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LEGAL REGULATION OF CONSUMER PROTECTION IN CHINA AND KAZAKHSTAN: COMPARATIVE LEGAL ANALYSIS

Abstract

The article touches on the features of legal regulation and organization of consumer rights protection in the People's Republic of China. The study concerns the PRC Law “On the Protection of the Rights and Interests of Consumers”, as well as the latest amendments made to the law in 2014 in connection with the development of e-commerce and the emergence of problems when selling goods via the Internet. A comparative analysis of consumer rights protection in China and Kazakhstan is also carried out.

Keywords: consumer protection, e-commerce, Law of the People's Republic of China "On the Protection of the Rights and Interests of Consumers".

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ҚЫТАЙ МЕН ҚАЗАҚСТАНДАҒЫ ТҰТЫНУШЫЛАРДЫҢ ҚҰҚЫҚТАРЫН ҚОРҒАУДЫ ҚҰҚЫҚТЫҚ РЕТТЕУ: САЛЫСТЫРМАЛЫ-ҚҰҚЫҚТЫҚ ТАЛДАУ

Аңдатпа

Мақалада Қытай Халық Республикасындағы тұтынушылардың құқықтарын қорғауды құқықтық реттеу және ұйымдастыру ерекшеліктері туралы айтылады. Зерттеу ҚХР-ның «Тұтынушылардың құқықтары мен мүдделерін қорғау туралы» Заңына, сондай-ақ электрондық коммерцияның дамуына және тауарларды сату кезінде проблемалардың туындауына байланысты 2014 жылы заңға енгізілген соңғы түзетулерге қатысты. Ғаламтор. Сондай-ақ Қытай мен Қазақстандағы тұтынушылардың құқықтарын қорғауға салыстырмалы талдау жасалған.

Түйін сөздер: тұтынушылардың құқықтарын қорғау, электронды коммерция, Қытай Халық Республикасының «Тұтынушылардың құқықтары мен мүдделерін қорғау туралы» Заңы.

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ПРАВОВОЕ РЕГУЛИРОВАНИЕ ЗАЩИТЫ ПРАВ ПОТРЕБИТЕЛЕЙ В КИТАЕ И КАЗАХСТАНЕ: СРАВНИТЕЛЬНО-ПРАВОВОЙ АНАЛИЗ

Аннотация

Статья затрагивает особенности юридического регулирования и организации защиты прав потребителей в народной республике Китай. Исследование касается закона КНР "О защите прав и интересов потребителей", а также последних поправок, внесенных в закон в 2014 году в связи с развитием электронной коммерции и возникновением проблем при продаже товаров через интернет. Также проводится сравнительный анализ защиты прав потребителей в КНР и Казахстане.

Ключевые слова: защита прав потребителей, электронная торговля, Закон КНР «О защите прав и интересов потребителей».

Basic provisions. The development of large-scale trade, provision of services, e-commerce and the sale of goods via the Internet, along with the occurrence of serious violations of consumer rights, dictates the need to improve legislation on the protection of consumer rights.

China has a law "On the Protection of the Rights and Interests of Consumers," but in addition to this law, the country has developed a number of regulatory legal acts that, to one degree or another, regulate the protection of consumer rights.

Chinese legislation assigns a special role to government agencies in the field of industry and trade in relation to consumer protection. The law also determines that the duties of the People's Court of the People's Republic of China include taking measures to simplify and expedite the consideration of disputes related to violations of the rights and interests of consumers.

In the course of comparing the legislation of the Republic of Kazakhstan and China, it is observed that the current Kazakh legislation on the protection of consumer rights has a more clearly structured conceptual apparatus, revealing the definition of basic concepts such as consumer, performer, manufacturer, seller, importer, etc. Whereas Chinese legislation on consumer protection can be assessed as more severe in relation to manufacturers of goods (works, services), aimed at tightening measures of legal liability for harm caused by low-quality goods, dishonestly provided services and poorly performed work.

Introduction. Consumer rights and consumer protection legislation enable people to combat consumer neglect and abuse by retailers and manufacturers. These laws are designed to keep sellers of goods and services from abusing their power by trying to make a profit by taking advantage of consumers' lack of information. Some actions may be considered unfair while others may be characterized as fraudulent. Consumer protection may differ slightly in different countries, but it is designed to protect the same thing - people's consumer rights.

Since consumer rights issues affect a wide range of social relations, such as purchase and sale, provision of services, warranty and post-warranty service, professional activities, standardization, intellectual property rights, etc., the obligations to protect these rights are regulated by a huge number of norms, controlling various areas and issues of a socio-economic nature.

Activities to protect consumer rights are a system of legal norms and mechanisms to protect buyers of goods and services, as well as the public, from unfair practices on the part of producers of

goods and services. The state tries to ensure the protection of consumer rights by creating a legislative framework aimed at preventing fraud or certain dishonest practices by sellers in order to gain an advantage over competitors or mislead consumers.

The legislation establishes specific consumer rights and determines the forms of liability for their violation. They may also provide additional protection to the public who may be affected by the product (or its production), even if they are not direct purchasers or consumers of the product. For example, government regulations may require companies to disclose detailed information about their products, especially in areas where public health or safety is an issue, such as food or automobiles.

Legal norms provide the consumer with a number of opportunities aimed at restoring violated rights, including the right to compensation for moral and material damage received in the process of realizing their consumer rights and legitimate interests. The legislation itself on the protection of consumer rights, or consumer law, is considered as an area of law that regulates private law relations between individual consumers and enterprises that sell these goods and services. Consumer protection covers a wide range of topics, including, but not limited to, product liability, invasion of privacy, unfair business practices, fraud, misrepresentation, and other consumer-business interactions.

Materials and research methods. The methodological basis for studying the relationship between the civil law, business law and social relations is dialectical, logical-legal, systemic-structural methods, methods of comparative legal analysis, formal-legal analysis, legal modeling.

Results and discussion. In China, consumer protection is regulated by the Consumer Protection Law, which was passed in 2013. This law establishes the basic principles of consumer protection, the responsibilities of sellers and manufacturers, the rights of consumers to return goods or compensation for defects, as well as mechanisms for resolving disputes.

In addition, China has the National Administration for Product Quality Supervision (AQSIQ), which is responsible for product quality control, product safety and consumer protection. There is also a consumer complaints center where citizens can seek help in case of conflicts with sellers or manufacturers.

In general, the consumer protection system in China is quite developed and includes various measures aimed at ensuring the safety and quality of goods and services, as well as protecting the interests of consumers in the event of disputes.

Protection of consumer rights can be carried out through legislative measures, control and supervision by government organizations, as well as through recourse to court or arbitration. It is important that consumers are aware of their rights and know how to effectively protect them.

For this purpose, there are a number of organizations involved in the protection of consumer rights, such as consumer associations, consumer rights centers and others. They provide advice, help consumers in case of violations and carry out various activities to protect consumer rights.

It is also important to remember your responsibility as a consumer and to comply with laws and regulations when purchasing goods and services. Taking care of your rights will help not only in case of problems, but also helps improve the quality of goods and services on the market as a whole.

Currently, in most countries, the sphere of consumer protection is regulated by the provisions of the law “On the Protection of Consumer Rights”. China has a law “On the Protection of the Rights and Interests of Consumers” [1], but in addition to the mentioned law, the country has developed a whole set of regulatory legal acts that, to one degree or another, regulate the protection of consumer rights.

Since consumer rights issues affect a wide range of social relations, such as purchase and sale, provision of services, warranty and post-warranty service, professional activities, standardization,

intellectual property rights, etc., a huge number of regulations are devoted to the protection of these rights, regulating various areas and issues of a socio-economic nature.

All Chinese legislation regulating the area we are analyzing can be divided into three main blocks:

- firstly, the Law of the People's Republic of China “On the Protection of the Rights and Interests of Consumers”;

- secondly, the fundamentals of national civil legislation, laws and regulations developed within the framework of civil law regulation;

- thirdly, the legislative and other regulatory legal acts adopted at the level of provinces, autonomous regions, municipalities and cities of central subordination.

Before considering the main legislative acts regulating the field of consumer protection, we will take a brief excursion into the history of the formation and development of Chinese legislation in the field of consumption.

Currently, China is the largest importer and it is almost impossible to find a product that is not produced in China or a country that does not have goods from China on its market. It should be noted that, having enormous production and human potential, China for a long time lagged significantly behind many Western countries in terms of socio-economic growth, as well as consumption growth.

For a long time, Chinese citizens did not have rights to high-quality and safe products or services clearly regulated in national legislation, and the activities of Chinese entrepreneurs were practically not regulated in any way. This state of affairs can be explained by the fact that in order to develop legislation in the sphere of providing the country’s population with quality goods and services, a competitive market is needed for producers and consumers, as well as legal support for both from the state. The development of the PRC from the very beginning of its formation took place within the framework of a planned economy, and the concept of a free market was not initially even considered by the country’s leadership [2].

Over time, political changes in the country led to the need for legal and economic reforms aimed at economic growth and the development of international trade, taking into account the experience of economic development of Western countries. As a result of these reforms, the influence of consumers in the market for goods and services has also increased.

In the 1990s, the PRC adopted a number of laws that in one way or another affected the sphere of consumer protection, such laws include the Law “On Combating Unfair Competition”, the Law “On Product Quality” and the Law “On the protection of the rights and interests of consumers.”

The first law regulating consumption in China was the Product Quality Law of February 22, 1993 [3]. This law regulates social, economic, legal and political factors that influence the quality of products produced in the country and the measures to control this quality.

The key points of the analyzed law are:

- the provisions of the law apply to all production and sales activities carried out in the territory of the PRC;

- products should be understood as all products produced and processed for the purpose of subsequent marketing;

- responsibility for supervision and quality management is exercised by specially created market regulatory bodies of the State Council for this purpose;

- all Chinese manufacturers are responsible for the quality of their products and must take measures to maintain and improve the quality of their products;

- all Chinese sellers are responsible for repairing, replacing or returning products of substandard quality, and are also required to compensate for damage caused to consumers in connection with the use of substandard products;

- in case of personal damage to the property of others due to product defects, all affected persons have the right to demand compensation for damage, both from sellers and from manufacturers, depending on whose fault this damage was caused. If the damage was compensated

by the seller, but was caused by the fault of the manufacturer, then sellers have the right to recover the funds they spent on compensation for damage from manufacturers and vice versa, manufacturers have the right to compensation for their losses if the fault for the damage lies with the seller;

– consumers of goods and other affected persons have the right to demand compensation for damage caused to them within two years from the moment the damage was caused.

Having studied the norms of the PRC Law “On Product Quality”, we can conclude that, despite the fact that they relate to various aspects of the protection of consumer rights, public relations in this area are not fully covered by the law, therefore, on October 31, 1993, the PRC Law “On the Protection of rights and interests of consumers” [1]. This law was the first legislative act aimed at protecting the interests of consumers and became a symbol of the beginning of a new era in the field of legal protection of consumer rights in China. The adoption of this law was largely due to the introduction in 1993 of an amendment to the Constitution of the People's Republic of China stating that China was embarking on the path of implementing a market economy policy in the country and therefore it was necessary to strengthen the national legislation regulating the country's economy [2].

Having decided on the need to develop an open market economy in the country, the PRC government understood that this was impossible without creating a strong legal system. Therefore, at the 8th Congress of the National People's Congress of China, which was held in 1993, 85 laws were approved as part of the implementation of the country's economic development program for the period from 1993 to 1998. About half of the adopted acts were adopted to promote construction of a socialist market in China. Among the most significant legislative acts, the Law “On Food Hygiene”, the Law “On Advertising”, the Law “On Protection of Consumer Rights” should be highlighted, in addition, changes were made to the Law “On Trademarks”, the Law “On Combating Unfair Competition” and the Law “On Product Quality”.

All of the laws listed above are aimed at standardizing and regulating the rules of behavior of sellers on the market. It should be noted that not much attention was paid to ensuring the protection of consumer rights, since the main goal of the first wave of legislation was to satisfy the interests of China's economic policy.

Among the laws of the PRC that in one way or another relate to the protection of consumer rights, the “Advertising Law” of February 1, 1995 should be highlighted [5] protecting consumers of products and services from false or misleading information contained in advertising and the “Law on Contracts” of March 15, 1999 [5], regulating trade relations between equal business entities.

The PRC Law “On the Protection of the Rights and Interests of Consumers” contains 8 chapters, which set out the key principles and system of state protection of the legitimate interests of consumers, the responsibilities of entrepreneurs, and the legal liability of participants in legal relations. The rules of the law regulate the basic everyday needs of consumers related to the acquisition and use of goods and services, and regulate the law and activities of peasants in the acquisition, use and sale of agricultural products.

A separate chapter (Chapter II) of the law is devoted to consumer rights [1].

Analyzing the norms of Chinese consumer rights protection law, we can conclude that most of the seller's obligations contained in Chapter III are compensatory for specific consumer rights, for example, the consumer's right to receive information about a product or service is ensured by the manufacturer's obligation to provide this information. An analysis of Chapter III of the law allows us to conclude that the norms it contains oblige Chinese entrepreneurs to act in good faith, namely:

– take measures to ensure the safety of consumers, including services, to a greater extent this applies to enterprises operating in the field of catering, tourism, entertainment, banking and other public spheres;

– issue checks, invoices or other documents confirming receipt of funds;

- within seven days, accept back low-quality goods or eliminate deficiencies in the services provided;
- the obligation of Internet sites that trade in goods or services to provide complete and reliable information about all goods, services, as well as their producers and sellers.

Contains the analyzed law and provisions on the role of the state in protecting consumer rights; a separate chapter is devoted to the mechanism of state protection (Chapter IV). The provisions of this chapter indicate that the people's government of the republic plays a major role in organizing, coordinating, managing, as well as stimulating relevant administrative bodies in protecting the rights and interests of consumers at all levels of government.

A special role in protecting consumer rights in legislation is assigned to government bodies in the field of industry and trade. The law also specifies the duty of the People's Court of the People's Republic of China to take measures to simplify and expedite the consideration of disputes related to violations of the rights and interests of consumers.

The main body that carries out state regulation of the organization of consumer rights protection in China is the State Administration of Commerce and Industry of the People's Republic of China (STPU of the People's Republic of China). It is the State Customs Service that is responsible for monitoring and regulating the national market, including in matters of consumer protection.

The law contains (Chapter V) provisions on public protection of consumer rights carried out by public associations and other consumer associations.

This form of consumer protection has become increasingly popular in China in recent years and consists of the creation of public consumer associations. In China, the Chinese Consumers Association (CCA) has been operating since 1984, which is a national public organization for the protection of the rights and legitimate interests of consumers. CCA also participated in the development of the draft law of the People's Republic of China "On the Protection of the Rights and Interests of Consumers", and also participated in the development of regulations governing the protection of consumer rights in 20 Chinese provinces, autonomous regions, municipalities and centrally subordinate cities. The peculiarity of these normative acts is that they take into account the characteristics of local production and consumption, provided they do not contradict the norms of the basic law.

The law provides for the creation of various consumer organizations in the form of associations and other forms of public organizations in order to monitor the sale of goods and the provision of services in order to protect violated consumer rights.

Chapter VI of the law considers the mechanism for resolving disputes in the event of a violation of consumer rights.

The most common procedure for resolving disputes about violated consumer rights in China is mediation, that is, the pre-trial settlement of all controversial issues. This method is the least expensive both in terms of time spent on the consideration of the case and in terms of the funds spent on this consideration. About 30% of all disputes with consumers in the country are resolved in this way [6]. The popularity of mediation procedures is explained not only by the Chinese national penchant for peaceful resolution of disputes, but also by the fact that in practice, Chinese courts are characterized by judicial red tape and consideration of cases in violation of procedural deadlines. Cases on the restoration of violated consumer rights can take years to be considered [7].

Chapter VII of the law provides a detailed list of violations by manufacturers and sellers, for which civil, administrative and criminal liability is provided.

China provides for criminal liability for the manufacture and sale of counterfeit and low-quality goods. The law also provides for circumstances when an entrepreneur may be deprived of the right to further carry out entrepreneurial activities.

The current Chinese legislation contains a large number of administrative offenses related to the protection of consumer rights. Since March 15, 2015, new rules for the application of administrative penalties for violations of consumer rights have been applied in the country [8]. These rules, adopted by the General State Administration of Commerce and Industry of the People's

Republic of China (GGUTPA), significantly expanded the scope of offenses, and also specified the procedures for bringing entrepreneurs to administrative responsibility for these violations.

The development in the country, as in the entire modern world of electronic commerce, necessitated amendments to the Law “On the Protection of the Rights and Interests of Consumers”, which were developed and approved by the Standing Committee of the National People's Congress on October 25, 2013.

The changes affected the protection of the rights of consumers purchasing goods and services in e-commerce, that is, on the Internet. The rules introduced by the law relate to the sale of goods via the Internet or other telecommunication networks and contain conditions for returning goods, filing claims for purchasing goods via the Internet, the obligation of sellers to provide all information about manufacturers, sellers, goods or services and the terms of the purchase and sale transaction. The law also introduced conditions for the protection of personal data of buyers, obliging entrepreneurs to use this data strictly in accordance with the norms of current legislation and not to use it to send commercial information without the prior consent of the buyer.

The changes made to the law also increased the amount of fines imposed by government authorities on Chinese entrepreneurs for violating the law.

The development of new ways of purchasing goods and services has necessitated the adoption of a number of laws regulating the protection of consumer rights. These include the “Law on Property Rights” dated March 15, 2007, “Anti-Monopoly Law” dated August 30, 2007, “Civil Procedure Code” dated December 26, 2009, “Food Safety Law” dated February 28, 2009.

In 2010, the State Administration of Industry and Commerce of the People's Republic of China signed the Interim Rules for Trade in Goods and Services via the Internet. This regulatory legal act became the first act regulating online trading and related services, as well as establishing rules of conduct for this form of trading and penalties for violating them.

On January 1, 2019, the Law of the People's Republic of China “On Electronic Commerce” came into force in China [2]. This law determined the key rules for the sale of goods and provision of services via the Internet. The law applies to all types of e-commerce (B2B, B2C, C2C, including sales through Wechat and streaming services) and all entrepreneurs in the field of e-commerce. The main innovation provided for by this law is the need for mandatory registration of any business activity, including micro-businesses.

The analyzed law states that all transactions for the sale of goods or the provision of services on the Internet are subject to the PRC Law “On the Protection of the Rights and Interests of Consumers”. That is, all entrepreneurs operating on the Internet must provide customers with reliable and complete information about their goods and services, as well as comply with all trading rules, including those regarding the age of the goods and the receipt of claims from customers. The law also states that all electronic trading platforms are required to monitor compliance with consumer rights by individual entrepreneurs. Otherwise, the electronic platform and the entrepreneur may be held jointly liable if a violation of consumer rights is revealed.

We will also compare the organization of consumer rights protection in China and the Republic of Kazakhstan.

In Kazakhstan, the main law regulating consumer rights is Law of the Republic of Kazakhstan dated May 4, 2010 No. 274-IV On the protection of consumer rights [9]. This law, like the PRC Law “On the Protection of the Rights and Interests of Consumers”, provides for state control over compliance with both the basic law and other regulations in the field of protecting the rights and legitimate interests of consumers. The structure of the Kazakhstan law is represented by 46 articles contained in the preamble and 4 sections.

Comparing the norms of Kazakh and Chinese laws, we can conclude that the law of the Republic of Kazakhstan has a more clearly built conceptual apparatus, revealing the definition of basic concepts such as consumer, performer, manufacturer, seller, importer, etc. The preamble of the Chinese law, which contains general provisions, does not provide an interpretation of the terms.

In practice, when resolving issues of consumer protection, a clear interpretation of terms contributes to a more accurate and fair resolution of the dispute.

Comparing the standards of liability for violation of consumer rights, we can conclude that in China they are much more stringent, for example, criminal liability is provided for the production and sale of low-quality or counterfeit goods, whereas in Kazakhstan such liability is not provided, and administrative measures are not taken, and cannot be compared with the benefits of unscrupulous manufacturers and sellers.

The laws of both the Republic of Kazakhstan and China establish a mechanism for legal education of consumers. The Law of the Republic of Kazakhstan indicates the right of consumers to education in the field of consumer protection. In Art. 13 of the Chinese law also added a clause obliging Chinese consumers to “diligently acquire knowledge and skills in using goods”. This clause was introduced with the aim of increasing conscious self-protection of consumer rights.

The next significant difference in the mechanism for protecting consumer rights in Kazakhstan and China is the mechanisms of this protection. In Kazakh practice, the largest numbers of disputes are resolved in court, while Chinese consumers are increasingly resorting to mediation procedures.

Despite the fact that the Kazakh law also provides for a pre-trial procedure for resolving disputes, it is applied in practice extremely reluctantly.

Conclusion. In general, analyzing the Kazakh and Chinese laws on consumer protection, we can conclude that, despite some similarities, they differ significantly from each other, but at the same time, both require further improvement and refinement in the light of constantly changing production conditions, conducting business and trading.

In conclusion, we outline the key problems of legal regulation of consumer rights in China. Firstly, the country still has some shortcomings in the construction of consumer protection laws themselves. Secondly, the problem of consumer rights violations in several areas still needs to be addressed. Third, consumer protection in online transactions faces new issues and challenges.

China has a law “On the Protection of the Rights and Interests of Consumers,” but in addition to this law, the country has developed a number of regulatory legal acts that, to one degree or another, regulate the protection of consumer rights.

All Chinese legislation regulating the area we are analyzing can be divided into three main blocks:

– firstly, this is the Law of the People's Republic of China “On the Protection of the Rights and Interests of Consumers”;

– secondly, these are the fundamentals of national civil legislation, laws and regulations developed within the framework of civil law regulation;

– thirdly, these are legislative and other regulatory legal acts adopted at the level of provinces, autonomous regions, municipalities and cities of central subordination.

The PRC Law “On the Protection of the Rights and Interests of Consumers” consists of 8 chapters, which set out the basic principles and system of state protection of the legitimate interests of consumers, the responsibilities of entrepreneurs, and the legal liability of participants in legal relations. The provisions of this law regulate the basic everyday needs of consumers regarding the acquisition and use of goods and services, and also regulates the activities of farmers in the acquisition, use and sale of agricultural products.

In general, analyzing the laws on consumer protection in various countries, we can conclude that despite some similarities they are enormously different from each other, but at the same time they require further improvement and refinement in the light of the constantly changing conditions of production, business and trade.

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ЗАҢДЫ ТҰЛҒАЛАР КӘСІПКЕРЛІК ҚЫЗМЕТ САЛАСЫНДАҒЫ ӘКІМШІЛІК ЖАУАПТЫЛЫҚ СУБЪЕКТІСІ РЕТІНДЕ

Аңдатпа

Мақалада Қазақстан Республикасындағы заңды тұлғалардың кәсіпкерлік қызметті жүзеге асыру барысында туындайтын әкімшілік жауаптылығы туралы талдау жасалған.

Заңды тұлға тәуекелге бара отырып, мүліктік жауапкершілік негізінде пайда табу үшін, мемлекеттік тіркеуден өткеннен кейін бастамашылық қызметті жүзеге асыруға құқылы. Егер лицензиялауға жататын қызметті жүзеге асыратын болса, лицензия алуға міндеттенеді.

Заңды тұлғаның кәсіпкерлік қызметтегі әкімшілік жауаптылығы туралы бірнеше көз-қарастар қарастырылған.

Түйін сөздер: заңды тұлға, кәсіпкерлік қызмет, субъект, заңды тұлғаның жауаптылығы, статистика