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## **PROBLEMS OF IMPROVING THE LEGAL MECHANISM FOR CONSUMER PROTECTION AND PROSPECTS FOR DEVELOPMENT**

This article deals with the issue of protecting the rights of consumers when purchasing goods. Every member of society, from a small to large, is a consumer of goods, works, certain or other services and often faces a violation of consumer rights, so every citizen should know about their rights as a consumer and be able to protect themselves. This question is relevant. In his address to the people of Kazakhstan, published on October 5, 2018, the president of the Republic of Kazakhstan noted that the health of the nation is the main priority of the state. Almost every person is a consumer of goods, works and services throughout his life; he acts as a participant in the legal relations that have developed in the consumer market. At the same time, consumer rights are often violated. The consistent formation and further development of the foundations of civilized legal regulation of relations with the participation of consumers, which was supposed to be in the period of formation of market relations, the foundation of which appeared, made it possible to balance the interests of consumers in a timely manner with the interests of business and obtain a comprehensive basis of legal norms, proved its effectiveness and viability. In an unstable market economy, manufacturers often impose favorable conditions on consumers only for the purchase of goods and services.

**Key words:** consumer, consumer rights, consumer protection, competition, safe goods.

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### **Тұтынушыларды қорғаудың құқықтық тетігін жетілдіру мәселелері және даму болашағы**

Бұл мақалада тауарды сатып алу кезінде тұтынушының құқықтарын қорғау мәселесі қарастырылады. Қоғамның әрбір мүшесі аздан үлкенге дейін тауардың, жұмыстың, сол немесе басқа қызметтердің тұтынушысы болып табылады және жиі тұтынушылық құқықтардың бұзылуына тап болады, сондықтан әрбір азамат өз құқықтары туралы тұтынушы ретінде білуі және өзін қорғай білуі тиіс. Бұл мәселе өзекті болып табылады. Қазақстан Республикасының Президенті 2018 жылғы 5 қазанда жарияланған Қазақстан халқына Жолдауында Ұлт денсаулығы – мемлекеттің басты басымдығы екенін атап өтті. Іс жүзінде әр адам өмір бойы тауарларды, жұмыстар мен қызметтерді тұтынушы; тұтыну нарығында қалыптасқан құқықтық қатынастардың қатысушысы ретінде әрекет етеді. Сонымен бірге тұтынушылардың құқықтары жиі бұзылады. Іргетасы пайда болған нарықтық қатынастарды қалыптастыру кезеңінде болжанған тұтынушылардың қатысуымен қатынастарды өркениетті құқықтық реттеудің негіздерін дәйекті түрде қалыптастыру және одан әрі дамыту тұтынушылардың мүдделерін бизнес мүдделерімен уақтылы теңдестіруге және құқықтық нормалардың кешенді негізін алуға мүмкіндік берді, өзінің тиімділігі мен өміршеңдігін дәлелдеді. Тұрақсыз нарықтық экономика жағдайында өндірушілер көбінесе тұтынушыларға тек тауарлар мен қызметтерді сатып алудың қолайлы шарттарын қояды.

**Түйін сөздер:** тұтынушы, тұтынушының құқықтары, тұтынушының құқықтарын қорғау, бәсекелестік, қауіпсіз тауар.

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### **Проблемы совершенствования правового механизма защиты потребителей и перспективы развития**

В данной статье рассматривается вопрос защиты прав потребителя при покупке товара. Каждый член общества от мала до велика является потребителем товара, работы, тех или иных услуг и часто сталкивается с нарушением потребительских прав, поэтому каждый гражданин

должен знать о своих правах как потребитель и уметь защищаться. Этот вопрос является на сегодняшний день актуальным. Президент Республики Казахстан в Послании народу Казахстана от 5 октября 2018 года отметил, что здоровье нации – главный приоритет государства. Практически каждый человек в течение жизни выступает потребителем товаров, работ и услуг; участником правоотношений, складывающихся на потребительском рынке. При этом часто нарушаются права потребителей. Последовательное формирование и дальнейшее развитие основ цивилизованного правового регулирования отношений с участием предполагаемых потребителей в период формирования рыночных отношений, на котором возник фундамент, позволили своевременно сбалансировать интересы потребителей с интересами бизнеса и получить комплексную основу правовых норм, доказав свою эффективность и жизнеспособность. В условиях нестабильной рыночной экономики производители часто диктуют потребителям только выгодные условия покупки товаров и услуг.

**Ключевые слова:** потребитель, права потребителя, защита прав потребителя, конкуренция, безопасный товар.

## Introduction

The Constitution of the Republic of Kazakhstan establishes the right of everyone to life, to health, a right for a favorable environment; for damages caused to his health or property by ecological offence; that the goods (work, service) under normal conditions of use, storage, transportation and recycling were safe for life, health, the environment, and also did not harm property of the consumer. Everyone has the right to be have recognized as a legal entity and has the right to protect their rights and freedoms in all ways that do not contradict the law, including the necessary defense. Everyone has the right to judicial protection of his or her rights and freedoms.

In the context of the objective need for citizens to meet their own needs, which are important for their lives and health or provide a decent level of subsistence, the quality of goods and services produced is paramount to maximizing their needs.

In the market time, when the market was have saturated with goods of different origins and different quality, the consumer needs to know about the product. Almost every person during his life acts as a consumer of goods, works and services; member of the legal relations developing in the consumer market. At the same time, consumer rights are often have violated (Svincova 2005).

The successive formation and further development of the foundations of civilized legal regulation of relations with participation of consumers, whose Foundation was expected at the stage of formation of nascent market relations, let in a timely manner to balance consumer interests with business interests and get a complex backbone of legal rules has proven its effectiveness and viability. In an unstable market economy, producers often impose beneficial terms for consumers to purchase goods and services only.

Participants of the relations regulated by norms of the legislation on the protection of consumer rights are citizens who have the intention to order or acquire or ordering, acquiring or using goods (works, services) for personal, family, household and other needs not connected with entrepreneurial activities (consumers), on the one hand, and organization (legal entity) or individual entrepreneurs producing goods for sale to consumers (manufacturers), selling goods to consumers under the agreement sales and purchase (sellers) or performing works and providing services to consumers under a paid contract (performers), on the other hand.

In addition, there was no universal consumer education and education system, and an analysis of jurisprudence showed that the judiciary was far from fully in line with consumer protection.

In this regard, the constitutional and legal status of the consumer, characterizing its position in society and the relationship of consumer rights with other constitutional rights of citizens of the Republic of Kazakhstan, is particularly relevant.

Consumer protection issues have great theoretical and practical importance; occupy an important place in the activities of specialists of various branches of knowledge, including lawyers.

## Main part

The market is an ancient means of economic management, its it has its own rich history of development. There are several definitions of the market. Market-production of goods and Commodity Exchange relations organized in accordance with the laws of operation a set of. Market-the interaction between buyers and sellers the mechanism of implementation of communication, i.e. the ratio of supply and demand “I’m sorry,” I said. The market is a framework of intra-country and interstate exchange connects consumers with product manu-

factors. So, the market a set of goods or goods in accordance with the laws of production and use it is considered as an organized Commodity Exchange. F. Kotler in the labor market at the moment, there are and may be buyers it is said that a set of. And in the book "Economics", what is the market? uniting sellers and buyers of a product or service type the definition of a mechanism is given. The market is characterized by a high level of demand for goods and services, as well as a high level of demand for goods and services. P. Steiner, voiced by D. Pervis. They say that the market is a scene that is put here the performance is attended by a meeting of those who solve economic problems: what goods and in what quantity do millions of consumers buy more and more entrepreneurs answer questions about what and how to produce and how to sell these goods to whom the owner of the factor of production "no," she said. The market is one of the most important and effective ways of economic development designed to understand and improve efficiency at the micro and macro levels it will be the foundation, the foundation. It is based on all economic entities commodity exchange between subjects, people and society as a whole it is characterized by a set of relationships. Market exchange of economists in the field of special economic relations between the seller and the buyer the opinion that it forms a system of relations is fully confirmed. Market economic relations between the seller and the buyer the influence of price, supply and demand, competition, income and cost, i.e. application of all elements included in the concept of "market mechanism" "I don't know," he said. The market is clearly socio-economic lives by conditions. It will depend entirely on the institution of ownership. The market is at all stages of the modernization of society – production, distribution, exchange and consumption play a very important role The transition to a market economy based on freedom of entrepreneurship has led to an increase in the number of producers and performers of various services. In the current environment, the relationship between consumers and entrepreneurs must reach a new level of development characterized by the satisfaction of the population's high quality of goods, jobs and services.

Despite the fact that today Kazakhstan has a regulatory framework guaranteeing the consumer basic rights that meet international standards, the imperfection of the system of legal enforcement of consumer rights creates many problems. The practice demonstrates systematic abuses by professional market participants based on the lack of effective statutory mechanisms for consumer protection of

their rights. Throughout the history of the modern state changed the legal status of subjects of consumer relations, transformed forms of consumer protection, complicated responsibility. Therefore, a deep understanding of the full extent of the legal protection system for consumer protection is impossible without an analysis of its origin and development.

The last twenty years can be have called the time of finding a reasonable balance between the rights of consumers and sellers, manufacturers and manufacturers. During this time, many countries around the world, especially Europe, have established government bodies of special competence, which have its main task of protecting the rights of consumers. Public organizations play an important role in consumer protection, as the publicly available data show. Thus, when consumers apply directly to the authority for the protection of their rights, it is not possible to solve the problem positively in every fifth case, and when contacting public organizations – not successful outcomes ten times less (Dozorov 2003).

To date, it is important to move away from the practice of courts lowering the amount of legal penalties for consumer claims, focusing on increasing the amount of compensation for moral harm caused, and creating conditions conducive to the availability of qualified legal aid.

The existence of the above problems is have explained, among other things, by the peculiarities of the long-established national model of legal awareness, in which the consumer did not realize the opportunity to fight for expansion and guarantee of their rights.

In today's environment, improving legal means and forms of consumer protection should become one of the priorities of the state.

Today, consumer protection is an integral part of the state's efforts to protect human rights, freedoms and citizens. The Legislature is looking for effective legal means of influencing consumer relations, as evidenced by the systematic introduction of changes and additions to existing regulations. The choice of legal means is have complicated by the fact that, on the one hand, they should protect consumers as a vulnerable category of market participants, and on the other hand should not upset a reasonable balance between the rights of consumers and their counterparts.

In addition to the very nature of consumer relations and the accompanying economic conditions, the transformation of the legal consciousness of buyers played an important role in the formation of consumer protection legislation. Emerging within

a limited framework of the consumer market, the legal consciousness of the modern consumer in the conditions of market relations was an important factor in the alignment of the economic positions of the consumer and the seller. Previously, the planned economy excluded the possibility of wide deployment of commodity-money relations, limited the consumer in its basic rights: choice, price, quality were have determined by the state. In the context of the development of market relations, consumers have realized the opportunity to advocate for the expansion and guarantee of their rights, and as a result, to increase their impact on producers and sellers. Mass production and new technologies have led to an increase in the sale of substandard goods and, as a result, have contributed to an organized consumer movement to protect their rights, which has led to a trend of formation in some states, for example, in Russia, of separate legislation aimed at protecting consumer rights (Gubina 2003: 47).

Consumer protection itself is the work of public authorities, public organizations and consumers themselves, aimed at restoring, compensating, and removing obstacles to the further realization of consumer rights. It is have carried out by applying a set of elements of protection (form, means and methods) in a specific legal order.

Legal protection of the rights of a particular category of persons coincides in its General characteristics with legal protection in General, but it has its own peculiarities arising from the specifics of regulated relations. The specificity of consumer relations is have manifested, first, in their subject composition – one of the parties of such legal relations is always the consumer – the individual. This is usually the «weak» side in the contract. The consumer contractor is always in a better position, which also entails numerous problems in both legislative, theoretical and practical order.

In Kazakhstan, only one dissertation has had protected on consumer protection over the past 20 years, and a new Consumer Protection Act was passed in 2010, which gives every reason to speak about the special relevance, novelty and problem of the issue of consumer protection (<http://adilet.zan.kz/kaz/docs/Z100000274> ).

In general, consumer protection has two main objectives: the first is to inform consumers about the goods and services available on the market so that the right choice contributes to the successful formation of the consumer market, the second – to protect the consumer if his position as a weak side is infringed.

It is have known that consumer protection mainly arises when making a contract of purchase – sale and provision of various services. Thus, the Civil code of the Republic of Kazakhstan provides that a contract of sale recognizes relations in which one party (the seller) undertakes to transfer property (goods) to the ownership, economic management or operational management of the other party (the buyer), and the buyer undertakes to accept the property (goods) and pay him a monetary amount (price). Under the contract of purchase – sale to the goods are required for quality, which was have specified in the contract or defined by law. The sale of faulty goods the buyer is entitled to: proportional reduction of purchase price; gratuitous elimination of defects in the goods within a reasonable time; compensation of his expenses for correction of defects in the goods; replacement of defective goods, the relevant contract; refusal to execute the contract and return paid for the goods amount. As can be seen from the article the buyer is the consumer who buys the goods or the item for use. That is why consumer protection is the protection of customers' rights. In addition to the Civil Code of the Republic of Kazakhstan, the Consumer Protection Act of Kazakhstan regulates consumer protection on May 4, 2010 (<http://adilet.zan>).

Thus, according to the Law, every consumer has the right to:

- product safety, which is expressed in the absence of an unacceptable risk associated with the possibility of causing harm to the life, health and/or property of the consumer and the environment, under normal conditions of use, storage, transportation, disposal of goods or during the performance of works and services;
- free contracts for the purchase of goods, the use of works and services;
- the appropriate quality of products, jobs and services, which consists of a combination of the characteristics of the product (work, service) relating to its ability to meet the needs of the consumer;
- receiving full and reliable information in Russian and state languages about the price, about the country;
- origin of goods and manufacturer, consumer properties of products; ways and regulations for the use of products and storage, the date of manufacture, the shelf life of the product and the warranty period (<http://adilet.zan.kz/kaz/docs/Z100000274> ).

It follows that every consumer of a particular service should receive all information concerning the goods, i.e. information about the place of origin, date of release, the quality of the goods, and so

on. All this information must be accurate and accessible, and the product itself should be safe, i.e. not harm to health, life and the environment.

At the same time, in a legal state, every citizen of the country should know about his rights, or rather about protecting his rights as consumers. This requires strengthening the seller's responsibilities to provide the buyer with the necessary and reliable information about the goods, the duty to ensure the safety of the goods, and the duty to ensure the proper quality of the goods. For example, article 448 of the Civil Code of the Republic of Kazakhstan and Article 10 of the Consumer Protection Act stipulate singer this obligation, which is to provide the buyer with the necessary and reliable information about the goods offered for sale.

Providing the buyer with the necessary and reliable information on which the buyer can make the right choice is essential to protect the rights of consumers. This information must comply with the legal requirements and the usual retail requirements for the content and way of presenting such information (Asheulov 2000). Many sellers do not fulfill their duty to provide information about the goods until you turn. If there are deficiencies in the goods, the seller who has failed in its duty to provide information about the goods is responsible for the shortcomings that arose after the transfer to the buyer due to the lack of information about the goods.

Civil law states that the buyer, in turn, must inspect the goods before the conclusion of the retail sales contract. The consumer, who is a consumer, has the right to return or exchange for a similar item for a similar product of other size, shape, size, style, coloring and trim for fourteen days. But in this case, such conditions as: the goods should not have been used, its product form, consumer properties, seals, labels, a document confirming the fact of the purchase of the goods have been preserved. Of course, in this case, the purchase of goods should be have proved by a check issued when buying it, but if there is no check, the law allows the presentation of a photo or video.

Drugs, medical products, linen, hosiery, hosiery, animals and plants, meter-based products of fibers of all kinds, knitted and curtain cloths, faux fur, carpeting, non-fiction materials, ribbons, laces, braids, wires, cables, linoleum, baguettes, film and gluers are not subject to exchange and return.

There are cases when the consumer buys goods with expired expiration dates that do not meet the requirements of technical regulations, regulatory documents on products, including those issued in violation of intellectual property rights. At the same

time, if the buyer or consumer has purchased an item with a warranty period, and the goods turned out to be of poor quality, he has the right to exchange the goods or receive the full amount that the consumer paid for the goods. If there is, only one day left even before the end of the warranty period. If the appliances are have purchased and it is broken, the seller is obliged to fix the problem at his own expense and ensure the delivery of the goods. In these cases, the seller is obliged to ensure the exchange or return of the goods regardless of consumption, preservation of the product, consumer properties, seals, and labels within 30 calendar days of the purchase of the goods with the return of the consumer's amount of money for the purchased goods. Not all these rules and conditions of the contract of purchase-sale the buyer may know, so it is purpose able that the seller educates the buyer on these issues. In this regard, public consumer protection organizations could be held seminars or courses to educate the public on consumer rights protection.

In addition to the duties of the seller specified in Articles 24-26 of the Consumer Protection Act of the Republic of Kazakhstan, it is necessary to provide for the seller's liability for non-performance of these duties. S.P. Moroz believes that civil, administrative, legal and criminal responsibility is had used in the sphere of consumer protection. At the same time, the scientist notes that the main responsibility in the sphere of consumer protection is civil – legal responsibility, and administrative – legal and criminal – legal responsibility is rather secondary. In turn, civil legal responsibility can be both contractual and tort, with the main one being contractual (Moroz 2008: 238).

Agreeing with the opinion of S.P. Moroz on the application of civil, administrative and criminal liability measures in the field of consumer protection, we propose to add article 26 to article 26-1 «liability of the seller for failure to provide complete information about the product».

The first paragraph of this article should read as follows, «the seller is liable to the consumer for failure to provide the full amount of necessary, reliable, timely and accessible information about the product».

The second point of this article should be stated in accordance with the Law of Ukraine «on consumer protection» in the following wording: «when considering consumer claims for damages caused by inaccurate or incomplete information about goods or unfair advertising, it is necessary to assume that the consumer does not have special knowledge about the properties and characteristics of the goods that

he buys» (<https://www.profiwins.com.ua/ru/letters-and-orders/gna/1140-1023-xii.html>).

Therefore, on the basis of the foregoing, we propose to amend or supplement the Code of the Republic of Kazakhstan on administrative offences.

### Conclusion

Article 193, for example, «Violation of the law of the Republic of Kazakhstan on trade regulation» of the Code on Administrative Offences of the Republic of Kazakhstan, is to be amended.

Firstly, we believe that if it is the seller's duty to provide the buyer with information, then the seller must fulfill this duty without the request of the buyer, so we propose to exclude the word «on request» from the text. Secondly, the information should be both necessary and reliable, as stated in article 448 of the Civil Code of the Republic of Kazakhstan, so we propose to supplement the text of the article with the word «credible». However, any information must be timely and accessible. The law of Ukraine «on consumer rights protection» specifies that the seller provides the buyer with the necessary, reliable, timely and accessible information about the product. The necessary information is such information, which is have required by law.

At the same time, Chapter 2 of the State Regulation in Consumer Protection of the Consumer Protection Act of the Republic of Kazakhstan should be had supplemented with an article entitled «Committee for the Control of the quality and safety of goods and services» in which the authority of this body should be provided. This body could monitor the quality and safety of products and services that affect human health and life, the quality of health services, drug treatment and public health and epidemiological well-being checks.

Consequently, article 715-1 of the Kazakhstan Code on Administrative Offences could be have called the Committee for the control of the quality and safety of goods and services.

Similar consumer protection bodies exist in other states. For example, Uzbekistan has a State Committee for Privatization, DE monopolization and Competition, which protects violated consumer rights.

In Russia, there is the State Committee on Standardization, Meteorology and Certification, which coordinates the activities of all bodies that monitor the quality and safety of goods, works and services, as well as conducts mandatory certification of goods (<http://pravo.gov.ru>).

Consumer protection in foreign countries is one of the main places. In France, for example, the French Consumer Code, which is a sub-industry of business law and consists of five books, is central to the legal regulation of consumer protection.

In addition, the Association of Some Bodies has established the Directorate-General for Competition, Consumption and Fraud, which is the administrative jurisdiction body of the French Ministry of Economy. This body regulates competition in the market, provides economic protection to consumers, and ensures consumer safety ([https://unctad.org/system/files/official-document/ditceplp2017d1\\_ru.pdf](https://unctad.org/system/files/official-document/ditceplp2017d1_ru.pdf)).

In addition, in order to provide information about the product competently and properly protect their consumer rights, it is necessary to develop the Seller and Buyer's Ethics Regulation and to conduct certified training of sellers to allow them to trade. Such experience exists in Korea. There, for example, organized special courses for citizens to protect the rights of the consumer, where any citizen can enroll and gain knowledge on competent protection of their rights as consumers.

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