Concept of the public interest Law in the entrepreneurial Law of Russia: comparative legal analysis

Varvara Vladimirovna Bogdan and Yelena Anatolyevna Kirillova

South-West State University Kursk, 50 years of October str., 94, Kursk, 305040, Russia

Abstract. The article studies the concept of public interest law from the perspective of development of this institution in Russia. Irrespective to how the concept of the public interest law is defined and what is included in it, it is right to say that certain aspects of the problem have been comprehensively studied by the national science of civil law and applied in the practice of courts. Though the Russian legislation does not use the term "public interest law", it has always been part of it: free assistance in certain cases, actions by prosecutors and bodies of state governance, trade unions, enterprises, establishments, and individuals who protected the rights of other persons, public and contractual representation, and protection of consumers by public organizations.
[Bogdan V.V., Kirillova Y.A. **Concept of the public interest Law in the entrepreneurial Law of Russia: comparative legal analysis.** *Life Sci J* 2014;11(10s):503-506] (ISSN:1097-8135). http://www.lifesciencesite.com. 97

Keywords: public interest law, class-action suits, social organizations, consumer rights protection, entrepreneurs

Introduction

The *public interest law* term originally comes from the USA. Louis Brandeis was among the first ones who formulated the conceptual principles of the public interest law in the USA, and also he was one of the first lawyers defending public interest long before this concept became widely used [1]. Both in Russia and in Central and Eastern Europe, the term "public interest law" is not widely used. However, it starts being used here and, what is more important, more and more lawyers start using the strategies of the public interest law irrespective of whether they use this term to describe it or not.

I.V. Reshetnikova in her research, which was dedicated to the public interest law, pointed out that in the USA, various views on the public interest law existed, but in general, we can identify four elements determining this concept:

1. The activity of lawyers, attorneys, and other organizations related to rendering free or almost free legal services.
2. Protection of violated rights and interests.
3. Defense of poorly represented groups of people.
4. Procedural actions aiming to protect public interest [2].

For example, E. Rekosh highlighted three meanings of the public interest law: in social terms, it is determined by the object of the defense and originates from protecting socially vulnerable groups of people; in financial terms, it concerns the actions of state authorities, first of all, the courts, which actions target achievement of the "goals of public welfare"; finally, the discursive concept of the public interest law, which is very urgent for the countries of Central and Eastern Europe, is bound up with the concept of the civil society and public sphere and assumes that in the special public sphere any problems of private life multiply due to the network of association and movements, and thus institutionalization of discourses targeting their solution takes place [3].

Methodology

The methodological base of the carried out research consists of the battery of existing basic research methods: system approach and system analysis. Besides, we used the comparative legal, formally logical, and other methods of learning the legal phenomena. The methodological basis of this article consists of innovations of civil, entrepreneurial, commercial, and economic law, and management of social systems.

Body of the work

The principal issue at regulation of relations involving consumers is whether there are any singularities determining specific features of the legal regulation of legal relations involving consumers from the perspective of division of the law into the private and public ones.

Beside the concept of differentiation of the public and private law and the theory of combination and interaction of the private law interests and the public law interests, of the private law tools and the public law tools, of the private law relations and the public law relations, new forms of the public and private laws appear, and new institutes and principles integrating them – this is how the concept of the public interest law appeared in the American theory. It targets providing for the legal culture of citizens and rendering legal services as well as holding legal reforms. It is more of a direction of the legal practice, which is based on a set of legal institutions and methods.

The legal literature provides a definition of the public interest law as a total of legal standards regulating relations at rendering assistance to those whose interests are insufficiently protected in courts. A. Neznamov noticed certain incorrectness of this definition. First, it is rather difficult to determine comparing to whom or to what the interests are protected insufficiently. Secondly, it is not very correct to narrow the range of defended interests by the subject matter of the bearers of such interest. It seems like not only the persons need to be mentioned who due to certain reasons cannot apply to protection of their interest at court but also the protection of the "poorly represented public interest" as such [4].

When a legislative body adopts a law, which contains the words "to the public interest", these words are a signal to implement discretional authority of the judicial or executive power. They mean that at taking decision on a particular issue, a judicial or executive body must take into account the inevitably personalized definition of what the interest of the whole society is [5].

The mechanism of the public interest law targets creating equal law environment for applying to justice and protection of interests at court, compensating certain disadvantages, impossibility, or deficiency of the judicial protection of the rights and interests of certain individuals and groups of such persons as well as the society as a whole [6]. Particular elements of such a mechanism are also the protection of interests of consumers by other persons, the lawsuits protecting any number of unspecified persons.

The legal system of the Russian Federation contains a legislative standard, which allows using the construct of a class-action suit when defending consumer rights [7]. We are referring to Article 13 Clause 6 of the Law "On consumer rights protection", which states that whenever a court allows the claims of a consumer stated by the law, the court shall levy the manufacturer (contractor, seller, authorized organization, authorized entrepreneur, or importer) a penalty equal to 50% of the amount allowed by the court in favor of the consumer for not having satisfied the claim of the consumer voluntarily.

At that, if the application aiming to defend the rights of the consumer is filed by public unions or associations of consumers or bodies of local government, 50% of the levied penalty are transferred to the mentioned associations, unions, or bodies [8].

Thus, the remuneration of a specialized organization protecting consumer rights can reach 50% of the levied amount, and at that, an extra charge can also be levied in favor of the person that consumes the expenses related to receiving the services of a representative. This is why filing lawsuits seeking consumer rights protection by a specialized organization is one of efficient mechanisms of protecting the rights of consumers as well as the public interest as a whole.

It is worth noting that the same law provides for filing lawsuits seeking protection of any number of unspecified persons. Article 46 of the Law states that an authorized federal executive body controlling (supervising) consumer rights protection (its regional representations), other federal bodies of the executive power (their regional representations), which exercise functions of control and supervision in the sphere of consumer rights protection and safety of goods (works, services), a local government, and public associations or unions of consumers are entitled to file lawsuits in courts seeking admission of actions committed by a manufacturer (a contractor, a seller, an authorized organization, an authorized entrepreneur, or an importer) illicit with regard to any number of unspecified consumers and demanding cessation of such actions. The core of the civil society consists of a network of associations, which institutionalizes discourses targeting solution of problems, which represent the public interest, within the framework of the organized public sphere [9].

At that, the said article stipulates recovery to the complainant of all damages incurred with respect to the proceedings in case it wins the case, including other necessary expenses incurred before appealing to the court and related to the case hearing.

As distinct from the provisions of Article 13 of the Law, this provision seems not to provide any stimuli to private (understood as non-governmental or non-municipal) organizations, but to public and other associations of consumers in order to encourage them to apply to courts with similar suits.

As evidenced by the practice, in this case an organization that has filed a suit to a court is not allowed to claim for compensation of, for example, moral damage [10]. There is no doubt that expenses for paying for the labor of a representative in such cases are to be levied from the defendant if the case is won; however, again in this case the problem of equality of the actual costs for the representative, the courts' vision of the rationality of these expenses, and the actual rates of a skilled representative able to win such a case raises [11].

Though lawsuits of consumer associations seeking protection of any number of unspecified persons are time to time filed, it seems more reasonable to complement the obvious non-pecuniary interest of such organizations in such cases with some certain financial stimulus. This would make applying to a court representing any number of unspecified persons economically reasonable, and violation of citizens' rights (a group of consumers in this case) and

hearing of such disputes in court very unprofitable for the violating person.

Development of the institution of pecuniary class-action suit in the USA is determined by the possibility of gaining high fees. Their amount depends on how the court estimates its statement, its importance and profitableness for the persons whose interest has been protected by the attorney.

In fact, courts award fees in favor of the soliciting attorney even in the cases when the sustained suit has material benefit for a group of complainants or even for persons who do not take part in the case [12]. For example, in a case on a claim seeking protection of shareholders of one company with the amount of the suit equal to at least 75,000,000 US Dollars, the representative of the complainants claimed 20% of the levied amount to be paid in its favor as well as reimbursement of expenses amounting to the maximum of 5,000,000 US Dollars [13].

Conclusion

As the fulfilled research evidenced, the concept of the public interest law in the entrepreneurial law of Russia starts being developed and applied in judicial practice.

Like in Russia, in the countries of Central and Eastern Europe, in which rendering legal assistance is submitted to the rules of the free and open market, more and more citizens are rendered poor quality assistance from the system of law, and thus, the society diverges from the idea of equal access to justice for everybody.

The strategic importance of this situation for lawyers engaged in the sphere of the public interest law resides in the fact that it is necessary to pay more attention to mechanisms – both governmental and private – that offer real opportunity of receiving free legal assistance to those whose interest and rights are discriminated.

Summary

As the Russian legislation does not contain a definition of the "public interest law", it is necessary to fill the gap. The public interest law, as applied to the entrepreneurial law in Russia, is to be defined as a total of standards regulating relations associated with establishing a mechanism of efficient interest protection for consumers who suffer from actions of unfair entrepreneurs, which cannot be protected unassistedly and comprehensively at court due to various reasons.

It is also necessary to raise the question of gentle extension of the concept of defending another's, i.e. not one's own, interest that has been reinforced in the effective entrepreneurial law. Gentle extension of the legislative list of cases, in which organizations and citizens could apply to a court to protect interest of other persons or any number of unspecified persons, would serve as the basis for that.

This sentence intentionally focuses on such subjects as organizations and citizens. In fact, we are referring to immediate participation of citizens of the country not only in execution of justice, but also in protecting interests of the whole society according to an established procedure. It is a known fact that often governmental and municipal bodies are not able to react and reflect current issues of the society faster than the representatives of the society itself can do it. Besides, it is obvious that the problems of corruption in Russia are still very considerable, and they sometimes impede timely reaction to rising issues.

In order to ensure pecuniary interest of associations of consumers at appealing to courts with the purpose of representing the interest of any number of unspecified persons, we find it necessary to supplement Article 39 Clause 4 of the Law of the Russian Federation "On consumer rights protection" with provisions stipulating awarding 50% of the levied penalty to public associations or unions of consumers in case of allowance of the claim in favor of any number of unspecified persons, whenever a court takes a decision to reimburse to a public association or union of consumers all expenses incurred during the hearing of the case, as well as necessary expenses incurred before application to the court and associated with the trial, including expenses for independent expert examination, in case such examination reveals violation of essential requirements to goods (works, services).

Corresponding Author:
Dr.Bogdan Varvara Vladimirovna
South-West State University Kursk
50 years of October str., 94, Kursk, 305040, Russia

References

1. Brandeis, L., 1905. The Opportunity in the Law. American Law Review, 39: 55-63.
2. Reshetnikova, I.V., 2007. The Evidence Law of England and the USA. Yekaterinburg: Изд-во Урал. ун-та, pp: 162.
3. Rekosh, E., 2005. Who does determine public interests? PILI Papers. Initiative is "Right for public interests", 1: 4-9.
4. Neznamov, A., 2009. Certain Aspects of Development of the Law of Public Interest in Russia. Date Views: 30.01.2014 http://www.juristlib.ru/book_6240.html.
5. Hrubala, J., 2001. Response to Questionnaire for Guidance for Promoting Judicial Independence

and Impartiality. Washington, D.C.: USAID, pp: 67.
6. The European Court of Human Rights. Observer and Guardian v. the United Kingdom. European Court ruling on human rights Judgement of 26 November 1991. (complaint N 13585/88). http://europeancourt.ru/resheniya-evropejskogo-suda-na-russkom-yazyke/observer-i-gardian-protiv-velikobritanii
7. Chugunova, E.I., 2003. Derivative Suits in Russia and Abroad. Arbitrazhny i Grazhdansky Protsess, 3: 41 - 47; 4: 22 - 26.
8. Kuznetsov, N.G., 2007. A Consumer in the Ocean of Goods. Saratov: the SSU Publishing House, pp: 67.
9. Habermas, J., 1989. Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy. Trans. William Rehng. Cambridge, MA: MIT Press, pp: 27.
10. Uksusova, E., 1997. Cases of Defense of Any Number of Unspecified Persons. Rossiyskaya Yustitsia, 11:98-101.
11. Rekosh E., 2005. The Vicious Circle: Weak State Institutions, Unremedied Abuse and Distrust. Budapest: Open Society Institute, pp: 209-2011.
12. Hirsch, A. and D. Sheehey, 1994. Awarding Attorneys' Fees and Managing Fee Litigation. Federal Judicial Center, pp: 1.
13. Notice of: (1) Pendency and proposed settlements of class action and (2) Hearing on proposed settlement In holding (Switzerland) securities litigation / Case No. 04 Civ. 7897 (DLC). Date Views: 22.04.2014. http://www.scorsecuritieslitigation.com./cases/2008.08.11-NOTICE.pdf.

6/3/2014