of legal basis // Russian legal system in the context of the fourth industrial revolution: Proc. VI Moscow legal forum of the XVI International scientific and practical conf.: In 3 parts. Moscow, April 4-6, 2019.

essential terms of the contract, expressed in advertising materials, catalogs or other descriptions addressed to an indefinite number of persons, acquires the status of a public offer. Particular attention should be paid to the provision that the demonstration of goods, the presentation of samples or the distribution of information about the products sold (including descriptions, catalogues, photographs) at points of sale is recognized as a public offer, even in the absence of an indication of the price and other essential terms of the contract.

So, signing the Contract of purchasing and selling goods online in the framework of distant trade, it is necessary to pay attention to two main legally important conditions. To begin with, the seller must properly formalize and direct the offer that contains all the material conditions of the agreement such as the description of the good, its price, the delivery process, and other relevant information. Second, the buyer should state his agreement (acceptance) with the terms applicable by performing decisive transactions, the purpose of which is to accept the offer, practically, in most cases, by placing an order in a formal manner using an electronic system.

Juridically, a contract is considered concluded at the moment when the seller receives an equivalent order confirming the acceptance of the buyer. The significance of the given moment is rather important as regards to determination of the emergence of the duties of the parties because it is since that time that the seller of a commodity gets the duty of delivering that commodity and the buyer gets the duty to accept and pay up.

Conducted research testifies to the existence of significant gaps in the legal regulation of the sphere of electronic commerce, in particular, the field of consumer protection in the digital environment. The review of the existing legislative framework and the practical approach of applying the law helps to identify that it is necessary to comprehensively update the normative base, the goal of which should be to eliminate the existing legal contradictions. In the first place, a clear definition of the legal status of digital platforms and information intermediaries should be provided with responsibility to ensure veracity in the information provided about goods and services. At the same time, it is necessary to develop standardized requirements to the content of electronic contracts, which would provide transparency of the conditions of the deal to consumers.

The introduction of effective mechanisms of protection of the rights of buyers acquires particular importance, in particular, the introduction of guaranteed schemes of returning payments, as well as the development of specialized out-of-court measures to resolve disputes. No less important seems to be the ensuring of the perfection of the system of the protection of the personal data through the introduction of special requirements to work with the personal data in the area of the electronic trade, the

obligatory certification of the digital platforms, the provision of the regular audit of the security systems.

To provide the effective implementation of offered measures, development of specialized controlling institutions, establishment of the self-regulating mechanisms of the electronic commerce and implementation of the programs of increasing population digital literacy is needed. In this respect, particular significance is attributed to the harmonization of the national legislation with the international ones concerning the protection of the rights of consumer goods in the digital universe, as in this way, it will be possible to establish a balanced system of the legal regulation of the sphere.

The topical areas of further scientific investigation can become the examination of the efficiency of the introduced mechanisms of protection, the development of global standards of the regulation of electronic commerce and the analysis of the impact of new technologies, including blockchain and artificial intelligence, on consumer relationships. Implementation of the mentioned measures will contribute to the establishment of a stable legal environment, which will provide not only the active development of the digital economy, but also a high level of the preservation of consumers rights and legitimate rights.

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