

Andrei Cherstobitov

*PhD., Dr. Cs. in Law, Professor of Civil Law  
Lomonosov Moscow State University*

# Problems of Consumer Protection in Russia

## 1. Consumer protection before the passing of the Russian Consumer Protection Act

The legal regulation of contractual and other obligations between enterprises, organisations and citizens in the former Soviet Union and pre-reform Russia was fulfilled by the norms of the main civil codified laws (the foundations of civil legislation of the USSR and republics of 1961 and later of 1991 and Civil Code of RSFSR of 1964).

Civil legislation of that period did not contain special rules connected exclusively with the questions of consumer protection. That is why a special system of rules connected with consumer protection in these laws traditionally defaulted.

From the beginning of the 1990s the necessity of special regulation in the field of consumer protection was conditioned by the transition of Russia, as with other countries of Eastern Europe, to a market economy. But the transition to a market economy was not the only reason for special regulation in this area. Indeed, there was also the illegal practice of the Supreme Soviet (former Soviet and Russian parliament) and Government to make over their rights on regulation of consumer protection to ministries. Then the situation in the field of service — particularly in tourist, sport, and cultural service — was very bad, because there was no regulation in codified civil acts in this sphere.

Finally, the legislation existing before the passing of the Russian Consumer Protection Act did not conform to international levels of consumer protection. For example, law did not protect all consumer rights. It touched on such thorny subjects as information and product liability.

There was no regulation of the questions connected with the rights of consumer organisations. As for the special state borders on consumer protection, they did not exist.

## 2. Adoption of the Russian Consumer Protection Act

It is necessary to say that during the final days of existence of the USSR, the Soviet Consumer Protection Act of 1991 was adopted. But it did not enter into force and was not applicable in Russia because of the disintegration of the Soviet Union. In these conditions now the legal base of consumer protection is either special laws on consumer protection of independent republics (like Belarus,

Kazakhstan, the Kyrgyz Republic, Russia, the Ukraine<sup>\*40</sup>), or civil codes and other legislation of other republics — members of the Commonwealth of Independent States.

Within the framework of the CIS, steps are now being taken to prepare a model draft consumer protection act.

The Consumer Protection Act consists of four chapters. Chapter 1 regulates the general provisions in the field of consumer protection. It includes norms about consumer legislation, consumer education, the quality of consumer goods and services, the security of consumer goods and services for the health of people, terms which merchants can or sometimes must establish on their consumer goods and services, information, including the liability for non-performance of the obligation to provide information, the main rules of civil liability of merchants for non-performance of their contractual obligations and for the damage including the compensation of moral damage, the rules of judicial protection of consumers and, finally, about the invalidity of terms and conditions of contracts which limit the rights of consumers.

Chapter 2 regulates consumer rights in sales contracts. It includes norms about the rights of the buyer in the case of sale of goods of inadequate quality to them, terms during which the buyer can realise their rights in the event of sale of goods of inadequate quality, liability of vendor and producer of goods of inadequate quality for the delay in fulfilment of consumers' claims, compensation of price difference in case of sale of goods of inadequate quality and exchange of goods.

Chapter 3 regulates consumer rights in the contracts on performance of works, or rendering of services. It also includes the norms about rights of client in case of performance of works, or rendering of services of inadequate quality, terms during which client can realise their rights in event of performance of works, or rendering of services of inadequate quality, liability of producer of works or services of inadequate quality for the delay of fulfilment of consumers claims, compensation of price difference in case of inadequate quality of works or services.

Finally, chapter 4 regulates the rights of federal executive bodies, local bodies and consumer associations in consumer protection. It includes the norms about competence of federal executive bodies and local bodies in this sphere, penalties levied on merchants who violate the legislation on consumer protection, the rights of consumer associations and the rules and class actions.

Now to point out the most important theoretical and practical positions which have taken place in the Consumer Protection Act. First of all it is the tendency to a strengthening of legislative regulation of consumer protection. As it has been assigned in section 1 of this Act the legislation on consumer protection in the first instance include the rules of the Civil Code of Russia, the rules of the Consumer Protection Act and other laws. These other laws cannot limit rights and interests of consumers as compared with the rules of the Civil Code and the Consumer Protection Act. The decrees of the President and resolutions of Government can be implemented only if they are directly indicated in the Civil Code, the Consumer Protection Act and other laws. By the way, in the Consumer Protection Act there are some sections which empower the Government to adopt the rules about, for example, some different kinds of consumer sale contracts or about the sale of different kinds of consumer goods (section 26). The Government has already adopted more than 20 such special acts. As for the acts of ministries and other federal executive boards the Consumer Protection Act contains direct prohibition of regulating any question in the field of consumer protection.

Then the Consumer Protection Act has laid special stress on paying losses as a universal measure of civil liability. The losses are defined in accordance with section 15 of the new Civil Code of Russia as expenses that a person whose right has been violated has incurred or must incur in order to restore the violated right, the loss or impairment of their property (it names actual damages or losses), and income that this person could have received under ordinary circumstances of civil intercourse if their right would not have been violated (it names lost profits).

Equally with the measures of contractual liability the Consumer Protection Act also contains rules about tort liability. According to section 14 the damage caused to the health or property of a consumer by goods, works or services, in which construction or production defects were disclosed must be paid. Moreover every victim can claim for compensation, not only the consumer himself or herself. It means, that it does not matter whether the victim had contractual relations with the producer, vendor, provider of services or not.

<sup>40</sup> The Ukrainian SSR Consumer Protection Act, adopted on 12 May 1991; the Kazakhstan SSR Consumer Protection Act, adopted on 5 June 1991; the RF Consumer Protection Act, adopted on 7 February 1992; the Republic of Kyrgyzstan Consumer Protection Act, adopted on 28 February 1992; the Republic of Belarus Consumer Protection Act, adopted on 19 November 1993.

The victim can in this case claim for payment of damages, which were disclosed at the terms of work (for example for a car or television set) or at the terms of fitness (for example for food, pharmaceuticals and so on). And in this event there exist three different situations:

- (a) if the producer, vendor, provider of services can set such terms and has set them, the victim has the right to claim for payment of damages within the limits of these terms;
- (b) if the producer, vendor, provider of services can set such terms, but has not done so, the victim has the right to claim for payment of damages within 10 years from the date of assignation of goods or the results of work or service;
- (c) if the producer, vendor, provider of services must set such terms (because goods or the results of work or services may be dangerous to the health of people and they were included in the special enumeration, adopted by Government), but has not done so, the victim has the right to claim for payment of damages at any time without limitation.

The consumer can claim for damages either from the seller, or from the producer within the limits of the guarantee term of exploitation of the consumer goods. It means that the Consumer Protection Act allows the competition of contractual and tort liability (or the competition of contractual and tort action).

The liability of merchants in the field of consumer protection in general outline has one more specific characteristic. The producer, vendor or provider of services, who has failed to perform or has improperly performed an obligation (it does not matter whether this obligation arises from contract or from tort), bears liability unless they prove that proper performance is impossible as a result of insurmountable force, that is, extraordinary and under the particular conditions unavoidable circumstances. By the way, according to section 401 of the Civil Code of Russia in particular, a breach of duties on the part of contractual parties of the debtor, the absence of goods in the market necessary for performance, and the lack of necessary financial resources on the part of the debtor do not constitute such circumstances.

The Consumer Protection Act sets up a possibility to pay a penalty (so-called legal penalty). This is an amount of money specified by law which the producer, vendor or provider of services is required to pay to a consumer in the event of a delay in performance of their obligations. For example, they must pay a penalty in the amount of 1% of the price per day for the delay of fulfilment of consumer claims in case of inadequate quality of consumer goods. And the Consumer Protection Act contains the rule that damages may be recovered in full in excess of a penalty.

At last, the Consumer Protection Act gives the consumer a possibility to claim compensation for moral damages. In accordance with sections 151 and 1099 of the Civil Code of Russia moral damages are determined as physical or moral suffering which have been inflicted upon a citizen by acts violating their personal non-property rights or infringing upon other non-material values belonging to a citizen, as well as in other cases provided for by a law. A court may impose the duty of monetary compensation of said harm upon the offender.

The moral harm that has been inflicted upon a citizen by acts violating their property rights may be imposed by a court only in cases provided for by law. Compensation of moral harm according to section 15 of the Consumer Protection Act is the only case of such liability for violations of property rights in Russian civil law.

Where the amount of compensation of moral harm is determined, a court takes into account the degree of guilt of the offender and other circumstances meriting attention. A court must also take into account the degree of the physical and moral suffering connected with the individual specific circumstances of the person upon whom the harm was inflicted.

It is important to know that moral damages must be compensated to the consumer only in case of the producer's, vendor's, or providers of services' fault (intent or negligence). And according to section 400 of Civil Code of Russia a person is not deemed to be at fault if they have taken all measures for the proper performance of an obligation with that degree of care and prudence that is required from them according to the nature of the obligation and commercial conditions.

The Consumer Protection Act guarantees not only protection of an individual consumer, but also the protection of common consumer rights and interests. Special federal executive boards such as the RF Ministry of Antimonopoly Policy and Support of Enterprise, the RF State Committee of Standardisation and Metrology, the RF Ministry of Public Health and others have a right to enforce producers, vendors and providers of services to perform their obligations. They can issue orders to producers, vendors and providers of services who violate consumer legislation. If producers, vendors and providers of services have failed to perform or have improperly performed such order, they bear liability in the form of a penalty. Producers, vendors and providers of services have a right to appeal the order to a state arbitration court if it is unlawful.

Finally, the federal executive organs, local organs and consumer associations also have a right to bring suits against producers, vendors and providers of services who violate consumer legislation. The most interesting question here is for the first time in Russia provided for by law, the possibility to bring a suit, named “the suit for protection of an uncertain circle of consumers”. This kind of action must not get entangled with so called “class actions”. The suit for protection of an uncertain circle of consumers is a kind of action, which has a purpose to plead the acts of producers, vendors and providers of services unlawful with respect to an uncertain circle of consumers and to stop these acts. That is why the claims cannot have the character of a property claim.

Nine years have passed since the adoption of the Consumer Protection Act of Russia. The application of this law, from one side has considerably improved the situation in the field of consumer protection. Now we have rich judicial practice. The result of generalisation of judicial practice here has become the adoption by the Supreme Court of Russia special resolution on 29 September 1994.<sup>\*1</sup> On 17 January 1997 and on 21 November 2000 this resolution was amended because of the necessity to allow for new rules of the Civil Code.<sup>\*2</sup> Some questions of application of the Russian Consumer Protection Act were considered also in official interpretations of the RF Ministry of Antimonopoly Policy and Support of Enterprise, which received the right to prepare and adopt official interpretations of the Consumer Protection Act according to section 40 of this law.<sup>\*3</sup>

From the other side, the Russian Consumer Protection Act has exerted influence upon civil and other legislation. The new Civil Code of Russia has perceived practically all juridical constructions of this law.

### 3. New Civil Code of Russia and the Consumer Protection Act. The problems of correlation and application

From the new rules of the Civil Code of Russia arise the problems of correlation and application of its norms and the norms of the Consumer Protection Act. There are many important steps which were made in the Civil Code for the strengthening of consumer protection.

First of all, now in section III “General part of the law of obligations” of the Civil Code there exists a special regulation of public contracts and contract of adhesion (sections 426, 428), as well as a very important main rule of section 400, which sets up: an agreement to limit the amount of liability of a debtor under a contract of adhesion or other contract in which a citizen acting as a consumer is the creditor, is void if the amount of liability for the particular type of obligation or for the particular breach has been determined by a law and if the agreement was concluded prior to the occurrence of the circumstances that result in liability for the failure to perform or for the improper performance of the obligation.

Then in the second part of the Civil Code there are numerous sections and chapters, which are, dedicated to the specifics of contractual relations between merchants and consumers (section 2 chapter 30; section 2 chapter 37, chapters 39, 44, section 3 chapter 59 and others), or single sections like section 783, 786, 799, 800, 835, 838, *etc.*

The Civil Code also establishes new kinds of contracts including contracts between merchants and consumers. The appearance of chapter 39 named “Compensated Providing of Services” gives the possibility to regulate numerous contractual relations between merchants and consumers in the field of culture, sports, tourism and other kinds of services.

The correlation between the rules of the Civil Code and the Consumer Protection Act may now be characterised in accordance with section 9 of the Entry into Force of the Second Part of the Civil Code of the Russian Federation Act adopted on 26 January 1996. It says: in the case of one party in an obligation being a consumer, he or she has the rights in this obligation both according to the Civil

<sup>1</sup> The Supreme Court of Russia 29 September 1994 Resolution about the practice of considerations consumer protection cases by courts. – Russian newspaper, 26 November 1994.

<sup>2</sup> Bulletin of the Supreme Court of Russia, 1997, No. 3; 2001, No. 2.

<sup>3</sup> The interpretations of the RF Ministry of Antimonopoly Policy and Support of Enterprise “About some questions connected to the application of the Consumer Protection Act”, adopted on 20 May 1998 (amended on 11 March 1999). – Bulletin of normative acts of the RF federal state executive boards, 1999, No. 2, pp. 18–19.

Code and the rights according to the Consumer Protection Act and other acts of consumer legislation. It is the main principle, but we cannot say that it is the decision of a question of correlation between the rules of the Civil Code and the Consumer Protection Act in general.

The Civil Code contains other sections in which this question is decided. First of all the Civil Code includes the types of consumer contracts in which different rules were established. These are Retail Purchase and Sale (section 2 chapter 30), Consumer Service Contract (section 2 chapter 37) and compensated providing of services (chapter 39). According to sections 492 and 730 of the Civil Code laws on protection of consumer rights and other legal acts adopted pursuant thereto shall apply to relations under a retail contract involving a buyer-citizen insofar as these are not regulated by the Code.

It means that if any question must be regulated by the rules of section 2 chapter 30, section 2 chapter 37 and chapter 39, the norms of the Consumer Protection Act may be applicable only where they are not contradictory or insofar as these are not regulated by the Code. In case of contradiction the rules of the Code must be applicable. It seems to me that an analogous situation exists in other contracts such as hire or custody, *etc.*

But not all rules of the Consumer Protection Act apply only in such a manner as it was said earlier. Some special rules of this law have a priority. For example, it takes place in cases, when Civil Code admits to the other rules by law. According to section 477 of the Civil Code unless otherwise provided for by a law or sale contract, the buyer shall have the right to present demands concerning defects in the goods provided that they have been revealed within the time limits established by this article. It means, that in a consumer contract of sale goods will be applicable to section 19 of the Consumer Protection Act about special terms to present demands concerning defects in the goods. The same situation exists in the case of application of section 724 of the Civil Code and section 29 of the Consumer Protection Act.

In all cases the sections of chapters 1 and 4 of the Consumer Protection Act are applicable to every consumer contract.