

**Protection of Personal Data in Consumer Relations
(Review of International and National Standards)**

In light of the development of modern trade relations, the refinement of trade relations has become an urgent necessity. This refinement is inconceivable without the implementation of high standards for consumer rights protection, a process that involves identifying the need for the processing of consumers' personal data. Such processing serves as the basis for both marketing activities and the establishment of rights and obligations outlined in consumer contracts.

It is noteworthy that the state has enacted two new special laws aligned with European directives in both of these fields: the Law of Georgia "On the Protection of Consumer Rights" dated June 1, 2022, and the Law of Georgia "On Personal Data Protection" dated June 14, 2023.

This article will examine the legal guarantees governing consumer relations established by the Law of Georgia "On Protection of Consumer Rights" and the Law of Georgia "On Personal Data Protection," along with the European directives upon which these legislative acts are based.

Keywords: *consumer, trader, personal data, consumer relation, personal data protection.*

1. Introduction

In the modern era, marked by the rapid development of trade relations, the need to refine legal regulations has become increasingly essential. It is precisely these legal regulations that provide the necessary guarantees to swiftly and effectively address both current and future challenges.

The flexibility of trade relations is driven by two key factors: technological advancements, on the one hand, and legal regulations that ensure the security of the parties involved in these relations, on the other.

As a private legal relationship, trade relations are inherently complex, and the protection of the parties' rights is ensured by several branches of law. Among these, it is

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particularly important to highlight the protection of consumer rights and the interaction of personal data protection standards within the framework of consumer relations.

The Law of Georgia “On Personal Data Protection”¹ was adopted in 2011, and the Law of Georgia “On the Protection of Consumer Rights”² was enacted in 1996, establishing general standards. On July 18, 2014, Georgia signed the Association Agreement with the European Union³ (hereinafter referred to as the “Association Agreement”), which entered into full force on July 1, 2016. From September 1, 2014, the trade-related provisions of the agreement, including the Deep and Comprehensive Free Trade Area (hereinafter referred to as “DCFTA”)⁴ with the European Union, commenced implementation. Georgia committed to aligning its national legislation with the obligations set forth in the agreement.

As a result of this ongoing process, new versions of special laws, in accordance with European standards, were developed in both fields of law to ensure a high level of protection for the subjects of legal relations.

Undoubtedly, a significant portion of the country's development is rooted in free trade relations, which are further bolstered by the DCFTA⁵. Modern trade relations, characterized by the exchange and processing of vast amounts of information, are becoming increasingly flexible.

On the other hand, personal data protection legislation provides crucial safeguards⁶ for the processing of data within trade relations, confirming the interconnection between these two fields.

2. Legal Safeguards for the Protection of Consumers Rights

Consumer relations significantly impact the daily life of society due to the wide range of issues and relationships encompassed within this field. For this reason, the protection of consumer rights is essential, relevant, and fundamental for developed countries.

On March 20, 1996, the Parliament of Georgia adopted the Law of Georgia “On the Protection of Consumer Rights.” This law was repealed on May 8, 2012, and the current Law “On the Protection of Consumer Rights” came into force on June 1, 2022⁷.

The new Law of Georgia “On the Protection of Consumer Rights”⁸ aligns with many European directives⁹, and the process of convergence with the latest directives is ongoing.

¹ Law of Georgia “On Personal Data Protection”, №5669, 28/12/2011.

² Law of Georgia “On the Protection of Consumer Rights”, No. 151, 20/03/1996.

³ Association Agreement between Georgia on the one hand and the European Union and the European Atomic Energy Union and their member states on the other hand <<https://matsne.gov.ge/ka/document/view/2496959?publication=4>> [29.07.2024].

⁴ Free trade with the European Union, <<https://dcfta.gov.ge/ge/agreement>> [29.07.2024].

⁵ Free trade with the European Union, <<https://dcfta.gov.ge/ge/agreement>> [29.07.2024].

⁶ Law of Georgia “On Personal Data Protection”, No. №3144-XIოლ-Xოო, 14/06/2023, Article 12.

⁷ Law of Georgia “On the Protection of Consumer Rights”, №1455-VIIIოლ-Xოო, 29/03/2022

⁸ Law of Georgia “On the Protection of Consumer Rights”, №1455-VIIIოლ-Xოო, 29/03/2022

⁹ Noteworthy:

- Directive of the European Parliament and the Council of October 25, 2011 on “Consumer Rights”, which replaces the Directives 92/13 of the Council and 1999/44 of the European Parliament and Directive 97/7 of the European Parliament and the Council;
- Directive 98/6/EC of the European Parliament and the Council of February 16, 1998 “On consumer protection in the indication of prices for products offered to consumers”;

This law establishes the general principles for the protection of consumer rights in legal relationships with traders for the use of goods or services for personal consumption¹⁰. Among the rights and prohibited actions outlined in the Law of Georgia “On the Protection of Consumer Rights”, Article 24, which prohibits unfair commercial practices. Unfair commercial activity is defined as activity that contradicts the principles of good faith and significantly alters, or is likely to alter, the economic behavior of the average consumer concerning the goods or services offered or intended for them. It also includes activities that adversely affect the economic behavior of the average member of a group of consumers when the target of the commercial activity is a defined group of consumers. Unfair commercial practices include misleading or aggressive commercial activities. Pursuant to Article 27, section 1, subsection “c” of this law, it is considered unfair and prohibited to systematically make unsolicited offers to customers by telephone or other remote communication methods, except when necessary to fulfill contractual obligations.

It should be noted that in order for the actions stipulated in Articles 24 and 27 to be deemed inconsistent with the Law “On the Protection of Consumer Rights,” several conditions must be met. Specifically, the disputed action must be that of the trader, it must harm the collective interest of a broad group of consumers, and it must be contrary to the law.

The basis of the aforementioned prohibition lies in the fact that direct marketing, which conveys advertising content and aims to sell or promote the sale of goods or services, as well as to influence the economic behavior of the recipient, constitutes an effort to impact the consumer and encourage the use of their financial resources for the purchase of goods or services.

It is important to highlight that advertising possesses two essential characteristics: the information must pertain to the recipient’s economic, commercial, financial, or professional activities, and the information provided must encourage the purchase or use of goods¹¹. Accordingly, the violation mentioned above is a serious matter and is also addressed by Directive 2005/29/EC of the European Parliament and Council “On Unfair Commercial Practices.”¹²

It is clear that a trader cannot make the offer outlined in subparagraph “c” of the first paragraph of Article 27 without processing the personal data of consumers. This processing is regulated by Article 12 of the Law of Georgia “On Personal Data Protection,” which provides safeguards for the processing of personal data in the context of direct marketing.

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- Directive 2005/29/EC of the European Parliament and the Council of May 11, 2005 “On unfair business-to-consumer commercial practices in the internal market” (“Unfair Commercial Practices Directive”);
 - Directive 1999/44/EC of the European Parliament and the Council of May 25, 1999 “On certain aspects of the sale of consumer goods and related guarantees”;
 - Council Directive 93/13/EEC of April 5, 1993 “On unfair terms in consumer contracts”;
 - Directive 2009/22/EC of the European Parliament and the Council of April 23, 2009 “On Measures to Protect Consumer Interests”;
 - Regulation of October 27, 2004 “On cooperation between national authorities responsible for the enforcement of laws on consumer protection (Regulation on cooperation in the field of consumer protection)”, with respect to which national legislation should be brought closer to the following articles: 3 (c); 4(3) – (7); 13 (3); 13(4).

¹⁰ Law of Georgia “On the Protection of Consumer Rights”, №1455-VIII06-X03, 29/03/2022, Article 2 (1),

¹¹ Decision No. 04/141 of the National Competition Agency of Georgia dated March 22, 2023, <https://gcca.gov.ge/uploads_script/user_rights/tmp/php8oEZGi.pdf> [29.07.2024].

¹² Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005, Annex 1, 26, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02005L0029-20220528&qid=1673608274813>> [29.07.2024].

Furthermore, according to European Union principles, the state must provide consumers with a flexible and efficient mechanism for the protection of their rights. The protection of consumer rights through an effective legislative framework will contribute to safeguarding the economic interests of citizens and promote consumer awareness of their rights and their ability to demand such protections. To this end, the legislator designated the main enforcement body of the law as the Competition and Consumer Protection Agency of Georgia, which is responsible for “protecting consumer rights.” The agency considers complaints regarding potential violations of the “Consumer Protection Law” and makes a decision within one month or within three months in cases of complexity.¹³

3. Legal Safeguards of Personal Data Protection

Given that the harmonization and consolidation of personal data protection legislation is a commitment undertaken by Georgia under the Association Agreement with the European Union and the Association Agenda, a new law “On Personal Data Protection” was adopted in 2023 to fulfill this obligation. This law is based on the European Union's General Data Protection Regulation (GDPR), the Council of Europe Convention 108 and its Additional Protocol, as well as EU Framework Decision 2008/977/JHA of November 27, 2008, and Recommendation No. R (87)15 of the Committee of Ministers of the Council of Europe, dated November 15, 1987. Furthermore, in accordance with the “Roadmap for Georgia's EU Integration,” one of the key future directions is to further align Georgia's data protection legislation with the latest European data protection standards.¹⁴

As a counterpart to Articles 24 and 27 of the Law of Georgia “On the Protection of Consumer Rights,” Article 8 of the previous version¹⁵ of the Law of Georgia “On Personal Data Protection” provided the following regulation: for the purposes of direct marketing, it was permissible to process data obtained from publicly available sources, regardless of the purpose for which the data were collected. Only specific data, such as name(s), address, telephone number, e-mail address, and fax number, could be processed for direct marketing purposes, and only with the written consent of the data subject as required by the law.

The data subject had the right to request that the data controller cease using their data for direct marketing purposes at any time. In response, the data controller was obligated to halt the processing of the data for such purposes and ensure that processor also ceased processing within 10 working days of receiving the request.

When processing data for direct marketing purposes, the data controller was required to inform the data subject of this right and ensure that the data subject could request the cessation of data processing for direct marketing purposes in the same form in which the direct marketing was conducted. Additionally, the controller had to establish an accessible and adequate means for the data subject to request termination of processing for direct marketing purposes.

In the new law, Article 12 introduces a higher standard for the processing of personal data for direct marketing purposes. Regardless of how the data were collected or their availability, personal data may only be processed for direct marketing purposes with the data

¹³ Order No. 45 of the Chairman of the National Competition Agency of Georgia “On approval of the case study procedure and procedure”, 29/09/2022, paragraphs 1 and 2 of Article 7.

¹⁴ Law of Georgia “On Personal Data Protection №3144-XI⁰ლ-¹83, 14/06/2023.

¹⁵ Law of Georgia “On Personal Data Protection №5669-⁰ლ, 28/12/2011.

subject's explicit consent. Before obtaining consent, the data controller or processor must explain to the data subject, in clear, simple, and comprehensible language, their right to withdraw consent at any time and the procedure for exercising this right. Additionally, while the previous law provided for a 10-day period for the processor to stop data processing upon the data subject's request, this period has been reduced to no more than 7 days under the new law.¹⁶

4. Practical Aspects of Personal Data Protection in Trade Relations

Despite their differing constitutional foundations¹⁷, consumer rights protection and personal data protection law have increasingly converged through the process of harmonization with European legislation¹⁸. Modern trade relations have become digitalized, relying on the exchange of personal data. The regulation of distance trade is a significant achievement of the Law of Georgia “On the Protection of Consumer Rights,” as this form of trade renders consumers vulnerable on one hand, while on the other, it makes trade relations more efficient by reducing the time, human effort, and financial resources required to purchase goods and services.

In the context of remote trade, the user/data subject is required to provide the trader with various pieces of information, including in some cases registering on the trader's website. The information shared may include email address, password, full name, bank card details, residential address, telephone number, and other personal details, without which the consumer would be unable to receive the purchased goods or services. Furthermore, traders may process additional data such as the amount of time spent on the website and the user's search history, which can be utilized for marketing purposes. The most crucial step before the exchange of such data is to ensure that the data subject/user is properly informed.

Articles 24 and 25 of the Law of Georgia “On Personal Data Protection” reinforce the mechanisms for ensuring the data subject's awareness, thus highlighting its importance. Article 24 outlines the information that must be provided to the data subject by the data controller when the data is collected directly from the subject, whereas Article 25 pertains to situations where the data is not collected directly from the data subject¹⁹. These provisions are in line with European standards, specifically the European Union's General Data Protection Regulation (GDPR)²⁰, which focuses on the proper means of informing consumers to enable them to make informed decisions. The principle of informed consent serves as the primary legal basis for the lawful processing of personal data. In addition, the GDPR provides a detailed list²¹ of information that data subjects must be informed about, including the purposes of data processing and all other relevant information necessary to ensure the fairness of the process. The GDPR further establishes standards²² regarding the form in which

¹⁶ Law of Georgia “On Personal Data Protection №3144-XIმს-ხმპ, 14/06/2023, Article 12 (1).

¹⁷ EU Charter of Fundamental Rights, Art. 7, <https://www.europarl.europa.eu/charter/pdf/text_en.pdf> [29.07.2024].

¹⁸ *Zuiderveen Borgesius F., Helberger N., Reyna A.*, Common Market Law Review, Volume 54, Issue 5, 2017.

¹⁹ Law of Georgia “On Personal Data Protection №3144-XIმს-ხმპ, 14/06/2023.

²⁰ General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council “On the protection of natural persons with regard to the processing of personal data and on the exchange of such data”, 27/04/2016, Article 6, paragraph 1, subparagraph “a” <<https://gdpr-info.eu/>> [29.07.2024].

²¹ Also, Article 14.

²² Also, Article 14.

information must be provided, stipulating that data subjects must be informed in a concise, clear, and easily understandable manner, using straightforward language.

Articles 5, 6, and 10 of the Law of Georgia “On the Protection of Consumer Rights” establish a high standard of consumer awareness in trade and consumer relations. These provisions outline the information that must be provided in both distance and on-site trading. Notably, in the case of distance trading, the standard for informing the consumer is higher, as the consumer must be able to make a purchase decision based on an “informed choice” before committing to the purchase of goods or services. In such cases, essential information must be provided, including the main characteristics of the goods or services, tailored to the nature of the goods or services and the medium of communication (unless such information is self-evident from the context).²³

In alignment with the standards set by the General Data Protection Regulation (GDPR), Article 5 of the Law “On the Protection of Consumer Rights” also mandates clarity in the provision of information. Specifically, it states: “Before concluding a contract, the trader is obligated to provide the consumer with the following clear and complete information in the state language of Georgia, in a manner that is clear and comprehensible (unless this information is self-evident)...”.

This standard aligns with the European Parliament and Council Directive 2011/83/EC²⁴ of October 25, 2011 (hereinafter referred to as Directive 2011/83/EC), whose purpose is to enhance the proper functioning of the internal market by ensuring a high level of consumer protection. This is achieved by harmonizing certain aspects of the laws, regulations, and administrative provisions of the Member States relating to consumer contracts. Articles 5 and 6 of Chapter 3 of Directive 2011/83 outline the information that a trader must provide to the consumer before entering into a contract. Article 5 specifically details the information that must be provided to the consumer for all contracts, except for distance contracts. Furthermore, under Article 6(9) of Directive 2011/83, the burden of proof regarding the provision of information to the consumer rests entirely on the trader. Thus, in the event of a dispute between the parties, it is the trader's responsibility to demonstrate that they have fully met their obligations under the directive and provided the consumer with the appropriate level of information.

When examining the legality of processing personal data in consumer relations, it is essential to consider practical examples, such as a case study conducted by the National Competition Agency of Georgia. In one instance²⁵, the agency evaluated a possible violation of Articles 24 and 27 of the Law of Georgia “On the Protection of Consumer Rights” by a Trader. The consumer in question had reported receiving persistent short text messages with advertising content, and all attempts to stop these messages had been unsuccessful. According to the complainant, this form of aggressive commercial activity not only affected them personally but also impacted the interests of other consumers.

²³ Decision No. 04/612 of the Georgian Competition and Consumer Protection Agency of July 11, 2024, <https://gccca.gov.ge/uploads_script/user_rights/tmp/phpwMZgnd.pdf> [29.07.2024].

²⁴ On consumer rights, amending Council Directive 93/13/EEC and European Parliament and Council Directive 1999/44/EC and repealing Council Directive 85/577/EEC and European Parliament and Council Directive 97/7/EC, <<https://matsne.gov.ge/ka/document/view/4488461?publication=0>> [29.07.2024].

²⁵ Decision No. 04/141 of the National Competition Agency of Georgia dated March 22, 2023, <https://gccca.gov.ge/uploads_script/user_rights/tmp/php8oEZGi.pdf> [29.07.2024].

The agency also analyzed Directive 2005/29/EC of the European Parliament and Council “On Unfair Commercial Practices,”²⁶ which classifies persistent and unsolicited advertising through telephone, fax, email, or other remote means as an aggressive commercial practice, except in cases allowed by national legislation. Both Article 27(1)(c) of the Law and Directive 2005/29/EC consider the systematic sending of text messages with irritating and tiresome frequency as an aggressive commercial practice. Furthermore, the agency took into account that marketing text messages should pertain to the recipient’s economic, commercial, financial, or professional activity and that the provided information should encourage the purchase or use of goods or services. In this specific case, the agency evaluated the frequency and content of the text messages sent by the trader. It concluded that the messages did not exhibit a systematic nature. Moreover, based on the evidence provided by the merchant, it was established that the consumer had given consent to receive marketing messages, and all marketing offers sent by the merchant included an opt-out mechanism. However, the consumer had not utilized the available means to unsubscribe. Consequently, the agency concluded that no violation of the Law of Georgia “On the Protection of Consumer Rights” had occurred in this case.

5. Conclusion

Based on the legal aspects discussed in this article, it can be concluded that the legal regulation of the two distinct fields of consumer rights protection and personal data protection complements each other, thereby ensuring the safeguarding of individual rights. The Law of Georgia “On Protection of Consumer Rights,” which has been in effect for two years, has successfully established a high standard within the trade sphere. In conjunction with the new Law “On Protection of Personal Data,” it creates a framework analogous to the European standards for the protection of consumer and data subject rights, which have been implemented in the majority of EU member states for decades.

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²⁶ Directive 2005/29/EC of the European Parliament and of the COUNCIL of 11 May 2005, Annex 1, 26, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02005L0029-20220528&qid=1673608274813>> [29.07.2024].

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