

Eurasian
Research Bulletin

International experience of compensation of damage caused to the consumer through contracts concluded on the Internet

D.Babaev (DSc.)

Professor at the Department of Civil Law of
Tashkent State Law University

ABSTRACT

As current directions in the field of consumer rights protection, today in many developed countries of the world, sales of goods on the basis of distant contracts, services provided to consumers through the Internet, and new types of relations with the participation of consumers through electronic trading platforms are emerging, in turn, determining the legal basis of these relations and the counterparty of consumers special attention is paid to the research of clarification issues. The primary tasks are to ensure the rights of the consumer, to determine the size and amount of the damage caused to him, and to make it possible for him to fully realize his rights established by the law.

Keywords:

consumer, contracts concluded on the Internet, damage, public offer, online trade, artificial intelligence, international law

As current directions in the field of consumer rights protection, today in many developed countries of the world, sales of goods on the basis of distance contracts, services provided to consumers through the Internet, and new types of relations with the participation of consumers through electronic trading platforms are emerging, in turn, determining the legal basis of these relations and the counterparty of consumers special attention is paid to the research of clarification issues. The primary tasks are to ensure the rights of the consumer, to determine the size and amount of the damage caused to him, and to make it possible for him to fully realize his rights established by the law.

The practice of concluding a contract is expanding with the development of technological processes and the emergence of new types of remote communication. Currently, the sale of goods and the provision of various services for a fee, including consulting and educational services, through the Internet are becoming popular. Along with the convenience of concluding and executing contracts for the sale and purchase of goods via the Internet,

there are also some inconveniences, including the fact that the contract is consensual rather than real. The passage of time after the agreement of the parties, the impossibility of exercising the rights of the consumer to inspect, check the quality of the sold goods, and test them directly before concluding the contract, creates problems in the practice of concluding consumer contracts through the Internet and issues of compensation for damages in this regard. At the moment, if the goods provided to the consumer under the contract concluded via the Internet do not correspond to the description given on the relevant site or are not of high quality, it may also lead to the violation of the consumer's rights and damage to him. Another important issue in the protection of consumer rights in civil transactions on the Internet is the identification of the person selling goods or providing services. In this case, the person who sold the goods is not located at the address indicated on the site or in the container of the delivered goods, or incorrect information may be provided. Such cases are common in practice. For example, a citizen ordered shaving equipment via the Internet.

According to the relevant site on the Internet, the freight is paid after the product is delivered to the consumer. After the goods were delivered to the consumer by courier under this condition, the consumer took them out of the box and immediately examined them and did not see any problems. However, when he brought the equipment home and took a closer look, it was found that the product was not of the quality and type that he ordered, but something closer to it. After that, when the consumer called the phone number listed on the box of the equipment, no one answered, and he learned that no such person was available at the listed address. In this situation, the consumer will not be able to exercise his rights to demand the replacement of the product with a good quality product and the payment of the damage caused to him.

Such a problem is observed not only in national practice, but also in international practice. In particular, in European law, consideration of claims arising from contracts concluded by the consumer on the Internet is subject to a specific procedure. However, such a practice has not been established in the countries that are members of the Commonwealth of Independent States, especially in Uzbekistan. Because the cross-border aspects of the consumer protection system are provided only in Article 1195 of the FC. According to this article, based on the desire of the consumer, the demand: his right of residence; the law of the country where the counterparty is located; subject to the law of the place where the consumer received the goods and the result of the work (service).

The 1973 Hague Convention on the Law Applicable to Producer Liability also provides for conflict of law rules governing liability for damages in connection with the provision of goods or services. According to some experts, if the poor quality of the goods or services provided to the consumer is realized in the country of the provider, it should be implemented according to the laws of this country and compensation for the damages should be demanded.

The convention contains important provisions related to damages caused by

product defects and defects, the main terms used in it, time limits and other issues. Of course, these rules apply to consumer relations complicated by a foreign element. This convention can also be applied to a certain extent in the sale of goods and services to consumers on the Internet.

It is known that users on the Internet are divided into active users, that is, those who enter a certain offer, information or other information into the network, and inactive users, those who only use it without posting any information to the network. From this point of view, many experts recognize consumers on the Internet as passive participants. In their opinion, since the consumer is an inactive participant in the conclusion of a contract through the Internet, their rights should be maximally protected.

Some authors choose a slightly different point of view in this regard, in their opinion, they note that the legal requirements for persons providing goods or services via the Internet should be at the same level as the requirements for ordinary entrepreneurs, and that it would be inappropriate to apply "soft" norms in this regard.

In addition, it is emphasized that there is a need to correctly determine the legal regime of the participants in the relations with consumers and benefits in the field of commerce on the Internet.

Some opinions were expressed about the status of the consumer on the Internet, that is, about his active participation. It was noted that the consumer can be evaluated as an active participant as an active participant, as he can conclude a contract via the Internet, accept the offer shown on the relevant site and form his own orders.

Opinions denying that individuals who purchase certain goods or services by concluding a contract on the Internet have the status of consumers and, as a result, have a special protection system, are also expressed in the legal literature. In this case, the consumer is considered to be a natural person participating in a normal civil-legal relationship and is considered a party to the contract in the same capacity as a seller or performer on the Internet.

When protecting consumer rights on the Internet, experts pay attention to the country and language of the site owner, as well as the currency used in civil transactions. According to them, these factors should not be taken into account in the protection of consumer rights. Because most of the terms and names on the Internet are mainly in English, and every user on the Internet is aware of this.

However, if two or more languages are considered the official language in some countries, it is reasonable to assume that Internet programs are presented in several languages. Taking the example of Uzbekistan, the Law "On State Language" states that the state language is Uzbek (Article 1). However, this rule does not deny the placement of information in other languages along with the state language on Internet sites, of course. Therefore, now, in order to expand the audience of consumers and customers, information in several languages, messages and information about the description of goods are posted on Internet sites. This ensures that every consumer has the right to receive information about goods and services in the language of his choice.

With the increasing scope of the Internet in the practice of international trade, it is important to determine the country of the server in ensuring the rights of the consumer and to determine the legal means of ensuring the obligations of the seller and the service provider. Because, in most cases, those who sell goods or provide services to consumers via the Internet are considered professionals.

Online trade is based on the conclusion of a contract based on a public offer, and therefore, in this trade, it is necessary to post complete information about the seller on the site, and the consumer has the opportunity to familiarize himself with all the information about the goods. This requirement is considered the main rule of entering into contractual relations with the consumer via the Internet. Therefore, compensation for damages caused by the sale of goods or services to the consumer based on professional activity is directly subordinated to the legislation on the protection of consumer rights.

It should be noted that if the person conducting trade or service activities via the Internet is located in another country, and the consumer is located in another country, it is necessary to determine the issue of which country's legislation will govern the relationship between them. As mentioned above, in this case, the law of the country where the consumer is located applies. But it is noteworthy how this rule applies in cases where a consumer buys a product through the Internet when he goes to another country instead of the country where he lives. In this case, the seller or service provider is allowed to use public information to identify the domain name or site through which the consumer purchased goods from the online store or used the service. In this situation, consumers can also declare their country of residence. For example, when ordering an electronic version of a book via the Internet, the consumer must indicate the country where he is located and the name of his e-mail address. If you are getting the electronic version of the book for free, most sites will also require you to provide the official email address of the person's place of work and office. In such situations, a problem with the protection of personal information of the consumer may arise.

It is necessary to pay attention not to the country in which the seller or service provider operates, but to the countries in which the activity has not been determined. If any dispute in this case arises from the sale of goods directly to the consumer on the Internet, the consumer may apply to the court of the state in which he has a place of residence. In this case, the seller has taken appropriate measures to prevent entering into sales relations with consumers in this country. Such measures may include, in particular, special statements requiring the consumer to indicate their place of residence during registration on the website or to use technical means (computer connected to the Internet) that determine the location of the consumer. However, the acceptability of such mechanisms varies.

Declaration on global electronic commerce (Declaration on global electronic commerce, 20.05.1998, WT/MIN(98)/DEC/2)

was approved within the World Trade Organization (WTO). Since 2016, the Universal Postal Union (UPU), the United Nations Conference for Trade and Development (UNCTAD), the Organization for Economic Cooperation and Development (OECD)) and BST are working on the introduction of regulations on the regulation of cross-border electronic trade.

In cross-border sales, when the seller is aware of the consumer's location, he is able to anticipate in which countries he may be sued. However, this may lead to misleading the seller or service provider by u In this case, if the consumer has entered incorrect information about his/her country of residence, the seller or service provider may be held liable or the customer may be denied consumer status.

However, some researchers have a different attitude in this regard. According to them, "the presence of a special clause on the site not intended for conducting business with consumers of other countries (or individual countries), in case of agreement with it, cannot exclude the possibility of establishing court jurisdiction at the place of residence of the consumer."

According to the established practice in the European private international law regarding the submission of claims to the court of the country in the contractual relations with the participation of the consumer, the law of the country where the consumer is located, the seller or the service provider, and, on the contrary, the law of the country where the consumer is located, the seller or the service provider, shall apply.

In our opinion, in this case, such a mechanism for the protection of consumer rights is effective and plays an important role in identifying professional actors located in different countries.

It should be noted that sales and service delivery through artificial intelligence is widely used. It is used by Alibaba, Uber, Yandex and other large and small online trade and service providers that sell and deliver goods through artificial intelligence. In particular, the computer performs such functions as accepting orders, providing goods (services), as well as

receiving and analyzing complaints, paying damages and eliminating its consequences in standard cases without the human factor.

It is necessary to select those who place their offers of goods and services for online trading in the virtual space, remove from the virtual trading space and block the sellers and performers who constantly violate the rights of consumers and cause harm. Also, it is advisable to introduce a special "filter" (cleaner) such as adding aggressive consumers to the black list of customers.

References:

1. Lubitz M. Jurisdiction and Choice of Law for Electronic Contracts: an English Perspective // *Computer und Recht*. 2001. – №39. P.41.
2. Stone P. Internet Consumer Contracts and European Private International Law // *Information & Communication Technology Law*. 2000. – №6. P.8.
3. Powell M.D., Turner-Kerr P.M. Issues in e-commerce – European Union: Putting the e- in Brussels and Rome // *Computer Law & Security Report*. 2000. – №23. P.24.
4. Jacquemyns L.R., Verbiest T.L. L'offre de services et produits financiers sur internet // *RDAI*. 2000. – №1. P.27.
5. Debussere F. International Jurisdiction over E-Consumer Contracts in the European Contracts in the European Union: Quid Novi Sub Sole? // *International Journal of Law and Information Technology*. 2002. Vol. 10. – №3. P.358.
6. Gillies L.E. Addressing the "Cyberspace Fallacy": Targeting the Jurisdiction of an Electronic Consumer Contract // *International Journal of Law and Information Technology*. 2008. Vol. 16. – №3. P.268.
7. Øren J.S.T. International Jurisdiction Over Consumer Contracts in E-Europe // *The International and Comparative Law Quarterly*. 2003. – №52. P.675.
8. Svantensson D. What Should Article 7 — Consumer Contracts, of the Proposed Hague Convention, Aim to Accomplish in

Relation to E-Commerce? // Computer Law & Security Report. 2001. Vol. 17. – №5. P.323.

9. Королева А.Н. Защита прав потребителей в условиях формирования цифрового товарного рынка // Юридический вестник Самарского университета. 2017. – №3. – С. 51 // <https://cyberleninka.ru/article>