Entrepreneurs and Consumers as Subjects of Civil Law

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Introduction

Russia’s transition to a market economy has placed emphasis on two groups that received scanty attention under the previous RSFSR Civil Code of 1964, namely entrepreneurs and consumers. At the time that Code was formulated, individual entrepreneurship was illegal and consumers were not at the forefront of economic priorities. As with quality control, consumer protection was dealt with (if at all) through administrative means. The 1994 Russian Civil Code has—in this area as many others—switched the priorities; now there are a number of provisions that pay particular attention to the duties of entrepreneurs and to the special needs of con-


2 For example, under Arts.153 and 154 of the RSFSR Criminal Code of 27 October 1960, criminalizing, respectively, “private entrepreneurial activity and activity as a commercial middleman” and “speculation”.


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sumers. On the whole, the result is a balanced set of statutory provisions that one might hope (and foresee) will be applied in the courts to build up an effective and predictable commercial jurisprudence.

In this exposition on entrepreneurs and consumers as subjects of civil law, there are two pieces of legislation that will not be examined in detail. First, there is what might be regarded as the main precursor to the new Russian Civil Code, the USSR Principles (Osnovy) of Civil Legislation of 31 May 1991, which were applied on the territory of the Russian Federation following the RSFSR Supreme Soviet decree of 14 July 1992 “On the Regulation of Civil Legal Relations During the Period of Conducting Economic Reforms”. There are clear signs that some initiatives in the USSR Principles were expanded in the new Russian Civil Code, but there will be no detailed textual comparison in this chapter.

Second, as this chapter focuses on the provisions of the Civil Code itself, there will not be discussion of the specific law of the Russian Federation on the protection of consumer rights of 1992, which entered into force on 7 April of that year. On this, readers are referred to a discussion of the working of the law in Pamela Jordan’s interesting article “Russian Lawyers as Consumer Protection Advocates: 1992-1995”.

The intent of this chapter is to highlight the provisions in the Russian Civil Code that specifically focus on entrepreneurs and consumers, within the context of the Code as a whole. On the one hand, for entrepreneurs, the Code’s main concern is to emphasize their right to conduct entrepreneurial activity; on the other, for consumers, it is to provide protection in situations where, to put it briefly, there might be inequality of bargaining power.


6 Vedomosti S”ezda narodnykh deputatov RSFSR i Verkhovnogo Soveta RSFSR 1992 No.30 item 1800.

7 For example, the USSR 1991 Principle’s Arts.100 and 129, “transport organizations in common use” and “responsibility for harm caused as a consequence of defects of good and work” seem to have informed the Russian Civil Code Art.426, discussed below, and Art.1095 “grounds for compensation of harm caused as consequence of defects of good, work or service”.


9 This chapter discusses provisions in Parts 1 and 2 of the Code; Part 3 had not been passed at the time of writing. However, as Part 3 contains Section V, Inheritance Law and Section VI, International Private Law, it contains little mention of either consumers or entrepreneurs, apart from (for consumers) Art.1177 delineating the rules for inheriting rights connected with participation in a consumer cooperative, and Art.1212 dealing with the law subject to application to a contract with the participation of a consumer. Of particular relevance to entrepreneurs are Art.1211, defining the significant party to decide jurisdiction for cross border contracts absent a choice of law clause, and Art.1221 which gives the victim choice of law for issues of law subject to application to responsibility for harm caused as consequences of defects of good, work or service.