



colloquium-journal

ISSN 2520-6990

Międzynarodowe czasopismo naukowe



**Jurisprudence
Public administration**

№14(101) 2021

Część 4



colloquium-journal

ISSN 2520-6990

ISSN 2520-2480

Colloquium-journal №14 (101), 2021

Część 4

(Warszawa, Polska)

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FEATURES OF LEGAL RESPONSIBILITY FOR VIOLATION OF LEGISLATION ON CONSUMER PROTECTION

Abstract.

The article considers the peculiarities of legal liability for violation of legislation on consumer protection, its enshrinement in the legislation of Ukraine and provides suggestions for improving the legal basis of legal liability for violation of legislation on consumer protection.

Keywords: *consumer, consumer rights, legal liability for violation of consumer protection legislation.*

Formulation of the problem.

The issue of improving liability for violating the law is a relevant and necessary element of legal support, because today the vast majority of people are guided in their lives not by legal requirements, but by their own interests, which often differ from the interests of the state and society. Therefore, the application of measures of legal responsibility in legal relations of a public nature to protect the public interest must be a fully justified measure.

Analysis of recent research and publications.

The issue of legal liability for violation of consumer rights legislation has been the subject of research in administrative, criminal, civil law, in particular by such scholars as V. S. Ващенко, L. B. Vyatkina, Yu. F. Dobromyslov, O.V. Zvereva, L. M. Ivanenko, T. Yu. Kagal, T. G. Kvyatkovskaya, A. G. Kravchenko, T. M. Kovalchuk, E. D. Kornilov, D. P. Lukyanets, V. F. Oprishko, G. A. Ossetian, R. M. Pospolitak, A. V. Rabinovich, M. S. Tsigankov, O.M. Yazvinska and others.

But the existence of a significant number of debatable theoretical and practical issues regarding

legal liability for violation of consumer rights legislation necessitates the study of the chosen topic.

The purpose of the article is to further cover the application of legal liability measures for violation of consumer rights legislation.

Presenting main material.

The Basic Law of Ukraine establishes that everyone is obliged to strictly abide by the Constitution of Ukraine and the laws of Ukraine, not to encroach on the rights and freedoms, honor and dignity of other people.

Ignorance of laws does not release from legal responsibility (Article 68 of the Constitution of Ukraine).

Legal responsibility is an important element of legal regulation of social relations [4, p. 7].

Its essence lies in the purposeful influence on the behavior of the individual through legal measures, and the purpose is to protect and defend social relations from any illegal violations through coercive measures, which leads to the regulation of social relations and giving them a systematic and stable.

With the help of legal responsibility, effective mechanisms of protection and defense of social relations from illegal encroachments by punishing actions that violate the conditions of normal development of

society, contradict the interests of the state, society as a whole and individuals are established.

And Karl Marx defined responsibility as a means of self-defense of society against the violation of the conditions of its existence.

The state protects the rights of consumers (Article 42 of the Constitution of Ukraine), which is one of the fundamental features of modern democratic society and is an integral part of human rights protection [5, p. 120].

Business entities are responsible for their actions in providing services and performing works.

Every business entity and consumer has the right to protection of their rights and legitimate interests, which are protected by:

- recognition of the presence or absence of rights;
- recognition of acts of state authorities and local self-government bodies, acts of other subjects that contradict the legislation, infringe the rights and legitimate interests of the business entity or consumers as completely or partially invalid; recognition of business agreements as invalid on the grounds provided by law;
- restoration of the situation that existed before the violation of the rights and legitimate interests of business entities;
- cessation of actions that violate the law or create a threat of its violation;
- award of duty in kind;
- damages;
- application of penalties;
- application of operational and economic sanctions;
- application of administrative and economic sanctions;
- establishment, change and termination of economic legal relations;
- in other ways provided by law (Article 20 of the Commercial Code of Ukraine).

Entrepreneurs bear property and other liability established by law for damage and losses (Article 49 of the Commercial Code of Ukraine).

The list of violations for which a fine is levied on a business entity, the amount and procedure for its collection are determined by the laws governing tax and other relations in which the offense is committed.

Administrative and economic fine (a sum of money paid by an economic entity to the relevant budget in case of violation of the rules of economic activity established by it) may be applied in cases specified by law simultaneously with other administrative and economic sanctions, namely:

- withdrawal of profit (income);
- collection of fees (mandatory payments);
- application of anti-dumping measures;
- termination of export-import operations; application of individual licensing regime; suspension of a license (patent) for a business entity to carry out certain types of economic activity;
- revocation of the license (patent) for the implementation of certain types of economic activity by the business entity;
- restriction or suspension of the business entity's activity; cancellation of state registration and liquidation of the business entity;

- other administrative and economic sanctions established by this Code and other laws (Article 239 of the Commercial Code of Ukraine) [2, p. 74].

The Law of Ukraine «On Consumer Protection», which regulates the relationship between consumers of goods, works and services and producers and sellers of goods, contractors and service providers of various forms of ownership, establishes the responsibility of business entities in trade and other services. restaurant business, for violation of the legislation on consumer protection (Article 23).

In case of detection during the established warranty period of defects of the goods or detection of significant defects of the goods which have arisen because of fault of the producer of the goods (seller, executor), or falsification of the goods confirmed if necessary by the conclusion of examination, the consumer has the right to demand:

- proportional reduction of the price;
- gratuitous elimination of defects of the goods in a reasonable time;
- reimbursement of expenses for elimination of defects of the goods.
- termination of the contract and return of the amount paid for the goods;
- to demand replacement of the goods on the same goods or on similar, from the goods available at the seller (manufacturer).

The consumer has the right to make one of the specified requirements, and in case of its non-fulfillment to declare other requirement. Consumer requirements are considered after the consumer presents a settlement document, technical passport (if necessary), or a document that replaces it, marked with the date of sale [3, p. 31].

Business entities are responsible for the lack of necessary, accessible, reliable and timely information about the product, as obtaining the necessary, available, reliable and timely information about the product provides the possibility of its competent knowledge.

The information is provided to the consumer before the purchase of the goods or the order of work (service) and should contain:

- the name of the goods, the name or reproduction of the mark for the goods and services for which they are sold;
- names of normative documents, the requirements of which must be met by domestic products;
- data on the main properties of the product, and for food - on the composition (taking into account the list of raw materials used in their manufacture, including food additives), nominal quantity (weight, volume, etc.), nutritional and energy value, conditions of use and warnings regarding their use by certain categories of consumers, as well as other information that applies to a specific product;
- information on the content of substances harmful to health, which are established by regulatory legal acts, and warnings on the use of certain products, if such warnings are established by regulatory legal acts;
- a mark on the presence of genetically modified components in its composition;

- data on the price (tariff), conditions and rules of purchase of production;
- date of manufacture;
- information on storage conditions;
- warranty obligations of the manufacturer (performer);
- rules and conditions of effective and safe use of products;
- expiration date (service life) of the goods (consequences of work), information on necessary actions of the consumer after their termination, and also on possible consequences in case of non-performance of these actions;
- name and location of the manufacturer (performer, seller) and the enterprise that performs its functions of accepting claims from the consumer, as well as repairs and maintenance [6, p. 8].

In addition, if the product is subject to mandatory certification, the consumer must be provided with information about its certification. With regard to foodstuffs, foodstuffs packaged and packaged in Ukraine must be accompanied by information on their origin.

In addition to the Law of Ukraine "On Consumer Protection", liability for violations of consumer rights is established by the Code of Ukraine on Administrative Offenses.

According to this Code, persons guilty of:

- violation of the rules of trade and provision of services by employees of trade, public catering and services, citizens engaged in entrepreneurial activities;
- violation of the procedure for settlements with consumers;
- deception of the buyer or the customer;
- refusal to provide citizens-consumers with necessary, accessible, reliable and timely information about goods (works, services), their quantity, quality, range, as well as about their manufacturer (performer, seller), in training for their safe and correct use, and as well as restriction of the rights of citizens-consumers to check the quality, completeness, weight and price of purchased goods;
- refusal to the citizen-consumer in realization of his right in case of acquisition by him of the goods of improper quality;
- violation of the rules of trade in alcoholic beverages and tobacco products;
- production and sale of products that do not meet the requirements of standards;
- release for sale of non-standard products;
- performance of works, provision of services to citizens-consumers that do not meet the requirements of standards, norms and rules;
- violation of the rules of production, repair, sale and rental of measuring equipment;
- violation of the rules of application of measuring equipment.

Legislation on consumer protection does not contain norms that would allow to absorb less serious violations by more serious ones. Penalties are imposed separately for each detected violation.

When applying the provisions of the Law of Ukraine «On Consumer Protection», the question of the grounds for exemption from liability for violation of

consumer rights raises certain difficulties. In resolving this issue, it is necessary to be guided by Articles 617, 1209 of the Civil Code of Ukraine, the provisions of the Law, as well as the terms of the contract, which may provide grounds for exemption from liability.

Article 4 of the Law of Ukraine «On Consumer Protection» provides for the consumer's obligation to use the product in accordance with its intended purpose and comply with the conditions set by the manufacturer of the product in the operating documentation, apply the manufacturer's safety products in compliance with in the absence of such rules in the documentation - to follow the usual reasonable safety measures established for goods of this kind.

Article 16 of this law provides for property liability for damage caused by defective products or products of improper quality. It should be borne in mind that the ten-year period during which the consumer has the right to claim compensation for damage caused by goods of indefinite service life (expiration date) is deducted from the date of sale of the goods, and not from the date of its production. In this case, the manufacturer (performer, seller) is released from liability if he proves that:

- 1) the damage was caused through the fault of the consumer as a result of violation of the established rules of use, storage or transportation of products or force majeure,
- 2) he did not put the product into circulation,
- 3) the defect in the product arose due to the manufacturer's compliance with the law or compliance with mandatory instructions of the state [7, p. 520].

According to item 6 of Art. 10 of the Law, the contractor is not liable for non-performance, delay or other improper performance of obligations and deficiencies in the work performed or services provided, if he proves that they arose through the fault of the consumer or due to force majeure. These provisions of the law should be taken into account when clarifying the question of the existence of grounds for exemption from liability for breach of obligation.

For example, by the decision of the city court of March 6, 2012, left unchanged by the decision of the Court of Appeal of Vinnytsia region of July 18, 2012, the claim of S.Z. to S.L. on consumer protection. Refusing to satisfy the claim, the court of first instance proceeded from the fact that the microwave oven, which the plaintiff purchased on December 10, 2010 with a warranty period of 18 months, failed due to improper operation of the device by the consumer. This fact is confirmed by the conclusion of the specialists of the Vinnytsia Regional Bureau of Expertise and confirmed at the court hearing by the explanations of the specialist that this appliance failed due to an electric arc formed as a result of using metal utensils, which is prohibited by the operating instructions. This is evidenced by operational defects established by expert research.

The decision of the Court of Appeal of Vinnytsia region dated 14.08.2013 annulled the decision of the district court dated 17.05.2013 in the case of L.Ya. to a private entrepreneur OR on termination of the contract of sale and compensation of losses and the claim was denied. Satisfying the claim, the court of first instance

came to the conclusion that when selling the sheepskin coat, the defendant violated the consumer's right to information about the quality of the goods. Annuling the decision of the court of first instance, the appellate court did not agree with this conclusion, because the circumstances of the case show that the manufacturer duly informed the buyer about the properties of the goods and the rules of its operation, the defendant provided labels. In particular, that under the influence of natural factors the skin can change color, and also the use of solvents - acetone, soap, washing powder when cleaning a sheepskin coat is forbidden, it is recommended to clean a sheepskin coat only in specialized dry cleaners. The plaintiff did not deny that a label with relevant information was added to the sheepskin coat sold to her. In addition, according to the conclusions of complex forensic and biological examinations, defects on the sheepskin coat are not defects of a production nature, they appeared as a result of the normal operation of the sheepskin coat and the use of household solvents on the product. In these circumstances, the appellate court reasonably did not take into account the plaintiff's arguments that the defendant sold her goods of improper quality, and did not provide her with proper information about the rules of operation of the sheepskin coat and agreed with the defendant's arguments that he was not guilty.

The law uses the concept of liability for damages and liability for damages. In view of this, it is necessary to distinguish between those rights and obligations that are exercised under the concluded agreement, and those rights, the exercise of which takes place outside the contract. Thus, the claim for damages follows from the contract, and the claim for damages to life, health, property of the buyer is non-contractual, as there are tortious legal relations.

Article 14 of the Law of Ukraine «On Consumer Protection» provides for the possibility of compensation for damages caused by defective or counterfeit products or products of improper quality, as well as property and moral (non-property) damage caused by dangerous to human life and health products legislation.

Article 15 of the Law provides for the possibility of compensation for damages caused by inaccurate or incomplete information (including advertising). The seller is not released from liability if he does not receive from the manufacturer (importer) relevant information about the product.

Article 8 of the Law provides for the right of the consumer to demand gratuitous elimination of defects of the purchased goods within a reasonable time, reimbursement of expenses for elimination of defects of the goods as a way of compensation of losses.

Article 10 of the Law provides for the possibility of compensating the consumer for damages by eliminating the shortcomings of the work performed (service provided) on their own or with the involvement of a third party.

According to Part 9 of Art. 10 of the Law, the executor is obliged to reimburse for a month the losses incurred in connection with the loss, damage or damage to the thing received by him from the consumer for the

performance of works (provision of services). The executor is not released from responsibility if the level of his scientific and technical knowledge did not allow to reveal special properties of the thing accepted from the consumer for performance of works (rendering of services).

Article 10 of the Law provides for the liability of the executor for damage caused to life, health or property of the consumer, which arose in connection with the use of things, materials, equipment, devices, tools, devices or other means necessary to perform his work (services), regardless of the level of his scientific and technical knowledge, which makes it possible to identify their properties, in accordance with the law.

Article 16 of the Law provides for property liability for damage caused by defective products or products of improper quality. The right to claim compensation for damage is recognized for each injured consumer, regardless of whether he was in a contractual relationship with the manufacturer (performer, seller). In these legal relations, the Law obliges the consumer to prove the existence of damage and the connection between damage and defect. In addition, the Law imposes liability on the manufacturer (performer) regardless of the actions or inaction of other persons related to the damage caused by defective products or products of improper quality.

According to the Law, improper quality of goods, works or services is a property of products that does not meet the requirements established for these products in regulations and regulations and the terms of the contract with the consumer. In resolving disputes about compensation for damage caused by defects in goods, works (services), it should be borne in mind that Articles 1209 - 1211 of the Civil Code of Ukraine apply to damage caused by defects in works and services that can be qualified as qualified and technologically qualified. similar shortcomings, as well as due to unreliable or insufficient information about goods, works, services that the debtor had to provide. Compensation for damage does not depend on the fault of the respective seller, manufacturer, executor, as well as on whether the victim was in a contractual relationship with them. Only in case of failure to provide complete and reliable information about the goods sold under the contract of retail sale, the buyer is liable under Part 4 of Art. 700 and Articles 22, 623 of the Civil Code of Ukraine, and in appropriate cases - on the basis of Art. 18 of the Law.

Part 9 of Art. 10 of the Law connects losses with loss, damage of the thing accepted from the consumer for performance of works (rendering of services). In addition, the general norms of the Central Committee of Ukraine on the concept of damages should be followed. The definition of damages is given in Articles 22, 623 of the Civil Code of Ukraine, which stipulate that damages, in particular, are losses incurred by a person in connection with the loss or damage of property, as well as costs incurred by a person to restore his violated right (real losses). Losses are determined taking into account the market prices that existed on the day of voluntary satisfaction of the creditor's claim by the debtor, or on the day of filing the claim, if the claims were not satisfied voluntarily, unless otherwise provided by law or

contract. The court may satisfy the claim for damages, taking into account the market prices that existed on the day of the decision. It should also be borne in mind that the losses include not only real losses but also unearned income.

In accordance with Art. 22 and Art. 1192 of the Civil Code of Ukraine, the amount of damages to be reimbursed to the victim is determined in accordance with the real value of the lost property at the time of consideration of the case or the performance of work necessary to restore the damaged property. Article 1192 of the Civil Code of Ukraine provides for two ways of compensating for damage to the victim's property - compensation for damage in kind (transfer of a thing of the same kind and quality, repair of a thing, etc.) and compensation for damages in full.

In resolving disputes related to consumer protection, it should be borne in mind that Art. 1192 is located in Chapter 82 of Book 5 of the Civil Code of Ukraine, which provides for liability for property damage in non-contractual legal relations.

Thus, the decision of the Court of Appeal of Vinnytsia region dated 18.04.2011 changed the decision of the district court dated 11.12.2012 in the case on the claim of V.N. to V.B. on consumer protection - in particular, because, satisfying the claims for recovery of the cost of repaired in the studio cloak with fur lining and collar totaling 5300 UAH., the court of first instance proceeded from the fact that through the fault of the defendant plaintiff's cloak lost and caused damage, the amount of which in accordance with the requirements of Art. 1192 of the Civil Code of Ukraine is determined in accordance with the real value of the lost property at the time of the case in the amount of 5300 UAH. Collecting from the defendant in favor of the plaintiff 1724 UAH. - the cost of only a leather cloak without fur linings and collar, the appellate court in the decision noted that the plaintiff did not prove that the cloak was handed over in the studio with fur lining and collar, so did not agree with the conclusion on recovery of the cost of the cloak with lining, for which the actual damage is subject to compensation. In the end, the appellate court agreed with the conclusions of the court of first instance [8, p. 29].

In accordance with the requirements of Art. 57 GIC of Ukraine evidence is any factual data on the basis of which the court establishes the presence or absence of circumstances that substantiate the claims and objections of the parties, and other circumstances that are relevant to the case. These data are established on the basis of explanations of the parties, third parties, their representatives, interrogated as witnesses, testimony of witnesses, written evidence, in particular, audio and video recordings, expert opinions.

According to Art. 60 GIC of Ukraine, each party is obliged to prove the circumstances to which it refers as the basis of their claims and objections, except in cases established by Art. 61 of this Code. In accordance with Part 2 of Art. 61 of the CPC of Ukraine, the circumstances recognized by the parties and other persons involved in the case are not subject to proof.

According to the Law of Ukraine «On Consumer Protection», a defect is any non-compliance of products

with the requirements of regulations and regulations, terms of contracts or requirements for it, as well as information about products provided by the manufacturer (performer, seller), so when checking the claims and circumstances of the case should use regulations, the definition of which is provided in the Law of Ukraine «On Standardization» on the terms: standard, national standard, code of practice, specifications, etc.

When applying Art. 15 of the Law of Ukraine «On Consumer Protection» it is necessary to proceed from the assumption that the consumer has no special knowledge about the properties and characteristics of the products he purchases (Part 9 of Article 15 of the Law). In Part 14 of Art. 8 of the Law states that the consumer's requirements under this article are not subject to satisfaction if the seller, manufacturer, enterprise that satisfies the consumer's requirements established by part one of this article, prove that the defects of the goods arose due to violation of the consumer's rules of use. The consumer has the right to participate in the inspection of the quality of the goods personally or through his representative. Thus, the obligation to prove the circumstances provided by law as grounds for release from liability rests not on the consumer, but on the manufacturer, seller, executor.

According to Part 1 of Art. 8 of the Law in case of detection during the established warranty period of essential defects which have arisen because of fault of the producer of the goods (seller, executor) or falsification of the goods confirmed as necessary by the conclusion of examination, the consumer, in the order and terms established by the legislation, has the right to protect his violated rights. When clarifying the question of the need to appoint an examination in each case, it is necessary to proceed from the provisions specified in Articles 57, 60, 168, 174 of the CPC of Ukraine.

In resolving disputes, the courts as a whole correctly determined the set of necessary evidence, but there were also errors. The decision of the Court of Appeal of Vinnytsia region dated 12.07.2014 changed the decision of the district court dated 25.04.2014 in the case on the claim of Yu.Kh. to I.O. and T.B. on consumer protection, which was collected from T.B. for compensation of material damage of UAH 2,398 and moral damage of UAH 1,000, other claims were denied. The Court of Appeals reduced the amount of damages, agreeing with the findings of the court of first instance that the plaintiff's proper hairdressing salon had performed poor-quality, in violation of technology, hair extensions, as a result of which the plaintiff failed which is confirmed by the explanations of the hairdresser who performed the work of dyeing and hair extensions (violation of technology), the recognition by the defendants of the fact of providing the plaintiff with this service, as well as the fact that the defendant does not have a certificate of quality and sanitary opinion. Satisfying the claim, the court in accordance with Art. 212 GIC of Ukraine assessed the totality of mutually agreed evidence and noted that they are sufficient to satisfy the claim for damages, so the appellate court agreed with the conclusion of the court of first instance, which did not consider necessary, in this case, the claim.

The decision of the Court of Appeal of Vinnytsia region dated 05.06.2012 left unchanged the decision of the district court dated 12.04.2012 on satisfaction of the claim of R.Sh. to a private entrepreneur I.B. on protection of consumer rights, as the court of first instance came to a reasonable conclusion on compensation for damages with the elimination of shortcomings of the work performed by a third party in the amount of UAH 3,787, because it found that 10.08.2011 the defendant installed the plaintiff defects. The presence of defects was confirmed by the conclusion of the forensic construction and technical expertise, according to which the installation of metal-plastic windows of the balcony allowed poor performance of works on the installation of drains, which led to their damage and reduced operational reliability of structures.

It is necessary to differentiate the scope of the Central Committee of Ukraine and the Law of Ukraine «On Consumer Protection» in legal relations regarding consumer protection.

Part 3 of Art. 698 of the Civil Code distinguishes the scope of Articles 698-711 of the Civil Code of Ukraine, which regulate the relationship of retail sale, on the one hand, and the Law of Ukraine «On Consumer Protection» - on the other. This Law applies to these legal relations only when they are not regulated by Articles 688-711 of the Civil Code of Ukraine. As for Articles 655-697 of the Civil Code, the provisions of the said Law (Part 3 of Article 698 of the Civil Code of Ukraine) are mainly applied before them. It should also be borne in mind that the terms of the retail trade agreement, which worsen the position of the consumer in comparison with the Central Committee of Ukraine and the legislation on consumer protection, are null and void.

Article 17 of the Law provides for full compensation for damage to life, health or property of the consumer caused by production, design, prescription and other defects, regardless of being in a contractual relationship with the manufacturer (performer, seller) during the service life, and if it is not established - within 10 years from the time of manufacture of the goods (acceptance of work, services).

According to Part 3 of Art. 6 of the current version of the Law "On Consumer Protection" requirements for products for their safety for life, health and property of the consumer, as well as the environment are set by regulations. Article 4 of the Law provides for the possibility of compensation for material and moral damage caused by products dangerous to human life and health in cases provided by law.

In accordance with Part 1 of Art. 16 of the Law, the damage caused to the life, health or property of the consumer by defective products or products of improper quality, is subject to compensation in full, unless the law provides for a higher degree of liability. According to Part 4 of this article of the Law, the manufacturer (performer) is liable for damage caused to life, health or property of the consumer, which occurred in connection with the use of things, materials, equipment, devices, tools, devices or other means, necessary for the

production of goods, performance of works or provision of services, regardless of the level of his scientific and technical knowledge.

In case of damage to the consumer, the norms of the Central Committee of Ukraine on compensation of damage specified in subsection 2 of section III of book 5 of the Central Committee of Ukraine «Non-contractual obligations» must be applied by the actions of third parties.

The decision of the Court of Appeal of Vinnytsia region from 06.12.2014 left unchanged the decision of the city court from 19.09.2014 in the case on the claim of GB to a private enterprise for damages. UAH 2,841 was collected in favor of the plaintiff. pecuniary damage and UAH 100 of non-pecuniary damage, as the court of first instance found and proceeded from the fact that during the execution of the contract for the installation of metal grilles in her apartment the defendant's employees connected the welding machine to the switchboard, for which the employees of REM energy for the population and accrued losses in the amount of UAH 2,841 70 kopecks, which the plaintiff paid. The court referred to Art. 1172, as well as Art. 1191 of the Civil Code of Ukraine, under which a person who reimbursed the damage caused by another person has the right of recourse (recourse) to the guilty person in the amount of compensation paid, unless otherwise provided by law.

The decision of the Court of Appeal of Vinnytsia region dated 03.10.2013 annulled the decision of the district court dated 15.06.2013 and refused to satisfy the claim of OS to the private entrepreneur A. S. on protection of consumer rights on the grounds that the damage was caused by the actions of a third party - IB, in respect of which there is a verdict in a criminal case, so the appellate court did not agree with the conclusions of the court of first instance on the application of the Law of Ukraine consumers ", and proceeded from the requirements of Articles 1166, 1167 of the Civil Code of Ukraine, which provide for the establishment of guilt in causing harm. The court's verdict on I.B. his guilt was established. By the decision of the Supreme Court of Ukraine of January 10, 2014, the decision of the Court of Appeal of Vinnytsia region of October 3, 2013 was left unchanged.

In case of purchase of goods of improper quality. Article 8 of the Law stipulates that in case of detection of defects during the established warranty period, the consumer, in the manner and terms established by law, has the right to demand: proportional reduction of the price; gratuitous elimination of defects of the goods in a reasonable time; reimbursement of expenses for elimination of defects of the goods. 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: termination of the contract and refund of the amount paid for the goods; replacement of goods with the same goods or similar ones, from among the goods available

at the seller (manufacturer), etc. Thus, the requirement to terminate the contract and return the amount paid for the goods, as well as the requirement to replace the purchased goods (works) with defects is possible only in the case of purchase of goods (works, services) with significant defects.

In resolving disputes related to consumer protection claims in the case of the purchase of substandard goods, the courts made errors in determining whether there was a significant defect in the goods.

The decision of the Court of Appeal of Vinnytsia region dated 24.07.2014 annulled the decision of the district court dated 07.06.2014 in the case on the claim of OS to LLC on car replacement, a new decision was issued, which refused to meet the requirements for car replacement, in particular, because the identified shortcomings are not related to the work carried out by the defendant free of charge to eliminate the shortcomings of the plaintiff's car. instance.

It is clear from the case file that the plaintiff filed a lawsuit to replace the car, as the identified defect of the car is significant, because it took more than 14 days to eliminate it, and after its elimination it appeared again, for reasons beyond the consumer's control. However, in satisfying the claim, the court of first instance did not take into account that in accordance with paragraph 1 of the Procedure for warranty repair (maintenance) or warranty replacement of road vehicles, a significant defect is such a defect that makes it impossible or inadmissible to use the vehicle in one that may pose a threat to the life of the consumer or other people, or one that requires a lot of labor and time and which has manifested itself repeatedly after its elimination. The court did not take into account that immediately after identifying the defect of the goods, the plaintiff, as a way to protect their violated rights, chose free elimination of defects, and in fact the defect was eliminated in four days, which did not involve large labor and time costs. were related to those works that were carried out by the defendant free of charge to eliminate the shortcomings of the plaintiff's car. That is, the court was not provided with evidence that after the warranty free repair of the plaintiff's car, the same shortcomings occurred, which had already been eliminated by the defendant. Therefore, the appellate court came to the conclusion that the court of first instance had no grounds to satisfy the claim for imposing on the defendant the obligation to replace the car, and refused to satisfy the claim for replacement of the car.

The decision of the Court of Appeal of Vinnytsia region from 13.08.2014 canceled the decision of the city court from 07.06.2014 in the case on the claim of L.K. to the private entrepreneur O.Sh. on protection of consumer rights and satisfied the claim for termination of the contract of sale, because, refusing to satisfy the claim, the court of first instance erroneously concluded that the existing shortcoming is not significant and it was eliminated at the expense of the defendant - despite the fact that the goods to a similar one (the plaintiff's claim to the occurrence of a dispute in court) without the consent of the consumer replaced the selections, which did not correspond to the factory and differed

significantly from them; as the goods became significantly different, there was a significant shortcoming defined by the Law.

When resolving disputes, it is necessary to pay attention that in case of detection during the warranty period of significant defects arising from the fault of the manufacturer (seller, executor), or falsification of goods, confirmed if necessary by the conclusion of the examination, the consumer has the right to provided for in Part 1 of Art. 8 of the Law, and in case of its non-fulfillment to declare other requirement provided by part 1 of this article, the right to choose one of the ways of protection of the violated rights provided by the law belongs to the consumer.

Violation of the terms of the contract for the performance of works (provision of services). According to Art. 10 of the Law of Ukraine "On Consumer Protection" the consumer has the right to:

- to refuse the contract on performance of works (rendering of services) and to demand compensation of losses if the executor in due time has not started performance of obligations under the contract or carries out work so slowly that to finish it in due time becomes impossible (item 1 of item 10 of the Law));

- in accordance with Part 12 of Art. 10 of the Law the consumer has the right to refuse the contract on performance of works (rendering of services) without penalties from the executor if after the conclusion of the contract the executor has informed of obviousness that works (services), considering their price (cost) and characteristics or other circumstances, will obviously not satisfy the interests or requirements of the consumer, or the cost of works (services) may increase significantly than could be expected at the time of concluding the contract;

- to terminate the contract, if it becomes obvious that the work (services) will not be performed due to the fault of the contractor in accordance with the terms of the contract, if within the period specified by the consumer deficiencies will not be eliminated by the contractor;

- in case of detection of defects the consumer has the right to demand gratuitous elimination of defects, reduction of the price, gratuitous manufacturing of other thing or repeated performance of works, compensation of losses by own forces or forces of the third party, realization of other rights provided by the legislation;

- in case of detection of defects the consumer has the right to demand gratuitous elimination of defects, reduction of the price, gratuitous manufacturing of other thing or repeated performance of works, compensation of losses by own forces or forces of the third party, realization of other rights provided by the legislation;

- in case of detection of significant shortcomings of performance of works (rendering of services) the consumer has the right at the choice to demand performance of work from the same material of the executor, or termination of the contract and compensation of losses. These requirements may be stated within the terms stipulated by normative legal acts and normative

documents, terms of the agreement, and in the absence of such terms - within 10 years.

The right to choose one of the ways of protection of the violated rights provided by the law belongs to the consumer and the court has no right to independently replace one way of protection with another, as it contradicts requirements of Art. 11 GIC of Ukraine.

That is, it should be emphasized that the state protects the rights of consumers (Article 42 of the Constitution of Ukraine), which is one of the fundamental features of modern democratic society and is part of the protection of human rights.

It is investigated that business entities are responsible for their actions in providing services and performing works.

Every business entity and consumer has the right to protection of their rights and legitimate interests, which are protected by: recognition of the presence or absence of rights; recognition of acts of state authorities and local self-government bodies, acts of other subjects that contradict the legislation, infringe the rights and legitimate interests of the business entity or consumers as completely or partially invalid; recognition of business agreements as invalid on the grounds provided by law; restoration of the situation that existed before the violation of the rights and legitimate interests of business entities; cessation of actions that violate the right or create a threat of its violation; sentencing in kind; damages; application of penalties; application of operational and economic sanctions; application of administrative and economic sanctions; establishment, change and termination of economic legal relations; in other ways provided by law (Article 20 of the Commercial Code of Ukraine).

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