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CONSUMER PROTECTION IN CHOSEN SYSTEMS OF HUMAN RIGHTS

PRAWA KONSUMENTA W WYBRANYCH SYSTEMACH OCHRONY PRAW CZŁOWIEKA

Abstract

Artykuł, oparty na analizie aktów prawa międzynarodowego oraz literatury przedmiotu, ma na celu przedstawienie uwzględniania praw konsumenta w wybranych systemach ochrony praw człowieka. Prawa konsumenta ujęte zostały jako podsystem praw człowieka oraz zasze-regowane do katalogu praw i wolności człowieka pierwszej, drugiej i trzeciej generacji. Omówiono wybrane regulacje prawa międzynarodowego wskazujące na potrzebę ochrony praw konsumenta w zakresie bezpieczeństwa zdrowotnego, ekonomicznego, dochodzenia roszczeń, dostępu do informacji i edukacji oraz wolności zrzeszania się. W artykule wskazano na priorytetową rolę Unii Europejskiej w kształtowaniu ponadnarodowych standardów ochrony konsumentów. Ostatnia część artykułu pełni rolę konkluzji, zawiera rozważania na temat faktycznego bezpieczeństwa konsumentów oraz istoty rozwoju praw konsumenta w systemach ochrony praw człowieka.

Słowa kluczowe: konsument, Organizacja Narodów Zjednoczonych, polityka konsumencka, prawa człowieka, prawa konsumenta, Unia Europejska

Introduction

Human rights are divided into tangible and procedural ones. The former indicate human rights, which ought to be guaranteed by state, and freedoms defined as spheres the state should not intervene in. Human rights and freedoms are present in a relationship between an individual and a state which is characterized as a vertical action of the rights. Human rights are peculiar rather than collective¹ (Nowicki 1998: 9). Proce-

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¹ The exception is Article 1 International Covenant Of Civil and Political Rights, which recognizes the right of self-determination of nations.

dural rights concern the second function of human rights which is the need for providing individuals with human rights protection by the state (Osiatyński 1998: 20). Human rights and freedoms are divided into generations, namely; first-generation civil and political rights (right to life and political participation) and second-generation economic, social and cultural rights (right to subsistence) (Hołda Z., Hołda D., Ostrowska, Rybczyńska 2004: 11). There are also third-generation solidarity rights (right to peace, right to clean environment) which are not closed in nature though. It is said that the third generation of human rights is connected with an increasing correlation between states in processes of progressive globalization. It includes the right to a healthy environment, the right to participation in cultural heritage, the right to economic and social development (*Third Generation Human Rights...*). Consumer rights are linked with the three generations of human rights. The first generation rights include the right to peacefully assemble and associate. The right to form and to join trade unions in order to support and protect individuals' socio-economic interests is enshrined in the second generation. The third generation human rights are consumer rights that are linked with the right to development, in particular with the areas of international socio-economic cooperation. The main purpose here is raising living standards and attaching importance to socio-economic advances. Appropriate consumer rights protection influences, in a positive way, the solutions of international economic and social pitfalls, such as cross-border trade and market practices (Benöhr 2013:46). Furthermore, the protection of a consumer perceived as the weaker party in a market system falls in this category. Protection is provided at an international level. It is connected with creation of standards in a socio-economic dimension and aims at introduction of legal regulations protecting health and life of purchasers, their economic security, the access to suitable information and education and procedures regarding seeking redress. According to John Fitzgerald Kennedy, consumer rights can be divided into four basic categories (*Special Message to the Congress...*): "the right to safety"², "the right to be informed"³, "the right to choose"⁴ and "the right to be heard"⁵.

² Consumers ought to be protected against hazardous products.

³ Consumer protection against unfair market practices, advertisements, labels and misleading information. Consumers should be well-informed while making a choice of products and services.

⁴ Consumers ought to be certain of their choice among the variety of products and services with competitive prices.

⁵ It provides stability that consumer interests are adequately represented by non-governmental organizations and government agencies.

The main aim of the article is to analyze consumer rights in chosen systems of human rights protection (the system of United Nations Organization and European system of human rights). The analysis of international legal acts was carried out within the scope of regulations of consumer rights. The paper is based on the assumption that even though the judicature of the European Court of Human Rights makes a significant contribution to human rights protection, it is the European Union that has the utmost importance in creation of international standards of consumer rights protection in Europe. The next postulate is that consumer rights can be included in each generation of human rights. Furthermore, a vast number of methods typical for politics was used i.e. systems analysis, legal and institutional analysis, as well as historical analysis.

Consumer rights in the system of human rights protection of United Nations Organization

The United Nations (UN) and its system of human rights protection indicates the need for respecting consumer rights to organize. The Universal Declaration of Human Rights (UDHR), 1948, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, emphasize the necessity of ensuring the freedom of association. Under Article 20, paragraph 1 of the UDHR, every individual has the right to peaceably assemble and associate. The ICCPR⁶ and ICESCR⁷ are both of great importance to the development of the right to peaceably assemble and associate. It is worth mentioning that the Universal Declaration of Human Rights is not binding, but it rather constitutes the document being pled while creating subsequent international laws regarding human rights. The International Covenants on Human Rights, on the other hand, are defined as documents which are used to introduce some mechanisms standing up for human rights and freedoms. As a result, "Consumer Protection Resolution" was approved during 39th session of the United Nations General Assembly and passed on 16 April 1985 in New York (Consumer protection resolution...). The resolution took into account consumers' interests and needs in all countries, in particular developing

⁶ Under Article 22 Section 1, everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

⁷ Under Article 8 Section 1, Point a, the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests.

ones. According to the Act, the main purpose of United Nations Organization, within the scope of consumer rights protection, is to support individual countries in providing purchasers with protection, facilitating production and distribution of model items which satisfy needs of consumers, reinforcing high level of moral principles among entrepreneurs, helping countries to restrain from aggressive and misleading market practices, facilitating the development of consumer organizations and international cooperation in consumer protection and finally, purchasing goods and services at a lower price. In the apex, the resolution contained seven guidelines for consumer protection (*Guidelines for consumer protection*) based on which the UNO member countries prepared appropriate documents specifying the rules of consumer rights protection, adjusted to the level of economic growth and social character (Niepokulczycki, Zborowska 1993: 8).

The first guideline ensured "physical security". The governments ought to support ordaining suitable regulations in legal systems and security, according to national and international standards in the form of protection against hazardous products and services. Furthermore, voluntary standards of providing security through keeping a record in safety of products according to their intended use were implemented. Appropriate state policy was intended to guarantee that in case of a conscious use of some dangerous products by entrepreneurs and distributors during the production of goods, the government ought to promptly recall such products. Government authorities should also consider different ways of informing consumers about this type of malpractice. What is more, country policy should guarantee that producers and distributors are aware of consequences triggered by launching hazardous goods. If it turns out that the product is severely faulty, defective, or contains harmful substance and poses a threat to consumers, governments ought to recall it or create a replacement product if possible.

The next prescription was connected with "protection and promotion of economic interests of consumers". It states that government should enable consumers to gain an optimal benefit from their economic measures. Consumers have the right to expect complete satisfaction from particular item, preserving proper production methods, fair market practices, reliable information and effective protection against practices that could unfavorably influence the economic interests of consumers.

The third guideline included necessity of providing consumers with "security and suitable standards for quality of goods and services offered". The right country policy should guarantee safety of produced commodities. Governments were supposed to formulate and promote the

implementation of standards for safety and quality of products and services at national and international level. National legal standards ought to be periodically checked whether they are adjusted to the international ones. When they appear to be worse than international standards because of local economic conditions, all the effort should be made to improve them.

The next directive was linked to "distribution and stability for basic goods and services". According to this, government should allow for the adoption or maintenance of efficient distribution of goods and services for consumers. The country policy should guarantee that the distribution of basic goods and services will not be dangerous. Additionally, it should provide support for creating appropriate warehouses and less difficult retail in rural communes.

The fifth recommendation indicated the availability of "effective consumer compensation". Governments ought to stabilize legal regulations facilitating suitable compensation due to formal and informal, fair, easily accessible and inexpensive procedures. Furthermore, they should satisfy the requirements of consumers with low income and provide the right to association for various groups and organizations.

The last but one guideline concerns the creation of "consumer informational and educational programs". Governments should support the development of consumer educational and informational programs including cultural tradition of consumers. The prime objective of such programs was to counteract discrimination of consumers and raising consumer awareness in the choice of goods and services.

The emphasis was particularly laid on the needs of consumers both in urban and rural agglomerations taking into consideration "low income" (*low-income*) of consumers as well as low level of literacy. Consumer education and news programs should include such aspects of consumer protection as health, nutrition, prevention of diseases and fraud, risky products, product labeling, accurate legislation, information concerning the ways of seeking redress, the quality of credit conditions and finally availability of essential products.

Last but not least guideline related to "ensuring suitable regulations connected with consumers' lives in the environment". Along with the evolution of consumer rights in developing countries, governments should also pay attention to the spheres which have an influence on consumer health, such as food, water, or pharmaceuticals. Country policy should be adopted and obliged to retain control over the quality of products, their easier distribution, unification of international information and labels as well as the provision of education and carrying out research in this field.

In 1988 the Economic and Social Council (ECOSOC) passed a resolution which encouraged governments of member countries to bring consumer policy into force and apply guidelines in national legal rules. The session of the ECOSOC in 1990 indicated that consumer protection does not have an internal character but is a global issue up against an increase in international trade in goods, passenger traffic and international information (Niepokulczycka 1999: 14).

Consumer rights in European system of human rights protection

First and foremost, system of human rights protection in Europe is connected with the appearance and activity of the Council of Europe and European Union. Both of the international law entities are linked to widely understood protection of human rights.

The Council of Europe indirectly addresses, in its legal regulations, the aspect of protection of consumer rights. This involves the creation of non-governmental organizations due to the freedom of association and participation in consumer activity of non-governmental organizations influencing the cultivation of purchasers' protection standards. Freedom of association constitutes an element among political rights and freedoms in Europe (Garlicki 2007: 108–109). It is one of the most important foundation of civil society and an expression of specified purposes and pursuit to achieve a particular aim (Sarnecki 1998: 11). Its genesis in Europe dates back to the XVIII century and involves the transition caused by French Revolution. Since then, on the basis of European legislation, the issue of regularization of the freedom of association was worked on (Chmaj 2002: 51). The countries of Council of Europe enacted a law in Convention for the Protection of Human Rights and Fundamental Freedoms, signed in 1950 and ratified in 1953 (Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności...).

The European Union is of greater importance as for the creation and protection of consumer rights in European system of human rights. It establishes socio-legal standards not only in freedom of association, but also in the remaining spheres of consumer rights protection, i.e. health protection, economic security and access to information and education. They are created in community treaties and acts issued by particular EU institutions. They include law-making acts (regulations, directives), and acts which are not legally binding (resolutions, recommendations, statements). Formulation and implementation of European consumer protec-

tion policy is also possible due to the activity of EU institutions, consumer organizations and other organizations working to promote consumers' interests (Dynia 2004: 132). Forms of consumer community law do not have its own character which would differ from the forms accepted in different domains of legislation. Therefore, the features of the EU laws refer automatically to consumer law (McDonald 2000, p. 40). The Maastricht Treaty signed by the members of the European Community extended the foregoing policy to title XI which is "consumer protection". Under Article 129a, Point 1 of the Treaty, the EU was to contribute to the achievement of a high level of consumer protection. The normalization of legal rules in member countries, support and carrying out the policy of protection of consumer health, security and economic interests as well as providing consumers with reliable information were key factors to bring about it. (Doliwa-Klepacki 2000: 206). The Treaty of Amsterdam, signed on 2 October 1997, created legal foundation and new action frames in consumer protection (Traktat z Amsterdamu...). Article 129a of the Treaty establishing the European Communities and certain related acts broadened the scope of consumer protection. It involved health, security, economic interests protection and the right to information and education. The Community contributes to achieve these goals through measures that support and control policy carried out by member countries (art. 153 ust. 3). On the basis of resolution of Article 153 Section 1⁸ consumer interests and rights can be discussed. Health, security, and economic interests were under protection, whereas the right to information, education and association were included in consumer rights (Maliszewska-Nienartowicz 2004: 194). The next considerable change was introduced in Section 2 with a provision specifying consumer protection in determining and implementing different policies and actions of the Community. The Treaty of Nice, signed by European leaders on 26 February 2001, amending the Treaty on European Union and the Treaties establishing the European Communities and certain related acts (Traktat z Nicei...), did not introduce any alterations in title XI devoted to consumer protection. Article 2 Section 39, which changed Article 257 of the Treaty establishing the European Communities, formed a significant regulation for the development of consumer policy in representation. The change concerned the establishment of the European Eco-

⁸ Under Article 153 Section 1; "In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests."

conomic and Social Committee (EESC). Henceforth, it gained advisory character and consisted of representatives of various socio-economic groups, including consumers (Hambura, Muszyński 2001: 19).

The Charter of Fundamental Rights of the European Union is a contemporary fundamental collection of human rights. It was passed and signed on 7 December 2000 by the European Parliament, the Council of Ministers and the European Commission in Nice. It also regulated the freedom of association (*Karta Praw Podstawowych...*). Article 12 Section 1 provides that everyone has the right to freedom of peaceful assembly and to freedom of association to all levels, in particular in political, trade union and civic matters.

The Treaty of Lisbon amending the Treaty on European Union and Treaty establishing the European Communities signed by the EU member states on 13 December 2007 (*Traktat z Lizbony...*) introduced a significant distribution of UE competences in consumer protection.

In part B, which concerns detailed changes in point 12, the Treaty introduced regulations within the scope of categories and fields of the EU competences. Two types of competences were differentiated, namely; exclusive EU competences⁹ and the competences which the EU shares with member states. Hence the EU and member states can enact laws and bring in legally binding acts in this field. It means that member states can exercise the powers in consumer protection in such a scope that the EU did not do or decided to cease it (added Article 2a Section 2).

Among the most significant EU secondary legislation acts concerning consumer protection, some directives could be listed that regard economic interests as well as consumer health and security protection. There are, among others, the directives on misleading advertisement (*Dyrektywa 2006/114/...*), on responsibility for faulty products (*Dyrektywa Rady 83/374/...*), on protection the consumer in respect of contracts negotiated away from business premises and distance contracts (*Dyrektywa Parlamentu Europejskiego i Rady 2011/83/...*), on consumer credits (*Dyrektywa Parlamentu Europejskiego i Rady 2008/48/...*), and on package travel (*Dyrektywa Parlamentu Europejskiego i Rady (UE) 2015/230/...*). The second kind of directives are as follows- on general product safety (*Dyrektywa 2001/95/...*), and on the safety of toys (*Dyrektywa Parlamentu Europejskiego i Rady 2009/48/...*). They were included in the legislation of particular member countries. It brought

⁹ According to Article 2a, Section 1 „When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of acts of the Union.”

about the standardization of consumer law-making and formed the legal basis for protection of consumer interests and development of a common and active consumer policy in the European Union.

Consumer rights as well as standards of consumer interests protection are created in Strategies and consumer policy programs, which have the shape of the European Commission Communications. They involve a few-year period and primary objectives needed for implementation in the EU. There are also strategies for the years 1993–1995 (Consumer Policy Second Commission...), and 1996–1998 (Communication from the Commission – priorities for consumer Policy 1996–1998...), 1999–2001 (Consumer Policy Action Plan 1999–2001...), 2002–2006 (Consumer Policy Strategy 2002–2006...), 2007–2013 (Consumer Policy Strategy 2007–2013...) worth mentioning.

The currently binding programs of consumer policy in the EU is Strategy for the years 2014–2020 (Regulation (EU) No 254/2014 ...).

Concluding remarks

Undoubtedly, consumer rights could be considered the elements of human rights and included in the catalogue of first, second and third generation of human rights. In comparison to the remaining tangible rights, it is an unusual situation. It seems that in the future, consumer rights, which are the most intensively developing rights, will be included in the third generation of human rights. The Articles of international laws and their evolution, deeply analyzed in this paper, are a testimony to it.

The United Nations System suggests the necessity for protection of purchasers and continuous adjustment of consumer rights to market needs. Sale globalization and purchasing of products, development of consumer society and modern digital purchase methods make consumer protection universal and significant. Unification of legal standards at publicly available worldwide market aims to serve this need.

In the EU system of human rights protection created by the European Council and European Union, protection of consumer rights is one of the major priorities of socio-economic policy direction. Unification of legal regulations within the scope of health and economic security of purchasers, the system of seeking redress, information and education and the right to associate have an influence on improving the economic co-operation among countries. Surprisingly, consumer rights, in comparison to other tangible rights, constitute a vital element of the EU law, not the EU Council.

References

- III generacja praw człowieka*, UNIC, <http://www.unic.un.org.pl/prawa-czlowieka/trzecia-generacja-praw-czlowieka/3205> (19.08.2018).
- Benöhr I. 2013, *EU Consumer Law and Human Rights*, Oxford.
- Chmaj M. 2002, *Wolność zrzeszania się* [w:] *Konstytucyjne wolności i prawa w Polsce. Wolności i prawa polityczne*, t. 3, red. M. Chmaj, Kraków.
- Communication from the Commission – priorities for consumer Policy 1996–1998, COM/95/519, 31. 10. 1995.
- Consumer Policy Action Plan 1999–2001, COM (98) final, 14.01.1998.
- Consumer Policy Second Commission Three year Action Plan 1993–1995, COM 378 final, 28.07.1993.
- Consumer Policy Strategy 2002–2006, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, COM (2002) 208, 7.05.2002.
- Consumer Policy Strategy 2007–2013, Communication from the Commission to the Council, the European Parliament and European Economic and Social Committee of the EU, COM/2007/0099, 13.03.2007.
- Consumer protection resolution, 9 April 1985, Organizations of United Nations, <http://www.un.org/documents/ga/res/39/a39r248.htm>, (16.08.2018).
- Doliwa-Klepacki Z.M. 2000, *Integracja europejska*, Białystok.
- Dynia E. 2004, *Integracja europejska*, Warszawa.
- Dyrektywa 2001/95/WE Parlamentu Europejskiego i Rady z dnia 3 grudnia 2001 r. w sprawie ogólnego bezpieczeństwa produktów, Dz. Urz. UE L 11/4, 3.12.2002.
- Dyrektywa 2006/114/WE Parlamentu Europejskiego i Rady z dnia 12 grudnia 2006 r. dotycząca reklamy wprowadzającej w błąd i reklamy porównawczej, Dz. Urz. UE. L 376, 27.12.2006.
- Dyrektywa Parlamentu Europejskiego i Rady (UE) 2015/2302 z dnia 25 listopada 2015 r. w sprawie imprez turystycznych i powiązanych usług turystycznych, zmieniająca rozporządzenie (WE) nr 2006/2004 i dyrektywę Parlamentu Europejskiego i Rady 2011/83/UE oraz uchylająca dyrektywę Rady 90/314/EWG, Dz. Urz. UE. L 326, 11.12.2015.
- Dyrektywa Parlamentu Europejskiego i Rady 2008/48/WE z dnia 23 kwietnia 2008 r. w sprawie umów o kredyt konsumencki oraz uchylająca dyrektywę Rady 87/102/EWG, Dz. Urz. UE. L 133, 22.5.2008.
- Dyrektywa Parlamentu Europejskiego i Rady 2009/48/WE z dnia 18 czerwca 2009 r. w sprawie bezpieczeństwa zabawek, Dz. Urz. UE L 170/1, 30.6.2009.
- Dyrektywa Parlamentu Europejskiego i Rady 2011/83/UE z dnia 25 października 2011 r. w sprawie praw konsumentów, zmieniająca dyrektywę Rady 93/13/EWG i dyrektywę 1999/44/WE Parlamentu Europejskiego i Rady oraz uchylająca dyrektywę Rady 85/577/EWG i dyrektywę 97/7/WE Parlamentu Europejskiego i Rady, Dz. Urz. UE. L 304, 22.11.2011.
- Dyrektywa Rady 83/374 EWG z dnia 25 lipca 1985 r. w sprawie zbliżenia przepisów ustawowych, wykonawczych i administracyjnych Państw Członkowskich dotyczących odpowiedzialności za produkty wadliwe, Dz. Urz. WE. L 210, 7.8.1985.
- Garlicki L. 2007, *Polskie prawo konstytucyjne, zarys wykładu*, Warszawa.
- Hambura S., Muszyński M. 2001, *Traktat z Nicei z komentarzem*, Bielsko-Biała.

- Hołda J., Hołda Z., Ostrowska D., Rybczyńska J.A. 2004, *Prawa człowieka: zarys wykładu*, Zakamycze.
- Karta Praw Podstawowych Unii Europejskiej, Dz. Urz. UE. C 326 z 26.10.2012.
- Kennedy J.F., *Special Message to the Congress on Protecting the Consumer Interest March 15, 1962*, <http://www.presidency.ucsb.edu/ws/index.php?pid=9108> (19.08.2018).
- Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności sporządzona w Rzymie dnia 4 listopada 1950 r., Dz. U. 1993 nr 61, poz. 248.
- Maliszewska-Nienartowicz J. 2004, *Ewolucja ochrony konsumenta w europejskim prawie wspólnotowym*, Toruń.
- McDonald F. 2000, *Consumer Protection policy in the European Union*, "European Business Journal", nr 1.
- Międzynarodowy Pakt Praw Gospodarczych, Społecznych i Kulturalnych otwarty do podpisu w Nowym Jorku dnia 19 grudnia 1966 r., Dz. U. 1977 nr 38 poz. 169.
- Międzynarodowy Pakt Praw Obywatelskich i Politycznych otwarty do podpisu w Nowym Jorku dnia 19 grudnia 1966 r., Dz. U. 1977 nr 38 poz. 167.
- Niepokulczycka M. 1999, *Polityka konsumencka i ochrona interesów konsumentów. Materiały dla pracowników i działaczy samorządów terytorialnych*, Warszawa.
- Niepokulczycki J., Zborowska W. 1993, *Polityka konsumencka w Polsce jako niezbędny warunek dostosowań do Wspólnot Europejskich*, Warszawa.
- Nowicki M. 1998, *Co to są prawa człowieka [w:] Szkoła praw człowieka. Teksty wykładów. Zeszyt 1*, red. E. Łabęcka, Warszawa.
- Osiatyński W. 1998, *Wprowadzenie do pojęcia praw człowieka [w:] Szkoła praw człowieka. Teksty wykładów. Zeszyt 1*, red. E. Łabęcka, Warszawa.
- Powszechna Deklaracja Praw Człowieka, Paryż 10.12.1948, Organizacja Narodów Zjednoczonych, <http://libr.sejm.gov.pl/tek01/txt/onz/1948.html> (10.08.2018).
- Regulation (EU) No 254/2014 of the European Parliament and of the Council of 26 February 2014 on a multiannual consumer programs for the years 2014-2020 and repealing Decision No 1926/2006/EC, Dz. Urz. UE L 84/42, 20.03.2014.
- Sarnecki P. 1998, *Wolność zrzeszania się*, Warszawa.
- Traktat o Unii Europejskiej, Dz. Urz. UE. C 191, 29.7.1992.
- Traktat z Amsterdamu, Dz. Urz. UE. C 340, 10.11.1997.
- Traktat z Lizbony zmieniający Traktat o Unii Europejskiej i Traktat ustanawiający Wspólnotę Europejską podpisany w Lizbonie dnia 13 grudnia 2007, Dz. Urz. UE, C 306, 17.12.2007.
- Traktat z Nicei zmieniający Traktat o Unii Europejskiej, Traktat ustanawiający Wspólnotę Europejską oraz niektóre związane z nimi akty prawne, Dz. Urz. UE J. C/80, 10.03.2001.