

CONSUMER EXTREMISM AND THE UNENVIABLE POSITION OF THE SELLER'S

National Aviation University
Kosmonavta Komarova Avenue, 1, 03680, Kyiv, Ukraine
E-mail: vvfilinovich@gmail.com

Purpose: to explore the notion and the essence of the consumer extremism (terrorism) and to find out an adequate solution for disputes between the seller and the customer. **The methodological basis** of the research comprises philosophical, ideological, general scientific and special methods. **Results:** the concept of the consumer extremism as the illegal action is defined as the dishonest actions of consumers operating under the law, aimed at receiving money from the seller (manufacturer of products, supplier of services) in order to profit from it, and not to renew their violated right. Also the author found out that there is no adequate regulation of this issue in Ukrainian legislation. The author suggested the list of actions to be taken while dealing with the consumer extremist. **Discussion:** improvement of the national legislation in the sphere of consumer terrorism; search for actions to be taken while dealing with the consumer terrorist.

Keywords: consumer protection; protection of the rights of the contractor; consumer extremism; consumer terrorism; protection of the rights of the seller; protection of the rights of the service provider.

Problem statement and its relevance. In 1991, Verkhovna Rada by its Decree No. 1024-XII introduced the Law of Ukraine on On Consumer Rights Protection (hereinafter – the Law). Our compatriots have become more secure while making a purchase of goods or receiving services. Everyone has heard the well-known expression that the customer is always right. And is this for real? Is the second party of the transaction - the seller of goods or the service provider sufficiently protected?

The present is marked by the emergence and rooting of such a phenomenon as consumer terrorism and consumer extremism.

Analysis of research and publications. The issue of consumer terrorism was studied by A. Gerlin, I. Kuznetsov, A. Nesterov, L. Doronina and other scientists.

Purpose of the article. By this article the author wants to reveal the notion and the essence of the consumer extremism and terrorism. Also attempts to find out an adequate solution for disputes between the seller and the customer on consumer extremism issue.

The presentation of the main material. The first mentions of such phenomenon known worldwide can be found in the early 90s of the XX century, in the famous «coffee business» case Liebeck vs. McDonald's Restaurants. That time the jury delivered a decision by which Stella Liebeck from Albuquerque should get 160 thousand dollars to cover her medical expenses and compensation for non-pecuniary damage (excluding the fine in the amount of 2 700 000 dollars) [1].

So, a woman bought in the McDonald's Auto a cup of coffee with the price \$0.49. Trying to add sugar to the drink, she touched the lid of the product and spilled the hot contents of the glass on herself. As a result, the victim received third-degree burns on 6% of the skin and burns of lesser degree on more than 16 percent of the hips. As a result, she needed a skin graft surgery. The treatment lasted for two years.

Firstly Stella Liebeck demanded 20 thousand dollars from McDonald's to cover her actual and expected costs, but the Company offered her with just \$ 800. Therefore, in August 1994, a lawsuit began, during which it became clear that the

temperature of coffee should not exceed 82-88 degrees, which can cause third-degree burns in a few seconds. Lawyers of Stella Liebeck said about the need to serve a drink with a temperature of not more than 60° C, as in most other companies.

McDonald's replied that the reason for the high temperature of coffee is that usually the customers of McDonald's Auto coffee plan to go with the drink for a long distance. Therefore, the coffee content of the glass has to stay hot for a longer term for the comfort of consumers.

In August 1994, 12 jurors rendered their verdict – to pay Liebeck 2,700,000 dollars as a fine, as well as 200,000 thousand dollars for non-pecuniary damage. The court noted the negligence of the supplier of coffee, even considering that the notorious glass of drink had an inscription about its hot content [2, p. A1].

So, what is consumer extremism? According to the Russian scientist I.N. Kuznetsov it is the unethical use of the provisions of the legislation by consumers on the protection of their rights for profit or personal gain [3, p. 79].

What do we mean? For example, for the sake of popularity among peers, a girl constantly changes the clothes she «buys» in the store, she puts them on without cutting the label, wears them for a certain period of time, and then takes it back to the store demanding money back. And if there is no trace of the use of the product, then there is no reason for refusal of the store's staff.

Or another case. The contract on the provision of services for the installation of plastic windows was signed between two parties. The document also contained a clause on the penalty for late fulfillment of obligations, as well as the obligation of the customer to ensure unhindered entry of workers to the work place. The claimant did not give them the opportunity to get into the apartments for several times, thus hoping to receive a penalty from the defendant by cunning.

Billy Jean Mathay rested in Disneyland with a daughter and three grandchildren. There, the family was robbed, then the security officers, instead of providing victims with assistance, took them to their office and held them there for several hours against their will. A few months later, the injured head of the family filed a claim against Disneyland

that the security service did not take the necessary actions and, among other things, about receiving moral damage to the injured. It was that while sitting in the security office, the family could see how the actors of the park took off part of their costumes (in the form of Mickey Mouse's growth toys and other fairy tale characters). Seeing Mickey Mouse without a head made a terrible impression on children [4, p. A22]. And there are several such cases!

Also, many of us have heard of a so-called legend called «The Poodle in the Microwave», that is, a dog that the elderly lady decided to dry in the microwave after the poodle Pierre got dirty and was washed by the mistress. Then the woman filed a lawsuit in court for damages caused by the death of the dog in the microwave. The lawsuit was against the manufacturer of microwaves, after all, she did not indicate in the instruction about the ban on drying out pets in such kitchen appliances. It has already been proven that in fact this was not, but its essence is still passed on from generation to generation [5].

Nevertheless, all these cases are a vivid example of the fact that the so-called «victims» – consumers actually wanted to make money, and not to receive compensation for the losses they actually suffered. This is a vivid illustration of the concept of consumer extremism, or terrorism (these concepts are usually used as equivalent, synonyms). So, is the client always the victim?

If we look through the Law, then we can follow the tendency of an advance attitude towards the seller (work performer, product manufacturer) as the guilty and as an unfair party, because the legislation provides him with more duties than rights, but the consumer has the opposite right-duties ratio.

Article 3, paragraph 6 of the Civil Code of Ukraine notes that general terms and meaning of civil law provide for, among other things, the good faith. And if you turn back to the Law, you can clearly see the understanding of the seller as the unfair party to the contract. By the way, there is no indication of consumer extremism in our legislation, which once again indicates a particular and advance position of the consumer.

Attention should be paid to the provision on compensation for moral damage. Articles 4 and 22 of the Law of Ukraine speak of its compensation, but only in the context of protecting the rights of the consumer, the sufferings and other components of the moral harm of the seller are not specified anywhere. It can be seen that compensation is closely related to the determination of the guilt of the seller, and not the moral suffering of the buyer [6, p. 380].

And the third feature – the burden of proof was imposed solely on the seller (contractor, manufacturer of products). In the Law, this position is illustrated, in particular:

– P. 6 of Art. 10, according to which the contractor must prove that in the event of non-performance, delay in performance or other improper performance of the obligation, such a situation has arisen due to the fault of the consumer or force majeure, otherwise he will be responsible for these actions.

– Clause 14 of Article 8 of the Law states that consumer requirements provided for in Article 8 will NOT be satisfied if the seller proves that it was the consumer who violated the rules for using the purchased product or stored it incorrectly, and this caused deficiencies in such an object.

The same position has the Supreme Court of Ukraine, which in its document Judicial Practice on Consideration of Civil Cases on Consumer Protection (2009-2012) dated 01.02.2013, noted the following: «When resolving consumer protection disputes, we should understand, that the burden of proving of circumstances exempt from liability for failure to perform or improper performance of an obligation, including for the harm caused, should be born by the seller (manufacturer)» [7].

Belarusian analyst A. Nesterov conditionally divided extremist consumers into three categories:

1) people who pursue material goals, that is, seek to earn income at the seller's expense);

2) persons who pursue other goals (for example, the desire to obtain moral satisfaction at the seller's expense, to assert themselves or, as they said before, «to achieve class justice»);

3) separate category – citizens with mental disabilities: they behave inadequately not only in

the field of trade and services, but also in other situations [8].

Such a division is acceptable for Ukraine too. But what about service providers, performers, sellers and manufacturers of products? Is it possible and how can they protect themselves from extremist consumers? Such a list of actions can be suggested for them:

1. Firstly, of course, you need a cold mind without emotions. It should be unemotional and thoroughly examine of the situation. A victim of consumer extremism must have a 100 percent certainty that he is not guilty for the problem.

2. You should not immediately encourage the illegal demands of the aggressor. Most well-known companies do not want holes to arise in their reputation, and therefore they prefer to resolve the dispute quickly and «quietly», even without understanding the essence of the problem and its circumstances. And this provokes an unscrupulous consumer to take further actions of the same kind and content or to increase the volume of his demands.

3. If the aggressor demonstrates extremism on the Internet, for example, by disseminating false information, by posting negative reviews, then this should not be ignored. You should always tell the audience your point of view and the results of conflict resolution.

4. Be sure to provide easy access for consumers to any information about your products and services.

5. You should inquire in detail if the complainant has previously had similar conflicts with other companies, especially when he threatened them with a trial. The presence of such a «history» may indicate that you met a professional consumer-extremist.

6. It is important to conduct trainings and workshops with staff, where they will be taught how to respond to any demands of customers, especially illegal. Also special documents and instructions on the relevant actions of workers should be developed and implemented in the company.

7. And, again, do not give in to emotions, usually the aggressor counts on it. After all, under the influence of emotions, you can make a lot of mistakes, and your opponent waits for it.

Lawyer L. Doronina believes that when manifestations of consumer extremism arise you should do the following:

1. Competently develop the provisions of the contract between the saler and consumers: this also relates to other rellevant documents such as accounts, acts and the like.

2. Clearly regulate the actions of the employees when working with the consumer, because this can help to avoid many complaints.

3. It is necessary to fix as much as possible all actions of customers and their staff. It is meant to record telephone conversations with customers. And although the record may not be accepted as evidence in court, this will have an effect on your opponent. You should also keep video recordings, for example, when a car is repaired in a car-care center, after which the service consumer claims that the masters scratched the car [9].

Conclusion. So, we can conclude that the issues of consumer extremism are not well-regulated by our legislation. It means that the fruitful work of the rule-makers in this direction is necessary. It is important to implement the principles and norms of equalization of consumers and sellers, service providers and manufacturers.

In the case of rooting of such provisions, not only one of the parties wins, but also the judicial branch in the whole. It is understood that the consumer-extremist, while knowing the consequences, will be less likely to seek legal protection. This, in turn, will help to reduce the workload of the judiciary, which will be able to direct its actions on solving of really important cases.

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В. В. Філінович

СПОЖИВЧИЙ ЕКСТРЕМІЗМ І НЕЗАВИДНЕ СТАНОВИЩЕ ПРОДАВЦЯ

National Aviation University
Kosmonavta Komarova Avenue, 1, 03058, Kyiv, Ukraine
E-mail: vvfilinovich@gmail.com

Наші співвітчизники відчули себе більш захищеними під час отримання послуг та купівлі товарів, коли у 1991 році Постановою № 1024-XII Верховної Ради було введено в дію Закон України про захист прав споживачів. Ми звикли до того, що клієнт завжди правий у відносинах із постачальником послуги, продавцем чи виробником товару. Тим не мени, деякі із клієнтів ведуть себе нечесно, тим самим виступаючи споживчими екстремістами.

Українське законодавство має серйозні прогалини щодо даного питання. Більш того, у Законі України про захист прав споживачів можна простежити тенденцію завчасного ставлення до продавця (виконавця робіт, виробника продукції) як до винної та несумлінної сторони, бо саме для такого суб'єкта нашим недосконалим законодавством передбачено більша кількість обов'язків, аніж прав, при цьому у «постраждалого» споживача - все навпаки.

***Метою** написання даної статті стало вивчення поняття і сутності споживчого екстремізму (тероризму). Автор спробує знайти дієве рішення для суперечок між продавцем і покупцем. **Методологічну основу дослідження** склали філософські, ідеологічні, загальнонаукові та спеціальні методи. У даній статті в ході дослідження були проаналізовані такі відомі справи як *Liebeck v. McDonald's Restaurants, Microwaved poodles, Armed Robbery in Disneyland* та інші. Для ілюстрації описуваного поняття споживчого тероризму автором наводяться найбільш вдалі повсякденні приклади такої поведінки, як на прикладі молоді, так і на прикладі відносин між дорослими людьми та підприємцями. **Результатом дослідження** стало формування поняття споживчого екстремізму як недобросовісних дій, якими оперують відповідно до закону споживачі з метою отримання прибутку від продавця, а не відновлення свого порушеного права. Також автор з'ясує, що в українському законодавстві немає адекватного регулювання цього питання та запропонує перелік дій, які необхідно вжити при взаємодії зі споживчим екстремістом. **Дискусія** в статті торкнеться вдосконалення національного законодавства в сфері споживчого тероризму, а також пошуку методів, які необхідно вжити при спілкуванні з терористом-споживачем.*

***Ключові слова:** захист споживачів; захист прав виробника продукції; споживчий екстремізм; споживчий тероризм; захист прав продавця; захист прав постачальника послуг.*