

## Protection of consumer rights and interests. Case of Kosovo

Mejdi BEKTASHI<sup>1</sup>

<sup>1</sup> Faculty of Law, University of Prishtina, Kosovo, [mejdi.bektashi@uni-pr.edu](mailto:mejdi.bektashi@uni-pr.edu)

**Abstract.** The paper presents an overview of the strategy and process of protection of customer rights and interests in Kosovo. The rights and interests of consumers in the domestic market are still not adequately protected, in a manner and form as is done in most countries of the European Union. The origin of the protection of the rights and interests of consumers in Kosovo began in 2004, with the approval of Consumer Protection Law (Law no. 2004/17) by the Kosovo Assembly. After the declaration of independence in 2008 and the approval of the Kosovo's Constitution, a specific attention is paid to the customer protection where "consumer protection is guaranteed in accordance with the law" (Constitution of the Republic of Kosovo, Chapter IX, Section 119, paragraph 7).

**Keywords:** consumer, rights, protection, consumer protection law. effective judicial protection

### 1 Introduction

Consumer rights and interests in the domestic market are still not adequately protected in a manner and form as is done in most countries of the European Union. The origin of the protection of the rights and interests of consumers in Kosovo began in 2004, with approval of Consumer Protection Law (Law no. 2004/17) by the Kosovo Assembly.

Since 2002, Kosovo is included in the Stabilisation and Association Agreement with the European Union, while this agreement is signed with a huge delay in 2014, which has taken specific tasks to harmonize the national legislation with that of the European Union. So far the negotiations have been very slowly and accompanied by various problem, due to various factors (those political, economic, social, etc.) presented by the negotiating parties. As part of these negotiations are consumer rights in Kosovo. The rules of European Union in this area are very strict and precise, especially if we are dealing with the fulfillment of certain criteria that certain products must meet, if those are destined for the European Union markets. This is better highlighted by Weatherill, which noticed that "understanding the problems of consumer protection in the context of the common market is how to understand the fundamental issues of European market integration" (Weatherill, 2005, pp. 1).

Through the acceptance and implementation of these high standards, it greatly opens the possibility of exporting the domestic products to EU markets, but on the other hand also it means the best and effective way of protecting the Kosovar customers. In the framework of European law of consumer protection there are a large number of treaties, regulations and directives, which are not yet incorporated or harmonized with the actual Consumer Protection Law in Kosovo.

Considering the importance of regulation of this area in the European Union, consumer protection is promoted by the EU Treaties and the Charter of Fundamental Rights of the EU, where points out: "To promote the interests of consumers and to ensure a level of consumer protection, the European Union contributes to the protection of health, safety and economic interests of consumers, as well as in

promoting the right to information, education and organization in order to protect their interests" (Charter of Fundamental Rights of the European Union, 2008, pp. 120).

Consumer rights present a general economic prerequisite for the realization of all other rights, and for this purpose the European Convention on Human Rights it is considered as basic rights.

## **2 Legal regulation for protecting consumer rights**

Legal and institutional regulation of the protection of consumer rights is more recent, compared with other areas. General Assembly of the United Nations, through Resolution 39/248 in 1985, has defined the priorities in the field of consumer protection, whereby the resolution urged the member states that institutionally define the protection of consumer rights. Meanwhile, in 1973, the countries of the European Economic Community (EEC) have approved the European Declaration of informing and protecting consumers by defining also the consumers basic rights, including the protection of economic interests, the protection from risks to life, health and property from the market products and services, legal protection and assistance, eligibility for registration and education, the right to unite in order to protect their interests and the right to participate in bodies that decide the consumer interests (Schüller, 2012, pp.125).

Protection of customer rights in the world was completely neglected for a long time, compared with some other basic rights. The first to speak publicly about this basic right, was the US President John F. Kennedy, which on 15 March 1962 addressed the US Congress with a special message on protecting consumer interest, stating that "Consumers, by definition, include us all. If consumers are offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and the national interest suffers" (Kennedy, 1962).

On this occasion, President Kennedy reaffirmed four basic consumer rights: the right to safety, the right to be informed, the right to choose, and the right to be heard.

All developed countries, since several decades have passed special laws which protect the consumer interests in their countries.

In the US, since 1972, has been approved a special law for consumer protection, but on the other hand, is in function a very powerful institution that controls the behavior of bidders for goods and services, recognized as the FTC (Federal Trade Commission). Also, the majority of EU countries, for more than 25 years have special laws through which are protected the specific segments of consumer rights.

In addition to regulations set by the EU, which are directly implemented by the relevant authorities, there are mandatory guidelines (directives) for those areas in which the Member States have maintained national powers. So far, the EU only in the field of consumer protection has adopted more than 100 directives that have mandatory action. (As the most important directives that are not included or partially included in national legislation are:

- Directive 98/6/EC on the unit pricing,
- Directive 85/577/EEC on contracts negotiated away from Business Premises,
- Directive 97/6/EC on distance selling,
- Directive 2000/31/EC on electronic commerce,
- Directive 93/13/EEC on unfair terms in consumer contracts,
- Directive 99/44/EC on the sale of consumer goods and associated guarantees,
- Directive 2002/22/EC on universal services,
- Directive 2003/55/EC on electricity,
- Directive 90/314/EEC on package travel,
- Directive 2008/122/EC on timeshare,

- Directive 2008/48/EC on consumer credit,
- Directive 2002/65/EC on distance contracts for financial services,
- Directive 98/27/EC on injunctions for the protection of consumers interests, and
- Directive 87/102/EEC which is replaced with 98/7/EC on consumer credit.

Consumer protection as an important field for smooth and efficient functioning of the European market is also sanctioned in the Treaty on the Functioning of the European Union, Article 168. The main innovation in the EU legal practice are orders, which directly applied, respectively obligates the member states, even if these have not been included or provided for in national legislation.

### **3 Enforcement of consumer protection legislation**

The first law on consumer protection in Kosovo (Law no. 2004/17) was approved on 16 June 2004, and had a total of 45 articles and it regulates only specific aspects of consumer protection. Enforcement and implementation of this law was very difficult due to various shortcomings, the lack of enforcement component, the lack of information and educational component. In 2009, the law is amended (Law no. 03/L-131) with 14 articles, which includes the establishment of the Council of Consumer Protection as an important instrument for market regulation, consumer protection and the elimination of defects during the exchange of goods in relation manufacturer–dealer–consumer. The Council is responsible for the drafting and implementation of National Program for the Consumer Protection for the period 2010 - 2014. The Council of Consumer Protection that operates under the Ministry of Trade and Industry (MTI), composed of 7 members, chaired by the representative of MTI, independent experts, representatives of consumer associations and business association. In addition to the Council, by the law is foreseen also the establishment of the Office of Consumer Protection (OCP), which is also within the MTI and is responsible for policy on consumer protection and harmonization of Kosovo legislation with European Union legislation. OCP shall have the power to give and offer proposals to amend the legislation, as well as pulling other bylaws. Also, OCP shall receive customer complaints and demands of the mechanisms that are responsible for supervision of market and to take measures provided by law.

The current law on consumer protection in Kosovo (Law no.04/ L-121), was enacted on 07 November 2012, has 83 articles and the same applies to the regulation of relations between consumers on the one hand and producers, sellers, suppliers, service providers turn to protect consumers from unfair practices to market their goods and services in the Republic of Kosovo. The new law was agreed on the basis of international advanced experience in this area, as well as relying on the Resolution of the United Nations Assembly no. 39/248 of 1985, which defines basic consumer rights: the right to fulfill the basic requirements, the right to listen directly to the voice of the customer, the right to compensation, the right to consumer education, the right for healthy living environment etc. (Harland, 1987, pp. 245).

In addition to those rights set forth in the new law are also arranged some areas dealing with the protection of life, health and consumer safety, economic protection of consumer rights, various forms of protection in the field of utilization of various services, typical contracts etc.. Unlike the old law, in the new law are included also some innovations related to advance payments, contracts negotiated away from business premises, contracts concluded on distance, consumer financial services, unfair terms in consumer contracts, unfair trade practices, deceptive trade practices, deceptive comparative advertising and sales through the Internet.

The current law on consumer protection only partially included instructions and directives of the EU,

which stipulates that the same in the near future should be changed in some areas and amended. The approval of this law is the first step in the institutional protection of consumer rights but has created legal basis for the formation of the responsible state bodies as well as independent consumer organizations in order to protect consumers more effectively in the local market. According to EU experts and Progress Reports, Kosovo recent years has made significant strides in the area of consumer protection primarily on the harmonization of legislation, but the consumer protection is still below the level required, primarily first because of inadequate institutions and due to inadequate efficiency in the implementation of the approved regulations.

According to the progress report for 2013, in general Kosovo has taken steps to improve and alignment with the *acquis*, especially in relation to consumer protection. Further efforts are required in 29 areas of product safety legislation. Administrative capacity, professionalism and expertise should be improved to ensure a better protection of consumers (European Commission, Kosovo 2013 Progress Report, pp.27). Meanwhile in the Progress Report for 2014, noted that in general Kosovo continued to improve harmonization of its legislation with the *acquis* in the field of movement of goods. Kosovo has adopted regulations on the safety of toys, machinery, marking of conformity and household appliances as well as regulations for fast system of exchange of information on products that pose a risk to the health and safety of consumers (European Commission, Kosovo 2013 Progress Report, pp.38).

Consumer protection includes a wide range of economic and legal issues as well as issues related to health and food safety for consumers, informing and educating consumers and the role of consumer associations and societies in the development of consumer protection policy (Haupt, 2003, pp.1142).

Achieving comprehensive observance of the rights and interests of consumers can be regarded as a sign of successful economic and democratic transition. From an economic standpoint, adaptation to European standards of consumer protection would reflect a high degree of transparency in the market, but also affects greatly on increasing of the economic freedoms of the citizens of Kosovo, and a faster economic development.

Inefficient cooperation between state agencies responsible for market supervision and lack of an strategic approach to market supervision. Also, the cooperation of The Council of Consumer Protection with relevant institutions of the countries of the region is at a low level, mainly with some countries (Republic of Serbia and Bosnia and Herzegovina), and mainly originate from imported food commodities, due to political problems inherited.

Weaknesses in law enforcement for consumer protection expressed primarily due to the lack of professional staff in this area, insufficient technical equipment, not approving other bylaws in this area, and no sensitivity, education and no recognition of their rights by consumers.

Consumer protection associations (there is only one Association for Consumer Protection "Konsumatori") are partially functional, have small capacities and lack of financial support. All these affect very little influence on the development of consumer culture and education. Implementation of the Law on Consumer Protection is the foundation for further development of consumer culture in the Republic of Kosovo, further harmonization of the existing law with EU Directives and the incorporation of consumer dimension in Kosovo legislation (positive discrimination customer), will affect the strengthening of the rights and interests of consumers but also in strengthening economic development.

In most countries of the Western Balkans, which are doing the aligning their legislation with EU consumer protection, health, safety and interests of consumers in most cases still have the status of interest and not of the guaranteed right. Information and customer information is a very important

element for a successful and effective protection of consumer interests (Ardic et al., 2011, pp. 15).

In previous years as a serious obstacle to the implementation of the Law on Consumer Protection was the lack of harmonization of institutional action between institutions and agencies responsible for protecting consumer interests, and it mainly between Central Inspectorate of MTI, Sanitary Inspectorate, Inspectorate of Veterinary and Phytosanitary, Inspectorates at the local level and the Veterinary and Food Agency.

During year 2014 (period January-December), The Council of Consumer Protection has been received about 3,000 phone calls from customers, of different type. From these calls are processed a total of 185 customer complaints, of which 120 were reviewed (or 65% of complaints). As far as receiving customer complaints compared to last year, there was a decrease of complaints for nearly 60 of them.

**Table 1.** Statement of customer complaints during period January-December 2014

Area – Respective Institution	Total complaints	In favor of the customer	Unfounded	Unresolved
<b>1 Medicaments</b> – Kosovo Medicines Agency	6	2	0	4
<b>2 Telecommunication</b> – Regulatory Authority of Electronic and Postal Communications	23	7	14	2
<b>3 Food products</b> – Kosovo Food and Veterinary Agency	37	12	10	15
<b>4 Financial services</b> – Central Bank of The Republic of Kosovo (CBK)	7	5	1	1
<b>5 Health</b>	1	0	0	1
<b>6 Market supervision</b> – Market Inspectorate, MTI	94	37	28	29
<b>7 Media</b> – Independent Media Commission	1	0	0	1

Source: *The Council of Consumer Protection, Annual Report 2014.*

More than half of customer complaints in 2014 were made in the field of market supervision (94 complaints), which is responsible under the laws in force is the responsibility of the Market Inspectorate in MTI, where more than 60% of these complaints relate to mismatch of prices (22 in total) and 39 complaints were related to the disregard of the guarantee (The Council of Consumer Protection, Annual Report 2014, pp. 4).

Market Inspectorate, which operates under the MTI, during the period January to December 2013 despite the lack of sufficient staff and specialist, has made 1,594 inspections to various economic operators in the field of internal trade, protection of customers, general safety of products, trade of petroleum and petroleum products, tourist and hotel services, etc..

From these inspections, the responsible authority in 43 cases has imposed administrative measures (fines) for violation of legal provisions in force, in 49 cases initiated the request for minor offenses in the competent court, 130 cases were initiated violation proceedings for breach of Law on Trade of Petroleum, because of non-compliance of oil quality and commercial activity without a valid license. Also, during this period were destroyed more than 25,000 labels misleading because the products are placed in incorrect data and are seized different material (CDs, DVDs or books) that have been the

subject of piracy.

#### 4 Concluding remarks

In markets with a low purchasing power, the rights of consumers of goods and service users are vulnerable in different ways and forms. In these markets are usually provided non-standard products, products dangerous and harmful to the health of people, false products, misleading and false advertising.

Local consumer protection is a priority in the process of establishing a modern institutional and legal system in an economy. To meet this important objective definitely the rule and order should be enforced in the domestic market, while consumers should be protected from non-correct market behaviors. This can only be achieved in a competitive market in which consumers can choose between many products and services at acceptable prices and guaranteed quality of products, and only then can we talk about the legal protection of consumer interest.

Consumer protection in the Republic of Kosovo is one of the priorities in the process of completing the institutional and legislative environment for a modern market economy and exceeding faster of the transition period, which in Kosovo is the longest in comparison with other Western Balkan countries.

Establishing the conditions for the functioning of the free market, increased competition and by not allowing misconduct behaviors among subjects in the Kosovo market is primarily in the interests of citizens of the Republic of Kosovo as a consumer, since only in case that consumers have and enjoy their level of legal certainty, they can make rational decisions.

#### 5 References

- Ardic, O. P., Ibrahim, J. A., & Mylenko, N. (2011): "Consumer Protection Laws and Regulations in Deposit and Loan Services: A Cross-Country Analysis with a New Data Set", *The World Bank*, Financial and Private Sector Development, Working Paper No. 5536, pp. 15.
- Constitution of the Republic of Kosovo, Chapter IX, Section 119, paragraph 7, June 2008, Prishtina. Date of access 24/12/2014. Url: <http://www.kryeministri-ks.net/repository/docs/Kushtetuta.e.Republikes.se.Kosoves.pdf> .
- Charter of Fundamental Rights of the European Union, Consolidated version, IPA, Tirana, 2008, Article 169, pp. 120.
- European Commission COM(2014) 700 Final, Kosovo 2014 Progress Report, 08/10/2014 Brussels, pp. 38-39.
- European Commission COM(2013) 700 Final, Kosovo 2013 Progress Report, 16/10/2013 Brussels, pp. 27.
- Harland, D. (1987): "The United Nations Guidelines for Consumer Protection", *Journal of Consumer Policy*, No. 10, pp. 245-266.
- Haupt, S. (2003): "An Economic Analysis of Consumer Protection in Contract Law", *German Law Journal*, 4, pp. 1137-1164.
- Kennedy, John F. (1962): "Special Message to the Congress on Protecting the Consumer Interest", Date of access 15/12/2014, Url: <http://www.presidency.ucsb.edu/ws/?pid=9108>.
- Schüller, B. (2012): "The Definition of Consumers in EU Consumer Law", *Cambridge University Press*, 123-142.
- The Council of Consumer Protection, Annual Report 2014, *Ministry of Trade and Industry of the Republic of Kosovo*, Prishtina.
- Weatherill, Stephen (2005). *EU Consumer Law and Policy*. Elgar European Law Series, Edward Elgar Publishing Inc.