
Consumer Rights Protection in International and Municipal Law: Problems and Perspectives

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Abstract:

This paper presents theoretical and practical issues of consumer rights protection in international and municipal law. Study of international civil aspects of origin and development of consumer protection institute revealed that consumer problems are global. Kazakhstan successfully employs experience of developed countries in the sphere of legal regulation of consumer rights. Study of national peculiarities of consumer protection development in Kazakhstan allowed revealing actual directions for the development of Kazakhstan consumer rights protection.

Key Words: *International and Municipal Law, Rights Protection, Consumers, State*

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Introduction

At present under the conditions of forced economy industrialization, the government of Kazakhstan creates equal opportunities for all the parties of commodity-money relations regardless of their form of ownership. Laws of competition in the economy do not always stand for consumers. Chasing the profits, businesspeople tend to forget about the consumers' needs, and that is when the laws of consumer rights protection should be applied.

Civil legislation treats the parties as equal under a commercial treaty, so an entrepreneur as a seller and a consumer as a buyer may be regarded as partners. However, it is only a facade of these relations as it is the consumer who is a crucial party. As the consumer possesses purchasing power, the eventual outcome of manufacturer's activity depends on consumer's actions.

Many of the world countries have initiated government measures of consumer protection in order not to allow a manufacturer to have a dominant position at the market, to protect a consumer from defective goods and lack of essential information about the manufacturer and the goods, to enable guaranteed equal conditions at the market for consumers. It was the squeezed position of consumers that made them actively protect their rights. In this way, the so-called consumer movement appeared which contributed to formation of modern consumer protection legislation.

All the living people are consumers regardless of their age, sex, complexion and creed [1, p.32].

Commercial organizations, manufacturers and performers of the work and services provide satisfaction of consumer demands for different goods and services. Beyond controversy, in Kazakhstan the development of market relations is primarily aimed at saturation of market with different goods and services. However, besides positive sides of market economy, it also has negative features: fraud, cheating on the weights, cheating in accounts, sale of adulterated and defective products, providing of inconsistent services. Under such conditions each consumer needs government support and protection from such negative phenomena. Kazakhstan asserts consumers' rights, forcing businesspeople to offer only high-quality goods, services and work. Consumers' rights are vested in different laws and regulations. Nevertheless, adoption and development of such laws does not reduce the quantity of consumers' rights infringements.

The problem of relations regulation between manufacturers and consumers as to the goods quality exists in all the countries. Having used global experience in this sphere, the government of Kazakhstan has also created quite effective legal framework for consumer rights protection.

A need to develop the framework for consumer rights protection in view of global trends is reflected in the Conception of Kazakhstan Legal Policy for 2010-2020. In this regard a new version of the law is a measure for enhancement of efficiency of consumer rights protection [2, 3].

At present Kazakhstan legal system for consumer rights protection is based on the Constitution the Republic of Kazakhstan and includes the Civil Code of the Republic of Kazakhstan (CC RK), the Consumer Rights Protection Act of the May

4, 2010 and other regulative acts of Kazakhstan. The laws of the Republic of Kazakhstan stipulate consumer rights in the spheres of finances, social relations, medicine, tourism and other services. In case there is an international treaty ratified by Kazakhstan, which establishes rules different from those established by the Consumer Rights Protection Act, the international rules prevail [3].

The Article No. 13 of the Constitution of RK states: "1. everyone shall have the right to be recognized as subject of the law and protect his rights and freedoms with all means not contradicting the law including self-defence. 2. Everyone shall have the right to judicial defence of his rights and freedoms. 3. Everyone shall have the right to qualified legal assistance..." [4].

Abovementioned constitutional provisions were further elaborated for consumer right protection sphere in para.6 Art.10 of CC RK, stating that consumer right protection is provided by means represented in CC RK or other legal acts. Every consumer has a right for, among other things: free conclusion of contracts for goods purchase, use of work and services; for proper quality and safety of goods (work, services); full and adequate information about goods (work, services); for associating in public organizations of consumers [5].

Existing Kazakhstan Consumer Right Protection Act of 2010 was amended and supplemented, which provide evidence of its further development and of improvement of social relations regulation in the sphere of consumer right protection [6].

Despite a comparatively short period of validity, this Act has a number of flaws arousing informed criticism of law enforcers. To elicit problems existing in law and regulation of consumer right protection sphere, we have studied theoretical and practical material representing international experience of regulation of these social relations.

This paper is dedicated to theoretical and practical issues of consumer right protection in international and municipal law. This set a following range of tasks: to determine international and national aspects of origin and development of Institute for Consumer Protection; to determine peculiarities of consumer right protection in international law based on study of particular provisions of law in the USA; to determine peculiarities of consumer right protection in municipal law based on study of particular provisions of law in the Republic of Kazakhstan.

International aspects of origin and development of Institute for Consumer Protection

Consumer rights are among basic civil human rights together with the right to life, right to a healthy environment, right to liberty etc.

Buyer's interests were protected even in the ancient times. This is demonstrated by the Code of Hammurabi, Digest of Justinian, Laws of Manu, Russian Sudebnik, Kazakh Zheti Zhargy and others. It is clear that traditions of consumer right protection appeared in the world centuries ago. For example, in Austria in the Middle Ages the law forbade adding of starch into margarine so that market inspector could clearly taste when margarine is sold as butter. There were

also laws delineating responsibility for sale of defective goods. In the 15th century in Austria again the seller of thin or spoiled milk had to drink all the defective milk himself. In the 16th century in France those who bought addled eggs could and even should through all the eggs in the face of the seller. Many countries had a profession of market inspector – his job was to control abidance by market rules, punishment of breaches and encouragement of honest marketers. Some of sources say that in Ancient China even the great philosopher Confucius held such position [7].

It is known that the Roman private law was thoroughly regulating right of buyer and responsibilities of seller in case when product appeared to be defective. This demonstrates the fact that norms inherent to customer protection laws date many years ago. However, a term of *consumer* appeared only in the 20th century, and the system of consumer right protection rose on a new level of quality.

A need for consumer right protection within a market economy follows from the character of these rights. First of all it is their vulnerability: defective products, medicines, unduly rendered services, dishonestly performed work – all of it eventually influences people's health, length of life and social climate. However, without participation of the government it is virtually impossible to solve the problems of consumer rights protection from the point of legal regulation. One of the most important spheres, which cannot exist without governmental regulation, is technical regulation. For example, building standards ensure proper quality of dwelling (even though, in effect consumers the most often complain about breaches in this sphere).

Consumer rights protection is a modern term having deep historical roots.

The meaning of this term reaches through the “thickness of millennia”. As far back as in the Old Testament Moses said in the Third book: “You shall do no wrong in judgment, in measurement of weight, or capacity. You shall have just balances, just weights...” Some researches see the sense relating to consumer protection even in commandment “thou shalt not steal”, which among others says “do not take without permission, do not cheat in the trade, be honest when paid” [8].

The birthplace of consumer protection movement is America. Rudiments of consumer protection policy appeared in the period of T. Roosevelt and are currently developing [9].

Aspects of origin of consumer movement are well studied in the works of Motekhina M.V. and Sherstobitov A.E. In particular Motekhina M.V. in her work “A course of lectures on consumer right protection” has dedicated one of the chapters to consumer right protection in the USA. She specifies that starting from 1960s this movement has spread beyond the borders of the US to European countries. Eventually it seizes the whole world and plays an important part in business and politics as well as in law. Supporters of movement coined the term *consumerism*, meaning “the movement for consumer rights protection” [10].

However, the first effort of consumers to protect their rights took place as far back as 100 years ago, when railway companies raised prices for passengers and transportation of freight. A need for control over transport operators required government intervention, thus the first institution appeared – Interstate Commerce Commission, – as well as first rate quotation.

According to Motekhina M.V. on the cusp of 19th and 20th centuries there was a conflict around law for quality control of medications and food. Later activists of this campaign were called the “muckrakers”. In 1899 the National Consumers league of the USA was created – it actively participated in campaign for food and drug quality surveillance. In 1935 the Union of consumers of the USA was created – now this organisation includes over 5 million members. In 1937-1940 it was the members of the Union of consumers of the USA who called the citizens of American states for the strike of goods from the Fascist Germany in 1930s [10, p.9-10].

Sherstobitov A.E. in his work “Civil issues of protection of consumers” specifies that in 1961 John F. Kennedy managed to convince the Congress of importance to protect consumer rights. Many social organisations supported Kennedy’s call to recognize the rights of consumers: the right for information, right for safe products, right for choice of products and the right to be heard [11].

Sherstobitov A.E. describes extending consumer rights as follows: “International Organisation of Consumers added 4 more rights to those existing before: the right for satisfaction of basic consumer needs, right for reparation of damages, right of education, right to a healthy environment. President Kennedy reminded that the term *consumer* unites all the citizens – and after this the Consumer Rights were accepted and approved, though with 2 amendments: a small list of rights was complemented with the right for enlightenment and right to compensation. On March 15, 1962 John F. Kennedy addressed the Congress with a Special Message on the Protection of Consumer Interests, which proclaimed basic consumer rights: right of choice; right for safety; right to be heard; right for information. In summer 1962 Kennedy ordered to establish the Advisory Board of Consumer Affairs. In 1971 it was reorganised and became the Management of Consumer Affairs [11].

Official web site of National Consumers League of Kazakhstan says that in the USA the movement of consumers unifies more than 200 organisations in 150 countries [12].

Six years later the American Federation of Consumers united all the national and local consumer protection organisations with a headquarters in Washington. Main objectives of this organisation –American Federation of Consumers – were to coordinate programs of consumer protection from defective goods, high prices for food, medicines, medical service, electricity and fuel. According to Sherstobitov A.E., consumer movement gradually began to more and more influence political life of the US and other countries. After the World War II, (1939-1945) consumerism began to develop momentum in many countries of Western Europe. In 1960 five consumer organisations of the USA, Great Britain, Australia, the Netherlands and France united to form the International Organization of Consumers Unions (IOCU). Now IOCU includes 181 members from 64 countries. It is a powerful organisation and all the manufacturers, vendors and governments have to reckon with it [11].

In connection with significant role of consumer movement in development of economy, UN announced the 15th of March to be the World Consumer Rights Day. For the first time this day was celebrated in 1983. In the same year it was fixed in the international calendar as World Consumer Rights Day. The aim of the international consumer movement is to unite all the consumers in their fight for the rights. Every

year the International Federation of Consumer Organisations picks up the most topical issue to be the focus of the Day and the whole year.

According to the National Consumers League of Kazakhstan, a campaign for consumer rights protection in the sphere of mobile telecommunication started on March 15, 2014 [12].

Talantsev V.I. in his work “Governmental protection of consumer rights at the goods and services market” states the following: “On April 9, 1985 United Nations General Assembly adopted general policy for consumer rights protection. By this UN acknowledged and authorized the result of international consumer movement activities. From that moment 8 consumer rights became internationally acknowledged and were adopted by developed and developing countries to be represented by municipal legislative acts” [13].

It is referred to global acknowledgement of the consumer rights, which were officially fixed in the Resolution of the General Assembly No.39/248 of April 9, 1985. There were 8 consumer rights: right for safe products; right for information; right for choice of products; right for expression of interest; right for satisfaction of basic consumer needs; right for reparation of damages; right of consumer education; right to a healthy environment [14].

Adoption of the Guidelines for Consumer Protection is one of the most prominent results achieved by global consumer movement represented by IOCU.

In Russian Federation this day was acknowledged after the adoption of Federal Law No. 2300-1 “Concerning the Protection of Consumers' Rights” d/d February 7, 1992 [15].

In Kazakhstan the World Consumer Rights Day is not mentioned at current legislation, but we can invoke the Art.2 of Consumer Rights Protection Act, which stipulates the priority of international norms over the local Kazakhstan laws [6].

Also each year in November there are special events in the frame of World Quality Day. The motto of this day is “Quality for the sake of better life”. In order to encourage and promote activity for quality improvement many countries have established national and regional quality awards. These awards are very prestigious which is illustrated by the fact that national awards are usually presented by top public officials: in the USA – the President, in the UK – Prime-minister, in Sweden – the King etc. Obviously, award winners have a significantly higher market rating and, consequently, higher commercial success.

At present the consumer movement is a powerful factor of quality control, so manufacturers and commercial as well as governmental institutions have to reckon with it. Current legal systems of different countries take consumers' rights under a complex protection. We may mention three directions of this protection: state, judicial and social. State protection is provided by experts on the basis of official laws; judicial protection is provided by unbiased court, and social one – by local organisations for consumer right protection and by corresponding regional associations and unions.

Well-known Russian scientist Zenin I.A. mentions: “During last several decades theory (and practice) of ‘consumer protection’ gained all-time massive scale. Quantity of literature on this topic can hardly be measured. According to

lawyers, consumer protection is one of the most topical legal issues nowadays – it may only be compared to environment protection” [16].

Thus, the study of international legal aspects of consumer protection origin by Keyta-Stankevich T.G., Motekhina M. V., Sherstobitov A.E., Ivanova T.M. and Zenin I.A. allows for the conclusion that in many countries – especially in the industrially developed ones – the laws for consumer protection have been in effect for quite a long time.

Review of works by above mentioned scientists shows that the problem of consumer protection is international. Spread of consumer movement from the USA to Europe led to development of a separate legal direction – the consumer's law. At present it has 2 aspects: on the one hand it is consumer rights protection as a social movement, on the other hand it is administrative-legal activity for consumer rights and interest protection based on legislation. Hence, the consumer's law represents a complex of norms, rules and instructions for consumer rights protection at the market of goods and services. In several countries there is a special consumer rights protection act, in others this function is performed by separate articles of the civil code.

National legal special aspects of development of consumer rights protection in Kazakhstan

A question of National legal special aspects of development of consumer rights protection in Kazakhstan was studied with the help of scientific works of Selyanin A.V. and Talantsev V.I., as well as publications at the web site of National Consumer League of Kazakhstan and current municipal laws and regulations.

In the Soviet times the first efforts of consumer protection can be associated with development of societies, clubs and associations for consumer rights protection, which took place in the 1980s during the Perestroika. In 1987-1988, these organisations were united to create the Federation of Consumer Organisations.

Selyanin A.V. in 2006 in his work “Consumer Rights Protection” says: “Before the demise of the Soviet Union relations of satisfaction of citizens’ needs were regulated by the norms of codified civil legislation. This legislation was designed for establishment of general provisions and as a basis for special legislation. That is why acts traditionally did not include specific character of relations between consumers and service organisations. Some kinds of factual contracts did not fit into current classification of civil contracts. In addition, the legislation did not provide a system of specific guarantee for consumer rights protection within contracts for satisfaction of their needs”. The author specifies features of Soviet legislation and mentions that “a special feature of legal regulation of this sphere of relations was the plurality of subordinate acts, regulating certain spheres of relations involving citizens-consumers. Departmental acts usually contained norms adversely affecting interests of consumers and sometimes were even contravened the law [17].

At this point opinion of Selyanin A.V. coincides with the position of Talantsev V.I., who in 2003 in his work “State Protection of Consumer Rights at the Goods

and Services Market” stated: “...applicable legal system did not quite conform to international norms, especially to basic principles of consumer protection adopted on April 9, 1985” [13].

Describing legal system applicable to consumer rights protection during those times, Selyanin A.V. says: “This nonconformity manifested as a fact that not all the consumer rights acknowledged by international community were adequately legally regulated. Even those rights, which were represented in the legislation, did not have any implementation mechanism and only had declaratory part. In addition, there was not a system of state protection for consumer interests. Such situation allowed imposing clearly unbeneficial conditions to consumers and sale of unsaleable stocks [17].

It is well known that 1990s were characterised by the newly obtained freedom of business activities, total commodity deficit and lack of culture of consumption, so a need for special legislation became critical.

According to Selyanin A.V., the first effort to create special legislation was formation of Goods Quality and Consumer Rights Protection Act of 1988. This Act was mostly dedicated to problems of goods and services quality, and only one section contained provisions for protection of consumer interests. Even the introduction of this bill was the first step towards development of consumer legislation. It was the first time when the need for special provisions establishing governmental guarantees for consumer protection was recognised. In his judgement, this Soviet bill was not without drawbacks. Firstly, the bill did not fix the difference between a consumer-citizen and a consumer-legal entity. Secondly, all its provisions were in some way or other associated with quality: that is, all the basic consumer rights (for information, for reparation of damages, for associations etc.) were stated only with regard to right for quality. The bill was widely discussed but dismissed as majority of its provisions were only declarative and could not be realised [17].

Opinion of Selyanin A.V. is concurrent with those of majority of authors who study consumer rights legislation development. They suppose that pivotal point of consumer legislation was adoption of the Consumer Rights Protection Act of the USSR on May 22, 1991. Though, because of demise of the Soviet Union this Act was never inured. It contained many provisions that did not exist in the civil legislation before as well as implementation mechanism for all the provisions, which undoubtedly was an advantage. This Act not only did not request usual adoption of subordinate acts, but also directly forbade development of regulatory documents affecting consumers’ interests [10, 11, 13 and 16].

In addition, it should be noted that the Consumer Rights Protection Act of the USSR is one of the first regulatory acts which conferred a right for compensation for moral damage caused. At the same time some of its provisions – as for example the right of citizens for guaranteed consumption minimum – very only declarative.

Modern Kazakhstan legal system in what concerns the consumer rights protection is for the most part a result of implementation, as most of the legal provisions are the result of adoption of institutions, features and principles formed in international legal systems. Development of consumer rights protection legislation

of Kazakhstan dates back to 1991 when the Consumer Rights Protection Act of the Kazakh SSR was adopted.

Under the formation of the Commonwealth of Independent States some of the republics adopted their own consumer protection acts based on the dismissed Soviet act. Such republic-wide acts were: Consumer Rights Protection Act of the Ukrainian SSR dated May 12, 1991 (which came into force on October 1, 1991); Consumer Rights Protection Act of the Republic of Kyrgyzstan dated February 28, 1992; Consumer Rights Protection Act of the Republic of Belarus dated November 19, 1993 (which came into force in Belarus on January 1, 1994); Consumer Rights Protection Act of the Kazakh SSR dated June 5, 1991 (which came into force in Kazakhstan on January 1, 1992) [18].

Romanovskaya S.Yu. in 2008 gave an interview for the “Kazakhstan segodnya” newspaper, in which she stressed a need for development of consumer protection legislation: “Since 1991 we have been living in accordance with the law regulating relations between a consumer and a businessman. It is the Consumer Rights Protection Act of the Kazakh SSR, and we were among the first countries to adopt this bill” [19].

The first Consumer Rights Protection Act of the Kazakh SSR No. 640-XII dated June 5, 1991 had been in force for 19 years. However, with the development of market economy, increase of business share in the economic relations and development of general legislation conception a need for a more practical and complying to modern realities appeared [20].

On June 26, 1992 the Law on Amendments to the Consumer Rights Protection Act of the Kazakh SSR No. 640-XII dated June 5, 1991 made amendments according to which the words ‘United SSR and Union Republics’ and ‘legal system of the USSR’ were eliminated as well as all the words denoting Soviet government institutions. Amendments also changed the procedure of complaint, claim amount, procedure for the reimbursement of injury and other issues associated with changes in social life of the country [21].

Consumer Rights Protection Act of 1991 entrenched new legal, economic and social basis as well as guarantees for consumer rights protection in Kazakhstan. Public authorities had to take effective measures as to the protection of personal rights of consumers for quality goods, work and services. The Act consisted of 3 sections containing 23 articles.

The object of the Act was to regulate relations between the consumer and the salesperson or provider of work and services, to establish their rights and responsibilities, to settle the questions as to consumer rights protection. The Act was aimed at enablement of following tasks: 1) establishing of priority of citizens' legal interests over the interests of manufacturers and businesspeople; 2) realization of consumers' rights for information, for quality of products, for exchange of quality goods, as well as of consumer rights protection in case of defective goods sale; 3) consumer protection against hazards; 4) development of international and inter-republican cooperation in the sphere of consumers' interests protection; 5) promotion of creation and activity of independent groups (societies of consumers) [20].

At that stage of country development these task were just enough to satisfy consumers' interests. Art.2 of former Consumer Rights Protection Act of 1991 (now abolished) defined *consumer* as a citizen who buys goods and uses work and services for personal usage or within a private household [20].

Subpt.15 para.1 Art.1 of new Consumer Rights Protection Act of 2010 defines *consumer* as a private individual intending to order or buy, or ordering/buying and/or using goods (work, service) for satisfaction of his/her needs [3].

Comparative study of these two definitions suggests that a substantial difference of abovementioned definitions lies in presence of term 'private individual' which widens the circle of consumer agents as it follows from the Art.12 of CC RK, uniting the citizens of Kazakhstan, foreign citizens and persons without citizenship within the notion of a 'private individual' [22].

Such approach to subject matter of consumer relations is considered to be right as in the context of globalisation of goods, work and services market as well as active migration these measures are called-for. All the persons living in the territory of any given state should have the right for protection of their consumer interests.

In this regard basing on legal precedents the question arises; is a legal entity a consumer? According to para.1 Art.1 of CC RK "the participants of the relations regulated by the civil legislation are the citizens, legal entities, state and administrative and territorial units". The same paragraph of the Art.1 of CC RK states that "the civil legislation shall regulate goods and monetary relations and other property relations based on the premise of equality of the participants, as well as personal non-property relations linked to property relations" [22].

Legal entities as subjects of goods and monetary relations and other property relations based on parade of parties, which have concluded a purchase/sale agreement for, for example, equipment, may be regarded as consumers, because in case of improper discharge of commitments at the initial stage all the disputes are solved by the exchange of claims.

Art.406 of CC RK regarding legal nature of buy and sell states that "according to the sales contract, one party (the seller) agrees to transfer the property (goods) in the property, economic management or operative control of the other party (the buyer), and the buyer agrees to take the property (goods) and pay a certain amount of money for it (the price)" [23].

As far as known, subject matter of buy and sell suggests that a legal entity can be a buyer. A purchase/sale agreement may be regarded as the most common basis for majority of legal relations between a consumer and businesspeople. But such presumption would contradict norms of current Consumer Rights Protection Act.

Indeed, through their business activities legal entities often conclude purchase/sale agreements. Problems associated with sale of defective goods are not rare. Still, protection of rights of legal entities acting as buyers is not regulated by the Consumer Rights Protection Act.

According to the subpt.15 Art.1 of the Consumer Rights Protection Act of 2010, the *consumer* is only a private individual who buys goods for individual household need having no commercial purposes [3]. This suggests that a citizen who

buys goods for an organisation and at its cost with the purpose to use the goods for manufacture, as well as a citizen who orders services for organisations and at their cost for the same purposes (for example, purchase of a camera for the work at a publishing house, of stationery and reporting forms for accounting department etc.) cannot be regarded as a consumer. Therefore, according to consumer protection legislation legal entities cannot be regarded as *consumers*, as well as all the goods purchased by a legal entity for its activity are not subject to protection. This is clearly demonstrated by works of Russian scientists which were studied.

In their activity legal entities within civil law relations of buy and sell, supply and other commercial contracts have to regulate their relations according to provisions of CC RK and special acts specifying provisions of the Civil Code [26]. If legal entity is backed by legal services which protect its interests, then this legal entity-consumer in case of violation of its consumer rights has to act entirely self-confidently.

It proves that in legal regulation of consumer protection, acts of the countries under study promote differentiated approach depending on the legal status of the subject. Also the purpose of purchase (of goods, work or services) should be taken into account as the Kazakhstan law clearly stipulates the expression “for individual household need having no commercial purposes”. Hence, individual entrepreneur operating as permitted by the Law "On Private Enterprise" of Kazakhstan Republic cannot be regarded as consumer. According to subpt.3 and 4 of Art.1 of this Law the individual entrepreneurs are “private individuals carrying out the individual enterprise without establishment of legal entity”, but the purpose of purchase of goods, work or service does not meet the conditions of the Consumer Rights Protection Act [24].

Moreover, former Consumer Rights Protection Act of the Kazakh SSR of 1991 contained an article 18 called “Compensation of Moral Harm”. Peculiarity of this article lay in the fact that all of its provisions very absolutely new for the country that just made a transition towards the market economy and did not have any experience of working with institute of moral harm.

In order to clarify the issues arising in courts upon execution of consumer protection legislation, and to provide effective judicial protection of consumer rights on the June 25, 1996 Plenum of Supreme Court of RK (hereinafter – PSC RK) adopted the Resolution No. 7 “On Practical Execution of Individual Enterprise Rights Protection Legal System in Courts” [25].

It should be noted that this resolution by Plenum of PSC RK was later twice amended: for the first time on June 18, 2004 [26], for the second time on December 30, 2011 [27].

The reason for second amendment is obvious – it is connected with the adoption of new current Consumer Rights Protection Act of 2010.

Let us analyse the clarification presented in regulatory resolution of PSC RK for court usage of Consumer Rights Protection Act. Thus, upon usage of Consumer Rights Protection Act the court shall reclaim and study laws and regulations of central executive agencies and in case they contain any rules exploiting preponderant (monopolistic) position of vendors, manufacturers and providers or any rules

contradicting the Consumer Rights Protection Act, it should be taken into account that such regulations are invalid from the moment of their adoption and should not be applied. In case of contradiction between the decision of maslikhat/akim and legislative acts, the court should settle a dispute on the basis of legislative acts [25, 26 and 27].

Such clarification was founded by para.5 Art.3 of CC RK stating that “ministries and other central executive bodies, local representative and executive bodies, may issue acts which regulate civil relations, in the cases and within the limits provided for by this Code, and by other acts of civil legislation” [22].

According to the provisions of Art.31 of Civil Procedural Code of RK a suit should be filed with a court having jurisdiction over respondent seat, and a suit against a legal body should be filed with a court having jurisdiction over the seat of legal entity registered office [28].

In virtue of this resolution suits to protect consumer rights against a private individual are filed where he/she lives, and against a legal entity – at its location. Moreover, according to the para.9 Art.32 of CPC of RK, suits for consumer rights protection may at the option of suitor be filed where the suitor lives or forum contracts, so upon receiving of notice of suit the court should take into account the suitor’s right for the choice of venue of proceedings [28].

Art.42 of the Consumer Rights Protection Act of 2010 establishes primary extrajudicial procedure of consumer organisations’ claim resolution mechanism. If abovementioned organisations do not follow this procedure of claim resolution and the opportunity is not lost, the judge shall return the claim in accordance with the subparagraph 1 paragraph1 Art.154 of CPC RK [3, 28].

The law does not stipulate extrajudicial procedure of claim resolution mechanism for the consumer. Suits filed with the court by consumers’ public associations or unions for the benefit of consumer are exempt to state duty according to the subpt.10 Art.541 of the Tax Code of RK [29].

Further the clarification of PSC RK continues: “Along with that when a consumer files a suit with the court individually, they are not granted a remission of state duty for the suits connected with violation of their rights. In these cases compensations of legal expenses to the state and both parties as well as their assignment between the parties is executed according to the rules stipulated by Articles 110, 115, 116 of CPC RK” [25, 26, 27, 28].

According to Articles 2 and 10 of the Public Associations Act, the associations for consumer rights protection as public non-commercial organisations are legal entities and shall act according to the statute that was adopted by statutory meeting convened upon an initiative of at least 10 members [30].

PSC RK specifies that in the cases initiated by public unions or their associations, the court shall check their status, object and mission as well as their legal capacity, taking into account that according to the Art.10 of the Public Associations Act, the legal capacity of such organisations exists from the moment of state registration or reregistration and state registration of their organization units (branches and representational offices) [25, 26, 27, 30].

According to the law, public consumer organisations can independently bring a case for recognising actions of seller, manufacturer (or his representative), provider as legal entities, or actions of regulatory bodies, as illegal in relation to an indefinite range of consumers. The organisation can demand barring of these actions [3].

In this case it is referred to a class action suit. According to the Art.30 of CPC RK, cases concerning such suits are within jurisdiction of specialized inter district economic courts [28].

PSC RK states that when applying Art.21 of Consumer Rights Protection Act courts should refer to para.3 Art.141 of CC RK as to the protection of non-property rights regardless on the fault of person who infringed the right [25, 26, 27 and 22].

Current Consumer Rights Protection Act in the Art.42 states: "Public consumer organisations and associations (unions) do not have a right to bring suits for compensation of property damage and moral harm in relation to indefinite range of consumers [3].

This means that statements of claim by consumer protection organisations for property damage and moral harm without indication of certain consumers are considered to be filed with violation of Art.150 of CPC RK, and according to the Art.155 of CPC RK such statements shall be suspended [25, 26, 27 and 28].

Agents of the State can participate in the litigation. According to the Art.57 of CPC RK, state authorities controlling safety of goods, work and services can be involved into trial of their own motivation or of motivation of other participants, to deliver an opinion upon the matters within their competence [28].

According to PSC RK, to identify the moment of the Retail Sales Agreement conclusion the court shall refer to the Art.446 of CC RK. This Article states that the Retail Sales Agreement is considered to be concluded in due form from the moment when the consumer is given a sales receipt, a sales draft or any other document confirming payment for merchandise, if another is not specified by legal acts or Retail Sales Agreement [23, 25, 26, 27].

It is also stressed that in this case according to Art.389 of CC RK conditions of forms or other standard form to which the buyer accedes should also be taken into account [25, 26, 27 and 22].

In its provision the PSC RK states following: according to Articles 394 and 396 of CC RK, the Retail Sales Agreement executed upon its conclusion is made viva voce regardless on the cost of goods, on condition that the parties reached an agreement as to subject of an agreement, price and other terms, if at least one of the parties insists on coordinated approvals. The same agreements executed not upon its conclusion (pre-order, mail order, sale of cars etc.) are made in the form established by law or arranged by the parties. Written form of agreement is considered to be observed if the person, who received a written offer for agreement conclusion, accepted it by fulfilment of stipulated terms (shipment of goods, providing of services, execution of work, payment of a relevant amount of money etc) [25, 26, 27, 22].

As to settlement of issues of material liability for damage caused by product of poor quality, the PSC RK precepts to the courts to take into account that according to Art.16 of Consumer Rights Protection Act harm to life, health or property of a

citizen due to construction, production, formulary or other defects is subject to full compensation as stipulated in Chapter 47 of CC RK [3, 25, 26, 27, 22].

According to para.1 Art.31 of Consumer Rights Protection Act the damage is subject to compensation by seller (manufacturer, provider) regardless of his fault and of the fact of existence of contractual relationship between him and consumer [3, 25, 26 and 27].

The provision of PSC RK under analysis defines the rules of judicial decision for extent of damage. Thus, the court shall take into account para.4 Art.9 of CC RK, which under the damages means the expenses which were borne or should be borne by a person whose rights were infringed, the lost or damage of his property (actual damage) and lost income which this person could get under normal circumstances when his right is not infringed (loss of expected gain). Extent of damage is calculated according to para.3 and para.4 of Art.350 of CC RK. In other cases the courts shall refer to the Art.351 of CC RK which states standard extent [25, 26, 27 and 22].

Section 3 of Consumer Rights Protection Act of 1991 had only 3 articles dedicated to the consumer movement for protection of their rights [20]. These three provisions gave the citizens a right to organise societies (unions) of consumers on a voluntary basis which was fully realised in reality.

Consumer Rights Protection Act of 1991 was strongly criticised by lawyers up to the moment of its abolishment, because the provisions of the act did not correspond to the level of society development which demanded reasonable changes to the sphere of consumer protection. Nevertheless, this Act deserves positive evaluation of its role at early stages of development of Kazakhstan goods and services market as well as of free enterprise formation.

Meaning of Consumer Rights Protection Act of 1991 lies in the fact that during 19 years of significant economic reforms this Act regulated relations between consumers and sellers, providers and manufacturers.

Act of 1991 promoted activation of social movement for consumer protection. As a result of it, public organisations appeared at every region – they provided legal and consulting services to citizens as to consumer rights protection. Goods and services quality drive and pursuance of stable competition environment promoted business development and formation of a businesspeople social layer.

Starting from 1991, quantity of public organisations was constantly increasing as consumers began to form them upon their own initiative. According to NPA National Consumers League, at present it unites 107 organisations, protecting consumers' rights in Kazakhstan, Tajikistan, Uzbekistan and Kirghizia [31].

There were cases when public organisations for consumer rights protection were created as legal clinics of schools. In particular, in 2006 one of the authors of this article (Zharkenova S.B.), who was a chairperson of Civil Law and Process Department back then, created the Public Organisation for Consumer Rights Protection "Femida+". This organisation should have been a practice base for students of law department at A. Baitursynov Kostanay State University (see the photos and other information at ksu.edu.kz/).

Professors and students get so engrossed with work that in 2008 activity of CRPS “Femida+” was recognised by National Consumers League represented by Romanovskaya S. Ju. Their organisation also took the 4th place at national awards of consumer protection organisations in Almaty. Activity of this organisation was useful not only for consumers in this city and region, but also for students who could practice with real examples under supervision of experienced lawyers. This organisation still exists and is quite successful. Lately, on February 27, 2014, media published an article, representing practical result of activity of Femida+ [32].

Kazakhstan is a constitutional state, and the sphere of regulation of consumer rights is no exception. Earlier we already touched questions of the first consumer rights act which was adopted in 1991 and stayed in force for quite a long time by Kazakhstan standards.

At present the legal system for consumer rights protection is renovated. Current Consumer Rights Protection Act of RK was adopted on May 4, 2010, 3 months after its publication [3]. It was greatly amended – last of amendments were adopted just on December 29, 2014 [6]. The Act consists of 7 chapters and 44 articles. It specifies legal, economic and social basis for consumer protection, as well as measures for provision of safe and high-quality goods (work and services). Objectives of the Act are: formation and development of efficient policy in the sphere of consumer rights protection in Kazakhstan; development of conditions for consumers to unite in order to protect their rights and interests; promote development of equal conditions for participant of consumer relations; promote effective control system at the consumer market to prevent dishonest activity of agents, violating the state requirements as to quality and safety of goods and services; promotion of conditions for further development of consumer protection mechanism [3].

As in Russia and Belarus, Kazakhstan Act is based upon provisions of CC of RK and has special meaning in the sphere of regulation of relations as to consumer protection. It stipulates consumer rights and means of their protection. Consumer rights include: 1) right to freely enter agreements to purchase goods and to employ work and services; 2) right to freely access information as to the consumer rights protection; 3) right to full and reliable information on goods (work, services), as well as on seller (manufacturer, provider); 4) right to purchase safe goods (work, services); 5) right to freely choose goods (work, services); 6) right to proper quality and safety of goods (work, services); 7) right to change or refund good of defective or proper quality; 8) right to full compensation of losses (damage) to life, health and (or) property caused by drawbacks of goods (work, services); 9) right to receive documents evidencing the fact of purchase of goods (work, services) seller (manufacturer, provider); 10) right for reclamation to game organiser as to the quality of goods (work, services), given (provided) as a prize; 11) right to establish public associations of consumers; 12) right to moral compensation; 13) right to protection of rights and legal interests; 14) right to realization of rights stipulated by the Act or other laws of Kazakhstan [3].

Each consumer right was specified in more details in separate articles. Rights and responsibilities of other party of consumer relations are also stipulated. The Act

gives enough space to regulation of consumer movement and states procedure and forms of establishment of consumer organisation for their interests protection.

Current consumer rights protection law has been in force for more than 4 years, however at present the law is due for amendments, which is associated with active state policy in this sphere.

On November 13, 2013 Agency of the Republic of Kazakhstan for Consumer Protection was established. According to the adopted law, the Department of Public Health of RK was reorganised, and following powers were delegated to newly established Agency of RK: 1) consumer rights protection – from Agency of the Republic of Kazakhstan for competition protection (antimonopoly agency); 2) sanitary and epidemiological welfare of the population – from the Department of Public Health of RK; 3) control and supervision of compliance with requirements, set by technical regulations and regulatory documents on goods and services provided to consumers, as well as supervision in sphere of food safety at the stage of sale – from Ministry of Industry and New Technology of Kazakhstan [33].

The provision on Agency of the Republic of Kazakhstan for Consumer Protection was approved on December 31, 2013 by the Republic of Kazakhstan Government Resolution No. 1538, according to which the Agency's mission is to promote protection of consumer rights and sanitary and epidemiological welfare of the population, to coordinate intersectoral activity of governmental bodies as to the implementation of policy for consumer rights protection and sanitary and epidemiological welfare of the population [34].

Agency of RK for Consumer Protection is a legal entity. It was established with a legal status of a state department and has regional offices locally representing functions of the agency.

After such reorganisation of state bodies in the sphere of consumer protection there is a need for further development of legal system, particularly for formation of the third statutory wording of the Consumer Rights Protection Act [35].

Main reason for the need of new wording is an implementation of new alternative ways of consumer rights and interests protection according to the Mediation Law of RK, which helps to solve problems more efficiently. Mediation is applicable in cases of disputes (conflicts) originating from civil, employment, family or other relations with participation of individuals and (or) legal entities, as well as disputes reviewed under a criminal proceeding for cases over minor offences and medium-gravity crimes. Objectives of mediation: 1) to arrive to a variant of dispute (conflict) resolution accepted by both parties of mediation and 2) to reduce the level of strife between parties [36].

There are more reasons for development of current consumer protection legislation. These are:

- extending of rights of public organisations, providing of opportunity to decide matters of material security as a non-profit organisation;
- more distinct regulation of business people's responsibility for infringement of rules of goods (work, services) quality, particularly in case of realization of defective goods (low quality work, services) and refund;

- the need for development of programmes of consumer education for different groups of people.

Development of consumer protection system will be largely conditioned by coverage of vital human's values, exceeding the sphere of purely consumer problems: protection in the sphere of salary and incomes, environmental protection, health care, care for unemployed people, reformation of social insurance and other systems [37].

In Kazakhstan norms for consumer protection are dispersed over different legal acts. Some of these provisions are contained in current Constitution of RK, some – in Codes and other Laws and Presidential Decrees. Cohort of by-laws is quite large: from Government Resolutions of RK, of individual Agencies and Departments and of local agencies of state power. Under such circumstances it is justified to talk about complex nature of consumer protection legislation.

However, it is obvious that a consumer as a private individual, realises the most vital of his rights – first of all, a right for satisfaction of essential physical needs – by participation in civil relations, by making different deals, contracts etc. A consumer is pre-eminently a person at civil law, a participant of civil relations. He is a weaker party of contractual relationships with participation of entrepreneurs offering goods, work and services. This is why civil aspect of consumer protection and definition of consumer's civil legal capacity as a participant of civil relations is the most important one. All the other legal provisions for consumer protection can be regarded as derivative, secondary and mediated [38].

Kazakhstan scientist Udartsev S.F. notes that despite efforts to develop Consumer Rights Protection Act, problems in this sphere were not duly captured in current civil legislation of Kazakhstan. This observation is also justified for CC RK as main regulatory act for civil relations. CC RK is mostly dedicated to granting of maximum freedom to participants of civil relations, so it is a good basis for development of market transformation. It particularly concerns one of the key principles – principle of contractual freedom (para.2 Art.2, Art. 380 and others) [39].

Though, modern development of Kazakhstan society demands more detailed regulation of contractual relationships with consumers. At present CC RK regulates relations in different spheres of contractual material legal relations. Its provisions are initially intended to regulate those relations in which entrepreneurs are principal, as they have commercial benefit from these agreements. CC RK offers quite limited quantity of provisions protecting interests of weaker party which is represented by the consumer. Here we can refer to the Art.10 and 11 of CC RK.

A consumer is a weaker party to contractual relationships because of following reasons: 1) consumer's limited financial capability is intended for satisfaction of natural human's needs and this capability presents an object of competitive struggle; 2) consumer does not participate in development of terms of an agreement to which he is a subject; 3) consumer's right for free informed choice of goods, work and services is limited by influence of marketing technologies; 4) consumer as a party to a buy and sell relationship has not expert abilities in qualitative assessment of goods, work and services, and his abilities concede to those of the seller. Udartsev S.F. rightly notes a need for perfection of provisions of CC

RK as to legal capacity of citizens as party to civil relations in cases when they are consumers [39].

Conclusion

Therefore, abovementioned facts let us not following special aspects of current Kazakhstan legislation for consumer rights protection:

1) legal system of the Republic of Kazakhstan for consumer rights protection is complex and contained in various acts, such as: Law on Technical Regulation of RK of November 9, 2004, Competition Law of December 25, 2008, the Law of RK Concerning Social Associations of May 31, 1996, the Law of RK Concerning Non-Commercial Organizations of January 16, 2001 and others. This fact is stated in para.2 Art.2 of the Consumer Rights Protection Act;

2) main provisions directly regulating rights and lawful interests of consumers are contained in civil legislation of RK and represented by special Consumer Rights Protection Act adopted in 2010;

3) Kazakhstan acknowledges importance of international legal norms in the sphere of consumer protection and applies the principles, stipulated in Resolution of the General Assembly in 1985 [14]. This provision is stated in para.3 Art.2 of Consumer Rights Protection Act: "In case there is an international treaty ratified by Kazakhstan, which establishes rules different from those established by the Consumer Rights Protection Act, the international rules prevail" [3];

4) provisions of the Consumer Rights Protection Act of 2010 stipulate matters of state regulation in the sphere of consumer rights protection. Competence of public authorities – Government of RK, Agency of RK for consumer protection and other authorities – was assigned according to it. Establishment of a separate body for consumer protection improves the policy of state regulation;

5) the Consumer Rights Protection Act of 2010 stipulates all the basic consumer rights, acknowledged by international society (Chapter 3 of the Law on Consumer Rights and Their Protection), but it scarcely reflects the question of entrepreneurs' responsibility for violation of quality requirements for goods, work and services;

6) despite certain progress in the sphere of consumer rights protection and reforms of governance system, current state of legislation need further development resulting from the need for implementation of alternative means of consumer protection, particularly concerning medicine;

7) Kazakhstan legislation offers almost no provisions for involvement of media to the policy of public education; public organisations should have an opportunity to initiate (on grant basis or other terms) TV-programs and other media-programs, raising level of consumer knowledge (like "The Sample Purchase" in Russia). State should be the main sponsor of such programs, represented by authorized agencies, as well as Kazakhstan TV-channels. At present we can observe a malpractice of investing of all the allowed finances into distribution of booklets and brochures, while most part of the information is accessed via TV and the Internet.

References

- Keyta-Stankevich T.G. The Evolution of Consumers' Rights Protection: a Global and National Experience. – Belarus Journal of International Law and International Relations, 2001, No. 2. - <http://evolutio.info/content/view/>
- The Consumer Rights Protection Act of the Republic of Kazakhstan of May 4, 2010 No. 274-IV 3PK. - IS Paragraph. - <http://online.zakon.kz>
- Civil Code of the Republic of Kazakhstan (General Part) of December 27, 1994. - IS Paragraph. - <http://online.zakon.kz/>
- Laws of the Republic of Kazakhstan “On Amendments to Some of the Legal Acts of the Republic of Kazakhstan on the Issues of Consumer Rights Protection” of July 5, 2011 No.452-IV; November 7, 2014 No.248-V; November 17, 2014 No.254-V; December 29, 2014 No.269-V - www.adilet.gov.kz/
- Ivanova T.M. History of Establishment and Development of Consumer Rights Protection Institution in Foreign Countries // Vestnik AGTU. Yuridicheskie nauki. – Astrakhan, 2005, No. 5 (28), P. 277-284.
- Consumer Rights Protection: History. - <http://mosadvokat.org/zashhita-prav-potrebitelya-istoriya/>
- Consumer Movement in the USA. - <http://pasha-chistov.narod.ru/USA.html>
- Motekhina M. V. A Course of Lectures on Consumer Right Protection. – Tula: Pub. house TGPU, 1998, 41 p.
- Sherstobitov A.E. Civil issues of protection of consumers. – Moscow: Pub. house MGU, 1993, 144 p.
- When is the World Consumer Rights Day? Information resource ROO “NLP” - <http://www.potrebitel.kz/>
- Talantsev V.I. Governmental Protection of Consumer Rights at the Goods and Services Market. Lecture Notes. – Vladivostok: Pub. house. DVGTI, 2003, 66 p.
- Guidelines for Consumer Protection // Resolution of the General Assembly No. 39/248 of April 9, 1985. - <http://www.un.org/ru/>
- The Consumer Rights Protection Act of the Russian Federation Nom. 2300-1 of February 7, 1992. - <http://online.zakon.kz/>
- Selyanin A.V. Consumer Rights Protection. Manual for graduate students. – Moscow: ZAO Justitsinform, 2006. - http://www.adhdportal.com/book_2169.html
- History of Consumer Movement. OOSP “Resonans”. - <http://www.zonapprav.ru/ap/history.htm>
- Savchenko S. We Cannot Adopt New Consumer Rights Protection Act in the Current Wording // “Kazakhstan segodnya” of December 9, 2008 . - <http://www.gazeta.kz/>
- Law “On Amendments to the Consumer Rights Protection Act of the Kazakh SSR of June 5, 1991 No. 640-XII” of the Republic of Kazakhstan of June 26, 1992 No. 1435-XII. - Vedomosti Verhovnogo Soveta Kazahskoj SSR, 1991, No. 23, p. 267.
- Civil Code of the Republic of Kazakhstan (General Part) of December 27, 1994. - <http://online.zakon.kz/>
- Law on Free Enterprise of the Republic of the Republic of Kazakhstan of January 31, 2006 No. 124-III 3PK. - <http://online.zakon.kz/>
- Decree of Plenum of Supreme Court of the Republic of Kazakhstan “On Practical Application of Consumer Protection Legislation by Courts” of July 25, 1996 No. 7. - <http://online.zakon.kz/>
- Regulatory Resolution of Supreme Court of the Republic of Kazakhstan “On Amendments to the Decree of Plenum of Supreme Court of the Republic of Kazakhstan of July 25,

- 1996 No. 7. “On Practical Application of Consumer Protection Legislation by Courts” of June 18, 2004 No. 9. - <http://online.zakon.kz/>
- Regulatory Resolution of Supreme Court of the Republic of Kazakhstan “On Amendments to Some of Regulatory Resolutions of Supreme Court of the Republic of Kazakhstan” of December 30, 2011 No. 5. - <http://online.zakon.kz/>
- Civil Procedural Code of the Republic of Kazakhstan No. 411-I of July 13, 1999. – <http://online.zakon.kz>
- Code of the Republic of Kazakhstan “On Taxes and other Obligatory Payments to the budget” (Tax Code) of December 10, 2008 No. 99-IV 3PK. – <http://online.zakon.kz>
- Law of the Republic of Kazakhstan “Concerning Social Associations” of May 31, 1996 No. 3-I. – <http://online.zakon.kz>
- National Consumers League: official Internet resource. - <http://www.potrebitel.kz/>
- Government Resolution of the Republic of Kazakhstan No. 1538 of December 31, 2013 On Adoption of Regulation on the Agency of the Republic of Kazakhstan for Consumer Rights Protection. - <http://online.zakon.kz>
- A New Consumer Rights Protection Act Adopted in Kazakhstan. - <http://total.kz/politics/>
- Mediation Law of the Republic of Kazakhstan No. 401-IV 3PK of January 28, 2011. - <http://online.zakon.kz>
- Kvyatkovskaya T.G. Issues of Development of Consumer Rights Protection Legislation in the Republic of Kazakhstan. Candidate's dissertation abstract. - Almaty, 2002, 29 p.
- Tkachev V.N. Consumer Rights Protection in the Russian Federation: Legal Regulation, Comments, Consultations, Models of Documents. Research and practice guidebook. – Moscow: Wolters Kluwer, 2009, 544 p.
- Udartsev S.F. Legal Coverage for Consumers’ Interests. Commentary to para.6 (additional) Art.10 of CC RK. - <http://online.zakon.kz/>
- Consumer Rights Protection Act of the Kazakh SSR of June 5, 1991 No. 640-XII (void). - <http://online.zakon.kz/>
- Constitution of the Republic of Kazakhstan of August 30, 1995. - IS Paragraph. - <http://online.zakon.kz>
- Presidential Decree of the Republic of Kazakhstan of August 24, 2009 No. 858 “On Concept of Legal Policy of the Republic of Kazakhstan for the period of 2010-2020”. – IS Paragraph. - <http://online.zakon.kz>
- Article about POCRP “Femida+” // “Nash Kostanay” of February 27, 2014 No. 15. - <http://top-news.kz/>
- Civil Code of the Republic of Kazakhstan (Special Part) of July 1, 1999 No. 409-I. - <http://online.zakon.kz/>
- Zenin I.A. Civil and Trade Law of Foreign Countries. Chapter 3.10 – Consumer Rights Protection. – Moscow: Pub. house. MESI, 2005, 194 p.
- Presidential Decree of the Republic of Kazakhstan of November 13, 2013 No. 691 “Concerning the Agency of the Republic of Kazakhstan for Consumer Rights Protection”. - <http://online.zakon.kz>

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