

THE EXAMINATION OF CONSUMER RIGHTS IN THE LIGHT OF ARTIFICIAL INTELLIGENCE*

A FOGYASZTÓI JOGOK A MESTERSÉGES INTELLIGENCIA TÜKRÉBEN

Ibolya Stefán**

Abstract

Nowadays, artificial intelligence is no longer just something you read about in science fiction books, but it also appears in real life, for example in the form of virtual assistants or smart devices. The widespread use of AI is having a major impact on both science and legislation. The changing digital environment makes it increasingly important to develop appropriate regulations which provide adequate protection for consumers. The process of transformation also affects consumer rights and their enforcement. In this paper, we discuss the impact of artificial intelligence on consumer rights and possible changes to these rights.

Keywords: artificial intelligence, consumers, consumer protection, consumer rights

Absztrakt

Napjainkban a mesterséges intelligencia már nem csak a sci-fi könyvek lapjain elevenedik meg, hanem a valóságban is, például virtuális asszisztensek vagy okoseszközök formájában. Az igen széles körben elterjedt technológia egyaránt jelentős hatást gyakorol a tudományra és a jogalkotásra. A megváltozott digitális környezet miatt egyre fontosabbá válik a megfelelő szabályozás kialakítása, amely kellő védelmet nyújt a fogyasztók számára. Az átalakulás folyamata a fogyasztói jogokat és azok érvényesülését is érinti. Jelen tanulmányban a mesterséges intelligencia fogyasztói jogokra gyakorolt hatásait és azok esetleges változásait kívánjuk ismertetni.

Kulcsszavak: mesterséges intelligencia, fogyasztók, fogyasztóvédelem, fogyasztói jogok

* PhD student, Ferenc Deák Doctoral School of Law; University of Miskolc, Faculty of Law, Department of Civil Law; stefan.ibolya@uni-miskolc.hu. Supervisor: Dr. Réka Pusztahelyi PhD, Associate Professor, University of Miskolc, Faculty of Law, Institute of Private Law, Department of Civil Law.

** This research was “Supported by the ÚNKP-20-3 New National Excellence Program of the Ministry for Innovation and Technology from the source of the National Research, Development and Innovation Fund.”

Introduction

The daily presence of artificial intelligence¹ (hereinafter, AI) is constantly growing as many devices or services are AI-based, such as spam filtering services, chatbots, virtual assistants or the facial recognition of smartphones. As a result of our previous scientific research (data protection issues regarding AI and IoT)², we can state that AI-based devices or services often use biometric identification or authentication in order to ensure security, which has a great significance as modern technologies often invade consumers' privacy.³ Moreover, AI collects, processes and stores large amounts of data, as fuel of the technology. Consequently, the novelty raises privacy, data and consumer⁴ protection concerns.

Although data and consumer protection are strictly regulated in the European Union and its Member States, we believe it is cardinal to revise the legislation in force in the light of AI. As we studied the challenges of consumer protection in a previous paper,⁵ we aim to focus on consumer rights. Therefore, in this study, we describe the regulatory framework of consumer protection and analyse the evolution of consumer rights, in addition, we also consider some new ones.

1. Regulatory framework regarding consumer protection and artificial intelligence

To examine the mentioned topic thoroughly, we need to explain the regulatory framework of our topic. The Charter of Fundamental Rights of the European Union considers consumer

¹ „artificial intelligence system' (AI system) means software that is developed with one or more of the techniques and approaches listed in Annex I and can, for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with” European Commission: Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts. COM(2021) 206 final. Brussels, 21.4.2021. (hereinafter, Artificial Intelligence Act), Article 3, (1) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206> (Date of download: 29th April 2021)

² See, Ibolya STEFÁN: Internet of Things and the protection of biometric data. (forthcoming in: *Infokommunikáció és jog* 2021/2.); STEFÁN Ibolya: Az okoseszközökkel kapcsolatos adatvédelmi kérdések, különös tekintettel a biometrikus adatokra. (forthcoming in: *Studia Iurisprudentiae Doctorandorum Miskolciensium* 2021/2.)

³ See more, Kirsten MARTIN – Katie SHILTON, Mobile Privacy Expectations: How Privacy Is Respected in Mobile Devices. in: SELINGER, Evan – POLONETSKY, Jules – TENE, Omer (eds.): *The Cambridge Handbook of Consumer Privacy*. Cambridge University Press, 2018, 85-101.

⁴ “consumer shall mean any natural person who is acting for purposes of purchasing, ordering, receiving and using goods or services which are outside his trade, business or profession, or who is the target of any representation or commercial communication directly connected with a product. In the application of the provisions on arbitration boards - excluding Regulation (EU) No. 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC -, consumer shall also mean - in addition to what is contained above - any civil society organization, ecclesiastical legal entity, condominium association, housing cooperative, micro, small and medium-size enterprise acting for purposes of purchasing, ordering, receiving and using goods or services which can be regarded as outside its trade, business or profession, or that is the target of any representation or commercial communication directly connected with a product. Furthermore, for the purposes of Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (hereinafter referred to as “Regulation 2018/302/EU”) any company that qualifies as a customer under Regulation 2018/302/EU shall also be treated as a consumer”

Act CLV of 1979 on Consumer Protection Article 2, a

⁵ See, Ibolya STEFÁN: Challenges of Consumer Protection Regarding Artificial Intelligence. (forthcoming in: *Multidiszciplináris Tudományok* 2021.)

protection as one of the fundamental rights⁶, the protection of consumers rights can be found both in the Act CLV of 1979 on Consumer Protection and in the Fundamental Law of Hungary.⁷

Regarding consumer rights, it is noteworthy to mention that on the 14th of April 1975 the Council of EEC adopted the so-called Magna Carta on Consumer Rights, which sets out the fundamental consumer rights, such as the right to health and safety; right to the protection of consumers' economic interests; right to enforce a claim; right to information and education; and right to representation. The mentioned rights are cardinal in the consumer protection regulation of each Member State; therefore, we only analyse our national rules in this paper. The national regulatory environment of consumer protection consists of several acts and decrees.⁸ The Act CLV of 1979 regulates consumer protection thoroughly, as it describes the cardinal definitions, sets out rules on the protection of children and juveniles, enforcement of consumer rights (complaint handling, customer assistance, consumer relations officer, arbitration board), consumer protection schemes sponsored by the state, local governments, and non-governmental organizations.

After we described the national regulatory environment of consumer protection and listed the most important acts and decrees, we present the main documents of AI and consumer protection. One of the first documents that stated the significance of consumer protection was the *'White paper On Artificial Intelligence – A European approach to excellence and trust'*. The paper did not set out rules on AI regarding consumers, only said: *"Consumers expect the same level of safety and respect of their rights whether or not a product or a system relies on AI."*⁹

Neither the 'White paper On Artificial Intelligence', nor the previously mentioned 'Artificial Intelligence Act' sets out specific rules regarding consumers or consumer protection, but both state the significance of it. From the perspective of consumers, it is important because of the so-called risk-based approach. Therefore, four categories are established, as follows:

- *unacceptable risk*: AI systems that threaten the safety of citizens must be banned (e.g., social scoring);
- *high risk*: AI systems are listed in the annexe of the proposal for 'Artificial Intelligence Act', such as critical infrastructure; education; employment and safety components of products; the latter is important from the perspective of consumers. In the case of high-risk systems, the following safety measures will take place: adequate risk assessment and mitigation; detailed documentation; clear and adequate information;

⁶ *"Union policies shall ensure a high level of consumer protection."* Charter of Fundamental Rights of the European Union, Article 38

We need to highlight another point of view which believes that consumer rights cannot be considered as a fundamental right. See more, Iris BENÖHR – Hans-W. MICZKLITZ: Consumer protection and human rights. in: HOWELLS, Geraint – RAMSAY, Iain – WILHELMSSON, Thomas (eds.): *Handbook of Research on International Consumer Law*. (2nd ed.) Edward Elgar Publishing, Cheltenham, 16–34. However, there are constitutions that guarantee consumer rights as a fundamental right.

⁷ *"Hungary shall ensure the conditions of fair economic competition, act against the abuse of a dominant economic position and protect the rights of consumers."* Fundamental Law of Hungary, Article M. See also, Decision 7/2015. (III. 19.) of the Constitutional Court of Hungary on Consumer Loan Agreement.

⁸ The following acts and decrees are significant in the field of consumer protection: Act V of 2013 on the Civil Code; Act XLVII of 2008 on the Prohibition of Unfair Business-to-Consumer Commercial Practices; Government Decree No 45/2014 of 26 February 2014 on the detailed rules of contracts concluded between consumers and businesses and Government Decree No. 387/2016 (XII. 2.) on the designation of the consumer protection authority.

⁹ European Commission, *White paper On Artificial Intelligence – A European approach to excellence and trust*. COM(2020) 65 final. Brussels, 19.2.2020. https://ec.europa.eu/info/publications/white-paper-artificial-intelligence-european-approach-excellence-and-trust_en (Date of download: 1st May 2021)

- *limited risk*: in the case of limited risk AI systems special transparency rules are needed, to warn the users, consumers that they interact with an AI system (e.g., chatbots);
- *minimal risk*: the Proposal does not draft specific rules as this type of AI system has little or no risk for citizens and their rights. As these are the most common types of the technology (e.g., AI-based games or spam filters), it is significant from the viewpoint of consumers.

Concerning, the proposal for ‘Artificial Intelligence Act’ the European Consumer Organisation states that the regulation is quite weak regarding consumer protection. Director General of BEUC, The European Consumer Organisation, *Monique Goyens*, says: “*Artificial intelligence technology already appears in the form of virtual assistants, self-driving car features and customer service chat bots. AI can benefit people’s daily lives but it also comes with risks. Today’s proposal misses the mark when it comes to protecting consumers. It is paramount this proposal gets improved, so consumer protection stays apace with technological advances.... People should be able to trust any product or service powered by artificial intelligence, be it ‘high-risk’, ‘medium-risk’ or ‘low-risk’. The EU must do more to ensure consumers have enforceable rights, as well as access to redress and remedies in case something goes wrong.*”¹⁰

The proposal for the ‘Artificial Intelligence Act’ lists the risks of AI systems and drafts regulations to protect EU citizens, the so-called ‘*Machinery Regulation*’ is important for the overall regulation of the technology, moreover it ensures the safe implementation of the technology. “*For artificial intelligence systems, the specific Union legislation on artificial intelligence should apply, since it contains specific safety requirements for high-risk artificial intelligence systems. In order to avoid incoherence with regard to the type of conformity assessment and to avoid introducing requirements to perform two conformity assessments, those specific safety requirements should however be checked as part of the conformity assessment procedure set out in this Regulation.*”¹¹

We also need to mention the ‘*New Deal for Consumers*’, which highlights the importance of AI, but also states that the complexity and the lack of transparency may raise problems in the near future.¹² In this modern era the numbers of technologies and digital platforms are growing, unfortunately, consumers are less aware of the operation of the novelties, therefore legislatures must ensure the protection of them and their rights. This phenomenon resulted in the Directive (EU) 2019/2161 of The European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules,¹³ which was implemented with the Act CXXXVI of 2020.

¹⁰ BEUC, The European Consumer Organisation, *EU proposal for artificial intelligence law is weak on consumer protection*. (Press release, 21. 04. 2021.) <https://www.beuc.eu/publications/eu-proposal-artificial-intelligence-law-weak-consumer-protection/html> (Date of download: 2nd May 2021)

¹¹ European Commission, Proposal for a Regulation of the European Parliament and of the Council on machinery products. COM(2021) 202 final, 2021/0105 (COD).

Brussels, 21.4.2021. <https://ec.europa.eu/docsroom/documents/45508> (Date of download: 2nd May 2021)

¹² European Commission, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee – A New Deal for Consumers. COM(2018) 183 final. Brussels, 11.4.2018. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0183&from=HU> (Date of download: 4th May 2021)

¹³ Directive (EU) 2019/2161 of The European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection <https://eur->

2. The evolution of consumer rights in the light of artificial intelligence

In this chapter, we examine the ‘classical consumer rights’ with special recognition of the technology of artificial intelligence. Moreover, we also study the new forms of consumer rights according to the paper of BEUC, The European Consumer Organization, called ‘*AI rights for consumers*’.

2.1. Examination of classical consumer rights

In this part, we focus on the consumer rights of the Hungarian regulation in the light of the Act CLV of 1979 on Consumer Protection. The Act lists the consumer rights in the introduction as follows: “*In the interest of introducing regulations to provide appropriate protection for consumer interests, with particular regard to the safety of goods and services, protection of property, proper information and education, efficient legal remedy, and to consumer protection through associations, and further development of the institutions necessary for the enforcement of such measures, Parliament has adopted the following Act...*”¹⁴

1. Right to safety of goods and services

Right to safety of goods and services classically means that the goods or services are secure, working properly and do not endanger the lives or health of other consumers. We believe it is possible to interpret this right in a broader sense. Safety may also mean data or cyber security, which is cardinal concerning the technology, but especially in interconnected, smart or IoT devices,¹⁵ as the failure of the system may result in data or privacy leakage.¹⁶ Another possibility is that a technology-specific right derives from right to safety of goods and services.

2. Right to protection of property

This right ensures that claims for damages may be enforced if a defective product or its malfunctioning causes a defect to property or damage. In the case of the various forms of AI (e.g., IoT devices) it is also applicable. However, it is questionable how ‘pure technology may be considered, if the use of AI or AI-based devices causes data corruption or destruction, which results in economic loss, moreover who will be liable for this loss? We believe that the mentioned example falls under the ‘scope’ of this right. However, it is questionable how mere technology can be considered if the use of AI or AI-based tools cause data corruption or destruction that results in economic loss, and who will be responsible for that loss? We believe that this example falls within the ‘scope’ of this right.

3. Right to proper information and education

Right to proper information and education is highly important, the Act CLV of 1979 on Consumer Protection also highlights it in Section 17 where the details of the right to education can be found. Right to information and education is much more important in the case of AI as it is an unknown technology for consumers, as a result of the information asymmetry they are more vulnerable. Therefore, the proper information on the technology, its working method, the

lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L2161&from=hu (Date of download: 4th May 2021)

¹⁴ Act CLV of 1979 on Consumer Protection

¹⁵ “*Smart devices are electronic tools capable of operating interactively and autonomously; they are usually networked.*” Big Data and Smart Devices and Their Impact on Privacy. (Study for LIBE Committee) 2015, 12. [https://www.europarl.europa.eu/RegData/etudes/STUD/2015/536455/IPOL_STU\(2015\)536455_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2015/536455/IPOL_STU(2015)536455_EN.pdf) (Date of download: 4th May 2021)

¹⁶ Shantanu PAL – Michael HITCHENS – Tahiry RABEHAJA – Subhas MUKHOPADHYAY, Security Requirements for the Internet of Things: A Systematic Approach *Sensors* 20(20):5897. (2020), 7. <https://www.mdpi.com/1424-8220/20/20/5897> (Date of download: 4th May 2021)

processed data, the possible outcomes, and problems are cardinal to protect consumers and ensure their rights in this new era. Moreover, we believe that consumer education on novelty may solve several data and consumer protection related problems. Consequently, age-appropriate educational materials, videos would be helpful to get more information on AI, even for little children as these days there are many interconnected devices and toys they can use.

4. *Right to efficient legal remedy and right to consumer protection through associations*
In order to ensure the rights of consumers, access to justice, the possibility of legal remedy, these rights are significant, however, their modification, broader interpretation concerning artificial intelligence is quite unlikely.

All in all, we can say that the classical consumer rights are important and applicable regarding AI, however, we believe that the right to safety and right to information and education are cardinal and will be even more significant in the future.

2.2. *New forms of consumer rights*

Technological development both affects our daily lives and law, however, the regulation often lags behind the novelties. In this chapter, we study the evolution of consumer rights and the new, AI-specific rights suggested by The European Consumer Organization.

1. *Right to Transparency, Explanation, and Objection*

*“Consumers should have a right to get a clear picture of how decisions that affect them are made and be able to oppose wrong or unfair decisions and request human intervention.”*¹⁷ We believe that this right is based on the right to proper information and education. However, the suggested right is broader and technology-specific, as the right may also ensure warning, when an AI system is used for decision-making, information on what type of data is used for the process and for what purpose(s). Moreover, it provides a possibility for the consumer to get an explanation of the AI system, the way it works and to object against the decision.¹⁸

2. *Right to Accountability and Control*

*“Consumers should have a right that appropriate technical and organisational systems as well as measures are put in place that ensure legal compliance and regulatory oversight... A comprehensive ADM risk assessment system must be developed. To define the level of risk of an application, the relevant competent supervisory authority should draw up a list of criteria to define its potential to cause harm or damage to individuals and/or society. Depending on the level of risk, the authorities should have the competence to impose the necessary documentation, certification, or transparency measures. For those applications that present the highest levels of risk, ex-ante scrutiny procedures (e.g. pre-approval before market deployment, publication of impact assessments) should be put in place. As an ultima ratio measure, authorities should be able to ban the use of certain ADM processes or parts/components thereof.”*¹⁹ The latter part complies with the aim and ‘rules’ of the proposal for Artificial Intelligence Act as the document establishes risk-based evaluation of AI systems (unacceptable, high, limited and minimal risk) and in the case of unacceptable risk, it forbids the use of the technology.

¹⁷ BEUC, The European Consumer Organization: AI rights for consumers. (hereinafter, AI rights for consumers) Brussels, 23rd October, 2019, 3. https://www.beuc.eu/publications/beuc-x-2019-063_ai_rights_for_consumers.pdf (Date of download: 5th May 2021)

¹⁸ AI rights for consumers, 3.

¹⁹ AI rights for consumers, 3.

3. Right to Fairness

“Consumers should have a right that algorithmic decision making is done in a fair and responsible way.”²⁰ According to the document of BEUC, the right to fairness has three aspects. It must ensure fairness during the decision-making process itself (which involves fair data processing); regarding the result of the applied method (manipulation and unfair practice²¹ must be prevented). Furthermore, right to fairness must be applied to businesses as well, as “the use of algorithms should never lead to consumers being deceived or impaired in their freedom of choice.”²²

4. Right to Non-discrimination

“Consumers should have a right to be protected from illegal discrimination and unfair differentiation.”²³ This right is extremely important, as it appears in several AI²⁴ and non-AI related documents of the European Union. It is noteworthy to mention that AI and its algorithms are not directly programmed to discriminate consumers, it is technically the consequence of the lack of relevant data or the use of biased databases.²⁵

5. Right to Safety and Security

“Consumers should have a right that AI-powered products are safe and secure throughout their lifecycle.”²⁶ As we mentioned above safety and security are cardinal concerning both AI and AI-related systems (e.g., IoT devices). It is important to consider the dynamic, often unknown nature of the technology during the legislation process and establish technology-specific requirements to ensure safety. This right also raises the question of what the terminology safe and secure means (does it also contain cyber security)?

6. Right to Access to Justice

“Consumers have a right to redress and public enforcement if risks associated with artificial intelligence materialise...It must be ensured that burden of proof rules or liability exceptions do not hamper the victims’ access to justice. As a rule, any professional in the product supply chain should be responsible to ensure that the product is safe and should be held liable for defects when their activities have affected the safety of the final product which was then placed on the market.”²⁷

²⁰ AI rights for consumers, 4.

²¹ We need to highlight the Opinion of the Hungarian Competition Authority in the case of Booking.com (VJ/17/2018. – unfair commercial practices against consumers). https://www.gvh.hu/dontesek/versenyhivatali_dontesek/dontesek_2018/vj-172018110 (Date of download 5th May 2021)

²² AI rights for consumers, 4.

²³ AI rights for consumers, 4.

²⁴ See more, Independent High-Level Expert Group. *Ethics Guidelines for Trustworthy AI*. Brussels, 8 April 2019. <https://digital-strategy.ec.europa.eu/en/policies/expert-group-ai> (Date of download 5th May 2021)

²⁵ Beyoda collected the theories of bias, as follows: “If an algorithm is trained on a database that disproportionately represents one race or ethnicity, it may be optimized to identify those individuals, and therefore underperform on other demographics. It is also possible that some demographic groups are, in some respects, more difficult for a computer to recognize. Women’s use of cosmetics may render their faces more difficult to distinguish. The facial features of individuals with darker skin tones may be harder to recognize due to lower color contrast. Finally, it is possible that the bias stems from design decisions intended to maximize performance for a particular demographic cohort.” See, Alvaro M. BEYODA, Algorithmic Discrimination vs. Privacy Law. in: Selinger, Evan – Polonetsky, Jules – Tene, Omer (eds.): *The Cambridge Handbook of Consumer Privacy*. Cambridge University Press, 2018, 234.

²⁶ AI rights for consumers, 5.

²⁷ AI rights for consumers, 5.

7. Right to Reliability and Robustness

“Consumers should have a right that AI powered products are technically reliable and robust by design.”²⁸ As AI is developing constantly it is more important to gain trust in the technology, we believe it may be achieved by updating and monitoring the system regularly.

We can state that these ‘new rights’ are technology-specific, although their roots can be found in the classical consumer rights. Technically, it is the ‘upgraded version’ of the classical consumer rights.

Summary

As the use of artificial intelligence gets more and more common, we start to focus on the protection of consumers and consumer rights. According to the findings of a multi-country survey on AI, consumers believe that AI is useful, which may be important in many fields of life. Unfortunately, they do not trust the technology and are concerned about data protection issues and manipulation. Moreover, consumers do not find the current legislation of AI effective.²⁹

In this paper, we studied the regulatory environment of consumer rights with special recognition of AI. As a result, we can say the evolution of the regulation of consumer protection has started, which phenomenon is expected to continue in the future. Furthermore, we also examined classical consumer rights concerning the novelty. We believe that the classical consumer rights are not efficient enough to ensure consumer protection, therefore we must consider the rights in a broader sense. Moreover, it is more likely to ‘establish’ a few, new technology-specific consumer rights, as mentioned in the study of BEUC, The European Consumer Organization.

As a result of the examination of consumer rights, we can state that there is an overlap between certain data subjects’ rights and consumer rights – in terms of purpose, e. g., right to information. We believe that this trend will continue with the emergence of artificial intelligence and its regulation, and by certain technology-specific rights linked to both areas of law.³⁰

²⁸ AI rights for consumers, 6.

²⁹ BEUC, The European Consumer Organisation: Artificial Intelligence: what consumers say: Findings and policy recommendations of a multi-country survey on AI. https://www.beuc.eu/publications/beuc-x-2020-078_artificial_intelligence_what_consumers_say_report.pdf (Date of download: 5th May 2021)

³⁰ Matilde Ratti highlights the connection between data and consumer protection, such as similar regulatory techniques or the protected, weaker subject. See more, Matilde RATTI, Personal-Data and Consumer Protection: What Do They Have in Common? in: Bakhoun, Mor – Conde Gallego, Beatriz – Mackenrodt, Mark-Oliver – Surblytė-Namavičienė, Gintarė (eds.): *Personal Data in Competition, Consumer Protection and Intellectual Property Law: Towards a Holistic Approach?* Springer-Verlag Berlin Heidelberg, 2018, 378-393.