

A BRIEF INTRODUCTION

The Union “Century 21” as a human rights organization exists since 1998. We work on different dimensions of the human rights protection and one of the working areas cover consumers’ rights protection. Within the organisation is created the permanent **Consumers’ Rights Protection Programme** aimed at promoting the issue to the public attention. We try to throw the attention of relevant governmental and non-government structures on the importance of the consumers’ rights protection which is interlinked with other issues too. In this respect the protection of the consumers’ rights is more linked with the protection of these two key actors – the consumer and the businessmen, we discuss the ongoing legal and structural reforms in the country.

In general we consider this reforming process as one step forward to the establishment and development of the market economy in the country.

I. Overview of Respective Legislature of Georgia

1. The Law of Georgia on Standartisation

The first Law on Standartisation was adapted in 1996 and it was the translated version of the similar law of the Russian Federation. In fact, it was constructed in a way of the centralized model.

Since the Georgia declared its commitment to become the member of the WTO the need for a new law was clear. In 1999, based on the recommendations of the foreign experts and with their active participation, was adapted a new Law on Standartisation.

The Article 18, paragraph 4 of the Law states, that:

“The national mandatory standards shall be transformed into voluntary standards within the period of 3 years from the day of the accession of Georgian to WTO”

Despite of this provision in the law, since 1999 there are not any effective and practical steps towards its implementation from the legislative and executive bodies of the government.

After the “Law concerning License and Permission” has been adapted in the spring of this year are made amendments to the “Law on Standartisation” which radically changes the old version of the law and implements the requirements of the item 4.

The law completely differs from the previous one in many ways: it consists only from 4 Chapters (except of 10 chapters). From the law is taken out the following chapters:

Chapter II: Standartisation Enactments

Chapter III: *Technical Regulations*

Chapter IV: *Conformity Assessment*

Chapter V: *Announcement, Publication and Notification of Standard Enactment Technical Regulations and Conformity Assessment Procedure*

Chapter VI: *State Control and Supervision of the Georgian Mandatory Standards*

Chapter VII: *Liability for the Violation of the Standardisation Law*

Chapter VIII: *Funding Standardisation, Controlling and Supervising Activities Encouraging the Application of Georgian Standards*

Chapter IX: *Transitional Final Provisions*

In the **Chapter I:** “*General Provisions*” were eight (8) articles which are decreased till four (4) articles.

Additionally have been added two (2) new chapters:

Chapter II: *Organization of the Standardisation Work* and the **Chapter III:** *National Agency of Standardisation, Technical Regulations and Metrology*

Upon these amendments have been made progressive steps towards the voluntary standardization, has been simplified the access to the standards, has been established a new agency without the controlling function which was the obstacle for the former “Sakstandarti”.

2. Law of Georgia on Product and Service Certification

The law was adapted in 1996 after the *Law of Georgia on the Rights of Consumers* was adapted. There were no significant changes to the law up to date. This law establishes a legal basis for mandatory and voluntary certification of products services, other objects in Georgia and determines rights, obligations and responsibilities of certification participants.

The Law was applicable for the centralized model of management as it was the case of “Coststandards” which in fact was additional obstacle for the trade development.

The law was based on the mandatory certification; it meant confirmation of the fact that the product meets requirements of the established standards.

According to this law “Sakstandarti” had the rights and authorities to establish general certification rules. Sakstandarti and government bodies of the executive authorities authorized to conduct and organize certification, determine a list of product subject to mandatory certification within their competence.

In the **Article 9:** *Participants to mandatory certification* stated that

“Any kind of registered nonprofit organizations, associations and unions have a right to participate in carrying out certification procedures if they are accredited by government bodies of the executive authority”.

This kind of understanding on certification was in contrary with the principles recognized worldwide.

After the amendments on June 24, 2005 we got fully revised version of the previous law, only the preamble has been left and additionally are added some new chapters.

To the **Chapter I** is added a new chapter – *Activities field*, **Chapter II** – *Aims* (has been added new aims) **Chapter III** – “*Main Terms*” defines such new terms as: “*Accreditation*” “*Technical Regulations*” “*Conformity Assurance*” “*Conformity Mark*”, “*Testing Laboratory*” “*Safe and Dangerous for human beings products*” and etc. All these terms are taken from ISO8402-94 international standardization terms which can be also considered as one step forward.

Chapter II – “*Technical Regulations*” gives the legal basis for its development, adaptation, recognition and etc.

Chapter III – introduces the responsibilities of manufacturer (seller, performers) and distributors, legal basis fro the Conformity certification and etc.

The part on accreditation is very important as it was firstly adapted in Georgia. The continuation of this part is the **Chapter VI** “*National Organ on Accreditation*”.

3. Law of Georgia on the Rights of Consumers

The law on protection of Consumer Rights on Georgia was elaborated in the yearly period of market economy. The basis for this law was the legal Act of the Russian Federation adapted in 1992, which in fact followed the model of the centralized management. The main lack of this law was the attempt to implement the state control on the relation of the consumers and suppliers. In fact, these relations are regulated even without administrative interfere. It is proved that the numbers of regulations do not mean the effectiveness. On the basis of the Law on the rights of Consumers is adapted more that 30 normative acts, which complicates their understanding by the ordinary citizens. Twice in this year have been made amendments to the *Law on the Rights of Consumers*, based on them:

- 1) The responsibilities of the Antimonopoly Service in this field has been canceled
- 2) The responsibilities of respective organs regulatory the safety of products is temporarily stopped until January 1, 2006

- 3) Has been added **article 36** stating that “**Before January 1, 2006, the third person during the appeal to the court regarding the claim on products’ safety, should be the respective controlling body defined by the legislative of Georgia**”.

4. The Law of Georgia concerning Foods and Tobacco

From the amendments to the *Law “Concerning Foods and Tobacco”* we should mention very important amendments to the **Chapter V**. The word “*control*” has been taken out from the law (more concretely it envisaged the conformity assessment of enterprise to the hygienic norms and rules conducting by the Sanhygiena).

This amendment can be considered as progressive step towards overcoming obstacles for the business development in Georgia.

5. Sanitary Code of Georgia

After respective amendments to the *Sanitary Code of Georgia*, state sanitary control remains on the following places:

- *Agrarian marketplaces*
- *Educational establishments*
- *Swimming pools*
- *Drinking water systems*
- *Medical establishments*
- *At the borders, in the case, if in contragent countries is spread various viruses, infectious diseases,*
- Amendments are made to the “*Law of Georgia on Veterinary*” and “*Law of Georgia on the Protection of Plants from Malicious Organisms*” according to which significantly is decreased the list of enterprises under the state control.

6. Law of Georgia on Ensuring Uniformity of Measurement

This Law sets up legal principles for ensuring the mandatory uniformity of measurements it regulates the Georgian state executive bodies’ relations with legal and physical entities in the production of manufacture, use, maintenance, sale and import of measuring instruments and is safeguard residents’ rights, legal interests, the established legal order and the Georgian against negative effects resulting from unreliable measurements.

7. Law of Georgia Concerning Licensing and Permission

According to the *Law of Georgia “Concerning Licensing and Permission”* the entrepreneurs needed a different and numerous kinds of licenses and permissions. After the amendments to the law the number of licenses and permissions are significantly decreased.

In parallel to these progressive changes, we should mention the lack of the existing law. Particularly, the organization giving licenses (permissions) is not clearly defined, also the procedure rules. A complete freedom in the production process to the entrepreneurs we consider a little bit early action.

II. Implementation of the Laws and Relevant Governmental Structures

In the field of consumers’ rights protection responsible, competent state structures were: **Georgian Antimonopoly Service** and **Sakstandarti**. Some functions in the field of consumers’ rights protection was conducted by other state structures are under reforming process at the moment and the improvement of the situation, in general, greatly depends on the right policy in the reform process.

Sakstandarti

The State department of Georgia for standartization, Metrology and Certification (“Sakstandarti” was the national body at standartization, metrology and certification in Georgia. The structure and responsibilities of the structure did not mean the modern requirements. It was far from the experiences of relevant structures in the USA and the EU countries.

The previous reforming process at Sakstandarti was not effective. Until 2003 Sakstandarti included different branched: *National Organ of Standardization, Office of the Accreditation, Institute of Metrology and Standardization, and Office of the Control and Supervision*. It should be mentioned that Sakstandarti was a member of the Interstate Council of Western Countries for Standardization, Metrology and Certification and became a correspondent member of the International Organization for Standardization (ISO) in 1999.

Partially, requirements of the WTO, the World Bank and the EU towards Georgia were implemented by the decree of the president in 2003 (#374 and #376). According to this decree the following structural entities are being established:

- *National Organ on Standardization* – legal entity of the Public Law
- *National Organ on Accreditation* – legal entity of the Public Law

- *Institute of Metrology and Standardization*- legal entity of the Public Law
- *Control and Supervision* – sub-departmental inspection.

According to the WTO and World Bank’s requirements Sakstandarti should responsible only by the renewing of standards, their edition, introduction to the consumers and conducting registration.

We considered this process of the restructuring of Sakstandarti in itself is very important and progressive step for the further strengthening of its role. Our work towards this process was widely supported by other NGOs and business sector representatives. In cooperation with these organizations we applied to the President of Georgia on November 30, 2004. It was a joint statement of the following organizations: the Union “Century 21”, Georgian Young Economists Association, Georgian Young Lawyers Association, Business Confederation of Georgia, Exporters’ Association of Georgia and others explaining the importance of the reforming process of Sakstandarti.

Despite of numerous recommendations of foreign and local experts to the government of Georgia the decree dated on December 31, 2004 (#122) entitled “*Concerning the Statute of the legal Entity of the Public Law – National Agency on Standardization, Metrology and Certification*” were unified different state supervisory structures.

The union “century 21” intensifies the work regarding the further reorganisation of Sakstandarti. Our affords ended up with the establishment of the *Commission on Reforming Standardization, Metrology and Certification Fields of Georgia*. The Commission functions at the Ministry of Economic Development since February 1, 2005 (Decree #1-1/40 of the Minister) and the Union “Century 21” has consultative status at the commission. The organization elaborated several initiatives proposed to the *Commission to the Parliamentarian Committee on Sector Economy and Economic Policy*, also to the former *Prime Minister of Georgia*, Mr. Zhvania.

The organization cooperates with the *Working Group on the Draft Law on Licensing and Other Amendments to relevant Legal acts*. The WG operates by Mr. Kublashvili.

Initiatives elaborated by the organization were proposed to the *Parliamentarian Committee on Human Rights and Civil Integration* and was held the committee hearing.

At this moment exists “*National Agency on Standardization, Technical Regulations and Metrology*” which is very progressive step by this time, although, we demand for the separation of the *Standardization and Metrology* spheres but it is not implemented yet.

One of the competent state structures in the field of consumers’ right protection was antimonopoly service of Georgia which was legally authorized to conduct the market monitoring and provide the consultations to the consumers. Although, this kind of institutional arrangement is in contrary with western experience where this service only conducts control on antimonopoly activities.

At this moment the service is under ongoing reforms to be ended up by August 15, 2005. Upon these reforms will be established a new structure having controlling mechanisms on antimonopoly activities. The functions of consumers’ rights protection will be taken out from it

State Sanitary -Hygienic Supervision Inspection

Ongoing reforms within the State Sanitary-Hygienic Supervision Inspection positively affects on the consumer market of Georgia. The sanitary-hygienic condition is significantly improved in compare with the previous years. Thus, should be mentioned that existing sanitary rules and conditions are not satisfied and they do not mat the modern standards of safety.

Another positive change was the amendments to the Sanitary Code of Georgia (25.06.2005) which significantly decreased the controlling function of the inspection. Based on these amendments, the inspection does not control anymore foodstuffs enterprises and marketplaces. Despite of some positive initiatives and activities, the government has not elaborated get a common state strategy or policy in the field of consumers’ rights protection.

The government stays passive and inactive and some particular initiatives do not change the picture. In the country the problem of consumers’ rights protection is not considered as priority objective for the government, while the issues is interlinked with other important issues such as (Business liberalization and etc)

Furthermore, we would like to focus your attention on some crucially important concerns of immediate solution:

- 1) The government of Georgia has not decided yet which model of the Consumers’ rights protection to follow on. Coming from this it is not clearly defined which structure and how will conduct the consumers’ rights protection policy.
- 2) The Law “concerning the Elimination and Stop to sell unfit products” is not yet adapted which leads to the vulnerable situation. Accordingly there is no legal mechanism to clean the market from dangerous for health products
- 3) Despite that the Georgian Legislature obliges on the libeling of the products to be indicated the food supplements used for this product, there is not relevant laboratory

which would be able to define the existence of food supplements in concrete products. It fully depends on a goodwill of the entrepreneur who in most cases is not enough informed.

- 4) As one of the most vulnerable issues we consider the lack of the relevant legislature on the genetically modified products. Thus, the rules of the import, production and realization of genetically modified products do not exist yet.
- 5) We see the need for the implementation of the consumer rights education in pre-schooling, secondary schooling and in high educational institutions.
- 6) There are no specific educational courses, training for the representatives of state structures, local authorities, field specialists, representatives of the business sector and teachers.