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THE CONCEPT OF «CONSUMER» ACCORDING TO THE LAWS OF UKRAINE AND THE EUROPEAN UNION

In Ukraine, the issue of consumer protection is receiving special attention since this legal institution is one of the priority areas for adaptation of national legislation to the legislation of the European Union. Even Art. 42. of the Constitution of Ukraine in 1996 stipulated that the state protects the rights of consumers, controls the quality and safety of products and all kinds of works and services, promotes the activities of public consumer organizations. The current regulations and judicial practice of Ukraine have repeatedly emphasized that consumers in Ukraine are not protected by the state and the law due to the declarative nature of the proclaimed rights and the lack of mechanisms for their implementation and restoration, the state has not created a European principle of an accessible and transparent system of pre-trial complaints and responding to the results of independent consumer research.

In our opinion, the consumer is a broad concept, and its endowment with certain characteristics leads to the emergence of a «special consumer», which has its internal content in a particular area of property turnover.

It should be noted that some aspects of the concept and legal status of the consumer were the subject of research of some Ph.D. theses, in particular, G. A. Osetinskaya «Civil law protection of consumer rights according to the laws of Ukraine» [1], Ju. Ju. Ryabchenko «Judicial protection of consumer rights» [2], O. Ju. Chernyak «Civil status of the consumer in the context of adaptation of the legislation of Ukraine to the legislation of the European Union» [3]. However, the problem of a theoretical understanding of the definition of «consumer» has not found its final solution in the scientific field. There are different approaches to its internal content, the issue of the possibility of an abstract perception of the category «consumer» within civil law remains unresolved, or it is still necessary to specify it for the purpose intended by legislation?

The purpose of this scientific article is an additional theoretical understanding of the concept of «consumer» based on modern scientific achievements of civilistics, regulations, legal positions of the judiciary

of Ukraine and the European Union to clarify the terminology used by the legislator.

For the first time, the definition of «consumer» was formulated in the Charter on Consumer Protection, adopted by the XXV session of the EU Consultative Assembly in 1973. This document provided that the consumer is a natural or juridical person who uses goods and services for personal purposes. The Charter includes only associations and charitable foundations, associations of artisans, artisans, and small businesses.

In Ukrainian law, the concept of «consumer» was enshrined in 1991 with the adoption of the Law of Ukraine «On Consumer Protection», according to which the consumer was a citizen who buys, orders, uses, or intends to purchase or order goods (works, services) for own household needs. In 2005, the Law of Ukraine “On Consumer Protection” was amended to formulate the concept of “consumer” and this definition was significantly expanded in terms of formulating the purpose of purchasing goods (works, services).

In the current legislation of Ukraine, the term «consumer» is used quite often, but the meaning that the legislator invests in it varies. The main legal act that establishes the legal status of the consumer is the Law of Ukraine «On Consumer Protection». Under this law, a consumer is a natural person who purchases, orders, uses, or intends to purchase or order products for personal needs not directly related to business activities or the performance of duties of an employee. It follows from this definition that consumers can only be natural persons, including citizens of Ukraine, foreigners, and stateless persons. Instead, when applying the rules of consumer law, juridical entities cannot be classified as consumers. Also, the Law of Ukraine «On Consumer Protection» does not apply if a natural person has the status of an entrepreneur and buys, orders, or uses goods (works, services) for business activities. As a consumer, the Law of Ukraine «On Consumer Protection» recognizes a natural who only intends to purchase a product or order work or service.

Scientific positions of researchers in the field of commercial law in the interpretation of Art. 2 of the Commercial Code of Ukraine, which for the first time consumers are recognized as participants in economic relations, are also divided on this issue: some believe that consumers as participants in economic relations - are citizens [5, p. 123], and others - that it is exclusively a juridical entity - an organization that consumes the results of economic activity, regardless of whether it is a business entity or non-business entity (consumers of energy, natural gas, etc.) [6, p. 12]. In the Law of Ukraine «On Advertising» consumers are understood as «an indefinite circle of persons to whom advertising is directed», that is why it can be both individuals and

juridical entities. St. 1 of the Law of Ukraine «On Natural Monopolies» to consumers refers to individuals or legal entities that purchase goods produced (sold) by natural monopolies. In this case, the legislator does not stipulate the purpose of purchasing such goods for personal use. As we can see, some legislative acts serve the understanding of the concept of «consumer» in a broad sense, limiting the scope of application of a law, for example, relations in commodity markets, which are in a state of natural monopoly.

Today, the question of the possibility of consumer recognition of a legal entity that can also buy, order or use goods (works, services) to meet personal needs, such as the purchase of household appliances to provide food for employees, is debatable and remains open. It should be noted, that some civil scientists suggest that consumers, in addition to individuals, are considered a certain category of legal entities.

This concept is adhered to by many Russian researchers of consumer protection issues. The above position is justified by the fact that in many situations legal entities act as non-professionals who need additional protection (LB Sitdikova [6]), or by the fact that certain goods, works, services are acquired by legal entities, not for business activities, but to meet the needs of its employees (E. Kornilov [7]). I.B. Kiryushina notes that special (increased) protection should be extended to legal entities that purchase products for the domestic needs of their employees (labor collective), or to such organized consumer groups as consumer cooperatives, homeowners' associations, and similar associations of citizens who purchase goods for the implementation of their statutory tasks and do not aim to make a profit [8, p. 35].

According to O.Yu. Chernyak, the restriction of the range of legal entities to which the Law of Ukraine «On Consumer Protection» should be extended is unfounded. Because a legal entity, when purchasing goods, works, or services to meet the needs of its employees (drinking water machine or coffee machine, air conditioners), needs, first of all, to extend to it the legislation on consumer protection, and not the legislation governing contractual relations [3, p. 34].

Develops the proposed concept in his study and E.O. Ruzhytska, who proposes to include in the concept of «consumer» a legal entity that buys goods to ensure its current activities, not related to profit [9, p. 8].

Of course, there are several researchers (MI Braginsky, VV Vitryansky, LA Shashkova, etc.) who do not support the idea of extending consumer status to legal entities and argue that organizations, unlike citizens, have their financial, accounting, legal services and therefore do not require special remedies provided by law to the weak side [10, 11].

In our opinion, the proposal to recognize legal entities as consumers contradicts one of the main principles of the legislation on consumer protection

- the principle of fair equality of subjects of consumer relations. To establish the legal equality of economically unequal subjects, the current civil law gives the entrepreneur many additional responsibilities, and the consumer - many rights. If legal entities would be able to apply the mechanism of consumer protection provided by the Law of Ukraine «On Consumer Protection» there will be legal inequality between these participants in civil relations.

The relevant position is set out in the decision of the Constitutional Court of Ukraine dated 10.11.2011 №15-pp/2011, which states that the consumer, as a rule, objectively lacks the knowledge necessary to make the right choice of goods (works, services) offered on the market, as well as to evaluate contracts for their acquisition, which often have the form of a form or other standard form. Therefore, the state provides special protection for the weaker subject of economic relations, as well as the actual rather than formal equality of the parties in civil relations, by determining the characteristics of contractual relations in the field of consumer lending and limiting the principle of freedom of civil contract [12].

Along with the discussion on the application of the term «consumer» to a legal entity, there is a question of extending the provisions of the Law of Ukraine «On Consumer Protection» to legal relations with the participation of natural persons-entrepreneurs. It is difficult to distinguish between those persons who may be recognized as consumers (natural person-entrepreneur, a natural person who is an employee and purchases goods, works, or services for a legal entity) because they are no different from other natural persons.

The answer to this question is given by case law. In particular, in the generalization of judicial practice of civil cases on consumer protection, attention is drawn to the absence in the Law of Ukraine «On Consumer Protection» of criteria for distinguishing the use of goods for personal use from its use in business or employee duties. It is noted that there are many cases when a business entity purchased goods for future use in business activities, but due to certain circumstances used them for their own household needs, or vice versa. Therefore, when deciding on the possibility of applying to the disputed legal provisions of the Law of Ukraine «On Consumer Protection» the court must find out for what purposes the purchased product is used: personal needs of an individual or its use related to business activities of an individual - the subject of entrepreneurial activity [13, p. 15].

In our opinion, an individual who wishes to exercise his constitutional right to entrepreneurial activity, after passing the relevant registration and other procedures provided by law, under no circumstances loses or changes his status as an individual, which he acquired from birth, but only acquires before

him a new sign - an entrepreneur. In this case, the legal status of «natural person-entrepreneur» in itself does not affect any powers of the natural person, due to his civil legal capacity, and does not limit them. That is why the key feature for resolving the issue of classifying a natural person-entrepreneur or a natural person-employee as a “consumer” is the purpose of using the purchased goods, ordered services, or works.

It should be noted that the problem of classifying business entities as consumers is also known to foreign countries. Thus, in Italy, before the adoption of the Italian Consumer Code in 2005, Italian scholars expressed the possibility of extending consumer protection rules to small businesses, artisans, who were seen as a «weaker» party to the contract, as between small and large enterprises inequality. However, Article 3 of the Consumer Code of Italy in 2005 found that small businesses, artisans, and entrepreneurs, although sometimes considered a «weak» party to contractual obligations, cannot legally enjoy the protection provided to consumers of individuals [14, p.25].

Legislation on consumer protection in France, Italy, and Germany shows that European legislation does not support the idea of extending it to legal entities. Thus, the French Consumer Protection Act means a natural person, except for an entrepreneur who acquires goods (services) for business purposes (Article 1), similar definitions are contained in the legislation of Italy (a natural person who acts for non-compliance related to business, commercial, craft or professional activities (Article 3 of the Consumer Code of Italy)), Germany (a natural person who enters into a contract for a purpose that cannot be attributed to either his production or his independent professional activity 13 «Consumer» of the German Civil Code)). Under Polish law, a consumer is a natural person who enters into a legal agreement with an entrepreneur that is not directly related to his business or professional activities [15].

Besides, as noted by O.Yu., Chernyak, if we pay attention to the EU directives on the definition of consumer rights in various fields (for example, EU Regulation № 593/2008 on the law to be applied to contractual obligations, Directive 98/6 / EC of the European Parliament and the Council of 19.02.1998 on consumer protection when indicating the prices of goods offered to consumers, Council Directive 93/13 / EEC of 05.04.1993 on unfair terms of consumer contracts, Council Directive 85/577 / EEC of 20.12.1985 on the protection of consumers to contracts concluded outside the business premises, etc.), it should be noted that most of them operate on the concept of the consumer as an individual, excluding legal entities. The scientist notes that all the definitions given in the EU directives are not the same, but relate only to a certain range of relations governed by them, so we can say that there is no clear definition of the consumer at the level of EU legislation [3, p. 30].

The definition of «consumer» has not been uniformly formulated in EU law. However, the following common features of this concept can be noted: a) the subject is a natural person who enters into a contract, usually not for commercial and professional purposes (the exception is the relationship for the provision of tourist services in a business tour); b) the subject is a person who directly consumes the product, which occupies the final step in the economic process. Also, in EU law, the term «consumer» is applied to a person who has been harmed by a substandard product (good, service).

Based on the above, we can formulate the following definition of the term consumer: “a consumer is a natural person, including a natural person-entrepreneur, who acquires (otherwise acquires ownership or use) or orders goods (works, services) or intends to purchase (otherwise acquire ownership or use) or order goods (works, services) for personal or other needs not related to business activities.

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Banasevich I.I. The concept of «consumer» according to the laws of Ukraine and the European Union

The article is devoted to the theoretical understanding of the concept of «consumer» based on modern scientific achievements of the science of civil law, as well as regulations and legal positions of the courts of Ukraine and the European Union. In the current legislation of Ukraine, the term «consumer» is used quite often, but the meaning that the domestic legislator invests in it varies. The main legal act that establishes the legal status of the consumer is the Law of Ukraine «On Consumer Protection». According to this law, a consumer is a natural person who purchases, orders, uses, or intends to purchase or order products for personal needs not directly related to business activities or the performance of duties of an employee. It follows from this definition that consumers can only be individuals, including citizens of Ukraine, foreigners, and stateless persons. Instead, when applying the rules of consumer law, legal entities cannot be classified as consumers. Also, the Law of Ukraine «On Consumer Protection» does not apply if an individual has the status of an entrepreneur and buys, orders, or uses goods (works, services) for business activities. As a consumer, the Law of Ukraine «On Consumer Protection» recognizes an individual who only intends to purchase a product or order work or service. Such provisions of Ukrainian legislation are in line with European practice, as most European Union directives on the definition of consumer rights in various areas recognize a consumer as an individual acting for a purpose not related to business or professional activities. Legislation in some European countries, such as France, Germany, Poland, and Italy, also does not support the idea of extending consumer protection legislation to legal entities.

Keywords: consumer, consumer protection, consumer rights, entrepreneur, personal needs.