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II.3. THE ROLE OF THE PRODUCT QUALITY GUARANTEE IN PROMOTING SUSTAINABLE CONSUMPTION: LITHUANIAN EXPERIENCE

Promoting more sustainable consumption by legal means

In general terms, "the concept of sustainable consumption encompasses the use of services and products designed to meet the basic needs of the consumer and the environmental impact of the products or services consumed" (Navickaitė and Novikovienė 2020, p. 870). The universally accepted concept of sustainable consumption was formulated at the 1994 Oslo Symposium on Sustainable Consumption, which defined sustainable consumption as "the use of services and products designed to meet basic needs and to create a better quality of life, while minimizing the use of natural resources and the use of toxic substances, and the emissions of waste and pollutants throughout the lifecycle of a product or service, without compromising the needs of future generations" (Ofstad 1994).

Today, the importance of sustainable consumption is being recognized at both the transnational and national levels, and, over time, individual consumers are also changing their attitudes towards excessive consumption. However, as I. Navickaitė and L. Novikovienė (2020) point out, "it should be noted that consumers' interest in environmental issues and their commitment to living more responsibly while protecting the environment do not mean that they will buy green, environmentally friendly products. The reasons for this may vary, but can include mistrust of companies' environmental claims or lack of information. (…). Therefore, a big role in the development of sustainable consumption is played by the entrepreneurs' attitudes towards environmentally friendly business models and the promotion of sustainable consumption. Responsible use of sales promotion measures such as advertising, fair commercial conduct, fair consumer information, labelling, etc., play an important role in the development of sustainable consumption" (p. 871).

For a long time, consumption has been seen as a tool for economic growth. The working principle of a market economy is simple: the more consumers buy, the more the economy grows. Therefore, the traditional aim has been to get consumers to buy more products and to keep replacing old items with new ones. Over time, wasteful consumption has created a global problem, with current production and consumption needs far outstripping existing natural resources. James P. Leape,

Director-General of the World Wide Fund for Nature, stated in the 2008 WWF report, as our population grows and we continue to consume resources at an alarming rate, we'll need the equivalent of a second Earth by 2030 to maintain our current lifestyle (WWF 2008, p. 1). In this context, the objective of ensuring that both producers and consumers receive the same or even a greater quantity of products and services at a lower cost has obviously become increasingly relevant. Various public opinion surveys show that the majority of consumers support the ideas of sustainable consumption. According to a Eurobarometer survey, 77% of EU citizens would rather repair their devices than replace them. A survey on consumer attitudes towards durability, repairability and recycling conducted by the European Commission showed that while consumers are willing to repair their items, they usually have to replace them with new ones due to the high cost of repair (European Commission 2018).

It is no less important that sustainable consumption is promoted through legal instruments and that the norms protecting consumers' rights reflect the rights of consumers who choose sustainable consumption. They should not only ensure the provision of information to consumers leading to the choice of a higher quality, more sustainable product, the provision of the possibility to assess the production technology of products, and the provision of legal guarantees relating to product quality, but also the provision of legal remedies in the event of a breach of consumer rights. Today, we must realize that sustainable consumption is inevitable, and therefore consumer protection rules must reconcile the general objectives of consumer protection with the objectives of sustainable consumption. Only when consumers know that their rights are protected – not only as purchasers of new goods, but also as consumers who choose sustainable consumption – will they be confident in making sustainable choices.

Obviously, the law has various instruments that can contribute to the promotion of sustainable consumption, one of which is the product quality guarantee, which, in the case of new products, creates a consumer's reasonable expectation that the longer the guarantee, the longer the lifetime of the product, and, in the case of second-hand equipment and second-hand products, the assurance that the product will not have hidden defects. For two decades, the guarantee of the quality of consumer goods has been regulated at the EU level by Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees. On 20 May 2019, Directive (EU) 2019/771 of the European Parliament and of the Council on certain aspects of contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC and repealing Directive 1999/44/EC (hereinafter referred to as Directive 2019/771 or the Sale of Goods Directive), was adopted. Directive 2019/771 also addresses the need to make goods more durable, which is seen as important for more sustainable consumption patterns and the circular economy. *Durability* in this Directive is defined as "the ability of the goods to maintain their required functions and performance through normal use. In order for goods to be in conformity, they should possess the durability which is normal for goods of the same type and which the consumer can reasonably expect given the nature of the specific goods, including the possible need for reasonable maintenance of the goods, such as the regular inspection or changing of filters in a car, and any public statement made by or on behalf of any person constituting a link in the chain of transactions. The assessment should also consider all other relevant circumstances, such as the price of the goods and the intensity or frequency of the use that the

consumer makes of the goods. In addition, insofar as specific durability information is indicated in any pre-contractual statement which forms part of the sales contract, the consumer should be able to rely on them as a part of the subjective requirements for conformity" (Directive 2019/771, p. 32).

Sociological surveys of consumer opinion show that a significant proportion of consumers do indeed prefer long-term products. A survey on consumer attitudes towards durability, repairability and recycling conducted by the European Commission (2018) revealed that consumers are even willing to pay more for longer-lasting and more easily repairable products, that consumers are becoming more aware of the environmental problems we face and of the climate crisis, and that consumers are not sufficiently informed about durability and repairability when purchasing products.

The guarantee on new items as a precondition for manufacturing longer-lasting products

The main consumer protection measure promoting the manufacture of longer-lasting products is the quality guarantee on new products, which ensures that if a product is defective, it will have to be repaired, replaced, or, in some cases, the consumer will be able to receive a refund by returning the faulty item. The Supreme Court of Lithuania (hereinafter referred to as the Supreme Court), in formulating the legal conditions for the return of a product that does not comply with quality standards, revealed the content of the product quality guarantee. The Supreme Court clarified that "it is the seller's obligation to guarantee to the buyer that the goods comply with the terms of the contract and that at the time of conclusion of the contract there are no hidden defects in the goods which would prevent the goods from being used for the purpose for which the buyer intended them to be used, or which would impair the usefulness of the goods in such a way that the buyer would not have bought the goods at all, or would not have paid the price, if he had been aware of those defects. These general provisions on the quality of goods shall apply to consumer sales contracts, together with additional provisions which are more favorable to the consumer (…)" (No E3K-3-158-469/2019).

As regards the quality guarantee and the conditions of its application in Lithuania, several stages of development of consumer protection remedies in the event of the purchase of a product of inadequate quality may be distinguished: (1) legal regulation before the amendments to the Civil Code of the Republic of Lithuania of 13 June 2014; (2) legal regulation after the amendments to the Civil Code of the Republic of Lithuania of 13 June 2014; and (3) the most recent legal regulation as of 1 January 2022.

Article 6.363(1) of the Civil Code of the Republic of Lithuania, in force until 31 December 2022, stipulated that the seller guarantees the quality of products in all cases, i.e., provides a guarantee in accordance with the law. The Supreme Court interpreted that "the binding nature of the guarantee of the goods sold, as set out in Article 6.333(3) of the Civil Code, is also reflected in the fact that the seller is not entitled to restrict the scope of such a guarantee, i.e. he is not allowed to shorten the term of the guarantee on his own: the guarantee, which is enshrined in the

law and which is in fact the main protection of the consumer's rights in case of a sale and purchase contract, cannot be changed at the seller's initiative" (No e3K-3-5-915/2018).

The term of the statutory guarantee for an item is two years (unless the law or the contract provides for a longer term), starting from the date of delivery of the item (Article 6.363(10) of the Civil Code), and the item has to remain in good quality throughout this period.

Article 6.363 of the Civil Code of the Republic of Lithuania did not provide (neither in the version valid until 12 June 2014 nor in the version valid from 13 June 2014 to 31 December 2021) for an order of priority (hierarchy) of the consumer's choice of remedies, and the consumer was free to choose one of the remedies set out in Articles 6.363(7) and 6.363(8) of the Civil Code. Therefore, if the defects of an item appeared within the guarantee period, the buyer, to whom the defective item was sold, had the right to rely on Article 6.363(7) of the Civil Code:

1) to require the seller to remedy the defects of the item free of charge (repair the item);
2) to require the seller to replace the defective item free of charge with an item of suitable quality;
3) to require the seller to reduce the price accordingly;
4) to unilaterally terminate the contract and demand a refund of the price paid.

The alternative rights of claim mentioned above for a buyer who purchased a defective product did not, in principle, promote sustainable consumption, as the consumer could, in most cases, simply refuse to have the product repaired without objective reason, demand a replacement, or even terminate the contract. Despite the fact that the version of Article 6.363 of the Civil Code of the Republic of Lithuania in force until 12 June 2014 provided that the buyer could choose any of the respective options, the Supreme Court formulated the rule of proportionality in its case law and clarified that "the buyer's right to choose one or another remedy may not, however, be absolutized, since the general principles of regulation of civil relations, *inter alia*, the proportionality of the applicable remedies, the balance of the interests of the parties to the civil relations, the stability of the civil circulation, and etc., apply in consumer contractual relations. The application of the principle of proportionality and the principle of balancing of interests in the protection of consumers' rights means that specific remedies must seek to ensure (restore) a balance between the legitimate interests of the buyer and the seller, and not unduly distort the balance in favor of the consumer and allow for abuse of the law. Situations in which the restriction of the seller's interests is disproportionate to the infringement of the consumer's interests are incompatible with the principle of proportionality. The stability of contractual legal relations is inseparable from the legal protection of its subjects and the certainty of their legal position, which is why the termination of a contract must not be applied indiscriminately but only if sufficient legal and factual grounds are established" (Protection of consumer rights in consumer contractual relations [2010]).

Thus, the consumer was free to choose the remedies specified, insofar as this was not contrary to the principle of proportionality, considering the case law of the court of cassation. However, whereas case law is usually invoked after a dispute has proceeded to trial, in all other cases, the consumer's rights were, in principle, exercised at the consumer's choice.

The right to terminate the contract and sustainable consumption

As of 13 June 2014, Article 6.363(8) of the amended version of Article 6.363 of the Civil Code of the Republic of Lithuania (Law No. XII-700 of 19 December 2013) already establishes that the buyer does not have the right to terminate the contract if the defect of goods is minor. As the Court of Cassation explained, "the legislator has transformed the provision formulated in the case-law on the assessment of the proportionality of the unilateral termination of the contract as the consumer's chosen remedy into a clause of minor importance, which is directly established by the law and defines the nature of the defects in the goods, in the presence of which unilateral termination of the contract by demanding the return of the price paid would be impossible" (No. 3K-3-186-1075/2020, para. 26–27).

Thus, the buyer's right to unilaterally terminate the contract and to demand reimbursement of the price paid became limited by the *minor importance* of the defect (Article 6.363(8) of the Civil Code). In all other cases, the consumer remained free to choose the remedy for the violation of their rights, i.e., they could simply refuse to have the goods repaired and demand the termination of the contract. A minor defect of the product is an evaluative term, which had to be assessed on a case-by-case basis by a court or an out-of-court dispute resolution body. The Lithuanian case law on the interpretation of the concept of "minor importance" states that "the question of the (non-) minor importance of a defect is a question of fact. When deciding whether a defect is minor or not, it must be assessed whether or not the defect can be eliminated at all, and if so, at what cost in terms of labor and time, what impact this has on the future condition of the item, and what impact elimination of the defect will have on the consumer's right to continue to enjoy the good quality of the product. A defect in an item could be considered to be essential if it would not be possible to remedy the defect at all or, if it were possible, the remedying of the defect would involve substantial labor and time which would deprive the buyer of the ability to use the item for its intended purpose for a long period of time, or if the remedying of the defect would fundamentally change the item, or if there are any other circumstances which would result in a disproportionate restriction of the buyer's (consumer's) rights obtained by virtue of the contract and protected by the law" (No 3K-3-252/2013).

The Court of Cassation also held that "when assessing whether the characteristics of an item deviate only slightly (insignificantly) from the provisions of a consumer contract of sale, the consumer's legitimate expectations as to the quality of that item are also of legal significance" (No 3K-3-247/2014; No 3K-3-186-1075/2020) and noted that "a defect of an item is considered to be of minor importance if the deviation of the item's characteristics, quality indicators or functionality from the provisions of the consumer contract of sale is minor (insignificant) and is of little significance for the purpose of deciding on the conformity of the item's quality with the requirements of the consumer contract of sale" (No 3K-3-186-1075/2020; No e3K-3-127-381/2022). As can be seen, the assessment of minor importance must not only be made on formal grounds, but must also consider the consumer's expectations. Hence, the purpose of the consumer contract is also an important criterion in assessing the minor importance of the defects in the goods.

At the same time, it should be noted that the limitation of the right to terminate a consumer contract on the basis of the minor defect of an item can be considered as one of the conditions

that indirectly contributed to the promotion of sustainable consumption, since the contract could no longer be terminated solely on the basis of the consumer's whim.

On 29 June 2021, Law No. XIV-466 amending Articles 1.125, 6.228^{1}, 6.228^{12}, 6.228^{14}, 6.363, 6.364, 6.419 and the Annex to the Civil Code of the Republic of Lithuania, and supplementing the Code with Articles 6.228^{17}, 6.228^{18}, 6.228^{19}, 6.228^{20}, 6.228^{21}, 6.228^{22}, 6.228^{23}, 6.228^{24}, 6.350^{1}, 6.364^{1}, 6.364^{2}, 6.364^{3}, 6.364^{4} was adopted, which entered into force on 1 January 2022 (hereinafter referred to as the Law on the Amendment and Supplement to the Civil Code). The Law on the Amendment and Supplement to the Civil Code was adopted in the implementation of Directive 2019/771, which already contains provisions aimed at ensuring the sustainability and long-term use of items. The Law on the Amendment and Supplement to the Civil Code has changed the way in which the product quality guarantee is applied in Lithuania, allowing the consumer to freely choose the remedy for their violated rights by establishing a hierarchy of rights. Article 6.364(1) of the Civil Code of the Republic of Lithuania established that the seller is liable to the consumer for any non-conformity of the quality of goods (including goods containing digital elements) at the time of delivery and which has become apparent not later than within two years after delivery of the goods (guarantee according to the law). However, when we analyze the rules of the newly introduced Article 6.3641 of the Civil Code of the Republic of Lithuania, we can see that, under the new regulation, a consumer who has purchased a product of inadequate quality, in order to exercise their rights, has to follow a two-step system of enforcement of consumers' rights provided for by law:

- first, the consumer must ask the seller to repair or replace the product with a product of appropriate quality (Article 6.364^{1}(2) of the Civil Code of the Republic of Lithuania);
- only then may the consumer demand (if the seller fails to comply with the request to repair or replace the goods) a reduction in the price of the goods or termination of the contract of sale of the goods (Article 6.364^{1}(4)(1) of the Civil Code of the Republic of Lithuania).

The consumer is therefore no longer free to choose the remedy that they want: they can only demand a reduction in the price of the goods or unilateral cancellation of the contract if the goods are not repaired or replaced by a product of appropriate quality.

It should be noted that the new regulation also provides for certain cases (Article 6.364^{1}(4)(1) to (4) of the Civil Code of the Republic of Lithuania) where the consumer may immediately claim the rights of the second step, i.e., a reduction of the price or the termination of the contract. One of these conditions is if the defect in the goods is essential (Article 6.364^{1}(4)(3) of the Civil Code of the Republic of Lithuania). In the event of an essential defect, the consumer is no longer obliged to follow the hierarchy of their rights, i.e., to ask for the repair or replacement of the product first. The consumer is immediately entitled to demand a reduction in the price of the goods or the termination of the contract, and the seller cannot restrict the consumer's right to choose the remedies available to them.

As regards the essential defect, its content is also of an evaluative nature, which will have to be disclosed to the court hearing the case. As there is no new case law of the Supreme Court on the application of the new provisions, the State Consumer Rights Protection Service (hereinafter referred to as SCRPS), when settling consumer disputes out of court, is in principle guided by the interpretations of the court of cassation on the essence of the defect of the product, which were made in the context of the interpretation of the content of the minor defect of an item (SCRPS 2022a, 2022b).

The SCRPS clarified that "depending on the type of the product, the essential defect may be different from the purpose of the product, i.e. whether the defect is essential would be determined by the intended use of the product: whether its main function is ensured or not; whether, according to the intended use of the product, in the presence of the defect/deficiency, the product cannot be used at all (in the broad sense, taking into account all its essential functions), or whether the absence of a function only makes it more difficult to use the product. Whether the defect is essential can in principle also be judged by the number of times the product has been repaired, the length of time it took to remedy such a defect, and the quality of the product was still not assured after the repair work was carried out (the defect was not repaired or reappeared soon afterwards)" (SCRPS, n.d.). Thus, an essential defect is a significant defect that justifies the application of the last consumer remedy, i.e., termination of the contract.

At the same time, Article $6.364^{1}(5)$ of the Civil Code of the Republic of Lithuania stipulates that the consumer does not have the right to terminate the contract if the defect is immaterial. The interpretation of the term *immaterial* is also not yet available in the case law, and it may of course differ to some extent from *of minor importance*, but we would consider that the difference between the two should not be substantial.

Promoting sustainable consumption through product repair

Before analyzing the consumer's right to product repair, which is now the focus of the new legal framework, it is also necessary to note certain aspects of the sustainability of this consumer right, which have become increasingly important in the European Union in recent years.

In December 2019, the European Commission published the Communication on the European Green Deal, which, among other initiatives, sets out a number of initiatives to protect consumer rights. These initiatives took a more concrete form in the European Commission's new Circular Economy Action Plan, published in March 2020, which has a specific focus on empowering consumers, stating that: "Empowering consumers and providing them with cost-saving opportunities is a key building block of the sustainable product policy framework. To enhance the participation of consumers in the circular economy, the Commission will propose a revision of EU consumer law to ensure that consumers receive trustworthy and relevant information on products at the point of sale, including on their lifespan and on the availability of repair services, spare parts and repair manuals. The Commission will also consider further strengthening consumer protection against green washing and premature obsolescence, setting minimum requirements for sustainability labels/logos and for information tools" (European Commission 2020b). In addition, it is foreseen that the Commission will pursue efforts to establish a new consumer "right to repair."

It has to be acknowledged that many products cannot be easily reused, repaired or recycled due to their short lifespan, as they are essentially single-use products, and consumers are not always keen on repairing products. Therefore, one of the objectives of the circular economy is to ensure that products are sustainable and can be used for a longer period of time, and to create both legal and economic conditions for consumers to participate in the circular economy. As announced in the New Circular Economy Action Plan, the aim is that "products placed on the

EU market will be designed to last longer, to be easier to repair, recycle and reuse" (European Commission 2020b).

In November 2020, the Commission published a Communication – "The New Consumer Agenda: Strengthening consumer resilience for sustainable recovery" – which not only sets out a vision for EU consumer policy from 2020 to 2025, but also details initiatives to contribute to sustainable consumption. The Communication states that "better information on the availability of spare parts and repair services can further support product durability. The upcoming initiative on empowering consumers in the green transition, the Sustainable Product Policy Initiative and, where relevant, sector specific initiatives will be essential to give consumers an effective right to repair. Moreover, the future review of the Sale of Goods Directive (2019/771) would provide an opportunity to examine what more can be done to promote repair, and encourage more sustainable, circular products. Various options regarding consumer remedies will be looked at, such as giving preference to repair over replacement, extending the minimum liability period for new or second-hand goods, restarting a new liability period after repair" (European Commission 2020a).

In January 2022, the European Parliamentary Research Service published an information note on the consumer's right to repair, which presents the right to repair in three aspects: the right to repair during the guarantee period; the right to repair after the legal guarantee has expired; and the right for consumers to repair products by themselves. The European Parliament does indeed raise a topical issue when it talks about the consumer's right to repair after the legal guarantee has expired, since "Once the legal guarantee has expired, neither sellers nor manufacturers are required to repair the products. Consumers no longer have a right to have their products repaired, even if they want to pay for the repair themselves. They are thus often faced with a situation in which repair would cost too much (compared with buying a new product); spare parts are not available; there are no repair shops left in their vicinity; or products are made in such a way that they cannot be repaired (e.g. because parts are glued together or are inaccessible)" (European Parliamentary Research Service 2022, p. 2).

In April 2022, the European Parliament adopted the resolution on the right to repair, which highlighted a number of areas that the European Commission should address when considering a proposal for a separate legislative act on the right to repair. Thus, the European Parliament "underlines that consumers should receive reliable, clear and easily understandable information at the point of sale on the durability and repairability of a product, to help them compare and identify the most sustainable products available on the market; calls on the Commission to propose harmonized rules for such consumer information, including, among other information, repair scores, information on estimated lifespan, information on spare parts, information on repair services and the period during which software updates would be available in the case of goods with digital elements, while keeping in mind the imperatives of consumer safety; notes that, for it to be useful, such information should be made available at the time of purchase." It also proposes "possible smart labelling such as QR codes or digital product passports; possible joint manufacturer-seller liability mechanism for non-conformity of products; durability and repair requirements included in a future Ecodesign Directive" (European Parliament 2022).

Having reviewed the current initiatives in the European Union on product repair and its role in promoting sustainable consumption in the context of this topic, we will further assess the situation regarding the implementation of the consumer's right to product repair in Lithuania.

Article 6.364[2](1) of the current Civil Code of the Republic of Lithuania lays down the seller's obligation to repair or replace goods free of charge, within a reasonable period from the moment when the consumer has informed the seller of the defective quality of the goods, and without causing the consumer any significant inconvenience. This rule of law shows that the main requirements for the repair of goods are that the repair must be carried out free of charge, within a reasonable period of time, and without causing serious inconvenience to the consumer. It should be noted that the expressions "within a reasonable time" and "without causing serious inconvenience to the consumer" are evaluative criteria. Therefore, the authority dealing with a consumer dispute shall decide on each occasion whether the consumer's rights have been adequately protected by repairing the goods.

In one Supreme Court case (No E3K-3-158-469/2019), the court had to decide whether the consumer's right to have an item (in the dispute at hand, a luxury watch) repaired was adequately ensured. In this case, the Supreme Court held on two important aspects: on the one hand, it clarified that where a luxury product is a limited edition, the entrepreneur, having sold the entire edition, cannot replace the fundamentally defective product with another one, because the goods of that edition are simply no longer available, and the consumer's only available remedy is therefore to have the product repaired; on the other hand, the court stated that it was concerned with the issue of the reasonable time for the repair of the item and the consumer's disadvantages that would result from the repair. Since the repair of the goods in the present case took more than five months, the court held that "the consumer did not obtain in substance what he had sought when he entered into the contract of sale, namely to have a good quality luxury watch and to use it for its intended purpose. Thus, remedying the quality defects of the watch sold by repairing it does not constitute adequate protection of the consumer's rights" (No E3K-3-158-469/2019). Since the consumer was subjected to considerable inconvenience, the buyer's demand for termination of the contract and reimbursement was proportionate and justified.

The "reasonable time" to repair an item is a question of fact to be assessed by the authority dealing with the consumer dispute. The period which is reasonable for the repair work should be as short as possible, which of course depends objectively on the nature and complexity of the goods, as well as on the nature and severity of the lack of conformity with quality or other factors. It is important that the consumer is informed of the time period within which the product will be repaired. "The period of time must be reasonable to meet the consumer's request but must not infringe the consumer's right to adequate assurance of the quality of the product. In accordance with the practice of the SCRPS and the case law, a reasonable repair period is 1 month" (SCRPS, n.d., p. 5). It must be stressed that every effort must be made to repair the product within the shortest possible time and without taking an unreasonable amount of time. Otherwise, it is advisable to provide the consumer with a replacement product, so that the repair of the product does not cause the consumer significant inconvenience. If the seller has not repaired or replaced the goods within the specified period, the consumer should have the right to demand a reduction in price or to terminate the contract without any further delay. It should be noted that the application of Article 6.364[1](4)(1) of the Civil Code of the Republic of Lithuania, which provides for such a right of the consumer, constitutes "a separate ground for the consumer to claim a price reduction or a refund, without this claim being linked solely to the seriousness of the defect in the goods (i.e. the defect in the goods may also be minor)" (SCRPS, n.d., p. 5).

The consumer's right to have the goods repaired or replaced could only be limited in cases where such a choice would be legally or factually impossible, or where it would entail disproportionate costs for the seller compared to the other available options. This is the clause contained in Article 6.364[1](3) of the Civil Code of the Republic of Lithuania, which provides that the seller may waive this obligation if it is not possible to repair or replace the goods or if it would cause the seller disproportionate costs, taking into account all the circumstances, including (1) the value of the goods in the absence of defects, and (2) the significance of the defect (non-conformity). This rule of law in principle allows the consumer's right to quality assurance not to be made absolute by requiring the repair or replacement of the product, as there are indeed situations where the defective parts of the product are not manufactured, or the product itself is not manufactured, or where the repair requires the product to be sent to another country, with the additional cost of transport, etc. The exercise of this consumer right must therefore be proportionate to the interests of the business, and the consumer, in turn, is entitled to invoke the remedies provided for in Article 6.364[3] of the Civil Code of the Republic of Lithuania, i.e., to claim a proportionate reduction in the price of the goods or to terminate the contract of sale.

Furthermore, under the new regulation, the consumer has the right to suspend payment of the price of the goods or part thereof until the seller has fulfilled the seller's obligations to ensure the quality of the goods (Article 6.364[1](6) of the Civil Code of the Republic of Lithuania).

Planned obsolescence as the antipode of sustainable consumption

With regard to the lifespan and durability of goods, it is necessary to draw attention to the problem of planned obsolescence, which has been discussed in the European Union for many years. Various measures have been taken to address this (European Commission 2019), including the consumer's "Right to Repair" (European Commission 2022b). "Planned obsolescence refers to a wide range of techniques that certain manufacturers might use to shorten the functional lifespan of products and force consumers to make premature replacements in order to continue selling in saturated markets" (BEUC 2015, p. 4).

Obsolescence is a multifaceted problem that can include intentional and unintentional product failure due to faulty design and failure to maintain, repair or install updated software. Indeed, there is a strange paradox that the lifetime of an item is getting shorter while technology is improving rapidly. However, deliberate acts to limit the lifetime of products can in many cases be difficult to prove. Strategies of planned obsolescence may include:

- "Design features which do not allow repair, upgradeability and interoperability with other devices;
- Programmed failure of a device after limited usage;
- Unavailability of spare parts and high costs of repair;
- Marketing strategies that suggest to consumers that in order to stay trendy they should buy new products and replace existing ones very quickly even though the 'old' ones are still fully functional" (BEUC 2015, p. 4).

Sometimes, consumer dissatisfaction with the performance of their product also leads to product switching. Therefore, even though the product works, it no longer meets the consumer's expectations and is replaced. According to T. Kessler, J. Brendel, "the different points of obsolescence can be illustrated as points Q (qualitative), P (psychological), R (regulatory), and T (technological) on the time line of a products' life-cycle. In this instance the company first tries to make the product psychologically obsolete then the technological obsolescence sets in and if the customer is still not willing to replace his product the regulatory obsolescence forces him to do so. In this example the qualitative obsolescence comes at last, for instance not to harm the company's reputation if the product brakes before the customer is forced to replace it due to legal regulations" (Kessler and Brendel 2016, p. 35). Planned obsolescence is therefore the deliberate production of an item for a limited lifetime, so that consumers have to transact repeatedly by purchasing the item again.

Voluntary commercial guarantee of durability

Article 6.364^4 has also been added to the Civil Code of the Republic of Lithuania, introducing a new voluntary commercial guarantee of durability, under which the manufacturer may be directly liable to the consumer. This article essentially extends the range of entities responsible for the product quality guarantee (commercial guarantee), i.e., not only the seller but also the manufacturer of the product may be held liable for the provision of the product quality guarantee. Article $6.364^4(1)$ of the Civil Code of the Republic of Lithuania defines that "the manufacturer shall be deemed to be the producer of the goods, the importer of the goods into the European Union, or any person who affixes on the goods his name, trademark or other distinctive sign." Article $6.364^4(2)$ of the Civil Code provides, accordingly, that "A product quality guarantee shall oblige the guarantor, in accordance with the terms and conditions set out in the quality guarantee document and in the related advertising published at the time of conclusion of the contract or prior to the conclusion thereof. Unless otherwise provided by other legislation, where the manufacturer gives the consumer a quality guarantee as to the durability of the goods for a certain period, the manufacturer is directly liable to the consumer for the repair or replacement of the goods in accordance with Article 6.364^2 of this Code for the entire duration of the guarantee. The manufacturer may offer more favorable conditions to the consumer in the document of the quality guarantee concerning the durability of the product." It follows from this provision that a commercial guarantee of the durability of a product for a certain period of time may be given to the consumer by the manufacturer. In such a case, the manufacturer is directly liable to the consumer for the repair or replacement of the product for the duration of the guarantee. At the same time, a commercial guarantee is an additional obligation on the part of the seller or the manufacturer (guarantor) towards the consumer, which does not affect the legal guarantee (statutory guarantee) but is simply additional to it. Therefore, during the period of the commercial guarantee, the consumer is not obliged to prove that the product's defects in quality are not their fault, but must inform the guarantor of the defects. Thus, for a consumer who prefers sustainable consumption, i.e., who wants to buy a durable, long-lasting product, the commercial guarantee is an additional indicator in decision-making.

Quality guarantee for second-hand items

The use of second-hand items can also contribute to the idea of sustainable consumption. As we have already mentioned, one of the aims of the circular economy is to use the same things for as long as possible: to repair items that are broken, to recycle items that no longer work and to pass on unused items to others who need them. It is equally important that when consumers decide to buy a second-hand item, they feel that their rights are protected.

The Civil Code of the Republic of Lithuania does not lay down any special conditions for the sale of a second-hand item, and the seller is liable for any discrepancy existing at the time of the transfer of ownership to the buyer, even if the discrepancy becomes apparent later on (Art.6.327(3) of the Civil Code). When interpreting the differences between second-hand and new items in terms of quality requirements, the Court of Cassation stated that "a second-hand item sold may, due to natural wear and tear, previous conditions of use (intensity, etc.), differ in quality from a similar new item, with the result that it may be expected to be less efficient and have a shorter service life but it must also be fit for its intended use. Fitness for its intended use must not be interpreted as meaning that it is possible to use the item, even if this entails considerable inconvenience, disruption of various kinds or additional costs" (No 3K-3-345-248/2017, para. 23; No e3K-3-307-1075/2018; No e3K-3-90-403/2022). Accordingly, unless the contract provides otherwise, the seller must ensure that the second-hand item sold is in conformity with standard requirements and that the buyer will be able to use it for its intended purpose.

As regards the protection of the consumer's rights in the case of second-hand goods, an important provision is laid down in Article 6.364(3) of the Civil Code of the Republic of Lithuania, which provides for the possibility, by agreement between the seller and the consumer, of shortening the period of the statutory guarantee for second-hand goods by a period of at least one year. This new provision is undoubtedly beneficial for sellers of second-hand goods. Considering that second-hand goods are a frequent subject of consumer sales contracts and that sellers of such goods bear a higher risk of possible defects in the goods, the current regulation will allow the seller to reduce the risk of potential liability in the event of the discovery of defects in the second-hand goods sold. It should be noted that before the adoption of this rule, the Court of Cassation had already explained that "the seller's liability for the quality of the item transferred is not absolute. The seller's obligation to guarantee the quality of the item sold does not extend to cases in which the defects in the item were known to the buyer or were so obvious that any prudent buyer would have noticed them without any special investigation (Articles 6.327(2) and 6.333(2) of the Civil Code)" (No e3K-3-454-611/2018, para. 32). As we can see, the burden of the seller's liability had been somewhat eased by the courts in their case law even before the adoption of the Law on the Amendment and Supplement to the Civil Code. On the other hand, when the seller seeks to shorten the statutory guarantee period, the consumer is informed that the goods are second-hand and is clearly aware of the quality guarantee period applicable to the second-hand goods that they are purchasing.

The civil law provides that the parties must reach an agreement on the shortening of the guarantee period. At the stage of drafting the Law on the Amendment and Supplement to the Civil Code, the SCRPS expressed its position that the wording of the provision of Article 6.364(3) of the Civil Code does not make it absolutely clear in what form such agreement between the parties

would have to be formalized – i.e., whether it should be expressed by the active action of the consumer, or whether the agreement will also be recognized as valid if the seller includes the condition on the application of a shorter period of the seller's liability for the second-hand goods in the standard contract of sale of the goods for the consumer's signature or in the rules of the goods guarantee, which are made available to the consumer (SCRPS 2021). It is therefore proposed that Article 6.364(3) of the Civil Code of the Republic of Lithuania should be amended by expressly stating in what form the consumer's agreement on the application of a shorter period of the seller's liability for second-hand goods should be expressed.

The wording of this legal norm remained unchanged after the adoption of the Law on the Amendment and Supplement to the Civil Code. Taking into account that the fact that a product is subject to a shorter statutory guarantee period must be proven by the seller in the event of a dispute between the parties, if the seller does not provide clear evidence that the parties had agreed on a shorter statutory guarantee period then it will be considered that the two-year period from the delivery of the item applies.

Conclusions

The law has a range of instruments that can contribute to the achievement of better sustainability objectives, in particular to ensure a balance between the consumer's right to adequate quality of goods and sustainable consumption. An important role in this area is played by the legal framework for consumer protection, which ensures these consumer rights. In turn, consumer rights stemming from the product quality guarantee encourage sellers (and indirectly manufacturers) to develop products with longer lifetimes, thus encouraging consumers to make more sustainable consumption choices, thereby reducing the negative effects of wasteful consumption.

For a long time in Lithuania, the product quality guarantee gave consumers the freedom to choose the remedy for the violation of their rights insofar as it did not contradict the principle of proportionality, considering the case law of the court of cassation. In the absence of a hierarchy of remedies, the promotion of sustainable consumption was in fact contributed to by limiting the consumer's right to unilaterally terminate the contract and claim reimbursement based on the minor importance of the defect. In all other cases, the consumer remained free to choose the remedy for the violation of their rights, which potentially created the conditions for the emergence of consumer behavior contrary to the idea of sustainability, as the consumer might simply have a subjective preference not to have the goods repaired but to demand the termination of the contract.

Minor defect is an evaluative term. Therefore, once the court has found a breach of the consumer's right to have the goods conform to the quality requirements, it has to decide on a case-by-case basis whether the consumer's intention to exercise the right of termination of the contract is possible. In other words, the court has to decide whether the defect found is of such minor importance that the consumer would not be able to defend their right in this way.

On 1 January 2022, significant amendments to the Civil Code entered into force in Lithuania, not only contributing to the entry into civil circulation of longer-lasting products but also allowing them to be used for a longer period. The consumer is no longer free to choose the desired remedy

for the violation of their rights, but has to comply with the two-step system of enforcement of consumer rights provided for in the law. The essence of this system is based on the fact that the consumer has the right to demand a reduction in the price of the product or to terminate the contract unilaterally only if the product is not repaired or replaced by another product of appropriate quality.

Repairing a product, which plays an important role in promoting sustainable consumption, is subject to the following requirements: the repair must be free of charge; the product must be repaired within a reasonable time; and the repair must not cause significant inconvenience to the consumer. In case law, the court or non-judicial authority hearing the dispute has to assess in each case the factual circumstances of the reasonable time and the serious inconvenience caused to the consumer, and to draw reasonable conclusions as to whether the consumer's right to quality assurance has been properly exercised. On the other hand, rapid advances in technology have led to the problems of planned obsolescence and the lack of a consumer right to repair, which complicate the exercise of the consumer's right to repair.

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