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UDC 346.548(574)

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(E-mail: alua76@mail.ru)***Development of the legislation on consumer protection**

The questions connected with development of the legislation of Kazakhstan on consumer protection are considered in the scientific article. Each statutory act which was carrying out at different times legal regulation of these relations is consistently analyzed. Along with the positive moments also those parties of standard material which didn't answer realities of time are noted and were replaced with new laws. The list of bodies and organizations which are capable to consider and resolve disputes with participation of consumers for their protection is provided in work. All mechanism of consumer protection is considered. The conclusion that in general the legislative base about consumer protection developed becomes a result of work.

Key words: customer satisfaction, protection, interests, liabilities, unscrupulous seller, service, works, goods, buyer, legislation development.

The modern Kazakhstan legislation on consumer protection inherited some lines of the legislation of the Soviet period.

Legal regulation of the relations on satisfaction of material and cultural requirements in the USSR was always carried out by the acts of the civil legislation which were base for a regulation of consumers' rights. These acts established the rights, duties and responsibility of subjects of the contractual relations with participation of citizens. Thus, according to point 1, 3 and 4 Article 77 Bases of the civil legislation (1991) the buyer to whom the thing of improper quality is sold, had the right to demand at the choice if the seller didn't stipulate its shortcomings at sale, replacements of a thing with a thing of appropriate quality, gratuitous removal of defects or compensation of charges of customer for their correction, or proportionate reduction of purchase price. The buyer could also instead of the requirements specified in point 1 of this article of Bases to dissolve the contract and, having returned a thing of improper quality to the seller, to demand from him the return of the sum paid, and if satisfaction of these requirements did not cover his losses, he was right to require their compensation. An important guarantee of consumer protection was the rule about invalidity of conditions of the contracts of household hire and the household order limiting the rights of citizens in comparison with the conditions provided by standard contracts, etc. provided in Kazakh SSR [1].

However along with the positive moments, the civil legislation wasn't specially calculated on regulation of the questions connected only with protection of the rights of citizens. Being the general legal base for the special norms directed towards protection of the rights of citizens, acts of the codified civil legislation are called to give a general character to basic formulations of the agreements given in a division «Obligation

right» with that they were counted not only on the relationships with consumers. That is why in these acts there were no specifics of relationship of consumers with the enterprises entering them into the contractual relations.

The classification of civil contracts given in the codified civil legislation before adoption of the new Civil Code didn't embrace all actually existing system of contracts. Such a situation existed in Bases of 1961, the same it remained in Bases of the civil legislation of 1991. So, neither Bases of the civil legislation nor CC KazSSR didn't regulate numerous contracts in the field of cultural, sports service of citizens at all. In the sphere of consumer services the codified civil legislation only provided a possibility of the approval by the Government of the standard contracts governing the relations with participation of citizens (household hire, the household order) and contained special rules about storage by the organizations of the things belonging to citizens. Such a situation demanded allocation of a number of other contractual views with an independent legal regulation.

In acts of the codified civil legislation there was no special system of guarantees of protection of the rights of citizens in the contracts directed on service of their requirements. Meanwhile the need of creation of such system was dictated from the late 80s began to early 90s, first of all, with transition of manufacturers of consumer goods, spheres of trade and service of the population to the market relations. In the conditions of freedom of business activity when the profit became the most important indicator of efficiency of their managing manufacturers of goods, performers, service providers, using the position in the consumer market, began to dictate to consumers the unprofitable terms for them, to violate the rights and interests of consumers. Thus, the classical civil legislation was never specially made for regulation of consumer protection. In these conditions there was an imperative need in creation and development of the special legislation on consumer protection providing the priority of interests of consumers in their relationship with manufacturers, sellers and service providers on a commodity market and services.

One of special lines of the legislation governing the relations with participation of citizens consumers was the plurality of regulations following, first of all, from incompleteness of coverage of the relations developing in services industry acts. It inevitably attracted filling of the being available gaps with subordinate (generally departmental) regulations. At plentiful departmental rule-making there was a possibility of the publication of the acts which weren't relying on the relevant standards of the law. For example, along with standard contracts by separate types of household hire whose acceptance belonged to maintaining Council.

However not only incompleteness by itself, but in some cases and direct transfer of the major questions of legal regulation of these relations by the Government under the authority of branch governing bodies, aggravated position of consumers. Until quite recently in certain cases the departmental regulations affecting the rights of consumers were accepted with obvious violation of the law. For example, Standard rules of an exchange of the industrial goods bought in retail network of the state and cooperative trade were accepted by the Ministry of Trade of the USSR in 1974 though the Bases of the civil legislation of 1961 (Art. 41) operating at that time provided definition of a procedure of the rights of the consumer in this case only the legislation of the republics [2].

The legislation existing before adoption of law on consumer protection did not also fully correspond to the international level of protection of their rights: first, the main questions concerning protection of the rights of consumers weren't solved at the legislative level, or if decided at this level, were solved by traditionally industry legislation without a priority of protection of their rights; secondly, not all international and recognized rights of consumers were properly protected (the right for information, the right for safety of life and the health, the right for indemnification caused by goods and services of inadequate quality). But also those rights which received rather full regulation, had no reliable mechanism of implementation; thirdly, not fully there corresponded to the international level regulation of responsibility of producers, trade enterprises and service before consumers in case of infliction of harm of their life, to health or property; fourthly, the questions concerning the organization and activity of the organized consumer movement, including public formations of the consumers created for collective protection of interests of citizens were insufficiently settled. There were no special government bodies on consumer protection as well.

The first serious attempt of the complex solution of questions of legal regulation in the field of consumer rights protection was development in 1988 of the bill USSR «About quality of production and consumer protection» [3]. The most part of this project was devoted to problems of ensuring quality of goods and services, and only one section contained the norms directed towards protection of consumers' interests. The downsides of the project were the following: first, it didn't make the distinction between the consumer citizen and the consumer legal entity; secondly, all its norms were anyway connected with quality of goods and

basic rights of consumers were formulated concerning ensuring the right for quality. Nevertheless, emergence of this bill was the first step in creation of the consumer legislation. For the first time the need of acceptance of the norms establishing guarantees of the state protection of interests of consumers admitted [4].

The foundation of implementation of the fundamental rights of the consumer was laid with adoption of law of the USSR of May 22, 1991. «About consumer protection» which, however, didn't come into force in connection with collapse of the USSR [5]. This law contained a set of the provisions which aren't developed in the civil legislation and also the mechanism of realization of its norms, directly forbade creation of the departmental documents infringing on interests of consumers, affirmed the right of citizens for compensation of the done moral harm.

So, the need of acceptance in the Republic of Kazakhstan of the special law directed to the protection of interests practically of all population was caused by that all legislation existing earlier was based on a priority of the interests of the manufacturer and seller which were the state organizations, and not numerous legislative norms which were available in the field of protection of interests of the consumer were blocked by departmental regulations and practically didn't work.

In many countries, first of all in industrially developed, similar laws already worked rather long ago. The problem of protection of the consumer rights gained the international value, and in April 1985. The United Nations General Assembly accepted «The guidelines for protection of interests of consumers» as a basis for development by the governments of policy and the legislation in this area [6; 4].

The beginning of reorganization of our society, orientation of economy to needs of the person, naturally, demanded the maximum expansion of the rights of consumers and the main thing, fixing of the measures providing their real implementation at the legislative level.

Value of the Law on consumer protection is not only in strengthening of social guarantees of the citizen. The law objectively increases the responsibility of producers, sellers and performers for quality of work that in the conditions of lack of the developed competition will promote improvement of quality of production and services, social and economic development of the country.

The legislation of the Republic of Kazakhstan guards interests of conscientious consumers.

The regulatory base consists of the Law RK «About Consumer Protection» of May 4, 2010 [7], Resolutions of the government of RK «About the Approval of the Instruction about Quality and Safety of Food Staples and Foodstuff» of November 29, 2000 [8], «About the approval of Rules of the organization of activity of the trade markets» of February 5, 2003 [9], the Standard resolution of the Supreme Court of RK «About Practice of Application by Courts of the Legislation on Consumer Protection» of July 25, 1996 № [10], the Law of the Republic of Kazakhstan «On regulation of trade activity» of April 12, 2004 [11], the Resolution of the government of the Republic of Kazakhstan «About the approval of Rules of domestic trade» of April 21, 2005 [12], the Resolution of the government of the Republic of Kazakhstan «About obligatory confirmation of compliance of production in the Republic of Kazakhstan» of April 20, 2005 [13].

Besides, in a number of regulations there are articles and sections devoted to consumer protection. For example, in Laws RK «About Safety of Chemical Production» of July 21, 2007 [14], «About communication» of July 5, 2004 [15], «About natural monopolies and controlled markets» of July 9, 1998 [16], in resolutions of the government of the Republic of Kazakhstan «About the adoption of regulations in the field of power industry of December 7, 2000 [17].

Innovation is development of special technical regulations, such as: The technical regulation «Requirement to packing, marking, labeling and their correct drawing» approved by the Resolution of the government of the Republic of Kazakhstan of March 21, 2008 No. 277 [18].

The above regulations protect the rights of consumers, however, the majority of norms is devoted to protection of interests of buyers.

The law RK «About Consumer Protection» of May 4, 2010 fixes legal, economic and social bases, and also guarantees of consumer protection. It already the second law adopted during the sovereignty of the Republic of Kazakhstan.

According to the Law RK «About Consumer Protection», it is intended for regulation of the relations between the consumer and the seller or the operator and services, establishment of their rights and duties, permission of questions of consumer protection and is directed on realization of the following tasks:

1. Recognition of a priority of legitimate interests of citizens before interests of manufacturers and sellers.

2. Implementation by consumers of the rights for information, quality of production, an exchange of goods of appropriate quality, and also the rights of consumers in case of sale of goods of inadequate quality to them.

3. Protection of the consumer against dangers to his life and health.

4. Expansion of the international and interrepublican cooperation in protection of interests of consumers.

5. Assistance to creation and activity of independent groups (societies of consumers).

The positive moment of this law is existence of a conceptual framework. In the section 3 «Rights of Consumers and Their Protection» in Art. 7 the rights of consumers of production are specified. The positive moment of this Law is also possibility of collecting moral harm.

The moral harm done to the consumer owing to violation by the seller (the manufacturer, the performer) of his rights and legitimate interests provided by the legislation of the Republic of Kazakhstan on consumer protection is subject to compensation in the presence of fault of the seller (the manufacturer, the performer) in a size determined by court if other isn't provided by laws of the Republic of Kazakhstan.

Protection of the rights and legitimate interests of consumers is carried out within competence by the appropriate government bodies and court, arbitration or the arbitration court.

Judicial claims for desire of the consumer are considered in the location or the claimant, or the respondent or in a place of infliction of harm.

At satisfaction of requirements of the citizen the court besides resolves an issue of collecting from the seller, manufacturer (their representatives), the performer of a penalty in the income of the relevant budget at a rate of the claim price for refusal of voluntary satisfaction of its requirements.

In case of infliction of harm of life, to health or property of the citizen the sum of a penalty can be increased to the fivefold size of the price of the claim at realization of substandard foodstuff and to the triple size at realization of industrial goods and services with the subsequent involvement of the seller, the manufacturer (performers) to responsibility [7].

Some kind of self-defense is the right of consumers for association in societies (unions) of consumers. Citizens of RK have the right to unite on a voluntary basis in societies (unions) of consumers. Societies of consumers can unite in the unions (federations) in areas, the cities, areas and in the republic in general.

These associations of consumers work according to the charters adopted by general meeting of members of society or meeting of authorized societies of consumers and are legal entities.

Protection of the rights of citizens by public organizations of consumers is carried out as follows. At the request of citizens, or on own initiative societies, consumers unions have the right to handle the claim to the seller (the manufacturer, the performer) of production of inadequate quality or realized at inflated prices about elimination of violations and compensation to citizens of the damage caused by these violations in a voluntary order. If within 10 days the manufacturer (the performer, the seller) doesn't give the answer to a claim or will refuse to eliminate violations and to indemnify the caused loss in a voluntary order, public organizations of consumers have the right to appeal to court.

In case of satisfaction of the imposed requirements the court passes the decision on collecting from the manufacturer (the performer, the seller) in the income of the relevant budget a penalty at a rate of the price of the claim and for compensation to public organizations of consumers of the suffered expenses.

Public organizations of consumers have the right independently or through the prosecutor to make the claim in court for recognition of actions of the seller, manufacturer (their representatives), the performer, and also governing body illegal concerning an uncertain circle of consumers (the collective claim) and the termination of these actions.

At satisfaction of the collective claim the court obliges the offender to bring through mass media or otherwise to data of consumers a judgment in due time.

The judgment which entered into force in the collective claim is obligatory for the court considering the claim of the consumer for civil consequences of actions of specified persons.

Features of consumer protection are shown in specifics of the subject — the consumer. Action of the legislation on consumer protection doesn't extend on consumers — legal entities, and also on consumers — natural persons (citizens) if they use, get, order or have intention to get or order goods, (work, service) for the enterprise purposes, and also on the contractual relations between citizens concerning satisfaction of their needs.

Thus, it is possible to draw a conclusion that in general in the Republic of Kazakhstan there was a regulatory base of protection of the violated rights of the consumer.

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Тұтынушы құқықтарын қорғау заңнамасының дамуы

Мақалада тұтынушы құқықтарын қорғау туралы Қазақстан заңнамасының дамуымен байланысты мәселелер қарастырылған. Осы қатынастардың әр түрлі уақытта құқықтық реттелуін жүзеге асыратын әр нормативтік құжат кезегімен талданды. Нормативтік материалдың оң тұстарымен қоса, уақыт талабына жауап бермеген, жаңа заңдармен ауыстырылған кездері де орын алды. Авторлар тұтынушыларды қорғау мақсатында, олардың қатысумен дауларды қарап және оларды шеше алатын органдар мен ұйымдардың тізімін көрсеткен. Тұтынушылардың құқықтарын қорғаудың тетігі зерттелген, нәтижесінде тұтынушылардың құқықтарын қорғау туралы заңнама базасы толықтай қамтылған.

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Развитие законодательства о защите прав потребителей

В статье рассматриваются вопросы, связанные с развитием законодательства Казахстана о защите прав потребителей. Последовательно анализируется каждый нормативный акт, осуществлявший в разное время правовое регулирование данных отношений. Наряду с положительными моментами отмечаются и те стороны нормативного материала, которые не отвечали реалиям времени и были заменены новыми законами. В работе приводится перечень органов и организаций, которые способны рассматривать и разрешать споры с участием потребителей в целях их защиты. Рассматривается весь механизм защиты прав потребителей. Итогом работы становится вывод о том, что в целом законодательная база о защите прав потребителей сложилась.

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UDC 347.155 (574)

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Problems and prospects of development of legal regulation of medical service in the Republic of Kazakhstan

The article is devoted to the problems of legal regulation of medical service in the Republic of Kazakhstan in the modern time. The author examines current issues of healthcare quality and development prospects of the legislation on the healthcare. In the context of modernization of the existing legislation, the theme of the article is actual, and the study of these issues is timely.

Key words: patient, medical service, quality of medical care, expertise, insurance.

Providing patient's right to qualified medical care — the main goal of the state, which establishes norms, regulating relations arising on the provision of medical services. Until recently, the problems of legal regulation of medical services were studied partially and the prospects of development of legislation on