

Yuritsin A. E., Lavrov Yu. B.

**PROCEDURAL ASPECTS OF BRINGING LEGAL PERSONS TO
ADMINISTRATIVE RESPONSIBILITY FOR INCLUSION TO A TREATY
CONDITIONS INFRINGING ON THE RIGHTS OF CONSUMERS**

*Yuritsin Andrei
Evgen'evich,
c.j.s. (PhD in law), Omsk Acad-
emy of the Russian Ministry of
Internal Affairs,*

*Lavrov Yurii
Borisovich,
graduate student of Omsk State
University behalf of F. M. Dos-
toevskii, Omsk*

Here are considered the issues of state regulation of contractual relations of private subjects of law to protect the rights of consumers in the absence of the possibility of consumers in most cases to affect the terms of contracts for the sale of goods, rendering services, granting loans, and so on. The authors identify the problem of bringing legal persons to administrative responsibility for the inclusion in a contract conditions infringing on the rights of consumers. Examined the issues of determining the guilt of legal persons.

Keywords: administrative responsibility of legal persons, bringing legal persons to administrative responsibility, guilt of a legal person, consumer's rights, infringement on the rights of consumers, responsibility for the infringement on the rights of consumers, terms of treaties with consumers.

The principle of the legal equality of participants in civil-law relations enshrined in article 1 of the Civil Code of the Russian Federation [1] (hereinafter - CC) does not necessarily mean that the parties to obligations are economically equal. Despite the fact that currently has been installed freedom of parties in the selection and harmonization of contract terms, in some cases, guided by the need to safeguard the rights of consumers, such freedom is objectively needed to be restricted. So, civil legislation separately establishes legal structures for the protection of the interests of the economically “weak” party of legal relations, to which belongs a public contract, as well as contracts where one of the parties is a consumer (the contract of retail sales, domestic contract).

One of the most significant normatively-legal acts in the sphere of protection the interests of legal relations participants - individuals is the RF Law “On Protection of Consumer Rights” [2] (hereinafter - the Law on Protection of Consumer Rights), whose preamble states that a consumer is a citizen having intention to order or purchase, or ordering, buying or using goods (works, services) solely for personal, family, household and other purposes not related to business activities. In accordance with paragraph 1 article 16 of the Law on Protection of Consumer Rights contract’s terms, which violate the rights of a consumer, compared with the rules established by the laws or normative acts of the Russian Federation in the field of consumer protection, are recognized void.

It should be noted that the contracts with participation of a citizen-consumer in most cases, are adhesion contracts, concluding which the consumer cannot affect the inclusion of certain terms in the contract. In this regard, in addition to civil-law measures of consumers protection, the Code on Administrative Offences of the Russian Federation [3] (hereinafter - CAO RF) in accordance with part 2 article 14.8 provides for administrative responsibility for the inclusion in a contract the terms that infringe statutory rights of a consumer.

The facts of such violations of consumer rights are observed in various areas of the sale of goods, performance of work, rendering of services. This could include cases of inclusion of seller services, delivery and assembly in the cost of goods; inclusion in a contract provisions on non-repayment of the amounts paid for educational services; inclusion by the banks in a loan agreement conditions that infringe the rights of consumers: the right of bank to the unilateral termination of contract and the interest rate change for a loan, payment of unreasonable fees for the provision of credit, the choice of jurisdiction in the location of a bank.

When bringing legal entities to administrative responsibility for the inclusion in a contract the conditions that infringe the rights of consumers, it is

important to determine the existence of guilt in the commission of the offense.

The issue of determining the guilt of legal persons is highly relevant, because in a free market exists a tremendous number of organizations that enter into various types of legal relations, including those associated with the violation of law norms. The problem lies in the fact that guilt is a mental attitude of a subject to the acts committed by it. At the same time legal entity is a derivative personality that objectively does not have consciousness and, therefore, any attitude to the acts committed. In this context, the notion of guilt in relation to legal persons is interpreted differently than in respect of natural persons.

The most detailed legal entities guilt was described by Professor V. D. Sorokin, who formulated the following concepts:

- subjective (mental) direction;
- behavioral concept;
- behavioral-psychological theory of guilt;
- concept of social guilt (responsibility of a legal person for the guilt of its employee).

The authors of the first concept consider guilt of legal persons as guilt of its officials and staff. Guilt is represented as a psychological category and is manifested as the attitude of representatives on behalf of an organization to a wrongful act committed by this organization. The said direction was reflected in the Tax Code of the Russian Federation [4], where in article 110 the guilt of a legal entity shall be determined according to the guilt of its officials or its representatives, actions (inaction) of which led to the commission of an offense.

Behavioral concept is based on the fact that guilt is considered as a subjective ground of responsibility. Guilt of a legal entity is defined as a set of negative elements conditioned by the disorganization of legal person activity, failure to take the necessary measures for the proper performance of its duties, as well as failure to make efforts to prevent offences and eliminate their causes.

Proponents of behavioral-psychological approach believe that to confirm an organization guilt is sufficient to determine that an offense was the result of a defect of the organization itself, its disorganization; that the cause of non-fulfillment of duties of the organization was a lack of efforts by the team of the organization, because objective expression of guilt can cover only the reckless form of its manifestation. Thus, the subjective understanding of guilt can be applied in the case of bringing organizations to responsibility for offenses of material nature; objective understanding of guilt should cover only reckless form of manifestation and applies to the formal constructions of collective deeds.

The concept of social guilt (or the theory of social responsibility) is reflected in the legislation of the United States, Holland, etc. According to it the guilt of a natural person has a psychological content, and the guilt of legal persons – socio-ethical.

Summing up the above mentioned concepts can be detected objective and subjective approaches in the understanding of guilt in administrative law. Objective guilt is a guilt of an organization, depending on the nature of a particular wrongful act of a legal entity, who has committed and (or) has not prevented this deed. Subjective guilt lies in the relation of an organization in the person of its representatives to a wrongful act committed by this organization. Here we should agree with D. I. Cherkanov that today the choice of approach to guilt (subjective or objective one) largely depends on the specifics of legal relations [9].

According to M. V. Puchkova, actions provided for by the norm of part 2 article 14.8 CAO RF from the subjective side can only be intentional [6, 460]. In accordance with article 2.2 CAO RF, an administrative offence shall be deemed willful, when the person who has committed it realized the wrongful nature of it action (omission), could foresee the harmful consequences thereof and wished these consequences, or deliberately allowed them, or treated them indifferently. Thus, in the case where the subject of the mentioned offense is a legal entity, it is very difficult to prove deliberate form of guilt under such regulation of intent on the part of the legislator.

Elucidation of legal persons' guilt of the committing an administrative offence is a prerequisite for taking decision on bringing to administrative responsibility. It is exercised on the grounds of:

- data contained in the protocol on an administrative offence;
- explanations of a person who is on trial in connection with a case concerning an administrative offence (including about the lack of opportunities to comply with the relevant rules and norms, taking all possible steps to comply with them);
- other evidences provided for by part 2 article 26.2 CAO RF.

This implies the conclusion that legal persons are not deprived of the right and opportunity to prove the absence of guilt of an administrative offense [5].

B. P. Noskov and A. V. Timoshin correctly note that subjective approach to guilt and arising from it forming of guilt of a legal entity through its representatives can be justified by the fact that the legal capacity of a legal entity is realized through its bodies [7]. In other words, if a legal entity – is a legal fiction, then why not to construct legal entity's guilt through step structure of guilt of legal entity's representatives, which is based on guilt – a mental attitude of individuals [9].

In our view, it is necessary at the legislative level to resolve both the issue of guilt of legal entities on inclusion in a contract conditions that infringe the rights of consumers, and the issue of determining legal persons' guilt of administrative offenses in general. At that we should take objective criterion as a basis, and determine the guilt of a legal entity in connection with the fact of its offense and the existence of a causal link between the actions (or inaction) of the legal entity and occurred socially-harmful consequences. Professor V. D. Sorokin absolutely correct noted that it is necessary "to say directly that we are in favor of objective imputation regarding bringing legal persons to responsibility" [8, 47].

Such an approach to legal regulation is extremely important in respect of the administrative offence under part 2 article 14.8 CAO RF. Adoption of objective criterion in determining guilt of a legal entity for inclusion in a contract conditions that infringe the rights of consumers will properly line up legal practice and bring public and private interests in legal relations with the participation of citizens-consumers in proper balance.

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