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The Consumer Protection Law in Kosovo and its Harmonisation with the EU Legislation²

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Abstract

Consumer protection is guaranteed by the Constitution of the Republic of Kosovo, by statutes and sub-statutory acts. The Republic of Kosovo, during the drafting of legislation in the field of consumer protection, has continuously devoted much attention to the approximation and harmonisation of its laws with the EU legislation. However, in this article, we have addressed various legal aspects that still need to be improved for the applicable law to be aligned and harmonised with the EU *acquis*. The paper discusses the fundamental rights of consumers, with a particular focus on their deficiencies.

Keywords: consumer protection, Kosovo legislation, EU legislation, consumer rights.

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Ustawa o ochronie konsumentów w Kosowie i jej harmonizacja z prawodawstwem UE³

Streszczenie

Ochronę konsumentów gwarantuje konstytucja Republiki Kosowa, ustawy i akty podustawowe. Opracowując ustawodawstwo dotyczące ochrony konsumentów Republika Kosowa przywiązywała wielką wagę do zbliżenia i harmonizacji ustawodawstwa Kosowa z prawodawstwem UE. Jednakże w tym artykule zwróciliśmy uwagę na pewne aspekty prawne, nad którymi należy jeszcze popracować, aby obecna ustawa o ochronie konsumentów została dostosowana i zharmonizowana z przepisami prawa UE. W artykule omówiono podstawowe prawa konsumenta ze szczególnym naciskiem na ich niedostatki

Słowa kluczowe: ochrona konsumentów, ustawodawstwo Kosowa, ustawodawstwo UE, prawa konsumentów.

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Introduction

Consumer protection is of particular importance to the state and society, and is therefore provided for by existing legislation. However, it cannot be overemphasised that consumer protection has to do only with a specific right, because consumer rights must be observed in their entirety. It raises the question of what legal actions should be undertaken in this regard by the competent bodies, and what would be their effect in terms of improving the position of consumers in general.

The current problematic legal matters include the lack of complete harmonisation of the law on consumer protection with the EU legislation, the failure to issue the necessary by-laws for consumer protection, delays regarding the application of several recommendations given by the European Commission in the Progress Report, non-establishment of the Alternative Dispute Resolution (ADR), and so forth.

The Constitution of the Republic of Kosovo of 2008⁴ guarantees consumer protection, which is defined in more detail by the relevant law. We believe that the protection of consumers, stipulated by the Constitution, raises the level of responsibility to the competent bodies to protect consumers and respect a constitutional right. As for consumer protection, the relevant law existing in the Republic of Kosovo is Law no. 06/L-034 on consumer protection of 2018⁵ (hereinafter: the LCP). The LCP takes into account the fundamental rights of consumers, including the consumer's right to legal protection. The question is: how can a consumer exercise their rights in case they have been denied or violated? To provide adequate protection to consumers, there are still several things that have to be done in terms of harmonising local legislation with the EU legislation, especially in those cases where it is considered necessary. This may be done by supplementing and amending the applicable law on consumer protection. Various additions have already been planned to be incorporated within the Draft Law to amend the law on consumer protection⁶, which we have addressed in this paper.

⁴ "Chapter IX Economic Relations" of the Constitution of the Republic of Kosovo, 15 June 2008. Available from: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702> (access: 12.06.2023).

⁵ Law No. 06/L-034 on consumer protection, Official Gazette of the Republic of Kosovo, No. 11, 14 June 2018. However, the Republic of Kosovo has had consumer protection legislation even earlier, see A. Krasniqi, *Legal divergences in terms of consumer rights in Kosovo*, "Juridical Tribune" 2018, 8(2), pp. 547–548.

⁶ See Article 2 of the Draft Law No. 08/L-192 on amending and supplementing the Law no. 06/L-034 for consumer protection, Assembly of the Republic of Kosovo. Available from: <https://www.kuvendikosoves.org/shq/projektligjet/projektligji/?draftlaw=430> (access: 17.06.2023).

The reasons why Kosovo still needs to harmonise its consumer protection law with the EU legislation are numerous include a greater certainty of respect for consumers' rights and the fulfilment of requirements during the European integration processes. The undertaking of concrete actions regarding the harmonisation of legislation indicates that Kosovo is committed to ensuring the protection of consumers' legal interests as provided by the EU legislation.

Under Law No. 06/L-034 on consumer protection, there have been a number of by-laws issued, which clarified several important procedural issues.⁷ The positive effects when it comes to consumer protection would be easily visible if the legal and institutional frameworks for consumer protection were in sync, so to speak. To have general protection of consumers, administrative and judicial protection must be efficient. Likewise, the creation of the necessary conditions for an alternative resolution of disputes would enable consumers to resolve their disputes in extrajudicial proceedings.

Consumers have the right to information and education,⁸ and we consider that it is necessary to increase the volume of work undertaken in this direction.⁹ In addition to the right to legal protection, and the right to information and education, the paper presents several other equally important rights. The new law is expected to include the consumer's right to equal treatment and protection from discrimination – as one of the basic human rights. The inclusion of this right in the law would positively affect the protection of and respect for the basic rights of consumers.

The protection of rights should be observed in terms of equal treatment of everybody – without discrimination, including consumers,¹⁰ traders, producers, sellers, etc., because each of them has rights and obligations.

⁷ Some of the by-laws are Administrative Instruction (MTI) No. 13/2018 on the procedure for handling complaints from the consumer protection department; Administrative Instruction (MEETIEST) No. 01/2020 for keeping the electronic register of collective lawsuits ending with a final judgment; Administrative Instruction (MTI) No. 05/2019 for the determination of standard information forms for consumers of time-sharing contracts and related contracts, etc.

⁸ See LCP, article 4 paragraph 1 (1.2) and Chapter XVII.

⁹ Ibidem, article 4 and article 5. Also see Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (Text with EEA relevance), Official Journal of the European Union, L 304, 22.11.2011.

¹⁰ See LCP, article 3 paragraph 1 (1.1).

The guarantee of consumer protection under the constitution

The Constitution of the Republic of Kosovo of 2008 makes it specifically clear that consumer protection is guaranteed by the law.¹¹ When we consider consumer protection, we must bear in mind that this protection is guaranteed by constitutional and legal norms. We emphasise this because if consumer protection is not respected, then the Constitution and the law have not been respected either. Hence, it is indispensable that the rights of consumers are to be respected and there should be a coordination of work between all relevant participants to protect consumers in this process.

Article 119, paragraph 7 of the Constitution of the Republic of Kosovo, states as follows: “*The protection of consumers is guaranteed in accordance with the law*”. Meanwhile, a special law for the protection of consumers in Kosovo is Law No. 06/L-034. Hence, consumers enjoy juridical protection on two tiers, constitutional and sub-constitutional.

Likewise, another important factor – or element – that affects consumer protection is the proper functioning of the market, based on fair competition. When it comes to competition, Article 119, paragraph 3 of the Constitution stipulates the following: “*Actions limiting free competition through the establishment or abuse of a dominant position or practices restricting competition are prohibited, unless explicitly allowed by law*”. The actions that limit free competition are prohibited, because it is intended to be a real competition, where it takes place based on applicable legislation.

As for the protection of competition, the Republic of Kosovo has Law No. 08/L-056 on the protection of competition,¹² in which substantial issues have been foreseen to ensure fair competition in the market.¹³ In this aspect, the Competition Authority of the Republic of Kosovo¹⁴ acts based on powers stipulated in the fifth chapter of Law No. 08/L-056 on the protection of competition. Fair competition also affects

¹¹ Article 119, paragraph 7 of the Constitution of Kosovo. See E. Hasani, I. Čukalović, *Commentary: Constitution of the Republic of Kosovo*, Pristina 2013, p. 613.

¹² Law No. 08/L-056 on protection of competition, Official Gazette of the Republic of Kosovo, No. 14, June 7, 2022, see article 1 paragraph 2, of this law. Also see G. Asllani, *Konkurrenca dhe e drejta e konkurrencës*, Pristina 2016, pp. 67–132.

¹³ See M.J. Hetemi, *Mbrojtja e tregut të lirë nga konkurrenca jolojale (Aspekti krahasimor)*, Prishtina 2004, pp. 24–32. See also V. Mulaj, *Protection of Competition from Abuse with Dominant Positions and Anticompetitive Agreements in the Kosovo Market*, “*Studia Iuridica Lublinensia*” 2022, 31(2), pp. 211–215.

¹⁴ See Chapter fifth of the Law No. 08/L-056 on protection of competition; Competition Authority of the Republic of Kosovo, <https://ak.rks-gov.net/ballina> (access: 2.07.2023). See also A. Mucaj, *Competition Law Framework in Kosovo and the Role of the EU in Promoting Competition Policies in Other Countries and Regions Wishing to Join the Block*, “*Yearbook Of Antitrust And Regulatory Studies*” 2020, 13(22), pp. 92–96;

consumers, because in the market there shall be more products, with better quality, at more affordable prices, therefore consumers shall have the right of choice.

When it comes to consumer protection, we also consider the safety of products as another very important matter, so that only safe products are available on the market. Bearing in mind the necessity to have safe products in stores, Kosovo has adopted Law No. 08/L-172 on general product safety,¹⁵ which is in line with EU directives.¹⁶ Hence, the Republic of Kosovo has a legal and institutional framework for consumer protection, competition protection, and general product safety, etc. that affect consumer protection.

Harmonisation of the law on consumer protection with the EU legislation

The Republic of Kosovo, unlike other countries of the Western Balkans, had a more specific situation when it comes to consolidation as a state, and many issues were more difficult to deal with. We mention this when we consider the status of Kosovo over the years, where it has been necessary to undertake continuous actions for the drafting, alignment, and harmonisation of the legislation with that of the EU. However, among other areas of law, progress has also been made in the field of consumer protection. The Republic of Kosovo, after signing the Stabilisation and Association Agreement with the EU, is actively harmonising domestic legislation with the EU legislation applied in the field of consumer protection.

The fulfillment of the obligations derived from the Stabilisation and Association Agreement involves aligning our country's legislation with the EU *acquis*.¹⁷ The Republic of Kosovo is not yet a member state of the EU, although it aspires to be one.

It can also be noticed in the Progress Report issued by the European Commission for Kosovo in 2022 that there is still some necessary work to be done with regard to the harmonisation of the Consumer Protection Law with the EU legislation. In this report, several important matters related to consumer protection have been brought to light. Hence, the relevant institutions of Kosovo should undertake

A. Jashari, E. Osmanaj, *Comparative analysis in connection with the prohibition of anti-competitive agreements in Kosovo, North Macedonia and Albania*, "Zbornik PFZ" 2023, 73(1), pp. 132–133.

¹⁵ Law No. 08/L-172 on general product safety, Official Gazette of the Republic of Kosovo, No. 9, 3 April 2023.

¹⁶ Ibidem, article 1, paragraph 3.

¹⁷ See Law No. 05/L-069 on ratification of the Stabilization and Association Agreement between the Republic of Kosovo, of the one part, and the European Union and the European Atomic Energy Community, of the other part, Official Gazette of the Republic of Kosovo, No. 34, 1 December 2015, Title VI, Article 81.

concrete actions to further harmonise the Law on consumer protection with the *EU acquis*, including the following matters: “It is not aligned with the EU *acquis* on mortgage credit, alternative consumer dispute resolution, better enforcement, modernization of consumer protection rules, or the EU *acquis* on consumer rights, unfair commercial practices and package travel”.¹⁸

Bearing in mind the dynamics of issuing legislation in the field of consumer protection in the EU, it is necessary to harmonise the law on consumer protection with EU legislation. We emphasise this based on the conclusions of the Progress Report published by the European Commission for Kosovo even in 2023.¹⁹ The harmonisation of Kosovo’s legislation with that of the EU provides the possibility of adopting high standards in terms of consumer protection. The protection of consumer rights is essential for countries aspiring to enter the EU.

Another significant aspect that would affect consumer protection in Kosovo, is the full implementation of the recommendations given by the European Commission in the Progress Report. This has to do with undertaking concrete legal and institutional actions regarding the advancement of consumer protection. For example, to increase the cooperation of Kosovo’s competent institutions with the institutions of other countries which have marked progress in the European integration process. Such cooperation would have an impact in terms of the advancement of best practices in the area of consumer protection.

One of the goals of Law No. 06/L-034 is to guarantee consumer protection as well as abide by EU directives. The framework of Article 1, paragraph 2 of the LCP indicates the directives with which this law is compatible²⁰ for the applicable law must be harmonised with some other EU directives.²¹ As it is well known, the protection of consumers in the EU is given special importance, therefore it is foreseen in the framework of various relevant legal acts.²²

It should be emphasised that while drafting legislation, the matter of approximation and harmonisation with the EU legislation continues to have special importance because strict rules must be respected by relevant institutions while

¹⁸ European Commission, Commission Staff Working Document Kosovo 2022 Report, pp. 90–91. Available from: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Kosovo%20Report%202022.pdf> (access: 14.06.2023).

¹⁹ European Commission, Progress Report for Kosovo 2023, p. 99. Available from: https://integrimievropian.rks-gov.net/wp-content/uploads/2023/12/Kosovo-2023-Report_SQ.pdf (access: 22.03.2024).

²⁰ See LCP, article 1 paragraph 2.

²¹ See European Commission, Commission Staff Working Document Kosovo 2022 Report.

²² See Treaty on the Functioning of the European Union (Consolidated version 2016), Official Journal of the European Union, C 202, 7.6.2016, Title XV “Consumer Protection”; Charter of Fundamental Rights of the European Union (2016), Official Journal of the European Union, C 202, 7.6.2016, Article 38 “Consumer protection”. In addition to these, the EU has many other legal acts, through which it guarantees the protection of consumers.

drafting legislation in harmony with the EU *acquis*.²³ Likewise, in the framework of the Stabilisation and Association Agreement between the Republic of Kosovo on the one hand and the European Union²⁴ on the other, Article 81 foresees cooperation between the parties regarding the alignment of Kosovo's consumer protection legislation with that of the EU *acquis*.

To protect consumers, the Consumer Protection Council has drafted the Consumer Protection Program 2021–2025,²⁵ which according to the LCP, proposed by the Ministry of Industry, Entrepreneurship and Trade, has been submitted to the Government of the Republic of Kosovo for approval²⁶ – and adopted. This program aims to ensure the best protection for consumers, taking into account domestic legislation, EU legislation, and international legal acts which are related to consumer protection.

It is important to emphasise the fact that the Republic of Kosovo, through relevant institutional mechanisms, drafted, approximated, and harmonised its domestic legislation with that of the EU.²⁷ In this regard, there is close cooperation between the relevant local institutions to make the adopted legislation in line with the EU *acquis*. If you look into retrospectives, then it can be stated that the Republic of Kosovo has made progress in the field of consumer protection. We emphasise this because there is a consolidated legal and institutional framework.

The current law on consumer protection can be considered modern because it is harmonised with several EU directives. However, to see advancement in consumer protection in keeping with European standards, a draft law on consumer protection is now underway.²⁸ Through this draft law, it is intended that after its approval in the Assembly of Kosovo, there shall be more effective protection of consumers, because the law shall be more harmonised with the EU legislation.

²³ See Article 30 of Administrative Instruction No. 03/2013 on standards for drafting normative acts; Article 7, Article 30 and Article 32 of Regulation No. 09/2011 of the Work of the Government of the Republic of Kosovo, Official Gazette of the Republic of Kosovo, No. 15, 12 September 2011; *Udhëzime Praktike për Përafrimin e Legjislacionit të Republikës së Kosovës me Legjislacionin e Bashkimit Evropian*, Pristina 2014. Also, see the National Program for the Implementation of the Stabilization and Association Agreement (PKZMSA) 2022–2026, Pristina 2022, "Chapter 28 of the *acquis*: Consumer and health protection", pp. 225–230. Available from: <https://integrimievropian.rks-gov.net/pkzmsa-2022-2026/> (access: 17.06.2023).

²⁴ See Law No. 05/L-069 on ratification of the Stabilisation and Association Agreement between the Republic of Kosovo, of the one part, and the European Union and the European Atomic Energy Community, of the other part.

²⁵ Consumer Protection Program 2021–2025, <https://mint.rks-gov.net/desk/inc/media/9254823B-58F3-459A-81A4-A20F25982B3A.pdf> (access: 17.06.2023).

²⁶ See LCP, article 131.

²⁷ See S. Shala, *The potential of national parliament in the EU legal alignment process: The case of Kosovo*, "Journal of Comparative Politics" 2019, 12(1), pp. 6–13.

²⁸ See the Draft Law on Consumer Protection. Available from: <https://kryeministri.rks-gov.net/wp-content/uploads/2024/01/PROJEKLIJGI-PER-MBROJTJEN-E-KONSUMATORIT.pdf> (access: 22.03.2024).

Hence, while the current law in force for consumer protection is generally contemporary, taking into account the dynamics of legal changes in the EU, Kosovo must issue a new law for consumer protection.

Consumer rights under the law

In addition to the constitutional aspect concerning the guarantee of consumer protection, it should be emphasised that the matter of consumer protection is stipulated in detail by statutes. The LCP stipulates specifically what the basic rights of consumers are.

The law on consumer protection guarantees the protection of the rights and interests of consumers, however, apart from the aspect of the legal framework, another element is the institutional framework. Because the problematic issue is not only the legal definition, but also offering this protection in practice.

In Article 4 of the Law No. 06/L-034 on consumer protection, the following basic consumer rights have been foreseen:

- ❑ *the right to protect life, health, environment and the economic interests of consumers;*
- ❑ *the right to consumer information and education;*
- ❑ *the right to represent consumer interests;*
- ❑ *the right of organizations in consumer association, to protect their interests;*
- ❑ *the right to complain;*
- ❑ *the right for legal protection of consumers;*
- ❑ *the right for compensation in certain cases for indemnity;*
- ❑ *the right to use public services;*
- ❑ *the right to receive services in a language understood by consumers.*

As it may be noticed, the LPC provides various consumer rights which have a direct impact on consumer protection. Hence, in article 5 of the Draft Law on the amendment and completion of Law no. 06/L-034 on consumer protection,²⁹ the following sentence is expected to be added: *“The consumer’s right to equal treatment and protection from discrimination”*.

All the aforementioned consumer rights gain importance and adequate weight only when, in addition to the aspect of guarantee by legal acts, they are also respected in practice. Consumers must be also active when it comes to having their

²⁹ See the Draft Law No. 08/L-192 on amending and supplementing Law No. 06/L-034 for consumer protection.

rights recognised by law. Various concrete actions should be undertaken by competent institutions in terms of consumer information. Special attention should be paid to informing consumers about their rights. When consumers know their rights, it gives them the opportunity to be more active in seeking protection of their rights and interests. We believe that traders are more informed about the applicable legislation concerning consumers and that they should be more active in terms of fulfilling their legal obligations with the demands of consumers in mind.

In addition to determining the rights of consumers under the existing law, another very important issue is the institutional organisational aspect,³⁰ so that all competent bodies perform their duties and responsibilities in line with the applicable legislation.³¹ Hence, in the Republic of Kosovo, within the structure of the Ministry of Industry, Entrepreneurship and Trade, there operates the Department for Consumer Protection.³² In Regulation (OPM) No. 03/2022, it is foreseen that within the Department for Consumer Protection there are two divisions: 1. Division for Drafting of Consumer Policies, and 2. Division for Information and Education of Consumers.³³ This Regulation defines the duties and responsibilities of the department and divisions.

According to the LCP, the Consumer Protection Council is also the bearer of consumer protection, meaning that it drafts the Consumer Protection Program and oversees its implementation.³⁴ Likewise, consumer protection associations play a special role in consumer protection, and due to their active role, they influence the protection of consumers' rights. Hence, according to Article 133, paragraph 1 of the LCP: "Consumer protection association shall be established for the protection of consumer rights and interests. It is a non-governmental organization, independent of manufacturers, sellers, suppliers or service providers". Therefore, consumer protection associations also aim to protect the rights and interests of consumers.

³⁰ Regarding the bearers of consumer protection in Kosovo, see Article 1 paragraph 1 (1.4) and Chapter XVI of the LCP.

³¹ See Consumer Protection Program 2021–2025, pp. 20–31.

³² See Regulation (OPM) No. 03/2022 on Internal Organization and Systematization of Workplaces of the Ministry of Industry, Enterprise and Trade, Article 7 (1.9) and Article 35.

³³ *Ibidem*, article 7 (1.9), article 35 paragraph 4 (4.1) and (4.2), article 36 and article 37.

³⁴ LCP, article 131 and 132.

Consumers' right to legal protection

The right to legal protection is one of the fundamental human rights based on domestic, European, and international legal acts.³⁵ This right enables the protection of basic human rights in general and in specific cases – also the rights of the consumer. The protection of human rights, usually in administrative or judicial procedures, is foreseen in cases when a person is denied or has any of their specific rights violated. One of the goals of Law No. 06/L-034 on consumer protection is *the administrative and judicial protection of consumer interests*.³⁶

Another legal issue we are aware of is the lack of adequate definition of the possibility for consumers to resolve their disputes in an alternative manner. Bearing this in mind, concrete legal and institutional actions should be undertaken concerning the establishment of the “Alternative Dispute Resolution (ADR)” system,³⁷ This is because this system provides several advantages for consumers to resolve certain contentious issues without the need to go to court.

Administrative protection

First of all, it should be emphasised that the legal and administrative protection of consumers is stipulated in chapter fourteen of the LCP. When the consumer is not satisfied with a product purchased from a merchant, they have the right to make a complaint on the grounds of non-conformity of the product with the contract concluded.³⁸ The customer may prove the purchase of the product using the invoice, sales contract, warranty, or a similar instrument.³⁹ The complaint may be submitted in one of the ways determined by law.⁴⁰ In addition to the right to appeal, the LCP also provides for the resolution of complaints, which makes it the duty of the trader to respond to the consumer within 15 (fifteen) days from the day of receiving of complaint.⁴¹

³⁵ See Article 3 and Article 24 of the Constitution of Kosovo 2008; Article 6 (1) of the European Convention on Human Rights 1950; Universal Declaration of Human Rights 1948.

³⁶ LCP, article 1 paragraph 1 (1.3). Also, regarding the administrative and judicial protection of consumer interests, see *Ibidem*, Chapters XIV and XV.

³⁷ Program for consumer protection 2021–2025, pp. 16–19.

³⁸ *Ibidem*, article 115 paragraph 1.

³⁹ *Ibidem*, article 115, paragraph 2. Also, regarding the “Guarantee for the regular functioning of the item sold”, see Article 484 and 490 of Law No. 04/L-077 on relationship of obligations, Official Gazette of the Republic of Kosovo, No. 16, 19 June 2012; N. Dauti, R. Berisha, A. Vokshi, A. Aliu, S. Blakaj, *Komentari Ligji për marrëdhëniet e detyrimeve, Libri II*, Pristina 2013, pp. 52–60.

⁴⁰ LCP, article 115, paragraph 3.

⁴¹ *Ibidem*, article 116, paragraph 1.

According to the LCP, the consumer may submit a complaint to the trader⁴² or to the Department for Consumer Protection (which shall address the complaints in a certain category, depending on the type of complaint), and can file a lawsuit with the competent court.⁴³ Article 116, paragraph 5 of the LCP determines that the regulators or other relevant bodies related to the complaint submitted by a consumer against the merchant's decision, decide within two (2) months after receiving the complaint – if no other special legal act provides otherwise.

In the case where a consumer has submitted a complaint to the trader, but the latter has not responded to the complaint within 15 (fifteen) days, the consumer may seek protection with the competent administrative body.⁴⁴ Consumers may submit a complaint to the Department for Consumer Protection⁴⁵ – and they do not have to pay for submitting the complaint.⁴⁶ Within this department, reports are drawn up, analysing the number of complaints submitted in certain years, their category,⁴⁷ and their resolution.⁴⁸ We emphasise the category, because consumers may submit their complaints to the Department for Consumer Protection, which – after analysing them – forwards them to the inspectorate or regulators.⁴⁹ Consumers may also submit a complaint directly to the regulators, who have mechanisms for reviewing them. Hence, in this regard, we consider it necessary to continue the cooperation between the Department for Consumer Protection, inspectorates, regulators, and relevant bodies.

In cases when the merchant rejects the complaint submitted by the consumer, then it is the right of the consumer to submit a request to the competent body (inspecting authority, judicial procedure or extrajudicial procedure).⁵⁰ Based on Article 117, paragraph 3 of the LCP, in cases when a competent inspection authority finds that the rights of the consumer have been violated, it shall instruct the merchant to act according to the law. The consumer may ask for help from extrajudicial

⁴² *Ibidem*, article 3, paragraph 1 (1.2), the definition of the commercial term.

⁴³ See Ministry of Industry, Enterprise and Trade (MIET), sending a complaint to the Department for Consumer Protection. Available from: <https://konsumatori.rks-gov.net/complaintPost.php> (access: 17.6.2023); LCP, article 115 paragraph 1 and article 117 paragraph 5.

⁴⁴ Law No. 06/L-034 on consumer protection, article 117, paragraph 1 and article 116, paragraph 1.

⁴⁵ See Department for Consumer Protection. Available from: <https://konsumatori.rks-gov.net/> (access: 17.06.2023).

⁴⁶ Administrative Instruction (MTI) No. 13/2018, article 9 paragraph 2.

⁴⁷ *Ibidem*, article 16 paragraph 3 and article 17.

⁴⁸ See Department for Consumer Protection – Statistics (list of complaints from consumers, can be searched for over the years, and can be noticed how many were submitted and resolved, etc.). Available from: <https://konsumatori.rks-gov.net/statistics.php> (access: 17.06.2023).

⁴⁹ See Article 20 paragraph 4 and Article 116 paragraph 5 of the LCP; Article 16 of the Administrative Instruction (MTI) No. 13/2018.

⁵⁰ LCP, article 117, paragraph 2.

bodies or judicial bodies, even before they have submitted a complaint to the trader.⁵¹ The submitted complaint must be substantiated, that is, the consumer must attach evidence (such as the fiscal coupon or invoice, guarantee, etc.). According to Article 15 of the Administrative Instruction (MTI) No. 13/2018, the Department for Consumer Protection shall inform the consumer about the decision made by the competent body according to the submitted complaint. The examination and decision related to the consumer's complaint must be done without delay within the deadlines stipulated by legal acts.⁵²

Also, accurate legal definitions are necessary to respect consumer rights. Hence, we propose that to protect consumers, in addition to the existing by-laws, other by-laws should be issued in compliance with the law.

It should be emphasized that there are also opportunities for consumers to submit their complaints digitally/electronically. However, it is necessary to work even more in this direction. Therefore, concrete actions should be undertaken in terms of advancing the online/electronic system of submitting complaints and an answer should be given regarding the decision rendered about complaints. In this regard there should be a match between the legal regulations and the possibility of implementation in practice. The unification and simplification of the online platform affect the advanced protection of consumers. We consider the lack of unification of procedures and administrative capacities as a cause that influences the lack of adequate consumer protection. Hence, action should be undertaken in the direction of unifying procedures for complaints and increasing the administrative staff in the competent institutions. If actions are undertaken concerning these matters, then this would have a direct impact on better consumer protection. The professional administrative staff is engaged in numerous jobs, depending on the legal provisions. These commitments are related to inspections, receiving complaints, and examining and responding to consumer complaints.

Judicial protection

The fifteenth chapter of the LCP covers judicial protection of consumer interests. Usually consumers attempt to reach an adequate solution concerning a specific matter by first submitting a complaint to the merchant, and then to the administrative bodies – or by attempting to reach solutions out of court, through e.g. media-

⁵¹ Ibidem, article 117, paragraph 5.

⁵² Ibidem, article 116, paragraph 5. See Administrative Instruction (MTI) No. 13/2018 on the procedure for handling complaints by the Department for Consumer Protection, article 14.

tion.⁵³ These actions may be undertaken by consumers to reach a quick and favorable solution without going to court. However, it is the right of consumers to address the competent court through a lawsuit⁵⁴ concerning the protection of their interests. *Judicial protection as a basic human right is guaranteed by the Constitution*⁵⁵ when the consumer claims that any of their rights have been violated or denied; they may address the competent court through a lawsuit under the legislation in force.⁵⁶ Likewise, under the LCP, in cases when we are dealing with a violation of the collective interests of consumers, a collective lawsuit may also be submitted.⁵⁷ The LCP defines several concrete aspects that must be taken into account before this lawsuit is submitted. First of all, it is necessary to have the knowledge of who the authorised persons to initiate proceedings are (who may initiate the collective lawsuit)⁵⁸ and of the actions that precede the judicial proceedings (the actions that must be undertaken before submitting the collective lawsuit).⁵⁹

When it comes to reviewing cases related to collective lawsuits, the court with exclusive jurisdiction is the Basic Court in Pristina, Department for Economic Matters,⁶⁰ which, based on Article 121, paragraph 2 of Law No. 06/L-034 on consumer protection, also determines the value of the disputed matters. Hence, under Article 121, paragraph 3 of the LCP, the court must determine the value of the disputed matter up to five thousand (5,000) euros. Whereas, according to article 121 paragraph 4 of the LCP, “if it comes to the reduction of the value of the disputed matter, particular attention should be paid to the complexity and scope of the disputed matter, to the number of persons against whom the procedure is initiated and the importance of the application in terms of public interest”.

⁵³ See Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), Official Journal of the European Union, L 165, 18.6.2013. Also see Law No. 06/L-009 on mediation, Official Gazette of the Republic of Kosovo, No. 14, 20 August 2018.

⁵⁴ For persons who do not have the financial means to prepare documents, etc., and belong to the categories defined by legislation, they can exercise their rights according to Law No. 04/L-017 on free legal aid, Official Gazette of the Republic of Kosovo, No. 03, 22 February 2012.

⁵⁵ See Article 54 and Article 102 paragraph 1 of the Constitution of Kosovo; Article 7 of the Law No. 06/L-054 on courts, Official Gazette of the Republic of Kosovo, No. 22, 18 December 2018. See also K. Katro, E. Teliti, *Albanian Institutions on Consumer Protection According to the Law no. 9902, Dated 17.04.2008 “On Consumer Protection”, “Mediterranean Journal of Social Sciences”* 2014, 5(16), p. 112.

⁵⁶ See Law No. 06/L-054 on courts; Law No. 03/L-006 on contested procedure, Official Gazette of the Republic of Kosovo, No. 38, 20 September 2008.

⁵⁷ LCP, article 118, paragraph 1.

⁵⁸ *Ibidem*, article 119.

⁵⁹ *Ibidem*, article 120.

⁶⁰ *Ibidem*, article 121, paragraph 1. See Article 12 paragraph 3, Article 13 (1.2) and Article 16 of Law No. 06/L-054 on courts.

Hence, it is the consumer's right to seek judicial protection by filing a lawsuit with a court, whereas after analysing facts and evidence, the court shall issue a decision by the legislation in force.⁶¹ The court in its final decisions, in addition to notifying the parties, also notifies the Department for Consumer Protection, because this department maintains an electronic register of the court's decision concerning collective lawsuits.⁶² The binding force of the court's decision has also been foreseen.⁶³ Consequently, based on provisions of Law No. 06/L-034 on consumer protection, it can be emphasised that consumers are guaranteed the right to administrative and judicial protection.

In addition to the administrative and judicial protection of consumers, it is important to undertake concrete actions for the possibilities for alternative solutions of disputes. Consumers would have a way of addressing their requests for solutions more easily, but at the same time also to receive decisions faster. Therefore, having a number of legal mechanisms through which consumers can seek the protection of their rights is definitely a positive phenomenon.

Conclusion

Consumer protection is guaranteed by the Constitution of the Republic of Kosovo and the Consumer Protection Law. In terms of the legal framework, Kosovo has made progress concerning the alignment and harmonisation of domestic legislation with the EU *acquis*. The law on consumer protection is in line with some of the EU directives and provides basic rights for consumers. Each of the consumer's rights has a positive impact on consumers to exercise their rights entirely. And when it comes to actions that consumers may undertake, we have mentioned the availability of administrative and judicial protection.

We consider that in the field of consumer protection, there is still work to be done in terms of legal and institutional aspects. From the legal point of view, it is necessary to work towards approximation and harmonisation of the Kosovo legislation with the EU legislation. As for the institutional aspect, there should be an even greater coordination of work between the relevant bodies regarding the matter that has to do with the protection of consumers.

The protection of consumers must be given special importance and continuity by all competent institutions, based on the applicable legislation. We consider that

⁶¹ See Chapter One and chapter eleven of Law No. 03/L-006 on contested procedure.

⁶² See LCP, article 127; Administrative Instruction (MEPTINIS) No. 01/2020 for keeping the electronic register of collective lawsuits finalized by final judgment.

⁶³ See LCP, article 126.

to reach a satisfactory stage in terms of knowledge about consumer rights and the protection of their interests, it is necessary to pay attention to it in educational institutions, through information campaigns, brochures, organizing conferences, and so forth.

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