

CONSUMER PROTECTION

CURRENT SITUATION

Development of consumer protection in Serbia is in the initial stage, both in legislative and institutional sense.

The field of consumer protection is regulated by the Law on Consumer Protection dated from 2005, as the core law, as well as other specific laws such as Law on Contracts and Torts, Law on Protection of Competition, Law on Advertising, Law on Prices, Law on General Product Safety, Law on Genetically Modified Organisms, Law on Broadcasting and Law on Banks etc. Legal framework in the field of consumer protection is not fully developed and harmonized with EU legislation. Generally, the law is not precise, not regularly structured, not consumer oriented and does not represent a functional legal frame. Its provisions are scarce, rather declarative than applicable.

As for implementation of the Law on Consumers Protection and other related laws, and establishment of the institutions, the consumers' protection is still poor.

Consumer is defined as a natural person, commercial company, enterprise, other legal entity and entrepreneur, when they are purchasing the products or obtaining services for their own needs. Inclusion of the legal entity is different from the provisions of EU instructions and practice of the European Court of Justice, subject to which the consumer is only a natural person and the company composed of natural persons. Besides the consumers and the salesman, it does not define other legal concepts in terms of this Law.

Protection of life, health and safety of the consumers is covered only basically and briefly. Safety of the products and packing material is only partially in compliance with the EU rules and the Law on Packing Material. The lacking provisions are those specifying that the packing material shall not affect the quality and safety of the products, that the packing material shall not create the consumers' confusion in connection with the size and weight of the products, that the salesman is obliged to, upon the consumer's request, keep the packing material, that packing bags with the seller's/manufacturer's logo shall not be charged.

The said law contains the disputable provisions on the permitted trade with genetically modified products, prohibited by

the provisions of the Law on Genetically Modified Organisms enacted in 2009. Further compliance with the EU Instructions 90/219/EEC and the Law on Genetically Modified Organisms is required.

The basic principles of the prices and the guarantee are in compliance with EU Instructions 98/7/EC and 1999/44/EC. Further compliance is required. Distance financial services and related consumers' protection have not been regulated by the Law. Distance purchase is only partially complied with the Instructions on the contracts negotiated away from business premises 85/577/EEC and Directive regulating distance contracting EU 97/7/EC. Provisions governing consumers' credits are only partially complied with the EU Instructions 90/7/EC. Principal concept, agreement termination, exceptions, information to the consumers, announcement of granting of the loan, settlement prior to expiry of the term, changes on the side of the loan grantor and legal right of pledge are not regulated by the Law.

Special forms of consumers' protection in connection with services are partially compliant with EU Instructions. The said law does not provide for mandatory application of the provisions of the Law on Consumers Protection. Public services are defined only in general. Obligation of the competent authorities to ensure the conditions for market competition between public services, inclusion of the representatives of the consumers' associations in the competent authorities in charge with claims of the public services providers is not stipulated. Provisions related to the standard agreements are not completely in line with the EU rules. The Law governs only interpretation of the unclear provisions of standard agreements and prohibition of issuance of the misleading guarantees. It does not govern unfair contractual commitments and provisions of the agreements, circumstances requiring assessment prohibition of application, entitlement to initiation of protection procedure, exceptions to the application, unfair business practice, misleading actions and omissions, procedures of misleading business practice, aggressive business practice, harassment, acts of force and non-permissive impact. Provisions on announcing are partially in compliance with EU Instructions 84/450/EEC. Comparative announcing is not governed.

The rules on providing evidence for the damage are not complied with EU Instructions 85/374/EEC on liability for

the products. There is a serious mistake in joining together the provisions on damage compensation. Provisions on liability of the seller lacks—operator of the means of distance communication, as well as the provisions on the seller's obligation to, upon request, provide evidence supporting his business practice and the provisions governing the competent authority's free assessment of the circumstances underlying the case.

Definition of the arbitration authorities' competence is missing. Mechanisms of the consumers' legal remedies within the extrajudicial settlement of the disputes are not mentioned. The concept of the consumers' organization is not precisely defined, nor the registration criteria. There are ambiguities in terms of unique representative association. The disputable issue is prohibited financing of the consumers' organization by EU institutions.

POSITIVE DEVELOPMENTS

Passage of related laws complied with the EU Instructions, which partially govern consumers' protection, thus ensuring a better protection until a new Law on Consumers Protection is passed.

REMAINING ISSUES

Under the circumstances of transition, import liberalization, incompliance of local regulations governing the quality of the products with the EU standards and poor purchase ability of the citizens, the market is flooded by poor quality products which represent a risk for health and safety of the consumers. Under the circumstances of market competition, introduction of new technologies and types of sale, including the distance trade, the grounds for consumers' protection have not yet been created. In case of the standard agreements, formulated in advance, without any participation of the consumers, the consumers are not in the position to assess which of the requirements may be unfair. In the field of public services, although the legal grounds have been created, no material improvement of the consumers' interests' protection has occurred yet.

Financial services offered to the consumers (banking services, loans, and insurance, pension, savings and payment

services) represent a problem for the consumer from the aspect of information and protection. Especially, since these services are offered in the form of standard agreements with the conditions formulated in advance, which conditions are unfavorable for the consumers' interests (costs of the services, annual interest rate, conditions upon termination of the agreement, etc.).

The information to the consumers is mainly based on issuance of leaflets and fliers. There are no special consumers' magazines, which would provide explanation of the data and independent comparative research.

Extrajudicial protection in the practice is either administrative inspection or court inspection for damage compensation. In practice, the lawsuit calls for high costs. The alternative protection provided by the Consumers Protection Act is arbitration, but it still lacks the well functioning mechanisms for application.

The authority in charge with the consumers' protection system, within the Ministry of Trade and Services, is the Consumers Protection Department. However, it has not achieved the required functional and operative level of acting. The problems include the required offices, equipment, professional education, appropriate library, professional books and magazines. The level of communication and cooperation with other institutions in the country and abroad is not satisfactory.

Inspection supervision lacks satisfactory coordination, exchange of information and documents between the inspection authorities and the Ministries in charge, between the inspection authorities and customs authorities. The communication system is outdated. There is no unique information system used by all the parties concerned. There is no fast warning system ensuring exchange of information, unique system of fast warning in case of appearance of hazardous consumption products. There is no coordination between various Ministries, inspection authorities, standardization authorities, chambers of commerce and associations.

There are a large number of consumers' organizations, but due to the lack of joint actions, their influence is small, only

within the local self-management units. This is the result of the lack of funds allocated for that purpose, first of all from the budget, as well as irrational use of the existing funds. A special problem is existence of unclear issues in terms of identification of the unique national representative association of the consumers of the Republic of Serbia, which would have full legitimacy to join the international organizations and appear as the negotiator in access to the foreign special purpose funds.

There are no advisory centers, as the nucleus of the social mechanism of consumers' protection (which integrate and coordinate operations of the governmental and independent consumers' organizations), which exist in all other European countries, and financing of such centers is directly dependant on the financial standing of the country, schedule for obtaining financial and professional assistance from the international sources and the extent of interest of the local self-management units.

FIC RECOMMENDATIONS

- Urgent compliance of the Law with EU standards and rendered regulations;
- Adoption of new legal regulations for the purpose of completion of the protection programs in the fields not governed so far, or not sufficiently governed;
- Establishment of a system of extrajudicial settlement of the disputes;
- Further compliance of the legal regulations in terms of safety of foodstuffs and safety of the products with the international EU standards covering certain fields.