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## THE CONSUMER IN RELATIONS IN THE FIELD OF ENSURING THE PROTECTION OF LAW AND ORDER DURING THE IMPLEMENTATION OF JUDICIAL PROCEEDINGS

*As a general rule, to satisfy their own interests and protect their rights, the consumer of security services has the right to apply a contractual (prescribed in the contract on the provision of security services) or legal (provided by the state in the legislation of Ukraine) mechanism.*

*If the contractual mechanism can be any, subject to compliance with the provision on the inadmissibility of exclusion or limitation in the contractual procedure of the rights granted to the consumer by legislation, and the terms of the contract, which exclude or limit the corresponding rights of the consumer, are optional for him, then the legislation of Ukraine has a clear procedure and a fairly clear mechanism for protecting the rights of consumers of security services.*

*The provisions of this Law are clear and understandable, but until the moment when the issue of their implementation and protection of the violated right in court does not arise. Protection of consumer rights, including protection services, is given little attention by both scientists and practitioners. Even less importance is given to these relations by state authorities and local self-government. Although it is they who must implement the information and legal policy to protect (protect) the rights of consumers, which should become a prejudice against violations of their rights and interference with their legitimate interests. The practice of concluding contracts causes many claims from the consumer in the future, but only a small part of them go to court to defend their rights. But various procedural «nuances» arise in courts, and here special attention is already paid to judicial practice on one or another issue. What can we talk about in the event that when participating in a court proceeding, each person becomes a consumer of court security services, which is a state body in the justice*

system that provides protection and maintenance of public order in courts. Among the functions of judicial protection are: 1) implementation of measures to prevent threats to the personal safety of judges, their family members, court employees, as well as participants in court proceedings, detection and neutralization of such threats; 2) responding within the limits of the powers granted by law to illegal actions related to assaults on judges, their family members, court employees, and participants in the court process.

According to the current legislation of Ukraine, not only judges, members of their families, court employees, but also participants in court proceedings are consumers of court security services. Such relations actually arise on the basis of the accession agreement and do not require the conclusion of separate special agreements. Protection of consumer rights in case of non-provision of judicial protection during participation in the legal process takes place on the basis of the general procedure for consideration of cases on the protection of consumer rights. Such cases also do not require the payment of a court fee.

**Keywords:** judicial protection, protection of rights, consumer, public control, legal process, public control, judicial system, court, judicial practice.

As a general rule, to satisfy their own interests and protect their rights, the consumer of security services has the right to apply a contractual (prescribed in the contract on the provision of security services) or legal (provided by the state in the legislation of Ukraine) mechanism.

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The Law of Ukraine «On the Protection of Consumer Rights» [1] is fundamental, which regulates relations between consumers of goods, works and services and manufacturers and sellers of goods, contractors and service providers of various forms of ownership, establishes consumer rights, and also determines the mechanism of their protection and basics of implementation of state policy in the field of consumer rights protection. The basis for this Law is Article 42 of the Constitution of Ukraine, which guarantees the protection of consumer rights by the state, control over the quality and safety of products and all types of services and

works, and promotion of the activities of consumer public organizations.

The provisions of this Law are clear and understandable, but until the moment when the issue of their implementation and protection of the violated right in court does not arise. Protection of consumer rights, including protection services, is given little attention by both scientists and practitioners. Even less importance is given to these relations by state authorities and local self-government. Although it is they who must implement the information and legal policy to protect (protect) the rights of consumers, which should become a prejudice against violations of their rights and interference with their legitimate interests.

The market of security services is very large and covers up to a dozen types of protection of both property and human life, but the informative content and explanatory work of the providers of such services is almost zero. From my own experience, we can say that there are no standard (model) contracts for the provision of services freely available, and when you receive a contract in the service provider's office, there is actually no opportunity to take it out and read it carefully. Proposals for the contract, which provides the potential consumer of the service, are not accepted and are not made.

This practice of concluding contracts causes many claims from the consumer in the future, but only a small part of them

go to court to defend their rights. But various procedural «nuances» arise in courts, and here special attention is already paid to judicial practice on one or another issue.

What can we talk about in the event that when participating in a court proceeding, each person becomes a consumer of court security services, which is a state body in the justice system that provides protection and maintenance of public order in courts.

Among the functions of judicial protection are: 1) implementation of measures to prevent threats to the personal safety of judges, their family members, court employees, as well as participants in court proceedings, detection and neutralization of such threats; 2) responding within the limits of the powers granted by law to illegal actions related to assaults on judges, their family members, court employees, and participants in the court process.

On the other hand, the Law of Ukraine «On the Protection of Consumer Rights» clearly defines that the protection of consumer rights provided for by the law is carried out by the court. Part 5 of Art. 28 of the Civil Procedure Code of Ukraine (CPC of Ukraine) [2] provides that claims for the protection of consumer rights may be filed also at the registered place of residence or stay of the consumer or at the place of injury or performance of the contract. It seems that the consumer has an advantage in the matter of choice of jurisdiction.

Further, Article 10 of the Law of Ukraine «On the Protection of Consumer Rights» supposedly clearly and consistently defines the sequence of actions of the consumer in case of violation of the terms of the contract for the performance of works (provision of services), however, judicial practice is not completely unambiguous. For example, non-pecuniary damage to consumers for breach of a civil law contract is compensated regardless of whether it is specified in the law or directly in the contract. This opinion was expressed by

the judges of the First Judicial Chamber of the Civil Court of Cassation of the Supreme Court in the decision of October 7, 2020 in case No. 755/3509/18 [3].

As a general rule, the infliction of moral damage and the compensation of corresponding non-property losses can take place both in contractual and tortious legal relations (outside the contractual or other legally binding relations existing between the victim and the person causing the damage). According to Art. 611 of the Civil Code of Ukraine (CC of Ukraine) [4] moral damage is subject to compensation in case of breach of obligation, if such compensation is established by contract or law. That is, the legislator indicates two cases of compensation for moral damage - they are determined by the terms of the contract or arise from the provisions of the legislation (in particular, Articles 4, 10, 22 of the Law of Ukraine «On the Protection of Consumer Rights»). Disputes about compensation for moral damage to an individual are considered, in particular: when the right to compensation is directly provided for by the norms of the Constitution of Ukraine or follows from its provisions; in cases provided for by the law, which establishes responsibility for causing moral damage; in case of violation of obligations that are subject to the Law of Ukraine «On the Protection of Consumer Rights» or other laws that regulate such obligations and provide for the compensation of moral damage.

This ruling is interesting because it can be applied by analogy. Thus, the Supreme Court established that it was finally possible to receive compensation for moral damages for the untimely commissioning of the building by the developer: «Conclusions of the courts of previous instances that the Law of Ukraine «On the Protection of Consumer Rights» does not regulate the legal relations that arose between the parties to the purchase agreement of the sale of property rights regarding the object of real estate - residential construction and that the specified contract does not provide for the compensation of moral damage, and

therefore there are no grounds for its compensation, are erroneous.» By analogy, this position can be applied in compensation for moral damage in case of untimely provision of security services (lateness to a call, delays in recording a violation of the safety of the object, loss of property value of the object of protection, etc.).

Non-pecuniary damage for violation of a consumer contract can be compensated even if the terms of the contract do not provide for the right to compensation for non-pecuniary damage. This situation is usually typical when concluding protection contracts. In this case, the damage is charged on the basis of Art. 16 and 23 of the Civil Code of Ukraine and Art. 4, 10 and 22 of the Law of Ukraine «On Protection of Consumer Rights». This is exactly the conclusion reached by the Grand Chamber of the Supreme Court in the decision dated September 1, 2020 in case No. 216/3521/16-ts [5].

Let's also consider another side of consumer rights protection, which was already discussed above, namely: unclear or ambiguous terms of contracts, and sometimes - the absence of mandatory elements of the contract. The legislation of Ukraine provides that they should be interpreted in favor of the consumer as the weaker party to the contract. In particular, in accordance with part eight of Article 18 of the Law of Ukraine «On the Protection of Consumer Rights», unclear or ambiguous provisions of contracts with consumers are interpreted in favor of the consumer. The participation of the consumer in the contract as a weak party, which is subject to special legal protection in the relevant legal relationship, narrows the effect of the principle of equality of participants in civil legal relations and freedom of contract, in particular, in contracts for the provision of security services.

As it was indicated above, the consumer has the right to choose the jurisdiction for a court case in the protection of rights. This norm is enshrined in Article 8 of the Law of Ukraine «On the Protection of

Consumer Rights» — the right of the consumer to independently choose to whom to submit claims: to the seller at the place of purchase of the goods, to the manufacturer or the enterprise that satisfies these claims at the location of the consumer. Regarding the provision of security services, such a norm is not directly provided for, but in accordance with Art. 28 of the Code of Civil Procedure of Ukraine, claims for the protection of consumer rights may be filed at the place of residence or stay of the consumer or at the place of injury or performance of the contract. That is, the norms of Art. Article 8 of the Law of Ukraine «On the Protection of Consumer Rights» can also be applied when protecting the rights of consumers of security services. For example, in the resolution dated January 25, 2019 in case No. 572/2528/18 [6]. The Supreme Court explained that consumers can apply to the court at their place of residence, or at the location of the defendant, or at the place of injury, or at the place of performance of the contract. The right to choose in this case belongs exclusively to the consumer. None of these courts has the right to refuse to accept a claim or forward it to another court on grounds of lack of jurisdiction.

An additional guarantee from the state for the possibility of exercising the right to protect the rights of the consumer of protection services is exemption from payment of the court fee. In accordance with Part 3 of Art. 22 of the Law of Ukraine «On the Protection of Consumer Rights», consumers are exempted from paying court fees for lawsuits related to the violation of their rights. At the same time, the Law of Ukraine «On Court Fees» [7] does not contain such a norm. In Article 5 of this Law, «Benefits regarding the payment of court fees», all except consumers are exempted from paying court fees during the consideration of the case in all court instances. Such a gap often causes misunderstanding in courts of first instance, which simply refuse to accept the application on the basis of non-payment of the court fee. Often, the absence of consumers in Article 5 scares them away, because consumers do not know that such a

provision is in the Law of Ukraine «On the Protection of Consumer Rights». At the same time, the court fee is not paid by consumers either for filing a lawsuit or for filing an appeal or cassation complaint. This position is enshrined in the resolutions of the Supreme Court dated November 25, 2020 in case No. 761/46977/18 [8] and dated March 21, 2018 in case No. 761/24881/16-ts [9], where it is stated that violated rights can be defended both in the court of first instance (when filing a lawsuit) and at subsequent stages of the civil process (appeal, cassation). All stages of judicial protection are a single civil process, the task of which is the fair consideration and resolution of civil cases in order to protect the violated right. Article 5 of the Law «On Court Fees» does not contain the rule that benefits are granted only for filing a lawsuit. Based on the above, the Supreme Court came to the conclusion that the consumer is exempt from paying court fees at all stages of the process.

According to official data of the Supreme Court, in 2020, the cassation instance considered more than a thousand disputes related to the application of the Law of Ukraine «On the Protection of Consumer Rights» [10]. Most of them were related to goods. Services are not a popular defense because it is difficult to prove a violation of rights on your own, and the services of lawyers are quite expensive for ordinary citizens. More than half of these cases were resolved in favor of consumers, and more than a billion hryvnias in property and moral damages were collected from offenders.

Such figures may lead to the conclusion that consumers in our country are one of the most protected segments of the population, but this is not entirely true. According to our own estimates, we can say that less than 10% of consumers whose rights have been violated go to court. There are even fewer consumers of security services in this number. In fact, when an event occurs (violation of property security or physical harm to a person as an object of protection), most consumers remain unprotected or receive from 10 to 50 thousand hryvnias in damages from the provider of protection services. All other material losses are the burden of the recipient of services (consumer). From a practical point of view, in order to achieve the simultaneous goal of property protection and the possibility of compensation for damages caused by the event, a property insurance contract (life and health) should also be concluded.

**Conclusion.** According to the current legislation of Ukraine, not only judges, members of their families, court employees, but also participants in court proceedings are consumers of court security services. Such relations actually arise on the basis of the accession agreement and do not require the conclusion of separate special agreements. Protection of consumer rights in case of non-provision of judicial protection during participation in the legal process takes place on the basis of the general procedure for consideration of cases on the protection of consumer rights. Such cases also do not require the payment of a court fee.

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**Попович Т. Г., Дерев'янюк Б. В., Теремецький В. І. Споживач у відносинах у сфері забезпечення охорони правопорядку при здійсненні судочинства.**

*За загальним правилом, для задоволення власних інтересів та захисту прав споживач послуг охорони має право застосувати договірний (прописаний у договорі з надання послуг охорони) або легальний (забезпечений державою у законодавстві України) механізм.*

*Якщо договірний механізм може бути будь-яким за умови дотримання положення про недопустимість виключення або обмеження в договірному порядку прав, що надаються споживачу законодавством, а умови договору, що виключають або обмежують відповідні права споживача, є для нього необов'язковими, то законодавство України має чіткий порядок дій та доволі зрозумілий механізм захисту прав споживача послуг охорони.*

*Положення цього Закону є чіткими та зрозумілими, але до того моменту, поки не поставне питання їх реалізації та захисту порушеного права в суді. Захисту прав споживачів, у тому числі послуг охорони, приділяється незначна увага як вченими, так і практиками. Ще меншу значимість цим відносинам надають органи державної влади та місцевого самоврядування. Хоча саме вони мають здійснювати інформаційно-правову політику для захисту (охорони) прав споживачів, що має стати упередженням порушень їх прав та втручання у їх законні інтереси. Практика укладання договорів спричиняє у подальшому багато претензій від споживача, але лише їх невелика частка йде в суд для відстоювання своїх прав. Але в судах виникають різного роду процесуальні «нюанси» і тут особлива увага вже приділяється судовій практиці з того чи іншого питання.*

*Про що ж говорити у тому разі, коли при участі у судовому процесі кожна особа стає споживачем послуг судової охорони, яка є державним органом у системі правосуддя, який*

забезпечує охорону та підтримання громадського порядку в судах. У судової охорони серед функцій є: 1) здійснення заходів із запобігання загрозам особистій безпеці суддів, членів їх сімей, працівників суду, а також учасників судового процесу у суді, виявлення та нейтралізації таких загроз; 2) реагування в межах наданих законом повноважень на протиправні дії, пов'язані із посяганням на суддів, членів їх сімей, працівників суду, учасників судового процесу.

Відповідно до чинного законодавства України, споживачем послуг судової охорони є не лише судді, члени їх сімей, працівники суду, а й учасники судового процесу у суді. Такі відносини фактично виникають на основі договору приєднання і не потребують окремого укладання спеціальних договорів. Захист прав споживача у разі ненадання судової охорони при участі у судовому процесі відбувається на підставі загального порядку розгляду справ про захист прав споживачів. Такі справи також не потребують оплати судового мита.

**Ключові слова:** *судова охорона, захист прав, споживач, публічний контроль, судовий процес, публічний контроль, судоустрій, суд, судова практика.*



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У посібнику пропонується алгоритм дій адвоката, який здійснює захист у справах про антикорупційні злочини. Запропоновано рекомендації щодо підготовки до процесу, роботи з клієнтом та поведінки адвоката при розслідуванні та розгляді справ антикорупційної спрямованості. Звертається увага на окремі проблемні питання кваліфікації злочинів.

Призначено для адвокатів, суддів, прокурорів, студентів вищих закладів освіти.