

Legal Regulation of a Remotely Concluded Sales Contract in the Era of Digitalization

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Abstract—The object of this research is the social relations that have arisen in the course of legal regulation of a contract of sale of goods concluded remotely. Due to the specificity of this type of contract, primarily due to its fundamental difference from other types of contracts of sale, in particular, from the contract of stationary sale, it became necessary to identify individual features of the contract of sale of goods concluded remotely. The article briefly discloses the history of the origin and development of the contract of sale of goods concluded remotely, defines the legal nature of this type of contract, formulates the concept, features and elements of the subject of study. The author considers some problems of legal regulation of the purchase and sale of goods carried out remotely and offers solutions to existing problems associated with the peculiarities of legal regulation of this type of legal relations at the current stage of development of the digital economy.

Keywords—remote sales contract, consumer, seller, goods, consumer protection.

I. INTRODUCTION

At present, the rapid development of the digital economy in the Russian Federation is characterized by a widespread spread of remote purchase of goods or services. Already today, this method of remote contracting is very common.

The emergence of a new way of buying and selling undoubtedly required new forms and methods of its legal regulation. It should be noted that despite the fact that this method of selling goods has appeared relatively recently, it has already become quite popular. In this connection, the mechanism of legal regulation of such relations has been developed to date. However, practice shows that there are a number of problems associated with the remote mode of purchase and sale of goods, and, consequently, further improvement and development of legislation in this area is required. That is a main purpose of the research.

II. LITERATURE REVIEW

The emergence of a new type of sales contract required a theoretical analysis of this type of legal relationship. It should be noted that there is a sufficient research base on this problem. Firstly, the remote sales contract is a relatively new phenomenon of modern Russian law. Therefore, the main literature on the problems of this type of legal relations refers to the last decades. Among the works of the authors studying the problems of this type of contract, can be distinguished the works of V. V. Bogdan [1], D. H. Valeev, M. Y. Chelyshev [2], O. A. Belova [3], V. A. Borchenko, A. V. Kitaeva [4], T. M. Trofimova [5], N. V. Konovalova [6], E. O. Sakhno [7], E. E. Gladkova [8], I. S. Evdokimova [9], A. A. Belskaya

[10], K. V. Solovieva, G. F. Chekmaryov [11], A. O. Inshakova, O. V. Beskrovna [12], N. A. Abyatipova, A. A. Kravtsova [13] and others.

III. RESEARCH METHODOLOGY

In order to solve the research problem in work the system approach is used. The problems are considered in the ratio of material and procedural aspects. The methods of this study are the historical and legal method, the formal and logical method, which determines the application of induction, deduction, analysis and synthesis, technical and legal method, providing for the interpretation of the rules of law.

IV. RESULTS

To start with a turn to the analysis of the problems of legal regulation of this type of legal relations, it should be noted that trafficking at a distance originated in ancient Egypt, with the help of an exchange of letters there was a contract between people. It follows from this that long before the advent of information-computer technologies people concluded a contract of sale with no direct contact between the parties [14].

As noted by O. V. Kotelnikova and L. A. Berdegulova, «Distance selling has its own specific features that distinguish it from other types of purchase and sale, including retail. In the first case, the buyer who intends to purchase the goods can clearly see it - to assess its consumer properties or to identify shortcomings on the spot; in the second - such an opportunity is absent, since the transaction is carried out at a distance and any information about the goods can be obtained only with the words of the seller - in writing or orally» [15].

There are several advantages to the wide spread of this method of selling goods. First, due to the round-the-clock operation of online stores, potential customers are not limited in the time of service. Secondly, customers have the opportunity to leave their recommendations about the product, compare them with each other and add to their preferences list. Third, the ease of payment for goods also stands out against this background. The buyer can use any payment method: cash, bank card or electronic payment. Fourth, distance selling is very convenient because it allows you to buy goods remotely without leaving your home or workplace. The customer receives the product or service at his or her location by courier delivery service or by post. Building such a sales platform is convenient and, most importantly, more profitable to the buyer and seller.

With the growing popularity of a remotely concluded contract, there are various discussions among scientists and civil law specialists on the definition of such a legal contract.

It is well known that a treaty is an expression of the will of the parties that gives rise to or terminates mutual rights and/or obligations of each party. However, the conclusion of agreements specific for this type of transaction not simultaneously and in different places, gave rise to different opinions among lawyers.

According to Carl Friedrich Keppen "The binding contract in the absence of the parties" (1871) says, "the contract can be recognized as valid even without the consent of the parties. A transaction consists of legal conditions and an expression of will, and this theory suggests that the consent of the parties indicates that there is a link between the parties to the treaty, but does not constitute an actual conclusion" [16].

Another civilist scientist, Henry Dernburg, formulated his position in the following way: "The declaration of will, which must be made against another person and made in the absence of the latter, becomes valid from the moment it is received by the addressee. An expression of will does not become effective if an application for refusal is received before or at the same time as it is received" [17].

In P. P. Tsitovich's opinion, the presentation of goods in the places of sale as a public offer should be perceived as a notice of the presence of specific goods, similar in value to those presented [18]. This representation has similar characteristics with the sale of goods by sample.

Another Russian legal expert and publicist, V.D. Katkov, should be singled out. V.D. Katkov made a significant contribution to the study of the problems of remote acquisition of goods. He argued that "the legality of such a transaction is based on an analysis of the legal norms and the practice of entering into such contracts. It is necessary to evaluate a contract concluded by means of telephone conversations as a contract concluded among those present" [19].

Domestic legislation regulates in detail the relations between counterparties (consumer and seller) when buying and selling goods remotely.

Article 26.1 of the Federal Law "On Protection of Consumer Rights" establishes the remote method of sale as "conclusion of a retail sale agreement based on the buyer's acquaintance with the seller's descriptions of the goods by means of photographs, booklets, leaflets, and prospectuses, excluding the possibility of direct contact of the buyer with the goods or the sample at the time of conclusion of the agreement" [20]. It is thus postulated that the treaty in question is such because of the manner in which it is concluded.

Article 497 of the Civil Code of the Russian Federation [21] distinguishes between the sale of goods by sample and distance sale, this can be seen from the title of the article "Sale of goods by sample and distance sale of goods". In both cases, it is stressed that the buyer is not in a position to familiarize himself directly with the goods he purchases. This common feature has made it possible to combine both ways of purchasing goods into one article. This article also includes the rules for the execution of such a contract at the time of the execution of the delivery of goods to the destination, issue, and regulates the right to refuse the purchase and to reimburse the resources spent in transportation to the seller.

After the introduction of amendments to the Civil Code of the Russian Federation in 2007 in the "Decree of the Government of the Russian Federation "On Approval of the Rules of Sale of Goods by Distance Selling" dated 27.09.2007

№ 612" [22], the Government of the Russian Federation approved the list of rules for distance selling of goods and fixed the very concept of this agreement. The concept of remote sale of goods, given in the Resolution of the Government of the Russian Federation, is identical to the concept of the Civil Code of the Russian Federation, which had a positive impact on law enforcement practice. The Decree on Distance Rules of Sale repeated the provision of the European Convention "On International Postal and Distance Trade" dated March 27, 2002 [23], where it is emphasized that the conclusion of such an agreement occurs when neither the seller nor the buyer do not see each other, and the sale of goods is carried out through various channels of dissemination of information, which are also duplicated in the Decree of the Government "On Approval of the Rules of Sale of Goods by Distance" and the Civil Code of the Russian Federation. Therefore, if the consumer can feel or familiarize himself directly with the product, this relationship will not be governed by the special regulations mentioned above.

There are also several other legal acts regulating distance selling, such as Rospotrebnadzor's letters No. 0100/2569-05-32 dated 08.04.2005 "On Prevention of Offences in the Case of Remote Selling of Goods" [24] and 12.10.2007 N 0100/10281-07-32 "On Control over Compliance with the Rules for the Sale of Goods by Remote Sensing" [25], as well as Federal Laws "On the Fundamentals of State Regulation of Trade Activities in the Russian Federation" dated 28.12.2009 № 381-FZ [26] and the Federal Law "On Advertising" [27].

From the above we can formulate a number of features of a retail purchase and sale agreement concluded remotely:

- 1) The subject matter of the contract is goods or services that may be sent under a distance contract. However, not all services may be subject to the contract, only those that are provided in the performance of the contract.
- 2) The conclusion of the contract is made outside the stationary trading areas, because such areas are simply not available to the seller. This criterion indicates the distance between consumer and seller.
- 3) The buyer has the possibility to select the goods only on the basis of the offered picture and text description via different communication channels (Internet, brochures, booklets, catalogues, etc.).
- 4) The consumer is deprived of the possibility of direct acquaintance with the goods when concluding such a contract.

Based on these provisions, it is possible to formulate the following definition of a retail sale agreement concluded remotely: a sale and purchase agreement concluded remotely is a sale and purchase agreement for the sale of products and services for the purchase of which the consumer studies the relevant information based on the visible image of the product, as well as the text description through various communication channels, the conclusion of this agreement is remote and the implementation of activities is carried out

I. V. Savenkova, D.A. Klinovskaya, L.N. Butenko notes: "Online commerce has been actively developing in Russia since 2006. Only 8.4% of Russian Internet users made their purchases, whereas in the world this figure was already more than 50%" [28]. In 2004, the National Association of Distance

Trade (NADT) was formed in our country, the purpose of which is to create favorable conditions for the development of distance commercial trade in Russia, as well as the observance of consumer interests, without which it is impossible to build a civilized market. This non-profit organization is guided by the "European Convention on International Postal and Distance Trade" and its members are bound by this agreement. This Association unites 24 companies for 2019, the turnover of which makes up 50% of the distance trade market in Russia [29]. Since the beginning of 2005, distance selling has been regulated by Article 26.1 of the Consumer Protection Law [30], as well as by the Resolution of the Government of the Russian Federation "On Approval of the Rules for the Sale of Goods by Distance Selling" [31].

Distance trade is now a promising trend due to the high development of information technology. In Europe, the turnover of remote sales of goods reaches 7% of the national GDP, especially in areas remote from the developed infrastructure. According to eMarketer's estimates, in 2017, e-commerce retail sales worldwide reached 2.304 trillion dollars, an increase of 24.8% over the previous year. Mobile phone remains a key factor, as m-commerce accounts for 58.9% of digital sales. It is estimated that by 2021, e-commerce will account for 72.9% of the market [32].

Therefore, it is worth noting that the regulation of this area clearly requires legislative improvement.

Firstly, the design of the sales agreement is not clearly structured in the Russian legislation. It seems that in the future the legislator needs to define and fix it in the regulatory legal acts regulating this sphere. In particular, it concerns the detailed delimitation of a remote sales contract and a model sales contract.

Second, practice shows that the consumer, as one of the parties to a remote sales contract, is the weaker, least protected party to the contract, as evidenced by court practice in disputes arising from remote sales contracts. In such a case, the consumer cannot solve the problems with the seller of the goods on his own, and applies to the court for protection of his rights. As a result, it is necessary to specify the rights of the buyer to return any goods of improper quality purchased remotely, allowing for an unambiguous interpretation of the provisions of the law, as well as to fix specific deadlines for the execution of the order to deliver the goods to the buyer.

Third, this type of treaty is very detailed and effectively used in the practice of a number of European countries. However, it is possible to apply the already existing foreign experience of legal regulation in this field of purchase and sale of goods to our legislation only in part, because in each individual country the development of trade has its own peculiarities, which depend on the development of the economy and the legislation of the country, which determines the various boundaries of the implementation of trade potential.

V. PRACTICAL RELEVANCE OF THE STUDY

The practical significance of the research lies in the identification of problems of legal regulation of the contract of sale concluded remotely, as well as in the formation of ways of development of the Russian legislation in the field of this type of contract in the conditions of "digitalization" of the Russian legal system.

VI. CONCLUSION

Thus, at the current stage of formation of the digital economy the contract of retail purchase - sale concluded by remote method is very popular, as it is conditioned by consumer demand. Each of the parties to the treaty has its advantages. In particular, the customer has the opportunity to purchase a unique item that is not available for purchase in their area; they are provided with a much wider range of goods; they have a chance to buy branded items at much lower prices; they are offered a variety of discount programs; there is a choice of payment method, as well as the right to receive purchases from home. For the seller there are also a number of advantages: to have an online store (and this is usually a low number of staff), the ability to sell goods outside the location of the store, there is no need to have retail space, and therefore no unnecessary costs for rent and design of the store.

The relatively recent form of remote sales is gaining momentum due to the development of information technology, but the development of a modern legal system in this area is developing at a much slower pace, resulting in problems in the legal regulation of the new contract.

The author believes that the legal regulation of legal relations arising from the contract of sale of goods concluded remotely requires further legislative improvement and resolution of a number of problems that are relevant at the present time. Offers to improve the Russian legislation in the field of remote sales contracts have been developed on the basis of the analysis of the legislation on this type of contract, carried out in order to obtain practical confirmation of the existence of identified problems.

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