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THEORETICAL AND PRACTICAL ISSUES OF CONSUMER'S CONCEPTION

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Abstract. *Protecting consumers' rights set higher standards on the rights of security compared with other participants of civil turnover, so the concept of consumer acquires not only theoretical but also practical significance. Definition of consumer must be sufficiently clear and precise as the proper subject of classification depends on what rules will apply to legal relationships arising.*

To this purpose, the concept of consumer is formulated as the concept of both the European Union and national legislation. Both presented the concept of consumer that is defined in accordance with the formal characteristics and prejudices that individuals are the weaker party without the actual value of that person experiences and knowledge and so on.

Legal doctrine voiced different conception of the position of the consumer. Therefore, based on existing approaches to consumer protection, it is possible to form a separate consumer's perception of concepts such as social role of situational security concept, the concept of hybrid user model.

Keywords: *consumer, consumer law, consumer right protection, consumers' legal relations, contracts.*

Introduction

While speaking to US Congress President John F Kennedy said, "Consumers by definition includes us all. They are the largest economic group in the economy, affecting and affected almost by every public and private economic decision. But they are important group whose views are often not heard".

All countries are driven by one basic goal – to develop economy by ensuring prosperity nationwide and for each person individually. Open and competitive market is the most effective way to promote business performance and ensuring that consumers are provided with high grade services and goods. When economy is functioning in efficient manner and consumers choose whichever goods and services they prefer, thus they obtain two major roles:

Firstly, they meet their own needs, and

Secondly, their decisions ensure competitiveness among suppliers and incite innovations as well as decrease prices of selling of goods and services.

However, in developed countries such system is confronted with difficulties. Monopolies are growing, trade practice is unfair and misleading while goods and services tend to be unsafe and faulty. Consumers are often provided with inadequate information about quality, expiry date and other factors related to the goods and services. These and such like market shortages are disbalancing information and power between consumers and businessmen. Consumers are not only less informed than the sellers, but also appear in a weaker position when it comes to defending their own interests. New, socially responsible and human-oriented economic industrial system cannot be established without state intervention and impartial laws.

According to the fact that rules of law of consumer rights help to enhance the protection of their rights comparing them to the other participants of civil turnover, the consumer's conception is applied both theoretically and practically. Rules of law applied for emerged legal relations depend on appropriate qualification of the subject.

Consequently consumer's conception has to be defined clearly and precisely.

Protection on consumer rights is one of the priority areas of the European Union and the subject of this protection is the most important question under consideration, i.e., consumer's protection, which has been an objective of both legal science and political discussions for more than three decades now. One of the most important questions: what is the consumer?

Therefore the *objective* of this article is to distinguish and analyze features of consumer's conception, formulated in legal doctrine and case-law as well as in legal acts of European Union and Lithuania.

In order to attain the objective set within the article the following *tasks* are set:

1. To formulate consumer's conceptions with reference to the protection of consumer rights as stated in the legal doctrine;
2. To define consumer's features, which exclude him from other participants of civil participants;

3. To carry out an analysis of common characterization of consumer's conception within legal acts of European Union and Lithuania;

4. To analyze case-law of the European Court of Justice and the Supreme Court of Lithuania in relation to consumer's conception.

Subject of the analysis – definition of consumer as a weaker party of contractual relations.

Methods of analysis: the article was prepared with reference to systematic and comparative analysis by applying a document analysis method.

Subject of consumer's conception has not been widely analyzed within the legal doctrine of Lithuania. This issue was mostly analyzed by D.Bublienė, who has examined issues of unfair terms in consumer contracts and also has been episodically mentioned in the scientific publications of P.Ravluševičius.

1. Consumer's Conceptions

Analysis of consumer's conception should be started from the legal doctrine where protection of consumer rights and analysis is approached differently. Depending on the dominant attitude towards the protection of consumer rights, the following conceptions can be formulated:

1. Conception of social role;
2. Conception of situational protection;
3. Mixed model of consumer's conception.

These conceptions are formulated according to the existing approach to the protection of consumer rights, thus consumer's conception in a way represents national traditions and perception of protection of consumer rights. Thus it can be said that consumer's conception as it is provided in various laws protecting consumer rights is the result of doctrine of protection of consumer rights.

The first conception under consideration is *social role theory*¹ upholding the view that there are three groups of legal subjects:

- Ordinary citizen (*normale Bürger* in German);
- Businessman (*der Unternehmer* in German);
- Consumer (*der Verbraucher* in German).

However, the consumer's conception is not clearly defined. Attitude towards consumer is based on his social role, i.e., what role he gets while concluding a contract. According to J.Drexl², consumer's conception highlights person's role in contractual relations. Consumer as such *in general* does not exist; everyone can become a consumer. A person is classified as consumer due to shortage of certain features (incompetence in particular area), which is typical for a greater part of society rather than for an individu-

1 See: Teske, W. Der Begriff des „Verbrauchers“ - Resümee und Annäherung. In *Recht und Ökonomie beim Konsumentenschutzes*. Magoulas, V. G.; Simon, J. Baden-Baden, 1985, s. 15 ff.

2 Drexl, J. *Die wirtschaftliche Selbstbestimmung des Verbrauchers*. Tübingen, 1998, s. 284.

al person³. Therefore consumer's protection is intended to compensate the conceptual general inequality⁴.

Within this conception a person is considered as weaker just because he gets consumer's role: being a consumer means weakness.

By analyzing features of this conception we have to emphasize the following shortages of this conception:

- It is not clearly defined why consumer is in a need for special protection. This conception underlines such economic and social weakness as stereotype, formal “business or juridical inexperience”, which is not dangerous for the consumer.
- This approach does not prevent from the possibility that consumer's conception might include those subjects, which are not weaker within different areas due to their economic activeness.

Therefore, lack of experience cannot be brought up as a proof of weakness so that special protection of consumer rights would have to be applied to such subjects. That would be unjustifiable, since such person is already carrying out a business activity.

It should be pointed out that rules of law protecting consumer rights under contract law also have to be fair in respect of other party of the contract. There cannot be any factual requirements to set one-dimensional process by seeking to eliminate contractual inequality.

Therefore we can state that social role theory has not attained its objectives since it is based on structurally arranged weakness of the consumer.

The next conception is the conception of *situational protection*⁵. Herein the approach is different than the one within the conception of social role and “personalized” protection is rejected. This conception is based on particular danger and particular vulnerability, which determines the need of protection.

Starting point of the conception is considered as a “contractual weakness” determined by a certain situation, instead of a predefined consumer's conception. (see Fig. 1).

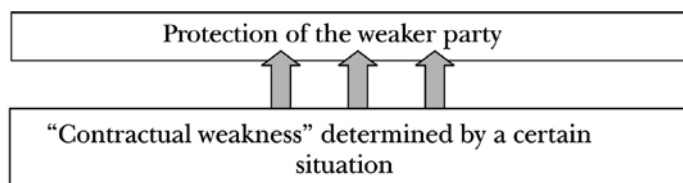


Figure 1. Base of the conception of situational protection

Considering the fact that situational approach is a situational “contractual weakness” based on compensation for vulnerability for each person who is holding weaker

3 Kemper, R. *Verbraucherschutzinstrumente*. Baden- Baden: Nomos, 1994, s. 31.

4 Neuner, J. *Privatrecht und Sozialstaat*. C. H. Beck, 1998, s. 276 ff.

5 Žr.: Lienhard, U. *Der asymmetrisch standartisierte Vertragschluss im EG-Privatrecht*. Baden- Baden: Nomos, 2004, s. 81; Pfeiffer, Th. *Europäische Rechtsangleichnung und nationale Privatrechte*. C. H. Beck, 1999, s. 21 ff.

position. However situational “contractual weakness” is more complicated and in need of protection than general weakness of the consumers.

So this approach is based on “factual” need of protection, irrespective of the economic role and social conditions of the parties of the contract. All legal subjects, who find themselves in unequal situations, can claim for improved legal protection.

The problem is that it is not possible to define apparent addressee of the rule of law. Consumer’s conception is not the element, which can be used to define the sphere of application. However, this does not mean that it is abandoned, since situational conception is a result of differences between covenantees, therefore consumer’s conception acquires an evaluative format as it is evaluated with reference to a particular situation.

The other problematic aspect of the conception, consequent upon the ones mentioned above, is that a businessman, who makes a contract not common for his business activity, can be considered as the weaker party. Yet this is unjustifiable following the practice of European Court of Justice, since presumption applied in such cases states that “a person who practices economic activity or who wants to initiate business activity, has to have required knowledge (information), experience and negotiation skills”. The term “business activity” means “not only certain business risk, but also a risk when at particular point there might be a shortage of knowledge required to make a business activity contracts. Law should not protect businessmen from their own incompetence (ignorance)”⁶.

These two quite contradictory consumer’s conceptions can form a transitional *mixed model of consumer’s conception*, combining situational and personalized consumer’s conceptions⁷. This conception is an intermediate position, where aforementioned differences are compensated by emphasizing vulnerability of one of the parties, which is determined by a particular situation. Mixed conception of the consumer allows considering the social role of the person, who concludes the contract as well as his experience and awareness in a particular area.

This conception underlines that a consumer *per se* is not a participant of the market and is in need of protection, yet demand of the protection depends on certain dangers and risk. The situational moment of this conception is the one that ensures additional protection for the consumer. Consequently not only consumer’s “status”, but also specific deficit under some circumstances can justify his protection in a contract law. Herein one can agree with an idea of P. Ravluševičius that „consumer right to protection forms mechanism of compensatory right, which should protect consumers from hazards of the market economy“⁸.

6 Bublienė, D. *Vartojimo sutarčių nesąžiningų sąlygų kontrolė* [Control of unfair terms in consumer contracts]. Vilnius, 2009, p. 93.

7 Meller-Hannich, C. *Verbraucherschutz im Schuldvertragsrecht. Private Freifeit und Staatliche Ordnung, Jus Privatum Bd.101, Habil.* Tübingen, 2005, s. 140 ff.

8 Ravluševičius, P. Vartotojų teisių apsaugos ypatumai Europos Sąjungos ir Lietuvos teisėje [Speciality of the consumer rights protection in the European Union and Lithuanian law]. *Jurisprudencija*. 2007, 9(99): 49.

However, limits of consumer's conception have to be defined impartially. Therefore the function of consumer's conception is to determine these persons, who would in some cases be in a need for an additional protection provided by the rules of law.

In order to name the subjects, who are provided with improved legal protection in contractual relations, it is necessary to define attributes of the consumer. The question is, which elements comprise the content of consumer's conception, in other words, which positive criteria allows to determine the application sphere of rules of law for protection of consumer rights?

Consumer's conception is firstly based on *perceptual (factual)* criterion, since the consumer is a person, who requires legal protection due to destitution of particular characteristics. Yet perceptual criterion is too abstract while describing needs of legal protection of a particular group of people. Therefore perceptual criterion is complemented with an *impartial (functional)* criterion, which is related to the objective of consumption, i.e., if the contract is concluded for business, professional or private use.

In order to properly define consumer's conception, it has to be noted that these elements correlate among each other and these two component parts comprise common conceptual characteristics of the weaker party.

According to D. Bublienė⁹, consumer's attributes are provided by applying formal criteria and not considering knowledge, experience, etc., of a particular person. Such criteria suppose common abstract presumption (precondition) that those people, who conclude contracts for non-business use, are presumed as weak and not having required knowledge and experience.

Hence we can state, that such consumer's conception defined by formal attributes will protect all of the consumers irrespective of their advantages or disadvantages.

When consumer's conception is based on such attributes, there is no difference if the consumer is under particular circumstances indeed weaker than the other party of the contract - businessman. As a result it is possible that the person, who has enough legal knowledge and required experience and concludes contracts for non-business and non-professional use with a small businessman, for whom that contract is the first one, might be deemed as a consumer.

2. Common Characteristics of Consumer's Conceptions in Legal Acts of European Union and Lithuania

Consumer's conception has been established in both national and European Union's regulations. It is necessary to analyze problems of consumer's conception within legal acts of European Union, since changes in the area of European Union's consumer rights directly affect Lithuanian consumers' law and its application.

It should be noted that most of the legal acts of consumers rights adopted at European Union level contain similarly formulated consumer's conception by occasionally

9 Bublienė, D., *supra* note 6, p. 89.

utilizing slightly different grammatical forms, which do not have much influence on the content of consumer's conception. For instance, in the Article 2 of the Directive 93/13/EEC of the European Council of 5 April 1993 on unfair terms in consumer contracts, in the Article 2 of the Directive 1997/7/EB of Council of 20 May 1997 on the Protection of Consumers in respect of Distance Contracts, in the Article 1 of the Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees it is specified that "consumer" means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession.

In the Article 2 of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC¹⁰ the following construction of consumer's conception is provided: "consumer" means any natural person who, in distance contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession.

By analyzing Directive on consumer rights we can see that there is a trend in European Union's legislation to formulate uniform consumer's conception. This objective is especially topical nowadays when discussions are held due to revision of statute of consumer rights within European Union while preparing a new Directive on consumer rights.

In the Project¹¹ (Part 1, Article 2) of Directive on consumer rights the following consumer's conception is provided: consumer means any natural person, acting upon contracts, which are applied to this Directive and acting for the purposes, which are outside his trade, business and profession.

It should be noticed that there is an innovation in this conception: it includes craft. Trader's conception comes alongside of consumer's conception: Trader means any natural or legal person who, in contracts covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader. Hence according to the definition provided in the Proposal for a Directive of the European Parliament and the Council on Consumer, trader is not only a person who directly concludes contracts with a consumer and is acting for the purposes relating to his trade, business and craft or profession, but also a person who is acting in the name or on behalf of a trader.

According to the extent of the harmonization of the Directive, i.e., it will be exhaustively harmonized or harmonized at maximum; it will have influence on consumer's conception all across EU. If it will be decided that it will be of an exhaustive harmonization, that is uniform level of protection of consumer rights will be determined all across

10 Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC. [interactive]. [accessed 29-10-2010]. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=DD:06:04:32002L0065:LT:PDF>>.

11 Proposal of 8 October 2008 for a Directive of the European Parliament and the Council on Consumer Rights - COM(2008) 614. [interactive]. [accessed 28-10-2010]. <http://ec.europa.eu/consumers/rights/docs/COMM_PDF_COM_2008_0614_F_LT_PROPOSITION_DE_DIRECTIVE.pdf>.

European Union, Member States will not be able to regulate this area in any other way *as well as to define consumer's conception in any other way*. This means that Member States will not be able to provide for improved level of consumer's protection.

We can agree with many critical opinions and doubts due to Commission's proposal on project of full harmonization for Directive on consumer rights, since an application of full harmonization principle would violate the principle of proportionality and eliminate cultural diversity of consumers.¹² Besides, in some European Union States, where the level of protection of consumer rights is currently is at a high level would decrease if full harmonization method according to the new Directive would be applied. It should be noted that lately the position of European Commission has toned down while preparing third project of Directive on consumer rights as some provisions are intended to have minimum harmonization by providing Member States with an opportunity to define higher standards for consumer protection within national law.

In addition, it should be emphasized that by defining consumer's conception within European Union legislation a negative way of formulation is applied. This means that consumer is defined by applying a negative way of conception formulation thus providing the cases when contracts cannot be considered as consumer contracts (for purposes outside business, trade or profession).

Consumer's conception in Lithuania is provided in the main law on protection of consumer rights – Law on Consumer Protection of Republic of Lithuania. It is stated in the Part 1 of the Article 2 of this Law, "Consumer means a natural person, who expresses his intention to buy, buys and uses goods or services to meet his own personal, family or household needs are outside his business or profession."¹³

According to the definition of consumer's conception provided in this Law, there are particular criteria, which exclude consumers from other subjects of Civil Law:

1. Only natural person is recognized as a consumer;
2. Being a natural person is not enough in order to be recognized as a consumer. Following the person has to perform particular action: to express an intention to buy, to buy and to use goods or services;
3. If natural person wants to be recognized as a consumer, the good he buys and uses is intended for his own personal, family or household needs and is outside his business or profession.
4. If natural person wants to be recognized as a consumer, it is required that other party of legal relations would be legal person (businessman) or a person, who pursues professional or commercial activity.

It should be noted that natural persons who, in accordance with the procedure established by the law, are engaged in commercial activities shall be deemed to be entrepreneurs. (Part 2 of the Article 2.4 of the Civil Code of the Republic of Lithuania).

Consumer's conception should be analyzed following the Civil Code of the Republic of Lithuania (hereinafter referred to as the CC RL), where consumer's conception is

12 Conference of the European Economic and Social Committee and the European Commission of 13 March 2009 concerning the Directive on consumer rights. [interactive]. [accessed 11-10-2010]. <<http://www.vartotojoteises.lt/index.php?2568228320>>.

13 Law on Consumer Protection of the Republic of Lithuania. *Official Gazette*. 1994, No. 94-1833; 2007, No. 12-488.

not specified directly, but according to the analysis of Part 1 of the Article 1.39 it can be said that upon the intention of legislator consumer can be defined as a natural person who is acting for the purposes outside his business or profession, i.e., to meet the needs of his own, his family and household. It is obvious that within the context of the CC RL the legislator identifies consumer with natural person. However, the fact that particular party in legal relations is natural person, does not necessarily mean that parties have concluded a consumer and that respective person should be deemed as a consumer. There are particular eligibility requirements and qualification conditions for the consumer, i.e., it is necessary to determine the purposes based on which a particular contract was concluded by the consumer. By analyzing provision provided in the Article 1.39 of CC RL we can see that consumer has to act outside business, trade or profession while concluding a contract. Contract must be concluded in order to meet needs of his own, his family and household. Consumer is considered as a weaker party having less experience, information and economic possibilities. If a particular natural person has concluded a contract to make a profit related to his business and professional interests, this contract will not be deemed as consumer contract and respective party of the contract will not be recognized as a consumer.

Hence a person can be recognized as a consumer and his interests can be protected as of the weaker party of the legal relation if a natural person concludes a particular contract and the contract is concluded in order to meet personal needs of natural person, needs of his family or business¹⁴.

By summarizing we can exclude the following features of consumer's conception as they are formulated upon definition provided in the CC RL:

- Consumer is any natural person, who concludes a contract for the purposes outside his business and professional activity; he is the end user of goods and services;
- Service provider or seller of goods has to act for purposes of business, i.e., selling of goods / services and related to his business or professional activity;
- Goods offered for sale and services provided have to be intended for private use and outside professional use;
- A person who has not directly concluded a contract with service provider or seller of the goods, but uses these goods and services to meet his own and / or family's needs.

3. Consumer's Conception in the Case Law of European Court of Justice and Supreme Court of Lithuania

Consumer's definition provided in the legal act of European Community is revised and developed in resolutions adopted by the European Court of Justice (hereinafter referred to as the ECJ) while hearing various proceedings. P. Ravluševičius states that "in some case European Court of Justice evaluates consumer as a person who is absolutely uncomprehending and offhandedly unconcerned and who is protected by measures,

14 Judgement of Supreme Court of Lithuania of 1 December 2008 in Civil Case No. 3K-3-579/2008.

while in other cases ECJ applies a category of economic consumer by emphasizing consumer's ability to think in a critical way and to perceive circumstances¹⁵. Such ambiguous evaluation of consumer's category can be explained by the changing position of the consumers as well as changing purposes for consumer protection. It can be noted, that in the background of the consideration of new Directive on consumer rights¹⁶ there are new suggestions offered in relation to consumer's status, underlining that previously conception of weak consumer was applied and currently consumer is defined as confident while internet creates a model of consumer-purchaser.

Consumer's conception was also disclosed by the European Court of Justice in its interpretation of provisions of Brussels Convention and discussion if a particular person can be recognized as a consumer. It should be noted that the European Court of Justice has formulated the so called narrow conception of a consumer, i.e., by defining consumer as a person who acts upon his own interest and not the interests related to his business or profession. In the case of *Bertrand*¹⁷ the European Court of Justice stood for position that consumers are the weaker party of legal relationship; do not transfer the goods they acquire and use it for the needs of their own, their family and household.¹⁸

In the case of *Gruber*¹⁹ the European Court of Justice also clearly supported the position, that consumer's conception has to be interpreted in a narrow way, according to the legal condition of a particular person in a particular contract, by specifying the legal condition separately in each case and considering the format and purpose of the contract rather than subjective position of the person. In the case mentioned above the European Court of Justice concluded by stating that the special rules defined in Brussels Convention and intended to protect consumer as a weaker party, are applied only for those contracts, where the purpose is to meet the private personal needs of a particular person not related to his business or profession. The European Court of Justice highlighted in the case, that if a person seeks to benefit in relation to his professional activity, he should be considered as an equal party in legal relationship, therefore protection provided to the consumers of Brussels Convention does not apply in this case. But there are many cases when particular contract is concluded for both personal and professional purposes. In this case the court, which is hearing a particular case, should have carried out deep investigation and analysis on evidence in order to decide in regards to the purposes of the case: if it was intended to meet one's own needs, family needs or business was the main purpose.

15 Ravluševičius, P., *supra* note 8, p. 51.

16 Conference of the European Economic and Social Committee and the European Commission of 13 March 2009 concerning the Directive on consumer rights, *supra* note 12.

17 Judgment of the European Court of Justice of 21 June 1978 in Case 150/77. *Bertrand v. Paul Ott KG*.

18 Vartotojų teisių apsauga vartojimo sutartiniuose santykiuose: teisinio reguliavimo ir teismų praktikos apžvalga [Protection of consumer rights in the contractual relations of consumption: review of legal regulation and jurisprudence]. *Teismų praktika*. 2009, 30.

19 Judgment of European Court of Justice of 20 January 2005 in Case C-464/01. *Johann Gruber v. Bay Wa AG*.

In other combined cases of *Cape Snc v. Idealservice Srl (C-541/99)* and *Idealservice MN RE Sas*²⁰, the European Court of Justice, while resolving European Council Directive No. 93/13/EEB on unfair terms in consumer contracts, has also emphasized that this Directive cannot be interpreted too broadly. It was meant for protection of natural persons as consumers, but not applicable for legal persons.

By establishing and developing principles of protection of consumer rights within Lithuania, case law of the Supreme Court of Lithuania performs a significant role.

The Supreme Court of Lithuania, as an institution, which is competent to interpret legal acts of the Republic of Lithuania, in the judgment of the 12 May 2003 in Civil Case No. 3K-3-579/2003²¹ on resolution of dispute due to the contract between two legal persons – “Vilniaus vandenys” and Owners’ association or multi-apartment buildings – by seeking to recognize the contract as a consumer contract, expressed its position which has greatly contributed to the formulation of consumer’s conception in Lithuania.

By acknowledging this contract as a consumer contract the Court was referring to the Part 1 of the Article 1.39 of the Civil Code and emphasized that consumer contract is defined by two attributes: *firstly*, goods and services must be acquired by a natural person; *secondly*, natural person has to acquire goods or services outside his economic activity, but in order to meet his personal, family and household needs.

By legally evaluating the contract these two attributes require to determine, which person, i.e., natural or legal, *is the end consumer of goods and services as well as the purpose of acquisition of goods and services*.

In addition, specific nature of Owners’ association or multi-apartment buildings was taken in consideration, since following the provisions of Law on Home Owners’ Associations of Multi-Apartment Buildings, this association is considered as non-commercial legal person with special capacity and through which citizens can implement their objective and obligatory rights. Therefore following the disputed contracts consumers of the supplied water are not considered as association, but as owners of the apartments, i.e., natural persons, who utilize water for their household needs. Owner of the apartments are the one who pay for the supplied water and not the association.

While hearing this case the Supreme Court of Lithuania evaluated the disputed contracts in a non-formal way and referred to the actual situation.

In other case, which contains absolutely different subject of disputes than the previous one, by resolving the question of recognizing contract on carriage by air as a consumer contract²², the Supreme Court of Justice also abandoned formal evaluation of the parties of the contract, although employer was the one who bought flight tickets for the claimant and purpose of the trip was duty assignment. By considering this contract

20 Judgment of European Court of Justice of 21 November 2001 in Case C-541/99, C-542/99. *Cape Snc v. Idealservice Srl and Idealservice MN RE Sas*.

21 Judgment of the Supreme Court of Lithuania of 12 May 2003 in Civil Case No. 3K-3-579/2003. *257th Owners’ association or multi-apartment buildings v. UAB “Vilniaus vandenys”*, cat. 37.1.

22 Judgment of the Division of Civil Cases of the Supreme Court of Lithuania of 1 December 2009 m. in Civil Case No. 3K-3-541/2009. *M. L. v. Air Baltic Corporation AS*.

as a consumer contract, the Supreme Court of Lithuania has stated that subject of the contract on carriage of passengers is a very specific service – passengers are carried to the destination point, therefore one party of the contract on carriage of passengers or the third party is always a natural person and the contract is concluded in his favor (passenger), and that is one of the attributes of consumer contract defined in the Article 1.39 of the CC RL. As it was mentioned before, the other attribute, which has to conform to the consumer contract, is the purpose of the conclusion of the contract. Referring to this attribute of this consumer contract, the Supreme Court of Lithuania underlined, that it is necessary to discern purpose of carriage as such (in this case flight) and purpose of person's trip. Thus the subject of the Contract on carriage by air is a flight as such; upon this contract personal needs of a passenger have to be met to be carried to the destination point, which cannot not be considered as related to his business or profession, since the destination of the person's trip (i.e., his activity after arrival to the destination point) is beyond the limits of the contract on carriage of passengers. Following these arguments the Supreme Court of Lithuania stated that contract on carriage of passengers should be considered as a consumer contract, where passenger is the weaker party, being in obviously unequal position in respect of other party of the contract – the carrier.

Thus according to these cases we can claim, that the Supreme Court of Lithuania has recognized a contract, which is concluded by a legal person on behalf of natural person, as a consumer contract.

In its case law the Supreme Court of Lithuania has also paid attention to the fact that it often comes into collision when seeking to determine the purposes upon which the contract was concluded, since a person can buy a respective good both for personal needs, family needs and business needs. In one of the cases the Supreme Court of Lithuania was resolving a dispute if a natural person, who has registered his farm on his own name and after concluding a contract on purchase of peat substrate with and enterprise can be recognized as consumer. The Court specified upon the resolution that the consumer is a natural person, who acquires goods and services for his own and household needs, his family's needs and outside business and professional activity. The farmer bought peat substrate outside his personal needs, but for the purposes of business, in order to grow vegetables and flowers, therefore he is deemed as businessman and purchase contract he has concluded is not considered as a consumer²³.

There are no rules of law in Lithuanian legal area that would regulate double purposes of the contract, although such contracts might be concluded as it was demonstrated by the case law. Therefore in such cases courts are forming a precedent practice.

23 Judgment of the Supreme Court of Lithuania of 19 October 2005 in Civil Case No. 3K-3-458/2005. *V. Pečiulis v. AB „Darpeta“*.

Conclusions

1. Consumer's conception is an important part of contractual law as it depends on definition and naming of the consumer attributes if the relations established between the parties will be considered as legal consumer relations. Consumer's conception is related to the protection of weaker party within the contractual relations.

2. Consumer's conception is provided in numerous laws on protection of rights and is a result of Contract Law and doctrine on protection of consumer rights. Consumer's conceptions are formulated according to the existing approach to the protection of consumer rights, therefore in some way it represents national perception to the consumer rights and traditions.

3. Consumer's conception is revealed following his actions in the market (activity within the market) rather than defining certain features of a person. Formulation of consumer's conception does not mean that consumer has to include some defined group of persons. Any person who buys goods and services in order to meet the needs of his own, family and household, outside his business and profession.

4. Consumer's conception usually provided in different legal acts both in European Union and at national level is formal; by utilizing preconception that natural person is a weaker party and making no reckoning of his experience, knowledge, etc.

Although legal acts of the European Union do not provide absolutely uniform grammatical construction for consumer's perception, two common attributes can be excluded, thus it leads to conclusion that consumer's conception within European Union law is typically narrow, i.e., natural person only.

5. European Court of Justice has chosen narrow definition for consumer's conception and only individual person is considered as consumer, and this concept is not extended as well as legal persons and businessmen are not considered as consumers.

6. Case law of Lithuanian Courts also identifies consumer with natural person, who buys goods or use services in order to meet the needs of his own, family and household. If the contract is concluded between two legal persons and a question recognition of the contract as a consumer contract has to be considered, a format of legal person is evaluated instead of formal party of the contract and the initiator of the contract as well as the end receiver of the good / service is determined.

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VARTOTOJO SAMPRATOS TEORINĖS IR PRAKTINĖS IŽVALGOS

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Santrauka. *Vartotojų teises ginančios normos nustato didesnes jų teisių apsaugos garantijas palyginti su kitais civilinės apyvartos dalyviais, todėl vartotojo sąvoka įgyja ne tik teorinę, bet ir praktinę reikšmę. Vartotojo sąvoka turi būti pakankamai aiški ir tiksli, kadangi nuo tinkamo subjekto kvalifikavimo priklauso, kokios teisės normos bus taikomos atsiradusiems teisiniams santykiams.*

Tuo tikslu vartotojo samprata yra formuluojama ir Europos Sąjungos, ir nacionaliniuose teisės aktuose. Juose pateikiama vartotojo samprata yra apibrėžta formaliais požymiais ir laikantis išankstinės nuostatos, kad fiziniai asmenys yra silpnesnė šalis, neteikiant reikšmės tikrajam šio asmens patyrimui, žinioms ir kt.

Teisės doktrinoje išsakomos įvairios pozicijos vartotojo sampratos klausimu. Todėl remiantis esamu požiūriu į vartotojų teisių apsaugą, galima suformuoti atskiras vartotojo sampratos koncepcijas, tokias kaip socialinio vaidmens, situacinės apsaugos koncepcijos, mišrus vartotojo sampratos modelis.

Socialinio vaidmens teorijoje požiūris į vartotoją grindžiamas jo socialiniu vaidmeniu, t. y. atsižvelgiant į tai, koks vaidmuo jam tenka sutarties sudarymo metu. Asmuo laikomas silpnesniu vien todėl, kad jam tenka vartotojo vaidmuo – buvimas vartotoju rodo jo silpnumą.

Situacinės apsaugos koncepcijoje laikomasi pozicijos, kad apsaugos poreikį nulemia faktinės aplinkybės, nepriklausomai nuo sutarties šalies ekonominio vaidmens arba socialinių sąlygų. Todėl visi teisės subjektai, kurių nelygiavertės situacijos, pretenduoja į didesnę teisinę apsaugą.

Mišrioje vartotojo sampratos koncepcijoje pabrėžiamas vienos iš šalių pažeidžiamumas, kurį lemia konkreti situacija. Mišri vartotojo sampratos koncepcija leidžia atsižvelgti į sutartį sudarančio asmens socialinį vaidmenį ir į jo patyrimą, informuotumą esant konkrečiai situacijai.

Reikšminiai žodžiai: *vartotojas, vartotojų teisė, vartotojų teisių apsauga, vartojimo teisiniai santykiai, sutartys.*

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