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THE FACTOR OF CONSUMER RIGHTS PROTECTION AS A CRITERION FOR SOCIAL SYSTEM DEVELOPMENT

Abstract

The Article studies the scope and the essence of consumer rights based on the study of international experience and national legislation of the Republic of Armenia. The article presents the principal vulnerabilities of the consumer protection system in the Republic of Armenia. The need for the state to pay more attention to the issues of envisaging effective structures to protect consumers' rights and legal interests was substantiated.

As a result of the study, it was substantiated that the essence of the fundamental rights of consumers is often reflected incorrectly in the acts aimed at regulating consumer relations; not all the necessary legal conditions are provided for the realization of the fundamental rights of consumers. As a result of the study, the need to envisage legal solutions in line with the developments in the socio-economic life of the country was substantiated, which will best guarantee the protection of consumer rights.

Keywords: market, consumers, fundamental rights, consumer protection, consumer relations.

Introduction

In philosophical discourse, it is rightly noted that the main criterion for developing a social system is the scope and boundaries of the implementation of its members' freedoms, rights and needs (Hovhannisyan, 2005, pp. 23-24, 2015, p. 42).

Conditioned by the current market economy, along with the production and consumption, it is of high importance to protect the consumer rights; since the context of the continuous development of market relations, it is necessary to take adequate measures to protect and guarantee the rights and the legal interests of the weaker party (consumer) in the market.

This is also because the dynamic changes in the market often lead to the disruption of the balance between the interests of consumers and the sellers of goods (producers, service providers) in favour of economic entities. From this point of view, it is not a coincidence that many countries are prioritizing the issues of consumer right protection. The international community, in its turn, is taking decisive steps to develop and implement a coordinated policy in this area.

As a piece of evidence to the previous statements can stand the adoption of several directives by the European Union, which are directly related to consumer rights and the improvement of their protection mechanisms, among which it is valuable to mention the Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (Directive 2001/95/EC, 2002), the Directive 2011/-83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights (Directive 2011/83/EU, 2011) and the Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (Council Directive 85/374/EEC, 1985).

The consumer policy in the European Union

aims to protect consumers from the serious risks and threats that the latter cannot overcome as individuals, to enable them to make choices based on accurate, clear, solid information, to increase consumer welfare and to effectively protect their safety, as well as economic interests (Valant, 2015, p. 3).

A study of consumer protection programs by the European Union shows that consumer protection covers two broad areas: the protection against economic risks and the protection against risks arising from dangerous goods (Micklitz, 1991, p. 55).

The effectiveness of each state's policy in the consumer sector is primarily due to the extent to which that policy is in line with the ongoing changes in the economy, as often these changes themselves impose the need for reform, expanding the scope of consumer rights, and taking measures to prevent possible violations in the consumer sector.

Basic Rights of Consumers

In this regard, it is essential to address the basic rights of consumers, and their essence, taking into account the lack of comprehensive analysis of the mentioned issues in the armenian professional literature, the diversity of approaches adopted by different countries, the need to present proposals that can contribute to the development and implementation of a more targeting, effective consumer policy by the Republic of Armenia.

In the process of defining the scope and the essence of consumer rights, a unique role was played by the Special message to Congress on protecting consumer interest, March 15, 1962, of the President of the United States, John F. Kennedy. In the mentioned message, such basic rights as the right to security, the right to receive information, the right to choose and the right to be heard (Kennedy, 1962, p. 2) were mentioned for the first time. The message later became known as the Consumer Rights Bill (Owolabi,

2015, p. 55).

At this moment, the right to safety presupposes that consumers must be protected from life-threatening or health-threatening products. The essence of the right to information is that consumers must be protected from false, untrue, intentionally misleading information, advertising, branding or other similar practices; and must be aware of the facts that enable them to make informed and reasoned choices. Furthermore, the right to choose requires guaranteeing the availability of different goods and services at competitive prices (where possible), and, in the event of an absence of such a possibility in specific areas, where state regulations replace it, it is necessary to guarantee fair prices and high-quality services. As for the right to be heard, it calls for the interests of consumers to be fully and compassionately addressed in the formulation of government policy and for consumer disputes to be resolved fairly and promptly by administrative tribunals (Kennedy, 1962).

The first particular consumer information policy program of the European Union was adopted in 1975, in which the following five basic consumer rights were identified:

- The right to protection of health and safety;
- The right to protection of economic interests;
- The right to compensation for damage;
- The right to education;
- The right to legal representation (the right to be heard).

The program (along with previous programs) has served as a basis for the subsequent adoption of several directives and regulations in the field of consumer protection (Valant, 2015, p. 4).

The study of this program allows us to outline the essence of the basic consumer rights enshrined in it. As a result of this, *the right to health and safety* requires the safety of goods and services not to endanger the consumer in the case of normal, predictable use. This right also implies providing the necessary information to consumers on the risks associated with goods and the requirement for public law entities to adopt regulations to ensure their safety.

The right to protection of economic interests presupposes the protection of consumers from abuse of power by sellers (for instance, by concluding unilateral contracts, not providing for vital consumer rights in contracts, etc.), the provision of reliable information to consumers, excluding confusing information and the guarantees of the opportunity to make an adequate choice.

The right to compensation for damages presupposes the provision of prompt compensation to the consumer in the event of damage and the provision of necessary support and consultation to consumers on consumer grievances or damages resulting from the purchase or use of goods.

The right to education presupposes the provision of the necessary information to the consumer on the main features of goods, the guarantee of the opportunities to make a rational choice of goods and services in a competitive environment, to use them safely to meet their needs, to demand compensation for damage caused by defects in goods and services and the education of children, young people and adults for them to be able to make informed choices and be aware of their rights.

As for the right of legal representation (right to be heard) requires the consumers to be consulted and informed in the event of making decisions about consumers, in particular through consumer protection or other similar organizations (Preliminary Programme of the European Economic Community for a Consumer Protection and Information Policy, 1975).

In terms of identifying the fundamental consumer rights, it is also essential to mention the United Nations guidelines for consumer protection. The guidelines were first adopted by the General Assembly Resolution 39/248, later extended by Economic and Social Council Resolution 1999/7, and then revised and adopted by the General Assembly in 2015 with the Resolution 70/186 of December 22, 2006 (*The United* Nations Guidelines for Consumer Protection, 2016, p. 3).

The consumer protection guidelines emphasize the need to meet the following legal expectations:

- Availability of essential goods and services to consumers;
- Protection of vulnerable and insecure consumers;
- Protection of consumers from threats to their health and safety;
- Promotion and protection of economic interests of consumers;
- Consumers' access to adequate information that will enable them to make informed choices based on individual desires and needs;
- Providing consumer education, including environmental, social and economic consequences of consumer choice;
- Existence of effective mechanisms for resolving consumer disputes and compensation;
- Freedom to form groups in the consumer sector or other similar organizations, to present their point of view and to have an impact on the decision-making process;
- Promotion of sustainable consumption models;
- Ensuring the same level of protection in the field of e-commerce as in other areas of trade;
- Consumer privacy protection and global free flow of information (*The United Nations Guidelines for Consumer Protection*, 2016, p. 7).

The study of the Guiding Principles of Consumer Protection suggests that, in addition to the rights enshrined in the Consumer Rights Bill, an emphasis is put on the right to compensation and the right to education, underlining the need to take effective measures to guarantee them.

Summarizing the results of the study of the Consumer Protection Guidelines, the Consumer Rights Bill, and the European Union's First Special Consumer Protection Information Policy Program, the following rights can be distinguished:

- Right to security
- Right to information
- Right to choice
- Right to education
- Right to compensation
- Right to be heard

Consumer Rights Protection Policy in the Republic of Armenia

Referring to the current situation in the Republic of Armenia, it should be noted that the provisions on consumer protection are reflected both in the text of the RA Constitution (Constitution of the Republic of Armenia, 2015) (hereinafter the Constitution) and other legal acts, among which the RA Civil Code (Civil Code of the Republic of Armenia, 1998), the RA Law on Protection of Consumer Rights (Law on Protection of Consumer Rights of the Republic of Armenia, 2001), the RA Law on Trade and Services (Law on Trade and Services of the Republic of Armenia, 2004), and other legal acts stand out with their high importance.

In this context, it is necessary first to address the issues of protection of consumer rights enshrined in the Constitution and, further, the issues of providing sufficient guarantees for their reflection, realization and protection of consumers' rights in other legal acts.

The study of the policy adopted by the Republic of Armenia in the field of consumer protection shows that it has had different development tendencies. Accordingly:

- The text of the RA Constitution adopted on July 5, 1995 (adopted on 05.07.1995, entered into force on 13.07.1995) did not contain a special provision aimed at protecting the interests of consumers.
- As a result of the referendum on November 27, 2005, Article 31.1 of the Chapter "Basic Right and Freedoms of the Human Being and the Citizen" of the Constitution of the Republic of Armenia clearly enshrined the norm

defining the positive responsibility of the state in the field of consumer protection, control of goods, works and services. In particular, the article, as mentioned above, stipulated that the state protects the interests of consumers and implements measures envisaged by law in the direction of quality control of goods, services and works.

- As a result of the 2015 constitutional reforms, the positive responsibility of the state in the field of consumer protection, control of goods, works and services did not get enshrined in the Chapter "Basic Right and Freedoms of the Human Being and the Citizen", but it rather singled out as the main goal of the state policy in the third chapter of the RA Constitution, the "Legislative Guarantees and Main Objectives of State Policy in Social, Economic and Cultural Spheres".
- The 2015 edition of the Constitution has adopted a new approach to guaranteeing the protection of human and civil rights, and it has deliminated classical rights from the goals of the state¹, taking into account that they stand for completely different legal consequences (Concept of Constitutional Reforms of the Republic of Armenia, 2014, pp. 24-25).

Summarizing the above, it can be concluded that according to the current edition of the Constitution, the rights of consumers are not separated among the basic rights of a person; the Constitution does not stipulate the requirement for the state to take measures envisaged by law to control the quality of goods, works and services. The above makes the consumer protection system more vulnerable, giving the state a broad discretion to act as a "passive observer" in similar matters and to take a relatively light burden of responsibility in terms of consumer protection.

The human rights enshrined in the Constitution are the public boundaries within which the

¹ A more detailed discussion on this topic can be found in the book by G. Danielyan, V. Ayvazyan, A. Manasyan, "Provisions of the Concept of Constitutional Reforms, the main directions of their implementation in the Republic of Armenia" (2015, pp.138-139).

"effective governance" of the state must be ensured. It goes without saying that the provision of consumer rights among the fundamental human rights obliged the state to consider the rights of consumers in effective governance. Withdrawal of consumer rights from basic human rights simultaneously means ignoring this critical imperative of effective state governance, which undoubtedly reduces the level of public safety in terms of consumer rights.

Under the current approach, the state has to ensure legislative guarantees in the social sphere and the state's goals, including the protection of the interests of the consumers and the control over the quality of goods and works. Services are exclusively within their capabilities and are no longer constrained by the imperative to take positive action in this direction.

In this regard, it is also noteworthy to study the experience of some countries.

As stated in the literature, Article 51 of the Constitution of Spain (1978) envisages fundamental consumer rights, such as the right to education, the right to be informed, and the right to health. According to the Constitution, the Government is also invited to stimulate the transfer of information and education of consumers and to recognize the role of consumer sector organizations. Article 60 of the Constitution of Portugal (1976/2005) recognizes the rights of consumers as constitutional rights, and this article emphasizes the rights of consumers to health, safety, and economic interests protection, fair advertising, and the rights of consumer associations to be heard. In Brazil, the consolidation of a similar rule by the Constitution (1988) is a serious step in recognising consumer rights as a fundamental human right. The adoption by countries of constitutional provisions aimed at protecting consumer rights following the point of view expressed in professional literature may indicate the importance of consumer protection as part of human rights (Deutch, 1994, pp. 574-577).

By analyzing the experience of other countries and comparing it with the situation in the Republic of Armenia, it should be stated that in the conditions of the current vulnerability of the consumer protection system at the constitutional level, more attention should be paid to the problems of providing effective mechanisms for protecting consumer rights and legitimate interests and including them within the framework of other legal acts aimed at protecting consumer rights.

From this point of view, it is necessary to refer to the RA Law "On Consumer Rights Protection", analyzing the issues of fixing the basic consumer rights within the framework of the law and ensuring sufficient guarantees for their implementation.

Firstly, it should be noted that a lack of systematicity characterizes the law. Many of its provisions are problematic from the point of view of legal certainty; often, certain articles enshrine a particular consumer right, while there may be clear regulations on some other rights, and as a result of a meaningful analysis of their individual provisions, it is only possible to conclude that there is one or another right.

In addition, the study of the Law allows us to conclude that within its framework, individual consumer rights are either not reflected at all or incorrectly reflected from a meaningful point of view.

Taking into account the range of basic consumer rights highlighted by us in this article, we will turn to the issue of their consolidation in the law, trying to identify also the problems associated with the incorrect reflection of the essence of these rights or their content within the law.

The Essence and the Content of Consumer Rights

The right to safety - received a reservation in Article 8 of the Law, part 1 of which establishes that the consumer has the right to demand that the goods (work, service) be safe for his life, health, and property under normal conditions of use, storage, transportation, and disposal. It can be argued believe that Article 5 of the Law is also aimed at ensuring the right to safety since it regulates issues related to the requirements for the quality of goods, works, services (hereinafter referred to as goods), and the safety of goods, of course, is conditioned by ensuring its qualitative properties.

The right to receive information - is enshrined in Article 9 of the Law, part 1 of which establishes the requirement to provide the consumer with the necessary and reliable information about the manufacturer (performer, seller), his working hours, the goods sold.

Despite the fact that Article 9 of the Law is responsible for "the consumer's right to receive information about the manufacturer and goods", it can be assumed that articles 10-12 of the law are also aimed at ensuring the guarantees of this right, which enshrine the manufacturer's requirement, the seller's work procedure, as well as providing the consumer with the necessary and reliable information about goods, the list of information to be published on the website and in the electronic application.

The right to choose - has not received a separate clause in the law, but it seems that there is a hint of this in the first part of article 11 of the law, which establishes that the manufacturer (performer, seller) is obliged to provide the consumer with the necessary and accurate information about the goods in a timely manner, ensuring the possibility of their correct choice.

The right of education - there is no special note in the text of the law on the consumer's right to education, only article 4 of the law enshrines the right to "awareness" as a consumer's right. The above article establishes that the right to inform consumers is ensured by including relevant requirements in organizational and methodological and general technical and regulatory documents and general educational and professional programs, as well as by organizing information systems about consumer rights and necessary actions to protect these rights. The consolidation of the right to consumer awareness in the text of the Law, in our opinion, cannot be identified and coincide with the right to education from a meaningful point of view, since the right to information implies only informing a person about a particular phenomenon or fact.

As it is quite rightly noted in professional literature, the right to education as a subjective opportunity is a process of personal development aimed at mastering knowledge, skills, creativity, and the formation of a valuable attitude to the world (Vagharshyan, 2016, p. 25). From this point of view, it is also appropriate to quote from the definition of the concept of education given in paragraph 1 of Part 1 of Article 3 of the RA Law "On Education" (Law On Education of the Republic of Armenia, 1999), according to which: "Education is a process of learning and upbring-ing proceeding from the interests of a person, society and the state, aimed to preserve the knowledge and to pass it on to generations".

From the point of view of analyzing the consumer's right to information in the light of the legal regulation of the Law, the interpretation of Article 4 of the Law may be valuable, which makes it possible to distinguish three important components of the consumer's right to information:

- The inclusion in the documents of the necessary information about the rights of consumers and their protection: these can be not only regulations but also technical documents attached to the goods, labels, descriptions, samples, or other similar documents;
- Inclusion of the necessary information about consumer rights and their protection *in gene-ral* education and professional programs unfortunately, it should be noted that this requirement is declarative since there are no special programs aimed at protecting consumer rights in general education and professional programs. From this point of view, it is also noteworthy that resolution 70/186 of "Consumer protection", adopted by the UN General Assembly on December 22, 2015, in which (paragraph 44), as a requirement for

educational programs provided for consumers, emphasizes addressing issues such as, for example, health, nutrition, prevention of foodborne diseases origin, the danger of the product, their labeling, legislation, dispute resolution mechanisms and compensation, environmental protection, electronic, financial services, efficient use of materials, energy and water, etc (Resolution 70/186 On Consumer Protection, 2015, pp. 10-11).

• Inclusion of the necessary information about consumer rights and their protection in information systems - from the point of view of fulfilling this requirement, it should also be stated that there is no coordinated state register or another information system through which it would be possible to provide consumers with complete and reliable information about their rights and possible mechanisms for their protection.

The right to compensation for damage - from the study of the Law, we conclude that Article 15 of the Law is aimed at resolving this issue, which is responsible for "property liability for damage caused by defects in goods (work, services)". Thus, according to part 1 of the said Article "1. The damage caused to the life, and health of the consumer as a result of structural, production, component, or other defects of the goods (work, service) is subject to compensation in accordance with the procedure established by the Civil Code of the Republic of Armenia. Damage caused to property is subject to compensation in accordance with the procedure established by this Law". From the interpretation of Article 15 and the part 1 of the Law, it directly follows that the issues of compensation for damage caused to the life and health of the consumer are beyond the scope of the subject of its legal regulation, and the Law applies only in cases of compensation for damage caused to property.

In other words, in the current version of the Law, in case of harm to the life and health of the consumer, the issues of compensation should be resolved by the provisions of paragraph 3 of Chapter 60 of the Civil Code of the Republic of Armenia, and in case of property damage, the Civil Code of the Republic of Armenia is inapplicable, since the Law regarding compensation for property damage is carried out only a reservation regarding the possibility of its application.

First, in this regard, the following important circumstances should be stated:

- According to paragraph 3 of Chapter 60 of the RA Civil Code, not only the issues of compensation for damage caused to human life or health due to their shortcomings when purchasing goods for consumer purposes are regulated, but also the problems of compensation for damage caused to property.
- The specified reservation of the Law could be considered justified or reasonable only if, from the point of view of compensation for damage caused to property, it established any specifics or any exception to the general rules of compensation for damage provided for by the Civil Code of the Republic of Armenia, while the study of the Law indicates that it does not provide any specifics in the issue of compensation for damage caused to property.
- In part 4 of Article 15 of the Law, special attention is paid to the fact that the manufacturer (performer) is responsible for damage caused to the life, health, property of the consumer, regardless of whether the level of scientific and technical knowledge makes it possible to detect their unique properties or not. Despite the fact that there is no special regulation in paragraph 3 of Chapter 60 of the RA Civil Code regarding the inadmissibility of releasing from the liability of a person who has caused harm based on the level of scientific and technical knowledge, however, we believe that the norm enshrined in Part 4 of Article 15 of the Law should not be considered as an exception to the general rule provided for in paragraph 3 of Chapter 60 of the Civil Code of the Republic of Armenia when deciding on the responsibility of the person who caused the harm (in our opinion, in the

context of the current legal regulation, the court should interpret this rule from the point of view that the person who caused the harm cannot refer to the level of scientific and technical knowledge as an irresistible force, respectively, it cannot serve as a basis for releasing the person who caused the harm from liability by force of Article 1091 of the Civil Code of the Republic of Armenia.

• In addition, it is also noteworthy that the norm fixed in part 4 of Article 15 of the Law applies not only to property but also to relations for compensation for damage caused to human life and health; that is, from this point of view, this regulation cannot be considered as a feature provided for in terms of compensation for damage caused property exclusively.

The right to be heard - the study of the Law shows that the right to be heard has not been reflected in its framework. Article 41 of the Law states only that consumer rights protection by public associations of consumers is carried out under the procedure established by the legislation of the Republic of Armenia. This norm, of course, does not reflect the whole essence of this right since the content of the right to be heard also boils down to the fact that when developing a state policy concerning consumer rights, the opinion of the latter must necessarily be taken into account, it must be possible for consumers to present their point of view in full in all circumstances, and for this purpose, it is also necessary to take steps aimed at endowing consumer organizations with such effective tools, with the help of which it will be possible to influence the process of state policy development in the consumer sector.

Conclusion

Summarising the results of the analysis carried out within the framework of this article, it can be stated that the legal acts of the Republic of Armenia aimed at regulating relations in the consumer sphere often violate the essence of basic consumer rights, from the point of view of the implementation of basic consumer rights, all the necessary legal conditions are not provided, which leads to consumer rights being trivial and to the lack of opportunities for their effective implementation. In this regard, it is necessary to take steps to develop a legal system aimed at protecting consumer rights, providing legal solutions consonant with the development of the socio-economic life of the country, and also eliminating obstacles that violate the normal process of implementing consumer rights.

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