Liability for the Improper Performance of Work Contracts in the New Russian Civil Code

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The “work contract” covers a wide and diverse variety of economic activities and obligations ranging from the repair of teeth to cars, from chimney sweeping to toxic-waste removal, from software design to the design and construction of houses. It thus represents the legal form for regulating important sectors and relations within market economies that will increase steadily with the growth of “post-industrialism”.

It goes without saying, in line with good codification practice, that the Russian Civil Code devotes a detailed chapter (37) to this type of contract. It further corresponds to good codification tradition that a certain number of works, mostly those of a complex nature and having a commercial character, such as carriage (Ch.40), freight forwarding (Ch.41) and storage (Ch.47), are singled out for specific treatment. This is less obvious for certain other sub-categories, some of which specify the function of the parties, be they consumers (Arts.30 ff.) or the State (Arts.763 ff.), or the content of performance duties such as construction (Art.740 ff.), design and exploratory work (Arts.758 ff.), or scientific research, to which a whole chapter is devoted (Ch.38, Arts.769 ff.).

Of course, each legislator is confronted with the problem of adopting a convenient level of abstraction when establishing types of contracts that reflect specific obligations and their consequences (while, of course, the reciprocal obligation, payment of money, is uniform and does not lend itself to further distinction). The most appropriate criterion in this context seems to be the criterion of regulatory substance, among which the prerequisites and consequences of improper or non-performance play a predominant role.

If we take this criterion of non-performance, important differences in wording immediately become evident. The consumer work contract is a case in point. Although somewhat surprising from a systematic point of view, Article 739, which deals with improper performance, does not refer the consumer to the general provisions of work contracts, whose Article 723 establishes a detailed, generally appropriate, and practically tested set of remedies, but rather to Articles 503 to 505, i.e., to the remedies in case of improper performance of retail sales. This sounds, of course, as if fundamental differences were established following a different distribution of risks, leaving the legislator without choice as to the necessity of

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singling out the consumer work contract as a special type. By comparing the content of Articles 503 to 505 and Article 723, however, it becomes apparent that the difference is much less dramatic than the reference technique leads one to assume. Indeed, one wonders why this reference has been used at all.

In fact, Article 723 provides for customer choices that well reflect the interest of the two contracting parties. The customer has the right to demand elimination of defects that can—under certain circumstances and under special conditions—be replaced by the delivery of a new work (Art. 723(2)). He can claim a reduction in price or—if contractually provided for—compensation for any costs of elimination or compensation for damages (Art. 723(3)). It is not explicitly said whether such compensation frees the debtor from specific performance, but this should be presumed to be the case in terms of Article 396(2). It is somewhat unusual that the different remedies have not been put into a chronological hierarchy, and it might be advisable that future interpretation introduces this in the sense that the right of the contractor to eliminate defects or to deliver anew precedes other remedies. This restriction of choice does no harm to the customer.

Notwithstanding the foregoing, the choices of remedies seem appropriate, even where the customer is a consumer. In fact, the reference to Articles 503 to 505 does not deprive him of these remedies since, in this respect, the norms coincide. This is why one wonders at first why Article 739 breaks away from the system of the work contract. There is, however, a difference. The application of Articles 503 to 505 leads to two additional remedies. The consumer may claim the costs for elimination of defects, even if not contractually provided for, or return the work/good and need not pay the price (Art. 503(3)). These differences lead, in turn, to the question why these choices have not been granted to all customers in work contracts; the particular interest of the consumer is not apparent. It is the same contextual question to which I cannot provide a rationally based answer; that is why insurance (Art. 742), compulsory production of documentation (Art. 743), the right to associate an expert for inspections (Art. 749), or the obligation to comply with (environmental) law (Art. 751) are restricted to the sole construction contract, whereas the compulsory character of state-regulated prices is confined to consumer work (Art. 735). To my mind, all such clauses and articles are not per se limited to specific work contracts and should be applicable as general provisions for all categories, something that is now rendered difficult by the technique of very finely tuned sub-divisions.

There is one more particularity involving Articles 503 to 505. The latter article specifies that compensation for damage suffered does not free