CHAPTER 10. LAW SCIENCES

CIVIL LIABILITY FOR HARM CAUSED TO CONSUMERS AS A RESULT OF IMPROPER PROVISION OF SERVICES

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DOI: dx.doi.org/10.30525/978-9934-571-30-5_18

Abstract. The article deals with the concept of "service" from the economic and legal point of view. The peculiarities of rendering services to business entities of natural persons to consumers are analyzed. It has been determined that under the scope of the special legislation on the protection of consumers' rights only relationships arising as a result of rendering services to an individual are met in order to meet their personal needs, which are not related to the conduct of entrepreneurial activity. It is proved that the consumer is only a paid contract, the conditions of which provides for the collection of fees for the performance of their duties by the contractor – the service provider. Attention is drawn to the fact that this feature of the subject structure and the purpose of the investigated contractual relations determines the specificity of the responsibility of their participants. The state of consumer rights protection of financial and other services in Ukraine is analyzed. The principles of the system of consumer rights protection services are defined. The theoretically grounded the need to consolidate in the domestic legislation financial sanctions, establish administrative and criminal liability of the heads of financial institutions for violation of the rules of providing credit services.

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1. Introduction

One of the fundamental rights of consumers proclaimed by the UN General Assembly is the right to safety of goods, works, services that are purchased or provided. Consequently, individual consumers have the right to ensure that goods (work, services) are safe for life, health, and the environment. The urgency of research as to the formation of an effective mechanism for protecting consumer rights in the field of rendering services in civilian traffic is determined by the dynamics of their development. In as turn, this is accompanied by an increase in the number of individuals entering into the relevant contractual relations with economic entities, diversification of the respective types of services and their integration into world markets. Consumers of credit, financial and other services often do not have sufficient information and professional knowledge, therefore, when choosing a particular type of service, it is not always possible to assess the level of risks that they may incur as a result of their receipt. Under such conditions, effective consumer protection is essential.

2. The concept of "service" in the economic and legal aspects

The term "service" is widely used in scientific research and law enforcement practice. However, the absence in the domestic civil law of the legal definition of the term generates conflicts of application of the conceptual apparatus of the special regulations on the legal regulation of obligatory relations arising from the need to compensate consumers for damage caused by non-fulfillment or improper performance of credit, financial and other services.

The notion of "service" is equally used in both economic and legal sciences. It should be noted that the economic category is wider than its legal understanding. Under the service in the economy it is understood: 1) the type of economic activity aimed at satisfying certain needs; 2)a good – a result that satisfies individual needs; 3) the dialectical unity of activity and the result achieved as a result of this activity [18, p. 10]. Also, the economic literature distinguish private services, which, in turn, are divided into those provided to mass consumers (leisure, communal services) and individual services (medical, psychological, etc.) [20, p. 26]. The economic essence of the service as a good is the pursuit of activities that meet needs. The service is a product that has a physical form of labor. The form of goods it acquires only as a result of labor [4, p. 81]. The main characteristic features

separating services from goods in the economic literature are: intangibility, inseparability from the source, variability of quality and non-preservation [20, p. 26]. In the legal science literature, the issue of legal regulation of the provision of services is the subject of the study of many domestic and foreign lawyers. Among them, first of all, are O. A. Krasavchikov, E. D. Sheshenin, M. I. Braginsky, A. Yu. Kabalkin, M. V. Krotov, V. V. Luts, V. A. Vasiliev, D. I. Stepanova, L. V. Sannikova and others.

In the legal sphere, the term "service" means, in general, actions (activities) of a legal entity or an individual or service provider aimed at achieving a certain intangible result and meeting the household needs of service providers who they need, actions have independent property value and are consumed when rendering services.

However, the definition of the term "service" remains the subject of scientific discussion. Thus, according to the classics of Marxism, the concept of "service" is not the only one and it is necessary to distinguish between services that are the result of a particular activity or work that is embodied in goods and services which, on the contrary, do not leave visible results that are separate from the performer of these services, "in other words, their result is not suitable for sale goods" [11, p. 17]. E. D. Schechenin defines the service as a kind of activity aimed at obtaining an intangible result, therefore the object of the relevant legal relationship is the action and its beneficial effect [24, p. 42]. V. V. Lutz emphasizes that "the useful effect of such activity does not appear in the form of a certain achievable material result, as is the case in contract contracts, but consists in the very process of rendering services" [14, p. 171]. In the spoke about the necessity of distinguishing between works and services, depending on the presence or absence of a material result Joffe [7, p. 488]. The supporters of this position include O. A. Pushkin, E. D. Sheshenin, B. I. Puginsky, E. O. Sukhanov, J. F. Farthutdinova [3, p. 211]. O. S. Ioffe argued that in the commitments to provide services one of the contractors entrusts to another course of a business, not related to the creation of a material result, but aimed at achieving various other effects [9, p. 489]. A number of authors considered the service as an object of civil law, which represents a certain benefit – the result of an activity that has the properties of the product [13, p. 93]. Thus, S. S. Alekseev argued that the object of the relationship can be exceptionally good [1, p. 286].

Article 177 of the Civil Code of Ukraine defines services as an independent object of civil rights, although, unlike other objects, for example,

securities, does not include their legal definition. There is no normative definition of services and in Chapter 63 of the Civil Code of Ukraine "Services. Terms. By using the term "services" in a number of legislative and sub-legislative legal acts, it should be noted that their definitions differ significantly among themselves. Only the understanding of the service as a gaining activity is unchangeable.

The analysis of the relevant normative provisions of the Civil Code of Ukraine makes it possible to state that the concept of services in the code is formulated through the categories of "commission of action" or "activity". Services are activities whose results, as a rule, do not have a material expression, they are realized and consumed in the process of carrying out this activity [24, p. 826]. As a legal category, a service is a type of public good, by which the needs are met by committing an action subject (the exercise of activity), in which the beneficial properties are the subjective interest of a person [4, p. 95]. The service can meet the needs of both individuals and groups persons; be aimed at changing the objects of nature and things, on the person itself, as well as on the change of social relations [13, p. 12].

Thus, on the basis of the above and taking into account the content of Art. 901 of the Civil Code of Ukraine "Contract on the provision of services" we distinguish the following main features that characterize any service: 1) the service is an action or activity; 2) the service is consumed in the process of its provision; 3) service is a good value which value is subject to evaluation.

Investigation of the essence of the concept of "service" also requires its separation from the concept of "service". Previously, many authors identified as a separate civil-law type of service contract for citizens, which covered its content of contracts concluded in the service sector, which was considered as "a complex of sectors of the national economy and the spheres of social and cultural activities that ensure satisfaction of material and spiritual needs of citizens «[27, p. 15; 73, p. 43]. A. E. Shersbotov allocated contracts for servicing citizens in a separate category [26, p. 17]. A. Y. Kabalkin believed that the agreements on the provision of services include all contracts of service sector [10, p. 44-45]. At that time, when there was a hierarchy of specialized state organizations providing services to the population, the use of the specified period was fully justified. However, even with the broadest interpretation of the notion of "service sector" above, some authors pointed to the impossibility of regulating the contract on servic-

ing citizens of housing relations, or vice versa, expressed the view that the mediation of the specified type of treaty relations in the field of medical care for the provision of all types services, including free ones [19, p. 32]. Russian researcher I. Drozdov rightly pointed out that the subject of service relations can be not only services, because needs can be met not only by products of labor, which is not material [6, p. 179] It should also be agreed with N. Fedorchenko that the provision of services can not be regulated by the rules of the contract, as it is impossible to regulate simultaneously contract contracts and service contracts in one normative act [21, p. 239]. Consequently, these agreements must be clearly separated from each other.

3. General characteristics of contracts for the provision of services with the participation of consumers

In accordance with the general provisions of Chapter 63 of the Civil Code of Ukraine, service contracts are divided into contracts for the provision of services for payment and contracts for the provision of services free of charge.

It is important to note that consumers can only enter into contracts for the provision of services for a fee, since the other party (the contractor) is a business entity whose activities are intended to generate profit. Recognition of the price conditions essential for the consumer contract is most consistent with its purpose. The consumer, as an unprofessional, at concluding a contract for the performance of the service must accurately understand the price that he will have to pay under the contract. Many contracts are consensual, and the consumer may not know or have a false impression when entering into an agreement about the price that is usually charged for similar services [2, p. 55; 60, p. 33; 205, p. 89]. Consequently, it is possible to predict the situation (without considering the price condition as essential), in which the performer, after concluding a consensual agreement, will legally demand from the consumer payment of the price charged in certain circumstances, however, does not correspond to the interests of the consumer, not sufficiently aware of the usual price for the provision of of this service.

Accordingly, the price clause should be considered inherent in all contracts for the provision of services for a fee, except for cases where the payment is not money, but other values. Free provision of services to an individual can not be effected by concluding a consumer contract, and the emerging relationships are not regulated by consumer protection laws, even

if these services are performed in order to meet its personal (domestic) needs (for example, under a consumer lending agreement, for what means are directed to personal needs). Relations in relation to the free provision of services to an individual do not require special legal regulation in terms of creating additional guarantees of their rights, since the acquirer in this case does not bear any costs and, accordingly, no risks associated with it. In particular, the norms of consumer protection law do not apply to relations arising as a result of the conclusion of a contract of commission (ch.68 of the Civil Code of Ukraine), storage of things in the wardrobe of the organization (Article 973 of the Civil Code of Ukraine), which may be free of charge. Not subject to consumer protection legislation, free medical, educational and some other non-repayable services that the state must provide to all citizens to ensure their constitutional rights.

Thus, as a consumer, only a contract for the provision of services may be considered for a fee, according to which the party must receive a fee for the performance of his duties.

It should be noted that Chapter 63 of the Civil Code of Ukraine does not contain a general list of types of services that may take place in civilian traffic. Scientific legal literature also does not have a single opinion on this issue. Thus, I. V. Zhilinkova refers to contracts for the provision of services as named contracts (transportation, storage, insurance, commission, commissions), as well as contracts for financial services in accordance with the Law of Ukraine "On Financial Services and State Regulation of Market Services" of 12 July 2001. In addition, the rules of the Central Committee on the provision of services, in its opinion, extend to agreements on the provision of medical, legal, tourist, educational, communal and other services [23, p. 268-269]. O. Malyavko believes that the obligations to provide services include transportation, commission, insurance, commission, travel services, storage, information services, loan, credit, bank account, bank deposit, property management, payment for other services, etc. [24, p. 120-122]. A similar list of service contracts, which also includes contracts for audit, hotel, concert and entertainment services, is found in the Scientific and Practical Comments of the Civil Code of Ukraine edited by O. Dzeri [15, p. 514].

In accordance with the proposed domestic scientist L.K. Veretelnik typization of service contracts can be factual, legal and legal-factual (or mixed) [5, p. 9]. The services of the first group are characterized by the fact that the

authorized person is interested in the implementation of the actual obligation of the obligated person, for example, in the provision of property for temporary use (Article 256 of the Central Committee), transportation of goods (Article 358 of the Central Committee), storage of property (Art. 413 CC) and others. The second group of services consists of the actions of the obligated person having legal character, for example, the actions of the attorney (Article 386 of the Central Committee) or the commissioner (Article 395 of the Central Committee). The current legislation of Ukraine also transmits cases when the legal entity acquiring legal and factual actions (mixed services) becomes obligatory, for example, under the expedition agreement the forwarder undertakes not only to accompany the load (actual actions), but also to draw up the corresponding documents, represent the interests of the sender (legal actions).

In the science of civil law is dominant that any service in its subject matter is the action (operation, activity) of the executor carried out in favor of the customer. However, in our opinion, this position should be corrected or clarified. By itself, the performer's action can not be the subject of the customer's interest, since the customer is interested in the effect of the behaviors performed by the performer. Therefore, the service should be considered not the behavior of the performer, but its effect (the result), which is subject, to say the least, to the consumption of the customer.

The general provisions of the Central Committee of Ukraine do not establish a list of contracts for the provision of services.However, the rules of Chapter 63 of the Civil Code of Ukraine may apply to all types of services, except those listed in the Civil Code itself, in particular: in a row (including household, building, etc.); execution of research, developmental and technological works; transportation; transport expedition; bank deposit; bank score; calculations; storage; authorization; commission; trust management of property. Thus, the contract for the provision of services for a fee regulates all services, except for services that have special legal regulation in the Central Committee of Ukraine. The list of these services is exhaustive.

Special laws and by-laws regulate the provision of paid services that are not mentioned in the Central Committee of Ukraine. These include, in particular, the Laws of Ukraine: “On Tourism” of September 15, 1995; “On Transport” dated 10.1.1994; “On Railway Transport” dated 04.07.1996; “On Communications” dated 16.05.1995; “On Veterinary Medicine” dated

25.06.1992; Fundamentals of Ukrainian Health Law of 19.11.1992. etc.; Subordinate normative acts: Decree of the Cabinet of Ministers of Ukraine of 18.02.1997. "Rules for the provision of passenger motor transport services", Resolution of the Cabinet of Ministers of Ukraine of 19.03.1997. "Rules of servicing citizens by rail", Decree of the Cabinet of Ministers of Ukraine of 16.05.1994 "Rules of Consumer Services"; Decree of the Cabinet of Ministers of Ukraine of April 27, 1998, No. 566 "A complete list of services which are domestic and subject to patenting", etc.

Of particular importance is the special legislation regulating a number of agreements, for example, with respect to a loan, a bank deposit and a loan agreement, in particular: Laws of Ukraine: "On Audit Activity" of April 22, 1993, "On Financial Services and State Regulation of Financial Services Markets" from July 12, 2001, Law of Ukraine "On Consumer Lending" 15.11. 2016, etc.

4. Responsibility for obligations to compensate for the harm caused by the consumer's disadvantages of the services rendered

When deciding whether the relevant provision of services is regulated by the Law of Ukraine "On Protection of Consumer Rights", it does not matter whether a specific type of contractual relationship exists. The determining factor is the provision of services exclusively for personal (domestic) needs that are not related to the pursuit of entrepreneurial activity. Therefore, under the Law, the services included in various lists are governed by various contracts, such as medical and passenger transportation (luggage), tourist, storage, etc.

In connection with the establishment in the Central Committee of Ukraine of a special contract for the provision of services for a fee, the content of which consists in the implementation of certain actions or the implementation of certain activities, the question arises about the possibility and nature of the use of such concepts and norms in these relations as improper quality of service, service life, warranty period, expiration date, obvious and hidden disadvantages, significant deficiencies, the timing of their detection and elimination, the limitation periods of disputes arising out of these agreements, etc.

The quality of service in the contract on reimbursement of the provision of services of the Central Committee of Ukraine is not specifically regulated, as well as the quality of work performed under a contract of domestic

contract. The quality of the service provided to the consumer is regulated by the legislation on consumer protection and other legal acts. The analysis of the regulatory requirements for the quality of services allows formulating the criteria for the quality of services provided to citizens, in particular: the terms of the contract, mandatory requirements of the state standards, requirements that are usually put forward to the relevant services, taking into account the subject of the contract reimbursement of services. At the same time, the quality of some services is also determined by such concepts as "category", "class", "category", etc., reflecting the level of service. The corresponding requirements can be fixed in normative and other documents or determined by the custom. Given the wide variety of services regulated by the agreement, the basic consumer requirements for the quality of these services should be provided for in the contract and in the rules for the provision of certain types of services approved by the Government of Ukraine.

From the point of view of legal regulation of liability for obligations to compensate for the harm caused to consumers by the shortcomings of the services rendered of particular importance, is the question of establishing the terms of service and suitability for service in the current legislation. When regulating security issues, the law comes naturally from the fact that the security of services must be unquestionably secured, as well as the safety of goods and work (Article 14). However, unlike the last two objects, the term of security of services is not set. In the regulation of issues of establishment of service life, eligibility of the law (Clause 2 Article 14) provides for the possibility of establishing them only for goods and results of work. Thus, for goods (results of work), the use of which over a certain period of time is hazardous to life, health of the consumer, the environment or can cause damage to the property of the consumer, establishes the term of service (expiration date). These requirements may apply to both the product as a whole and its individual parts. This position of the legislator seems quite logical and reasonable, since the inapplicability of the concepts of "service life" and "service life" to services is consistent with the nature of the subject of the service contract, which is usually provided either continuously over a long period of time (for example, communication services, training services) or, conversely, for a limited time, after which their provision ends (for example, auditing, tourist services).

However, speaking of the regulation of the terms of property liability for damage, the legislator in paragraph 1 of Article 1211 of the Civil Code

of Ukraine provides that the damage caused due to shortcomings of goods, works (services) is subject to compensation, if it is caused during the established terms of the suitability of goods, work (services), and if they are not established, – within ten years from the date of manufacture of goods, performance of work (provision of services). At the same time, in Clause 2 of Art. 16 The law sets the terms of service and service for products, thus establishing the term of service and terms of serviceability, as products are any product (product), work or service that is being produced, performed or provided to meet public needs (par. 19 item 1).

In our opinion, it is theoretically and practically impossible to establish criteria and terms of service and suitability for services, since they do not have materially significant results, and therefore there is no object for establishing the service life, period of validity, and guarantees of their quality and safety should be provided directly when they are provided. Thus, when regulating the terms of property liability for damage caused due to service failures (Article 1211 of the Civil Code of Ukraine, Article 16 of the Law), it should be taken into account that it is caused in the process of the implementation of such a service, even if its direct identification by the consumer occurred later (last should be considered as a moment when the consumer has learned or should have been aware of the violation of his subjective right).

In view of the foregoing it can be concluded that the security of the service should be provided by the executor throughout the whole period (the process of) its provision, and responsibility for the obligations to compensate for the harm caused to consumers by the shortcomings of the services rendered must come irrespective of the time of its occurrence.

5. Features of liability for damage caused to consumers due to improper provision of financial services

Considering the issue of liability for damage caused to individuals as a result of unfair execution by banks or other financial institutions of their responsibilities within the framework of the relevant agreements, it should be noted that domestic legislation does not properly regulate the grounds and procedure for applying sanctions to credit institutions for violations of the rights of consumers of financial services. In fact, the latter can use the general methods of protection provided for by civil law (payment of a penalty, indemnity). If the financial institution does

not agree to voluntarily pay the amount of the penalty and indemnify the losses, the consumer will have to go to court. However, special means of protection domestic legislation does not provide for: no administrative liability or financial sanctions for violating consumers' rights in the field of lending have been established.

By in way of comparison, Article 23 of Directive 2008/48 / EC establishes the obligation of Member States to introduce in the field of credit relations the sanctions applicable to creditors, which in general can be divided into: civil, administrative and criminal.

Civilian impact measures can be divided into two groups: 1) measures of general influence (Germany, Italy and Romania), applicable for any violation in the field of lending; 2) specific measures of influence refer to specific violations of regulations governing credit relations. The examples of civil enforcement measures provided for by national law include: the right to terminate a loan agreement (Greece); return of loan amount without interest (France, Poland); invalidation of the contract or amendment of certain clauses of such agreement (Austria, Greece, Italy); application of the interest rate on a loan in the amount of the discount rate determined by law (Austria); early repayment of a loan without compensation (Austria) or claim for damages (Germany) [17].

Another separate group is the administrative-legal sanctions. These are fines, forcibly suspending the activities of a credit institution and returning illegally received funds or monitoring the terms of the contract. Some countries separate administrative sanctions from lending rules by placing them in administrative codes (laws), while others include sanctions on special lending laws.

Among European countries, criminal sanctions for violating the rights of consumers of financial services apply only in Poland – for non-fulfillment of obligations by the creditor at the stage before the signing of the agreement, failure to provide standard information in advertising regarding the value of the loan and not the analysis and assessment of the borrower's creditworthiness [8, p. 221].

Regarding the issue of regulating the liability of a lender in domestic law, it should be noted that civil, administrative and criminal sanctions are applied to non-compliance or non-compliance with the terms of a loan agreement with financial institutions. However, there is no direct indication of this in any normative legal act yet.

The primary responsibility of a bank or other financial institution is to provide cash to the borrower. Regarding the responsibility of the lender for non-fulfillment of the terms of the loan agreement, some authors in the scientific legal literature suggest that not only the credit institution's obligation to compensate the consumer for damages, but also the imposition of special liability for violation of the conditions for the issuance of funds [12, p. 221]. However, it should be noted that such an approach does not correspond to the legal nature of the loan commitment. In this regard, only the indemnification of the borrower should be considered as the main form of liability for the creditor for failure to fulfill the loan obligation, in the case where this was not a legitimate refusal to enter into a contract provided for by law.

The civil liability of creditors in Ukraine has its own specifics, as it is regulated not only by the general provisions of the Central Committee of Ukraine, the special rules of chapter 71, but also by the Law of Ukraine "On Protection of Consumer Rights.» It is also worth noting that the majority of the norms of the above-mentioned normative act do not apply to financial services of banks and other lending institutions. However, this is explained not so much by the specific nature of the legal nature of lending relations, but by the fact that the normative act in question is intended for the most part for a commodity rather than a financial market and protects, in the majority, the rights of consumers of goods and works. The issue of regulating the provision of financial services is only marginally resolved in the mentioned above act. It does not contain any direct indications as to the rights related to financial services.

In the decision of November 10, 2011, No. 15-rp / 2011, the Constitutional Court of Ukraine eliminated the contradictions existing in the practical activity regarding the possibility of applying the provisions of the said Law to the sphere of financial services. In its decision, the court ruled that the Law of Ukraine "On Protection of Consumer Rights" applies to the legal relationship between the creditor and the borrower; accordingly, consumers have the right to use the protection mechanisms envisaged by this Law throughout the term of the loan agreement [16].

Taking into account the orientation of the norms of the said law on the regulation of commodity circulation, it should be noted that only lending applies to its general provisions. In particular, the rules providing for the right of consumers to receive information (Article 15, Article 23), rights in

the case of violation of the terms of the contract for the performance of work (provision of services) (Article 10), establish the consequences of "unfair" conditions in consumer contracts (Article 18), prohibit the implementation of unfair business practices (Article 19). Other consequences of breach of the terms of the consumer credit agreement are regulated by the Civil Code of Ukraine and the special blanket rule of Art. 11 of the Law of Ukraine "On Protection of Consumer Rights", which refers to a special legal act – the Law of Ukraine "On Protection of Consumer Rights" of 2016.

The duty of timely provision of information to the consumer on the conditions of consumer lending is established by Articles 11 and 15 of the Law. It is assumed that in case of failure to provide information stipulated by the legislation, the lender is liable, established by Articles 15 and 23 of this Law. Item 7 of Art. 15 stipulates that in case of providing the consumer with inaccessible, inaccurate, incomplete or untimely information, he is entitled to demand compensation for losses incurred and termination of the contract. However, it should be noted that the sanctions set forth in paragraph 7 of Art. 15 and p. 7 part 1 of Art. 23 of the Law of Ukraine "On Protection of Consumer Rights", can not be used as a measure of liability in case of violation of the requirements of Art. 11 of the said Law. It is clear from the context of these norms that they apply only in the absence of necessary, accessible, reliable and timely information on products. Thus, with regard to the lender's liability to the consumer-borrower, in the investigated transaction, it is only a contractual penalty and other consequences established by the parties. Such situation does not promote the protection of the rights of the borrower; in fact, his rights are less secure than those of other services (domestic, medical, etc.).

The special regulation of relations arising from the provision of financial services is provided by the Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets". The specified normative legal act contains provisions concerning the protection of consumers' rights. In particular, general requirements for contracts for the provision of financial services are established, it is prohibited to unilaterally increase the interest rate, to demand early repayment of the unpaid portion of the loan debt, to distribute advertising containing false information about activities in the field of financial services. However, it should be noted that the Law mentioned above does not contain norms regarding the liability of financial institutions for the violation of consumer rights.

Considering the possibility of applying administrative sanctions to lenders, it should be noted that the Code of Ukraine on Administrative Offenses provides for liability for violation of rules in the field of trade, provision of services, in the field of finance, entrepreneurship and consumer rights protection. Thus, Article 156-1 of the said legal act establishes liability for violation of the legislation on the protection of consumer rights, however, it is a question of relations arising in the realm of goods, works and household services. Article 168-1 provides for the prosecution of guilty persons for the execution of works and the provision of services to citizens-consumers that do not meet the requirements of standards, norms and rules. However, this norm can be applied to consumer credit relations only if the relevant authorities establish legislative requirements regarding the standards for the provision of financial services. Said allows us to conclude that in the domestic legislation there is no measure of administrative liability of lenders for violating the rights of consumers of financial services.

Regarding the possibility of applying to criminal sanctions to financial institutions, it should be noted that the content of the Criminal Code of Ukraine recently excluded articles relating to the protection of consumers' rights (Articles 225-227), which included liability for the fraud of buyers and customers, the falsification of measuring instruments and poor quality products. Such changes in the legislation are explained by the lack of statistics on the criminal liability of economic entities in providing financial services to them. The severity of the application of criminal sanctions lies in the problem of proving intent when rendering services to the customer. Therefore, the only criminal sanction that can be applied to unscrupulous financial institutions in the area of violation of the rights of consumer-borrowers is the measures set forth in Art. 190 of the Criminal Code of Ukraine, which provides for prosecution for fraud. However, the statistics of the application of this article is precisely when there is a violation of consumer rights [8, p. 221].

The bodies of state power play an important role in protecting the rights of consumers – borrowers, which are entrusted with the function of exercising control over the provision of financial services to the population and the application of appropriate measures of legal liability for violations in this area. International experience shows that there are two main approaches to the institutional framework for protecting the rights of consumers of financial services. The first is the presence in the country of several agencies

responsible for economic and trade issues. The second involves the presence in the state of a single specialized institution that protects the rights of consumers. The role of the latter can be the financial sector regulator (England), the general consumer protection agency (Sweden, Poland, Latvia, Lithuania) or the central bank (Czech Republic, Azerbaijan). Thus, for example, in accordance with the laws of England on the protection of the rights of consumers of financial services, the Financial Ombudsman is authorized, the Consumer Financial Protection Bureau (71) operates in the United States of America [8, p. 221].

As far as domestic legislation is concerned, in the area of lending supervision of the banking sector is primarily carried out by the National Bank of Ukraine. The National Commission on Financial Services and the Antimonopoly Committee of Ukraine also implement certain functions of overseeing financial institutions. Immediate implementation of the protection of consumer rights is entrusted to the State Consumer Inspectorate. It should be noted that in the legislation of Ukraine there is no clear division of responsibilities between the state authorities regarding the regulation of relations of protection of the rights of consumers of financial services, there is no way to determine the influence of these bodies on violations that arise in this area. In particular, an analysis of the provisions of domestic legislation suggests that the powers of the State Consumer Inspectorate to impose any sanctions on financial institutions for violating consumer rights are very limited.

6. Conclusions

Thus, on the basis of the above, it should be noted that the term "service" is an economic and, at the same time, a legal category that does not have a clear scientific economic or legal content. In the civilist doctrine, services are considered as a separate type of civil rights objects that are different from other objects (things, results of works, intangible objects, etc.). They are characterized by the fact that they are immaterial, are closely connected with the person of the executor and the process of carrying out certain actions or carrying out certain activities. This means that the service exists only when it is provided. In other words, the service is consumed in the process of committing a certain action or carrying out certain activities. For example, in the case of a loan, this activity consists in the provision of funds in ownership on terms of maturity and payment, which characterizes

this activity exactly as a service. As to the provisions of the special legislation on consumer protection, it should be noted that credit relations are qualified as providing financial services.The Civil Code of Ukraine does not contain a general list of types of services that may take place in civilian traffic. Treaties in the relevant field traditionally include transportation, storage, insurance, commission, commission, as well as contracts for the provision of financial, medical, legal, tourist, educational, communal and other services.

The norms of the legislation on the protection of consumer rights are regulated only by relations aimed at the acquisition of services by an individual in order to meet his personal, family, home and other needs not related to the business. Including the consumer can only be considered as a contract for the provision of services to the business entity to the individual for a fee, that is, such conditions, which provides for the collection of fees for the performance of their duties by the contractor. The specified feature of the subject structure and the purpose of the corresponding contractual relations determines the specificity of the responsibility of their participants.

When investigating the responsibility of an executor under a service contract, attention should be paid to his responsibilities regarding the quality of the service, the timing of its provision, the disadvantages that may arise in the process of its consumption, etc. Taking into account the above it can be concluded that the relevant conditions, including the security of services, must be provided by the executor throughout the whole period (the process of) its provision, and responsibility for the obligations to compensate for the harm caused to consumers by the shortcomings of the services rendered must come irrespective of the time of its occurrence.

Separate consideration should be given to the peculiarities of liability of participants in the relations arising as a result of the provision of financial services. Thus, bringing to responsibility of the creditor for failure to perform or improper fulfillment of the conditions of the loan agreement is not properly regulated by domestic legislation. The protection of the rights of borrowers is realized by means of the general methods provided for by the civil law (payment of a penalty, indemnification) taking into account the peculiarities established by the Law of Ukraine "On Protection of Consumer Rights.» However, most of the norms of the law, which contain sanctions for violating the consumer rights, do not apply to the sphere of financial services provision. In this regard, the means of influence on the lender are

only measures of responsibility provided by the parties. Also, the provisions of the current legislation of Ukraine testify to the impossibility of applying financial, administrative and criminal sanctions to credit institutions for violating the rights of consumers of financial services. In this regard, it is considered necessary to establish a series of measures of influence that can be applied for the violation of the investigated relationship.

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