ABSTRACT

of the doctoral dissertation titled "Problems and Prospects for the Development of the Legal Mechanism for Consumer Protection," submitted for the degree of Doctor of Philosophy (PhD) in the specialty 6D030100 – Jurisprudence by Assel Oralovna Syurikpaeva.

General characteristics of the research. The present dissertation is devoted to a comprehensive analysis of current issues in the field of consumer rights protection in the Republic of Kazakhstan, as well as to the development of theoretical foundations and practical mechanisms for improving the relevant legislation. The object of the research consists of social relations arising in connection with citizens' consumption of goods and services (including digital content), while the subject of the research comprises normative legal acts and judicial practice in the specified field.

Relevance of the research topic. The protection of consumer rights has been recognized as a priority of Kazakhstan's state policy, which is reflected in the President's Addresses of 2022 and 2024, the Concept of Legal Policy until 2030, governmental measures and the draft law on the revision of legislation . Given the low effectiveness of pre-trial protection of consumer rights, the uncertainty of criteria for public contracts, and the growth of abuses in the digital environment, particular importance is attached to research aimed at eliminating legislative gaps, improving mechanisms for the protection of consumer rights, harmonizing legislation with international standards, and strengthening the position of consumers in both the traditional and digital environments, an area that remains insufficiently developed in the legal scholarship and judicial practice of Kazakhstan.

Degree of scientific elaboration of the topic. The topic traces back to Soviet legal doctrine, which laid the foundations of civil-law protection of consumer rights. In Kazakhstani civil law scholarship, general issues have been addressed in the works of M.K. Suleimenov, A.G. Didenko, Yu.G. Basin, and E. Osipov. The first monographic studies include the dissertation of T.G. Kvyatkovskaya, textbooks by S.Yu. Romanovskaya and S.P. Moroz, the dissertation of S.K. Idrysheva, and individual scholarly articles by M.K. Zhusupbekova, E.V. Nesterova, K. Akhmedinova, F.S. Karagusova, A.B. Bondarev, A. Bondarev and E. Pak . However, the mechanisms of judicial and pre-trial protection, and their compliance with international standards and the challenges of digitalization, have only been developed in a fragmentary manner. Against the background of studies by C. Busch , A. De Franceschi , N. Helberger , E. Agibalova and E. Bagreeva , as well as Directive (EU) 2019/770, the absence of a holistic theoretical and practical approach that takes into account Kazakhstan's specific context determines the scientific novelty of the dissertation.

The purpose of the dissertation research is to provide a scholarly justification and develop systemic recommendations aimed at improving the legal mechanisms for the protection of consumer rights in the Republic of Kazakhstan, taking into account contemporary digital realities, international experience, and the need for effective regulation of new formats of consumer relations.

To achieve this purpose, the following objectives are set:

– to carry out a comprehensive analysis of Kazakhstan's legislation on consumer protection and identify its gaps and shortcomings in the context of the development of the institution and the digitalization of the economy;

– to determine the conceptual directions for expanding the legal status of the consumer in national legislation and to assess them by comparing with European and Asian approaches;

– to analyse the forms and procedures for the protection of consumer rights, including issues of improving the model of pre-trial dispute resolution and mechanisms for compensation of moral harm;

– to assess the prospects for improving the mechanism of the public contract and ways of preventing unjustified discrimination in contractual relations;

– to analyse the areas of legal regulation of digital content and of countering unfair online practices;

– to formulate proposals for improving the mechanisms of consumer protection and the current legislation, taking into account foreign experience and international standards.

The object of the dissertation research is the totality of social relations arising in the Republic of Kazakhstan in the field of consumer protection, encompassing both traditional formats of sale and purchase and the provision of services, and relations connected with electronic commerce, online platforms, as well as public contracts in the areas of monopolistic and socially significant services.

The subject of the dissertation research is the normative legal acts and law-enforcement practice relating to consumer protection in the Republic of Kazakhstan (legislation on consumer protection, civil and administrative legislation, as well as related regulatory acts on advertising, informatization, natural monopolies, etc.), international instruments, the experience of foreign states, and scientific and specialized literature.

The normative framework of the research consists of the Constitution of the Republic of Kazakhstan, constitutional laws, sectoral laws and other normative legal acts, international instruments regulating the sphere of consumer protection, the President's addresses, and the system of state programmatic documents.

Methodology and research methods relies on a combination of general scientific methods (analysis, synthesis, system-structural approach, modelling), special legal methods (comparative-legal, formal-legal and historical-legal, sociological), and interdisciplinary methods (economic analysis of law, information-technological approach). Taken together, they have made it possible to

identify key problem areas (digital content, public contract, pre-trial procedure, compensation for moral damage) and to formulate proposals for improving legislation and law-enforcement practice in the field of consumer protection in Kazakhstan.

The scientific novelty of the research lies in the systematic development of concrete proposals and recommendations aimed at improving the legal mechanisms for consumer protection in the Republic of Kazakhstan, taking into account contemporary digital realities, including the following key provisions submitted for defence:

1. The author's position on the need to enshrine in the legal system of Kazakhstan, including through amendments to the current legislation, the principle of technologically neutral functional equivalence between material and digital performance of consumer obligations (see Appendix A). As civil-law transactions develop in the digital environment, obligations are performed in two forms – in material (in-kind) and in digital form – which are equivalent in terms of the content and meaning of the performance of the obligation. It is proposed to introduce a presumption of equal legal protection: digital performance (access to digital content or a digital service, with the declared functionality, security, updates and fixes ensured within a reasonable time) is recognised as equivalent to the delivery of a tangible good, work or service. The same requirements as to quality, safety, provision of information and liability apply to such performance, and the burden of proving the contrary is placed on the seller (manufacturer, performer, platform service provider).

2. The author substantiates the need for further improvement of pre-trial dispute resolution mechanisms in the sphere of consumer protection, including the clear statutory establishment of the mandatory nature of pre-trial procedures for both parties. It is argued that legislation should impose a mutual obligation on the consumer and the seller to comply with the pre-trial dispute resolution procedure (submission of a claim and its timely and proper consideration), and should introduce administrative liability of the seller (manufacturer, platform service provider) for unjustified refusal, failure to respond or evasion of the pre-trial procedure. It is proposed to link the consumer's right to bring a claim before a court to receipt of a response to the claim or to the expiry of the statutory time limit for such response (see Appendix A).

3. The author's position on the further development of mechanisms for recovering compensation for moral harm as an incentive to comply with pre-trial procedures, and on strengthening liability for evasion of pre-trial settlement. In order to prevent courts from unjustifiably and excessively reducing the amount of compensation for moral harm and to suppress intentional or systematic infringements of consumers' interests by businesses, the author substantiates the necessity of: legislatively establishing the procedure for recovering compensation for moral harm in the event of violations of consumer rights; obliging courts to provide reasons for any reduction of compensation by more than 50 per cent and granting them the power, in cases of intentional or repeated violations, to award a fine of at least 50 per cent of

the amount awarded; and establishing a minimum amount of compensation for moral harm that precludes its unjustified underestimation (see Appendix A).

4. The author's substantiation of the strengthening of the role of the public contract in relations with entities of natural monopolies and of ensuring the real operability of the public contract mechanism. The author argues for the need to establish in legislation a prohibition on a natural monopoly entity refusing to conclude or to perform a public contract, except in cases of an objective absence of technical possibility, confirmed by the competent authority, or socially dangerous actions of the client. Formal grounds are not permitted, and only factual impossibility of performance, an unlawful or manifestly disproportionate request by the consumer, and situations involving a threat to the safety of staff or other consumers are to be recognised as lawful grounds (see Appendix A).

5. Substantiation of the necessity of legal regulation and consolidation of special definitions of digital content and services. Digital content should be defined as data in digital form and other intellectual property objects provided to the consumer for payment or in exchange for personal data. A digital service is an activity consisting in the creation, processing, storage and provision of access to such data (including cloud services, streaming, platforms, subscriptions). It is proposed to establish by law quality criteria for a digital good (work/service), to impose on providers of digital products and services duties to ensure the reliability and security of the digital products acquired (timely updates, defect remediation, notification of cessation of support, etc.), and to establish liability for breach of these duties (see Appendix A).

6. The author substantiates the need to raise the level of information security of consumers and the quality of digital goods and services, as well as to improve the protection of consumer rights in the field of e-commerce, by legally enshrining the concepts of "manipulative interface techniques" and "fake reviews" and classifying them as prohibited practices. "Dark patterns" as design elements that covertly affect the user's freedom of choice, and fake reviews created by bots, for remuneration or on behalf of fictitious persons, are proposed to be classified as unlawful advertising, with strengthened supervision and liability, which increases information security and trust in digital goods and services (see Appendix A).

The prohibition of mechanisms that covertly affect the user's freedom of choice and of fake reviews, together with strengthened supervision and liability, raises the level of consumers' information security, ensures the quality of digital goods and services and improves the system for protecting consumer rights in e-commerce.

Theoretical and practical significance. The theoretical and practical significance of this research is defined by a set of developed proposals capable of tangibly raising the level of consumer-rights protection in Kazakhstan. First, new positions have been formulated that can serve as a basis for preparing amendments and supplements to the Law of the Republic of Kazakhstan "On Protection of Consumer Rights", the Civil Code of the Republic of Kazakhstan, the Code of the

Republic of Kazakhstan on Administrative Offences, the Law of the Republic of Kazakhstan "On Advertising", and other normative acts (including the introduction of a mandatory pre-trial procedure, clarification of the public contract, refinement of criteria for non-pecuniary (moral) damage, and regulation of digital content). Second, specifying concrete criteria for "objective technical obstacles" and defining the supplier's duties when concluding a public contract will reduce unjustified refusals in the housing-and-utilities, transport, and telecommunications sectors and strengthen citizens' social guarantees. Finally, enhancing liability for unfair online practices (manipulative interfaces/dark patterns, fake reviews) will build trust in electronic services, support the growth of e-commerce in Kazakhstan, and reinforce the foundations of the digital economy.

Approbation of the research results. The main findings of the dissertation research have been published in 7 scientific articles, including 1 article in an international peer-reviewed journal indexed in the Scopus database, 4 articles in academic journals recommended by the Committee for Quality Assurance in the Sphere of Science and Higher Education of the Ministry of Science and Higher Education of the Republic of Kazakhstan, as well as 2 articles in the proceedings of international scientific and practical conferences.

The structure of the dissertation includes an introduction, three chapters, seven subsections, a conclusion, and a list of references.