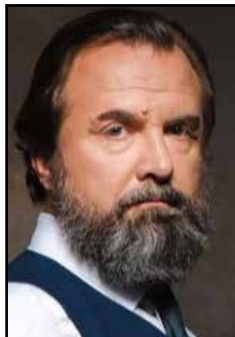




Consumer Extremism in Passenger Transportation: Theory and Practices



Galina A. MORGUNOVA



Sergey N. MOROZOV

Galina A. Morgunova¹, Sergey N. Morozov²

^{1,2} Russian University of Transport, Moscow, Russia.

¹ ORCID 0009-0009-1270-9854; Russian Science Citation Index Author ID: 1227933.

² ORCID 0009-0000-1286-0882; Web of Science Researcher ID: MSV-9616-2025.

✉ l_mg1971@mail.ru.

ABSTRACT

In the last decade, consumer extremism as a type of abuse of rights under civil law has acquired in our country the form of a mass phenomenon. If in European countries and in the USA consumer extremism has a long history and has already become entrenched in society, then for objective reasons within our tradition its manifestations are not of mass nature, and the first ones were noticed only at the end of the 1990s. But at the moment it is developing, going through a stage of transformation from isolated cases to a finally formed phenomenon, and the definition of «consumer extremism» itself has not acquired a formal character, since it has not been included in the terminology of the current legislation of the Russian Federation. At the same time, the very possibility and necessity of including such a term in the law is the subject of serious scientific discussions.

In circumstances where the state pays significant attention to supporting the social interests and rights of citizens in general and the rights of consumers in particular, what we can actually witness, including in the legal field of Russia, some imbalance in the favour of consumers can be noted, when individual consumers use the powers granted to them, putting the seller

of goods, works, services in a disadvantageous position. Thus, conditions are formed for the development of a culture of consumer extremism. The described problem is exacerbated by the increase in regulatory protection of the consumer, which in turn goes too far in economic relations and imposes the need to tighten the consumer's liability for abuse of rights.

Analysis of practices, including judicial practices, shows that the sample is already so representative that it makes it possible to identify the most «attractive» areas of commercial activity from the point of view of violators, namely, the areas of shared participation in housing construction, provision of medical services, retail sale and purchase. The transport sector is also subject to this abuse of rights.

Of course, this phenomenon has a negative impact on the reputation and financial position of entrepreneurs, and this raises the relevance of the task of finding ways to counteract the facts of unfair behaviour of consumers of both services and works, and goods. It is necessary to consider that consumer extremism is a complex, multifaceted phenomenon: it has not only legal, but also social, economic, psychological grounds, motives and consequences

Keywords: consumer protection, abuse of rights, consumer extremism, consumer terrorism, transport.

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BACKGROUND

The highest normative act of the Russian Federation – the Constitution establishes that «a person, his rights and freedoms are the highest value; recognition, observance and protection of the rights and freedoms of man and citizen is the duty of the state» (Article 2).

The formulation of the idea of searching for and designing an effective system for the protection of human rights is a consequence of the continuous humanisation of society, the expansion of the range of relationships of the individual, and, in addition, is necessary for the comprehensive development and formation of a free personality [1, P. 17].

In fact, it is difficult to find many states with fundamental acts, labour legislation and legislation on the protection of consumer rights that would be more attractive to the interests of ordinary citizens than the Russian Federation. At the same time, in some cases, judicial practice has created even more favourable conditions for citizens than those determined by legislators. At first glance at the problem, it can be noted that this is a positive phenomenon, but not in the field of civil law, where the imbalance of the volume of legal guarantees in favour of one subject automatically means a decrease in the protection of another subject.

Therefore, it is timely to study such a phenomenon as «consumer extremism», which includes the ability of the consumer to «make a profit» at the expense of the opposing party, which is an economic entity.

The content of the term «consumer extremism» is one of the issues that seems to be very controversial and is often discussed in the scientific and practical sphere. Publications on this topic are numerous. Recently, researchers of the issue have followed the path of «structuring by industries»: abuse in the insurance services market, in medical interventions, in the housing and communal services market, in housing construction, in the activities of public organisations, etc.

All this indicates an unquenchable scientific interest in the problem, as well as an expansion of areas of society that are negatively affected by such a phenomenon as the abuse of rights by consumers for the purpose of illegal enrichment.

The objective of the work is to highlight individual significant aspects of the manifestation of «consumer extremism» as a phenomenon, as well as an analysis of some features of the

manifestation of «consumer extremism» in the field of passenger transportation services.

Methodology: formal-legal, historical-legal, and comparative-legal *methods* were used.

RESULTS

The first lawsuit that laid the foundation for the subsequent debate over consumer injury tax reform was the «Hot Coffee Case,» in which Stella Liebeck accused McDonald's of injuring her. In the 1994 trial, the plaintiff was awarded 2,7 million USD in damages. However, the first instance decision was not final, and the appellate court adjusted the amount of compensation, reducing it to 480 thousand USD [2, P. 21].

Some people cited this case as a shining example of frivolous litigation and called it «an example of demonstratively excessive lawsuits.»

In 2014, the second-largest US tobacco company, R. J. Reynolds Tobacco, which owned the Camel, Winston, Salem, and Pall Mall brands, was ordered by a Florida court to pay 23,6 billion USD in compensation to the widow of a smoker who died of lung cancer¹.

According to the initial jury verdict, R. J. Reynolds Tobacco was to pay the widow and her son 16,8 million USD, respectively. The jury's decision, after lengthy additional deliberations, increased the amount of compensation to a record 23,6 billion USD.

The circumstances of the case indicate that the basis for the payment was insufficient information to consumers about the hidden harm of smoking.

The payment of 23,6 billion USD ordered by the court was an additional amount of compensation for damages, which was not intended to compensate the losses of the injured party, but was, in the opinion of the plaintiff, to punish the defendant for causing damage.

From the defendant's point of view, this verdict went beyond the bounds of reasonableness and fairness.

In Russia, cases of «consumer extremism» began to arise in the late 1990s of the 20th century. At the same time, there are various theories about the prerequisites for this phenomenon in our country.

Thus, according to M. Bykov, «this was largely facilitated by the development of the consumer

¹ Florida Court Orders Reynolds Tobacco to Pay 23 billion USD in Compensation. *Kommersant* [Newspaper], 20.07.2014. [Electronic resource]: <https://www.kommersant.ru/doc/2529515?ysclid=m88129guq1628659969>. Last accessed 26.08.2024.



goods and services market, which, in turn, led to increased competition among entrepreneurs in this area» [3, P. 157]. One can partially agree with this point of view. The highly competitive market at the current stage of its development has formulated a new rule for entrepreneurs, without which business activities are unlikely to be successful: consumer loyalty will have to be achieved. A variety of goods, an expanded range of services provided, and constant quality improvement are not enough for an entrepreneur to successfully run his business. A customer focus is required, the ability to identify and anticipate consumer requests and ensure that the client's expectations coincide with the opportunities that the business is ready to offer.

The fight for clients and their loyalty, adherence to the postulate «the customer is always right» can push certain individuals to search for such ways to exercise their rights, which, in fact, boil down to abuse aimed at extracting maximum benefit.

Research papers have noted more than one case where the authors consider the adoption of the Law of the Russian Federation «On the Protection of Consumer Rights» to be a prerequisite for the emergence of «consumer extremism» in Russia, believing that it was adopted «with such significant gaps in the regulation of consumer liability that such omissions made possible both the abuse of consumer rights and sometimes actions according to the law, but containing signs of fraud» [4; 5]. An opinion has even formed that this law is a «reliable shield for the average consumer», possessing such an effective property that some consumers have begun to use it systematically against bona fide entrepreneurs.

Experts particularly note the increase in the number of cases of abuse of rights by consumers after the publication of the Resolution of the Plenum of the Supreme Court of the Russian Federation of June 28, 2012, No. 17 «On the consideration by the courts of civil cases on disputes on the protection of consumer rights»². It was this document that expanded the possibilities of consumers to protect their rights, provided more effective protection of the position of citizens in comparison with their counterparties in the sphere of consumption (manufacturers, sellers, performers of works, services).

² On the consideration by the courts of civil cases on disputes on the protection of consumer rights: Resolution of the Plenum of the Supreme Court of the Russian Federation dated June 28, 2012, № 17. *Rossiyskaya Gazeta* [Newspaper], № 156, 2012, 11 July.

During the analysis, our attention was drawn to the integrated approach to identifying the causes of consumer abuse and to the view that «consumer extremism» is a multi-faceted phenomenon that has, on the one hand, legal roots, and on the other, has social, economic and psychological grounds, motives and consequences [6, P. 375].

Using this approach as a support, we can conclude that the phenomenon of «consumer extremism» is interconnected with such aspects of legal culture, or rather their absence, as legal deformation and change in personality traits (value orientations, character). Both features should be considered when implementing the marketing policy of economic entities, and the desire of business participants to minimise the risks from activities in areas of interest to attackers should be based on modern achievements in the field of behavioural economics, marketing and strict compliance management.

As such, the term «consumer extremism» is not defined by law; in formal documents of judicial practice, it is used only in the context of citing appeals from interested parties; in other words, it is unofficial in nature.

The closest phraseological analogue, which is readily used in the context of this topic, is the concept of «abuse of rights», which has long been known to the doctrine and has been well studied, moreover, it has a normative consolidation.

In accordance with the provisions of paragraph 1 of Article 10 of the Civil Code of the Russian Federation³, abuse of rights is defined through «deliberately unfair exercise of civil rights»; in addition, one can use the provisions of Articles 159 and 165 of the Criminal Code of the Russian Federation⁴ in order to derive additional elements through the definitions of «fraud», «causing property damage by deception or abuse of trust» that fill the essence and consequences of abuse of consumer rights with meaning.

In continuation of the above, it is necessary to pay attention to the main symptoms of consumer extremism:

a) actions of consumers carried out with the intention of causing property damage to an entrepreneur by deception or abuse of trust;

³ Civil Code of the Russian Federation (first part) dated 30.11.1994 № 51-FZ (as amended on 11.03.2024). *Rossiyskaya Gazeta*, № 238–239, 1994, 08 December 1994.

⁴ Criminal Code of the Russian Federation dated 13.06.1996 № 63-FZ (as amended on 29.05.2024, with amend. and add., ent. into force from 10.06.2024). *Rossiyskaya Gazeta*, № 113, 1996, 18 June; № 114, 1996, 19 June; № 115, 1996, 20 June; № 118, 1996, 25 June.

- b) abuse by consumers of their special position in the market of goods, works and services;
- c) unfair behaviour of consumers;
- d) deliberate illegal acts of consumers committed with the purpose of acquiring the right to someone else's property (the property of entrepreneurs) by deception or abuse of trust.

The above, at the same time, is related to the concept of abuse in general, but also considering the relationship with consumer behaviour, represents multiple forms of abuse of subjective civil rights, differing in some features.

On the contrary, the concept of «consumer extremism» cannot be classified as legal or dogmatic, since it has neither a normative stipulation nor scientific recognition.

V. V. Bogdan and V. N. Suslikov rightly noted in this regard that the studied system of views «is not entirely correct from a scientific point of view. Mixing criminal and civil law concepts cannot reflect the essence of the phenomenon under study [abuse of rights by a consumer]. Extremism, extremist activity has nothing in common with abuse of rights in its civil law understanding» [7, P. 225].

Therefore, the term «consumer extremism» (or «consumer terrorism») is easily used in the journalistic industry, but in scientific research it should be accompanied by a more balanced and thorough approach, including for this reason, the definitions used in it should be very precise and exclude the possibility of internal contradictions and ambiguous explanations.

The first mention of this concept can be found in the Order of the Government of the Russian Federation dated August 28, 2017, No. 1837-r, or more precisely in the Strategy of the state policy of the Russian Federation in the field of consumer protection for the period up to 2030, approved by such an order.

The text of the said Strategy draws attention to the fact that «the problem of abuse of consumer trust (in the implementation of the assignment of rights of claim) and legal instruments and guarantees provided for consumers by unscrupulous intermediaries (auto lawyers, debt collectors, anti-collectors), which is perceived by the business community as a manifestation of consumer extremism»⁵. At the

same time, there are no real measures to counter, prevent, combat consumer extremism, much less is disclosed the vector of possible regulation and the degree of responsibility for such offenses.

In civil law, there are different positions regarding the concept of this phenomenon.

For example, T. V. Zakupen defines «consumer extremism» as actions by consumers in circumvention of the law, carried out solely with the intention of causing harm to another person; as abuse by consumers of their special position in the market for goods, works and services; unfair behaviour of consumers, abuse of rights; intentional illegal acts of consumers committed with the purpose of converting the property of entrepreneurs to their own advantage through deception or abuse of special treatment of consumers [8, P. 24].

T. A. Ozhegova notes that «consumer extremism can be defined as nothing more than unfair manipulation of the law by the consumer, the main purpose of which is not to protect their rights, but to obtain material benefits and income» [9, P. 16].

The above-mentioned main manifestations of consumer extremism are almost entirely present in the field of passenger transportation.

The analysis of the practice of considering disputes of this category in court shows some features of the application of the norms of Russian civil legislation in cases where the dispute arises from relations of carriage of passengers by air transport in international traffic.

The features are dictated by the application of paragraph 3 of Article 1212 of the Civil Code of the Russian Federation⁶, according to which the rule on the application of the law of the country of residence of the consumer to a contract with the participation of the consumer does not apply to contracts of carriage. Thus, courts of first instance, when considering cases on the protection of consumer rights in the field of international passenger transportation, must take into account the current conflict of laws rules of Russian and international private law.

For example, there is the Convention for the Unification of Certain Rules for International Carriage by Air⁷ (the so-called Montreal Convention) that entered into force on 4 November 2003. The

⁵ On approval of the Strategy of the state policy of the Russian Federation in the field of consumer protection for the period up to 2030: order of the Government of the Russian Federation dated August 28, 2017, № 1837-r. [Electronic resource]: <https://www.rosпотребнадзор.ru/upload/iblock/543/strategiyagosudarstvennoy-politiki-rossiyskoy-federatsii-v-oblasti-zashchity-prav-potrebiteley-na-period-do-2030-goda.pdf>. Last accessed 22.08.2024.

⁶ Civil Code of the Russian Federation (third part) dated 26.11.2001 № 146-FZ (as amended on 24.07.2023, with amend. and add. ent. into force from 04.08.2023). Rossiyskaya Gazeta, № 233, 28 November 2001.

⁷ Convention for the Unification of Certain Rules for International Carriage by Air (Done in Montreal on 28.05.1999). Collection of legislation of the Russian Federation, № 37, 11.09.2017 [In Russian].



Russian Federation acceded to it on 21 August 2017. Article 29 of this Convention clearly states that «any action for liability, whatever the cause of action, whether based on this Convention, on contract, in tort or any other ground, may be brought only in accordance with the terms and conditions and such limits of liability as are provided for in this Convention, without prejudice to the determination of the circle of persons who have a right of action and their respective rights» (it does not matter here whether we are talking about the passenger's unjustified refusal of the contract or something else). In any such action, fines, penalties or any other payments not related to compensation for actual damage are not subject to recovery.

However, the courts erroneously apply Russian consumer protection laws, satisfying claims of Russian citizens who abuse their rights. Thus, the Meshchansky District Court of Moscow considered a citizen's claim to recover from the Air Transport Joint Stock Company «Air SERBIA Belgrade» damages in the form of the difference in the cost of a ticket purchased for another flight as a result of the failure to provide transportation services under the existing ticket, expenses for paying for representative services, the cost of a taxi service that the plaintiff was forced to use, and a fine for refusing to voluntarily satisfy the consumer's demands. Resolving the case on the merits, the court incorrectly applied the substantive law, namely paragraph 6 of Article 13 of the Law on the Protection of Consumer Rights, and satisfied the consumer's claim, including regarding the fine from the air carrier.

The appellate court indicated that the court's award of a fine in favour of the plaintiff was illegal and unfounded, and the provisions of Russian legislation, including the provisions on the contract of carriage of the Civil Code of the Russian Federation, the Air Code of the Russian Federation, the Law on the Protection of Consumer Rights, and the Federal Aviation Rules, cannot be applied in this situation by virtue of Articles 1186, 1202, 1211, and 1212 of the Civil Code of the Russian Federation, from which it follows that the law of the carrier's country applies to the disputed legal relationship⁸.

In our opinion, this case demonstrates that the plaintiff – the consumer, exercising his subjective

right, had the goal of realising an illegal interest that was not included in the elementary composition of the subjective right, therefore, in the process of implementing his authority, he went beyond the scope of the exercise of rights; and the court contributed to this by incorrectly applying the rules of substantive law.

Another interesting example of abuse of rights based on the provision of incomplete information in resolving disputes from passenger transportation can be found in the case materials of the Zamoskvoretsky District Court of Moscow dated June 29, 2023⁹: «As established by the court and follows from the case materials, an air transportation agreement for a passenger was concluded between the plaintiffs and the Airline Joint-Stock Company Turk, operating under the Turkish Airlines brand, as a result of the purchase of air tickets on Moscow–Antalya–Moscow route. The plaintiffs, dissatisfied with the quality of the business class seats on the aircraft (business class «Maximum Comfort» typology), asked to recover the difference between the paid cost of business class transportation services and the cost of economy class transportation services actually rendered, compensation for moral damages, and a fine for failure to voluntarily satisfy the consumer's demands. The plaintiffs expected that the plane would have business class seats of the «European Business Class» typology. The court found that the plaintiffs, if they had been diligent and careful, upon receiving an electronic confirmation of their ticket booking, were not deprived of the opportunity to familiarise themselves in advance with the established terms and conditions for the provision of business class services, including information on business class seats on the aircraft, which was posted on the carrier's website, had the opportunity to voluntarily refuse transportation and receive the cost of the purchased air ticket. The carrier's website informed passengers that the characteristics of the seats may vary depending on the type of aircraft»⁹.

The plaintiffs used all other services provided under this tariff, namely priority check-in and priority boarding, increased baggage and hand luggage allowance, meals, snacks, tea/coffee, soft drinks and alcoholic beverages, according to the Business Class rations, business lounge, service by

⁸ Appellate ruling of the Moscow City Court regarding case No. 33–8091/2024 dated March 26, 2024. Official website of the courts of general jurisdiction of the city of Moscow. [Electronic resource]: <https://mos-gorsud.ru/mgs/services/cases/appeal-civil/details/382df120-d09a-11ee-be9c-6d950c8344cc?uid=77MS0281-01-2022-002318-68&formType=fullForm>. Last accessed 22.08.2024.

⁹ Appellate ruling of the Moscow City Court regarding case No. 33–7180/2024 dated March 12, 2024. Official website of the courts of general jurisdiction of the city of Moscow. [Electronic resource]: <https://mos-gorsud.ru/mgs/services/cases/appeal-civil/details/86fa0151-cb44-11ee-8a94-e17a7ff377ea?caseNumber=33-7180/2024>. Last accessed 22.08.2024.

specially trained flight attendants, and have no complaints about their quality.

The Zamoskvoretsky District Court rejected the claims for consumer protection, collection of funds, penalties, fines, and compensation for moral damage. However, the plaintiffs considered the court's decision to be illegal and unfounded, and filed an appeal, adding arguments that during the flight, the passengers were not informed about the food in economy class, and therefore had no opportunity to compare the actual service provided in terms of on-board meals with what was provided to other passengers formally registered in economy class.

The court of the second instance supported the first, noting that the conclusions of the decision of the Zamoskvoretsky Court were confirmed by the case materials, and they were assessed properly; the court determined the significant circumstances necessary for a full and comprehensive examination of the case correctly; the arguments of the appeal do not contain circumstances that refuted the conclusions of the court decision and are aimed at a different assessment of the evidence, which is not grounds for cancelling the court decision, therefore the decision of the Zamoskvoretsky District Court was left unchanged, and the appeal was dismissed.

In our opinion, the materials of the considered process are a clear example of both unfair behaviour of consumers and an example of actions of consumers carried out with the intention of causing property damage to an entrepreneur without legal grounds.

Analysing the practice of abuse of law in the sphere of consumer protection, researchers [13, P. 2] try to define the types of extremist consumers, distinguishing the following groups among them:

1. Unbalanced people who consider themselves entitled to profit at the expense of wealthy businessmen. As a rule, they are characterised by a low level of legal literacy.

2. Legally literate people who are well versed in laws and use vague wording in legislation, speculating on their rights. They seek to benefit at the expense of entrepreneurs.

3. Public consumer organisations that were created by the founders solely for the purpose of obtaining income from «consumer extremism», in their actions they allow blackmail

in relation to entrepreneurs, offering to pay off in exchange for not filing a claim in court.

In our opinion, this classification has no value from the point of view of law enforcement, since this should not in any way affect the consideration of the circumstances of the case on the merits. In addition, for the sake of objectivity, entrepreneurs sometimes put the consumer in such a difficult situation that it is easy to become an unbalanced person.

Thus, according to the case materials considered by the Zyuzinsky District Court¹⁰, the plaintiff purchased a ticket for a flight of Ural Airlines OJSC on Moscow–Simferopol route, which was supposed to depart at 17:30 from Domodedovo and land in Simferopol at 20:00.

The plaintiff arrived at the airport three hours before departure, but the air service carrier repeatedly postponed the departure time and only at 19:45 did the U622841 plane depart from Domodedovo. Approaching the Simferopol airport, the plane began to circle in the air for two and a half hours, without landing and without giving a reason. As a result, the landing in Simferopol did not take place, the plane turned around and landed at another airport, from where at 8:00 a.m. the plaintiff finally flew to Simferopol.

The plaintiff demanded compensation for moral damages for failure to provide complete and reliable information about the reasons for repeated flight delays, compensation for moral damages for unjustified refusal to consider the plaintiff's claim and for violation of the passenger transportation deadlines. The court dismissed the claim in full, since the flight delay occurred for a technical reason which was replacement of the engine generator and late refuelling of the aircraft, and the landing of the aircraft at another airport was due to bad weather conditions (fog). In accordance with Article 15 of the Law «On Protection of Consumer Rights», moral damage caused to the consumer is subject to compensation by the perpetrator of the damage only if there is his fault.

The plaintiff filed a complaint with the court of the second instance, despite the indisputably

¹⁰ Decision of the Zyuzinsky District Court in case No. 02–1473/2020 dated July 15, 2020. Official website of the courts of general jurisdiction of the city of Moscow. [Electronic resource]: <https://mos-gorsud.ru/rs/zyuzinskij/services/cases/civil/details/e6b74785-91f9-4b27-a483-cfea15086c23>. Last accessed 22.08.2024.



correct application of the substantive law by the court and the adoption of a reasoned and motivated decision. At the same time, the court's decision reflects an interesting point: the plaintiff appeared at the court hearing, but due to improper behaviour in the courtroom, was removed from the courtroom, the case was considered in the absence of the plaintiff.

The materials of the considered case may indicate that in this case the plaintiff might be classified as the first type of consumer extremists: unbalanced people who do not have legal knowledge, but who have firmly set themselves the goal of obtaining an unjustified benefit from an entrepreneur.

CONCLUSION

Thus, the topics for discussion on consumer extremism have not been exhausted, and the concept of consumer extremism itself has received an ambiguous interpretation in the domestic legal doctrine. It is quite possible that this is the result of active opposition from economic entities seeking to compensate for the regulatory imbalance and lobby commercial interests. However, the most appropriate concept of this phenomenon is «abuse of consumer rights», which the judiciary uses in its activities.

It is necessary to counteract consumer extremism by paying attention to several directions: in the sphere of legislative regulation, using the conclusions of established judicial practice; and in the sphere of interaction between economic entities and the client, convincing the consumer of the advantage that he will receive from constructive interaction; and in the educational sphere, eliminating the deformation of legal culture.

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Information about the authors:

Morgunova, Galina A., Ph.D. (Law), Associate Professor, Head of the Department for the Formation of Curriculums and Programs of the Educational and Methodological Department of Russian University of Transport, Moscow, Russia, mg1971@mail.ru.

Morozov, Sergey N., Lecturer at the College of International Transport Communications of International Transport Communications Institute of Russian University of Transport, Moscow, Russia, werwish@gmail.com

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