

## A general view of Albanian legislation on Distance Contracts

Dr. Ersida Teliti

Lecturer, Law Faculty, Tirana University, Abania

Doi:10.5901/ajis.2013.v2n11p203

### Abstract

*Distance contracts are used very often nowadays in Albania. Most of consumer buy goods and services using the means of distance communication, such as: telephone, email, television etc. Even they buy, they are not aware about the conclusion of such contract. The consumer does not have any information about their rights and the trader's obligations. So, they get under trader powers without exercising their rights. The aim of this article is to give a general view about the provisions of distance contracts according to Albanian law "On consumer protection". Also, the article offers a comprehensive view to Albanian law provisions and those offers from the European legislator. In the end, the article gives some recommendations in order to improve our law and how to make it more effective.*

**Key words:** distance contracts, consumer, right to withdrawal, information, trader.

### Introduction

The development of internet world and the signing of Stabilization and Association Agreement have increased the usage of distance contracts. This long process has been accompanied with legislative changes. The Albanian State should approximate its legislation with *Acquis Communautaire*. Consumer protection is one of the most important fields, in order to realize the four freedoms of the Union, especially the freedom of products and services.

#### 1. General view

Distance contracts are regulated under the law no. 9902, dated 17.04.2008 "On consumer protection" and amended from the law no. 10 444, dated 14.07.2011 and law no. 15/2013, dated 14.02.2013. Also, more detailed regulation is offered by the Decision of Council of Ministers no. 64, dated 21.01.2009 "On distance contracts".

The law amendments are in accordance with the Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 "On the protection of consumers in respect of distance contracts". The Directive 2011/83/EU of the European Parliament and of the Council

of 25 October 2011 "On consumer rights" hasn't been reflected to our national legislation on consumer protection.

Distance contract means any contract concerning goods or services concluded between a trader and a consumer under an organized distance sales or service-provision scheme run by the trader, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded.

So, the Albanian law offers a definition identically of that given from the Directive 97/7/EC. The Directive 2011/83/EU "On consumer rights" gives the same definition of distance contracts, but adding explicitly the terms "without the simultaneous physical presence of the trader and the consumer". This is a key element which makes a big difference between distance contracts and contracts concluded away from business premises.

The parties of this contract are : the consumer and the trader. According to Albanian law "on consumer protection", consumer is a person, who buy or use goods and services for himself, for filling individual needs, acting for purposes which are outside his trade, business or profession. Here, the definition given from our legislation is wider than European legislator. If we use the literal method of interpretation, consumer could be a natural or legal person. This is not in accordance with the European Union concept for consumer. The Directive 2011/83/EU "On consumer rights" and the latest jurisprudence of European Court of Justice have definitely defined as consumer only a natural person, excluding legal one.

The specific element of this contract is the usage of means of distance communication. Means of distance communication means any means which, without the simultaneous physical presence of the trader and the consumer, may be used for the conclusion of a contract between these parties, such as: Press advertising with order form, catalogue, electronic mail, electronic commerce, fax, telephone and television. The Decision of Council of Ministers give a general provision on the concept means of distance communication, extending this concept with any new mean that could be used in order to conclude the distance contracts.

What is really interesting of Albanian law "On consumer protection" is the fact that the electronic contract is included in distance contracts. In fact, the law no.9902, dated 17.04.2008 "On consumer protection" doesn't have any provision for the electronic contracts. These are regulated under the law no. 10 128, dated 11.05.2009 "The electronic commerce". So, law enforcers should make an expanded interpretation, in order to include e-contracts under distance contracts and to protect consumer as the weakest party in this legal relationship.

## **2. The exclusions from the application scope**

The legislator has clearly listed all the contracts on which this law shall not apply. So, are excluded : the contracts concluded by means of automatic vending machines or automated commercial premises; contracts concluded with telecommunications operators through the use of public payphone; contracts concluded for the construction and sale of immovable property or relating to other immovable property rights, except for rental; contracts concluded at an auction; contracts for the supply of foodstuffs, beverages or other goods intended for everyday consumption supplied to the home of the consumer, to his residence or to his workplace by regular rounds men; contracts for the provision of accommodation, transport, catering or leisure services, where the supplier undertakes, when the contract is concluded, to provide these services on a specific date or within a specific period.

The reasons of exclusions are different, referring to the possibility to have a good look to the product, referring to the price that isn't too high, referring to the physical presence of the parties or to the consumable products.

The most important contracts are those related to immovable properties or immovable properties rights. This field is very problematic and hasn't been subject of legislative unification, because Member States offers different provisions in this field, different from each other.

Also, contracts related to immovable properties are very sensitive and parties, seller and buyer should be very careful.

## **3. The obligation for information**

Distance contracts are concluded through means of distance communication, so the possibility that the will of consumer could be deformed is present. So, the legislator has interfered through the law provisions, in order to make some balance between the power of the trader and the good will of the consumer.

The means of this power balance are the obligation of trader to give detailed information to the consumer in the pre-contractual and contractual phase and the right of consumer to withdrawal.

The pre-contractual phase is a moment between the desire of consumer to conclude a distance contract and in a good time prior to the conclusion of it. This is an important moment of the relation trader – consumer. Even though, the consumer has not declared his will, the legislator has obliged trader to give information to the consumer.

The provided information should be given in a clear and comprehensible manner, in order to be understood from any consumer, as this one is the weakest party of the relationship. This information is related to: identity of the trader, the main characteristic of goods and services, price and other applicable costs, the existence of the right to withdrawal and the period for which the price offer is valid.

The law "On consumer protection" has a general provision. The Decision of Council of Ministers has clearly respected and transposed the provisions of the Directive 97/7/EC "On distance contracts". All the provisions about the obligation for information are identically with those of the directive.

The most important moments of the information in the pre-contractual phase are the terms used about the quality of information: clear and comprehensible. Even these concepts are a little bit subjective, they should be interpreted case by case, referring to the consumer, which could be vulnerable one or referring to the average consumer. The European Court of Justice, in its decisions, has charged the Member States with the obligation to take national measures in order to give comprehensible information to the consumer, especially in the cases of imported goods, and in the respect of the principle of proportionality.

The consumer must receive written confirmation or confirmation in another durable medium available and accessible to him of the information related to the procedures and conditions of exercising the right to withdrawal; the geographical address trader to which the consumer may complain; the information on after-sales and guarantees; the conclusion for cancelling the contract, where it is of unspecified duration or a duration exceeding one year.

This information should be given to the consumer in good time during the performance of the contract, and at the latest at the time of delivery where goods not for delivery to third parties are concerned, unless the information has already been given to the consumer prior to conclusion of the contract in writing or on another durable medium available and accessible to him.

The Directive 2011/83/UE "On consumer rights" has foreseen clearly and in a detailed manner the obligation for information. It has listed more data that the trader should give to the consumer and the ratio of it is to minimize the inequality of informative power.

For any distance contract the consumer shall have a period of at least fourteen working days in which to withdraw from the contract without penalty and without giving any reason. According to the Directive 97/7/EC, this period is seven days. Albanian legislator has respected the period of fourteen days, which is nearly unified to all consumer contracts. This period begins in different moments, depending on the object of the contract, so: goods or services.

The Directive 2011/83/UE has clearly predicted all the procedures, the effects and the obligations of trader and consumer in the event of withdrawal. So, the Member States should respect them properly, without deviating from the forecast.

#### **4. Other provisions**

Albanian legislator has clearly prohibited the supply of goods or services to a consumer without their being ordered by the consumer beforehand, where such supply involves a demand for payment. The consumer is free to get any decision, including the upturning the product. The absence if response doesn't constitute consent.

Also, there are other restrictions on the usage of some means of distance communication, which requires the prior consent of consumer, related to: telephone, fax and electronic mail.

These two provisions are vague and nearly without possibility of application. There aren't other legal acts which clarify them.

European Community has obliged the Member States to take adequate and effective measures according to these provisions, during the transposing of this Directive.

The Directive 2011/83/UE has enforced the imperative nature of it, obligating the Member States to take real measures, from institutional bodies, consumer organizations and other organizations having a legitimate interest.

#### **Conclusions and recommendations**

Law no. 9902, dated 17.04.2008 "On consumer contracts" offers general provisions on distance contracts.

The Decision of Council of Ministers "On distance contracts" does not fulfill all the legal requirements about these contracts.

The concept and the general information on distance contracts are in accordance with the Directive 97/7/EC, but do not respect the provisions of the Directive 2011/83/UE.

We strongly recommend the Albanian legislator to transpose this Directive in our national law.

We also recommend to make some provisions about the electronic contracts, as a special form of distance contracts, to law "On consumer protection".

The national bodies and the consumer organizations should be active in order to raise the awareness of Albanian consumers about their rights.

#### **Bibliography**

Decision of Council of Ministers no. 64, dated 21.01.2009 "On distance contracts"

Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 "On the protection of consumers in respect of distance contracts"

Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 "On consumer rights"

European Court Of Justice C-269/95, dated 03.07.1997

European Court of Justice C-33/97, dated 03.06.1999

Law no. 9902, dated 17.04.2008 "On consumer protection"

Law no. 10 128, dated 11.05.2009 "The electronic commerce"

Law no. 10 444, dated 14.07.2011 "On some amendments on the law no. 9902, dated 17.04.2008"

Law no. 15/2013, dated 14.02.2013" On some amendments on the law no. 9902, dated 17.04.2008"