

食品安全損害賠償事件中 消費者之權利保護與 損害額之舉證責任減輕

Protection of Consumer Rights and Reduction of the Burden of Proof for Damages in Food Safety Damage Compensation Cases

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摘要

為因應社會生活之發展與需求，並考量事件之不同特性，加強對於消費者身體健康權之保護有其必要。對消費者而言，健康上風險與損害因具有不確定性或潛伏性，消費者可能受限於證明困難而不易求償。若能擴大身體健康權之保護範圍，並減輕具體損害數額之證明責任，某程度可克服食安事件中之證明困境，亦符合保護消費者之規範目的。

To respond to the development and needs of social life and considering the different characteristics of various incidents, it is necessary to enhance the protection of

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consumers' right to health. For consumers, health risks and damages often involve uncertainties or latent effects, making it difficult for them to seek compensation due to the burden of proof. Expanding the scope of protection for the right to health and reducing the burden of proof for specific damages can help overcome the challenges of evidence in food safety incidents and align with the regulatory objectives of protecting consumers.

壹、前言

關於食品安全事件中，受有損害之消費者如何對於違反食品安全法規之食品業者請求損害賠償，除了民法侵權行為、債務不履行、物之瑕疵擔保及消費者保護法第7條以下設有條文規定外，扮演管制法規角色的食品安全衛生管理法（下稱食安法）第56條亦設有損害賠償之規定。依此等事件之性質，消費者食用食品後，身體健康權是否受到侵害，未必容易證明；即使消費者已證明身體權受到侵害，惟受害者對於實際損害數額一事，亦可能難以證明。於實體法的侵權責任面向，是否可藉由保護權利之擴張以實現規範目的？於程序法的面向，依民事訴訟法（下稱民訴法）第222條第2項及食安法第56條第3項之規定，如消費者不能證明其實際損害額時，得依減輕證明責任或賦予法官一定程度裁量權限之方式，進而認定損害賠償之數額。此二條文之性質及其於具體事件中如何適用，值得探究。依上所述，如何有效地調和消費者填補損害之需求與避免