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Mangora T. V.
Candidate of Law Sciences
Associate Professor of Law
Vinnytsia National Agrarian University

CHARACTERISTICS OF THE FEATURES OF THE MECHANISM OF LEGAL REGULATION OF STATE PROTECTION OF CONSUMER RIGHTS IN UKRAINE

Abstract.

The article considers the peculiarities of the mechanism of legal regulation of state protection of consumer rights in Ukraine. The main factors influencing the level of consumer protection are given and analyzed, namely: imperfection of legislation; insufficient funding, material and technical and personnel base; lack of consumer education; ignorance of the consumer of their rights; inaction of central and local authorities and local governments in the realization of the rights and interests of consumers; corruption in government; distrust of citizens, identified specific ways to improve the legal regulation of this problem in Ukraine.

Keywords: consumer, consumer protection, consumer protection legislation

Formulation of the problem.

At this stage of development, the reform of Ukraine's economy is carried out through legal norms aimed primarily at protecting the rights of citizens when they are consumers of goods, works or services. The provisions of the Civil Code of Ukraine and the Law of Ukraine "On Consumer Protection" are the basis of comprehensive legislative support for such protection. At the same time, these are the Laws "On Advertising", "On Information", "On Education", "On Transport", "On Telecommunications", "On Ensuring the Sanitary and Epidemic Welfare of the Population", "On Basic Principles and Requirements for Security" and food quality" and a number of bylaws. That is, the state protects consumer rights, controls the quality and safety of products and all kinds of services and works, promotes the activities of public consumer organizations. However, recently, in the process of market transformations complicated by phenomena such as inflation and rising prices, the level of social protection has declined significantly. The number of consumer complaints about the unsatisfactory quality of products, services and services is growing. In addition, the consumer's right to receive the necessary reliable information about goods, works, services, as well as the consumer's right to be heard, protected and receive damages is insufficiently realized. NGOs and trade unions are not fully involved in consumer protection in Ukraine. Which determines the relevance of the study of consumer protection.

Analysis of recent research and publications.

The source basis for writing this article were the works of such scientists as: N.S. Hlus, B.A. Yevtushevsky, S.A. Rumyantseva, O.A. Ustenko, S.I. Chebotar and other scientists. The work of these scientists is of methodological importance, but does not cover all the diversity of issues related to consumer protection, the peculiarities of their implementation and should be used as a starting point in the process of writing this article.

The purpose of this article is to highlight the features of consumer protection, which are regulated by commercial and civil law.

Presenting main material.

The Constitution of Ukraine, Article 42, states: "The state protects the rights of consumers, controls the quality and safety of products and all kinds of services and works, promotes the activities of public consumer organizations" [10, p. 282].

Article 50 of the main law of Ukraine states: "Everyone has the right to a safe environment for life and health and to compensation for damage caused by the violation of this right. Everyone is guaranteed the right to free access to information on the state of the environment, the quality of food and household items, as well as the right to disseminate it. No one can classify such information".

The right of everyone to meet basic needs - for housing, for a sufficient standard of living, for health care and medical care is also guaranteed by the Constitution of Ukraine.

In the current legislation of Ukraine there are several definitions of the term "consumer". Here are some of them.

According to the Law of Ukraine "On Consumer Protection", a consumer is a natural person who buys, orders, uses or intends to purchase or order products for personal use, not directly related to business activities or performance of duties.

Law of Ukraine "On Housing and Communal Services" of June 24, 2004. Interprets the concept of consumer as - a natural or legal person who receives or intends to receive housing and communal services [2, p. 76].

According to the Law of Ukraine "On Chemical Sources of Electricity" of February 23, 2006, a consumer is a legal or natural person who uses chemical power supplies or products with integrated chemical power supplies.

Resolution of the Cabinet of Ministers of Ukraine on approval of the Rules for the use of wire broadcasting (paragraph 1 of the Rules) of May 22, 1997. Interprets this concept as follows: consumer - a legal or natural person to whom the wire broadcasting service is provided.

In case of detection of defects or falsification of goods during the warranty period in the manner and

terms established by law, and on the basis of mandatory rules or contract, the consumer has the right to choose from the seller or manufacturer:

- gratuitous elimination of defects of the goods or reimbursement of expenses for their correction by the consumer or the third party;
- replacement of goods of a similar brand (model, product, modification) of proper quality;
- a corresponding reduction in its purchase price;
- replacement of the same product of another brand (model, article, modification) with the corresponding transfer of the purchase price;
- termination of the contract and compensation for losses incurred by him [5, p. 75].

For non-food items that have been used and sold through retail commissions, consumer requirements are met with the consent of the seller.

Consumer requirements for goods whose warranty period has not expired are met.

The consumer has the right to demand from the manufacturer free of charge elimination of defects of the goods after the expiration of a warranty period.

This requirement may be imposed within the prescribed service life, and if not - for 10 years, if the product has been found to have significant defects due to the fault of the manufacturer.

If the provision of inaccessible, inaccurate, incomplete or untimely information about the product (work, service) and the manufacturer (performer, seller) caused: purchase of goods (works, services) that do not have the necessary consumer properties - the consumer has the right to terminate the contract and claim damages caused to him.

Shelf life (term) - a term (term) defined by regulations, regulations, terms of the contract, during which in the case of compliance with the relevant conditions of storage and / or operation or consumption of production, its quality and safety indicators must comply with regulations. acts, regulations and terms of the contract [9, p. 7].

Counterfeit products - products made in violation of technology or improper use of the mark for goods and services, or copying the form, packaging, exterior design, as well as improper reproduction of goods of another person.

Consumers are obliged to:

- before the start of operation of the goods carefully read the rules of operation set out in the documentation for the goods provided by the manufacturer (seller, performer);

- in case of necessity of explanation of conditions and rules of use of the goods - before the beginning of use of the goods to address for explanations to the seller (manufacturer, executor) or to other person specified in the operational documentation which carries out their functions;

- use the product in accordance with its intended purpose and meet the conditions (requirements, rules, regulations) set by the manufacturer of the product (performer) in the operating documentation;

- in order to prevent negative consequences for the consumer's use of goods - to apply safety measures provided by the manufacturer, in compliance with special documentation, and in the absence of such rules in the documentation - to follow the usual reasonable safety measures for such products [11, p. . 115].

The state provides consumers with protection of their rights, provides the opportunity to freely choose products, acquire the knowledge and skills necessary to make independent decisions when purchasing and using products according to their needs, and guarantees the purchase or receipt of products in other ways. , sufficient to maintain health and vital functions.

The state creates conditions for consumers to obtain the necessary knowledge to exercise their rights.

Consumer protection is carried out by a specially authorized central executive body in the field of consumer protection and its territorial bodies, the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, bodies and institutions exercising state control. in accordance with the law, as well as the courts.

Consumer protection is provided by the Law of Ukraine "On Consumer Protection". This Law regulates the relationship between consumers of goods (works, services) and producers, performers, sellers of various forms of ownership, as well as establishes consumer rights. Consumers who are on the territory of Ukraine (not only citizens of Ukraine, but also other countries), when purchasing, ordering or using goods (works, services) have the rights described in table 2.1.:

Table 2.1.

Consumer rights in Ukraine

№ s/n	Types of rights
1	protection of their rights by the state
2	acquisition of knowledge
3	proper quality of products and service
4	product safety
5	necessary, accessible, reliable and timely information about the product, its quality, range, as well as about its manufacturer (performer, seller)
6	compensation for damage (losses) caused by defective or counterfeit products or products of improper quality, as well as property and moral (non-property) damage caused by products dangerous to human life and health in cases provided by law
7	appeals to the court and other authorized bodies of state power for protection of violated rights
8	associations in public consumer organizations (consumer associations)

Thus, the table shows what rights consumers enjoy in our country.

Domestic legislation on consumer protection and interests also includes other laws and regulations, including the laws of Ukraine "On Advertising", "On Information", "On Education", "On Food Safety and Quality", "On Transport", "On Telecommunications", "On Ensuring the Sanitary and Epidemic Welfare of the Population", Regulations on "Rules of Retail Trade", "Rules of Trade in Markets", "Rules of Trade in Installments", "Rules of Trade in Medicinal Products", and "Rules of Trade in Unit Numbers", "Rules of retail trade in tobacco products", etc.

Ukraine also has certain European directives in the framework of international agreements signed by our country, which complement domestic legislation to protect the rights and interests of consumers with the rules recognized in the world and European community, in particular, appeals to the Strasbourg court [12, 120].

It should be noted that the legislator, defining the concept of "consumer", indicating the specific purpose of the agreements that the citizen enters into or plans ("for their own needs in everyday life"), as well as indications that such purpose should take place during the agreement or planning its conclusion and when using goods, works or services, no longer forms any signs of acquisition, order, use of a citizen. Therefore, in my opinion, without making any special requirements for the implementation of agreements of citizens-entrepreneurs (registration, which allows to establish the consumer nature of these agreements), thus the legislator gives grounds to consider a large number of agreements concluded "non-consumer", ie concluded for business activities. Such a conclusion will also be supported by the fact that the relevant party to the agreement was a citizen who at the time of the agreement had the status of a business entity.

In fact, agreements concluded, even if they are made in the form of a single document (this often does not happen, in particular, in the case of cash payment or in the case when the agreement is real), the purpose of acquisition (procedure) is unlikely to be formulated. And in the case when the entrepreneur pays for the purchase (work, service) by non-cash payment, the correctly executed contract may even specify the status of the client-entrepreneur (this may be due, in particular, to confirm the legitimacy of income tax), which indicates on the "non-consumer" nature of the operation. Often, the agreements of a citizen-entrepreneur in their design do not differ from the agreements concluded by citizens who do not have the status of an entrepreneur, and documents that indirectly indicate such agreements are only settlement documents - cash or receipt of goods, receipt, etc. Thus, if at the time of concluding the contract there is no documentary evidence of its "consumer" nature, the citizen who acquires (orders), at the moment can not be recognized as a consumer.

It is also difficult to establish the fact that a citizen-entrepreneur uses many goods (works, services) exclusively for their own household needs. Of course, a personal car can be moved not only to places of leisure, but also, for example, to places of work that are the subject

of entrepreneurial activity of this person. In other words, the nature of the use of things (services, works) can be twofold: both for entrepreneurial activity, and for meeting "own household needs". Thus, an entrepreneur can order the repair of the premises of his house, in one part of which he lives, and in the other - works in a specially equipped office, workshop, etc. This ambiguity, in my opinion, the legislator does not take into account, and his definition of "consumer" provides an opportunity for two conclusions: finding out that a citizen has the status of an entrepreneur, we can say that all relations with his participation can be associated only with for profit. And proving that the entrepreneur still used the thing (the result of work, service) for their own household needs, we can say that in the same relationship participated only a citizen who is already, regardless of his entrepreneurial status, a consumer. What conclusion should be made if, for example, an entrepreneur bought a thing and used it both as an entrepreneur and as a citizen (for household needs)? In what proportion to define in one and the same person the businessman and the citizen-consumer? And, most importantly, in what part to resolve the dispute with the participation of such a person in court, and in what - in the commercial court? It seems that the definition of the term "consumer" contained in the Law on Consumer Protection prompts such a really meaningless question.

The legislator gives the court sufficient grounds to apply for protection by means provided by the Law on Consumer Protection of violated rights of a citizen who at the time of the agreement or during the use of the thing had the status of a business entity to refuse to accept the statement of claim. of this fact after the acceptance of the statement of claim) to close the proceedings, or at the stage of appeal to cancel the decision of the court of first (appellate) instance with the closure of the proceedings due to the fact that it is not subject to court (not subject to commercial court). On the other hand, the commercial court, finding the fact of purchase (order) or use of goods, works or services for their own household needs, and recognizing that the person participated in the disputed relationship not as an entrepreneur but as a citizen whose rights are protected by the general court, accordingly, to refuse to accept the statement of claim, to terminate the proceedings or to cancel the decision of the lower court with the closure of the proceedings, using, in particular, the provisions of Part 1 of Article 24 of the Law on Consumer Protection. Thus, the existing definition of the term "consumer" allows to recognize the claims of citizens-entrepreneurs beyond the jurisdiction of both the court and the commercial court [13, p. 27].

There is a theory that the definition of "consumer" in the Law on Consumer Protection should be formulated differently. Of course, all claims to the existing wording accumulated in the legal literature should be taken into account. However, I consider it illogical to keep the possibility of refusing judicial protection to a person who has the status of a business entity, but purchases and uses goods (works, services) for their own household needs. Obviously, it is necessary to extend the status of the consumer to the citizens-businessmen who take part in relations concerning those goods

(works, services) which can be used for their personal household needs. It is the possibility of use for personal needs, and not the fact of such use should be the basis for defining the concept of "consumer": first, it will eliminate the need to determine the existence of the relevant purpose of the agreement at the time of its conclusion, and secondly, such a presumption get rid of the need to prove the fact of using the purchased for their own household needs.

According to statistics, most consumer lawsuits in Ukraine are related to the violation of their rights to goods of proper quality. The practice of law enforcement testifies to the active activity of judicial bodies in this direction.

Consumer protection - in Ukraine - is guaranteed by the Constitution control over the quality and safety of products and all types of services and works by the state and the social movement in support of it [16, p. 55].

Consumer protection is an integral part of human rights protection. In countries with developed economies, the consumer performs a leading function in the consumer market. And this is possible only with the active life position of every citizen of the country and state support.

Types of consumer protection mechanisms:

- compensation for material damage;
- compensation for non-pecuniary damage;
- others (coercion, exchange, refund, etc.) [17, p.

29].

Based on the principle enshrined in Art. 3 of the Constitution of Ukraine, that a person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value, consumer rights are one of the most important social rights of citizens, whose protection is entrusted to the state. These principles are specified in the provisions of Art. 4 of the Law of Ukraine "On Consumer Protection", according to which consumers when purchasing, ordering or using goods sold in Ukraine, to meet their personal needs have the right:

- 1) state protection of their rights;
- 2) proper quality of products and services;
- 3) product safety;
- 4) necessary, accessible, reliable and timely information about the product, its quantity, quality, range, as well as its manufacturer (performer, seller);
- 5) compensation for damage caused by defective or counterfeit products or products of improper quality, as well as property and moral (non-property) damage caused by products dangerous to human life and health, in cases provided by law;
- 6) appeal to the court and other authorized bodies of state power to protect the violated rights;
- 7) associations in public consumer organizations (consumer associations).

This list is not exhaustive, because according to paragraph 2 of Art. 4 "Other consumer rights arising from the basic declared rights are established in a number of articles of the Law of Ukraine" On Consumer Protection ", as well as in resolutions of the Cabinet of

Ministers of Ukraine, rules and lists approved by relevant resolutions, and orders of ministries and ministries."

Self-defense occurs as a result of active initiative actions of the subject with the requirement to the seller (manufacturer) to eliminate violations of his rights to safety and quality of products, completeness and objectivity of information. This is a statutory procedure for exchanging low-quality or high-quality but unusable goods; refund of funds paid for such goods in case of impossibility of their replacement; warranty repair of goods in due time; secondly, a public form of protection of rights. St. 24 of the Law of Ukraine "On Consumer Protection" provides for the possibility of establishing public organizations for consumer protection, the procedure for the establishment and operation of which is regulated by a special law "On Public Associations".

Public form of protection is the realization of public (collective) interest in ensuring consumer rights, however, unlike self-defense and other forms of consumer protection, it occurs with the involvement of public administration, local government and the judiciary.

The public form of consumer protection is also characterized by extensive explanatory work and preliminary assessment (analytical) activities on the compliance of producers (sellers) of goods and services with regulatory requirements for quality and safety of products and services.

Secondly, state (administrative) protection, which is provided by the competent state authority for consumer protection (now - the State Inspectorate of Ukraine for Consumer Protection) and the system of its territorial offices and administrations. Powers to protect the rights of consumers of this body relate to: 1) inspection of the activities of economic entities that produce and sell goods and provide services (scheduled and unscheduled) and quality control (examination) of sold / provided goods and services; 2) obtaining the necessary documentation certifying the quality of goods and services; 3) application of appropriate measures in case of violation of consumer rights - issuance of mandatory instructions, prohibition and termination of producers and sellers of goods and services, sealing of buildings, trade and other premises, the use of which is carried out in violation of consumer rights. consumer protection.

Close to the powers of administrative (state protection) is the self-governing protection of consumer rights, which is carried out by special units of executive committees of local governments.

A special place belongs to the judicial protection of consumer rights. Judicial protection of consumer rights of citizens is carried out through appeals of consumers to courts of general jurisdiction and with claims for protection of rights to: safe and high-quality products; complete, reliable and transparent consumer information; compensation for material (property) damage caused by the consumption of low-quality products or the provision of incomplete or misleading information that prevented the use of products for their intended purpose; compensation of moral (non-property)

damage caused as a result of consumption of low-quality or dangerous products, receipt of low-quality services (including unfriendly attitude of staff), inaction of state and self-governing bodies of consumer protection; for timely, sufficient and objective response of state and self-government bodies (organizations) to the revealed / declared facts of violation of consumer rights.

Customs and laws have always protected consumer rights. The idea of consumer protection gradually materialized and was embodied in the formation of various social associations, legal norms, etc.

In medieval Lviv, in order to avoid unnecessary discussions, the city executioner generally monitored the cleanliness of sewage ditches. However, it was not until the middle of the twentieth century that it became clear that the civilized relationship between producer and consumer should be based on clear legal principles (see also: social responsibility of business).

In 1936, the National Consumers Association of the United States appeared, in 1951 - in France, in 1957 - in Great Britain.

US President John F. Kennedy recognized the movement for consumer protection as vital, placing it next to the union and the "green".

On March 15, 1962, the President of the United States issued a special resolution declaring the "Four Consumer Rights":

- a) security, quality of goods and services;
- b) reliable information about them;
- c) the right to be heard in case of consumer claims;
- d) the right to defend their consumer claims in court [14, p. 13].

Since then, March 15 has been celebrated annually as World Consumer Rights Day. In 1973, the XXV session of the Consultative Assembly of the European Union approved the "Charter of Consumer Protection", and in 1985 the UN General Assembly approved the "Guiding Principles for the Protection of the Interests and Rights of Consumers". These principles were once recognized even by the USSR, although this was not documented.

Ukraine has also signed UN-approved principles. This was put into practice in the fact that Ukraine was the first among the republics of the former Union to adopt the Law "On Consumer Protection". For the practical implementation of the Law, the State Inspectorate for Consumer Protection was established, which in 1992 acquired the status of the State Committee of Ukraine for Consumer Protection. In 2008, the State Housing and Communal Inspectorate was established to protect the rights of consumers of housing and communal services.

The process of formation and formation of the system of protection of citizens' rights is based on Article 42 of the Constitution of Ukraine, according to which "the state protects consumer rights, controls the quality and safety of products and all types of services and works."

Consumer protection is provided by: the State Inspectorate of Ukraine for Consumer Protection, the Antimonopoly Committee of Ukraine, the State Housing and Communal Inspectorate.

Even before the formation of relevant structures at the state level, large non-governmental organizations began to be established in large cities of Ukraine. In 1989, the public organization "Ukrainian Consumers' Association" was registered, which took on the responsibility of working according to international legal norms. In 2003, the public organization "Expert" was registered, the main purpose of which is to identify low-quality, unsafe food for consumption on the market and inform consumers about it.

Declining purchasing power pushes the vast majority of the impoverished population to purchase low-quality, and partly counterfeit goods, which are offered at low prices. Therefore, the state should play a dominant role in shaping and conducting an effective consumer protection policy.

Consumer protection under the Law of Ukraine "On Consumer Protection" is not limited to the procedure and conditions for exercising the right to protection of subjective civil rights by consumers and bodies of the State Inspectorate of Ukraine for Consumer Protection in their interests. The Law of Ukraine "On Consumer Protection" defines the mechanism of consumer protection and the basis for the implementation of state policy in the field of consumer protection. Thus, in the legislation of Ukraine the concept of "consumer protection" is used in a broad sense and goes far beyond the civilist category of protection of subjective rights, including the public legal component, which is implemented through the establishment of mandatory rules for economic control of these activities. persons who are in legal relations with consumers [1, p. 376]. Therefore, the exercise of control powers by the bodies of the State Inspectorate of Ukraine for Consumer Protection is not the implementation of methods of consumer protection in the sense of civil law, just as the application of administrative sanctions by these bodies is not the application of civil sanctions.

The protection of any subjective civil right, including the rights of the consumer, may be exercised only in a certain form and in a manner prescribed by law or by contract. Disclosure of this statement, purely theoretical at first glance, is of great practical importance for the successful construction of a strategy for consumer protection.

The protection of subjective civil rights and interests must be carried out in the manner prescribed by law, which is called a form of protection of civil rights. The form of protection reflects how the authorized person will exercise his / her right to protection - independently, or will involve a certain authorized body in this process. Today, a distinction is made between jurisdictional and non-jurisdictional procedures for exercising the right to protection, or a form of protection.

The simplest example of a non-jurisdictional form of protection is the consumer's appeal to the seller or the manufacturer with a request for free elimination of defects of the goods within a reasonable time in the manner prescribed by Art. 8 of the Law of Ukraine "On Consumer Protection". By the way, the Law of Ukraine "On Consumer Protection" does not require a mandatory written form of this requirement, but the effectiveness of such a requirement in writing is much greater

than an oral appeal. Sending a written request by mail with a valuable letter with a description of the attachment and notification of delivery of the postal item provides the consumer with proof of sending it to the seller or manufacturer, as well as proof of receipt of such request on a specific calendar date.

Practice shows that claims to the seller or producer of goods are sent by consumers even in cases where the consumer is sure that they will not be satisfied and to protect the rights the consumer will have to protect their rights in a jurisdictional form of protection. In this case, the sending of the request plays the role of preparatory actions for further appeal to the court.

Finally, an unreasonably unsatisfied claim, the right to which is provided by the Law of Ukraine "On Consumer Protection", indicates the existence of a dispute between the consumer and the seller or producer of goods and serves as proof of its existence, as well as violation of consumer rights.

In case of dissatisfaction of the consumer's reasonable request to eliminate deficiencies beyond the period established by the Law of Ukraine "On Consumer Protection", the consumer acquires the right to demand from the violator of his rights to pay a penalty of one percent of the value of goods, works or services. Documentary confirmation of the fact of receipt of such a claim by the addressee in case of its dissatisfaction will serve as a confirmation of the legitimacy of the consumer to charge a penalty for each day following the expiration of the period for satisfaction of such a claim. If the relationship between the consumer and the person who violated his right does not allow to count on resolving the dispute out of court, then this requirement should be noted that if left unsatisfied, the consumer will inevitably go to court and the amount of costs that may be incurred by the addressee. requirements in connection with its satisfaction, after the court's decision in favor of the consumer will inevitably increase by the amount of legal penalty, consumer costs for legal assistance, compensation for non-pecuniary damage, etc. Correctly formed warning about the negative consequences of leaving the claim without satisfaction can motivate the person who violated the rights of the consumer, as soon as possible to satisfy such a requirement and thus avoid additional losses in the future [3, p. 138].

Presenting to a person who has violated the consumer's right a requirement to eliminate the violation in the doctrine of civil law is a measure of operational influence on the offender, which is part of the non-jurisdictional form of civil rights. The author of the theory of measures of operational influence VP According to Gribanov, under the content of "efficiency" of these measures, the possibility of a party to a relative legal relationship to make a claim to the violator of his rights in this legal relationship, or to act to protect the violated right without recourse to the competent authorities, ie without going beyond.

Among the jurisdictional forms of protection, the most effective is to apply to the court for protection of violated rights. In this form of protection, the consumer is not given a number of additional rights due to his relative "weakness" in comparison with the seller of goods, performer of works or services. First of all, such

a guarantee is the consumer's right to choose the place of filing a lawsuit: - the location of the defendant or the place of residence of the consumer - in any case, as well as the place of damage to property or health or place of performance - in cases specified by law, according to the Civil Procedure Code of March 18, 2004 № 1618 IV.

Consumers are exempt from paying court fees for lawsuits related to the violation of their rights under Art. 22 of the Law of Ukraine "On Consumer Protection", but are obliged to pay the costs of information and technical support of the case. In the claim for consumer protection, in addition to the general provisions for all such documents, it is desirable to draw attention, first of all the defendant, to the fact that the consumer in the near future after filing a lawsuit will apply to general and special consumer protection authorities. initiating the inspection of the defendant and bringing him to justice for violating the legislation on consumer protection. The claim must be accompanied by evidence confirming the fact that the plaintiff is a consumer and received a product, service or work with defects, as a result of which his rights were violated. Such evidence may be copies of contracts, receipts, commodity or cash checks, tickets, coupons or other settlement documents that serve as confirmation of the oral transaction, according to the Law of Ukraine "On Consumer Protection".

Also in the claim it is possible to mention former violations by the defendant of the rights of consumers, or offenses in the related spheres of relations. Sometimes such information is publicly available, for example, the official website of the State Commission on Securities and Stock Market contains information on offenses of market participants, even with the texts of regulations, which may be needed by policyholders who are consumers of financial services and insurance services. It is not superfluous in the lawsuit to indicate the practice of resolving similar disputes by courts with a summary of the content of court decisions. However, practice shows that lawsuits for consumer protection generally do not contain even the above basic provisions.

The form of protection is only the order of realization of the right to protection, which takes place in a certain way. The method of protection of civil rights is aimed at restoring the disturbed balance of civil rights and obligations, the claim of the holder of the violated subjective civil right to its violator, made directly or through the competent authority.

In accordance with Part 2 of Art. 16 of the Civil Code of Ukraine, ways to protect civil rights and interests may be: recognition of the right; invalidation of the transaction; termination of an act that violates the right; restoration of the situation that existed before the violation; enforcement in kind; change of legal relationship; termination of legal relationship; compensation for damages and other methods of compensation for property damage; compensation for moral (non-pecuniary) damage; recognition of illegal decisions, actions or inaction of a body of state power, a body of power of the Autonomous Republic of Crimea or a body of local self-government, their officials and officials. In

this case, the court may protect civil law or interest in another way established by contract or law.

The Law of Ukraine "On Consumer Protection" in comparison with the Civil Code of Ukraine contains only one pronounced special method of protection - recovery of legal (provided by law, not contract) penalty, and in other cases allows consumers to protect their rights by using universal remedies: losses and other ways of compensation for property damage, compensation for non-pecuniary damage, etc. [1, p. 379].

Analysis of consumer protection practices suggests that compensation for property and non-pecuniary damage, the imposition of penalties are the most common ways to protect consumer rights. Of all the ways to protect civil rights, damages are the most universal. However, no matter how obvious the damage may seem to others, it cannot be forcibly reimbursed without taking certain actions to confirm it by the party in the case. The subject of proof in cases of damages has the largest number of factual circumstances, compared to the subject of proof in cases of any other claims against the violator of civil law, which explains the fact that the most universal way to protect any real.

Thus, in March 2014, the Shevchenkivsky District Court of Kyiv considered a civil case on K.'s claim to the JSC for consumer protection, compensation for material and moral damage.

According to the case file, on July 13, 2012, JSC and K. signed an agreement on the provision of tourist services, according to the terms of which the JSC undertook to organize a tourist trip (tour) on the route "Kyiv - Antalya - Kyiv".

The terms of the contract provided for K. to stay in the CANAN Hotel, in a single room, which should have a telephone, air conditioning, shower and balcony. In addition, the hotel must have table tennis. The cost of services under this agreement was UAH 19070.71.

Upon arrival at the resort, K. found that the appearance of the hotel had nothing to do with the visual information he had received from the JSC. Instead of a single room, he was placed in a semi-basement room, as there were no free rooms in the hotel. After spending the night in the basement, K. agreed with the owner of the hotel the next morning to stay in a single room, but instead the owner agreed that K. was staying in the CANER boarding house, which was two blocks away. At the same time, K. was forced to spend the night only in a boarding house, and to have breakfast and dinner at the hotel. Eventually, K. managed to contact the defendant's partner, who promised to bring K.'s leisure and living conditions into line with the terms of the contract, but in fact did not take any measures in this direction.

According to K., the above circumstances indicate a violation of the terms of the contract. Returning from a trip to Kyiv, K. turned to the JSC, which the latter rejected.

On September 20, 2013, K. appealed to the Main Kyiv City Department for Consumer Protection, according to which № 01 10/14 of October 18, 2013, during the inspection of the defendant's enterprise on October 17, 2013, violations of the requirements of the License Terms were found. on the organization of

foreign, domestic tourism, excursion activities, approved by the order of the State Committee of Ukraine for Regulatory Policy and Entrepreneurship, the State Committee for Youth Policy, Sports and Tourism of Ukraine № 7/62 of January 17, 2006, for booking travel services. In addition, the inspection revealed violations of JSC Art. 18 of the Law of Ukraine "On Consumer Protection", namely: the contract does not specify the necessary, accessible and reliable information about the main properties of the tourist service - the room category.

K. filed a claim with the JSC for compensation of property damage in the amount of the cost of the tourist service and moral damage, which he estimated at UAH 12,000.00. The plaintiff justified the amount of the claimed compensation for non-pecuniary damage by the fact that the tourist trip was dedicated to his birthday, which fell on the date of his stay on this tourist trip.

Based on the above, the court concluded that the defendant violated the terms of the contract, did not provide the plaintiff with reliable, necessary and accessible information, which led to a violation of the rights of the latter as a consumer of tourist services.

The court found that the plaintiff had not been able to leave a place of rest that did not meet the terms of the contract, as it was at a considerable distance from the plaintiff's place of residence, namely Turkey, and the return ticket was fixed. Due to such circumstances, the plaintiff was forced to use services of inadequate quality.

The court satisfied the claims in terms of compensation for property damage in full, deciding to collect from the defendant 19070.71 UAH, which is the cost of tourist services. In terms of compensation for non-pecuniary damage, the court reduced the amount of compensation to UAH 1,500.00. of the declared UAH 12,000.00. [6, p. 215].

The subject of proof in any case of damages includes the following substantive legal facts: the fact of unlawful conduct (because damages become possible only as a result of violation of civil law, with a few exceptions), the fact of damages, the connection and damage behavior and damages resulting from such behavior, the fact of guilt of the person who caused the damage.

From the above the fact of wrongful conduct of the defendant, violation of the contract and his guilt in the offense in the case was proved not by the plaintiff, but by the State Inspectorate of Ukraine for Consumer Protection, therefore, the plaintiff had to prove the loss the relationship between damages and breach of contractual obligations of the defendant.

It cannot be concluded that without the intervention of the said body it would have been impossible to recover damages from the defendant, but in the absence of the assistance of Derzhspozhyvstandart of Ukraine the trial would obviously have become longer.

References

1. Commercial Code of Ukraine: Law of Ukraine of January 16, 2003 № 436-IV Information of the Verkhovna Rada of Ukraine. 2003. № 18-22. Art. 144.
2. On consumer protection: Law of Ukraine of 12.05.1991 №1024-XII.

- Information of the Verkhovna Rada of Ukraine. 1991. № 30 Art.. 379-395.
3. Biryukov I. Interest and subjective civil law. Law of Ukraine. 2008. № 8. P.18
4. Geets V. Statehood of Ukraine. On the way to civil society. More. 2009. № 5. P. 3.
5. Civil law: in 4 volumes / Otv. ed. prof. E.A. Sukhanov. Moscow: Walters Clover, 2009. Volume I. General part. 561 p.
6. Zambrovsky B.Ya. On the question of the formation of a civil and legal state. Socio-political sciences. 2014. № 6. P. 15–18.
7. General theory of state and law / Ed. V.V. Kopychukova. Kyiv: 2007. 320 p.
8. Ivanenko L. Realization of the right of consumers to purchase goods of proper quality. Law of Ukraine. 2014. № 8. P.73-77.
9. Kalaur I. Some aspects of the application of the legal consequences of insignificant and disputed transactions. Entrepreneurship, economy and law. 2009. № 12. P. 48.
10. Kornilovsky B.Yu. Observance of consumer rights when advertising goods and services. Economics, finance, law. 2010. № 4. P. 25–29.
11. Molchanov R.V. Quasi-consumer and quasi-plaintiff. Some considerations on the problems of consumer protection in Ukraine. Economics, finance, law. 2014. № 4. P. 17– 22.
12. Ogryzkov V. Consumer protection. Moscow: 2009. 250 p.
13. Ovcharenko A.V. Market research of goods and services in Ukraine. Poltava: 2009. 195 p.
14. Potapenko VR Is the damage compensated to the consumer? Law of Ukraine. 2014. № 8. P. 27–33.
15. Skakun O.F. Civil society and the rule of law: ways of development in Ukraine. The rule of law in Ukraine: problems, prospects for development. Kharkiv: 2007. 715 p.
16. Civil law. General part / Ed. O.A. Pidoprigrory, D.V. Bobrova, O.V. Derry. Kyiv: 2005. 416 p.
17. Chepurnoy Y.P. Consumer protection. Types and methods of deceiving the buyer when selling food products. Rostov on Don: Phoenix, 2003. 416 p.

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Поліщук Марина Генадіївна

Кандидат юридичних наук, доцент

Дніпропетровський державний університет внутрішніх справ

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«ПОРІВНЯЛЬНИЙ АНАЛІЗ РОЗІРВАННЯ ШЛЮБУ В АДМІНІСТРАТИВНОМУ ТА СУДОВОМУ ПОРЯДКУ»

Polishchuk Marina Genadiyivna

Candidate of Law Sciences, Associate Professor at the Department of Civil Law Disciplines of Dnipropetrovsk State University of Internal Affairs

"COMPARATIVE ANALYSIS OF DIVORCE IN ADMINISTRATIVE AND JUDICIAL PROCEDURE"

Анотація.

Створення нової ланки суспільства – сім'ї це досить складний морально, фізично та матеріально шлях. Не менш легкий для кожної людини і момент розірвання шлюбу, адже після цього наступають певні юридичні наслідки та припиняються особисті права та обов'язки між колишнім подружжям. Подружнє життя в Україні досить часто закінчується подачею заяви про розірвання шлюбу. На жаль на теперішній час Україна посідає перше місце в Європі за кількістю розлучень. На 295 тисяч укладених шлюбів у нас припадає 130,7 тисяч розлучень. Це досить високий показник, тому стаття характеризує одну з проблем нашої країни-розлучення. Дана наукова робота присвячена аналізу законодавства, рекомендаційних джерел, судової практики, наукової літератури щодо процедури розірвання шлюбу.

Проведено науково-теоретичний аналіз правового регулювання розірвання шлюбу в адміністративному та судовому порядку.

Проаналізовано процедури розірвання шлюбу за рішенням суду у порядку окремого та позовного провадження, а також охарактеризовано процедуру розірвання шлюбу через органи реєстрації актів цивільного стану.

Виокремлено особливості розгляду заяви про розірвання шлюбу до органу реєстрації цивільного стану, охарактеризовано важливі моменти при подачі, а також строки її відкликання та розгляду. Проаналізовано та охарактеризовано основні кроки, які здійснює особа, щоб розірвати шлюбу, роз'яснено особливі ознаки звернення до суду, визначено характерні риси порядку окремого та позовного провадження. Обґрунтовано та визначено особливості кожного випадку розірвання шлюбу, їхні переваги та недоліки. Визначено строки розгляду судом позовної заяви про розірвання шлюбу. Зазначено особливості заяви про примирення, порядок розірвання шлюбу із засудженим, а також визначено відповідно до чинного законодавства вартість кожного звернення як до органу реєстрації актів цивільного стану так і до суду.