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STAGES OF BECOMING OF MOTION IN THE PROTECTION OF RIGHTS OF CONSUMERS: EXPERIENCE OF UKRAINE

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Oklander T.O., Konak K.I. Етапи становлення руху на захист прав споживачів: досвід України.

В статті розглянуто інституційні механізми та форми захисту прав споживачів. Виділено етапи становлення конс'юмеристського руху в США і Україні, сутність основних прав споживачів. Виділено об'єктивні та суб'єктивні передумови формування системи українського споживчого законодавства. Сформульовано теоретичне підґрунтя правового регулювання захисту прав споживачів у формі принципів. Розглянуто основні тенденції розвитку конс'юмеристського руху.

Ключові слова: конс'юмеризм, споживач, права споживача, продавець, покупець

Oklander T.O., Konak E.I. Этапы становления движения в защиту прав потребителей: опыт Украины.

В статье рассмотрены институционные механизмы и формы защиты прав потребителей. Выделены этапы становления консьюмеристского движения в США и Украине, сущность основных прав потребителей. Выделены объективные и субъективные предпосылки формирования системы украинского потребительского законодательства. Сформулированы теоретические основы правового регулирования защиты прав потребителей в форме принципов. Рассмотрены основные тенденции развития консьюмеристского движения.

Ключевые слова: консьюмеризм, потребитель, права потребителя, продавец, покупатель

Oklander T.O., Konak K.I. Stages of becoming of motion in the protection of rights of consumers: experience of Ukraine.

Institutional mechanisms and forms of protection of consumers are considered in the article. The stages of becoming of protection of consumers are distinguished in the USA and Ukraine, essence of basic rights of consumers. Objective and subjective pre-conditions of forming of the system of the Ukrainian consumer legislation are distinguished. Theoretical soil of the legal adjusting of protection of consumers is set forth in form principles. Basic progress of protection of consumers trends are considered.

Keywords: consumerism, consumer, consumer rights, seller, buyer

A consumer who believes being facing a bad attitude, can restore justice in several ways: addressing a letter to the management of the manufacturer or seller, to media, local authorities, or applying to court. Such consumer rights are legally fixed in many countries, as a result of consumers movement. In this context, important to highlight the stages of understanding the trends of further development of consumer protection in Ukraine, as these processes are key factors that affect the marketing activity.

Analysis of recent researches and publications

Consumer Rights Protection in Ukraine is governed by the following normative acts:

- The Constitution of Ukraine,
- Civil, administrative, criminal Codes of Ukraine,
- Laws of Ukraine,
- Resolutions by the Ukrainian Cabinet of Ministers,
- Decrees by the President of Ukraine,
- Acts of Ministries and their respective authorities,
- decisions of local governments,
- official interpretation of the law at the Ukrainian Supreme Court resolutions.

Numerous National and foreign authors devoted their scientific publications to the study of the problems of consumerism and consumer decision-making process: Kotler F., Pavlenko A.F., Voychak A.V., Kardash V.Y., Pylypchuk V.P., Shafalyuk O.K. [1-3].

Unsolved aspects of the problem

The legislation on consumer rights does inherently extend to the market actions of the individual who purchases or intends to purchase products or services for personal use, not associated with business activities. Therefore logical is to believe that the consumers rights have the market content and they represent a specific function of the market. But the content and scope of consumer rights is guaranteed by law protection being a matter of the State authorities, civil society organizations and courts. Therefore, there is necessity for researching the changes in the regulatory activities of consumer protection.

The *aim* of the article is to highlight the stages of formation of consumer rights protection processes in Ukraine and in the world justifying the main trends of further development of consumerism in Ukraine.

The main material

The consumerism is an organized social movement of citizens and governmental authorities, aimed at protecting the consumer rights.

Subjects of consumer activities:

- public unions of consumers;
- government authorities;
- enterprises.

The first documented and spontaneous customers protest occurred in 1775 in the United States (Massachusetts); as a result the spoiled food sellers were sentenced to the pillory. However, a purposeful, organized movement for the rights of consumers began only in the XIX and XX centuries. At this time the issue of consumer protection became a national scale in the U.S. and got its legal principles. So consumer movement emerged in the U.S.

In 1890 in New York the National League of Customers has been founded (the world's first consumer organization). The organization launched a goods certification form (labels), which were given to enterprises producing high-quality goods. Such companies made part of a so-called «white list».

In 1905, the U.S. President Theodore Roosevelt addressed a message to the Congress: «I recommend to adopt a law that would have dealt with interstate commerce, related to incorrectly labeled and falsified food products, beverages, medicines. Such a law would protect the interests of honest traders and manufacturers, as well as contributed to the protection of consumer health. Trading counterfeit and poor quality food products is harmful to health so those who confuse the buyer should be banned».

The Consumers Union was created year 1936 in the U.S. It is known for the magazine «Consumer Reports», which compares competing products. The main task of the organization relates to informing consumers about the products and results of laboratory tests.

In the late 60s of XX century there existed a movement associated with the name of a lawyer Ralph Nader, so called «new consumerism». It includes the methods of political struggle: the laws for the benefit of consumers, publishing of incriminating material in the media, organized demonstrations and boycotts against goods of poor quality, lawsuits against monopolies, practice of providing legal assistance to consumers.

In the 70s Ralph Nader established several groups; the most significant of them being «Public Figure» that has 50 thousand members.

But then, in the 1980s, as a result of intense state regulation of consumer protection, a decline in consumerism activity occurred. At the same time, in the U.S. the environmental movement replaced the consumer protection task, because for people their struggle with environmental and environmental risk decrease means the appearance of wholesome foods and safe consumer products. The activity of consumer organizations makes manufacturers not only provide more accurate information about products and

services, but also offering environmental development programs for companies and products.

Currently, the consumer organizations in the United States represent a powerful factor in the goods quality regulation. General American consumerism history involves the following steps:

- 1) the struggle against substandard products
- 2) antitrust struggle, food and drugs control;
- 3) the struggle against unfair trade practices, implausible advertising and labeling;
- 4) environmental protection, the struggle against unreliable information on the food impact on health, advertising regulation to children.

March 15, 1962 became the milestone for the world consumers movement. President John F. Kennedy sent a message to the U.S. Congress «Special Announcement of consumer protection», saying: «We are all consumers. It is the largest economic gap that affects any private or public economic decisions. But this is only the voice, which is often not heard». John F. Kennedy declared four basic consumer rights: the right to safety, the right to awareness, the right to choose, the right to be heard.

1) *The right to consumer safety.* Consumers have a right for protection from goods dangerous to health and life.

There is a list of products subject to mandatory certification through the need to observe safety standard in Ukraine, approved by the Government. The problem is connected with consumer safety reputation manufacturer. A manifestation of the consumer right to safety, for example, return purchased vehicles at the manufacturer consumers right initiative to safety, for example, return purchased vehicles at the manufacturer initiative. Thus, concern «Toyota» has suspended new car shipments and have bought cars recalled due to defects detection in the braking system. Another example refers to recalling the beverages by «Coca-Cola», «Pepsi», «7 UP» companies. There cord in that domain belongs to «Perrier», having recalled from retail market annually 160 mln of water bottles total costs amounting to 248,6 mln USD after the detection of residual benzole by USA testing labs.

2) *Consumer rights and information value.* Consumers could to be protected from invalid information and advertising.

This right is implemented through placing a full and truthful information about the product properties in its entirety, place and form that is convenient for consumer. For example, an international environmental organization «Greenpeace» conducted a survey of 450 food manufacturers for the genetically modified ingredients presence. The enterprises which use such ingredients and do not inform the consumers were put in the lists and published. Consumer rights for information can be contravened not only by markings, but also by advertising. For example, cooking oil «Rama» TV advertising was considered deliberately misleading, because it equated this product to butter «Vologda» and demonstrated using it by children. In addition, if advertising shows the goods' price decrease and does not give information

about packaging roominess reduction, it is also related to the consumer rights contravention facts. Also, the consumers rights violations to promote information value include lowering prices, while not reported a decrease capacity packing. Consumer rights and information value are related to their choosing right, information is needed to justify the product alternatives number choice.

3) *The consumers' right for choice.* Consumers are entitled to have guaranteed free access to all products. Customer satisfaction provides the all alternative goods evaluation opportunity. The consumers do claim that large companies are trying to limit the consumers choices making it difficult to enter to other producers market. Large companies are taking over the information space, the best place on the stores shelves and offer discounts. Antitrust regulation embodies an attempt to protect potential monopolistic competitors to ensure adequate consumer choice and competitive prices.

4) *The consumers' right to be heard.* Consumers have a right to express dissatisfaction with the purchased product and the claims. There are three possible options for the expression the dissatisfaction:

- Rejection of next purchases;
- Notification friends of product dissatisfaction;
- Official petition to replace the product or damages.

In 90s years of XX century the objective prerequisites for the formation of Ukrainian consumer legislation were:

- The decline of the national economy and reducing the population consumption;
- The initial civil society formation stage and the inefficiency centralized state and consumers legal protection on existing regulations basis.

In the 2000s the objective prerequisites for the formation of Ukrainian consumer legislation were:

- Gradual growth in living standards;
- Socio-economic society stratification and «middle class» formation;
- To develop proactive citizens;
- Negative environment quality in most regions, Chernobyl accident consequences and the natural resources extensive use;
- The need to regulate the quality and foodstuffs safety, drugs at the relevant laws level, regulations and administrative support;
- Increased attention to European consumer regulation standards.

The subjective Ukrainian consumer legislation formation conditions are:

- Significant large corporations' and producers' associations interest to approval during the intentional gaps at legislative activity and irrelevant blocking proper state law consumer protection;
- The consumers union's impact and public legal awareness development and formation the active position to improve the consumer protection effectiveness;

— Inefficient state control system for observation the consumer legislation.

The Ukrainian Constitution holds the main responsibility for the consumers protection in the state: «The state protects the consumers rights to control quality and products safety and all kinds of services and activities promotion the civil society organizations activity» [4]. In addition, the Constitution guarantees the rights, for everyone, including foreign nationals and stateless persons staying in Ukraine on legal grounds [4]: «... to free access to information on the environment, the food and objects quality and also to expansion rights. This information could not be coded by nobody» [4].

Under the Constitution, the government should also promote market competition, to avoid a dominant position abuse on the market and undue the competition restriction [4]. These articles of the Constitution, reflects a hybrid approach to consumer protection, which includes both paternalistic elements and rules based on consumer rights.

The main law is the Law of Ukraine «On Protection of Consumers' Rights» Ukraine because one of the first countries in East Europe, which accept the Law «On Protection of Consumers' Rights» in 1991. As to the Czech Republic it was 1992, Poland (1990), Hungary (1997), Bulgaria (1999), Estonia (1994), Latvia (1997), Bulgaria (1999) Estonia (1994), Latvia (1992), Lithuania (1994).

The theoretical basis for the legal consumer protection regulation should include such main principles:

- Priority to ensure the goods and services safety and quality ;
- Completeness and information objectivity about the quality, composition and product safety
- Measures safety for consumer protection
- The certification and declaration obligation safety goods and services;
- To be sure on the goods and services manufacturer (seller) the full responsibility for the goods and services; quality and safety
- Compensation damage caused to consumers health and property as a substandard result and unsafe products and services.

General principles to ensure the consumers right to quality and product safety are established as the mandatory procedures for Standardization certification that the Law of Ukraine «On Standards , Technical Regulations and Conformity Assessment Procedures» dated 1.12.2005, № 3164 -IV [5] «On Standardization» of 17.05.2001, № 2408-III [6] , indicating the goods and services producers' and sellers' obligation to offer and provide only services or apply processes or enter into circulation of domestic or foreign products that are safe for human , animal, plant life and health provide national security, protection, environmental protection and natural resources , unfair competition prevention.

The Ukrainian Committee for Consumer Protection was established in 1992, its functions have been transferred afterwards to the Ukraine State

Standard Committee, and Technical Regulation and Consumer Policy State Committee was formed on its base.

The Ukrainian Consumers Association was created in 1989 combining regional NGOs. The associations' functions are to create a control system over the trade work and life, the raids and inspections implementation, education, information dissemination, legal assistance, independent examination. Ukrainian Consumers Association was registered by the Ukrainian Ministry of Justice as a national public consumers association.

The union associations «Ukrainian Federation of Consumers «Pulse» was created on March 30, 2010. Its creation was initiated by numerous leaders and consumer organizations activists which were united around a common European Union project and the United Nations Development Program in Ukraine «Consumer and public unions» in the period of 2006 to 2010.

The «Ukrainian Federation of Consumers «Pulse» aim embodies the consumer organizations efforts combination from different Ukrainian regions to effectively protect the legitimate consumers rights, improving the existing legislation in this area, promoting the consumer society interests, equal consumers access to safe and good-quality goods and services.

Among the «Ukrainian Federation of Consumers «Pulse» objectives are such as: to promote information field for consumers, the children and young people systematic consumer education organization a citizens wide legal education range, a widespread practice effectively defending the legitimate consumers rights, the public creation service announcements for the consumers benefit and strengthening public against 'associations consumers develop partnerships with consumers' organizations European Union and world.

The «Ukrainian Federation of Consumers «Pulse» is unique non-governmental organization except trade unions, regulated with its own law – «On Protection of Consumers' Rights». It is also the organization that has won the consumers social movement importance recognition at the highest legislative level; inclusion into the Constitution of Ukraine.

There are about one hundred regional non-governmental organizations (NGOs) consumers in Ukraine. Their status and rights are set out in Ukrainian Law Article 25 «On Protection of Consumers' Rights». Most of these organizations do protect consumer rights, effecting information and education activities and also representing the consumers interests in decision-making at the societal level. Ukrainian Constitution Article 42 and Ukrainian Law Article 24 «On Protection of Consumers' Rights» proclaim that the state should develop and maintain consumer NGOs. These organizations activity is essential, once as they, among other things, initiate lawsuits to protect the rights of consumers and providing consumer education in Ukraine.

The consumers should know their rights and the possible compensation methods when their rights are violated, and be able to easily obtain information on safety and quality. Government should be responded by providing such information.

The current Ukrainian legislation provides the following forms of consumer protection:

- *Self-defense*. The legal definition of self-defense is given in Article 19 of the Civil Code, and also in Articles 8 and 9 of the Ukrainian Law «On Protection of Consumers' Rights». A self-defense is realized as a direct recourse to the seller or the manufacturer when a complaint was about the products safety or quality or information or objectivity completeness. This protection form provided by law to replace the defective goods, it is talking about return paid money for such goods if the goods can not be a replacement, or warranty of goods within a specified period; «”
- *Consumer protection NGOs*. The Ukrainian Law Article 24 «On Protection of Consumers' Rights» provides that consumers have the right to form non-governmental organizations for the legal rights protection. The creation procedure and operation of such organizations are regulated by the Law of Ukraine «On Public Associations». The consumer protection represented the public interest realization to ensure the citizens constitutional rights. Protecting the public interest, including consumer rights, characterized by carrying out educational and analytical activities related to compliance with regulatory requirements for quality and products and services safety (Ukrainian Law Article 25 «On Protection of Consumers' Rights»).
- *State consumer protection organizations*. This protection is provided by competent authorities responsible for consumer protection, and by local administration systems and offices. The consumer protection agencies powers are referred in the Ukrainian Law Article 26 «On Protection of Consumers' Rights» economic activity Inspections carried out only by written staff chief order, and can be scheduled (no more than once a year) or unscheduled held on consumers allegations;
- *Consumer Protection by local authorities*. Article 28 Law of Ukraine «On Protection of Consumers' Rights» envisages relevant departments of executive local authorities committees consider and respond to consumer applications; analysis of transactions between consumers and producers or suppliers; temporary sales suspension of poor quality products, other penalties for consumer legislation violations. Ukrainian Law «On Protection of Consumers' Rights» stipulates that local authorities have to send the relevant information concerning the rights violations to government agencies responsible for consumer protection;
- *Judicial protection of consumer rights*. Ukrainian Law Article 22 «On Protection of Consumers' Rights» contains provisions for a NGOs or government agencies declaration directly to the

commercial courts. Here with the jurisdiction depends on the consumer and the defendant, according to the purchase place (territorial jurisdiction). The biggest challenges in court defending the consumers rights are overwhelmed by the courts, simplified lack procedures for filing claims by consumers and courts dependence on business and government. Nevertheless, the case-law precedents are decisions for the consumers' benefit.

Conclusions

Recently, the consumerism concept starts struggle against overconsumption. In a mass the consumption society ceases its leading primary consumption function: the life support. Consumption becomes harmful addiction, a sign of belonging to a prestigious social groups. The idea of possibility to achieve social benefits through consumption convince consumers that the need is met through buying process, not through a commodity bought. It bought far more goods than it takes to get pleasure from the actual act of purchase. However, the phenomenon of post-industrial economy, which is characteristic for a significant increase in life quality comes into conflict

with the limited planet resources and humanity is becoming a global problem.

Understanding danger to the health of growing up generation becomes an urgent problem to resolve in a view of:

- A significant increase consumer awareness about the harmful properties and junk food effects, paying particular attention to educating young people;
- Fostering a consumption culture in society, including healthy and balanced diet;
- Creating favorable conditions for the development of corporate social responsibility;
- Encouraging the development, production and «healthy» foods marketing, mostly positive;
- State control strengthening and producers supervision and trade organizations to provide consumers with comprehensive information to make a decision for choosing «healthy» foods;
- Provide comprehensive assistance in establishing national policy on good nutrition and people life quality.

In further research it is planned to take into account the this paper conclusions in the consumer behavior contemporary models study based on the total mass individualization and information society.

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