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Review article

ROLE OF FORENSIC MERCHANDISING IN CONSUMER PROTECTION CASES

This article content is aimed at characterization of urgent problematic issues, which are connected with determining the place of forensic expertise in cases related to the protection of consumer rights and the development of ways of solving emerging problems. The article emphasizes that in accordance with the current legislation, consumers have the right to protect their rights to the necessary quality, safety of goods and services, as well as the right to compensation for losses caused by goods of inadequate quality, dangerous to life and health, etc. It is determined that the main control in the sphere of trade is exercised by the State Service for Product Safety and Consumer Protection, and it is established that the problems are the inability of this service to carry out an instant check on a consumer complaint of a particular point of sale.

At the present stage, the problem of citizens' rights including rights in the sphere of consumption, is extremely urgent, because accession of Ukraine to the European Union requires the application of European standards of product quality. In developed country, the consumer is a major player in market relations, which is focused on the production and improvement of the quality of goods and services. The application of sanctions to sellers, manufacturers of poor-quality products does not always give the necessary effect, because usually an unscrupulous manufacturer (seller, executor) pays a fine and continues to provide poor quality services, to supply products that are dangerous to life and health.

Important factor in improving the quality of products and services provided is the legal knowledge of consumers themselves in protecting their rights. Consumer rights have a prerogative over the rights of sellers and producers, since human life and health under the Constitution of Ukraine is a fundamental value of the state.

The authors described the actions that the consumer should take to protect their violated rights, and emphasized that in cases where the consumer seeks to restore justice for this issue, he should ask an expert institution to perform a forensic trade research.

Keywords: consumer, goods, protection of rights, legislation, quality of goods, forensic science.

Formulation of Research Problem.

The regulation of relations between consumers of products and services and their manufacturers is carried out by the legislation of

Ukraine and international enforcement acts. The law itself, regardless of the ownership of the manufacturer, provides for consumer protection.

However, it is often left out of the question of those aspects that may not be considered by the consumer during the purchase of the goods or services, and in the future create the basis for possible compensation for damage caused by defects in the goods or services. Such relations are governed by the laws of Ukraine including the Laws of Ukraine:

- *On Consumer Rights Protection*¹ regulating the relations between consumers of goods, works and services and producers and sellers of goods, contractors and service providers of various forms of ownership, establishes consumer rights, and defines the mechanism of their protection and the basis for the implementation of state policy in the field protection of consumer rights;

- *On Liability for Damages Caused by Product Defects* regulating the relations regarding liability for damage caused by a defect in a product put into circulation in Ukraine,

- *On Basic Principles and Requirements for Food Safety and Quality* regulating the relations between executive authorities, food market operators and food consumers, and defines the procedure for ensuring the safety and individual quality indicators of food produced, imported (shipped) to the customs territory of Ukraine and / or exported (shipped) from², etc.

Along with the current consumer protection legislation, forensic expertise helps to establish the truth in consumer protection cases.

At the present stage, expert practice does not fully meet the needs of judicial investigative bodies, legal entities and ordinary citizens in solving the problematic issue of consumer protection cases in assessing the actual quality and value of counterfeit, non-standard, substandard consumer goods.

The relevance of this topic is determined by the need to determine the place and develop common common approaches to the appointment of forensic expertise in consumer protection cases, as there are currently no methodological materials to address this problematic issue.

Analysis of recent research and publications. Researches in the field of consumer protection were conducted by: O. M. Galkin, O. V. Zverev, T. O. Kagal, M. M. Kuzmin, L. V. Krychkovskaya,

¹ Pro zakhyst prav spozhyvachiv [On Consumer Protection]: Zakon Ukrainy vid 12.05.1991 № 1023–Khii (zi zminamy ta dopovnenniamy) Vidomosti Verkhovnoi Rady Ukrainy (VVR). 1991. № 30. St. 380 [in Ukrainian].

² Pro osnovni pryntsypy ta vymohy do bezpechnosti ta yakosti kharchovykh produktiv [On basic principles and requirements for food safety and quality] : Zakon Ukrainy. № 771/97–vr. Vidomosti Verkhovnoi Rady Ukrainy (VVR), 1998, № 19. St. 98. URL: <https://zakon.help/law/771/97-%D0%92%D0%A0/edition04.04.2018/> (data zvernennia 21.06.2019) [in Ukrainian].

I. A. Petrova, T. M. Kolomiets, N. V. Pritulskaya, O. L. Romanenko, A. V. Rabinovich, V. D. Pchelkin and others. In their textbook: *Forensic examination of goods*, T. M. Kolomiets, N. V. Prytulskaya, A. L. Romanenko pay considerable attention to the issues of technology of conducting examinations with differentiation into examination of quality, quantity and other specific features; document their results, identify requirements and characterize the status of the marking of goods in accordance with applicable standards.

Among other domestic scientists, O. M. Galkin, based on the analysis of the current legislation of Ukraine and the practice of its implementation, determined the administrative and legal principles of ensuring the safety and quality of food products and outlined the ways of their further development. M. M. Kuzmina researched on legal nature and content of consumer protection in the Internet commerce network and analyzed the case law of considering cases in the field of consumer rights protection in Internet commerce. I. A. Petrova noted that preventing offenses related to the supply of harmful products to the market allows the quality control of goods carried out in Ukraine at several levels of management: at the level of enterprises, sectoral and state. This control prevents the formation of those properties of products that do not meet the requirements of regulatory documents, even at the stage of manufacture.

The author emphasizes that the most stable quality of manufactured products are the enterprises that have developed and implemented modern quality systems in accordance with the requirements of international standards ISO 9000 series, have mastered the principles of general quality management¹. In the manual (authors: I. A. Petrova, S. O. Petrov, L. V. Krychkovska, V. L. Dubonosov) methodological features of expert study of quality and safety of consumer goods are analyzed in detail, general approaches to characterization of features are given. Identification and detection of fraud. The detailed description of the general aspects of quality assessment of food and non-food products, determination of ecological safety of production of products and factors that affect the quality of goods in the process of turnover are given. However, there is a need for further elaboration of this issue, considering the constant change of economic conditions and the development of legislation.

The **Article Purpose** is to outline topical issues related to determining the place of forensic expertise in consumer protection cases and developing ways of their solving.

Main content presentation. Consumer protection in all developed and developing countries is at the forefront. In 1961, President John Kennedy, for the first time in Congress, expressed his views on protecting

¹ Petrova I. A. Orhanizatsiia kontroliu yakosti tovariv yak sposib poperedzhennia pravoporushen [Organization of quality control of goods as a way to prevent offenses] Visnyk Kharkivskoho natsionalnoho universytetu vnutrishnikh sprav. 2013. № 4 (63). S. 188–199 [in Ukrainian].

consumer rights and outlined their fundamental rights: the right to quality goods and services; the right to have reliable information about them; the right to safety; the right to defend their consumer claims in court. They later added to the right to consumer education, the right to damages, the right to meet basic needs and the right to a healthy environment.

Subsequently, March 15, 1962, the world began to celebrate as the World Consumer Protection Day¹.

Currently the problem of citizen rights, including consumer rights, is extremely urgent, since Ukraine approximation to the European Union requires the application of European standards of product quality and the creation of preconditions for the exercise of the right of every citizen to a decent level of services and products consumed. In the developed country, the consumer is a major player in market relations, which is focused on the production and improvement of the quality of goods and services.

Applying sanctions to sellers, manufacturers of low-quality products does not always have the necessary effect, since usually the unscrupulous manufacturer (seller, contractor) pays a fine and continues to provide poor-quality services, supplying products that are dangerous to life and health.

An important factor in improving the quality of products and services provided is the legal awareness of consumers themselves in protecting their rights. Consumer rights must prevail over the rights of sellers and producers, since human life and health are, according to the Constitution of Ukraine, a fundamental value of the state.

Consumers, in accordance with applicable law and in accordance with Art. 3 of the Consumer Protection Law, have the right to protect their rights in respect of quality, safety of goods and services, as well as the right to compensation for damage caused by goods of poor quality, life-threatening and health hazards, etc². Such a right is confirmed by the Law of Ukraine: *On Liability for Damages Caused by Product Defects*.

It should be noted that Ukraine was one of the first among the post-Soviet countries to adopt the Law: *On Consumer Rights Protection*.

However, this was not a push to take the issue of consumer protection to a high and high standard. This is since in addition to the laws passed, it necessary to create the preconditions for their effective implementation and implementation. Quite often Ukrainians should deal with the fact that the quality of the goods they buy at different outlets leaves much to be desired.

¹ Problemy zakhystu prav spozhyvachiv v Ukraini ta shliakhy yikh vyrishennia [Consumer protection issues in Ukraine and ways to solve them]. URL : <https://consumerhm.gov.ua/774-problemi-zakhystu-prav-spozhyvachiv-v-ukrajini-ta-shlyakhi-jikh-virishennya> (data zvernennia 17.06.2019) [in Ukrainian].

² Pro zakhyst prav spozhyvachiv [Consumer Protection]; Zakon Ukrainy. Vidomosti Verkhovnoi Rady Ukrainy (VVR). 1991. № 30. St. 380 [in Ukrainian].

In shops, supermarkets, and even in markets that are trusted by many of our compatriots by ancient habits, you may encounter non-standard, defective and overdue goods every now and then. According to the reports of the State Consumer Service, last year inspections were carried out in 4873 business entities, and violations were found in 1984 from them, ie in 40% of cases. The most common violation was the lack of necessary, accessible, reliable and timely information on products (including non-standard ones): 74,8% of cases and sale of goods with an expired shelf life was only 17,2%.

Now, the main control in the sphere of trade is exercised by the State Service of Ukraine for Food Safety and Consumer Protection, which started operating only in 2016, after several services and inspections have been combined. It is up to this service to file a complaint, after which the State Consumer Service must conduct a shop, market or market check.

The problem is that an instant check of a point of sale of the State Consumer Service cannot. It is necessary to spend 14 days in coordination with the Ministry of Economic Development and Trade and 5 days in the State Regulatory Service. After this period, when the service comes to check, the stores, as a rule, have long hidden or disposed of all overdue, defective or non-certified goods. As a result, the result of such inspections does not demonstrate the mass disclosure of the sale of such a product.

To ensure a high level of protection of the health of citizens and to satisfy their social and economic interests and to approximate the legislation of Ukraine with the legislation of the European Union in the field of safety and quality of products, on July 22, 2014, the Verkhovna Rada of Ukraine adopted the Law: *On Amendments to Certain Legislative Acts of Ukraine food products*. The main purpose of this Law is approximation of the legislation of Ukraine to the legislation of the European Union in the field of safety and quality of products, formation of a high level of consumer protection, creation of transparent conditions for business activity, increase of the level of competitiveness of Ukrainian foodstuffs and reduction of their prices, introduction of European principles of regulation of GMO. specific requirements for the state control procedures for food quality in the market of Ukraine and imported products according to European practice, the establishment of a mechanism of self-regulation by market operators on the general requirements of legislation on food hygiene.

In addition, this Law supplements the *Code of Ukraine on Administrative Offenses* by Article 166-22 *Violation of the requirements of the legislation on safety and certain indicators of food quality»,* which provides for penalties for several offenses, namely:

- implementation of unregistered objects of sanitary measures, stipulated by the Law of Ukraine: *On Quality and Safety of Food Products and Food Raw Materials* entails imposing a fine on citizens from forty-five to sixty non-taxable minimum incomes of citizens;

- junk food circulation entails a fine for citizens of thirty to forty-five non-taxable minimum incomes;
- violation of the safety parameters of the sanitary measures objects, established by the legislation on safety and certain indicators of food quality entails the imposition of a fine on citizens from fifty to sixty non-taxable minimum incomes of citizens.

It is hoped that the provisions of the Act will be effective in practice and will lead to improved consumer protection. Verkhovna Rada adopted the Law: *On Consumer Information on Foodstuffs* establishing the legal and organizational framework for providing consumers with information on foodstuffs to ensure a high level of protection of citizens' health and to satisfy their social and economic interests. This Law sets out the general principles for the provision and requirements for food information provided to consumers, on the labeling of food products, as well as the obligations of food market operators to communicate this information to other food market operators and to consumers.

In addition, the Law defines: the content of the main terms used in this field; general requirements for food information; what information is mandatory and voluntarily provided; responsibilities of food market operators; the procedure for the placement and presentation of food information; features of marking and state control, etc.

An important factor in reaching a new level of quality protection and protection of consumer rights is the legal and consumer awareness of a person who knows their rights and understands how they can be protected. In developed countries, civil society organizations, which focus their activities on counteracting dishonest producers and sellers, as well as helping ordinary citizens to defend their rights and interests in the judiciary and public authorities, take the leading role in protecting consumer interests.

Nor can it be neglected that the key to success in achieving high standards of quality of life is the cooperation of government agencies, NGOs and consumers. Consumer culture should be used to educate children from a young age, because the right quality of goods and services is not only safety for life and health, but also respect for human dignity. It is not enough for the consumer to know that the product can be returned within fourteen days, because the Law of Ukraine: *On Consumer Rights Protection* provides for other rights of the buyer and consumer of services. They need to understand that they could protect their rights when they receive services such as footwear repair, hairdresser services, vehicle inspection. When receiving poor quality services, the consumer is entitled to compensation.

The main point that complicates the situation regarding the protection of consumers' rights and interests is the indifferent attitude of people to their rights. Often, the consumer does not want to get involved in long-term litigation because of the low cost of poor quality purchased products or little harm to health. Not all people understand that their

passivity in this matter leads to a deterioration in the quality of food, electrical goods, drinking water, utilities, and lower living standards in general. You should always remember that consumer rights are an integral part of human rights.

Consumer satisfaction in a developed European country should be a priority in the activities of public authorities. In order to improve the quality of life, one should not rely on anyone and start defending their rights independently, demanding and encouraging manufacturers (sellers, contractors) to fulfill the requirements of the law and not violate consumers' rights to protection from goods and services of poor quality, to accessible, reliable, complete and timely information on goods and services, on the free conscious choice of quality products. It is necessary to establish a civilized dialogue between public authorities, business and consumers to get the best result in the field of consumer safety, since Ukraine's approaching to the European community presents new challenges for our country, in particular in the field of protection of consumers' rights and interests. Every conscious citizen should feel responsible because changes for the better depend on the efforts of one and all, on the awareness of their personal role in improving consumer culture and safety. It should be emphasized that the legal awareness of consumers in Ukraine is very low.

All shoppers in the stores see the Consumer Protection Law of Ukraine in the corner of the consumer, but most often they are not interested in familiarizing themselves with the rights stated therein in order to be able to exercise them and defend their interests. Actions that the consumer must take to protect his or her violated rights:

- While purchasing a product or receiving a service, you must keep a check that confirms the purchase or receipt of the service.

- In case of discrepancy of a product or service, an appropriate statement (appeal, complaint, claim) should be addressed to the seller (manufacturer, contractor) for damages. The application (complaint, request, request) is sent to the legal address of the seller, the manufacturer with a letter with a description and notification of delivery. If the seller (manufacturer) does not respond in any way to the claim for reimbursement, you should file a complaint (complaint) with the public authorities, which are obliged to protect the consumer's rights. Today, these functions are performed by the State Consumer Protection Inspectorate of Ukraine and its territorial bodies.

- Another option to protect the rights and interests of the consumer is to sue for damages for poor quality goods and services.

- In parallel, the consumer can seek help from a non-governmental organization that specializes in upholding citizens' rights to quality goods and services. Non-governmental organizations of this type will help to carry out all necessary examinations and inform what evidence should be provided to the court to successfully settle the case in favor of the consumer. In addition, it will be advisable to seek the services of a

qualified lawyer who will help prepare all the necessary documents to file a lawsuit, as well as protect the consumer's rights in court and in relations with the seller, manufacturer or service provider.

In cases where the consumer tries to restore justice in this problematic issue, he asks the expert institutions to conduct commodity research of the goods. For example, if during the warranty period it is necessary to determine the reasons for the loss of product quality, the seller is obliged to arrange for the expert examination of the product within three days from the receipt of the written consent from the consumer. If the expert's findings prove that the defects arose after the product was delivered to the consumer due to violation of the established rules of use, storage or transportation or the actions of third parties, the consumer's requirements shall not be satisfied and the consumer shall be obliged to reimburse the seller for the cost of forensic examination.

In addition, the consumer, the seller (contractor, manufacturer) have the right to appeal the expert's findings in court. If the expert concludes that the defect is to be remedied, then the consumer of his choice has the right to demand from the seller a reduction in the price of the product, free repair or compensation for the cost of eliminating the defects of the goods.

If the examination establishes that the defect in the goods can not be eliminated, the elimination of this defect takes more than 14 days, or after elimination of the defect the goods will be substantially other than provided for in the supporting documents, then the consumer has the right to demand termination of the contract of sale and return of the paid for goods of a monetary amount, to demand replacement of the goods for the same goods or for a similar one, from the number available from the seller.

Conclusions. Given the pressing problems of today, one of which is the protection of consumers' rights against counterfeiting and the decline in the quality of goods, one can trace in line with this increasing importance of forensic expertise. In addition, it should be emphasized that trade specialists of the new formation should: be able to assess the quality, consumer preferences of goods, their compliance with standards, norms, requirements of laws, distinguish counterfeit goods, surrogate goods, non-standard, unsorted goods; to advise buyers, to influence the creation of public opinion on certain goods in the market, based on the knowledge of their high quality; to provide real assistance to the consumer in the choice of the goods, to formulate and provide the creation of modern consumer properties of goods in a positive way.

References

- Halkina, O. M. (2017). *Administratyvno-pravovi zasady zabezpechennia bezpechnosti ta yakosti kharchovykh produktiv v Ukraini* : avtoref. dys. ... kand. yuryd. nauk : 12.00.07. Kharkiv: KhNUVS [in Ukrainian].
- Kolomiets, T. M., Prytulska N. V., Romanenko O. L. (2001). *Ekspertyza tovariv: pidruchnyk*. Kyiv: KNTEU [in Ukrainian].

- Kuzmina, M. M. (2014). Pravove rehuliuвання zakhystu prav spozhyvachiv v Internet torhivli. *Pravo ta innovatsii*. № 3 (7) 36–42 [in Ukrainian].
- Petrova, I. A. (2013). Orhanizatsiia kontroliu yakosti tovariv yak sposib poperedzhennia pravoporushen. *Visnyk Kharkivskoho Natsionalnoho universytetu vnutrishnikh sprav*. № 4 (63) 188–199 [in Ukrainian].
- Petrova, I. A., Petrov, S. O., Krychkovska, L. V., Dubonosov, V. L. (2016). *Zahalni metody vyznachennia yakosti ta bezpeky spozhyvchykh tovariv* : Navch.-prakt. posib. Kharkiv: KhNADU [in Ukrainian].
- Pro informatsiiu dlia spozhyvachiv shchodo kharchovykh produktiv: Zakon Ukrainy vid 06.12.2018 № 2639–VIII. *Vidomosti Verkhovnoi Rady Ukrainy*, 2019, № 7. St. 41 [in Ukrainian].
- Pro osnovni pryntsypy ta vymohy do bezpechnosti ta yakosti kharchovykh produktiv: Zakon Ukrainy. № 771/97-vr. *Vidomosti Verkhovnoi Rady Ukrainy*, 1998, № 19. St. 98. URL: <https://zakon.help/law/771/97-%D0%92%D0%A0/edition04.04.2018/> [in Ukrainian].
- Pro vidpovidalnist za shkodu, zavdanu vnaslidok defektu v produktsii: Zakon Ukrainy vid 19.05.2011 № 3390–VI. *Vidomosti Verkhovnoi Rady Ukrainy*, 2011, № 47. St. 531 [in Ukrainian].
- Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo kharchovykh produktiv: Zakon Ukrainy vid 04.04.2018 № 2042–VIII. *Vidomosti Verkhovnoi Rady*, 2014, № 41–42. St. 2024. URL : <https://zakon.rada.gov.ua/laws/show/1602-18> ([in Ukrainian].
- Pro zakhyst prav spozhyvachiv: Zakon Ukrainy vid 12.05.1991 № 1023–KhII (zi zminamy ta dopovnenniamy). *Vidomosti Verkhovnoi Rady Ukrainy*, 1991. № 30. St. 380 [in Ukrainian].
- Problemy zakhystu prav spozhyvachiv v Ukraini ta shliakhy yikh vyrishennia*. URL: <https://consumerhm.gov.ua/774-problemi-zakhistu-prav-spozhyvachiv-v-ukrajini-ta-shlyakhi-jikh-virishennya> ([in Ukrainian].

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Оглядова стаття

МІСЦЕ СУДОВО-ТОВАРОЗНАВЧИХ ЕКСПЕРТИЗ У СПРАВАХ ПРО ЗАХИСТ ПРАВ СПОЖИВАЧІВ

Окреслено актуальні проблемні питання, пов'язані з визначенням місця судово-товарознавчих експертиз у справах про захист прав споживачів і розробкою шляхів вирішення проблем, що виникають. Споживачі згідно з чинним законодавством мають право на захист своїх прав щодо належної якості, безпеки товарів та послуг, а також право на відшкодування збитків, завданих товарами неналежної якості, небезпечними для життя та здоров'я тощо. Визначено дії, які споживач повинен вчинити для захисту своїх порушених прав, та підкреслено, що у випадках коли споживач намагається відновити справедливість у цьому проблемному питанні, він має звернутися до експертних установ з проханням провести товарознавчі дослідження товарів.

Ключові слова: споживач, товари, захист прав, законодавство, якість товарів, судова експертиза.

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