

CERTAIN ASPECTS OF THE INSTITUTION ON QUALITY OF GOODS IN CIVIL LAW OF RUSSIA AND SOME FOREIGN COUNTRIES

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ABSTRACT: The purpose of the paper is to consider the general aspects of the quality of goods, works and services. The distinguishing of general aspects in the paper is due to the complexity of the quality category in civil law. The paper uses the method of scientific analysis, synthesis, and analogy. The thesis is substantiated that the goods are then of high quality, when they can be used for their intended purpose at all stages of their life cycle. Finally, the paper draws conclusions.

Keywords: Institution of quality; goods; work; services; sanctions of foreign countries; consumer.

INTRODUCTION

The issue of quality in the science of civil law is a complex one. Quality as a term has many professional and philistine options for understanding. The consumer synonym for the quality of a commodity is its strength, resistance of its external surface to scratches and abrasions, high-speed performance, the absence of suspensions and incorrect operation (telephones, computers), metal resistance to corrosion (car body), food safety, and much more. The subjects of civil law see a quality as signs of appearance, taste, variety of choice, uninterrupted operation of mechanisms for a long

time, justification of consumer preferences in goods. Business entities in their contractual relations (for example, deliveries), like individual consumers, face problems of quality of machine tools, equipment, chemicals and compounds. Therefore, this issue is relevant both for manufacturers (or intermediaries), and for end users.

The institution of quality is applicable to goods, work, and service. The practice of civil circulation sometimes does not separate these concepts and everything merges into a single term of “goods” in contracts. In the most common sales transaction, their nature may not be important from the point of view of legal practice. But in the science of civil law, the issue of the quality of goods, a work, and a service is different for each of the mentioned objects of civil rights and has its own, albeit insignificant, but still differences, which can be called general aspects (Shayakhmetova & Chaklikova, 2018) .In this work, various general scientific techniques and methods of logical cognition were used: analysis and synthesis, abstraction, system-structural, functional and formal-logical approaches. The achievement of the stated goal was facilitated by the use of formal legal and comparative legal methods (Radhy, 2019).

RESULTS

At various times, a sufficient number of quality studies have been conducted in world science. J.M. Juran notes: “There are persuasive reasons for a book on quality planning. During the 1960s and 1970s many domestic U.S. companies lost their quality leadership to new, aggressive competition. The most obvious consequence was loss of market share. For example, here is a partial list of goods for which imports had gained a significant share of the North American market by 1980*. Stereo components, Medical equipment, Color television sets, Hand tools, Radial tires, Electric motors, Athletic equipment, Computer chips, Industrial robots, Electron microscopes, Machine tools, Optical equipment. The reasons for the loss in share of market were related mainly to quality, in two respects: The imports had quality features that were perceived as better meeting customer needs. The imports did not fail in service as often as the domestic products” (Juran, 1992). The point of view of the author should be supported. Indeed, American companies in the sixties and seventies were inferior in quality to many foreign companies as a result of competitive trade wars. Actual import substitution has occurred for a number of items described by J.M. Juran. Currently, the United States, like any other country, is involved in very fierce competition in the markets of high-tech products. The engine of competition and such battles between commodity producers is the institute of the quality of goods, work, and services.

Scientists from Chicago University of Illinois Michael Mussa and Sherwin Rosen note: “While the goods are similar, they are not perfect substitutes because all customers do not place the valuations on all attributes of the goods. The seller knows the redistribution of tastes and demands in the market, but cannot distinguish among buyers prior to an actual sale and cannot prevent resale in other markets. Therefore, the monopolist cannot engage in the usual sort of price discrimination. Instead, the goods are offered in an impersonal market on a take-it-or-leave-it basis and the seller exploits the possibilities for a pricing policy (a price-quality schedule) to allocate customers along the quality spectrum by a process of self-selection. The optimal policy “smokes out” consumer preferences, separates markets, and assigns different customer types to

different varieties of goods, thereby permitting partial discrimination among consumers of varying intensities of demand” (Mussa & Rosen, 1978).

The term "take-it-or-leave-it" noted by the authors has not lost its relevance now. The Russian market is filled with various goods with borderline quality, when the goods only serve short lifespans and after their expiration, for example, the guarantee period, they are practically not suitable for use. There are also many substitutes or analogues of goods that are not identified at all in civil circulation in terms of at least satisfactory quality. "Take-it-or-leave-it" is the principle of trade and production. In some cases, the manufacturer loses all interest in the production of quality goods that meet the requirements of individual consumers. A consumer becomes a person dependent on fashion, pseudo progress, and quasi-technologies.

V.S. Belykh indicates: "Production quality means the internal certainty of a product (phenomenon). Legal support is a type of legal activity to create and maintain, within the necessary limits, the legal regulation of relations in the field of ensuring the quality of products at all stages of its production ("quality loop"). This provision is carried out through the application of a system of generally binding norms and non-normative legal means" (Belykh, 1994; Juran, 1992; Tereso, et al 2018). The point of view of the authors should be supported. The quality of goods determines their internal state, which must, firstly, satisfy the minimum requirements for similar goods which are substitutes or a reference sample (according to GOST, TU, etc.). Secondly, quality is in some way consumer expectations, since often the goods are aimed at the final consumer. Thirdly, the institute of quality requires modern civil law regulation in the field of its concept, properties, security, and legal responsibility.

Thus, the goods are then of high quality, when they can be used with confidence for their intended purpose at all stages of their life cycle. A.E. Sherstobitov notes: "Based on the consideration of a civil law contract as a legal means of achieving socially significant results, as well as conclusions made in science about the possibility of achieving these results by including the terms of the final contractual result in the contract, it was found that a contract for servicing citizens has its final contractual result in the form of a quality of service, including the quality of goods, work and services, as well as a quality of additional services that create comfort for consumers, as well as high service culture" (Mussa & Rosen, 1978; Fateminasab, 2014). The author's justified conclusions can be supplemented by the fact that a contract is a universal means for the transfer in civil circulation of objects of civil rights: goods, work, and services. Quality is mediated by the contractual design. In special socially important cases for a consumer, when expensive objects of civil rights are alienated, for example, apartments, non-residential premises, household appliances, vehicles, machine tools, and equipment, the terms of the contract are essential. The consumer checks the specified objects for quality, tries to include in the contract details regarding its subject, especially with respect to objects which are not new and were already in use. This is due to the high cost of these goods and the application of a written form of transaction.

Simpler and cheaper goods, works and services are transferred from seller to buyer by virtue of an oral transaction or sales / cash vouchers. It is logical that when buying bread, medicines in a pharmacy, visiting a movie theater (entertainment services), a hairdresser (hairdressing services), and performing finish works, the consumer is not always interested in agreeing on the quality of these civil rights objects using a written transaction in accordance with Article 160 of the Civil Code of the

Russian Federation. But this state of affairs should not detract from the quality of the goods, work or services purchased according to an oral transaction only by the criterion of its form. The quality of goods, works and services is unthinkable without the institution of property rights and, of course, commodity-money relations. Almost every modern economy is based on the free movement of material assets through property rights.

A.A. Ivanov rightly notes on this issue: “Property and commodity-money relations are two inextricably linked components of economic relations, which in unity embody the relationship between the subject and the object (a person and a thing), or between the subject and the object, respectively. The right of ownership as a form of a relationship between a person and a thing is an inexhaustible set of opportunities that are provided to the subject by objective law and are embodied in any actions required to conduct commodity production. As the most complete dominance of a person over a thing, the right of ownership (namely, such an understanding must be revived) rests on the principle of authorization and cannot be reduced to a competitive list of powers” (Ivanov, 1991; Shayakhmetova, & Chaklikova, 2018).

It is necessary to join the point of view of the author and to support it. Quality in civil circulation exists only due to the ownership right. Even in historical situations, when the institution of private property was limited, the quality cannot be estimated for a number of reasons without the title owner of a thing, the result of a work or service. Firstly, the property, as a rule, has the subject or the title owner, which possesses the thing. Only the useful properties of a thing as belonging to goods, allow the consumer or legal entity to use the thing at all stages of its life for its intended purpose. Secondly, quality is assessed by the time of ownership of the goods, the result of work or services. For example, a newly built house will not be evaluated by the consumer in terms of quality immediately, but only after some time. Thirdly, the right of ownership, being in close connection with commodity-money relations, allows goods, works and services to freely alienate from one owner to another, allowing each time to have the idea by the title owner of a thing about its quality in a new or in the being in use form.

E.A. Sukhanov notes: “The Institution of Property Law is one of the central institutions of any rule of law. There can be a single conclusion: there are no “forms of ownership”, but there is only one and the only right of ownership with a standard, single set of powers (opportunities), which can have different subjects: citizens, legal entities, the state, and other public law entities ” (Sukhanov, 2001). The author’s point of view is prevailing and fundamental. The owners of goods, works or services may be different: individual consumers, legal entities, the state, and other entities. All of them can be owners, and also, they evaluate the quality, exercise and protect their civil rights to the quality and safety of products. Of course, the institution of property law is the basis of any rule of law. Quality and market relations are closely intertwined. Property law is the connecting component that makes goods, works and services available to extract their useful properties in a particular life situation. Property law allows us to protect a thing, to defend the rights of the title owner in accordance with article 12 and article 209 of the Civil Code of the Russian Federation, to file a claim with the court regarding the restoration of the proper quality of goods, work, and services.

The quality of goods, work and services is such their condition which requires a unique system of organization and management of this process.

V.S. Belykh points out: “As a special type of social systems, the quality management system consists of two interconnected elements: the managing and managed subsystems. Moreover, any product quality management system is characterized by integrity and relative independence. A low-order quality management system is always a subsystem of a higher system” (Belykh, 2011). Maintaining the proper or minimum level of quality of goods, works and services requires a system of organization and quality management, therefore the point of view by V. Belykh is justified. There is no doubt that the quality organization and management is a multi-level system which is provided by the legislative mechanism, the availability of relevant standards (SNIP (building code), GOST (state standards), and TU (technical specifications)), and by reference samples. Some goods are complex in terms of their internal design and intended use (telephones, computers, machine tools). Their start-up, commissioning and use are associated with a system of services and service points (i.e. points of repair of household appliances and electronics, car services).

The above mentioned applies to the quality control system of output products. It is usually organized at the enterprises manufacturing those products, or at assembly plants. Technical control at all stages of the production of goods monitors the condition and suitability of materials, substances and mechanisms that go as components in a particular variety of goods. Such control requires significant financial costs, as well as attracting highly qualified specialists, machine tools, equipment, and storage facilities. There is a quality system in work and services, it is provided by sanitary standards, rules of trade, SNIP (Building code), and the procedure for accepting results. However, it is worth noting that a full-fledged quality system of goods, works, and services does not exist in all subjects of civil turnover engaged in so-called entrepreneurial activities (small and medium-sized businesses, and entities that do not have entrepreneurial status). There are several reasons for this. Firstly, small and medium-sized businesses can sell goods or provide services on an “as is” basis simply due to lack of money. And here, the goods will not be necessarily substandard. We can talk about a generally poor or modestly adjusted system of quality control and interaction with the end user and counterparty. Secondly, a one-time or seasonal business is little adapted to measures to control and improve quality. A similar remark can be made with respect to ordinary individuals who carry out “a kind of entrepreneurial activity” without entrepreneurial registration: resale of secondary housing; purchase and sale of used cars, machine tools, equipment, computer equipment, etc. It is clear that the thing is not new and used, it has some obvious or hidden flaws, but it is unlikely that an individual will carefully correct them when selling, since the whole point of commercial profit is lost.

A.P. Zaporozhets indicates: “Apparently, the idea of integrated product quality management systems should be abandoned in modern conditions. Ensuring the highest level of quality is possible based on a detailed agreed upon technological process. The document fixing the agreement between the completing subcontractors could be the Agreement, which is concluded between the final (completing) enterprise and subcontractors. The final manufacturer will act as a central link in the technology of production of these products” (Zaporozhets, 2010). Integrated quality management systems are effective in practice. Any modern technological process is unthinkable without special structures that control quality. A final manufacturer sometimes serves as an outermost person in all kinds of disputes between an individual consumer and a dealer network, or between entities supplying components. And the factories that

supply the parts, as a rule, are little involved in complaints with the individual consumer. This state of affairs can be easily seen on the example of automobile concerns that produce cars in the Russian Federation. Their comprehensive quality management system does not boil down to a document consolidating agreements between completing subcontractors. Firstly, there are assembly lines and technical control departments. Secondly, all vehicles have a manufacturer's warranty, usually from two to five years. There is even a guarantee against through corrosion of their bodies in the Russian climate. At the same time, in the warranty between the consumer and the official dealer of the car brand, there are no talk of any component manufacturers.

CONCLUSIONS

The institution for the quality of foods, works and services is complex and multifaceted. In its understanding, civil, economic, industrial, technical, political and other elements are combined. It seems that the quality institution allows an owner or other person who legally owns the goods, the result of work or the result of the service to evaluate such objects of civil rights from the point of view of their application for direct consumer or economic purposes, the absence of shortcomings or material weaknesses, safety, durability, compliance with mandatory technical standards and law, as well as contract terms.

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