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публичной собственностью, а именно вопрос нормативно-правовой корректировки целей управления. Федеральное законодательство в своей мере выражает утверждение некоторых документов нормативного порядка. Однако, несмотря на данное явление, чаще нормативные документы принимаются в режиме потребности или востребованности определенного аспекта в жизни и деятельности конкретной административной территории и в основном является некой инициативой опережающей федерального законодательства.

Одной из основных задач экономического, политического и в том числе правового характера остается выявление, отделение и также ограничение каких-либо объектов публичной собственности. Данное действие влечет за собой разрешение некоторых проблем: создание, обособление, переименование определенных объектов публичной собственности. Данная проблема открывает глаза на необходимость разделения процесса правовых норм их использования в данном аспекте на составляющие части.

В реалиях современного общества идея обособления объектов публичной собственности до конца не понятна, она является частью законодательных и нормативных актов множества ступеней публичной власти.

Одна из основных проблем регулирования публичной собственности выражена в вопросе имущества, которое относится к собственности государства и муниципального образования по праву собственности. И соответственно эксплуатируется (прямо или же косвенно) для приобретения определенной денежной пользы, то есть прибыли, осуществления и выполнения частных интересов. Такое имущество называется публично-частным. В

Российской Федерации данный аспект публичной собственности не воспринимается всерьез и не имеет под собой правовой базы, не регулируется и не имеет какого-либо будущего. Несмотря на это значимо понимать, как именно определяется статус этого имущества и как действовать в вопросах частной экономической деятельности.

Из всего вышеперечисленного, можно сделать вывод, что вопрос правового регулирования управления государственной собственностью производится и развивается для работы, которая осуществляется не без помощи частного и публичного права. Именно оно позволяет познавать и закреплять такие методы правового регулирования как императивные и диспозитивные обусловленные предметом регулирования и составом членов правовых отношений.

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PREREQUISITES AND THEORETICAL FUNDAMENTALS OF DEVELOPMENT OF LEGISLATION ABOUT PROTECTING CONSUMER RIGHTS IN UKRAINE

Abstract.

The article considers the problems of legal regulation of state protection of consumer rights in Ukraine. The attention is focused on the problems in legislative activity and on the shortcomings of the normative-legal regulation of the peculiarities of the legal protection of the rights of consumers in the Ukrainian legislation, the concrete ways of improvement of the normative-legal regulation of the specified problem in Ukraine are determined.

Keywords: consumer protection, legal category «consumer», legislation, regulations.

Formulation of the problem. In recent years, theoretical issues of the peculiarities of state protection of consumer rights have become especially relevant in the scientific legal literature.

The Constitution of Ukraine provides for the right of every citizen, as well as foreigners and stateless persons, to go to court to protect their rights and to receive legal assistance. Such a right cannot be restricted under any circumstances (Article 64 of the Constitution). At the same time, the state of Ukraine

cares about the protection of life and health of its citizens, including the consumption of food, household, industrial and technical products and the provision of services. The main parameter of such products and services is their quality (Article 16 of the Constitution).

These constitutional provisions create general political and legal bases for ensuring consumer rights. According to the Law of Ukraine «On Consumer Protection», such measures are provided in the form of a single system, which includes: first, self-defense, the

legal basis for which is created by the Civil Code of Ukraine.

Analysis of recent research and publications.

Preliminary study of the problem has shown that in recent years, many scientists have studied mainly general problems of legal protection of consumer rights. Among the most famous are the works of N. S. Hlus, V. A. Yevtushevsky, S.A. Rumyantsev, A. A. Ustenko, S. I. Chebotar and others. Each of them has its own opinion on improving the regulation of state activities for the legal protection of consumer rights.

The purpose of this article is to determine the level of theoretical and rule-making development of the problem of legal regulation of state protection of consumer rights in Ukraine.

Presenting main material. The development of market relations is accompanied by the saturation of the market with various goods and services. However, this process, along with the positive aspects, inevitably leads to the growth of a number of negative phenomena - deception, weighing, calculation, sale of low-quality and counterfeit products. And although citizens are the central link in the market and act as recipients, consumers (consumers) of goods, works and services, they often fall victim to fraud. Therefore, in the current conditions of building the economy of Ukraine, the legal regulation of public relations is paramount, including consumer protection as the main participants in market relations.

The formation of market conditions, their further development and improvement creates its own specific requirements for the buyer. As the buyer is limited in access to reliable information about all types and methods of fraud, in the formation of market relations, the damage still remains by itself. The only way to protect the buyer is to choose from a wide range of the best and most optimal types of goods and services.

In the process of competition, in order to fully meet the needs of the consumer and withdraw more money for the goods and services provided, firms use different methods of influencing the buyer. Many companies try to get this money honestly for their quality goods, but in the free market there are always other manufacturers who try to deceitfully get money from the buyer for poor quality goods or even counterfeit.

The most important problems faced by consumers in the Ukrainian market are: the appearance on the market of goods not one seller (represented by the state, as before), but many sellers, each of whom seeks to gain a certain share in the free markets of Ukraine and receive certain income from sales of their goods; free entry into our market of goods of any both domestic and foreign entrepreneur, manufacturer and their sellers; inconsistency of the activity of state control bodies and non-awareness of the consumer about the results of their activity; incomplete regulatory support in the field of consumer protection; lack of information provision of consumers about possible methods of fraud, counterfeiting of certain goods, which complicates the competent choice of goods by the buyer, detection of various kinds of fraud, falsifications with the help of reliable and affordable express methods; the national

mentality of our people, which for many years used more products of the national producer.

Due to the urgency of the emerging problems today, more than ever, every consumer needs state support and protection from these negative phenomena [9, p. 200].

Consumer protection is «a complex, multifaceted problem that is directly related to strengthening the national security of the state and protecting its citizens. It concerns the whole chain of production relations (commodity-trade-consumer), where each link has its own specifics and features. In the current conditions, the main directions of state policy in the field of consumer protection should include control, preventive, ideological, coordination and information-analytical functions».

At the present stage, the issues to be discussed at the state level remain priority, namely: the imperfection of the market mechanism in the form of lack or distortion of information about goods and services; overpricing and the presence of monopolistic structures; the need to implement measures for a more equitable distribution of income, lower living standards, provision of services in the field of education, health, housing, transport, environment.

The state, while protecting consumer rights, concentrates its efforts on creating and improving the regulatory framework, reforming the management system in the field of consumer protection. The state, when adopting regulations, seeks to force sellers, entrepreneurs and producers to offer buyers only quality products.

It cannot be said that the problem of protecting the consumer from various kinds of deception began to worry us only during the transition to market relations. Of course not, the consumer needed protection at all times.

Archival documents testify that throughout the historical development of mankind there have been attempts with the help of the state to regulate the quality and safety of food, medicine and other goods. Thus, during the reign of Peter I, a number of decrees were adopted on trade in food products in the markets of the capital. The Senate decree of September 18, 1713 proposed «In the ranks of meat to beat cattle and sell still healthy, and if someone is sick, then do not beat and do not sell and watch hard, so that the butchers do not secretly do» [10, p. 45]. The Decree of 1718 proposed «unhealthy edible food» and established severe methods of punishment: «for the first guilt will be beaten with a whip, for the second - exiled to hard labor, for the third - the death penalty» [16, p. 128]. Supervision of product quality was entrusted to the police. Senate decrees (1756) defined the rights of the police, which were also required to monitor food prices in the markets. «The bailiff must visit the markets of his unit, and will see a complaint or high cost, then what he can not fix, offer the council».

However, despite the punishment, the establishment of institutions to assist the police and special services that supervise the deception of buyers and the sale of counterfeit products, the problem remained acute in the mid-eighteenth century and early

nineteenth century. Evidence of this is the adoption of decrees dated 1837, 1841, 1861, 1866. Thus, in accordance with the Statute of Punishments Imposed by Magistrates (1855), a fine of up to 100 rubles was established. on the guilty for «prepared for sale or sale of edible supplies or beverages that are harmful to health or spoiled, as well as forgery of utensils made of materials harmful to health» [13, p. 3].

In the law of May 12, 1890, the storage of counterfeit goods in commercial and industrial premises was equated to preparation for sale and to the sale itself. Penalties were increased: fines - up to 300 rubles. and arrest for up to 3 months.

Among the counterfeit foodstuffs mentioned in the legislation were bread, meat (1845), cow oil, and fats (1891). In the future, the list was supplemented by counterfeits of bee honey, coffee, milk, flour, beer, saccharin, etc. [17, p. 86].

At the beginning of the 20th century, the question of preventing counterfeit products from entering the markets was raised again. Professor V.E. Tairov, who had information about the falsification of grape wine, asked the country's leading scientists to express their opinion on the counterfeits they encountered in the nature of their activities. On the basis of the sent materials V.E. Tairov drafted a law «On food counterfeiting». But this law was not passed.

With the advent of Soviet power and the establishment of a state monopoly on the production of goods, the law on consumer protection did not exist. And this is easy to explain. The state itself could not accuse itself of forgery or falsification. The word «falsification» later disappeared from the legislation, but the deception of the buyer due to weighting, measuring, and calculation was strictly prosecuted until the punishment [20, p. 15].

At the same time, the production of counterfeit products was organized on a mass scale, and revenues from the sale of counterfeit goods went to state revenue. For example: in Indian tea, packaged in the USSR, Georgian tea of lower grades was always added in the amount of up to 45%, depending on the variety. Roasted chicory or roasted wine berries were always added to ground roasted premium coffee.

In turn, Professor Nesmeyanov was awarded the title of Academician and awarded the State Prize for the development of a counterfeit - «artificial black caviar for the poor» made of gelatin, flavored with herring brine.

It should be noted that before the revolution in Russia, in addition to legislative measures to protect against counterfeiting, measures were taken, which from the standpoint of today can be called social. Thus, the surnames and names of counterfeiters were made public, and books were published describing methods for identifying counterfeit goods. One of such books - «Home Determinant of Counterfeits» by Professor of Physics and Chemistry A. Almadingen - allowed to detect falsification of a number of food products, some materials used for home repairs, etc.

Along with these negative phenomena, we can highlight the positive experience of those times. The fact is that in the production of food products almost no

food additives were used. Previously, in accordance with the requirements of the Chief Sanitary Physician of the USSR, only a few dozen substances were allowed to be introduced into food products that had undergone full clinical trials for their safety. Now it is allowed to introduce up to several hundred new substances harmful to the human body every year.

Thus, Ukraine was a unique state in terms of food traditions. For many decades, the country consumed only natural products, domestic industry was deprived of virtually any synthetic, artificial additives and attracted to the food circulation only natural dyes, flavors, stabilizers, emulsifiers and more. Therefore, the current state of the modern market, which presents goods, firstly, the traditional range, secondly, new in recipe and technology, and thirdly, surrogate goods, has led to the disorientation of the Ukrainian unpretentious consumer.

From the middle of the 20th century, although at a slow pace, legal norms on the regulation of consumer protection issues began to be established. Thus, in the 1950s, the practice of developing and implementing rules for trade in certain groups of food and non-food products was initiated. These rules provided for norms and organizational and legal measures, which in one way or another, determined the special legal status of buyers in retail trade, established in accordance with the then socio-economic circumstances in the country, some additional guarantees of their implementation. This led to a situation where the rights of buyers were determined not by law, but by legal regulations, which leveled these rules, because each service primarily sought in these acts to properly protect their interests, to prevent the establishment of burdensome obligations to businesses.

In 1956, the Ministry of Trade of the USSR approved the «Rules for the Exchange of Industrial Goods Purchased in the Retail Trade Network». According to the mentioned rules, in case of detection of defects in the purchased goods, the buyer had the right to gratuitous elimination of shortcomings from warranty repair shops, and if there are no such - from shop.

In 1967, instead of these rules, the Ministry of Trade of the USSR adopted the «Standard Rules for the Exchange of Industrial Goods Purchased in the Retail Trade Network,» which defined general provisions on the exchange of industrial goods purchased in the state and cooperative trade networks [21, p. 175].

A significant event was the adoption in 1963 of the Civil Code of the USSR, in Art. 234 which contained a rule on the right of the buyer, to whom the thing of improper quality was sold, if its defects were not specified by the seller, at his choice to demand or replacement of the thing of proper quality, or proportional reduction of the purchase price, or gratuitous elimination of defects. correction, or termination of the contract with compensation to the buyer of losses.

An important place among the normative-legal acts in the sphere of trade was given to the rules of trade in certain foodstuffs, which were approved by the relevant orders of the Ministry of Trade of the USSR

(bread and bread products, fruit and vegetable drinks, alcoholic beverages). However, they practically did not establish the procedure for exercising the rights of buyers in case of purchase of food products of improper quality, but mainly contained provisions for regulating relations with the organization of trade, establishing appropriate sanitary requirements for food storage, etc [22, p. 5].

In general, the Rules of Exchange of Industrial Goods contained provisions that limited the rights of buyers, defined by civil law, significantly reduced the degree of their legal protection. Thus, a buyer who purchased a product of improper quality for which a warranty period has been established, first of all had to apply for its repair. And only when the repaired goods needed a second or third repair (depending on the type of goods and the complexity of the repair) or could not be repaired at all within the prescribed time, the buyer had the right to exchange low-quality products for other of the same brand with a refund. demand a refund of the amount paid by him at the time of concluding the contract. Therefore, citizens (buyers) were forced to first apply for repairs of low-quality products to manufacturers of goods or to special warranty workshops, which could at their discretion to qualify the complexity of repair and the origin of the breakdown of the product in such a way as to prevent its extent. avoid returning the amount of its purchase value.

As a result of these and other artificially created obstacles, citizens were often deprived of the opportunity to use the things they bought, and trade enterprises were practically not liable to buyers for the sale of low-quality goods.

According to the Rules of Exchange of Industrial Goods, a buyer who found obvious defects in the purchased goods, for which no warranty period is set (clothing, fabrics, fur, carpets, etc.), was given the right to exchange the goods at the place of purchase only for 14 days or receive cash. the amount for the returned item. Upon detection of hidden defects in the purchased item, confirmed by laboratory tests, the buyer had the right to exchange it in the store within six months from the date of purchase. Thus, the realization by buyers in such cases of their rights was made dependent on the nature of the defects (explicit or implicit), which was not consistent with civil law. The rules did not provide for the buyer's right to compensation for damages caused to him as a result of purchasing a defective item [25, p. 73].

The rules of exchange of industrial goods gave the buyer the right only to exchange the goods of proper quality for similar goods (for which no warranty period is set), if the purchased goods did not suit him in shape, style, color, size. Termination of the contract with the return of the goods, and the buyer of its purchase value was possible only with the consent of the seller.

As already mentioned, in the former Soviet Union there was no special legislation on consumer protection. Only in the early 1990s did this problem be considered by the Committee for Constitutional Supervision of the USSR. On September 14, 1990, this body came to the conclusion that certain provisions of

the Fundamentals of Civil Legislation of the USSR and Union Republics and other normative acts that established the consequences of selling goods of improper quality, the provisions of the USSR Constitution and USSR laws were inconsistent. It was deemed necessary to bring the legal norms in line with the Constitution of the USSR and the general principles of legal regulation of property relations in the process of updating the civil legislation of the USSR and the union republics.

However, the political and economic situation in the USSR dictated a different scenario. The Union Republics, during the development of the idea of sovereignty and economic independence, were declared independent. After the adoption of the Declaration of State Sovereignty of Ukraine and the Law «On the Economic Independence of the Ukrainian SSR», the creation of a new legal system in Ukraine was initiated, in which the legislation on consumer protection took its place.

Thus, over the last decade of market restructuring, a new complex institute of consumer law has been created, in which the relations between citizens and consumers are regulated in a fundamentally different way. Meanwhile, most of the provisions of this legal institution need further improvement.

Ukraine, the first of all CIS countries to adopt the Law «On Consumer Protection», which proved to the world its importance to the international principles of civilized protection of citizens as consumers.

The Law «On Consumer Protection» of May 12, 1991 became the basis for the adoption of a number of bylaws of the Cabinet of Ministers of Ukraine, ministries and state committees concerning consumer protection. For the first time, the law clearly regulated the procedure for the consumer to exercise his rights in case of purchase of goods, receipt of services of improper and proper quality [4, p. 379].

The law provided for the right of the buyer to choose actions in case of purchase of goods or provision of services of improper quality: either termination of the contract and refund, or elimination, correction of defects by the seller or the buyer, but at the expense of the entrepreneur. Thus, there is reason to believe that the legislation on consumer protection has become more progressive compared to what was in force before, despite its certain incompleteness and imperfection.

Already in the middle of 1992 it became clear that the Law of Ukraine «On Consumer Protection» of 1991 did not meet the requirements of the time and it was significantly revised.

The Law of Ukraine «On Amendments to the Law of the Ukrainian SSR» On Consumer Protection», adopted on December 15, 1993, reflected the radical changes that took place in Ukraine since the adoption of the first version of the law on consumer protection. Thus, in August 1991, Ukraine became an independent state, and this changed many accents of political, economic and social life in the country. The main thing is that the law of 1993 already contained a system of control over the quality of consumer goods, compliance with the rules of trade and provision of services, as well

as the rules of administrative liability, which occurs in violation of consumer rights. In particular, some gaps in the regulation of relations with the participation of consumer citizens, etc. were filled.

This law was developed and adopted in the context of the principles of building an independent state governed by the rule of law, as well as the Guiding Principles for the Protection of Consumer Interests. Pursuant to the provisions of the articles of the Law «On Consumer Protection», the Government of Ukraine has approved the relevant rules, procedures, etc. in the field of citizen services.

The Law of Ukraine «On Consumer Protection» of May 12, 1991 № 1023 XII calls a consumer a natural person who purchases, orders, uses or intends to purchase or order products for personal needs not directly related to business activities or fulfillment of obligations. languages of the employee. The stated definition, like classical academic ones, contains a list of the main features of the subject of definition. Significant is the fact that in the understanding of the Law «On Consumer Protection» the consumer is exclusively an individual.

At the same time, a number of legislative acts call consumers both individuals and legal entities, and common to all these acts is that the concepts defined by them are used only in the field defined by the subject of their regulation and no more. Thus, such legislation calls legal entities consumers of certain groups of goods, works or services, such as housing and communal services or telecommunications services, while an individual, according to the Law «On Consumer Protection» can be a consumer of potentially any product., ie any product (goods), works or services that are manufactured, performed or provided to meet public needs.

The Law of Ukraine «On Consumer Protection» establishes general rules for the protection of consumer rights in respect of all goods, works, services, and these legislative acts serve as exceptions to the general rule. An example of an extremely broad definition of consumers are the provisions of the Law of Ukraine «On Advertising» of July 3, 1996 № 270/96 VR, which states that consumers of advertising are an indefinite number of persons to whom advertising is directed [9, p. 122].

A clear understanding of the limits of consumer protection legislation is essential in consumer protection. In accordance with Art. 2 of the Law of Ukraine «On Consumer Protection», legislation on consumer protection consists of this law, the Civil Code of Ukraine, the Commercial Code of Ukraine and other regulations containing provisions on consumer protection. Since this norm is enshrined in the Law of Ukraine «On Consumer Protection», consumers are understood to mean only natural persons, moreover, according to the above norm, the normative legal act can be included in the legislation on consumer protection only if it contains provisions on their protection. Thus, the provisions of the legislation on consumer protection do not apply to consumers of legal entities, as they are not consumers under the Law of Ukraine «On Consumer Protection». The consumer

legal entity may use all legal means of protection provided by the specified codified acts as the participant of civil relations without the legal status of the consumer. The value of the Law of Ukraine «On Consumer Protection» - in giving consumers an additional range of subjective rights that are not available to participants in civil relations, which the Law of Ukraine «On Consumer Protection» does not call consumers.

The process aimed at improving the regulatory framework in the field of consumer protection continues today. Thus, on January 13, 2006, the Law «On Consumer Protection» was officially published in a new edition dated December 1, 2005, № 3161-IV. This is confirmed by the norms enshrined in the Commercial and Civil Codes. The Commercial Code pays attention to the problem of consumer protection and provides for the relevant rules enshrined in Article 20 «Protection of the rights of economic entities and consumers» and Article 39 «Protection of consumer rights». According to Art. 39 of the Commercial Code of Ukraine: «Consumers who are on the territory of Ukraine, when purchasing, ordering or using goods (works, services) in order to meet their needs have the right to: state protection of their rights; guaranteed level of consumption; proper quality of goods (works, services); safety of goods (works, services); compensation for damages caused by goods (works, ambassador».

In turn, the Civil Code also did not stay aside and, in addition to the established general rights and obligations of consumers, sellers, manufacturers arising from the contractual relationship, highlighted the new rules that have not yet been applied. In particular, it is Article 1209 «Grounds for compensation for damage caused by defects in goods, works (services)» and Article 1210 «Persons obliged to compensate for damage caused by defects in goods, works (services)».

Thus, today the regulatory framework in the field of consumer rights in Ukraine has more than 50 laws and bylaws. But in comparison with other states it is insignificant quantity. For example, in Canada, each province has 5-6 local consumer protection laws, ie almost 300, and even federal, more than a hundred. In Austria there are 200 laws, in the USA - more than 150, in Germany - about 80 laws, as well as more than 300 government decrees (and there are laws of so-called «direct action» on bread, wine, milk, fish, etc.) [14, p. 27].

Despite the fact that a large number of normative acts have been adopted, none of the countries has yet developed a comprehensive, internally coordinated system of relevant legislative norms in the field of consumer protection.

Unfortunately, the trend of increasing the number of legislative acts often does not reduce the number of violations in this area. Many experts see the «root of evil» in the weak and imperfect legal framework. It is impossible not to agree with this «the current legislation still has gaps and ambiguities on this issue and needs to be improved». However, the problem is not only in the imperfection of legal norms, but rather

in their implementation, so most consumer rights remain «paper norms», which are difficult to use in real life.

It has long been known that the law actively works only when it reflects and enshrines those norms that have already been strengthened in everyday life at the level of existing customs, traditions, business etiquette or habitual rules of conduct.

Therefore, the problem in particular is that the relationship between seller and consumer is closely linked to the problems of business development in Ukraine. And it is known that it is at the stage of formation, and the development of entrepreneurship is accompanied by a number of difficulties, which is reflected in the increase of abuses in the field of consumer protection [19, p. 165].

And this is a problem not only of our state. Most countries have experienced the situation that Ukraine faces today, although they have considerable experience on these issues. According to experts, the development of market relations in the 60's and 70's was accompanied by a sharp increase in consumer commercial risk due to the purchase of goods and services that did not have the necessary consumer qualities, or even caused damage to a person or property. The number of cases of damage as a result of the sale of low-quality goods - household appliances, medicines, food, cosmetics, etc. - has increased significantly. For example, in the EU at the time, the number of people affected by substandard consumer goods ranged from 4 to 5 million annually. In the United States in the early 1970s, between 25 million and 30 million people were injured annually due to the use of substandard consumer goods. consumer goods, of which 110 thousand - serious, and 30 thousand - deadly. The related total loss was \$ 5.5 billion. annually. In Great Britain in 1997, more than 590 thousand complaints were received from consumers (mostly there were complaints about the quality of clothes and cars) [26, p. 33].

As international experience shows, it takes more than a decade for the norms and mechanisms for consumer protection to take effect. During this time, the public attitude to this problem should change, and the adopted norms should be tested over time.

To achieve this goal, the government needs not only to improve the regulatory framework, which should cover all aspects of the problem, but also to encourage the development of general programs of education and consumer information, taking into account the cultural traditions of the population. To oblige responsible bodies through the media., which would contain general information about the product, consumption traditions and features of production of this product [27, p. 48].

Thus, violations in the field of consumer protection are a common phenomenon under market conditions. Meanwhile, the process aimed at consumer protection in Ukraine is more painful because we are far behind the global consumer movement (consumerism). Today, the legal framework of consumerism in Ukraine has more than 100 laws and

bylaws adopted to protect the rights of citizens as consumers.

Thus, today Ukraine has a legal framework in the field of consumer protection, which requires appropriate mechanisms for its application and implementation, in particular in terms of guaranteeing the quality of certain goods, procedures for consumers to exercise their rights to exchange goods of improper quality and return of funds. goods sold and services provided, etc.

The Decree of the President of Ukraine of 14 September 2000 to accelerate the implementation of the Partnership and Cooperation Agreement between Ukraine and the EU indicated the need to develop an action plan in the field of consumer protection, which provided for the adaptation of Ukrainian legislation in the field of consumer protection. advertising legislation to EU legislation. Accordingly, priorities have been set in the development of close cooperation between Ukraine and the EU in order to achieve compatibility of consumer protection systems.

In particular, it was envisaged:

- conducting an expert assessment of domestic regulations with the involvement of specialists from ministries, other central executive bodies of Ukraine, representatives of the European Union to ensure the gradual approximation of Ukrainian legislation with EU regulations;

- providing wide access to European legal, bibliographic and other information data on consumer protection;

- creation of a permanent system of mutual exchange of information on dangerous goods and services;

- improvement of information provided to the consumer (especially in the form of advertising) about prices, characteristics of the offered goods and services;

- providing operational information regarding unfair advertising, etc. [29, p. 19].

At the same time, it should be noted that since the establishment of cooperation between Ukraine and the EU, the adaptation of Ukrainian legislation to EU legislation has become increasingly important every year. The entry into force of the Partnership and Cooperation Agreement with the European Communities and their Member States on 1 March 1998 finally revealed the desire of the Parties to establish close relations based on historical ties, and the adoption of the Law of Ukraine on the National Legislative Approximation Of the Union «of March 18, 2004 established that» the adaptation of Ukrainian legislation to the EU legislation is an important component of the process of Ukraine's integration into the European Union, which in turn is a priority of Ukrainian foreign policy».

Adaptation of the legislation of Ukraine to the EU legislation, in accordance with Section IV «Stages of Adaptation of Legislation» of the above-mentioned Law, is a planned process, covering several successive stages, at each of which a certain degree of compliance must be achieved.

One of the priority spheres of implementation of the National Program of Adaptation of the Legislation

of Ukraine to the EU Legislation, which is referred to the first stage of the Program implementation, is the sphere of consumer protection.

The dynamics of consumer protection at the current stage of Ukraine-EU relations is determined by the fact that as a result of the enlargement of the European Union to twelve new member states, most of which are located in Central Europe, in the west Ukraine borders on the EU. This allows our country access to the EU market, which has almost half a billion consumers. As stated in the press release of the Delegation of the European Commission to Ukraine «Ukraine-EU Relations: From Cooperation to Integration», on 12 May 2004 the European Commission adopted the EU Strategy Plan, which sets out the European Neighborhood Policy (ENP). The ENP has the highest priority in the Commission's foreign policy. It testifies to the Commission's significantly increased attention to Ukraine and provides a mechanism for strengthening EU-Ukraine relations.

Trade and economic cooperation between Ukraine and the European Union is developing dynamically from year to year, bilateral foreign trade turnover and foreign direct investment from EU member states in Ukraine's economy are steadily growing. Today, the EU is Ukraine's largest foreign trade partner in the world. Cooperation between Ukraine and the EU develops during the annual meetings of the Ukraine-EU summit with the participation of the President of Ukraine, the Cooperation Council with the participation of the Prime Minister of Ukraine, the Cooperation Committee, the Parliamentary Cooperation Committee, Ukraine, regular expert consultations. Every year, more than 80 official meetings and consultations are held between Ukraine and the EU at high and expert levels, where special attention is paid to issues of political and economic cooperation.

The signing of the Ukraine-European Union Action Plan on February 21, 2005 was an important step towards more intensive cooperation between Ukraine and the EU. The implementation of the Action Plan should promote Ukraine's gradual integration into the EU internal market and create the preconditions for launching a free trade zone with the EU.

In the current conditions of rapid scientific and technological progress in the world, fierce competition of business entities, legal regulation of consumer protection plays an increasingly important role, because mostly the consumer is a non-professional who buys goods and services to meet personal needs. Information about goods and services sold.

In general, the policy of Ukraine and the European Union in the field of consumer protection is aimed at reducing inequality between consumers and sellers, improving the level of safety and health of people, improving living standards.

The wording of the first part of Article 8 of the Law narrows the content and scope of consumer rights, which have already been established by the first part of Article 14 of the Law of Ukraine «On Consumer Protection» as amended on May 12, 1991 № 1023-XII on replacement of goods or termination of contract

during the warranty period of defects of this product, which violates the requirement of Article 22 of the Constitution of Ukraine to prevent narrowing of the content and scope of existing rights and freedoms in the adoption of new laws or amendments to existing ones.

It should also be noted that in connection with the adoption of a new version of the first part of Article 8 of the Law, it is necessary to make appropriate changes to the third, sixth, seventh, eighth, tenth and fourteenth parts of Article 8 of the Law. Otherwise, the practical application of the provisions of Article 8 becomes impossible due to the fact that in the text of the Law there is no mechanism for satisfying consumer requirements in identifying «defects» and «significant defects» of the goods, as the requirements to be satisfied are different.

In addition, the definition of «significant defect» does not correspond to the definition of «defective products», which is adopted in EU legislation. In this regard, the requirements of Directive 85/374 / EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States relating to liability for defective products are not adapted to the legislation of Ukraine and there is a need to introduce them. Article 16 of the Law on Property Liability for Damage Caused by Defective Products or Products of Improper Quality.

In view of the above, it can be concluded that the Law of Ukraine «On Amendments to the Law of Ukraine» On Consumer Protection «in terms of defining the concept of» substantial defect «(paragraph 12 of Article 1) and the wording of the first article 8 is not agreed with the legislation of the European Union on consumer protection, product safety in the process of its distribution and placement on the market, which threatens the accession of Ukraine to the EU [30, p. 62].

On January 1, 2007, the provisions of the first sentence of item 3 of part 1 of Article 26 of the Law of Ukraine «On Consumer Protection» on payment of samples and research (examination) at the expense of the state budget in accordance with European standards came into force. However, the Laws of Ukraine «On the State Budget for Different Years» did not provide for such funds.

In addition, the Law of Ukraine «On procurement of goods, works and services for public funds» from 22.02.2000 № 1490 established the conditions for the implementation of procedures for procurement of goods, works and services for public funds [31, p. 16].

In Ukraine, in the process of building an independent state, they are doing some work to create a legal basis for consumerism, accumulating their own experience of state and non-governmental organizations, reviving historical traditions of active public activity in this area. State consumer structures and public associations of citizens operating on the territory of our state take an active part in the integration into the international community, which is concerned with the problems of quality of goods, products, services and consumerism. This makes it possible to introduce on the territory of Ukraine advanced foreign legislation in this area of activity. The very fact of participation of Ukrainian citizens and their

associations in international projects testifies to real steps towards solving the problems of product quality and consumer protection according to European criteria. At the same time, foreign experience in legislation in the field of consumer protection should not be blindly copied.

However, as evidenced by the practice of implementing control measures to protect the rights of consumers in Ukraine, 90 percent of business entities among those inspected in the field of trade, restaurants and services violate the legally recognized rights of citizens as consumers. The consumer market is saturated with low-quality, counterfeit and dangerous to human life and health goods, especially food. The right of consumers to provide them with the necessary, accessible and reliable information about goods, works and services is not fully realized. Violations of the rules of trade service and the order of providing services are often allowed. The state cannot fully apply the Western model of consumer self-protection – «voting in hryvnia» (the consumer chooses what to pay for it) - due to the low solvency of the majority of the country's population.

Consumers should be effectively represented in the decision-making process by the government and parliament, which can be ensured through, for example, the creation of advisory bodies in which consumer associations are represented. An extremely important issue is to ensure the effectiveness of the judiciary, the ability to effectively resolve private disputes. To customize the signing of tripartite agreements between consumer associations, media, business and government «On the basics of business practice for the benefit of consumers» [32, p. 26].

Provide for the formation of consumer arbitration courts in these agreements. Introduce compulsory consumer education in educational institutions. Establish a national consumer information agency.

To implement consumer policy in accordance with the requirements of the World Trade Organization and the European Union, promote sustainable economic growth, create more favorable conditions for entrepreneurship, fair competition, improve the protection of life, human health and the environment. consumer protection in Ukraine.

Today, the government faces the task of being prudent in making decisions, anticipating both domestic and socio-economic changes, as well as global factors in the development of the world economy. This is the only way to ensure the unconditional priority of human rights and freedoms, a high and guaranteed quality of life, and the conditions for the free development of the individual.

Throughout the post-Soviet period, state policy in all spheres of society was formed «from above», ie the state, based on its own interests and ideas about what society needs, established «rules of the game» for economic and social actors and enforced them. Such a policy did not provide for the consent of the «players» to the «rules of the game», nor the responsibility of the state for the implementation of the rules [31, p. 18].

However, practice shows that such an approach is often ineffective. If the «rules of the game» are not

accepted by the players on a voluntary basis, then objectively there is distrust of state policy, its overall effectiveness decreases, and the state's costs of coercion to enforce the rules increase.

Thus, the above allows us to conclude that since the proclamation of Ukraine's independence in 1991, the basic principles of state policy on consumer protection. Ukraine, the first of all CIS countries to adopt the Law «On Consumer Protection», which proved to the world its respect for the international principles of civilized protection of citizens as consumers.

When adopting the Constitution of Ukraine, our state reaffirmed the unchanging course, which is aimed at state protection of consumer rights, control over the quality and safety of products and all types of services and works, promoting the activities of public organizations for consumers. 42.

Thus, with the awareness and acceptance of specific consumer rights, which are an integral part of universal human rights, the state policy on consumer protection was launched in Ukraine, and this policy in its legal form now fully complies with international documents.

The importance of conducting the state policy on consumer protection is relevant in connection with Ukraine's intentions to join the European Community, which was enshrined in the Partnership and Cooperation Agreement between the European Union and Ukraine of June 16, 1994.

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ОСОБЛИВОСТІ ПРАВОВОЇ СИСТЕМИ СУЧАСНОГО ГОНГОНГУ

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THE PECULIARITIES OF THE LEGAL SYSTEM OF MODERN HONG KONG

Аннотация.

Статья посвящена исследованию особенностей правовой системы современного Гонконга. Установлено, что правовая система Гонконга как специального административного региона Китайской народной республики является уникальной правовой системой, которая включает в себя черты английской общеправовой юридической традиции, обычного права Китая и современного законодательства, базирующегося на Основном законе Гонконга. Определено, что правовую систему современного Гонконга можно отнести к «смешанным правовым системам».

Abstract.

The article is devoted to the study of the features of the legal system of modern Hong Kong. It was established that the legal system of Hong Kong as a special administrative region of the People's Republic of China is a unique legal system that includes features of the English common legal tradition, customary law of China and modern legislation based on the Basic Law of Hong Kong. It is determined that the legal system of modern Hong Kong can be classified as a «mixed legal system».

Ключевые слова: правовая система, верховенство права, общее право, обычное право, смешанная правовая система.

Keywords: legal system, rule of law, common law, customary law, mixed legal system.

Постановка проблеми. В межах сучасної китайської правової системи можна виділити кілька окремих унікальних правових систем, зокрема правову систему спеціального адміністративного регіону Китайської народної республіки – Гонконгу. Параметри правової системи Гонконгу не визначені чітко у юридичній літературі. Але можна зазначити, що наріжним каменем даної системи є гарантування принципу верховенства права на всіх рівнях та незалежність судової влади, які забезпечують успіх Гонконгу як провідного міжнародного комерційного та фінансового центру, що забезпечує безпечне середовище для приватних осіб та організацій та рівні умови для бізнесу. В нашому дослідженні спробуємо визначити основні характеристики правової системи сучасного Гонконгу.

Стан дослідження. На жаль, у вітчизняних теоретико-правових джерелах практично відсутні

спеціальні наукові праці, які присвячені дослідженню правової системи Гонконгу. Вагомий внесок у розроблення теоретичних аспектів правових систем сучасності зробили О. Зайчук, О. Лукашова, Л. Луць, М. Марченко, Н. Оніщенко, О. Скакун, П. Рабінович та інші.

Мета дослідження. Метою цієї публікації є дослідження основних ознак правової системи Гонконгу на сучасному етапі розвитку та віднесення даної правової системи до певної класифікації.

Основний зміст дослідження. З 1842 по 1997 роки правова система Гонконгу розвивалася в рамках британського загального права на основі китайських звичаїв та традицій, тобто китайського звичаєвого права [1]. В 1997 році Гонконг повернувся під владу Китаю та отримав статус його спеціального адміністративного регіону. 1 липня 1997 року був затверджений Основний закон Гонконгу [1].