

## Historical background of consumer rights development in the EU

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### Abstract

The consumer's rights in the European Union are very developed. The European Union has always devoted a special interest to the rights and protection of consumers, an interest reflected in the policy pursued in this area and the entirety of approved acts, altered and developed over the years. Regarding the entirety of the regulatory acts that it contains, the consumer's right in the European Union forms a consumer *acquis* within the *acquis communautaire*. European Consumer Law consists of a whole set of acts relating to consumer rights, information, education, security and protection. There are adjustments regarding the safety and quality of products and services to consumers, labeling and packaging of products, regulation related to trading practices for consumer protection, there are also arrangements regarding consumer contracts, protecting consumer interests and resolving disputes between consumers and traders in the European Union. And the jurisprudence of the European Court of Justice has a considerable contribution to European consumer law. This material aims to present and analyze the developments of consumer law in the EU.

**Keywords:** Consumer rights, EU, Historical Background, development.

### Introduction

It should be acknowledged that the consumer as an actor in the market has not been there since Mesopotamian or Roman times but has developed during the course of the commercial period (mercantilist) and industrialization.<sup>1</sup> But in ancient Rome, there are traces of special attention paid to consumers, even though they were not known at that time. The history of the civil law system is mainly the story of two periods: that of Roman law and that of modern law, which begins with the "re-discovery" of Roman law in the XI century.<sup>2</sup>

In Roman law we can find some cases in which special attention is paid to the defense of the weaker party in the contract. For example in terms of sales contracts, if the price<sup>3</sup> was not fair, therefore, did not correspond to the true value of *merx* at the moment of the contract, classical law sanctioned the legal remedies in the form of sanction (*dolus malus*) the deception of one party to the detriment of the other, such as sale under the price, made consciously by the seller and that on the price, consciously accepted by the buyer<sup>4</sup>. Price is an essential element of this type of contract. Even nowadays consumers are offered protection against unfair pricing.

<sup>1</sup> Legal Studies Magazine 2, Unfair terms in consumer contracts. Current developments in the EU and possible impact on Albanian civil law - Dr. Nada Dollani, Tiranë 2011 – pg 77.

<sup>2</sup> Dr. Enkelelda Olldash, Roman Law, MediaPrint, the first edition, fq. 1.

<sup>3</sup> The price should be clear, in cash and not in the other goods, since then we would have an exchange relationship. –Prof. Dr. Arta Mandro, Roman Law, Tiranë 2006, fq366.

<sup>4</sup> Dr. Enkelelda Olldash "Roman Law, "MediaPrint, First Edition, pg 187.

Regarding the European Union, the first steps towards consumer protection date back to the early attempts to create this sui generis state union. Cultural, social, economic, technological and scientific development has influenced the development of new policies in this area, as well as the change and improvement of European consumer law.

European consumers today have a whole legal corpus by which they can defend their rights, recognized by the European Union. When defining and implementing Union policies and other activities, consideration is given to consumer protection requirements.<sup>5</sup> Despite changes, developments and improvements made in legislation, globalization and electronic commerce still pose challenges to consumer protection. Concerning the birth and development of consumer rights in the European Union, the following are considered historical developments, current developments and future intentions in this area.

## **1.2 Historical birth and development of consumer law in the European Union**

The study of the historical development of consumer law is important to understand in the genesis the entirety of norms that regulate this field of law and how norms change by adapting to the time developments.

At the beginnings of the European Union, we can not discuss about the rights of consumers or the protection of their rights, since consumers in the Treaty of Rome signed in 1957 were devoting only a few articles regarding their individual protection. It was about agricultural policy, reasonable prices of products for consumers, consumer protection from abusive practices regarding competition and creation of an organization in the agricultural market.

In the following decades, more attention was paid to the consumer protection policies by the European Economic Community regarding the expansion and increase of their level of protection. "The European Consumer Protection Card" served as a foundation stone for development in the area of consumer law. Listing customer rights on the card paved the way for the development of a whole set of rules. The card included the right to protection, legal assistance, indemnity, information, education, representation and counseling for consumers.

Since the adoption of the first targeted measures for consumers in 1975, the EU has been working hard to ensure a high level of protection for the health and safety of all EU consumers from the moment when the product is produced up to its ultimate use. In the first and second programs for "Consumer Protection and Information Policies" the rights were expanded and for consumers were foreseen, in addition to information, education and representation, health protection and safety as well as protection of economic interest. In the second program more importance was paid to the prices of products and the quality of goods and services. New consumer policies were easing policies regarding purchases in the markets of the European Economic Community Member States.

The Single European Act, which came into force in January 1987, was another important step in terms of consumer rights and protection. The Single European Act constituted the first true, important review of the founding Treaties of the European

<sup>5</sup> Article 12 of the Treaty on the Functioning of the European Union.

Communities.<sup>6</sup>For the first time, was specifically addressed, the objective on consumer protection.

As it was moving towards the creation of a common market, customer safety should be seen as a priority. The creation of the internal market, the economic and monetary union provided for in the Maastricht Treaty presented a number of challenges in the field of consumer protection. The term consumer used today is born only after the '92, because it was the Maastricht Treaty that brought innovation to consumers by foreseeing for the first time consumer protection and foreseeing it as one of the most important European Union policies.<sup>7</sup>

In this treaty, consumer protection was very important. The consumer protection article was also included in the Treaty of Amsterdam.

In the Nice Treaty, the articles for consumers were re-included. The EU Fundamental Rights Card of 2000 reaffirmed the protection and importance that the European Union devotes to its customers.<sup>8</sup>According to the Lisbon Treaty, the EU, in defining and implementing further policies and activities, takes into account consumer protection requirements.<sup>9</sup>

The consumer protection in the Treaty on the Functioning of the European Union is foreseen as a shared competence between the European Union and the Member States<sup>10</sup>, in this treaty a special importance has been paid to non-discrimination of consumers. XV title of this treaty is dedicated to consumer protection. Article 169 provides that, in promoting consumer interests and ensuring a level of consumer protection, the Union contributes to health protection, safety and economic interests of consumers, as well as the promotion of the right to information, education and organization, in order to protect their interests. The principle of proportionality and subsidiarity foreseen in Protocol No 2 of the Treaty on the European Union Functioning is also applicable and important.

Already the enlargement of the European Union, economic and technological development, the advances related to the common market have created the ground for the protection of European consumers individually and collectively as well as the free provision of services. The strategies and policies pursued by the EU in this area throughout these years were numerous and aimed primarily at enhancing security and empowering the consumer. The achievements of the European Union, as the single market and the common currency, were accompanied by developments within the rights of consumers. In 2014, a regulation on a multi-year program was adopted and its purpose was to protect consumer rights.

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<sup>6</sup> European Law - Lecture cycle, Dr. Iva Zajmi, Tiranë 2010, pg 16.

<sup>7</sup> Disertacion – Consumer protection in European Union legislation, the impact on our system of law – Belinda Halilaj, Tiranë, 2018, pg 8.

<sup>8</sup> Article 38, Mbrojtja e konsumatorit - Politikat e Bashkimit garantojnë një nivel të lartë të mbrojtjes së konsumatorit

<sup>9</sup> Article 12 of the Treaty of Lisbon.

<sup>10</sup> Article 4 of the Treaty on the Functioning of the European Union.

### **1.3 European Union achievements in the development and protection of consumer rights**

The European Union has devoted a special interest to the rights and protection of consumers, an interest reflected in the policy and legislation approved, altered and developed over the years. *Acquis communautaire* already has its own component and *acquis communautaire* for the consumer, otherwise called the *acquisconsumer*, as an important part of the European law corps. The change of legislation in the area of European consumer law has led to an increase in the level of consumer protection of the European Union. EU law gives all customers a minimum level of protection, no matter where they come from and which national laws are applicable.<sup>11</sup> The European consumer can move freely across all European Union countries, buy products and receive services and have the same rights as consumers in the country in which they are located.

The European Union gives importance to strengthening consumer rights, new policies and updates of acts with changes in time, customer information, labeling and packaging of products, banning unfair and deceptive trade practices, consumer safety and product safety, consumer health, quality of goods and services, and protection of consumer interests. In all these areas, European Union institutions have adopted a number of different regulatory acts.

And countries that aim to join the European Union also align their legislation with the *acquis communautaire*, consequently the level of consumer protection increases and in these states which are on the road to the EU. This is the case of our state. Finally, a greater attention has been paid to consumers, their rights and their protection, in the spirit of the European Union's laws. The European Union itself focuses on the rights that European consumers enjoy, consumer protection, product safety and quality, consumer safety and their non-discrimination.

European Union institutions today play a very important role in protecting consumers. EU relations with the rest of the world are held by the Council of General Affairs and External Relations (Foreign Ministers). One of the nine configurations of the council is the Employment, Social Policy, Health and Consumer Protection Council.<sup>12</sup>

The European Commission has the responsibility to implement the Treaty on European Union and the Treaty on the European Union Functioning, which also contains the articles on consumer protection. The Commission maintains the implementation of the treaty provisions and the decisions of the institutions by taking care of the existence of a mutual trusting atmosphere.<sup>13</sup> It has almost the monopoly of the EU legal initiative, has the right to make proposals regarding consumer protection so that the protection reaches a higher level than the one existing. The European Parliament and the Council exercise legislative, co-decision functions whose importance is essential. And finally, another important institution is the European Court of Justice that through the pre-trial procedure is expressed for the interpretation of the Treaties.

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<sup>11</sup>European Commission Publication, Consumers, Luxembourg: European Union Publications Office, 2013 pg 4.

<sup>12</sup>European Law - Lecture cycle, Dr. Iva Zajmi , Tiranë 2010, pg 98.

<sup>13</sup>European Law - Lecture cycle, Dr. Iva Zajmi , Tiranë 2010, pg 102.

The general principles of law are important for the interpretation of consumer law in the European Union. The GJED has the power to decide on the legality of legislative acts adopted by European Union institutions. On the issue of Germany against the European Parliament and the Council of the European Union<sup>14</sup>, The GJED marked a development moment regarding consumer protection. In its decision, the GJED decided the annulment of the directive 98/43, concerning tobacco advertisements. This decision given by the Court would give some effects, one of which was the protection of consumer health.

In community and the European Union law, the general principles of law form those fundamental rules of law and in the function of giving justice which are inherited throughout the juridical order. Most of the principles are not explicitly mentioned in treaties but the Court of Justice obliges EU institutions to respect them.<sup>15</sup>

The European Union takes various measures to protect European consumer rights, supportive and controlling measures regarding the policy followed by the Union's member states. The domestic market, competition, energy and public services are some of the inseparably linked sectors with consumers. EU interventions regarding these measures to the benefit of consumers are often undertaken in parallel with other measures in the aforementioned sectors, in an integrated manner.

For example, measures taken in the field of competition directly affect consumers. Competition is a key element of the market economy and also a key element of the European Common Market. It creates the opportunity for the consumer to have a wider choice of price and quality between different goods and services of the market. The basics of EU policy on consumer are set out in Articles 81-89 (ex Articles 85 to 94) of the European Community Treaty, where respect for them ensures the smooth running of trade between Member States. These consist of prohibiting agreements that may affect trade between Member States and prohibiting any abuse by one or more enterprises in relation to their dominant positions.

In the European Union, there is also a network of consumer protection cooperation linking national authorities of all EU countries to detect, investigate and stop illegal cross-border trade experiences. This network also facilitates EU states to address all violations of consumer legislation.

The free and common market could not fulfill the purpose it was created if the EU did not pay a specific attention to consumers and consumer contracts. Consumer interests are always protected by European legislation. One of the EU's achievements has been the increase in the number of rights that European consumers enjoy. Another important point is consumer protection for products and services purchased in the European Union, the consumer is not discriminated but enjoys the same rights as the residents of the Member State where the entity buys the goods or receives the service. The European Union gives particular importance to product safety, often by setting strict rules on certain products. One way in which the EU provides European consumers is through the obligation of producers to meet certain production and trading characteristics for different products. For Food Products the European Union

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<sup>14</sup>Case C-376/98, The Federal Republic of Germany against the European Parliament and the Council of the European Union, [ECR], 5. 10. 2000.

<sup>15</sup>Lecture cycle - European Union Private Law - Ervin Pupe.

aims to guarantee the consumer the quality of products, safety, detailed information, product-accurate labeling, and EU requirements for foodstuff content.

The current consumer law developments in the European Union together with the jurisprudence of the European Court of Justice and the new areas of interest in consumer law will be further addressed in the following chapters.

#### **1.4 European Union perspective on European consumer law**

Since the end of the XX century, the idea of contracts harmonization in Europe got really shaped under the supervision and support of European institutions.<sup>16</sup> And the first developments were noted in relation to the review of the *acquis* in the field of consumer protection. We can now speak of a complete legal shame of EU law in the area of consumer protection, but we can not say the same thing with regard to contract law in general as efforts for their harmonization still continue.

As science and technology have advanced, purchases are made more and more electronically, digitization has left room for some challenges associated with consumer rights protection. This is with regard to the accuracy of information that the customer receives through the internet, the authenticity of this information and the conduct of the purchase procedure. When it comes to electronic commerce, it increasingly moves towards globalization and goes beyond the common European market. The European Union always aims to be updated with its policy and legal corpus and consequently to provide adequate protection to European consumers.

European consumer policy is a partnership between the EU, member states and their citizens. These policies in the area of consumer law aim to protect consumers from serious risks or threats, to give consumers the power to always choose based on accurate information, to identify ways to resolve disputes and to adjust their rights of consumers with the latest changes.

Increasing the level of consumer protection in the European Union is a goal in its own and in the multi-year program for consumers for the years 2014-2020. Information, education, non-discrimination, protection and security of products are its main points. Increasing consumer confidence is seen as a very important element for a strong and competitive European economy.

The overall objective of the Program is to provide a high level of consumer protection, empower consumers and place the customer at the heart of the domestic market.<sup>17</sup> This shows once again the great importance that the level of consumer protection occupies in the whole of European Union law.

It is the Commission who applies the program and by its request Member States submit to the Commission information on program implementation. The Commission has proposed a budget of 197 million euro for the consumer program (2014-20).<sup>18</sup>

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<sup>16</sup>Lecture cycle - European Union Private Law - Ervin Pupe pg 42.

<sup>17</sup>Parts of Article 2 of the European Parliament and of the Council Regulation Nr. 254/2014.

<sup>18</sup>European Commission Publication, Consumers, Luxembourg: European Union Publications Office, 2013 pg 4.

## 1.5 European Union Law

Community law is precisely the right created by the institutions of the European Union, it consists of a whole set of acts that regulate many different fields. While consumer law in the European Union includes the entirety of European Union law acts specially designed for consumers and for their benefit. The consumer enjoys a special status and special protection in the European Union and in the domestic legislations of member states.

Before clarifying EU law in the field of consumer protection, it is important to present a general overview of EU norms. Not all rates have the same strength, enforceability and application. There is therefore a need for a general clarification, so that references to European consumer law are clearer. Also, the terminology used in EU acts is very important.

When referring to the original right of the European Union, we can mention treaties too. The Treaties contain provisions of an institutional nature and material rules directly applicable to European citizens. They are accompanied by protocols and statements. The protocols enjoy the same legal value as treaties, while statements are simply an interpretative tool. In the first chapter of this paper are also referred to relevant articles on consumer protection contained in the texts of EU treaties.

EU law summarizes the acts adopted by the European Union institutions in order to put into practice the treaties. The regulations, directives, decisions, recommendations, opinions and sui generis acts constitute the European Union's derived right. An important place in this right has the right of the European consumer.

The regulations have general powers of action and are mandatory in all their elements and directly applicable in each member state. The Directive obliges Member States addressed only for the result to be achieved, leaving the competence of the national authorities unresolved with regard to the form and means used to achieve that result. The decision is mandatory in all its elements for those who are addressed; while recommendations and opinions are not mandatory.<sup>19</sup>The paper will deal with acts with binding powers as well as other recommended acts.

Acts issued by EU bodies regarding consumers are in significant numbers. To illustrate the above paragraph i am mentioning some of them as: consumer rights directive, fraudulent and comparative publication directive, product safety directive, directive on the use of genetically modified microorganisms, regulation for a multi-year program for consumers for the years 2014-2020, the regulation on consumer and merchant disputes arising out of online purchases, the regulation on medical devices, the communication by the Commission on strengthening the rights of passengers within the European Union, a communication on consumer empowerment and increased confidence, the Commission's recommendation for a unique structure and system of medical devices in the European Union, and last the decision of the Commission to set up scientific committees in the field of public health, consumer safety and environment. In addition to consumer law, efforts to protect competition in the single market also serve to further protect the economic interests of consumers, part of which is governed by the right of competition. Consumer protection should

<sup>19</sup>European Law - Lecture cycle, Dr. Iva Zajmi , Tirana 2010, pg 117-118.

be integrated with other state policies such as competition, the internal market, food security and services of general interest.

The European Union's internal market is a single market in which the free movement of goods, services, capital and persons is ensured and in which citizens are free to live, work, study and do business. The European Union's domestic market has little more than half a billion potential customers. As I mentioned earlier, the right of competition is very important for the European Union and very much connected with the right of consumers. Free competition is a key element of an open market economy. It stimulates economic performance and offers consumers a wider choice of quality products and services at more competitive prices.

Consumer law covers a range of areas, including the right to privacy for consumers. This is a very important right because consumers can be exposed to misuse of their data or their shopping history, and not only. The acts of EU institutions also protect consumers from unfair business practices. In addition to consumer protection rules, another way to provide consumer protection is through non-governmental entities.

### 1.6 Customer in the European Union

To better understand the acts of the European Union regarding consumer protection, we should understand the terminology used in them. Throughout the work, the most mentioned term is the consumer. Its understanding is essential to consumer's right. Other important terms are merchant, manufacturing, goods, service, price, contractual warranty, commercial practice, consumer legal relationship, etc.

In EU legislation there is no definite definition to say what we will understand by the term consumer. This has led many authors to maintain different attitudes regarding this issue. Explanation of the term consumer has been given depending on the area where a law in the European Union has been adopted.<sup>20</sup>

Court of Justice of the European Union has given an interpretation of this term. In the narrow interpretation of the term consumer is understood the person who buys or uses goods or services to meet his/her own needs for purposes that are not related to the commercial activity or practice of the profession. This means that the consumer does not resell, redistribute or produce other goods through these goods. The narrow interpretation of the consumer concept is the one held by the European Union Court of Justice.<sup>21</sup>

In other decisions, the GJED has ruled that consumer status may only be granted if the link between the use of goods and services and the profession is so easy to be considered as peripheral compared to private purpose.<sup>22</sup>

The European consumer enjoys a number of rights in the European Union such as: the right to information, education, to be protected against fraudulent advertising, the right to health protection, the right to compensation, to organize, the right to the use of public services, the right to legal protection, for safe and good quality

<sup>20</sup>Dissertation - Consumer protection in European Union legislation, impact on our law system – Belinda Halilaj, Tiranë, 2018, pg 188.

<sup>21</sup>ECJ 14 march 1991, C 361/89 Patrice de Pinto, 3 july '97 BEnincasa v Dentalkit, 17 march 1998 c45/96 Bayrische Hypotheken- Wecheslbank AG v Edgard Dietzinger.

<sup>22</sup>EJC 20 january 2005 –c 464/01 Johann Gruber v Bay Wa AG.

products. The European consumer is also protected from discrimination. The European Union is interested not only in empowering consumers, but also in boosting their confidence. Through information and education, the EU aims to empower consumers and provide them with a higher level of protection. The regulation on a multi-year program for consumers for the years 2014-2020 has been adopted to achieve this goal. This regulation has been briefly discussed in the first chapter of this work.

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