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THE PROBLEM OF LEGAL EQUALITY IN PROVIDING ACTOR ACCESS TO RESOURCES, MARKETS, AND FORMS OF ECONOMIC ACTIVITY

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The article is devoted to the problems of ensuring legal equality in providing citizens with access to resources, markets and forms of economic activity and the possibility of establishing standards of professional preparedness of subjects of active economic activity. The conducted research allowed to come to the conclusion that the initial imperative of legal equality of possibilities of use of natural and technical resources, financial provision, access to the market, possession of intellectual rights and other components which make up potential participation in economic activity is necessary, which does not exclude establishment of special (required) criteria. In addition, in itself the implementation of other profitable activities should not be an obstacle to participation in various forms of economic life organization (including bidding and public procurement system, etc.). The necessity of non-linear (differentiated) approach to the solution of the problem of access to economic relations of a wide range of persons with no special training is substantiated. On the one hand, in relation to active economic activity in general, there cannot be set a general census on special professional training. On the other hand, it is necessary to provide satisfaction of requirements of quality and safety of products, manufacturability of production and exclusion of its negative influence on health of people, general and special safety.

Keywords: active economic activity, legal equality, market, access to resources, professional qualification, training standards.

For most citizens today, the question of securing their livelihood is quite acute. All subjects initially inevitably face the need to determine the form of inclusion in social life, which would provide them with the basic means of existence. The

parameters of such a choice are not random, they are usually predetermined by a range of both subjective (education, skills, personal aspirations) and objective (resources, market situation, etc.) opportunities and conditions. Then the subject enters into the available to him and conditioned by the chosen form, interaction in society and receives a certain financial result.

The problem of providing that part of the income that citizens need to live (meritorious goods, unconditional income, a living wage, etc.) is closely related to the issue of legal equality in providing access to resources, markets and forms of economic activity.

Because with the objective distinction of subjects on the most various parameters and characteristics, the legal organization of the economy should not create advantages and unfair restrictions for others. Therefore, when deciding the question, a) about access to this or that segment of the market (inclusion in trade or other networks, participation in procurement), b) about the use of certain resources (including natural resources), c) also participation in the economic life of the country in this or that form cannot in itself serve as grounds for refusal to obtain the possibility of such participation.

Thus, concerning access to separate components of the market space, this means that in conditions of competitions, tenders, grants, the system of state purchases, organized tenders, etc., bans or restrictions are not allowed only because of a certain organizational and legal form or type of active economic activity. Undoubtedly, there can be such restrictions, but they must be associated with other special criteria and indicators (availability of necessary qualifications, technology, etc.), but in no way with the type of activity of the subject that carries it out.

This provision means that all participants of active economic activity should have equal legal, not actual conditions of participation. If the needs of production or, say, the implementation of an investment project, require a certain amount of equity or borrowed capital, then this indicator can act as a limitation. The same applies to the criterion of the use of a certain technology, which, more often than not, is related to whether the applicant is the owner of the relevant exclusive or non-exclusive intellectual rights. We also believe that so far in our legislation the problems of ensuring such equality have not been fully resolved, because citizens are deprived of the very possibility to possess many intellectual rights, and therefore initially find themselves in a worse position compared to other actors¹.

¹ Currently, in accordance with clause 4 of the Action Plan ("road map") of the implementation of the mechanism of management of systemic changes in the regulatory and legal regulation of business "transformation of the business climate", "intellectual property", approved by RF Government Decree of 03.08.2020 No. 2027-р draft Federal Law "On Amendments to Part Four of the Civil Code of the Russian Federation", which provides for amendments to existing Russian legislation

It appears that the admission of this or that subject to activity on the market does not mean the refusal to establish additional conditions and prohibitions, including to ensure the rights and legitimate interests of counterparties of this subject. In this sense, the totality of possible restrictions, such as the availability of collateral for participation in bidding, is included in the content of legal personality in the implementation of the relevant type of activity and does not act as a restriction of rights within the meaning of article 55 of the Constitution of the Russian Federation. However, in the absence of such conditions the possibility of access to resources and market segments must be equal (equally accessible).

This understanding of the issue in question creates the potential for economic growth of the actors and can serve as a platform for combining their interests for a cumulative effect (the creation of cooperatives or the joining (syndication) of bids at the bidding). For example, the Uniform Procurement Regulation of the State Corporation “ROSTECH” allows participation of collective participants in bidding¹; the Uniform Industry Procurement Standard (Procurement Regulation of the State Corporation for Atomic Energy “Rosatom”) provides for procurement from small and medium businesses².

The other aspect concerns access to resources that open up the possibility of doing business successfully. Conceptually, there is evidently a need here for a system which could consist in allocation of a special niche of resources for those actors which potentially cannot (due to their size and volumes) compete with giant companies (for example, preferences under Article 10 (12) of Federal Law No. 69-FZ of April 1, 2020 “On Protection and Promotion of Capital Investment in the Russian Federation”³ are granted only for investments of at least 300 billion rubles). Such a system could be built on the semblance of the system of state and municipal procurement.

The introduction here of special criteria, which can actually serve as an obstacle, is also reasonable and justified, since the conditions for the use of a number of resources (water areas, land, radio frequencies, etc.) imply the presence of financial or other assets, the possession of special competence, etc.

Finally, an independent aspect of the problem of ensuring legal equality of persons acting in the market space is the provision of equal access to forms of partici-

¹ See: Unified Regulation on Procurement of Rostec State Corporation: approved by the Supervisory Board of Rostec State Corporation (Minutes of 18.03.2015 No. 2) // [Electronic resource]. URL: <https://rt-capital.ru/tender/> (access date: 31.03.2021).

² See: Unified Industry Procurement Standard (Regulations on Procurement of the State Atomic Energy Corporation “Rosatom”) // [Electronic resource]. URL: <http://zakupki.rosatom.ru/Web.aspx?node=eosz> (date of reference: 31.03.2021).

³ See: Federal Law of April 1, 2020 No. 69-FZ (ed. on 30.12.2020) “On protection and promotion of capital investments in the Russian Federation” // C33 RF, 2020. No. 14 (part 1). art. 1999.

pation in economic life. Unfortunately, we observe poorly motivated elimination of a citizen (actor) from various forms of economic activity not only when he himself directly participates, but also when he takes part in the studied activity through one or another organizational and legal form of a legal entity, i.e. he is eliminated not only from the “field” of civil-law regulation as an active participant of the economy, but also from those forms that are “secondary”. For example, historically long established and well-established form of economic activity is a production cooperative (artel)¹. In accordance with Article 4 of the Federal Law of 08.05.1996 No. 41-FZ “On Production Cooperatives” the number of members of the cooperative may not be less than five people. Consequently, three people can not form a cooperative, as the law establishes the minimum number of members of the cooperative. The question arises why, why, with what logic did the legislator set such a minimum number of members of the cooperative? How can we check this logic, by what parameters and criteria? The same questions arise with respect to the investment partnership, the parties to the contract of which can only be commercial organizations, as well as non-profit organizations in the cases established by federal law² (i.e. a citizen-entrepreneur cannot be a member thereof. Considering the legislation and the practice of its application, a citizen cannot actually receive income by participating in a simple partnership, since any such activity is interpreted as “entrepreneurial”³. Obviously, there is ground for discussion, reflection and appropriate solutions⁴. As a special phenomenon of economic activation and

¹ See: Article 106.1.–106.6 of the Civil Code of the Russian Federation (part one) from 30.11.1994 No. 51-FZ (ed. from 09.03.2021) // C33 RF, 1994. No. 32. art. 3301; Federal Law No. 41-FZ of 08.05.1996 (ed. on 30.11.2011) “On Production Cooperatives” // SZ RF, 1996. No. 20. art. 2321.

² See: Clause 3, Article 3 of the Federal Law of 28.11.2011 No. 335-FZ (ed. 27.12.2018) “On investment partnership” // C33 RF, 2011, No. 49 (part 1) Art. 7013.

³ See: item 2 of article 1041 of the Civil Code of Russian Federation (part 2) from 26.01.1996 No. 14-FZ (ed. 09.03.2021) // C33 RF, 1996. No. 5. Art. 410.

⁴ It would be appropriate to cite some data regarding the importance of artels in the USSR during Stalin's rule: “Artels occupied 6-10% of total production, but gave up to 80-90% of the variety of the assortment. In the first five-year plan (1928-1933) it was planned to increase the number of members of artels 2.6 times. In 1941 it was decided that the new artels would be exempt from most taxes and state control over retail pricing for two years. The state imposed one condition — prices for products must not exceed by more than 10% the price of similar products of state enterprises. To avoid abuses by bureaucrats, cost limits were imposed on artels for raw materials, transport, etc. During the war many artels produced weapons and necessities for the front. After the war, additional benefits were introduced for artels composed of disabled people. For many who had lost their health at the front, this form of labor organization provided sustenance and an opportunity to be treated and live” (Industrialization in the USSR, the first five-year plans / Alex Hodinar. [Electronic resource] // URL: <https://adne.info/industrializaciya-v-sssr/> (accessed 19.05.2021)).

citizen participation in investments can be the so-called “collective investing”¹. Which in our country is only at the initial phase of development².

According to the Federal Antimonopoly Service, the problem of equal access to resources and market segments can be partially solved by introducing amendments to the law “On Protection of Competition” related to the development of trade and purchasing unions — associations of small forms of economic activity, different from cartels, in order to compete in a certain market with big businessmen³. To solve the problem of equal access to state resources is also aimed at the Strategy of Competition and Antimonopoly

Thus, the initial imperative of legal equality of opportunities to use natural and technical resources, financial security, access to the market, the possession of intellectual rights and other components that make up the potential to participate in economic activity, which does not exclude the establishment of special (required) criteria.

At the same time, there is a big topical problem, which sounds in various tribunes: the possibility of establishing standards of professional preparedness of subjects of active economic activity. There is a need to highlight to the legislator benchmarks for the purpose of developing a flexible system of indicators, criteria for standards of training of subjects of active economic activity, providing, ultimately, the quality of products, environmental protection, rights and legitimate interests of consumers.

To date, there is no need to introduce a general qualification of special professional training of persons engaged in active economic activities, because this problem is resolved in another way. Requirements for product quality and safety, manufacturability of production, exclusion of negative impact of production on human health, general and special safety are and should be implemented in an evolutionary way, according to the development of interrelated social, economic and legal institutions.

At present the provision of the necessary professionalism in the market is determined by the formation of the intra-market infrastructure, requirements to the availability of specialists, the operation of the licensing system, etc. In par-

¹ See: *Sleptsova J. M., Shishkanova E. M., Yakovlev A. B.* Problems of normative regulation of the financial market in the Russian Federation in part of the market of subjects of collective investments // *Banking Law*. 2017. No. 5. P. 65–71.

² See: Federal Law of 02.08.2019 No. 259-FZ “On attracting investment using investment platforms and on amendments to certain legislative acts of the Russian Federation” // *NW RF*. 05.08.2019. No. 31. Art. 4418.

³ See: FAS is preparing a regulatory framework for the formation of procurement unions in Russia [Electronic resource] // *Interfax*. 2020. 30 June. URL: <https://prozakupki.interfax.ru/articles/1821> (access date: 15.06.2021).

ticular, in a number of separate segments of the market, additional restrictive and permissive rules have already developed, which are based on the fact that only participants having special training and equipment are allowed to carry out active economic activities (rules of the relevant self-regulating organizations, securities and banking market regulators, electricity market, etc.). Universalization of requirements to the conditions and management of production has led to the fact that they have the same meaning for all who are engaged in the relevant production (regardless of the organizational forms and types of economic activity).

The differentiation of levels of access to the market (segments for “professionals” and “non-professionals”), in fact, is a special technique of legal regulation. Nevertheless, the problem of sufficient training of actors exists. The study of the practice of entrepreneurial and other active economic activities shows that a significant part of difficulties, disputes, errors arises due to the insufficient level of preparation and awareness in the conduct of affairs, including in cases of bankruptcy or when the actor is or may be brought to property liability¹.

This state of affairs in the domestic economy is due to various factors, including the lack of attention from the state to this issue, funds for training and education, etc.² Only for certain types of other profitable activities certain education, passage of qualification tests (examinations)³ or other additional training requirements (for example, for arbitration managers)⁴ are provided. There are few general mandatory training requirements (in particular, there is training in labor protection — Art. 225 of the RF Labor Code)⁵.

¹ It should be taken into account that in the sphere of civil turnover liability may occur regardless of guilt (clause 3 of Art. 401 of the Civil Code). For more details see e.g.: Generalization of judicial practice in the field of intellectual property / L. Novoselova [et al.] // Act. 2019. No. 6. P. 19–35; *Romanova I. N.* Preventsii i kompensatornosti insuraniya v svobodnom mekhanizm resilience of subjects of entrepreneurship to the negative consequences of economic activity // *Pravo i ekonomika* [Law and Economy]. 2019. No. 5. P. 39–42; Legal concept of robotization / ed. by Yu.A. Tikhomirov, S.B. Nanba. Moscow: Prospect, 2019.

² Thus, the literature notes that small entrepreneurs are afraid of such costs (see: *Dymova Yu.* Key innovations of the legislation of the outgoing year // *EJ Lawyer*. 2017. No. 50. P. 2).

³ See: Fundamentals of the Legislation of the Russian Federation on Notariate”: approved by the Supreme Court of the Russian Federation 11.02.1993 No. 4462-1) // *Vedomosti SND and VS RF*. 1993. No. 10. Art. 357; Federal law from 31.05.2002 No. 63-FZ. Op. cit.

⁴ See: Art. 20, 20.1 of Federal Law #127-FZ from October 26, 2002 (op. cit.).

⁵ In other cases, general preparation for business is done dispositively. See e.g.: Order of the Ministry of Economic Development of Russia from 19.02.2020 No. 77 “On approval of the Procedure, timing and forms of presentation of information stipulated by paragraph 5 of the Rules of the Joint Stock Company “Federal Corporation for Development of Small and Medium Entrepreneurship” monitoring the provision by federal executive authorities, executive authorities of subjects

There is also concern that the emergence of new forms and activities, the emergence of previously unknown technologies and communications, not covered (not provided) by existing rules (standards) can have the most significant impact on the safety of customers, partners, and others¹.

Therefore, training standards should be a flexible system of indicators, criteria, and benchmarks aimed at three objectives: 1) compulsory training; 2) voluntary training; 3) implementation of the state's obligation to create and provide actors with the necessary data (information). In accordance with this or that task, different methods of influence must be applied, and their degree of compulsion is not the same. In some cases, they are compulsory and, more often than not, are established by the state, in others, indicators of the level of preparedness may be developed and introduced by the actors themselves or by their communities (including associations and self-regulatory organizations)². The state already takes certain measures to assist in the implementation of voluntary training³.

Thus, a nonlinear (differentiated) approach is needed to solve the problem of access to economic relations for a wide range of persons with no special training. On the one hand, with regard to active economic activity as a whole, there cannot be a general census about special professional training. On the other hand, it is necessary to provide satisfaction of requirements of quality and safety of production, manufacturability of production and exclusion of its negative influence on health of people, general and special safety. Of course, this is possible only in an evolutionary way, at different rates and in divergent forms, according to the development of interrelated social, economic and legal institutions.

of the Russian Federation, local governments support to small and medium enterprises and organizations that form the infrastructure to support small and medium-sized businesses // URL: <https://normativ.kontur.ru/document?moduleId=1&documentId=360659> (date of reference: 15.06.2021).

¹ In principle, this is exactly what we see in the case of new data transfer systems, methods of calculation (payment) or new legal institutions included in the legal system without prior preparation (in particular, this applies to the "contract of equity participation in construction").

² This way of introducing standards can be called "voluntary" and also covers mastering accounting and tax accounting, human resources, marketing, etc.

³ For example, in recent years Russia has launched a number of programs to support small and medium-sized businesses, the purpose of which is not only financial and property assistance to entrepreneurs, but also information (creation of federal and regional information systems, official sites to provide subjects of active economic activity with relevant information), educational (development of training programs for specialists), etc. (see e.g. *Klimakina I.* Support for small business: programs 2020-2021 [Electronic resource] // URL: <https://www.business.ru/article/1360-podderjka-malogo-biznesa-2019-gos-programmy> (date of reference: 15.06.2021)).

References

Dymova Yu. Key innovations of the legislation of the outgoing year // *EJ Lawyer*. 2017. No. 50. P. 2

Generalization of judicial practice in the field of intellectual property / L. Novoselova [et al.] // *Act*. 2019. No. 6. P. 19–35

Legal concept of robotization / ed. by Yu.A. Tikhomirov, S.B. Nanba. Moscow: Prospect, 2019.

Romanova I. N. Preventsii i kompensatornosti insuraniya v svobodnom mekhanizm resilience of subjects of entrepreneurship to the negative consequences of economic activity // *Law and Economy*. 2019. No. 5. P. 39–42.

Sleptsova J. M., Shishkanova E. M., Yakovlev A. B. Problems of normative regulation of the financial market in the Russian Federation in part of the market of subjects of collective investments // *Banking Law*. 2017. No. 5. P. 65–71.

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