

# An Off-Premises Contract Under the Georgian and European Laws\*\*

## 1. Introduction

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The present article discusses the concept of a contract concluded off-premises. The main objective of the article is to discuss the content of contracts signed on the street, the parties and the place of its conclusion, and develop the Georgian legal doctrine in this regard. The article explores the Georgian consumer market and identifies the problems related to the realization of consumer rights. The article also reviews the existing European and Georgian legal frameworks on the issue and elaborates recommendations for the improvement of the latter.

An off-premises contract can be regarded as a novelty in the Georgian legislation. It became a part of civil law in 1997, when the new Civil Code of Georgia entered into force.

An off-premises contract, a contract that is closely linked to consumer law, and the legal issues related to it are quite topical in many countries

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\*\* This article has been translated from Georgian.

across the modern world. Diversity in the scope of consumer markets and concluding a contract in a “non-contractual environment” are not very rare in the 21<sup>st</sup> century. However, due to the fact that legal regulation of the issue is absent, it is almost impossible to ensure strong safeguards for consumers. Despite the fact that an agreement that is signed off-premises is already regulated by the Civil Code of Georgia for quite a long time, the relevant article is not frequently invoked in Georgian practice, which is caused by the obscurity of the norm. The concept of these types of contracts, the place of their conclusion, as well as the parties and their rights and obligations are unclear. In addition, it is noteworthy that the 1996 Law of Georgia on Consumer Rights Protection was annulled on May 8, 2012. Consequently, there is practically no legislation in Georgia in terms of protecting consumer rights.

## 2. Legal Regulation of Off-Premises Contracts

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When discussing the concept of an off-premises contract, it is necessary to pay attention not only to the definition provided by the Georgian legislation, but also to the experience of the European countries. Among the European countries, special attention should be paid to the German law, since the majority of the Georgian Civil Code’s norms of liability law were developed in accordance with the model of the German Civil Code (*Bürgerliches Gesetzbuch Deutschlands* – BGB;). The majority of Georgian norms were implemented from the German Civil Code and other German laws.<sup>1</sup>

Focus on the European legislation stems from the country’s external outlook and the obligation to ensure the implementation of the commitments undertaken by Georgia since 2014.<sup>2</sup> In particular, in June 2014, after the Association Agreement was signed between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part (hereinafter referred to as the Association Agree-

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<sup>1</sup> Z. Tchetchelashvili, *Contract Law* (Tbilisi, 2010), 10.

<sup>2</sup> Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, available at: [http://eeas.europa.eu/georgia/pdf/eu-ge\\_aa-dcfta\\_en.pdf](http://eeas.europa.eu/georgia/pdf/eu-ge_aa-dcfta_en.pdf).

ment), Georgia undertook a number of commitments, including approximation of its legislation with the European Standards. The sectoral cooperation part of the agreement, namely, Chapter 13 of Section 6 (Articles 345–347) deals with the issues related to consumer policies. Under Articles 345–347, Georgia should ensure a high level of consumer protection and implement a thorough legislative reform in favor of consumer protection. This is the purpose of the draft Law on the Protection of Consumer Rights (hereinafter referred to as the draft law), initiated by the Parliamentary Committee on European Integration the main objective of which is to create the legislation focused on consumer protection in Georgia and share practices of European countries in this regard. Each one of us is a consumer; therefore, protection of consumer rights is the main task of any state. Creation of a consumer-oriented legislation is a priority for the countries of European legal order, since modern law recognizes the supremacy of a person and the most effective realization of rights and freedoms is the factor that determines the supremacy of a person.

It should be noted that an off-premises contract and the related issues were first regulated in the context of agreements concluded through the negotiations held outside non-profit institutions (under the Georgian legislation – an off-premises contract) in Council Directive 85/577 EEC of 20 December 1985 to protect the consumer with regard to contracts negotiated away from business premises.<sup>3</sup> Later, one more directive was added to the above-mentioned directive, viz., Directive 97/7/EC of the European Parliament and of the Council of May 1997 on the protection of consumers with respect to distance contracts,<sup>4</sup> which to certain extent complemented its predecessor.

However, development of modern technologies and expansion of consumer market have created the need for new regulations. Consequently, the European Parliament has developed a new directive. As of today, in the majority of the EU states, an off-premises contract and the related issues are regulated by Directive 2011/83/EU of the European Parliament and the Direc-

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<sup>3</sup> Council Directive 85/577 EEC of 20 December 1985 to protect the consumer with respect to contracts negotiated away from business premises, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31985L0577:en:HTML>

<sup>4</sup> Directive 97/7/EC of the European Parliament and of the Council of May 1997 on the protection of consumers in respect of distance contracts, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31997L0007&from=en>

tive of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and the Directive of the Council, and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, (hereinafter referred to as the Directive).<sup>5</sup>

The purpose of the new Directive was to eradicate the existing deficiencies and discrepancies effectively, based on the existing experiences. In addition, the Directive has established general rules in relation to distance contracts and contracts negotiated away from business premises that allow Member States to bring their internal legislations in conformity with the Directive and, thereby, provide a guarantee for consumers' protection.

### 3. Parties to an Off-Premises Contract

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One of the characteristics of an off-premises agreement is its parties. Under Article 336 of the Civil Code of Georgia, a consumer and a person conducting sales within his/her business constitute the parties.<sup>6</sup>

Law of Georgia on the Protection of Consumer Rights, 1996, defined a consumer as a natural person, who uses, purchases, orders goods (work and service) or has such an intention for personal needs. The definition of a consumer is also provided in Decree no. 3, dated March 17, 2006, of the Georgian National Communications Commission. Under Article 3 of the above decree, a consumer is an individual, who uses or intends to use a service provided through commonly used electronic communication networks and means for personal needs, and does not intend to sell it to another consumer. According to the legal encyclopedia by S. Tezelashvili, a consumer is a citizen, who

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<sup>5</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2011.304.01.0064.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2011.304.01.0064.01.ENG)

<sup>6</sup> A contract concluded on the street, at the doorstep or in similar places between a consumer and a person conducting sales within his/her trade shall be valid only if the consumer has not rejected the contract in writing within a week, unless the contract is fulfilled upon its conclusion.

wants to purchase or order any goods; a buyer of goods and services; a client or a user for personal, family or any other needs that are not related to entrepreneurial activities.<sup>7</sup>

Unfortunately, what is meant by the term “individual conducting sales” was not defined by the above-mentioned Law on the Protection of Consumer Rights. Presumably, an entrepreneur (trader) is considered its subject. At the same time, it is also disputable whether the term “person” envisages only a natural person, or also a legal entity. Under the Civil Code, a person can be both an individual and a legal entity.

The Georgian draft law clearly envisages a “consumer” and a “trader” as parties to an off-premises contract.<sup>8</sup> In particular, under Article 3 paragraph “a”, a consumer is a physical person, who is offered, or who purchases or further uses, goods or services for personal use and not for entrepreneurial or other professional activities. Under paragraph “b” of the same article, a trader, either a natural or legal person, is a provider and/or seller of goods within an entrepreneurial or other professional activity, as well as a service provider. Unlike the existing norms, the draft law already contains a detailed definition of the parties.

Unlike the Georgian legislature, a very specific definition is made by the German legislature, which considers a consumer and an entrepreneur as the parties. Under paragraph 13 of the German Civil Code, a consumer means every natural person who enters into a legal transaction for a purpose that is outside his/her trade, business or profession<sup>9</sup>. Under paragraph 14, an entrepreneur means a natural or legal person or a partnership with legal personality that, when entering into a legal transaction, acts in exercise of his/her or its trade, business or profession.<sup>10</sup>

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<sup>7</sup> S. Tezelashvili, *Legal Encyclopedia* (Tbilisi, 2008), 373.

<sup>8</sup> The draft law of Georgia on the Protection of Consumer Rights is available at: <http://info.parliament.ge/file/1/BillReviewContent/120599>.

<sup>9</sup> § 13 BGB – Verbraucher ist jede natürliche Person, die ein Rechtsgeschäft zu einem Zwecke abschließt, der weder ihrer gewerblichen noch ihrer selbständigen beruflichen Tätigkeit zugerechnet werden kann.

<sup>10</sup> § 14 BGB – (1) Unternehmer ist eine natürliche oder juristische Person oder eine rechtsfähige Personengesellschaft, die bei Abschluss eines Rechtsgeschäfts in Ausübung ihrer gewerblichen oder selbständigen beruflichen Tätigkeit handelt. (2) Eine rechtsfähige Personengesellschaft ist eine Personengesellschaft, die mit der Fähigkeit ausgestattet ist, Rechte zu erwerben und Verbindlichkeiten einzugehen.

Under the Directive, a consumer and a trader are the parties to this type of contract. Under Article 2 of the Directive, ‘consumer’ means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his/her trade, business, craft or profession; ‘trader’ means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his/her name or on his/her behalf, for purposes relating to his/her trade, business, craft or profession in relation to contracts covered by this Directive.

Although the terminological aspect has little importance in this case, it would be appropriate for the Georgian legislature to indicate in express and clear terms the parties to an agreement and provide their definition accordingly. Vague terms always fall “victim” to suspicion.

## 4. The Place of Conclusion of an Off-Premises Contract

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The main characteristic of an off-premises contract is that it is concluded in a “non-contractual environment”, where a person does not intend to conclude a contract and it happens without planning. The “effect of unexpectedness” is decisive in these types of contracts. “Such agreements are usually concluded by chance, so that a consumer is not ready for them.” However, it should be noted that in spite of the unpreparedness of the customer, customers are still attracted to such contracts; “he/she experiences self-satisfaction, when individual attention is paid to him/her, especially during a visit at home.”<sup>11</sup>

Under Article 336 of the Civil Code of Georgia, the place of concluding a contract can be: “on the street, at the doorstep or in similar places,” which “requires interpretation, since literal meaning of the word street can cause many misunderstandings.” For example, an exhibition shop might be organized on the street, in front of a house, etc. Purchasing any item in these situations constitutes an off-premises contract due to the location; however, it cannot be qualified under Article 336 of the Civil Code of Georgia, since a consumer was ready to conclude a contract. The term “own business” is generally considered as a permanent location of the provider of a service or

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<sup>11</sup> E. Kardava, ‘Comparative review of European standards for Consumers’ Rights Protection on the Example of the Contract Concluded in the Street’, special edition of *Georgian Law Review* (2007), at 134.

goods; however, in this case it is not a permanent base of a particular trade.

Under the draft law, a contract is deemed to be concluded on the street if it is conducted outside a seller's business premises in the physical presence of the seller and the consumer, as well as within the business premises of a trader or distantly, however, immediately after the customer is personally and individually approached with an offer outside the trader's premises.

Unfortunately, the Georgian counterpart to the above-mentioned norm does not contain a detailed definition of the place where a contract is concluded. This issue has not been studied from a legal perspective. Only three cases are discussed in the commentaries to the Civil Code of Georgia, in the context of the place of conclusion of a contract in Article 336.<sup>12</sup> The user is quite confused with the obscure composition and title of the norm. All this, in turn, makes it difficult to invoke the above-mentioned norm in practice, which is why this article is not actually used in the Georgian practice.

A detailed definition of an off-premises contract and the place of conclusion of such a contract are defined by the Directive, under which, an off-premises contract is, for example, the place of residence or work. The definition of such a contract should also include the situation, where a consumer receives an offer to conclude a contract personally and individually in a non-contractual environment; however, the contract is concluded later, on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer. Definition of this article should not foresee the situations in which a trader initially goes to a customer's home to provide consultation, provides an estimate or carries out surveying, and, only after the expiration of a certain period of time, the contract is concluded on the trader's business premises. In this case, a contract is not considered to be immediately concluded, since a consumer had sufficient time to analyze the offer presented by a trader, before concluding a contract.<sup>13</sup> Off-premises contracts are also those purchases, which a consumer makes during promotional trips organized by a trader, where products are offered for sale.

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<sup>12</sup> L. Chanturia, Commentaries to the Civil Code of Georgia, Book III, (Tbilisi, 2001), 151-153.

<sup>13</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, preamble (21) 304/67. Available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%63AOJ.L\\_.2011.304.01.0064.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%63AOJ.L_.2011.304.01.0064.01.ENG)

With regard to the German legislation, it should be noted that as of June 13, 2014, the Law on the Implementation of the Consumer Rights Protection Directive<sup>14</sup> is in force in Germany. The law has made significant amendments to the norms regulating off-premises contracts. The German legislature accepted in full the Directive developed by the European legislature and has implemented it comprehensively in the domestic legislation.<sup>15</sup> The name of this type of a contract has been changed, according to which, the term for the contract was established in the Georgian law, namely, a doorstep contract. In particular, under the German law, its name was *Haustürgeschäft* – a contract concluded at the doorstep. Under the current regulations, it is called –*Außerhalb von Geschäftsräumen geschlossene Verträge* – a contract concluded outside entrepreneurial activities, like its European counterpart, off-premises contracts.<sup>16</sup>

Despite the fact that an off-premises contract has been regulated by the Civil Code of Georgia for a long period, this article is not used in the Georgian legal practice, which is due to the vagueness of the norm. The location of concluding such a contract, as well as the rights and obligations of the parties and the legal effects of their relations are unclear. Therefore, it will be positively assessed if the Georgian legislature takes into consideration, in order to avoid misunderstanding, the existing international practice in relation to the term for a contract concluded on streets, and considers the possibility to change the name of the norm, for instance, into “a contract concluded in a non-contractual environment,”<sup>17</sup> or “a contract concluded outside the business premises of a trader,” as established by the Directive. The above will contribute to the elimination of the problem in the way of application of the norm, and will make it more practical.

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<sup>14</sup> Gesetz zur Umsetzung der Verbraucherrechtlinie und zur Änderung des Gesetzes zur Regelung der Wohnungsvermittlung (VerbrRRLUG). Available at: <http://www.buzer.de/gesetz/10934/index.htm>.

<sup>15</sup> Prütting/Wegen/Weinreich/Stürmer §312 Rn. 1.

<sup>16</sup> German Civil Code in English available at: [https://www.gesetze-im-internet.de/englisch\\_bgb/englisch\\_bgb.html#p1070](https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p1070).

<sup>17</sup> The term “non-contractual environment” is a kind of novelty in Georgian law. It means all places, where the consumer does not expect to conclude a contract, is not ready for contractual relations, where sufficient information is not provided, and becomes a participant of such relations considering the external circumstances. The main feature of the contract concluded on the street is that the contract is concluded in a place where the consumer was not ready to do so. The “non-contractual environment” is broader than the “contract concluded on the street”, which limits the area of conclusion of a contract stemming from the name.



## 5. Conclusion

One of the most important functions of law is to ensure the equality of parties in any type of a relationship. When a contract is concluded on the street, the consumer is less secure. Consequently, the Georgian legislature, through implementing safeguard mechanisms in its legal acts, attempts to ensure the protection of consumer rights as that of a “weak” party in this relationship. The issues discussed in the present article give an opportunity to develop certain recommendations. Namely:

(1) It is necessary to define the place of concluding a contract – in particular, to specify what is implied in a contract concluded on the “street, house and similar places,” as stipulated in Article 336 of the Civil Code of Georgia. In order to achieve the purpose of the provision, it is necessary to interpret it. A consumer must know exactly what the place of conclusion of a contract is, in case of which he/she has a right to refuse it within a fixed term.

(2) It will be positively assessed if the term, “a contract concluded on the street (a doorstep contract)” is changed in accordance with existing international practice, to avoid misunderstanding.

(3) It is quite important to improve the terms defining the parties to an agreement. It is especially important to define what is meant by the term, “an individual trading within his/her own business”.

It is noteworthy that, due to the vagueness of the norm, Georgian jurisprudence is not familiar with a single decision in relation to contracts concluded on the street. Article 336 of the Civil Code of Georgia is a so-called “dead rule”, which is not used in practice because of the shortcoming in its connotation.

It can be concluded that the Georgian legislature’s attempt to protect consumer rights is very important and any improvement on this front will undoubtedly be quite useful to consumer market. The main purpose of this norm is to protect the rights of a consumer, the “weak party”.

Taking the above recommendations into consideration will facilitate a better implementation of the rights and interests of a consumer and his/her contractor. Creation of a legislation oriented towards the interests of each individual and ensuring high standards for protecting their rights is the main objective of any state.

