

Mechanisms of Protection of the Rights and Interests of Entrepreneurs in Russia

Vladislav Yurievich Turanin¹, Vitaliy Valentinovich Kistenev¹, Yana Vitalievna Posokhova²,
Olga Alekseevna Kisteneva³

¹Belgorod State University of Arts and Culture, Belgorod, Russia

²Lomonosov Moscow State University, Moscow, Russia

³Belgorod State National Research University, Belgorod, Russia

Summary

The implementation of the legal mechanism to protect the rights and interests of entrepreneurs in Russia has its unique features. When the rights and interests of a businessman are threatened with infringement, specific legal remedies may be applied, by means of which the violated rights and interests are restored and, thereby, the opportunity to resume entrepreneurial activity is created. The paper explores extrajudicial ways to protect the rights and interests of entrepreneurs in Russia. The study analyzes the forms of self-help, arbitral tribunal, resolution of applications and complaints by executive authorities, the notariate, and work with the business ombudsman and civil society institutions.

Keywords:

law, analysis, self-defense, arbitral tribunal, business ombudsman.

1. Introduction

Addressing the issue of the implementation of the legal mechanism for the protection of rights and interests, we shall consider the means of protection established in Russia. In the general form, they are divided into non-judicial – self-help, extrajudicial dispute resolution, including arbitral tribunal, and resolution of applications and complaints by the executive authorities in the order of subordination (including the notarial form of protection); and judicial-constitutional protection and consideration of economic disputes by courts of general jurisdiction and arbitration courts. In this work, we focus on non-judicial remedies.

The legal norms of various branches of law protect, that is, from the perspective of the legislator, ensure the normal implementation of business activities. When the activity of an entrepreneur is wrongfully violated or their rights and interests are threatened to be violated, specific legal remedies may be applied, which restore the violated rights and interests and create the opportunity to resume entrepreneurial activity, which is the priority for the victim entrepreneur.

2. Methods

The method of protection of civil rights in Russia is the legal means stipulated by the Civil Code and other laws of the Russian Federation the application of which, based on the recognition of the right, restores the status that existed prior to the infringement of the right and suppresses actions that violate or threaten to violate the right.

The set of legal methods for the protection of the rights and interests of entrepreneurs is an indispensable part of the legal regime established by law for entrepreneurship. In order to provide protection for the rights and legally protected interests of entrepreneurs, the legal regime of entrepreneurship should target the following main objectives:

- establishment of a general prohibition on obstructing entrepreneurial activity that is not prohibited by law;
 - introduction of liability measures – sanctions for offenders infringing on the rights and legitimate interests of entrepreneurs (these measures should provide for a wide range of sanctions, including disciplinary, administrative, civil, and criminal liability of citizens and officials who violate the rights of entrepreneurs);
 - ensuring the restoration of the property status of the entrepreneur, whose rights have been violated;
 - achievement of the promptness of measures to protect the rights and interests of entrepreneurs (in terms of their application procedure, legal means of protection of entrepreneurship should be the most straightforward and accessible, as well as provide prompt resolution of conflict situations and the implementation of decisions taken) [1].
- The actions of business entities to protect their rights and legitimate interests taken on their own, without resorting to the assistance of state authorities, constitute self-help [2, pp. 5-8].

The opportunity to utilize self-help should be viewed as a vital prerequisite for entrepreneurial activity, as an absolute civil right that arises from the legal capacity of an entrepreneur. The provisions of Art. 14 of the Civil Code

are the normative legal basis for self-help of the entrepreneur in the course of their business activities in any situation, not only when their rights are violated and they are caused harm.

3. Results and Discussion

Entrepreneurs have the right to take preventive protective actions that defend their interests against possible encroachments. The normal conduct of entrepreneurial activity and achievement of the goal of preserving and increasing capital require from the entrepreneur to take care of the protection of their property (in order to safeguard the property, its accounting is maintained, an inventory and revaluation are carried out, balances are drawn up, agreements are signed on full material responsibility with persons who are entrusted with the property of the entrepreneur, etc.); the protection of property against theft and other encroachments is ensured by the use of special technical means: equipment, alarms, etc.), intellectual property, proprietary and trade secrets (disclosure (intentional or negligent), as well as illegal use of information that constitutes a trade secret, entail disciplinary, civil, administrative and criminal liability), business reputation (the need to protect an individual entrepreneur's business reputation arises in cases of dissemination of information that discredits their honor and dignity or reputation as an entrepreneur).

Horizontal economic relationships cover all links in the chain of expanded commodity reproduction and financial turnover. In these relationships, entrepreneurs may act both as the producer (service provider, performer) and as the consumer (buyer, customer). In this system of relationships, there may arise disputes between partners and counterparties, which are rooted in the depths of economic processes. The objective reasons for these conflicts manifest as subjective factors that serve as a direct cause or reason for the breach of contractual obligations.

In cases of disagreements between business partners or counterparties in commercial contracts, there is always an opportunity to regulate their relationships and protect the violated rights without going to court. This is the path of negotiation and the search for compromise and consensus. Under current law, the pre-trial settlement procedure was obligatory only in cases stipulated by law or by agreement between the parties [3, pp. 143-145]. Since June 1, 2016, the claim (pre-trial) procedure for settling most civil law disputes has become mandatory in arbitration proceedings. The scope of pre-trial protection of the rights of subjects of entrepreneurial activity also includes arbitral tribunals [4]. The essence of the consideration of disputes by the arbitral tribunal is that the dispute is resolved by third parties with the mutual consent of the disputing parties. The goal of the settlement of cases by an arbitral tribunal is to settle legal

conflicts with utmost fairness and ensure the voluntary fulfillment of obligations on the basis of customary business practices.

An important role in protecting the rights of entrepreneurial entities is also played by the notariate. The task of the notariate is to certify undisputed rights and facts. By certifying transactions and copies of documents and ensuring enforcement of an undisputed obligation of the debtor, notaries support the normal functioning of civil turnover, as well as the effectiveness of the protection of property rights of citizens and legal entities.

When considering notarial protection as an extrajudicial method of protecting the rights and interests of entrepreneurs, it is crucial to take note of the following peculiarities of its implementation: the subject matter of notarial activities is undisputed cases; the principles of publicity and adversarial nature are not applied; notarial acts are only performed by a notary alone; legal facts are normally established on the basis of written evidence [5].

The legal mechanism for the protection of the rights and interests of entrepreneurs in their interaction with public authorities provides ways to eliminate contradictions that arise between business entities and eligible state structures through applications and complaints of entrepreneurs to the authorities in the order of subordination [6].

Considering the issue of protecting the rights of business entities through complaints and appeals to public authorities, we should dwell on the institution of the Ombudsman for Human Rights in the Russian Federation. The responsibilities of the Human Rights Ombudsman include consideration of appeals on violations of the economic rights of entrepreneurs in the sphere of their interaction with government agencies, local authorities, and officials.

In 2012, entrepreneurs were granted a new form of protection for their violated rights in disputes with the authorities – an appeal to the Commissioner for the Protection of Entrepreneurs' Rights under the President of the Russian Federation [7].

The business ombudsman is primarily responsible for considering complaints from entrepreneurs and making decisions on them. If the arguments of the applicant are found to be justified, the ombudsman takes actions prescribed by law to protect the entrepreneur. In particular, they may:

- forward a conclusion to the state body that violated the rights and legitimate interests of the entrepreneur, indicating the measures necessary to restore the rights of the entrepreneur;
- file a complaint to protect the rights of the entrepreneur to the body authorized to consider such complaints;
- appeal against the actions and acts of state bodies and officials in court.

Both Russian and foreign entrepreneurial subjects can turn for protection to the ombudsman for entrepreneurial rights.

The law stipulates that along with the position of the ombudsman for the rights of entrepreneurs acting at the federal level, the laws of the constituent entities of the Russian Federation establish the positions of the regional ombudsman.

When protecting their rights and interests, entrepreneurs have the right to appeal to the prosecutor's office.

The prosecutor's office often receives complaints to suppress unlawful actions of officials against businessmen. The state of lawfulness is facilitated by an active dialogue between prosecutors' offices and the business community, which is realized through the activities of public councils for the protection of small and medium-sized businesses established under prosecutor's offices. Since the creation of public councils for the protection of small and medium-sized businesses, dozens of appeals from entrepreneurs have been filed with prosecutor's offices, the majority of them concerning appeals against the inaction of local government officials, raiding, and their failure to comply with statutory deadlines for reviewing appeals.

When it comes to protecting the rights of entrepreneurs, it is common for local law enforcement agencies to act in concert with municipal authorities and overlook legal violations in their activities. Thus, the typical model for the field is a situation where investigative measures in respect of an entrepreneur, whose activities are classified as criminal, are carried out with a considerable amount of violations of procedural rules of law. In this case, the entrepreneur appeals against the actions taken against him to a higher prosecutor's office, which makes a request for the elimination of gross violations of procedural law, the lack of a real basis for conducting such operations, and numerous violations in their conduct. However, with the consent of the local prosecutor, criminal cases are still opened, which forces the next-level prosecutor to intervene and restore the rights of entrepreneurs. In other words, prosecutors in constituent entities of the Russian Federation protect entrepreneurs at the local level, while municipal prosecutors treat this issue nominally.

4. Conclusion

The arsenal of methods and forms of extrajudicial protection of the rights and interests of entrepreneurs includes appeals to civil society institutions that represent and protect the rights of businessmen. These are, first and foremost, the Russian Union of Industrialists and Entrepreneurs, Chambers of Commerce and Industry, and public organizations "Delovaia Rossiia" and "Opора Rossiia". In addition to legal consultations (e.g., the Belgorod Regional Branch of "Opора Rossiia" establishes a

Bureau for the Protection of Entrepreneurs' Rights), entrepreneurs are given the opportunity to lobby their interests in the executive, legislative, and judicial bodies through various committees, commissions, working groups, and councils created under state authority structures. The expert communities formed by civil society institutions enable serious analytical work on improving the legislative framework in the sphere of protecting the rights and interests of entrepreneurs. Furthermore, the considered institutions play a prominent part in alternative dispute resolution procedures involving an independent mediator (mediation procedures), the promotion of partnership business relations and the formation of business ethics, and the harmonization of social relations.

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