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ОСНОВИ ТА ПЕРСПЕКТИВИ ВПРОВАДЖЕННЯ ІНСТИТУТУ КОЛЕКТИВНОГО (ГРУПОВОГО) ПОЗОВУ В РЕСПУБЛІЦІ КАЗАХСТАН

Анотація. *У статті показано, що прогнозувати аспект того, в якій сфері права груповий позов знайде своє найбільш ефективне застосування, на даний момент вкрай складно. Автори показують, що слід виходити з того, що груповий позов за змістом введених новел є універсальним механізмом захисту. У статті показано, що імплементувати правовий механізм масового правосуддя можна застосовувати в будь-яких справах, підвідомчих судам загальної юрисдикції за правилами Цивільно-процесуального законодавства (за винятком справ окремого провадження). Автори виявляють, що груповий позов буде актуальний в споживчих, трудових і соціальних спорах, в суперечках про захист навколишнього середовища, суперечках, що випливають із заподіяння шкоди, суперечках в сфері антимонопольного регулювання, в суперечках між учасниками ринку цінних паперів. Висновки авторів засновані на тому, що в іноземних юрисдикціях груповий позов найбільш поширений саме в перерахованих вище суперечках. На думку авторів, та модель групового позову, яка закріплена в цивільно-процесуальному законодавстві, в малому ступені відрізняється від простої співучасті на стороні позивача і значного зиску для учасників групи не містить. В рамках процесуальної співучасті сторони мають право передати ведення своєї справи одному з сопозивачів, який і буде dominus litis («господарем спору»), що і відбувається зараз на практиці. До недоліків групового виробництва автори відносять встановлений восьмимісячний термін розгляду справи, рішення може в незначній мірі носити характер res judicata для осіб, які не брали участі у справі. Практична значимість дослідження визначається авторами в зниженні навантаження на судову систему і як наслідок підвищення якості судового розгляду. Це дозволить виділити також і соціально-суспільні форми підвищення сприйняття корпоративної соціальної відповідальності.*

Ключові слова: колективний позов, суд, предикація, розгляд, процедура.

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ОСНОВЫ И ПЕРСПЕКТИВЫ ВНЕДРЕНИЯ ИНСТИТУТА КОЛЛЕКТИВНЫХ (ГРУППОВЫХ) ИСКОВ В РЕСПУБЛИКЕ КАЗАХСТАН

Аннотация. *В статье показано, что прогнозировать аспект того, в какой сфере права групповой иск найдет свое наиболее эффективное применение, на данный момент крайне сложно. Авторы показывают, что следует исходить из того, что групповой иск по смыслу введенных новелл является универсальным механизмом защиты. В статье показано, что имплементированный правовой механизм массового правосудия можно применять в любых делах, подведомственных судам общей юрисдикции по правилам гражданско-процессуального законодательства (за исключением дел особого производства). Авторы выявляют, что групповой иск будет актуален в потребительских, трудовых и социальных спорах, в спорах о защите окружающей среды, спорах, вытекающих из причинения вреда, спорах в сфере антимонопольного регулирования, в спорах между участниками рынка ценных бумаг. Выводы авторов основаны на том, что в иностранных юрисдикциях групповой иск наиболее распространен именно в перечисленных выше спорах. По мнению авторов, та модель группового иска, которая закреплена в гражданско-процессуальном законодательстве, в малой степени отличается от простого соучастия на истцовой стороне и значительной выгоды для участников группы не содержит. В рамках процессуального соучастия стороны вправе передать ведение своего дела одному из соистцов, который и будет являться dominus litis («хозяином спора»), что и происходит сейчас на практике. К недостаткам группового производства авторы относят установленный восьмимесячный срок рассмотрения дела, решение может в незначительной степени носить характер res judicata для лиц, которые не принимали участия в деле. Практическая значимость исследования определяется авторами в снижении нагрузки на судебную систему и как следствие повышение качества судебного разбирательства. Это позволит выделить также и социально-общественные формы повышения восприятия корпоративной социальной ответственности.*

Ключевые слова: коллективный иск, суд, предикация, рассмотрение, процедура.

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BASICS AND PROSPECTS OF INTRODUCING THE INSTITUTION OF CLASS (GROUP) ACTION IN THE REPUBLIC OF KAZAKHSTAN

Abstract. *The paper demonstrates that at the moment it is extremely difficult to predict in which branch of law will a class action find its most efficient application. The authors display that one should proceed from the fact that the class action within the meaning of the introduced innovations is a universal defense mechanism. The paper reveals that the subordinate courts of general jurisdiction can use the implemented legal mechanism of mass justice according to the rules of civil procedure legislation in any cases (except for cases of special proceedings). The authors reveal that the class action will be relevant in consumer, labor and social disputes, in disputes on environmental protection, disputes arising from harm, disputes in the field of antitrust regulation, in disputes between participants in the securities market. The authors' conclusions are based on the fact that in foreign jurisdictions a class action is most common among the above-listed disputes. According to the authors, the model of class action, which is enshrined in civil procedure legislation, differs from simple complicity on the plaintiff only to a small extent and does not contain significant benefits for the group members. Within the framework of procedural complicity, the parties have the right to transfer the conduct of their case to one of the co-plaintiffs, who will become the dominus litis ("master of the dispute"), which is exactly what happens in practice nowadays. The authors refer to the established eight-month deadline for the consideration of a case as a shortcoming of group proceedings; for persons who did not participate in the case, the decision may be of res judicata nature to a small extent. The practical significance of the study is determined by the authors in reducing the burden on the judicial system and, as a result, improving the quality of litigation. This will also allow to outline social forms of increasing perception of corporate social responsibility.*

Keywords: class action, court, predication, consideration, procedure.

INTRODUCTION

This paper covers the concept of a class action and evaluation of the prospects for the development of this institution in the legislation of the Republic of Kazakhstan. Within the framework of the study, international legal documents and recognized global standards regarding the concept of collective actions and collective (group)

claims for protecting consumer rights (UNCTAD; OECD; European Union directives), experience in regulating collective (group) actions in selected jurisdictions were studied. An analysis of Kazakhstani legislation on the use of collective remedies for violated consumer rights and the Kazakhstani practice of applying statutory mechanisms and the Kazakhstani experience of using institutions of complicity and protection of the rights of a group of persons recognized by consumers was also performed. An important international source of regulatory standards is the OECD Recommendation of the Council on Consumer Dispute Resolution and Redress of July 12, 2007[1]. They were adopted so that governments can create a legal framework that assists consumers in resolving and settling disputes with entrepreneurs. Such a legal basis should apply both to transactions concluded within the same jurisdiction and to cross-border transactions. This also applies to transactions within e-commerce, including transactions within the framework of conventional methods and forms of purchases.

These OECD Recommendations[2] were prepared at the very moment when increased attention was paid to dispute resolution and redress mechanisms in the EU countries, especially with regard to mechanisms protecting the collective interests of consumers. The Recommendations address current practical and legal barriers to the use of remedies in consumer protection cases. In particular, they emphasize that at the level of national legislation, governments are expected to provide consumers with mechanisms to act independently (as alternative dispute resolution and simplified court procedures for small claims) or collectively (as action initiated by the consumer on his own behalf and representing other consumers). The Recommendations[3] note that this legislation should also regulate claims of consumer organizations representing consumers, claims of state bodies for the protection of consumer rights, acting as representatives of consumers. Such government consumer protection bodies can receive or facilitate compensation for damages on behalf of consumers, allowing them to apply for court orders in civil and criminal proceedings and act as a representative of the party claiming damages. In the context of cross-border disputes, Recommendations call on OECD countries to increase awareness of (as well as access to) dispute resolution tools and redress mechanisms, including increase in the efficiency of compensation for losses incurred by consumers.

The concept of class action (representative action) originated in the United States. This term is defined as the method used when a large group of persons interested in a particular issue, through one or more entities that files a lawsuit (or a lawsuit can be filed against them) as a representative(s) of this class (group) without having each member of this class (group) join the lawsuit. The procedure for filing and considering

[1] OECD Recommendation of the Council on Consumer Dispute Resolution and Redress. (2007). Retrieved from http://www.oecd.org/internet/consumer/38960101.pdf.

[2] *Ibidem*, 2007.

[3] *Ibidem*, 2007.

such a claim, applicable in federal courts and in the majority of state courts, is provided for by procedural legislation[1].

Thus, both of the mentioned English terms mean the same thing, but reflect two important aspects characterizing the features of class action lawsuits. In particular, the concept of "class action" is based on the concept of "class", meaning in American law a group of persons, things, qualities or activities that have common features (signs) or attributes [1]. That is, this term reflects the fact that the action is filed in the interests of the relevant group (class) of persons. In turn, the concept of "representative action" is emphasized by the fact that the interests of the corresponding group (class) of persons are represented by the separate representative(s) of this group. It's not clear from the Black's Law Dictionary whether another person (not part of this stakeholder group) can act as a representative of this stakeholder group [or of each member of this group] [2].

In American law, procedural legislation establishes general requirements for filing and maintaining any class (group) action. These requirements include the following: (1) the number of persons making up the group (class) must be in such a quantity that it becomes impractical for them all to appear before the court, and (2) the representative(s) mentioned must to be such as to ensure adequate representation of all those persons. Furthermore, (3) the group (class) of interested parties should be definable, and (4) their common interest should be well defined in terms of legislation and facts affecting the interests of the represented individuals. An important aspect is that it is the court that must certify (confirm) the claim as being a collective (group) claim [2]. Evidently, the indicated authority of the court is extremely important to avoid conflict with the general provision of civil law on actions in the interests of others without a mandate, their legal significance and their consequences [3]. The concept of a class action as a lawsuit filed by an individual, a group of individuals or an organization, but necessarily on behalf of persons of a certain category (united in the corresponding category/group according to the criterion of equal interest subject to judicial protection), is inherent in most common law jurisdictions. But it is not a legal tradition of most European states [4]. This concept is relatively new to the law of modern European states.

In particular, the existence of a special category of property interest subject to judicial protection, which was called collective interest, was recognized in the European Union [5]. This concept is broader than the concept of "individual interest", which must be protected through an individual lawsuit [6]. But it is narrower than the concept of "general interest" or "public interest" to be protected by special ways means of protecting public law and order. With that, upon adopting this concept in European countries, the term "representative action" was more favored rather than "class action" [7], proceeding from the fact that it is not as much about being able to go to court for protection of collective interest as about a clear understanding of who is entitled to file

[1] Federal Rules of Civil Procedure. Rule 23. Class Actions. (2018). Retrieved from https://www.law.cornell.edu/rules/frcp/rule_23.

such an action: in some jurisdictions this is provided to public groups, in others – this responsibility is assigned to a state body, and somewhere both are entitled to file such an action [8].

At the same time, regulation of the issue of who is entitled to be the representative of such a collective interest does not detract from the importance of identifying the corresponding group (class) of persons in whose interests such a representative is entitled to file a lawsuit. Furthermore, factoring in the fact that the right to claim and compensation for damages should be provided for in the substantive law and attributed to a specific subject there as an identifying term, it appears more appropriate to use the term "class action" and, among other things, to determine who has the right to file such actions. In addition, from the standpoint of the Russian language in the legal context, the concept of "representative action" may lead to ambiguity in its understanding. Based on the foregoing, it appears expedient, factoring in the predominant European approach ("class action"), to call such category of claims "group actions".

1. MATERIALS AND METHODS

The main method that conditioned the overall development of the study is the verification method, which determines what is primarily a compensation for damages in a class action, and what is the aspiration for public resonance. This is determined by the presence of mutually exclusive judicial acts that occur when the content of judicial acts is diametrically opposed. For example, decisions of different courts that recognize the ownership of the same object by different persons. It is clear that in such a case both decisions are discredited.

The contradiction of judicial acts may also be less noticeable, arising from their comparison and interpretation in the relationship (indirect contradiction). For example, one court recovered the debt for a separate period of validity of the contract, and another court refused to collect the debt for another period of validity of the same contract. In such case, it is necessary to investigate the motives of the adopted judicial acts. For example, if the judicial act of refusal is motivated by the passage of the limitation period, then there may not be a contradiction; if the "rejected" decision is motivated by the absence of a contract (its nullity, non-conclusion), then a contradiction can be apparent.

A method for investigating the integrity of a filed action is a method for finding contradictions. Legal inconsistency lies in opposing legal conclusions that are reached by different courts. Two competing judicial acts may, respectively, relate to the recognition of a right and the denial of a right, the existence of a duty and the absence of a duty, the guilt of a person and the innocence of a person, the existence of a legal relationship and the absence of a legal relationship. The actual contradiction follows from the meaning of the judicial acts and concerns the circumstances of the case. One court decision established the presence of certain circumstances, and another established the

absence of these circumstances. Legal and logical contradictions are interconnected in the same way as questions of law and fact are interconnected. A legal conclusion is made on the basis of established factual circumstances. It is logical that a contradiction in the circumstances will lead to a legal contradiction. An indirect contradiction can be so implicit that it is revealed only in the course the verification of a judicial act.

2. RESULTS AND DISCUSSION

2.1 Opt-in and opt-out models of joining the collective (group) actions

In Kazakhstan, there is currently a social demand for appropriate legislative regulation and the use of legal means to protect collective interests, that is, not only in the field of relations for the protection of consumer rights. In particular, it can be cases of compensation for harm caused to the life and health of individuals in connection with environmental pollution by industrial enterprises, including claims on the unlawful nature of the actions of state bodies, contractors and developers in connection with the creation of conditions that do not allow citizens to fully enjoy their constitutional right[1] to rest and leisure [9].

For example, there is information from the media on the intention of the residents of Temirtau to prepare and file actions in 2018 in connection with the massive damage to the health of citizens as a result of constant violations of ecological and environmental legislation by ArcelorMittal Temirtau [10]. There are also grounds for legal protection of the collective interests of citizens who suffered in connection with the night construction work in Astana in 2017 that interfered with the nightly rest of citizens of nearby houses and the inaction of law enforcement agencies [11]. On the whole, such unlawful activity of construction contractors and developers, which entails the impossibility of such a rest, detracts from the importance and effectiveness of national policy aimed at increasing the social responsibility of business in Kazakhstan.

2.2 The features of regulation of collective (group) actions in the territory of the European Union

In general, the concept of "class action" adopted in American law is perceived at the level of European Union directives and the legislation of developed Western European states [12]. However, in some jurisdictions the opt-out model of joining a class action is adopted, while in most other legal systems, the opt-in model of joining the model is applied [13]. It is also possible to choose a model by court order or even legislative regulation for mixed use following the example of Germany (where the opt-in model is used as the default rule, but plaintiffs who join in this model can withdraw from the class action before the end of the trial, including for the purpose

[1] Constitution of the Republic of Kazakhstan. (1995). Retrieved from https://www.akorda.kz/ru/official_documents/constitution.

of filing an independent action) [14]. Thus, in various developed legal orders of Western Europe, an individual experience in regulating the mechanisms of a collective (group) action has developed.

Currently, the European Commission has developed a draft new directive of the European Parliament and of the Council on class actions in consumer relations, providing for signs of a group of injured persons, thereby allowing the court to clearly identify the consumer group affected by the violation of the law should consumers be affected by the same practice and suffer comparable damage for a period of time or due to the acquisition of goods of inadequate quality[1]. This draft directive pays special attention to "qualified representatives" in class actions [15]. Such a representative should be an organization that (in the aggregate of features) is properly established according to the law of the state party, has a legitimate interest in complying with EU consumer protection legislation and has the status of a non-commercial organization, and its activities are not aimed at making profit.

It should be noted that, in general, in European jurisdictions, the rule on group actions is accepted to compensate only for actual losses incurred, consisting of real damage and lost profit [16]. There is also an example of application of a penalty in the Russian Federation paid by a manufacturer to a consumer in the event of refusal of voluntary compensation for losses and the award of such compensation by a court. At the same time, the United States has rules on multiple losses, as a result of which compensation increases sharply and there is a risk of bankruptcy of the defendant company.

European legislation pays particular attention to the out-of-court settlement of collective disputes by reaching an amicable settlement approved by the court (for example, in the Netherlands) [17].

2.3 Features of regulation of legal remedies for collective (group) interests and consumer rights in Kazakhstan

The legislation of the Republic of Kazakhstan provides for the possibility of protecting the rights of an unlimited (indefinite) circle of persons, including the grounds for the occurrence of procedural complicity, the conditions for its implementation and consequences. It is also possible to file an action in the interests of an indefinite number of people, however, such actions are possible only with the requirement to terminate illegal or other infringing practice (which is known as injunction relief in general legal systems), since, proceeding from the general provisions of civil law and civil procedure, stipulating the certainty of the subject and the content of the claim, a collective (i.e., group) action is not possible for damages to an indefinite

[1] Proposal for a directive of the European parliament and of the council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC. (2018). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018PC0184.

number of persons (for example, Article 148[1] of the Civil Procedure Code and Article 350 of the Civil Code of the Republic of Kazakhstan[2]).

Kazakhstan law does not contain a general concept of "collective methods of protection" of civil rights or interests of a group of people and, accordingly, there is no clear (neither legislative nor doctrinal) classification of such methods, although some of these methods are regulated by legislation (for example, complicity, action in the interests of an indefinite number of persons, the resolution of labor disputes under collective labor contracts or acts of the employer and working conditions). Kazakhstan law does not regulate class actions at all as a collective way to protect property rights of a wide, albeit defined by subjects, circle of persons.

The legislation of the Republic of Kazakhstan provides for rules governing (allowing) the possibility of protecting rights by an unlimited (indefinite) scope of persons. Thus, according to the Civil Procedural Code of the Republic of Kazakhstan dated October 31, 2015 No. 377-V ZRK (hereinafter referred to as the Civil Procedural Code), state bodies within their jurisdiction, citizens and legal entities in the manner established by the Civil Procedural Code are entitled to apply to the court with a statement on the protection of violated or contested legitimate interests of an indefinite scope of persons. In addition, in accordance with the Civil Procedural Code, the prosecutor, pursuant to the legislation, has the right to file an action in court so as to restore violated rights and protect interests, in particular, of an unlimited scope of persons[3].

Apart from specially agreed ways to protect the interests of an indefinite scope of persons, the Civil Procedural Code contains general grounds for using the mechanism of procedural complicity. In particular, if several claims are brought against the same defendant, the court has the right to combine them into one proceeding if the subject or the reason of the dispute are related to the subject or the reason of the dispute of the case in the court proceedings, and the jurisdiction of such claims does not violate the jurisdiction of the case under consideration. With that, an action may be brought jointly by several plaintiffs against one or several defendants. Moreover, each of the plaintiffs or defendants in relation to the other side acts independently in the process. The parties may entrust the conduct of the case, respectively, to one of the co-plaintiffs or co-defendants on the basis of a power of attorney[4].

The participation of several plaintiffs or defendants is possible in cases where:

1) the subject of the dispute is the general rights and obligations of several plaintiffs or several defendants;

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[1] The Code of Civil Procedure of the Republic of Kazakhstan. (2015). Retrieved from https://online.zakon.kz/document/?doc_id=34329053#pos=2;-155.

[2] Civil Code of the Republic of Kazakhstan (General part). (1994). Retrieved from http://adilet.zan.kz/rus/docs/K940001000_.

[3] The Code of Civil Procedure of the Republic of Kazakhstan, op. cit.

[4] The Code of Civil Procedure of the Republic of Kazakhstan. (2015). Retrieved from https://online.zakon.kz/document/?doc_id=34329053#pos=2;-155.

2) the rights and obligations of several plaintiffs or several defendants have the same basis;

3) the subject of the dispute are the homogeneous (identical) rights and obligations of several plaintiffs or several defendants[1].

In this regard, it appears that the mechanism of complicity provided for by Kazakhstani legislation is not the collective action that is used in developed legal systems to protect consumer rights.

The Law on the Protection of Consumer Rights also provides for the possibility of protecting consumer rights in relation to an indefinite scope of persons. Thus, public associations of consumers, associations (unions) have, in particular, the right to sue in the interests of consumers, including in the interests of an indefinite scope of consumers[2].

Thus, Kazakhstani legislation provides an understanding of who the consumer is, defines their rights and obligations, guarantees protection of their interests (both independently and by contacting public associations of consumers, authorized state bodies and the court). At the same time, an analysis of provisions of Kazakhstani legislation does not provide a clear understanding of the mechanism for judicial resolution of disputes related to collective protection of consumer rights precisely through a collective (group) action, in connection with which the following can be distinguished as conclusions:

the absence of a general concept of a remedy for the collective interests of a scope of persons in Kazakhstan law;

accordingly, the absence of classification of such methods, although some of these methods are regulated by legislation (for example, complicity, actions in the interests of an indefinite scope of persons, resolution of labor disputes under collective labor contracts or acts of the employer and working conditions);

it is possible to file a claim in the interests of an indefinite scope of persons, but such claims are possible only with the requirement to terminate an illegal or other right infringing practice (injunction relief), since, proceeding from the general provisions of the civil process on the certainty of the claim, a class action on compensation for damage is not possible.

Thus, a collective (group) action, which allows to protect property rights, albeit of a wide, but a certain circle of persons, is not regulated in Kazakhstani legislation.

2.4 Features of the practice of applying legal methods provided for by Kazakhstan law

Group actions are a type of mass claims, that is, those filed and considered in defense of equally violated (by one entity or group of related parties in the same way

[1] *Ibidem*, 2015.

[2] The Law of the Republic of Kazakhstan No. 274-IV "On Protection of Consumer Rights". (2010, May). Retrieved from https://online.zakon.kz/document/?doc_id=30661723.

with the same content of claims for compensation for property damage or other harm) rights of a large group of persons not otherwise connected. Class actions are a powerful mechanism used in civil society, allowing to protect the property rights of individuals as a weak party in the relevant legal relations. Using this mechanism also provides the rule of law and is a powerful tool for social justice. Group actions are not limited to consumer disputes, they are a way of judicial protection of rights in a number of public relations and in relation to a number of defendants, including the state. There is no universal model for using the class action mechanism; each jurisdiction implements it with its own specifics. In perceiving the concept of class actions, it is advisable to continue to adhere to the approach that the right to claim, as well as to compensation for damage, should be provided for by substantive law. However, since the obligation to consider claims rests with the courts, it must be implemented in accordance with very detailed rules of procedure [18].

The potential risk of losses for any of the models for calculating such losses may lead to bankruptcy of the respondent organization. Due to the fact that there are still state enterprises and state institutions in the Republic of Kazakhstan that render utilities and other services related to consumption, the obligation to pay the amount of compensation under a class action will be transferred to the owners of property of enterprises and institutions, which are the akimats and the government of the Republic of Kazakhstan. For the purpose of preserving budget funds, we recommend reorganizing such enterprises and institutions into legal entities of public law [19–21].

Regulation of the grounds and consequences of satisfaction should be reasonable so as not to entail fatal consequences for the business. It is known that in the USA, factoring in the peculiarities of compensation for losses, the amount of compensation for class actions reaches unprecedentedly large amounts. For example, in 2005, WorldCom telecommunications company paid 6.2 billion dollars to its shareholders, who filed a false reporting action. In 2006, Nortel Networks, the leader in the supply of fiber-optic equipment for Internet providers, paid 2.4 billion dollars in a lawsuit against its investors for false financial statements [1]. In general, in the United States, about a third of companies against which class action suits are filed go bankrupt. Also, one cannot ignore the world-famous downfall of the asbestos industry in the USA, which was charged with hiding information about the dangers of asbestos [22].

US experience suggests that class action can completely ruin once-successful companies. On the other hand, the threat of bankruptcy after payments in a class action lawsuit may increase the level of companies' good faith and responsible conduct of their business [23]. In view of the growing negative effect from satisfying class actions, in 2005 the United States introduced the Law on justice in class actions[1], according to

[1] 28 U. S. Code § 1332.Diversity of citizenship; amount in controversy; costs. (2005). Retrieved from https://www.law.cornell.edu/uscode/text/28/1332.

which class actions and attorney fees shall be subject to closer scrutiny. Despite attempts by federal and state courts to limit class actions, some industries are constantly facing increased pressure from such actions. The most sued groups are consumer-related industries such as retail, automotive, insurance, pharmaceuticals, and financial services [24]. It is worth paying special attention to the fact that in the Republic of Kazakhstan many consumer sectors (gas, water, electricity, etc.) are represented by state organizations. If class actions are satisfied, even those demanding only direct losses to such organizations (and not multiple as in the USA), in the absence of funds, payments will have to be made from republican or local budgets in the manner of subsidiary liability [25]. Thus, as an effective solution to increase the responsibility of such companies for their activities and reduce the conditions for the use of collective consumer protection, it appears advisable to transform such organizations into legal entities of public law, as we recommended in the relevant publications [19-21]. In particular, this will allow to limit as much as possible the responsibility of local and republican budgets from reimbursement of large compensations for collective claims.

We shall separately mention the possibility of filing class actions against a group of defendants. Group actions against a large group of defendants shall be brought against a large group of defendants, united on the basis of an unlawful act and the existence of a causal link between the actions of the defendants and the loss or damage to the health of one or more plaintiffs [9]. It is also recommended to provide a substantive basis and create appropriate procedural rules for filing and considering class actions, including those filed in the interests of a wide range of consumers to receive compensation for losses incurred as a result of contractual relations between such consumers and business entities that are their counterparties under these agreements. In turn, the creation of consumer compensation mechanisms through class action is recommended by UNCTAD and OECD. To create cost-effective and efficient ways of compensation for property damage for consumers in accordance with the OECD recommendations[1] the possibilities of procedural complicity and filing lawsuits for the benefit of an indefinite scope of people, which exist in Kazakhstan's legislation are insufficient. Class action mechanism is the sought means.

Regarding the use of class actions to protect consumers' property rights, factoring in the public interest and legitimate interests of entrepreneurs, it is necessary, as recommended by the OECD[2], that upon regulating issues of compensation for economic harm in transactions between consumers and business, consumers should be limited in their ability to abuse their rights and use the possibility of filing group claims in the absence of property damage. We proceed from the generally accepted approach that the procedural rules for the protection of property interests should be based on substantive law.

[1] OECD Recommendation of the Council on Consumer Dispute Resolution and Redress. (2007). Retrieved from http://www.oecd.org/internet/consumer/38960101.pdf.

[2] *Ibidem*, 2007.

Therefore, appropriate amendments are also proposed in the Civil Code of the Republic of Kazakhstan. However, we limited ourselves only to this aspect, although for a more complete protection of consumers' rights, a much larger scope of new provisions should be introduced in the Civil Code [1] (for example, on consumer contracts and legislative mechanisms for preventing violation of consumer rights).

By introducing the concept of class actions in the legislation of the Republic of Kazakhstan, it will be possible to perform the OECD recommendation[2] that national governments should provide effective mechanisms for redressing damage through collective action [25].

Due to this implementation, rapprochement with the law of the European Union and the legislation of its member states will be ensured. The experience of the European Union in this matter is especially invaluable. Over the past 30 years, the most balanced decisions have been worked out therein on how to perceive the institution of class actions in the national civil law system, which arose and developed in common law countries so as to best ensure both the protection of collective consumer rights and the implementation of public interest, and also supporting and protecting the interests of private enterprise.

Furthermore, by introducing the institutution of class actions to protect consumer rights, an important step will be achieved in implementing the Treaty on the Eurasian Economic Union[3], which provides for the implementation of an agreed consumer protection policy by all member states, aimed at creating equal conditions for citizens of member states to protect their interests from dishonest activities of business entities. This is especially important in the context that, in accordance with the agreement, citizens of the EEU Member States can apply on an equal basis to state and public organizations for the protection of consumer rights, ... including courts and (or) perform other procedural actions on the same conditions as and citizens of other member states[4].

CONCLUSIONS

The idea of collective (group) claims is based on the classical institution of complicity, since in both cases the protection of the rights of several persons is carried out in the same process. When the number of persons in a similar legal and factual situation, who consider their rights violated and in need of judicial protection, exceeds the possibility of involving all these persons in one trial, there is an objective need to consolidate such persons and develop a unified legal position that the court must be represented by a representative elected by the group and authorized to conduct the

[1] Civil Code of the Republic of Kazakhstan (Special Part). (1999). Retrieved from https://online.zakon.kz/document/?doc_id=1013880.

[2] OECD Recommendation of the Council on Consumer Dispute Resolution and Redress. (2007). Retrieved from http://www.oecd.org/internet/consumer/38960101.pdf.

[3] Eurasian Economic Union. (2014). Retrieved from http://docs.cntd.ru/document/420205962.

[4] The Law of the Republic of Kazakhstan No. 413-IV "On State Property". (2011, March). Retrieved from https://online.zakon.kz/m/Document/?doc_id=30947363.

case. In such a situation, it is advisable that persons who have a material interest in the outcome of the case indirectly participate in the process, controlling the integrity of the actions of their representative and receive a personified positive result upon satisfaction of the claim.

In modern procedural science, such forms of joint participation as procedural complicity and the procedure of a collective (group) action are designated as forms of procedural multiplicity. With this in mind, class actions cannot be considered in isolation from the procedural institution of complicity. Class actions are filed at the request of consumers. For example, if this refers to an airline that violates the rights of consumers for some reason, then five or more people can approach this airline, for example, for compensation for non-pecuniary damage for violation of their rights. After that, information about the case is published, and anyone who wants to join this case, does so. Anyone who does not want – does not join, but this does not have much significance, because the court decision will apply to them as well. Repeated proof of the circumstances that will be set out in the court decision will no longer be necessary, since it will be of fundamental importance to the remaining participants, who did not even join the action. It will be enough to take the court decision, go to court and receive compensation almost automatically if it was discussed in an action filed earlier.

A person can choose a specific method of protection in business individually. Of course, the method of protection is related to the facts that are established in a particular case. Therefore, if the requirements and circumstances are formulated in such a way that it is possible, for example, only to recover some forfeit, then in such case it will not be possible to replace the goods or something else. Such claims will work quite effectively in relation to food producers, household goods, car manufacturers, airlines. Case in point would be the case of one well-known automobile manufacturer. The cars of this company used to have a structural defect in the steering. If at that time such a law existed and there was the possibility of class actions, then it would be possible for everyone to unite and subsequently not having to prove to everyone by examinations that the car was broken.

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