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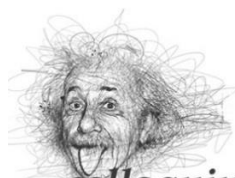
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действия (кроме процедуры совещания судей при вынесении приговора или решения) совершаются, как правило, открыто во всех судах общей юрисдикции, в арбитражных судах, в Конституционном Суде, конституционных (уставных) судах субъектов Федерации. Конституция РФ предусматривает закрытое слушание дела в случаях, указанных в ч. 1 ст. 10 ГПК РФ [5].

Состязательность сторон. Этот принцип означает, что стороны вправе представлять суду доказательства, участвовать в их исследовании, заявлять ходатайства, отводы и т.д. В уголовном процессе функцию обвинения представляет одна сторона — прокурор, общественный обвинитель, потерпевший; а функцию защиты другая сторона — защитник, подсудимый, его законный представитель (ст. 15 УПК РФ) [6]; Стороны при состязательном порядке судопроизводства равноправны. Суд не выступает на стороне обвинения или защиты.

Принцип несменяемости судей – это важным элемент в системе правовых гарантий независимости судей. Судья не может быть переведён на другую должность или в другой суд без его согласия. Его полномочия прекращаются или приостанавливаются в соответствии с порядком, определённым в законе.

В Конституции РФ утверждается, что *судьи неприкосновенны* (ст. 122). До и после прекращения своих полномочий судья, не может быть привлечен к той или иной ответственности за высказанное им при осуществлении правосудия мнение и принятое судом решение, если только не будет установлено

судья злоупотреблял своим положением или умышленно выносил несправедливые и необъективные судебные решения.

Таким образом, можно сделать вывод, что конституционные принципы организации и деятельности судов хорошо разработаны в отдельных законодательных актах и являются важными на всех этапах для вынесения справедливого решения по судебному разбирательству. Для каждого вида судопроизводства характерен свой набор принципов, но всё же допустимо их объединить на неких сходных и универсальных началах. К ним относят: законность и конституционность, открытость, справедливость, состязательность и равноправие сторон.

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CHARACTERISTIC OF FEATURES OF LEGAL PROTECTION OF PROPERTY AND NON-PROPERTY CONSUMER RIGHTS IN UKRAINE

Abstract.

The article considers the peculiarities of the mechanism of legal protection of property and non - property rights of consumers in Ukraine. The main factors influencing the level of consumer protection are given and analyzed, namely: imperfect legislation; insufficient funding, material and technical and personnel base; lack of consumer education; consumer ignorance of their rights; inaction of central and local authorities and local governments in the implementation 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, legislation on consumer protection, property and non-property rights of consumers.

Formulation of the problem.

At this stage of development, the reform of Ukraine's economy is carried out with the help of 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 also 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 Communications», «On Ensuring Sanitary and Epidemic Welfare of the Population», «On Basic Principles and Requirements to food safety and quality» and a number of bylaws. That is, the state protects the rights of consumers, controls the quality and safety of products and all types of services and works, promotes the activities of public consumer organizations. However, recently, in the process of

market transformations complicated by such phenomena as inflation and rising prices, the level of social protection of the population has significantly decreased. The number of consumer complaints about unsatisfactory product quality, service provision and service is growing. In addition, the consumer's right to receive the necessary reliable information about goods, works, services, as well as the right of consumers to be heard, protected and receive compensation for damages is not sufficiently realized. Public organizations and 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 was the work of such scientists as: N. S. Glus, V. A. Yevtushevsky, S. A. Rumyantsev, 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.

At the legislative level, the state declares to provide citizens as consumers with protection of their rights, providing the opportunity to freely choose goods (works, services), acquiring knowledge and qualifications necessary for making independent decisions when purchasing and using goods (works, services).

An essential state guarantee of consumer rights is the provisions of Art. 21 of the Law «On Consumer Protection», according to which the terms of the contract, which restrict the rights of the consumer in comparison with the rights established by law, are invalid. If, as a result of the application of the terms of the contract restricting the consumer's rights, he has suffered losses, they must be reimbursed by the guilty person in full.

The consumer is also entitled to compensation for damages caused to him by the manufacturer (performer, seller) in connection with the latter's use of the advantages of his position in production or trade.

Article 17 of the Law «On Consumer Protection» regulates the issue of property liability for damage caused by goods (works, services) of improper quality.

Damage caused to the life, health or property of the consumer by goods (works, services) containing constructive, production, prescription or other defects shall be subject to full compensation, unless the legislation provides for a higher degree of liability. In this case, the responsibility to the consumer is borne by the party who caused it (seller, manufacturer, supplier, etc.).

Compensation for losses in full, obviously, gives the consumer reason to demand not only reimbursement of costs directly related to the purchase of low-quality goods (works, services), but also related costs (to see a doctor, travel to another city). factory).

The right to claim compensation for the damage caused is recognized for each injured consumer, regardless of whether or not he was in a contractual relationship with the manufacturer (performer, seller). This right is retained during the established service life (expiration date), and if such is not established - within 10 years from the date of manufacture of the goods (acceptance of work, services).

As a rule, the service life is set for technically complex products - cars, washing machines, irons, coffee makers, electric stoves, etc., and the shelf life - for food and some non-food products.

In addition, the manufacturer (performer) is liable for damage caused to life, health or property of the consumer in connection with the use of materials, equipment, devices, tools and other means necessary for the production of goods (works, services), regardless of the level of his scientific and technical knowledge.

The law states that the manufacturer (performer, seller) is released from liability if he proves that the damage was caused by the fault of the consumer as a result of violation of the established rules of use, storage or transportation of goods (works, services) or force majeure.

This provision of Art. 17 cannot be considered perfect. First of all, the norm of the law does not contain clarifications whether the manufacturer (performer, seller) is always released from liability in case of non-compliance by the consumer with certain rules of use, transportation or storage of goods (works, services). And if such a violation of the rules by the consumer is the result of malicious intent of the manufacturer (performer, seller), who deliberately did not acquaint the consumer with the existing rules or misled about specific rules? And what to do when the consumer's violation of existing rules for goods (works, services) occurred due to simple negligence of the manufacturer (performer, seller)? The law should distinguish between these two cases in order to increase the number of fair principles in the field of consumer protection. The law must take such situations into account. In these cases, the burden of responsibility should fall on the shoulders of the manufacturer (performer, seller).

It should be noted that part of the rights remains only declared, the other - painted with the use of elements of procedural law. Yes, according to Art. 5 of the Law, «The state creates conditions for consumers to acquire the necessary knowledge on the implementation of their rights», but the Law does not contain detailed mechanisms for educating consumers. To the rights described in detail with mechanisms of their realization, it is possible to carry first of all the rights specified in articles 8 - 13 and 18 of the Law of Ukraine «About protection of the rights of consumers». These articles establish many rights and mechanisms of their realization, which can be used in everyday life [2, p. 376].

In particular, Art. 8 of the Law determines the rights of the consumer in case of purchase of the goods of improper quality. In case of detection of defects during the warranty period (any non-compliance of products with the requirements of regulations and regulations, the terms of contracts or requirements for it, as well as information about the products provided by the

manufacturer (performer, seller, consumer) order and within the time limits established by law, has the right to demand

- 1) proportional reduction of the price;
- 2) gratuitous elimination of defects of the goods within a reasonable time;
- 3) reimbursement of expenses for elimination of defects of the goods.

In accordance with Art. 12 of the Law «On Consumer Protection», the consumer has the right to require the seller (manufacturer, performer) that the quality of the purchased goods (work performed, services provided) meet the requirements of regulations and regulations, the terms of contracts, as well as information about goods (work, service) provided by the seller (manufacturer, performer).

In case of detection of defects or falsification of the goods during the warranty period in the manner and terms established by law, as well as on the basis of mandatory rules or contract, the consumer has the right to choose from the seller or manufacturer:

- a) gratuitous elimination of defects of the goods or reimbursement of expenses for their correction by the consumer or a third party;
- b) replacements with goods of a similar brand (model, article, modification) of proper quality;
- c) a corresponding reduction in its purchase price;
- d) replacements for the same product of another brand (model, article, modification), with the corresponding transfer of the purchase price;
- e) termination of the contract and compensation of losses incurred by him [7, p. 76].

With regard to non-food products that have been used and sold through retail commission trade enterprises, the above consumer requirements are met with the consent of the seller. Such consumer requirements are satisfied for goods for which the warranty period has not expired.

Consumers are exempt from paying state duty on lawsuits related to the violation of their rights. Therefore, in terms of property, they can sue for their rights as much as they want.

However, what prevents today's consumers from successfully fighting? First of all, stereotypes. Defendants, who are often state-owned enterprises, complain about the «large» amounts of the lawsuit and ask for their reduction. This is especially true for compensation of moral damages, where human dignity and psychological health of a person are assessed at «non-market» prices.

Government agencies refer to the problems of budget financing. Courts often rule on the basis of abstract «general» benefit and stability, rather than on the requirement of reasonableness and fairness, without taking into account the criteria for determining the amount of non-pecuniary damage in encroachments on such inalienable human rights as life, health, honor and honor. dignity.

With such a position, the courts only discredit themselves, lose their authority in society. In the imagination of ordinary citizens-consumers, the court is a defender not of their rights and freedoms, but of the interests of producers. At the same time, the executed

court decision on compensation is money or property, ie a reality that can prove to the victim and his immediate environment, and with the help of the media - to the whole society, that there is a social price of consumer rights.

It should also be recalled that the fair collection of sums of money from violators of the rights and freedoms of citizens in Western countries has greatly contributed to the development of the ideal of citizen and servant of the state, strengthening respect for other people's rights and personalities.

It should not be forgotten that in parallel with the judicial protection of their rights, the consumer has the right to choose an out-of-court procedure. After all, state and non-state bodies for consumer protection, local self-government bodies are endowed with significant competence in the field of consumer protection, up to the filing of lawsuits in court.

In case of detection during the established warranty period of significant defects arising from the fault of the manufacturer of the goods (seller, executor), or falsification of the goods, confirmed if necessary by the conclusion of examination, the consumer, in the order and in the terms established by the legislation. parties to the rules or contract, has the right to choose from the seller or manufacturer:

- 1) termination of the contract and return of the amount paid for the goods;
- 2) replacement of the goods by the same goods or by similar, from among the goods available at the seller (manufacturer).

In accordance with Articles 4 and 24 of the Law of Ukraine «On Consumer Protection», consumer protection is exercised, in particular, by a court in a lawsuit, which provides for the resolution of a dispute over the right. In this regard, it is important for both the consumer as a potential party in civil proceedings and the court deciding whether to accept the statement of claim to determine the fact of a dispute over the right. If such a fact is not found, the court is obliged to refuse to accept the statement of claim on the grounds that the court is not competent. The main problems of the right to sue for defects in sold items are to determine the moment of violation of consumer rights, in contradictory and insufficient regulation by the Law on Consumer Protection of the consumer's exercise of their rights, which he uses when buying low-quality goods.

The construction of protection of interests of the consumer who has got the goods of improper quality, as it is known, provides occurrence in it in this connection of a number of the rights defined by Art. 14 of the Law:

- 1) the right to free elimination of deficiencies or reimbursement of costs for their correction;
- 2) to replace a similar product of proper quality;
- 3) the right to a corresponding reduction in the purchase price;
- 4) the right to terminate the contract and indemnify, etc. [7, p. 76].

The content of these rights provides for an appeal to the seller or manufacturer. The consumer in this case can protect his interests only by using his right, the content of which is:

1) a requirement specified by law;

2) such appeal with this requirement to the seller or the manufacturer, which provides for the provision of the purchased thing to the seller or the manufacturer.

Therefore, the moment of a dispute about the right (which is the subject of litigation) must be associated with the moment of refusal of the seller or manufacturer to satisfy the properly formulated and put forward consumer demand or with the expiration of the statutory period or period established by law. such a requirement. At the same time, the jurisprudence goes through the consideration of claims for defects in sold items, filed by such consumers who did not apply to the seller or manufacturer before filing a lawsuit, ie disputes that did not arise are resolved, the rights protected are protected. were not violated.

The pre-trial procedure for resolving the dispute in this case is not provided, but the mechanism of realization of consumer rights clearly provides for the emergence of relations between the consumer and the seller (manufacturer) about the shortcomings in the sold items. Thus, in order for the seller to fulfill his obligation, the buyer must apply to him, and such appeal must include acquaintance of the seller with the content of the consumer's claims, the nature of damage (defects) of the thing, the requirement to provide a similar thing for repair and possibly other circumstances. about which it is necessary to know to the seller (manufacturer) for performance of the duties. The need for proper execution of such an appeal, as well as the response to it, necessitates a special claim procedure, which, however, should not be considered only as a mechanism for pre-trial settlement of the dispute. This procedure will allow the court to make a correct conclusion as to whether the right has been violated, whether a dispute has arisen over the right, whether the buyer has simply not exercised his rights, has not applied to the seller (manufacturer). The problem is that the domestic legislator has not established such an order.

The absence of a normatively regulated written claim procedure for consumers' appeals in this case contributes to the emergence of grounds for refusal by the court to accept the statement of claim, closure of the proceedings, as well as the emergence of grounds for the defendant in the appeal and cassation proceedings. in which there is no dispute about the right cannot be considered in the order of claim proceedings.

It is necessary to establish the obligation of the buyer to file a claim to the seller (manufacturer), defining the form of such a claim as written, setting deadlines for responding to the claim and the possibility of going to court only in case of failure to respond to the claim or reply to the response part. We believe that the buyer should be given the right to go to court in case the seller (manufacturer) recognizes his claim, when it will not be satisfied within the period prescribed by law or between the seller (manufacturer) and the buyer by agreement.

Only an appeal with a request in writing (claim) does not allow to realize the considered rights of the consumer. There is a need for direct acquaintance of the seller (manufacturer) with the purchased item to obtain

information about its shortcomings and to make a decision on consumer requirements. First of all, in this regard, certain requirements must be set by law and in response to the claim. In particular, in order to confirm the fact of providing the purchased goods to the seller (manufacturer) to make a decision on the validity of the buyer's claims, their satisfaction or dissatisfaction, it is necessary to provide as a mandatory requisite response to the claim. A response to a claim that does not contain such mandatory details must be deemed not to have been received.

The proposed form of response is justified both in the case when the buyer, having sent a claim, intentionally does not give the thing to the seller (manufacturer), and in the case when the seller (manufacturer) intentionally does not confirm in response to the claim the fact of providing the purchased item. In the first case, the seller (manufacturer) can prove in court (if the buyer goes to court) the impossibility of satisfying the consumer's claims given the failure to provide the purchased item to get acquainted with its shortcomings. It should also deter buyers from making unsubstantiated claims. In the second case, the reluctance of the seller (manufacturer) to comply with reasonable requirements of the buyer is prevented. One way or another, the abuses considered in the two cases should be perceived as the occurrence of a dispute to be considered in court.

Unfortunately, law enforcement practice rarely raises and answers these questions. At the same time, it is quite probable that the skillful use of the mentioned shortcomings of the consumer legislation is capable to bring benefit to unscrupulous sellers, manufacturers and executors, precluding procedural judicial protection of the rights and legitimate interests of consumers in Ukraine.

Of particular importance in legal relations arising between the consumer and the manufacturer, seller, executor, is the concept of «defect» and «significant defect» of the goods (works, services), because the detection of a defect or a significant defect is the basis for application to the manufacturer, seller, executor various measures of a legal nature provided by the Law.

For example, consumers rarely use their right to receive a warranty of a similar brand (model, article, modification) for the period of warranty repair, regardless of the model. To do this, the seller, the manufacturer (the enterprise that satisfies the consumer), are obliged to create (have) an exchange fund of goods. The list of such goods is determined by the Cabinet of Ministers of Ukraine. For each day of delay in fulfilling the requirement to provide a product of a similar brand (model, article, modification) and for each day of delay in eliminating defects beyond the established period (fourteen days), the consumer is paid a penalty of one percent of the value of the goods.

In case of purchase of goods of proper quality (Article 9 of the Law) the consumer has the right to exchange non-food goods of proper quality for similar from the seller from whom he was purchased, if the goods did not satisfy him in shape, size, style, color, size or other reasons. cannot be used for its intended purpose. The consumer has the right to exchange goods

of proper quality within fourteen days, not counting the day of purchase. The exchange of goods of proper quality is carried out if it has not been used and if its commodity appearance, consumer properties, seals, labels, as well as the settlement document issued to the consumer together with the sold goods are preserved. The list of goods that are not subject to exchange (return) on the grounds specified in this article shall be approved by the Cabinet of Ministers of Ukraine.

It should be noted that the latest version of the Law has significantly brought Ukrainian standards closer to EU requirements. For example, in terms of consumer protection in the event of their purchase of products on credit (Article 11), the conclusion of a contract outside trade or office premises (Article 12), when concluding a distance contract (Article 13), invalidation of the terms of contracts that restrict consumer rights (Article 18), prohibition of dishonest business activities (Article 19). However, these innovations are not yet widely used due to the concentration of efforts of state bodies of consumer protection only on checking the safety and quality of goods and services.

Objects of civil rights, according to the provisions of Art. 177 of the Civil Code of Ukraine, there are tangible and intangible benefits. Damage in civil law is the reduction or deprivation of one person of his tangible or intangible benefits due to the influence of another person on him [16, p. 46].

Thus, the reduction or deprivation of material goods is property (material) damage, and the reduction or deprivation of intangible goods, respectively, is non-material damage. In practice, most consumers see in each violation of their rights due to the shortcomings of goods, works, services, ie in the reduction of their material goods, while causing them moral damage due to the very fact of violation of their property rights. However, in order to substantiate the fairness of the claim for compensation for non-pecuniary damage, the plaintiff must prove the fact of violation of non-property rights, the existence of consequences of such violation (actual damage) and justify the amount of compensation for non-pecuniary damage. Instead, consumers increasingly claim any amount of compensation for non-pecuniary damage, do not provide evidence of violation and the consequences of violation of their non-property rights and do not in any way justify the amount of compensation claimed. Quite often, consumers consider sufficient justification for any amount of compensation claimed by them for emotional distress, deterioration of health or psychological discomfort due to the violation of their rights. At the same time, they do not take into account that the current legislation of Ukraine provides for compensation of moral damage, which consists at least in suffering, deterioration of the victim's abilities or depriving him of the opportunity to implement them, for example, in the form of injury, etc. Indeed, the SCU Resolution on the Practice of Compensation for Non-pecuniary (Non-pecuniary) Damage of 31 March 1995 № 4 stipulates that non-pecuniary damage may consist in humiliation of honor, dignity, prestige or business reputation, but such humiliation must be so obvious will leave the court no doubt about its existence.

An example of satisfaction of the consumer's claims for compensation for non-pecuniary damage in full is the Decision of the Dniprovsky District Court of Kyiv in case № 2 221/05 of April 4, 2014. The analysis of the dispute allows us to draw the following conclusions. First, in addition to compensation for non-pecuniary damage, the plaintiff asked the court to oblige the defendant to perform the duty in kind, which is not a measure of civil liability in general. Second, the defendant did not fulfill its obligations under the contract for participation in the costs of maintaining the house and the surrounding area for five years. Thirdly, the defendant's guilty actions led to the plaintiff's refusal to recalculate his pension; fourthly, the plaintiff is a participant in hostilities and a disabled person of the second group. The case file contains other circumstances that indicate the task of the plaintiff's moral suffering, so the court decided to satisfy the claims in full, namely to collect from the defendant 2000.00 UAH. as compensation for moral damage and oblige him to perform the duty in kind [3, p. 5].

Some consumers in lawsuits specifically claim the knowingly inflated amount of compensation for non-pecuniary damage due to the belief that the court will reduce this amount in any case, so you need to ask as much as possible. It is such actions of consumers that lead to the formation of the above-mentioned practice of reducing the amount of compensation for non-pecuniary damage.

The practical problems of realization of the right to compensation of moral damage are not limited to the stated, as evidenced by case materials on Ch .s claim to PJSC «C» about compensation of moral damage considered by panel of judges of Judicial chamber on civil cases of VSU. The refusal to satisfy the cassation appeal was based on the conclusion that the consumer has the right to compensation for non-pecuniary damage only in the case of causing such damage to life and health of goods (works, services) in cases provided by law, with reference to provisions of paragraph 7 of Art. 3 of the Law of Ukraine «On Consumer Protection» in the previous version (now - paragraph 5 of Part 1 of Article 4 of the Law of Ukraine «On Consumer Protection»).

The above cannot testify to the position of the Supreme Court of Ukraine on the issue of compensation for moral damage to consumers, but may later turn into a practice of resolving such disputes, which will not help protect consumer rights.

One can try to disagree with the conclusion of the Supreme Court of Ukraine on the following grounds. In accordance with Art. 15 of the Civil Code of Ukraine, every person has the right to protection of his civil right in case of its violation, non-recognition or challenge. In accordance with Art. 16 of the Civil Code of Ukraine, the right to compensation for non-pecuniary damage belongs to the methods of protection of civil rights, as a universal method of protection. Thus, any participant in civil relations on the basis of this article of the Central Committee of Ukraine may apply to the court for compensation for non-pecuniary damage. Specifies the content of non-pecuniary damage under Art. 23 of the Central Committee of Ukraine. Thus, Art. 15, 16, 23 of

the Civil Code of Ukraine do not contain any exceptions to the general rule that the right to compensation for non-pecuniary damage is granted to every participant in civil relations. In accordance with Art. 1167 of the Civil Code of Ukraine, moral damage caused to a natural or legal person by illegal decisions, actions or omissions shall be reimbursed by the person who caused it, in the presence of his guilt, except for the cases established by part two of this article.

It should be emphasized that the Law of Ukraine «On Consumer Protection», according to the preamble, establishes the rights of consumers, as well as determines the mechanism of their protection and the basis for the implementation of state policy in the field of consumer protection. The Law of Ukraine «On Consumer Protection» contains only two distinct special methods of consumer protection, and in the rest of its provisions the methods of protection established by the Central Committee of Ukraine are used. Consumers are participants in civil relations, therefore, have the right to protection of their civil rights, both on the basis of the Law of Ukraine «On Consumer Protection» and on the basis of the Central Committee of Ukraine.

According to 5 hours 1 of Art. 4 of the Law of Ukraine «On Consumer Protection», the consumer has the right to compensation for non-pecuniary damage caused by dangerous to human life and health products in cases provided by law.

The legislation on consumer protection includes the Central Committee of Ukraine, which provides for the right of a person to compensation for non-pecuniary damage in all cases without exception. Accordingly, the consumer has the right to compensation for non-pecuniary damage in all, without exception, violations of his rights to non-property rights of the consumer.

The consumer can secure his claim for compensation for non-pecuniary damage from the refusal to satisfy it on the specified grounds by referring in the claim to the relevant articles of the Central Committee of Ukraine in substantiation of claims, which can be advised to all consumers in case of damages.

In Ukraine, it is established that the consumer must go to court to protect his rights, but there are many cases of simultaneous violation by the seller or executor of the rights of several consumers. The jurisprudence of foreign countries has long been familiar with the filing and satisfaction of so-called collective actions for consumer protection. Such lawsuits are usually widely publicized and can lead to extremely negative consequences for the offender, such as bankruptcy. In accordance with Art. 32 of the Civil Procedure Code of Ukraine, the claim may be filed jointly by several plaintiffs or several defendants. In this case, each of the plaintiffs or defendants in relation to the other party acts independently in civil proceedings. Participation in the case of several plaintiffs and (or) defendants (procedural complicity) is allowed if the subject of the dispute is the joint rights or obligations of several plaintiffs or defendants, or if the rights and obligations of several plaintiffs or defendants of the subject or defendants arose from disputes have homogeneous rights and responsibilities. The grounds for the emergence of rights and obligations under Art. 11 of the Civil Code of

Ukraine, there is a task of property (material) and moral damage to another person. Thus, if property or moral damage was caused simultaneously by several consumers as a result of one illegal act, for example, the sale of products of improper quality, then all consumers who were damaged as a result of product defects have the right to sue one of the defendants.

Prospects for the spread of collective lawsuits against producers or sellers of products in Ukraine are quite large, as this simplifies the process of proving for each of the consumers one by one, reduces the burden of costs of the case compared to if such costs were imposed on only one consumer.

The Law on Consumer Protection provides for the right to go directly to court for protection of rights, without providing for a pre-trial procedure for settling consumer disputes. At the same time, it is necessary to determine the moment of occurrence of the subject matter of the dispute, ie sometimes, since the consumer's right has been violated, and therefore, the person has the right to demand. However, such a moment will differ depending on the subject of the dispute, namely: which right is declared as violated [4, p. 375].

In particular, with regard to a consumer who has purchased a product of improper quality, the Law provides for the emergence of in connection with this fact the rights specified in Art. 8 of the Law: 1) proportional reduction of the price; 2) gratuitous elimination of defects of the goods in a reasonable time; 3) reimbursement of expenses for elimination of defects of the goods. Such rights can be realized only at the request of the consumer with the corresponding requirement to the seller. Accordingly, the violation of these rights can occur only if the seller (manufacturer) refuses to meet the requirements of the consumer.

At the same time, the jurisprudence goes through the consideration of claims for defects in sold items filed by such consumers who did not address their claims to the seller or manufacturer before filing a lawsuit, ie resolves disputes that did not arise, protects rights that have not been violated.

It is more difficult to establish the moment of occurrence of a dispute about the right (own violation of the right) regarding other opportunities of consumers, in particular the right to safe products, the right to consumer information. Probably, such rights can be violated from the time of their personification, which can be claimed from the moment of direct influence of actions (or inaction) of the producer (seller, executor) on the consumer. For example, the provision of incomplete or misleading information on the stand in the room where the sale (provision of services) should be regarded as a violation of the rights of a citizen, when he not only read such information, but also committed certain actions adequate to such information, refrained from purchasing goods of similar functional purpose, but from another manufacturer, etc. That is, the violation of the law in this case is the restriction of free choice of the consumer and the infliction of harm to him, which is the basis for recourse to judicial protection.

Similarly, the right to safe and high-quality food products, which are usually not subject to return and replacement at the point of sale, is directly subject to judicial protection.

Courts, acting in accordance with the constitutional provisions recognizing as disputes disputes arising from any legal relationship, are open to the adoption and consideration of cases on consumer protection.

The legislation creates a wide range of legal opportunities for judicial protection in consumer protection cases, but a small part of consumer cases in the total number of civil cases is explained mainly by social, economic and humanitarian preconditions for the administration of justice in general.

Significant problems arise for citizens with actual access to consumer justice. This leads to a reluctance to defend their rights in court and seek appropriate compensation only when the amount of damage is significant. According to the monitoring of citizens' access to general courts [4, p. 24].

Accessibility of the court in Ukraine after the reform), the organization of the reception of the population in the courts also causes a lot of inconvenience to both citizens and employees. The low legal culture of citizens causes dissatisfaction and constant complaints of judges and court employees. Lack of information and comfortable conditions in court do not set citizens up for confidence in the conscientious performance of their duties by court employees. In addition, the mode of operation of the court coincides with the mode of operation of most enterprises, which harms the work of the average citizen.

Access to the justice system is also limited for financial reasons. Obviously insufficient funding of courts leads to the fact that office expenses are reimbursed at the expense of citizens who apply to the court.

An equally important issue is the lack of necessary funding for courts. Lack of funds for the repair of premises, lack of computer equipment and necessary software lead to the fact that the courts are in an extremely difficult situation today.

Another obstacle for citizens to apply to the court is the payment of state duty, despite the legal norm on exemption from this when filing lawsuits for the protection of cases. The courts of first instance often nominally carry out the procedure of preliminary consideration of cases for accepting them for proceedings or leaving them without intervention and giving them time to correct the shortcomings. At this stage, insufficient attention is paid to the peculiarities of claims in consumer cases, in particular the payment of state duty, the availability of documentary evidence attached to the application.

The practice of court consideration of cases on consumer protection demonstrates an unsatisfactory tendency to reduce the amount of compensation for review of court decisions by higher courts. In particular, according to the results of the appellate and cassation proceedings, the amount of compensation for non-pecuniary damage is not more than 5 thousand hryvnias. Sometimes the amounts of compensation for material damage are reviewed, and the courts do not always fully and objectively assess the circumstances of the

case, in particular the contradictory data of examinations on the value of the goods caused by the damage. These realities of receiving insignificant compensation, combined with long terms of consumer cases in the case of appeals and cassation appeals, which often take several years, lead to the disbelief of citizens in fair and effective judicial protection of their rights [4, p. 25].

In addition, in most cases, the results of the review of the case are returned to the courts of first instance for a new hearing.

The effectiveness of judicial protection of consumer rights remains extremely low, which also has a negative impact on the psychological attitude of citizens to this form.

In view of judicial statistics, courts generally correctly decided consumer cases at first instance until 2006, as stated in the above-mentioned Resolution of the Plenum of the Supreme Court «On the Practice of Civil Cases on Consumer Protection Claims», in the Generalization of Consumer Case Laws. Only in isolated cases were decisions reviewed by appellate courts and in cassation.

However, the spread of judicial protection of consumer rights is constrained by certain factors that actually reduce the prospects and attractiveness of judicial resolution of consumer disputes. Such factors include violation of the terms of consideration of the case, inefficiency of the trial, caused, on the one hand, by the workload of courts, and on the other - by the peculiarities of national procedural law, which prescribes postponing the case in case one of the parties to the dispute.) does not appear at the hearing. However, according to the Supreme Court of Ukraine, during the last year the courts of first instance violated the deadlines: appointment of a preliminary hearing - in 109 cases, assignment of a case for consideration - in 291 cases, actual consideration of a case - 950 cases, ie a total of about 1,300 cases of violation. about 5,500 cases heard by the courts.

The results of judicial protection are extremely unattractive for the beginning of litigation. In particular, during the last year, the amount of compensation awarded was only 12% of the damage claimed by consumers. On the one hand, this situation is caused by the inefficient work of the court and its intentions to award as little compensation as possible, but its negative impact here and a certain formality and inflexibility of judicial proceedings in consumer cases, and the connection of judges with the principles of establishing objective truth, guilt, the validity and completeness of the court decision, as well as the negligent attitude of consumers to provide evidence of their own procedural position and confirmation of their claims, and this is, on the one hand, a trusting attitude to dishonest entrepreneurs, sellers, and on the other - ignorance of their rights. Moral damage was awarded only about 600 thousand hryvnias, and this is only as a result of consideration of cases on the merits, and as evidenced by the practice of consideration of cases on appeal and cassation appeal - the amount of moral compensation is reduced or even canceled.

This has a psychologically depressing effect on potential consumers, as it testifies to the actual disrespect of the judicial system and judges to the moral feelings of consumers whose rights have been violated. Extreme difficulties according to the results of the analysis of judicial practice on awarding compensation for moral damage and review of consumer cases are caused by proving psychological experiences and objective assessment by the court of the facts of moral suffering of consumers.

Thus, as a result of the research conducted in this section of the work, the following conclusions can be drawn.

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 public movement for its support.

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 moral damage; others (enforcement, exchange, refund, etc.).

The state provides consumers with protection of their rights, provides an opportunity for free choice of products, acquisition of knowledge and qualifications necessary for making independent decisions when purchasing and using products in accordance with their needs, and guarantees the purchase or receipt of products by other means, sufficient to maintain health and vital functions.

The state creates conditions for consumers to acquire the necessary knowledge on the implementation of 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.

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