

Human Rights on the Internet under quarantine (on the example of E-Commerce): problematic aspects

Convergencia derechos humanos en internet en cuarentena (sobre el ejemplo del comercio electrónico): aspectos problemáticos

Direitos Humanos na Internet em quarentena (no exemplo do E-Commerce): aspectos problemáticos

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Abstract

As a result of the introduction of quarantine measures on the territory of Ukraine and abroad, almost all spheres of social life underwent particular changes. This led to certain restrictions on human rights, as a result of which legal science faced the task of finalizing and adapting legal regulation in the field of protection of subjective rights on the Internet to the realities caused by the coronavirus crisis. The purpose of the study is to characterize the legal regulation regarding restrictions and protection of consumer rights on the Internet in quarantine conditions. The object of the study is public relations in the spheres of electronic commerce, protection of consumer rights, and human rights on the Internet in general. The subject of the study is social relations that arise during the protection of civil rights on the Internet under quarantine conditions. The research methods were general scientific and special scientific methods such as dialectical, systemic, structural, historical-legal, comparative-legal, formal-legal; methods of induction, deduction, analysis, and synthesis. As a result of the research work, a multi-disciplinary review of publications on the subject of study and the conclusions of scholars was carried out; a description of the theoretical and legal framework for regulating the protection of civil rights on the Internet in quarantine conditions is provided; examples of judicial practice are given; issues related to the taxation of activities in the field of Internet trade were analyzed; specific solutions for improving legal regulation are proposed.

Key words: Coronavirus, e-commerce, Internet trade, protection of consumer rights, quarantine.

Resumen

Como resultado de la introducción de medidas de cuarentena en el territorio de Ucrania y en el extranjero, casi todas las esferas de la vida social sufrieron cambios particulares. Esto dio lugar a ciertas restricciones a los derechos humanos, por lo que la ciencia jurídica se enfrentó a la tarea de ultimar y adaptar la regulación jurídica en el ámbito de la protección de los derechos subjetivos en Internet a las realidades provocadas por la crisis del coronavirus. El estudio tiene como objetivo caracterizar la regulación legal en cuanto a restricciones y protección de los derechos de los consumidores en Internet en condiciones de cuarentena. El objeto de estudio son las relaciones públicas en los ámbitos del comercio electrónico, la protección de los derechos del consumidor y los derechos humanos en Internet en general. El objeto de estudio son las relaciones sociales que surgen durante la protección de los derechos civiles en Internet en condiciones de cuarentena. Los métodos de investigación fueron los métodos científico general y científico especial como el dialéctico, sistémico, estructural, histórico-jurídico, comparado-jurídico, formal-jurídico; métodos de inducción, deducción, análisis y síntesis. Como resultado del trabajo de investigación se realizó una revisión multidisciplinaria de publicaciones sobre el tema de estudio y las conclusiones de los estudiosos; se proporciona una descripción del marco teórico y legal para regular la protección de los derechos civiles en Internet en condiciones de cuarentena; se dan ejemplos de la práctica judicial; se analizaron temas relacionados con la tributación de actividades en el ámbito del comercio por Internet; se proponen soluciones específicas para mejorar la regulación legal.

Palabras clave: coronavirus, comercio por Internet, comercio electrónico, protección de los derechos del consumidor, cuarentena.

Resumo

Como resultado da introdução de medidas de quarentena no território da Ucrânia e no exterior, quase todas as esferas da vida social sofreram mudanças particulares. Isso levou a certas restrições aos direitos humanos, em virtude das quais a ciência jurídica se deparou com a tarefa de finalizar e adequar a regulamentação jurídica no campo da proteção dos direitos subjetivos na Internet às realidades provocadas pela crise do coronavírus. O objetivo do estudo é caracterizar a regulamentação legal quanto às restrições e proteção dos direitos do con-

sumidor na Internet em condições de quarentena. O objeto do estudo são as relações públicas nas esferas do comércio eletrônico, proteção dos direitos do consumidor e direitos humanos na Internet em geral. O tema do estudo são as relações sociais que surgem durante a proteção dos direitos civis na Internet em condições de quarentena. Os métodos de pesquisa foram os métodos científicos gerais e os métodos científicos especiais, como dialético, sistêmico, estrutural, histórico-legal, comparativo-legal, formal-legal; métodos de indução, dedução, análise e síntese. Como resultado do trabalho de pesquisa, foi realizada uma revisão multidisciplinar das publicações sobre o tema de estudo e as conclusões dos estudiosos; é fornecida uma descrição do quadro teórico e legal para regular a proteção dos direitos civis na Internet em condições de quarentena; são dados exemplos de prática judicial; foram analisadas questões relacionadas com a tributação das atividades no domínio do comércio na Internet; são propostas soluções específicas para melhorar a regulamentação jurídica.

Palavras-chave: Coronavírus, comércio na Internet, e-commerce, proteção dos direitos do consumidor, quarentena.

I. INTRODUCTION

According to Article 42 of the Constitution of Ukraine, the state guarantees the protection of consumer rights, control over the quality of goods, provision of services, performance of works, and promotes the activities of consumer organizations. Article 55 of the Constitution of Ukraine also contains a provision that gives a person the right to protect his/her rights and interests by any means not prohibited by law¹.

The profile normative legal act in the field of consumer rights protection is the Law on Consumer Rights Protection, which regulates relations between consumers and sellers, service providers, or contractors, and regulates the mechanism of protection of violated rights². In case of violation, dispute, or non-recognition of one's civil right or interest, under Articles 15 and 16 of the Civil Code of Ukraine, a person has the right to their protection in ways that do not violate the principles of civil legislation³.

In connection with the threat of the spread of the acute respiratory disease COVID-19, caused by the SARS-CoV2 virus, the Cabinet of Ministers of Ukraine imposed a quarantine on the entire territory of Ukraine from March 12, 2020. As of the time of writing, it has been extended. To ensure compliance with anti-epidemic measures in Ukraine, the work of public catering establishments, shopping and entertainment and fitness centers, and other small business facilities, in addition to hardware stores, gas stations, pharmacies, banks, insurance companies, and communication facilities, was

1 Verkhovna Rada of Ukraine. Constitution of Ukraine. 1996. Available at: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

2 Verkhovna Rada of Ukraine. Law of Ukraine: On the Protection of Consumer Rights. 1991. Available at: <https://zakon.rada.gov.ua/laws/show/1023-12>

3 Verkhovna Rada of Ukraine. Civil Code of Ukraine. 2003. Available at: <https://zakon.rada.gov.ua/laws/show/435-15#Text>

stopped. Performing their teleological function, these methods of infection containment are aimed at leveling the risks of infection and spread of COVID-19 through social distancing and mandatory masking.

Under the influence of quarantine restrictions, economic, social and cultural activities have predictably moved online. Services, trade, training and work have transformed under the influence of measures, the observance of which is emphasized by representatives of power structures and local self-government, and the implementation of flexible mechanisms for conducting business in quarantine conditions has become the basis of its existence. At the same time, jurisprudence faced the task of effective regulation of subjective civil rights during the pandemic, in particular, in the field of online trade and electronic commerce, which have become especially important in crisis conditions⁴.

II. METHODOLOGY

When writing the work, both general scientific and special scientific methods were used. Among them, the following can be listed: dialectical, systemic, structural, formal-legal, historical-legal, comparative-legal; epistemological methods of analysis, synthesis, induction, and deduction. Thus, the dialectical method was used to depict the process of development of the institute for the protection of consumer rights on the Internet as a sequence of quantitative and qualitative changes, which were designed to remove the contradiction between the lack of effective norms of legal regulation and the need for fair and effective protection of civil rights.

The systemic method was operated to depict the interrelationship of various fields of law, economics, marketing, retail, accounting, and auditing, as well as international and national levels of legal regulation of the subject of research, in their interpenetration and influence on each other's functioning. The structural method was applied to depict the place of the legal norm in foreign or national legislation.

The formal legal method made it conceivable to interpret the concepts of electronic commerce, online trade, website and online store from the point of view of formal logic. The historical-legal method made possible a retrospective review of the legal framework (in particular, its international dimension) regarding the protection of

4 Vlada Dishleva & Olena Zhuk. *E-Commerce in Ukraine: Direct Development in the Minds of Quarantine*. Vadym Hetman Kyiv National Economic University. 2020; Svitlana Ugniva. *Chronicles of Quarantine. How Ukrainian Entrepreneurs Earn and Spend on Coronavirus*. UKRAINIAN NEWS. 2020.

consumer rights and the taxation of natural persons who are subjects of entrepreneurial activity from Internet trade.

The comparative legal method made it possible to identify common and distinctive features of legal norms of national and foreign legislation. The method of analysis was used to determine the features of the main concepts, and to characterize the functions of legal regulation regarding the protection of the rights of consumers and natural persons-entrepreneurs on the Internet in the conditions of quarantine restrictions.

The method of synthesis proved its usefulness in formulating conclusions, as well as proposals and recommendations for the optimization and modernization of legal regulation. The method of induction was utilized to cover the general processes, phenomena and trends that led to the formation of the researched legal institutions in their current form. The method of deduction was employed to find the initial elements in the sequence of events that occurred in the process of establishing legal norms for the protection of civil rights on the Internet.

III. LITERATURE REVIEW

The works of many theoretical lawyers and practitioners were devoted to the problems related to the subject of research. Thus, V. Pleskach and T. Zatonatska⁵ devoted their attention to the issue of defining the concept of electronic commerce. They defined the coverage of financial and trade transactions, and relevant business processes with the help of information and communication technologies, which constitute the form of trade in goods and services. A. Chuchkovska⁶ analyzes e-commerce from the point of view of the complex legal relations. The author concludes that e-commerce is primarily a systemic concept.

According to M. Makarova⁷, an essential condition to define the concept of e-commerce is taking into account such attributes as the technical and software capabilities of the global Internet computer network. V. Apopia, I. Mishchuk and V. Rebitsky⁸ draw parallels between Internet trade, commodity-monetary exchange, and sales contracts. In their opinion, to define e-commerce, the relationship is necessary precisely in the aspect of buying and selling.

5 Valentyna Pleskach & Tetiana Zatonatska. *E-COMMERCE*. Knowledge. (2007).

6 Anna Chuchkovska. *LEGAL REGULATION OF ELECTRONIC COMMERCE IN UKRAINE*. Center for Educational Literature. (2007).

7 Mariia Makarova. *ELECTRONIC COMMERCE*. Vidavnicheskyy Center "Academiya". (2002).

8 Victor Apopij, Ihor Mishchuk & Victor Rebitsky. *ORGANIZATION OF TRADE*. TsNL. (2005).

I. Davydova⁹ drew attention to the problems of online orders in the conditions of COVID-19. The difficulties of a theoretical and practical nature, which civil legislation encounters in quarantine conditions, have been identified. In their publications, practicing lawyers such as Yu. Asadchev¹⁰, O. Arkhipov¹¹, Ye. Konovalov and D. Pernikoza¹², I. Kusina¹³, N. Naiman, O. Nikitin¹⁴, and O. Tomarova¹⁵ paid attention to the issues of evidentiary power of e-documents, court practice in the field of e-commerce, and protection of consumer rights.

What is more, M. Kuzmina¹⁶ investigated the legal regulation of consumer rights protection in Internet trade. The author provides a general description of problematic situations that occur in this area of law and also suggests possible vectors for overcoming these contradictions based on effective and fair legal regulation.

In her publication, V. Karpova¹⁷ investigated the legal aspects of Internet trade. In particular, the author characterized the legislative framework in this area, and analyzed the impact of regulatory acts on entrepreneurial activity in the digital environment. N. Adakhovska, in her work, explored the issue of recognizing the COVID-19 pandemic as a *force majeure* circumstance. In particular, the author characterized the grounds for exemption from liability for non-fulfillment of obligations under the influence of the introduction of quarantine measures¹⁸.

Additionally, O. Bernaz-Lukavetska¹⁹, in her work, focused on the current changes in contract law in quarantine conditions. The scientist investigated the impact of quarantine restrictions on the fulfillment of contractual obligations. In this context, it

9 Iryna Davydova. PROBLEMS OF THE INTERNET COMMUNITY IN THE MINDS OF COVID-19. Phoenix. (2020).

10 Yurii Asadchev. *Features of electronic contracts are stipulated by the Law of Ukraine "On Electronic Commerce"*. LAW AND BUSINESS, 2016.

11 Oleksandr Arkhipov. *Legal Force of E-Document*. PROTOCOL. 2016.

12 Evhen Konovalov & Dmytro Pernikoza. *Electronic Proof is the Norm for Ukrainian Jurisprudence, but there are Nuances*. LEGAL GAZETTE. 2020.

13 Ilona Kusina. *E-Commerce: Ship Practice*. GORO. 2020.

14 Oleh Nikitin. *Court Decisions in the Field of Electronic Commerce*. ID LEGAL GROUP. 2020.

15 Olha Tomarova. *Code of Contracts by E-Mail. Review of Ship Practice*. PROTOCOL. 2017.

16 Maryna Kuzmina. *Legal Regulation of Consumer Rights Protection in Internet Trade*. LAW AND INNOVATION 3. 2014. P. 36-42.

17 Volodymyr Gurlov. *Applying for an Online Store in Ukraine*. LAW COMPANY "PRAVOVA DOPOMOGA". 2020.

18 See: Inna Vorotyntseva, Ivanna Hranina & Maryna Pysarenko. *Comparative Legal Research on Contract Law Changes Under Covid-19 Pandemic: England, United States, Asia and Ukraine*. IUS HUMANI 1. 2021. P. 123-150.

19 Olena Bernaz-Lukavetska. THE IMPACT OF COVID-19 ON THE AGREEMENT OF LEGAL RIGHTS IN CIVIL LAW. Phoenix. (2020).

is also worth mentioning the names of A. Bogutskyi and M. Malskyi²⁰, who devoted their analysis to the problems of fulfilling obligations in the conditions of the pandemic.

An analysis of foreign experience in the development of electronic commerce was performed by O. Vorobyova²¹. The scholar described the main stages of the formation of the international regulatory framework on the researched issue. An analysis of foreign experience in the development of electronic commerce was conducted by O. Vorobyova²². The scholar described the main stages of the formation of the international regulatory framework on the researched issue.

Moreover, S. Malovichko²³ and O. Melnychuk focused their attention on the analysis of the state and features of the development of international electronic trade. In general, the authors characterized the main global trends in this industry, provided forecasts for the future development of Internet trade. Further, I. Belik²⁴, V. Gurlov²⁵, O. Lega²⁶ and A. Poberezhnyk devoted their work to the issue of taxation of activities related to Internet trade. The researchers analyzed a wide range of public relations related to the topic, and provided a description of the main types of taxes in the field of Internet trade. I.B. Belik²⁷, in particular, focused his attention on the international dimension of e-commerce taxation.

Additionally, S. Ilyashenko²⁸, in his works, focused on the role of communication technologies in marketing and e-commerce. The author analyzed the directions of development and identified possible options for overcoming problems related to the implementation of entrepreneurial activities on Internet trade, in particular, in the legal field.

When writing the paper, the profile regulatory legal framework regarding the subject of research was analyzed, in particular, the Constitution of Ukraine, the Civil Code of Ukraine, the Tax Code of Ukraine, laws of Ukraine "On the Protection of Consumer

20 Andrii Bogutskyi & Mykhailo Malskyi. *Quarantine and Yoga Heritage for Vikonannya Contracted Goiter*. LEGAL NEWSPAPER. 2020.

21 Olena Vorobyova. *Foreign Information on the Development of Electronic Commerce*. EFFICIENCY OF STATE ADMINISTRATION 29. 2011. P. 262-268.

22 *Id.*

23 Svitlana Malovichko. *Analysis of the Development of International Electronic Commerce*. *Economic Annals XXI*. INSTITUTE OF SOCIETY TRANSFORMATION 1. 2015. P. 17-19.

24 Ihor Belik. *International Legal Document on the Submission of Electronic Commerce*. LAW FORUM 2. 2013. P. 49-54.

25 Volodymyr Gurlov, *supra*, note 17.

26 Olha Lega. *Internet Trade: Appearance and Submission*. COASTAL ECONOMIC STUDIES 43. 2019. P. 161-166.

27 Ihor Belik, *supra*, note 24.

28 Serhii Ilyashenko. *Current Trends in the Promotion of Internet Technologies in Marketing*. MARKETING AND MANAGEMENT OF INNOVATIONS 2. 2011. P. 64-74.

Rights”, “On E-Commerce”²⁹. A large number of network resources devoted to issues of e-commerce, Internet trade, economic and legal nuances of marketing and retail in the conditions of the coronavirus crisis were studied; a description of judicial practice regarding the protection of civil rights in the researched area is given.

IV. RESULTS AND DISCUSSION

1. World experience of restrictions and protection of civil rights on the Internet in quarantine conditions

The development of legal regulation of the protection of consumer rights in the field of e-commerce dates back to the 80s. To illustrate this statement, let's turn to the provisions of the Resolution of the General Assembly of the United Nations (UNGA) dated 09.04.1985 No. 39/248, which is entitled “Guidelines for the Protection of Consumer Interests”. This document recognized the fact that consumers often become vulnerable social units, because they are in an unequal position from the point of view of economic conditions, level of education, and purchasing power. Thus, it is concluded that the principles of their protection should, among other things, contribute to other countries in the fight against harmful business practices of all business entities at the national and international levels, if it has a negative impact on consumers³⁰.

In the future, the adoption of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce in New York in 1996 was a significant event in the international development of Internet commerce. This document became a model for the subsequent development of legal regulation in this area. However, the concept of “e-commerce” then meant a wide range of activities, for example, leasing, engineering, construction of industrial facilities, and any agreements on the supply of goods or the provision of services, which prevented a clear interpretation of the concept³¹.

It is worth noting that issues related to taxation could not immediately bypass the area we were studying. Thus, at the conference of the Organization for Economic Cooperation and Development (OECD) in Ottawa, Canada, on October 8, 1998, the

29 Verkhovna Rada of Ukraine. Law of Ukraine: On E-Commerce. 2015. Available at: <https://zakon.rada.gov.ua/laws/show/675-19#Text>

30 Olena Vorobyova, *supra*, note 21; Nataliia Kramorenko. *Legal Aspects of Electronic Commerce in the Context of Light Education*. YOUNG SCHOLAR 10. 2008. P. 77-81.

31 United Nations Commission on International Trade Law (UNCITRAL). *Model Law on E-Commerce*. 1996.

concept of evolutionary development of the Model Convention on the taxation of electronic commerce was developed. It was agreed that tax collection in this area should be subject to the general principles of neutrality, efficiency, certainty, simplicity, effectiveness, fairness, and flexibility³².

In the context of European legal regulation, it is necessary to mention Directive 97/7/EU "On the protection of consumer rights in distance contracts" and Directive 2000/31/EU "On some legal aspects of information services, in particular, electronic commerce, in the domestic market." It was designed to ensure the proper functioning of trade conditions in the digital environment of the European Union countries. In the future, European Union legislation in this area has developed significantly³³.

The gradual development of legal and economic aspects in international business practice made it possible to distinguish the following types of interaction in electronic commerce: 1) B2B (business to business); 2) B2G (business to the state); 3) B2C (business to client); 4) C2C (client to client); 5) G2B (government – business). An interesting example from the point of view of international experience will be the online auction eBay (C2C)³⁴.

However, in the context of our research, the focus is on B2C (business goods and services for end consumers – retail trade carried out by online stores).

If it was not possible to resolve the dispute with the seller at the stage of pre-trial settlement, the consumer has the right to appeal to the court to protect his violated, contested, unrecognized rights and interests. The practice of judicial proceedings in international instances shows the application of Part 1 of Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR). Thus, the trial must take place within a reasonable time, following the right guaranteed by the ECHR. National courts have a primary duty to quickly consider cases. The circumstances of the case, its complexity, the behavior of the parties and the subject of the dispute affect the decision on the reasonableness of the duration of the trial. If the court is unable to effectively oppose obstacles to the progress of the case, which are created

32 Organization for Economic Co-operation and Development (OECD). *Tax Treaty Characterization Issues Arising from E-Commerce*. 2001.

33 Lesiya Katinska. *Power of conformity to the Law of Ukraine "On Electronic Commerce" to European legislation*. SCIENTIFIC BULLETIN OF UZHGOROD NATIONAL UNIVERSITY. SERIES "LAW" 2. 2015. P. 165-169; European Parliament. Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce). 2000. Available at: http://europa.eu.int/ISPO/ecommerce/legal/documents/2000_31ec/2000_31ec_en.pdf

34 Oleksandr Melnichuk. *Global Trends in the Development of Electronic Commerce*. NAUKOVI PRATSI NDFI 66. 2014. P. 58-69; Oleksandra Shaleva. *ELECTRONIC COMMERCE*. Center for Educational Literature. (2011).

in bad faith by the participants, this is considered a violation of Part 1 of Article 6 of the ECHR. So, we see that at the international level there are appropriate guarantees of judicial protection of violated rights, however, we note that at the time of writing the article, for obvious reasons, there is no practice of the European Court of Human Rights regarding the violation of the civil rights of consumers on the Internet during quarantine. We are confident that its appearance should be expected in the coming years³⁵.

Next, we will give examples of how other states contributed to the protection of the rights of their citizens under quarantine conditions. In this context, first of all, it is necessary to pay attention to state programs to help businesses, individuals – entrepreneurs, and consumers. Thus, it is emphasized that with the spread of the epidemic of the coronavirus disease, measures were taken to compensate for the restrictions experienced by the economy, medium and small businesses, as well as consumers in the context of a multi-industry crisis.

Detailing the first example, let's remember Finland. The country has made efforts to fund a government program designed to provide unemployment benefits to affected businesses, particularly workers, while employers provide unpaid leave to employees. At the beginning of the quarantine, the corona crisis supports amounted to 15 billion euros.

We should also note that in the context of the pandemic, the number of illegal actions in the online trade environment has increased. Fraudsters use fake websites to sell non-existent products. To counter such illegal activities, there is a legal norm in the European Union, the United States and Israel that protects consumers from fraud. According to it, sellers of goods on the Internet are obliged to indicate on their sites only those mobile phones that are officially registered by the operator as a legal entity or linked to the passport data of a private entrepreneur.

In such European Union countries as Germany and Austria, there is a legal norm on the mandatory deposit of the consumer's funds in the marketplace or bank account during the subscription. Thus, the consumer is protected from Internet fraudsters when performing settlement operations. The tax authorities of Germany, France and Switzerland have publicly accessible registers of honest sellers, and China has an effective escrow mechanism, whereby the seller can receive money from the consumer only after fulfilling his obligations in full.

As for the organizational and legal forms of combating fraud in the field of Internet trade, for the protection of consumer rights in the United States and other

35 Council of Europe. *Convention on the Protection of Human Rights and Fundamental Freedoms*. 1950.

countries of the Anglo-Saxon legal family, preference is given to tools of free entrepreneurial self-regulation and effective judicial protection³⁶.

2. National legislation on restrictions and protection of civil rights on the Internet in quarantine conditions

According to A. Mikhalev and V. Melnik³⁷, the features established in the Rules for the sale of goods to order and outside of retail or office premises, approved by the order of the Ministry of Economy No. 103 dated 04.19.2007, provide grounds for including Internet trade in the sale of goods to order³⁸. Developing this point of view, it should be agreed that trade on the Internet has all the characteristics of the sale of goods to order, since in this case the consumer concludes a contract for the sale of goods with the seller at a distance using means of remote communication or makes a preliminary order directly to the seller. Clause 1.2 of Rules No. 103 provides among the means of remote communication, in particular, telecommunication networks, postal communication, television, information networks, and the Internet³⁹.

Practically all relations in the studied industry are covered by the norms of the Civil Code of Ukraine and the Law of Ukraine "On the Protection of Consumer Rights". This is explained by the fact that the buyer in the online store is most often an individual. Thus, the basis of the legal regulation of the subject of our research today is a triad of normative legal acts such as the Civil Code of Ukraine, the Law of Ukraine "On the Protection of Consumer Rights" and the Law of Ukraine "On Electronic Commerce"⁴⁰.

Since the issue of protection of civil rights on the Internet in the context of our work is inextricably linked with the Law of Ukraine "On the Protection of Consumer Rights", it seems necessary to analyze its provisions. From the point of view of our research, of particular interest is the norm on contracts concluded at a distance, under

36 Oleh Titamir. *What Makes Ukrainian E-Commerce a Civilized State*. ECONOMIC TRUTH. 2020.

37 Anton Mikhalev & Volodymyr Melnik. CONSUMER RIGHTS WHEN PURCHASING GOODS THROUGH AN ONLINE STORE. SumDU. (2012).

38 Oleksandr Tertichny. *Peculiarities of Marketing in the Internet. Economics and Suspilstvo*. ELECTRONIC GERALD 12. 2017. P. 382-385; Nataliia Tyagunova & Mariia Gudzenko. *Internet Trade: Essence and Features*. BULLETIN OF THE POLTAVA STATE AGRARIAN ACADEMY 3. 2013. P. 160-162.

39 Verkhovna Rada of Ukraine. On the approval of the Rules for the sale of goods for the sale of goods for the sale of commercial or office premises: Order. 2007. Available at: <http://zakon2.rada.gov.ua/laws/show/z1181-07>.

40 Olena Zubatenko. *Analysis of the Concept of "Electronic Commerce" in the Context of the Law of Ukraine "On Electronic Commerce"*. ACTUAL PROBLEMS OF STATE LAW 1. 2016. P. 32-34.

which the law understands contracts concluded by the seller (executor) with the consumer using means of remote communication, in particular, the Internet (Item 8, Part 1, Article 1). It follows from the norms of the mentioned legal act that a consumer is a natural person who purchases, orders, uses, or intends to purchase or order products for personal needs that are not directly related to business activities or the performance of the duties of an employee (Part 1, Article 1).

The legal status of the consumer (Article 4) and the seller are characterized by certain stability according to the norms specified in the above-mentioned law, however, they are not limited by its prescriptions. The state is under an obligation to create appropriate conditions that are necessary for the protection of consumer rights (Article 5). Unscrupulous business activity is prohibited (Parts 1 and 2 of Article 19)⁴¹.

The norms of the Civil Code of Ukraine are also applied to protect the rights of consumers. It provides a list of powers regarding fair compensation, elimination of product defects or their replacement (Part 1 of Article 708), and compensation for moral damage due to violation of rights (Article 23). Regarding the general principles of the Civil Code of Ukraine, it provides that the obligations must be properly fulfilled under the terms of the contract, the requirements of the Code itself, other acts of civil legislation, and in the absence of them – following the customs of business turnover or other requirements that are usually set (Article 526)⁴².

On March 17, 2020, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine, aimed at Preventing the Occurrence and Spread of the Coronavirus Disease (COVID-19)” entered into force, by which the list of *force majeure* circumstances in Ukraine was officially supplemented by the “quarantine established by the Cabinet of Ministers of Ukraine”. However, the parties to the contract are not automatically released from liability for non-fulfillment of contractual obligations based on the quarantine addendum. In each specific case, the party affected by *force majeure* must prove a causal connection between the quarantine and its inability to fulfill the contractual obligation. In other words, the party affected by *force majeure* must prove that it was the quarantine that caused the non-fulfillment of the obligation⁴³.

41 Judgment of the Bohunsky District Court of the city of Zhytomyr on the right No. 295/2041/20 dated 24.06.2020. Available at: <http://reyestr.court.gov.ua/Review/90243204>

42 Civil Code of Ukraine; Olha Starytska. *Understanding the Criteria for Classifying the Legal Status of a Supporter: Theoretical and Legal Research*. LEGAL BULLETIN. AIR AND SPACE LAW 3. 2012. P. 48-52.

43 Nadiia Adahovska. BEFORE THE ANNOUNCEMENT ABOUT THE COVID-19 PANDEMIC STATUS OF FORCE MAJEURE. Phoenix. (2020; Olena Bernaz-Lukavetska, *supra*, note 19; Iryna Davydova, *supra*, note 9.

Following the current legislation, legal entities and individual entrepreneurs who are subjects of e-commerce have the right to independently choose a simplified or general taxation system. What is the difference, and how exactly does it relate to civil rights on the Internet during quarantine?

Unlike the general system, the simplified one involves the payment of a single tax instead of several separate taxes and fees. The nuances related specifically to the activities of online stores are that, for example, being in the first group of single taxpayers, which can only be natural persons-entrepreneurs, does not involve conducting activities related to online trade. We can draw this conclusion by analyzing the structure of the classification of types of economic activity (КВЕД ДК 009 of 2010), which states that for individual entrepreneurs, who are taxpayers of the single tax of group I, retail trade from trays and in markets is provided for: 47.81 (food, beverages and tobacco products), 47.82 (textiles, clothing, and footwear), 47.89 (other goods); but not: 47.91 (retail trade carried out by mail order firms or via the Internet), 47.99 (other types of non-store retail trade), 56.29 (supply of other ready meals), 56.21 (supply of ready meals for events). These types of economic activity have become especially relevant with the introduction of quarantine restrictions and are typical for online stores⁴⁴.

Therefore, among the taxpayers of the single tax, only those who are in the groups II and III can be subjects of Internet trade. At the same time, payers of the uniform tax of the group II have the right to provide delivery services exclusively to other payers of the uniform tax and the population, and among the payers of the tax of the group III may be legal entities.

Business practice shows that a simplified tax system is more suitable for individual entrepreneurs with relatively low levels of income while large volumes of income and, accordingly, profits, require the collection of income tax within the framework of the general taxation system, which is applied mainly by large market players, legal entities⁴⁵. In addition, depending on the chosen taxation system, online stores may be subject to VAT (20%), personal income tax (18%), military duty (1.5%) and other taxes⁴⁶.

According to the changes made to the Tax Code of Ukraine, new income limits of taxpayers who are on the simplified taxation system were established. Following these changes, the maximum permissible income of individual entrepreneurs of the group I is now UAH 1 million, of the group II is UAH 5 million, and of individual

44 Olha Lega, *supra*, note 26.

45 Alona Poberezhnik. *E-Entrepreneur: Nuances of Taxation of Activity*. GORO. 2020. Available at: <https://goro.ua/ua/post/e-entrepreneur-the-nuances-of-taxing-activities>

46 Volodymyr Gurlov, *supra*, note 17.

entrepreneurs and legal entities of the group III is UAH 7 million. These measures are designed to reduce the tax burden on single tax payers in quarantine conditions⁴⁷.

With the spread of the coronavirus epidemic on the territory of Ukraine in the digital environment, the number of offenses in the field of Internet trade began to increase. By using fake virtual sites, mirror links, misleading buyers, parasitizing on the extraordinary demand for disinfectants, masks, gloves, offenders literally started selling non-existent goods and services.

The algorithm of actions of such persons is approximately the same: the organizers of the fraudulent scheme indicate a phishing phone number, that is, one that will be used and disposed of in the successful execution of the scam, on which the buyer must “peck”. After receiving money from the consumer for a non-existent product, the swindler gets rid of the SIM-card and disappears. Later, he continues his/her criminal activities with a new website and a new sim card⁴⁸.

It is difficult to establish such a person and his/her personal data, so lawsuits regarding this category of cases mostly do not have a positive result. Thus, based on the analysis of court practice, it can be concluded that the courts mostly equally consider disputes regarding the protection of consumer rights, in which the plaintiffs are natural persons who purchased goods on the Internet, which in turn indicates the establishment of court practice. Let's consider in more detail the cases in which the identity of the defendant was established and a decision was made on the merits.

A characteristic feature of such disputes is the recognition of a violation of consumer rights by counterparties if the circumstances referred to by the consumer are proved, the court assigns the appropriate compensation, that is, in general, the satisfaction of the claims. However, courts most often refuse applicants compensation for moral damages due to the lack of supporting facts, such as the opinion of a psychotherapist, a check for the purchase of preventive and therapeutic drugs to combat stress, the absence of the possibility of compensation for moral damages stipulated in the contract concluded between the parties, of the cause-and-effect relationship between the counterparty's illegal behavior and consequences harmful to mental health.

47 Verkhovna Rada of Ukraine. Tax Code of Ukraine. 2010. Available at: <https://zakon.rada.gov.ua/laws/show/2755-17>; Verkhovna Rada of Ukraine. Law of Ukraine. About the introduction of amendments to certain legislative acts of Ukraine, directing to the provision of additional social and economic guarantees in connection with the spread of corona virus disease (COVID-19). 2010. Available at: <https://zakon.rada.gov.ua/laws/show/540-20#Text>

48 Oleh Titamir, *supra*, note 36.

In addition, there are not rare cases when the plaintiff cannot prove exactly what kind of binding relationship the parties are in, what kind of obligation the defendant had to fulfill, and in what period, which in the end most likely turns into a refusal to satisfy the claims⁴⁹. Let's consider several examples of current judicial practice that are related to the topic of our research.

According to the plot of Case No. 195/211/20, the plaintiff paid for the goods in the online store, but the order was not transferred properly. After that, the consumer announced the termination of the contract, but contrary to the requirements of the law, the money paid for the goods was not voluntarily returned by the seller. Thus, the court obliged the defendant to return them⁵⁰.

In Case No. 591/5801/19⁵¹ and Case No. 161/20376/19⁵², the courts satisfied the claims of consumers, in addition to compensation for moral damage, and in Case No. 465/2619/18⁵³, guided by the provisions of Article 700 of the Civil Code and Clause 4 of Article 4, Part 1 of Article 15 of the Law of Ukraine "On the Protection of Consumer Rights", the court found the defendant's actions regarding failure to provide information about goods in Ukrainian to be unlawful. It is noteworthy that in all three cases the defendant is the same company.

Interesting comments of the court are contained in Case No. 295/2041/20. According to this decision, the court refused to take into account the statement of the representative of the defendant that the information posted on the Internet is unreliable because it can allegedly be posted by any person. The court proceeded from a set of signs that established that the defendant's online store belonged to him, since he used the paid service package of the Prom.ua marketplace, and the phone numbers indicated a match between the contact details of the plaintiff, his online store and his account in the WhatsApp messenger⁵⁴.

We assume that shortly the number of cases regarding violations in the field of consumer rights protection, which are related to the e-commerce and Internet trade

49 Oleh Nikitin, *supra*, note 14.

50 Judgment of the Tomakivsky District Court of the Dnipropetrovsk Region on reference No. 195/211/20 dated 06/05/2020. Available at: <http://reyestr.court.gov.ua/Review/89668425>

51 Decision of the Zarichny District Court of Sumi on the right No. 591/5801/19 dated 25.05.2020. Available at: <http://reyestr.court.gov.ua/Review/89420248>

52 Decision of the Lutsk regional court of the Volyn region on reference No. 161/20376/19 dated 04.05.2020. Available at: <http://reyestr.court.gov.ua/Review/89113365>

53 Judgment of the Frankivskyi District Court of the city of Lviv on the right No. 465/2619/18 dated 02.07.2020. Available at: <http://reyestr.court.gov.ua/Review/90292263>

54 Judgment of the Bohunsky District Court of the city of Zhytomyr on the right No. 295/2041/20 dated 24.06.2020. Available at: <http://reyestr.court.gov.ua/Review/90243204>

industry, will increase, and already next year we will have established court practice regarding violations that occurred precisely during the quarantine period. In the conditions of quarantine restrictions, the state must ensure the protection of consumer rights in contactless mode. The central body of the executive power, which carries out state policy in the field of consumer rights protection, is the State Service of Ukraine for Food Safety and Consumer Protection, but, unfortunately, there always were many complaints about it.

To modernize and optimize the dialogue between the state and citizens in this difficult time, the latest technologies can come in handy. Let's consider this possibility with the help of the "SMART-consumer" project, whose mission is to fulfill the informational and human rights protection function.

This application allows consumers to check information about goods and products, get acquainted with stories, and instructions on preventing or protecting against violations of consumer rights. Also, within the framework of the Internet platform, the operation of the Cash-Back service is provided, which will allow consumers to file complaints in case of issuing an invalid fiscal check for purchases of UAH 850 (or more) for some goods from high-risk groups (jewelry, medicines, and others). The protection algorithm involves filing a complaint through the taxpayer's electronic office after passing electronic identification using a qualified electronic signature⁵⁵, after which an inspection by the relevant supervisory authorities (e.g. State Tax Service of Ukraine) is initiated to establish the fact of a violation (or lack thereof) on the part of the seller. If the data from the complaint is confirmed, the consumer will be compensated for the purchase price within 10 working days.

IV. CONCLUSIONS

Thus, as a result of the conducted research, the following results were achieved:

- 1.1. A review of publications in various fields of activity, such as jurisprudence, economics, marketing, retail, accounting, and auditing, was carried out, and a brief description of the results obtained by the authors was provided.
- 1.2. The theoretical and legal framework that regulates the protection of civil rights on the Internet in quarantine conditions is characterized, in particular, the application of certain normative legal acts in the context of the current crisis situation at the international and national levels is analyzed.

55 Verkhovna Rada of Ukraine. Law of Ukraine: On Electronic Trust Services. 2017. Available at: <https://zakon.rada.gov.ua/laws/show/2155-19#Text>.

- 1.3. Actual judicial practice with specific examples of court decisions in the field of protection of consumer rights violated in the digital environment is given.
- 1.4. Analytics related to the issue of taxation of Internet trade in quarantine conditions have been provided.

In order to optimize and modernize the processes, mechanisms, conditions, and algorithms for the protection of civil rights, in particular, the rights of consumers on the Internet in quarantine conditions, it is proposed to take the following measures:

- 2.1. Improve the monitoring mechanisms regarding compliance with the ban on conducting business activities in the field of Internet trade for entities that do not disclose registration information. First of all, it concerns online stores with phone numbers that are unverified or not linked to the passport data of a natural person-entrepreneur.
- 2.2. Provide the right to block online store sites that do not meet identification requirements in a court of law. Separate attention should be paid to the possibility of applying an accelerated procedure for the trial of such cases.
- 2.3. Legislatively regulate the possibility of using tools and mechanisms for depositing consumers' funds by banking institutions or marketplaces in order to strengthen their protection against Internet fraudsters. In this context, it remains the responsibility of the state to conduct a powerful information campaign, which will be designed to explain the advantages of depositing funds in a separate account and to identify the risks of paying for goods or services in the P2P format (transfer of funds from one individual to another).
- 2.4. Create an official register of honest and conscientious online stores separately or on the website of the state regulator. Such a step will contribute to the harmonization of national legislation with the law of the European Union, as it corresponds to the European model of consumer rights protection.

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