

The project concerns the protection of a weaker party to the contract and its relation to the consumer protection model currently applied in the European Union. The changes that are currently being seen in EU consumer law leads to the conclusion that certain significant changes must be implemented in the regulations concerning the protection of a weaker party to a contract and consumer protection, as the solutions being proposed now are proving to be insufficient or insufficiently adjusted to the phenomena emerging in society today.

The most radical effect of the research would be to bring about general model legal solutions aimed at the protection of the weaker party, rather than the currently accepted regulations, which are directed at specific categories of entities (consumers, lessees, small businesses, etc.), and to have these implemented into EU law and therefore other national laws of EU Member States.

Given the fact that achieving this objective would be long-term and dependent upon political, not necessarily academic factors, the research will specifically involve

- preparing the above specified model solution;
- commencing a scientific debate at Polish level and participation on the EU level, concerning the need to introduce a weaker party model into legal solutions;
- actively joining EU discussion about the directions of development in consumer law;
- proposing a thorough remodelling of the currently accepted legal solutions and participating in the process of their reconstruction;
- conducting a deep analysis of the issue of the protection of a weaker party to a transaction in the scientific circles in Poland.

For several years already, the Applicant has been conducting research concerning consumer law and the weaker party to transactions. The observation of changes in these fields over the last twenty years has triggered the proposed discussion.

The concept of consumer protection has been attracting ever greater coverage since the mid-1960s. In the beginning, a consumer, considered to be the final recipient of goods and services, was treated as a weak, badly informed and underrepresented market participant. For this reason, he needed protection against the stronger and better informed business that was imposing its will. In certain countries (Germany, the Benelux countries, USA and other countries), and then in the EU, legal regulations were introduced with the aim of protecting consumers. This protection was in the form of, among other things, control over unfair contractual provisions, the consumer's right to withdraw from a contract, special regulations concerning the seller's liability concerning the quality of goods, and counteracting unfair advertising and unfair commercial practices. Due to these solutions, consumers were provided with special protection not enjoyed by any other entities operating on the market (such as businesses, for instance). Therefore, other categories of subjects in a weaker position in transactions strived to ensure for themselves a level of protection like that enjoyed by consumers. This was the case even in respect of some enterprises. For example, the preamble to Directive 2011/83 on consumer rights provides that, even though the definition of a consumer should cover individuals who are acting outside their trade, in the case of dual purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade, where the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered as a consumer. Thus, in certain circumstances a business is a consumer. This statement is not only contradictory in itself (by definition, a consumer is someone opposed to a business), but it also introduces a significant dose of confusion into a transaction. It is, for example, difficult to explain to common business without any legal knowledge that the entity executing a contract for their business may enjoy the status of a consumer.

On the other hand, for approximately 40 years in which the concept of consumer protection has functioned in the EU, there has been a significant change in approach to the model of a consumer in EU. As has already been indicated, the consumer was initially regarded as a weaker and passive entity in market transactions. However, as time passed by, in particular due to the functions and specifics of the internal market, as well as market freedoms, the role performed by a consumer on the EU market has been given greater consideration. ("If a common market effectively functions, a consumer will have a greater trust in cross-border transactions, which will positively affect competition and prices, and in effect will bring advantages to all EU citizens. This objective and pursuit of creating a real internal market of exchange of consumer goods should be fulfilled by strengthened consumer protection.") The very model of a consumer followed by the CJ EU jurisprudence ("well-informed, average circumspect and average responsible consumer") and the EU directives ("the point of reference includes an average circumspect consumer who is well-informed and reasonably observant and circumspect") indicate that the conditions established to be fulfilled by a EU consumer are relatively tough. At the same time, great emphasis is placed on activating consumers and motivating them to actively participate in the functioning of the internal market ("well-informed consumers who have confidence and a strong position in the market are a driving force of economic changes, as their choices stimulate innovations and productivity. For this reason, it is necessary to provide consumers with tools and abilities that will allow them to perform their roles in a modern economy.")

This image of a consumer, or even a prosumer, is far from an original consumer concept, i.e. a "model" weaker party to economic transactions.

To conclude, on the one hand, the notion of a consumer as a "consumer, a purchaser of goods on his own account, a user," has lost its original meaning and has extended to other categories of entities. On the other hand, an EU consumer (at least in the EU programme perspective) is not at all the weaker party to a transaction. As a result, the further use of the paradigm of "protecting the consumer as a weaker party to a transaction" is becoming pointless, no longer reflecting current economic phenomena, and not following the current process, in fact it is confusing. This project constitutes an attempt to develop a solution to this problem. The applicant intends, acting on the basis of the analysis of legal solutions (available in Polish, EU and American legal systems), case law established by courts and tribunals (in Poland, the EU and selected other countries), the EU documents (strategies, action plans and other guidance directed at the development of the EU internal market and consumer policy), as well as papers developed by groups of experts (PECL, CESL, DCFR), to:

- reconstruct a modern model of a weaker party to a transaction in contractual relations, i.e. who may be considered a weaker party, why, and after satisfying what conditions?.

- indicate legal remedies for the protection of a weaker party, i.e. how the protection should be ensured,
- analyse the currently applicable model, grounds for and measures to protect a consumer in EU, i.e. why exactly a EU consumer is protected and in what manner,
- indicate the areas in which a developed model of a weaker party to a transaction could successively substitute a concept of consumer protection,
- distinguish areas, taking into consideration the needs of the internal market development, where it would be necessary to maintain the concept of prosumer protection on the internal market.

There is no question that, in particular in the era of globalisation, mass production, the common use of contractual models and the advantage of supply over demand, which result in contractual imbalances between parties, there emerges a strong need to ensure protection to a weaker party, with the exact aim being to restore the due position of the parties and, therefore, ensure that the principle of freedom of contracts functions appropriately.

However, there is no longer any point ensuring protection to specific categories of entities (consumers, lessees, small businesses). One should assume that every entity that fulfils the criteria of a developed model of a weaker party has a right to protection with use of legal remedies available in respect of this purpose.

Therefore, the project should serve the following purposes:

- developing model solutions,
- promoting them in debates at EU level,
- introducing them into Polish legal science,
- initiating a thorough discussion in Poland, and in other countries, concerning the future of consumer law and the fundamental principles of contract law.