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Legislation on Protection of Consumer Rights in Vietnam: History of Establishment and Development

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Abstract

In this article, the author focuses on analyzing the process of formation of the regime of consumer rights protection and the development of this legal regime in the Vietnamese legal system. Consumer rights protection is becoming a matter of primary concern of the Party and the State of Vietnam to ensure the legitimate rights and interests of consumers, promote the economy, stabilize and improve the quality living of people and in accordance with the provisions of international law. The article also outlines the legal basis for protecting consumers' rights, consumers' rights and obligations, security mechanisms, and forms of dispute resolution between traders and consumers; current status of implementing the law on protection of consumer rights in Vietnam today.

Keywords: protection of consumers' rights, consumers, the law on the protection of consumer' rights, quality of goods and services, unfair competition, fake goods and poor quality goods, Consumer Protection Association.

1. Introduction

In the current social development period and in the context of Vietnam becoming a member of WTO and participating in free trade areas today, protection of consumer rights becomes an urgent need and is the first concern of the whole society to improve living standards as well as protect legitimate rights and interests of consumers.

Protection of consumer rights in Vietnam has really been concerned since the State implemented the "Doi Moi", shifting from a centrally planned economy to a socialist-oriented market economy. For the purpose set by the Party and the State when implementing the policy of "Doi Moi" to make "rich people, strong countries, social justice, democracy and civilization" the Vietnamese legal system has focused and recorded receive consumer protection as an independent legal regime, especially the Ordinance on protection of consumer rights launched in 1999, marking the importance of this regime in the legal system when Vietnam is integrating into the international economy. In 2010, the Law on the protection of consumer rights was officially passed by the National Assembly, affirming the political system's efforts to ensure the legitimate interests of consumers in general, and more than 95 million people in Vietnam in particular. Ensuring the legitimate rights and interests of consumers based on the principle of protecting basic rights of people and citizens recorded in the Vietnamese Constitution in 2013 is the driving force for developing the economy in a sustainable way and helping harmonize the relationship between

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manufacturing enterprises providing goods and services and consumers, stabilizing society and improving the quality of life of people.

The article analyzes the process of forming this legal regime as well as its development in the legal system and the implementation of the law on the protection of consumer rights.

2. Materials and methods

The article is studied based on legal documents relating to the protection of consumers' rights such as Ordinance on protection of consumer rights 1999; Law on protection of consumer rights 2010; Competition law 2014; Law of goods and service quality in 2007; Commercial Law 2005; Food safety Law 2010; Criminal Code 2015; Law on handling administrative violations 2012; Price Law 2012. In addition, there are guiding decrees related to the protection of consumer rights such as Decision No. 02/2012/QĐ-TTg dated January 13, 2012, of the Prime Minister, promulgating the List of goods, essential services must register form contracts, general transaction conditions; Decree No 08/2013/ND-CP dated January 10, 2013, on sanctioning administrative violations for acts of producing and trading fake goods; Decree No 185/2013/ND-CP dated November 15, 2013, regulating administrative sanctions in commercial activities, production, and trading of fake goods, prohibited goods and protection of consumer rights...

The article uses methods of general scientific research such as methods of analysis, synthesis, the method of comparing laws, dialectical materialism methods, historical methods.

3. Discussion

Vietnam has experienced a prolonged war against France and the United States, and with a centrally planned subsidized economic model, the issue of protecting consumer rights has not been really focused. Before the years of innovation, this issue was quite fuzzy in the perception of people, businesses, manufacturers as well as legislators. Only from the beginning of the "Doi Moi" policy, protection of consumer rights has become a legal regime recognized in the Ordinance on the protection of consumer rights. The Standing Committee of the National Assembly issued the Ordinance No 13/1999/PL-UBTVQH10 to protect the legitimate rights and interests of consumers; enhance the effectiveness of state management, enhance the responsibility of organizations and individuals producing and trading goods and services in protecting consumers' rights ([Ordinance 13/1999/PL-UBTVQH10](#)). However, the protection of consumers' rights and the operation of the protection of consumers' rights, have revealed many weaknesses and inappropriate: from raising awareness about protecting consumers' rights for the whole society (for the business community, related agencies - organizations and for consumers themselves); issues such as sustainable consumption, "green" consumption (environmental protection), anti-counterfeiting etc., until new phenomena arise in the process of international economic integration such as advertising and promotional acts dishonest trade, nefarious multi-level business, online fraud/net etc... All of which requires new perspectives and new approaches to enhance the effectiveness of the protection of consumer rights ([Loan Dinh Thi My, 2008](#)).

Along with the introduction of the Ordinance on the protection of consumer rights, a series of other legal documents were born and there were regulations on the protection of consumer rights. This is an important legal corridor for the authorities to implement the state management of consumer protection while also expressing the State's growing concern for this issue. For example, in Part 3 of the Vietnamese Civil Code 2015, there are regulations on civil obligations and civil contracts with provisions relating to consumer protection ([Civil Code, 2015, Part. 3](#)).

On November 21, 2007, the Product and Goods Quality Law was passed, in which consumers' rights and obligations are defined in Section 3, Chapter II. Especially, under Article 17 of this Law, consumers have the right to;

- (i) be provided with truthful information on the level of safety, quality, instructions for transport, storage, preserve and use of products and goods;
- (ii) be provided with information on the warranty of goods, the possibility of causing unsafe goods and how to prevent when receiving warning information from producers and importers;
- (iii) ask sellers to repair, refund or exchange new goods, receive goods with disabilities;

(iv) be compensated for damage according to the provisions of Section 2, Chapter V of this Law and other relevant law provisions;

(v) request organizations and individuals producing and trading goods to perform their responsibilities to protect consumers' rights in accordance with the law on protection of consumer rights;

(vi) request organizations on protection of consumers' rights help protect their legal rights according to the law on protection of consumers' rights ([Product and Goods Quality Law, 2007, Art.17](#)).

In 2004, the Competition Law was enacted, creating an important legal corridor to protect consumer rights. This law stipulates acts of restraint of competition and unfair competition, abuse of dominant position in the market, abuse of the monopoly position of producers and enterprises in the trading of goods and services, causing risks to negatively impact consumers. According to the Competition Law: "Enterprises are free to compete within the legal framework. The state protects the right to legal competition in business. The competition must be carried out on the principle of honesty, not infringing upon the interests of the State, public interests, legitimate rights and interests of enterprises and consumers and must comply with the provisions of this Law" ([Competition Law, 2004, Art. 4](#)).

Commercial Law in 2005 also had specific provisions for protecting consumer rights through regulations on promotion and commercial advertising. In order to protect consumers' rights, Decree № 37/2006/ND-CP regulates promotional goods and services; goods and services used for sale promotion; legal rights and obligations of traders conducting promotions; prohibited acts in promotional activities; principles to implement promotions. Decree № 37/2006/ND-CP regulates the content of commercial advertising products for some special goods and services as follows: Commercial advertising for goods that are nutritional products for children must comply with the provisions of the law on business and use of nutritional products for children ([Decree 37/2006/ND-CP, Art. 23](#)). Commercial advertising for goods and services related to pharmaceuticals, vaccines, medical biologicals, medical equipment, instruments, therapeutic methods, medicines, and functional foods must be followed comply with the provisions of medical law. Commercial advertising for goods and services related to veterinary drugs, plant protection drugs, fertilizers, animal feeds, animal breeds and plant varieties must comply with relevant law provisions. and may not contain the following contents: affirmation of safety, non-toxic but not certified by a competent state authority; confirms the effectiveness and features of veterinary drugs, pesticides, fertilizers, animal feed, plant varieties but does not have a scientific basis; Use of speech, writing or images violating the process and methods of safe use of veterinary drugs and plant protection drugs. Apart from non-standard goods, technical regulations on goods quality, traders are only allowed to advertise commercial goods for goods subject to the application of corresponding technical standards after such goods are issued with a technical standard conformity certificate issued by a competent state management agency or published with quality standards (Art.24, 25, 26 Decree № 37/2006/ND-CP).

The Enterprise Law in 2005, amended and supplemented in 2014, also created a more equal competition environment between different types of enterprises, from which the quality of services and goods was improved, the cost Be lowered and consumers have more choices to suit their needs. Because an enterprise wants to grow strongly and sustainably, it is necessary to have the trust of consumers and must meet the needs they desire.

In addition, consumer rights are also protected by many provisions in other legal documents such as: Criminal Code 2015, Law on food safety 2010, Law on handling administrative violations 2012; Law on plant protection and quarantine 2013; Price Law 2012; and the legal documents guiding the protection of consumer rights: Decree № 08/2013/ND-CP dated January 10, 2013 on sanctioning administrative violations for acts of producing and trading fake goods; Decree № 185/2013/ND-CP dated November 15, 2013 regulating administrative sanctions in commercial activities, production and trading of counterfeit and banned goods and protection of consumers' rights; Decision № 02/2012/QD-TTG dated January 13, 2012 of the Prime Minister promulgating the list of essential goods and services required to register contracts according to form and general trading conditions; ... The above legal documents have created the more legal basis for the protection of consumers' interests in general.

Especially, the Law on the protection of consumer rights was officially adopted by the National Assembly in 2010, which adjusted relationships between consumers and traders. This Law regulates consumers' rights and obligations; responsibilities of organizations and individuals trading in goods and services for consumers; responsibilities of social organizations in participating in protecting consumers' rights; resolving disputes between consumers and organizations and individuals trading in goods and services; the state management responsibility for the protection of consumers' rights ([Law on the protection of consumers' rights, 2010, Art. 1](#)).

The trading relationship between traders and consumers is purely a civil legal relationship, this is not a commercial legal relationship because there is no purpose of buying and reselling to profit. However, consumers need to be protected in a more practical way in addition to the provisions of traditional civil law, so that a new field of law is formed - that is the law on protection of consumer rights. Protection of consumers' rights is a common responsibility of the State and society. The rights of consumers are respected and protected in accordance with the law. The protection of consumer rights must be implemented in a timely, fair, transparent and lawful manner. Activities of protecting consumers' rights must not infringe upon the interests of the State, rights and legal interests of organizations and individuals trading in goods and services and other organizations and individuals. The State always creates favorable conditions to protect consumers, mobilize all resources to increase investment in infrastructure, develop human resources for agencies and organizations to implement the protection of consumers' rights, regularly strengthen counseling, support, propaganda, dissemination and knowledge guidance for consumers.

According to the Law on protection of consumer rights in 1992 (amended and supplemented in 2018) of the Russian Federation, consumers are citizens who intend order or purchase goods (works, services) and use those goods just for personal, family, and other living needs, and not related to conduct of business activities ([Law on the protection of consumers' rights of the Russian Federation, 1992](#)).

According to Clause 1, Article 3 of the Law on the protection of consumer rights 2010 of Vietnam, consumers are the people who buy and use goods and services for consumption and living purposes of individuals, families, and organizations. Also in this law, consumers have 8 basic rights ([Vietnamese Consumer Protection Law, 2010, Art. 8](#)), including:

- To be assured of the safety of life, health, property, other legal rights, and interests when they participate in transactions and use of goods and services provided by organizations and individuals trading in goods and services;

- To be provided with accurate and complete information about organizations and individuals trading in goods and services, contents of goods and service transactions, source and origin of goods; to be provided with invoices, documents, transaction-related documents and other necessary information on goods and services that consumers have purchased and used.

- Select goods and services, organizations and individuals trading in goods and services according to their needs and practical conditions; decide to participate or not participate in the transaction and the agreed contents when participating in transactions with organizations and individuals trading in goods and services.

- Have the right to comment on organizations and individuals trading in goods and services on prices, quality of goods, services, service styles, transaction methods and other content related to transactions between consumers and organizations and individuals trading in goods and services.

- Participate in developing and implementing policies and laws on the protection of consumer' rights.

- Request for compensation when goods and services are not in accordance with standards, technical regulations, quality, quantity, features, utilities, prices or other contents that organizations and individuals trading in goods and services have announced, listed, advertised or committed.

- Complaints, denunciations, lawsuits or requests for social organizations to institute lawsuits to protect their rights according to the provisions of this Law and other relevant law provisions.

- To be consulted, supported, guided knowledge about the consumption of goods and services.

In addition, the Law also provides for the protection of consumer information. Consumers have ensured the safety and confidentiality of their information when participating in transactions and use of goods and services, except when required by competent state agencies (Vietnamese Consumer Protection Law, 2010, Art. 6).

This law also stipulates consumers' obligations whereby consumers must check goods before receiving them, must choose goods and services with the clear origin and do not harm the environment/health and not contrary to fine traditions. Consumers must notify state agencies and organizations when discovering goods and services that do not guarantee safety, harm or threaten consumers' health and property; acts of infringing upon the rights and interests of consumers. (Vietnamese Consumer Protection Law, 2010, Art. 9).

Decree 99/2011/ND-CP dated October 27, 2011, also specified the provisions of the Law on consumer rights protection 2010 regarding consumer rights protection in dealing with individuals doing business independently and frequently without having to register for business; contract with consumers and general trading conditions; solving requirements of protecting consumers' rights; social organizations engaged in protecting consumers' rights; organizing reconciliation of disputes between consumers and business organizations and individuals ([Decree 99/2011/ND-CP](#)).

In recognition of the importance of consumers and the protection of their legitimate rights and interests, on July 10, 2015, the Prime Minister made a decision on 1035/QĐ-TTg taking March 15 every year as Vietnamese Consumer Rights Day.

Vietnamese Consumer Rights Day is held annually to:

(i) affirm the role, position and importance of protecting consumers' rights with stable and sustainable development of society and country;

(ii) propaganda, education and dissemination of laws and policies to protect consumers' rights, thereby creating a basis to mobilize and focus the interest, response and participation of the whole society to the protection of consumers' rights;

(iii) contribute to building a healthy consumer environment for both consumers and organizations and individuals trading in goods and services; keep stable and create a driving force for development, innovation and creativity for the national economy;

(iv) enhance responsibility, encourage cooperation and coordination between state management agencies and social organizations to protect consumer's rights, rights of organizations and individuals trading goods and services in carrying out activities to protect consumers' rights ([Decision 1035/QĐ-TTg](#)).

On August 18, 2017, implementing Decree No. 98/ND-CP of the Government regulating the functions, tasks, powers and organizational structure of the Ministry of Industry and Trade, the Bureau of Competition and Consumer Protection is established on the basis of separation from the Vietnam Competition Authority (previously) with the function of state management of competition and consumer protection. This separation aims to unify the function and name of the bureau in the management of competition and consumer protection, in accordance with the domestic reality as well as international trends.

In 1999, the Ordinance on the protection of consumer rights and in 2010, Law on the protection of consumer rights, passed by the National Assembly, created a legal corridor and demonstrated the determination of the political system in the careers protecting the rights of more than 95 million Vietnamese consumers. After more than 7 years of effective Law on protection of consumer rights 2010, consumer rights protection in our country has achieved many achievements, greatly reducing damage to consumers. However, that result has not met expectations. In response to the new request, at the request of the Vietnam Standards and Consumer Protection Association, the consent of the Ministry of Industry and Trade and the Ministry of Science and Technology, on October 31, 2018, the Ministry of Home Affairs issued a Decision intended to allow the establishment of the Vietnam Consumer Protection Association on the basis of separation from the Vietnam Standards and Consumer Protection Association. The association consists of 61 local associations and member organizations spread throughout the provinces and cities in the country. The principle and purpose of the association is "a social organization of voluntarily established organizations and individuals with the aim of gathering and uniting members, participating in protecting consumers' interests according to laws, contributing to the economic and social development of the country". At the same time, contributing to mobilizing not only members of the

association but also the masses and genuine businesses throughout the country to participate in protecting the legitimate interests of consumers.

However, in reality, the legal rights and interests of consumers have not been guaranteed. Many cases of consumer rights violations not only affect the interests of one or a few consumers but also affect the consumer community as well as the whole society. Can lead some typical cases such as:

On October 17, 2017, buyers found 1 in 60 silk scarves bought from KhaiSilk store at 113 Hang Gai that had both the “Made in Vietnam” label and the “Made in China” label. October 25, 2017, Mr. Hoang Khai acknowledged that he sells silk scarves originating from China with the press. It can be said that after Mr. Hoang Khai voiced his acknowledgment, attaching high-quality Vietnamese goods to products from China made those who bought KhaiSilk’s silk scarves disappointed and bewildered by the quality of Vietnamese goods. The case became more serious when the inspection team of the Ministry of Industry and Trade assessed the quality of textile and garment products for some models of Khai Duc Co., Ltd., which owns the KhaiSilk brand, and the product did not have silk components as announced on the label of ingredients in raw materials are 100 % silk.

The case of Khaisilk Group’s silk scarves products was “stripped” by consumers about the unclear origin of goods, the representative of the Group admitted that 50 % of Khaisilk’s silk scarves products were imported from China. Thus, Khaisilk Group violates the Law on the protection of consumer rights when infringing upon the right to supply information of origin and goods origin to consumers.

This is not the first time that consumer rights have been violated, but there are many other products. Such as food and beverage group is a group of goods accounted for the proportion of violations of consumer rights up to 19.69 %; household electronics 13.05 %; daily consumer goods 12.88% (Thuy Linh, 2018).

Meanwhile, consumers still hesitate to rely on legal protection agencies. Indifference in protecting one's own rights shows that the Law on Protection of Consumer Rights has not been given adequate attention (Huong My, 2017).

In May 2016, the Ministry of Health Inspectorate requested to recall 3 lots of products of URC Vietnam Co., Ltd. due to the lead content exceeding the permitted level, in particular, there is a lot of lemon green tea C2 (Production date: February 4, 2016, Expiry date: February 4, 2017). The results showed that only 1,200 C2 barrels and Red Dragon energy drink (also of URC) were recovered by the manufacturer. About 40,000 lead-contaminated C2 and Red Dragon boxes are sold out. And, URC Vietnam Co., Ltd. was fined nearly 6 billion VND by the Ministry of Health.

By the end of June 2016, the Vietnam Competition Authority (Ministry of Industry and Trade) continued to issue notices, revoking 2 more C2 and Red Dragon shipments of strawberry flavor with lead content exceeding the permitted level of URC.

According to experts, lead is a heavy metal, if used with high content, it can cause chronic or acute poisoning depending on the degree of lead tolerance of each person. If the lead content is 0.05 mg/l, the user will not be poisoned because lead is excreted by the urine, sweat. When crossing the threshold many times, the risk of health damage is very large, especially for children. In particular, in the case of acute lead poisoning (because lead is difficult to dispose of when entering the body, the lead will follow the blood to organs: liver, kidney, brain, bone marrow, nerves...) (Quang Binh, 2018).

Another case that violates consumers’ rights is the case of the “Con Cung” Products Joint Stock Company (end of May 2018) showing signs of cutting goods labels and replacing them with Con Cung’s label. The Con Cung side and customers have a record of resolving complaints with the content of the recall of the defective products being sold at the store, recalling the faulty products purchased. But by mid-July, the Market Management Branch at Ho Chi Minh City recently collaborated with the Vietnam Market Management Department to check goods, documents and origins of products on sale at 3 Con Cung shops in Ho Chi Minh City. Market Management Branch seized more than 5,000 products of Con Cung because “there are signs of violation of trademark, origin with a value of nearly 500 million VND”.

The incident was pushed to “climax” at the press conference against smuggling results, commercial fraud and counterfeit goods in the first 6 months of 2018 in Hanoi, according to which Con Cung supermarket chain has 7 signs of violation (Nguyen Hai, Thuy Duong, 2018).

From the above cases, it can be seen that the legal rights and interests of consumers, despite being protected by law, but businesses and manufacturers of goods and services still have violations of the law on the protection of consumers' rights, affecting the lives, health and consumer confidence.

4. Results

The Law on the protection of consumer rights contains a mechanism and form of dispute resolution between consumers and traders, however, in fact, consumers themselves are still afraid, they have not really received the right way to protect their rights. Consumers tend to ignore when buying fake goods, poor quality goods, especially for goods and services with small value. This proves that consumers are still not fully aware of their rights and are not really aggressive to protect their legitimate rights in accordance with the law on the protection of consumers' rights.

Besides genuine businesses, there are still many businesses doing poor quality goods and services, trading in counterfeit goods, smuggling, counterfeiting labels, exchanging origins to trick consumers in order to profit, illicit business. This has greatly influenced consumers' psychology because they are direct recipients of using non-quality goods and services, and are at risk of being affected to their health and lives.

Admittedly, although the law on the protection of consumers' rights is increasingly being concerned by both the State, the business community and the whole society, state management on the protection of consumers' rights has not been executed in a righteous way, not yet strict and show shortcomings and inadequacies. The most typical example is the case of consumer rights violations of "Con Cung" Company. During the implementation of the inspection activities, the civil servants leading the Market Management Department are Mr. Nguyen Trong Tin - Deputy Director and Mr. Tran Hung – Deputy Director have signs of violating the provisions of law and of Ministry of Industry and Trade on speech, affecting state management activities, causing bad effects, misunderstandings, incorrect understanding of the nature of events in public opinion as well as affecting economic activities business (To Uyen, 2018).

5. Conclusion

Over nearly 30 years since the Ordinance on consumer rights protection has been established up to now (1999-2019), the law on consumer protection is gradually being improved and consistent with the socio-economic conditions and the trend of international economic integration of Vietnam, especially when Vietnam is promoting integration into regional and world economic organizations such as WTO, ASEAN, ASEM, APEC. Therefore, to overcome the shortcomings that exist and maximum protect legitimate rights and interests of consumers, Vietnamese law needs to improve both legal provisions as well as ensure proper enforcement of regulations on consumer rights protection:

- Continue to improve the legal provisions on obligations and specific responsibilities for each subject related to the implementation of the task of protecting consumers' rights. Protecting consumers' rights must become one of the strategic objectives to develop the economy in a sustainable way.

- Regulating sanctions to handle violations of the law on the protection of consumers' rights in detail and be sufficiently deterrent for individuals, organizations, and enterprises trading in goods and services, causing damage to consumers. Regulating the responsibilities of violating individuals and organizations in the process of state management of the protection of consumers' rights.

- Strengthening the expansion of international cooperation on the protection of consumers' rights, training of human resources and the application of modern science and technology in protecting consumers' rights.

- Raising consumers awareness through the dissemination and education of laws on the protection of consumers' rights, creating favorable conditions for people to participate in protecting consumers' rights.

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