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Scientific-Practical Description Of The Status Of The Consumer As A Subject Of Relations Arising From Damage

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ABSTRACT

The definition of consumer status is based on the specifics of the participation of an individual in the procurement of goods (works, services). In this case, if an individual enters into the relevant legal relationship for consumer purposes, he is recognized as a consumer. Therefore, the legislation provides that the damage caused to an individual as a result of a defect in the goods (work, service) can be compensated in the case of purchase of goods for consumer purposes. However, given the breadth and variety of scope of the legal relationship in which an individual participates, the problem of determining its purpose arises. In this case, the nature of the legal relationship and the origin of the purpose for which the goods are purchased will be a specific solution. At the same time, the application of warranty to these situations can be used effectively in solving the problem. This article analyzes the problems of determining the status of the consumer in relation to the damage caused by defects in the goods (works, services) and their solutions.

KEYWORDS

Consumer, damage, contract, right, obligation, warranty, civil law, subject, business activity, individual, legal entity.

INTRODUCTION

The consumer participates in the obligation-legal relationship for personal purposes, household purposes, or as a result of the

damage caused to him which is a result of the legal relationship performed for these purposes; the individual acquires the rights of

the consumer. This is primarily due to the fact that the obligations under Article 234 of the Civil Code arise from contracts and damages.

In a relationship resulting from the harm of an individual, the consumer status is related to the purpose of purchasing the goods, ordering the work and service. If the goods (work, service) are purchased for personal and household purposes, and the result of its defect is considered to be a damage to the life and health or property of an individual in which case the person has the right to claim compensation for damages. At the same time, this situation is reflected in Article 13 of the 1968 Brussels Convention on the Enforcement of Judgments and Enforcement of Judgments in Civil and Commercial Disputes. It stipulates that a consumer is a person who enters into a contract for purposes not related to trade and professional activities [9]. A statement close to this rule is also set out in EU Directive 29/2005/29 on Unfair Commercial Practices in the Domestic Market [15]: a consumer is an individual who enters into a commercial relationship governed by this Directive and pursues personal goals, not commercial, business or professional interests [16]. It can be seen that the approach to the concept of consumer also differs in the legislation of foreign countries. For example, in Malaysia, the Consumer Protection Act of 1999 gives a traditional definition of the concept of consumer: consumer - as a rule, a person who buys or uses goods and services for personal or household purposes. This definition completely excludes the protection of consumer rights in the field of trade or production. Legislation in some countries, particularly in Fiji and Pakistan, provides for the existence of a consumer in the field of leasing and rent, but the phrase "acquisition or use"

can be applied to situations where there is no direct property right [3]. In some jurisdictions, it is recognized that it is difficult to distinguish whether goods are used for work or for domestic purposes. A clear example can be seen as mobile phones. The separation of work from home represents, on the one hand, the period of mass production in factories and, on the other hand, the development of a wide range of service areas in offices. In developing countries, especially in rural shops, such a division has always been less pronounced. In developed countries, the recent emergence of the possibility of working away from home has necessitated a flexible representation of the separation of work and domestic consumption. The Consumer Protection Law of China, adopted in 1993, gives a broad definition of the concept of consumer and adds the following element to it: "Farmers who buy the means of production for agriculture". Although this sentence has been removed from the updated version of the 2013 law, the basic idea that small producers have the same status as household consumers is widespread and valid. Other countries, including Vietnam, India, Nepal, the Republic of Korea, and the Philippines, include consumers in their laws as farmers, small fishermen, small traders, and even "organizations" that purchase goods for their own consumption [4]. According to a 2013 survey of 60 jurisdictions by international consumer organizations, "many countries clearly define the boundaries of access to household goods and services." [5]. In Australia, France and the UK, there are no separate definitions of the concept of consumer. Belgian, Quebec and Uruguayan legislation excludes the use of goods for professional purposes in the definition given to the consumer [1]. Currently, there is a certain

degree of flexibility in several jurisdictions, particularly in Latin American countries, such as Chile, Panama and Guatemala [2]. The legislation of these countries reflects the possibility that the concept of consumer can be expressed in a wider range of personalities. In several Latin American jurisdictions, consumer protection also applies to small artisans (Costa Rica) and micro-enterprises (Mexico) [6]. The latest EU Consumer Rights Directive (June 2014) defines the concept of consumer as: an individual acting for purposes other than trade, business, craft or professional activities. However, the directive stipulates that “if the contract is concluded in part for internal and partly external purposes of commercial activity, and the purpose of commercial activity does not prevail in the general text of the contract, such person must also be recognized as a consumer.”[18].

The consumer participates in the obligation-legal relationship for personal purposes, household purposes, or as a result of the damage caused to him which is a result of the legal relationship performed for these purposes; the individual acquires the rights of the consumer. This is primarily due to the fact that the obligations under Article 234 of the Civil Code arise from contracts and damages.

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It should be noted that the Civil Code does not directly define the concept of “consumer”. The definition of this concept is explained only in a special law and in the context of the application of this law. In other legal relations, this term is not expressed from a normative point of view. According to some experts, the acquisition of consumer status depends on a number of circumstances and conditions that are reflected in practice in the relevant legal relationship, as in other statuses (for example, owner, service lawyer, war veteran, etc.) [10].

A single approach to the interpretation of the term “consumption” has not been defined at the normative level. Such an approach has not been developed in the legal literature either. Three points of view are distinguished in this regard. First, according to the traditional approach, the consumer can only be an individual. This is due to the interpretation of consumer protection legislation and the expression of the concept of entrepreneur in the legislation on guarantees of freedom of entrepreneurial activity. It is established that entrepreneurial activity is based on risk, and the entrepreneur as a subject of contractual relations cannot refer to the lack of experience, knowledge and other circumstances. At the same time, the counterparty-consumer has additional rights to qualify life situations and even its characteristics in its favor, to reduce its liability or to unilaterally terminate the contractual relationship. Article 5 of the Law “On

Consumer Protection” provides for the right of the consumer to request information about the manufacturer, on the one hand, and the obligation of the consumer counterparty to provide this information in an open and visible manner. Otherwise, the consumer has the right to claim refund for the damages. In this case, the responsibility and liability rests with the contractor, regardless of whether the consumer exercised his right or not. This approach describes the vulnerability of the consumer and gives rise to his or her right to recover damages when his or her rights are violated. This approach is also observed in judicial practice. Courts in this situation usually reject the claims of business entities on consumer rights, arguing that the entrepreneur must fully understand the issue and be fully aware, or assume the risk of compensation for damages. In particular, the courts are required to bear the risk of liability when concluding contracts with the entrepreneur and companies operating in violation of the law, as well as to compensate the damage caused to consumers. It is understood that a legal entity as a business entity must be able to see the consequences, in particular, the negative consequences. This approach is common in foreign law and is defined in Article 12 of the Luxembourg Unfair Contract Terms Act of 1977 [7] as a person who lacks professional knowledge and skills and buys goods for personal purposes [8].

The special legal status of the consumer is an integral part of the general legal status of the citizen, legally defined by legal norms. The special legal status of the consumer is a set of rights and obligations enshrined in the law on consumer protection, as well as the guarantee of the exercise of these rights is determined by the establishment of separate civil law

mechanisms for their protection. The consumer, as a full participant in the legal relationship, is not only entitled to rights, but also to the obligations imposed on him, and he must fulfill these obligations. In case of violation of the rights of the consumer by the business the additional special right is provided first of all in relation to protection and the consumer should not abuse this right [11]. In special scientific research, many concepts and views have been formed on the interpretation of legal subjectivity as a legal category. Extensive research in this area was carried out by I.A. Mikhailova [20] and R.J. Matkurbanov [19], in whose works the category of special legal subjectivity came not from the age, mental state, addiction to alcohol, but from a particular area and direction in the legislation which is of the special status given to this concept.

Elements of modification or specialization of the legal personality of an individual determine its civil legal status and reflect the specificity of the mechanisms for exercising the subjective rights belonging to it. According to one of the concepts devoted to the legal status of the individual, the subjectivity of law is manifested as an element of the legal status of the individual. If the subjectivity of the consumer's exclusive right is considered through the above abstract concept, the person will have to have special legal capacity in order to be recognized as a consumer. However, the status of the consumer is considered a legal status, not a social one, in this legal relationship. The subjectivity of the general right of the consumer as an individual cannot be transformed under the influence of special elements. V.F. Yakovlev's point of view in this regard is noteworthy, as he writes that legal capacity is granted to citizens by law. There is

no need to form special features of citizens as a subject of civil law. The legal capacity of a citizen can only be general, because it is the same for all, special legal capacity belongs to organizations, and the legal personality of a citizen is determined by several areas of law at the same time [25]. Recognizing this concept, H.R. Rahmonkulov also states that the legal capacity of citizens is equal to them, regardless of whether they participate in the relations regulated by the norms of civil law or not [21]. According to S.D. Radchenko, the following cases can be included in the special civil legal capacity: the possibility of acquiring property rights for certain types of property; the right to leave a will [13]. According to V.V. Rovny, the importance of legal capacity lies in the existence of rights and obligations and the abstract possibility of their further realization in order to meet the needs of the citizen, so it does not matter whether another citizen is not engaged in entrepreneurial activity, note the author. What is important is that these rights are expressed in civil capacity [12].

Analyzing the approaches of the Civil Code and the legislation on consumer rights to the concept and status of “consumer”, I.V. Kiryushina makes the following comments: the term “consumer” is analyzed from an economic and legal point of view, because the consumer's personality as a complex social reality is studied not only legally, but also in the economic sense of the term “consumption”. While the Civil Code has a broader approach to the definition of the term “consumer”, the legislation on consumer protection gives the citizen-consumer additional rights and special status [17].

Furthermore, it is unclear exactly what actions are considered consumer purposes against a

legal entity. Therefore, “the consumer purposes of a citizen do not correspond to the consumer purposes of a legal entity. According to A.R. Tovmasyan [22], any exploitation for a legal entity that does not comply with the concept of “use in business” should mean the use of goods for consumption purposes, because the definition of consumer purposes of a legal entity is more complicated than the definition of exploitation in business. According to D.N. Davtyan-Davydova, the use of property in any way, which does not provide for the use of the legal entity for consumer purposes, can be included. For example, in the case of non-commercial legal entities, the obligations under consideration may establish liability for damage caused by defects in goods, works and services aimed at achieving the statutory objectives of the legal entity [14].

In our opinion, the consumer purposes of a legal entity also depend on the area in which the purchased goods are used. If a product is purchased for purposes not related to business activities, such as New Year's gifts to employees or for charitable purposes, it may be assessed as a consumer purpose. A consumer is not a legal entity that buys goods, orders work or services. It is necessary to decide on the application of the rule of liability for damage caused by the defect of the goods (works, services) to the legal entity, based on the issue of understanding the type of contract concluded by the legal entity when purchasing goods, ordering work and services. For example, if the retail contract does not stipulate that the buyer must be an individual, the consumer contract stipulates that the customer must be a citizen. It appears that the purchase of goods by a legal entity through retail sales (e.g., office equipment, gifts and building decorations, etc.) is intended for

consumption purposes. In addition, it is not prohibited to order a legal entity to perform work for consumer purposes, but it is not a domestic contract, the general rules of the contract apply, and the consequences of the defect of the work to the property of the legal entity or damage to life and health of employees, the rules of paragraph 3 of Chapter 57 in Civil Code are applied. Therefore, the purpose of the legal entity at the time of acquisition of the goods (works, services) and the status of future use of these goods (works, services) allow to determine whether the purpose of the legal entity is consumer or commercial. In summary, a legal entity is not a consumer, but if its legal relationship is for consumer purposes, the consumer will have rights to the refund for damage caused by the defect.

In this case, it is necessary to pay attention to the situation when the health of a person who is an employee of the legal entity used in the production of goods purchased by a legal entity is damaged due to defects in the goods or the head of a private enterprise loses his life due to equipment defects. It is a matter of applying liability arising from a dilettante relationship to the producer or seller, and in this case the employee or the head of the private enterprise being the consumer. Under current law, the rules of dilemma obligations do not apply to such situations, and the employee or head of a private enterprise in the example above is not considered a consumer because in these cases, the goods were purchased for commercial and production purposes, not for consumer purposes, and because it is defective, the buyer may demand a refund from the seller or demand the replacement of the goods. This is because when a legal entity or a private enterprise

purchases goods for business purposes, it is assumed that they have the appropriate knowledge, skills and abilities in this type of goods and that it is necessary to follow safety rules when using the goods. Therefore, Article 1017 of the Civil Code stipulates that only individuals and legal entities that purchase goods for consumer purposes are entitled to compensation for damage caused by a defect in the goods.

In legal relationship, the question of who exactly has the status of a consumer, that is a natural person who is a direct participant in the contractual relationship, who bought the goods from the seller or consumed the goods without entering into such a legal relationship, is important. According to experts, the right to claim damages is not only the person who bought the goods, work, service, ordered, but also any person (consumer) who suffered damage in the course of its use [24]. In this case, the main factor in determining the status of the consumer is not the fact that the individual has entered into a legal relationship with the counterparty, but the lexical meaning of the term “consumption”. In the Uzbek dictionary the word “to consume” is defined as “to use, to eat, to drink, to receive” [23]. It follows that a consumer is not only an individual who buys a good for personal purposes, but also an individual who consumes or uses it directly for personal purposes. In legal relations, the “history of the goods” does not matter how the goods came to the citizen in order to compensate the damage caused to the citizen as a result of the defect of the goods. The most important thing is that the goods are defective and cause harm to the individual as a result of its consumption.

Regarding the damage to the property of a legal entity as a result of a defect in the goods, it can be said that the main factor is that the acquisition of goods (works, services) is related to the purpose of consumption. This takes into account the fact that the goods are used for consumer purposes, for example, in the office, employees are used for consumption.

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