

## CONSUMER PROTECTION: THE REPUBLIC OF NORTH MACEDONIA NEEDS A NEW LAW

Faton SHABANI<sup>1</sup>

<sup>1</sup>Department of Civil Law, Faculty of Law, University of Tetova

\*Corresponding author e-mail: faton.shabani@unite.edu.mk

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### Abstract

Consumer protection nowadays has become a necessity in order to make the market as fair as possible between traders and consumers. As such, consumer protection covers a wide range of topics, including but not limited to general product safety, health protection, dishonest market behavior, advertising of products and services, and other economic interests. In the Republic of North Macedonia, most of the rights of consumers are protected by the Law on Consumer Protection, but also by provisions of other laws and regulations. The Law on Consumer Protection is considered a basic law governing the relationship between individual consumers and traders selling goods and services. Frequent changes and additions to the Law on Consumer Protection, but also numerous remarks and complaints from individual consumers and consumer associations, have forced the Ministry of Economy to prepare and submit a proposal for the new Draft Law on Consumer Protection. The new Draft Law seeks to increase the harmonization of the law with several directives and regulations of the European Union. Taking into account all the above, this paper aims to provide a clearer picture of the previous and current situation in terms of consumer protection in North Macedonia, focusing on the need for new regulations and reasoning as well as the content of the new Draft Law on Consumer Protection.

*Keywords:* consumers, Draft Law on Consumer Protection

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### 1. Introduction

The notion of consumer as it is known in law differs from the concept of consumer as used in marketing and sociology. In law, precise definition of the 'consumer' is essential in order to delimit the circle of persons entitled to extended legal protection in relations with traders whose position is stronger.<sup>1</sup> As such, a consumer is generally described as a person who is economically active other than in connection with his or her profession. Persons trading with consumers who are doing so in performance of their profession, are designated as 'professionals' (business people).<sup>2</sup>

A comprehensive analysis of laws and other international acts shows that in principle they are designed to prevent traders from engaging in any kind of fraud or certain unfair practices in order to gain an advantage over competitors. They also perform another function, which is to protect the most vulnerable entities in society, consumers. The importance of consumer position and protection of consumer's rights today has led many academics, organizations, and the legislatures of various states to try to provide a definition of the notion of consumer. In this regard, most of EU directives and regulations on consumer protection have a narrower definition of consumers.

<sup>1</sup>Margus Kingisepp, Age Värvi, The Notion of Consumer in EU Consumer Acquis and the Consumer Rights Directive – A Significant Change of Paradigm?, *Juridica International*, XVIII/2011, 44-53, 44.

<sup>2</sup>Alexander J. Bělohávek, *B2C Arbitration: Consumer Protection in Arbitration*, New York: JurisNet, LLC, 2012, 9.

Thus, the Consolidated text of the Consumer Rights Directive in Article 2(1) refer to consumer as natural person who is acting for purposes which are outside his trade, business, craft or profession.<sup>3</sup> In contrast, the Macedonian legislator tried to give a broader definition. According to the Law on Consumer Protection: “Consumer is any natural person who buys products or uses services for immediate own consumption in the business premises of the trader, outside the business premises as well as by distance contracts for purposes that do not fall within its commercial, business, craft or professional activity”.<sup>4</sup> From the definitions for the consumer (including the above mentioned), it can be concluded that they qualify as two basic features: (1) the consumer is always a natural person; (2) consumer contracts are concluded for personal, family and household use.

Every consumer today undoubtedly requires a diverse offer, quality and value for the money invested. Moreover, every consumer expects accurate information about the products he buys and wants to make sure that his consumer rights are protected. But his choice is also the force that drives innovation, efficiency and economic growth. The law on consumer protection is in the process of expansion and rapid development as a very visible area. All of us are consumers who can readily detect both consumer protection transgressions and the effect of consumer protection.<sup>5</sup> It is necessary to emphasize that, in essence, all legal systems are based on the assumption that the consumer contract is not a separate type of contract.<sup>6</sup> Every contract (contractual relationship) may be of consumer nature if it is characterized, first of all, by specific contracting parties. The most important thing is that one of the parties usually acts in connection with a business profession or certain activity, or in pursuit of purpose for which it is founded (this applies to legal entities), while the other party, in contrast, acts exclusively to satisfy its personal needs.<sup>7</sup> Consequently, the emphasis is not on the type of contract. The legislation of certain countries is trying to improve the transparency of the concept by abandoning the conventional concept of a consumer contract and using a more extensive term such as a ‘contract concluded by a consumer’.<sup>8</sup> Today, the consumer is placed in a position to play an important role in the national economy and not only. This has caused that, the earlier approach of *Caveat emptor* means “Let the buyer beware” changed to *Caveat venditor* means “Let the seller beware”.

## 2. Description of the former situation

In the legislation of the Republic of North Macedonia, consumer rights, formally legal by general law, were regulated for the first time by the adoption of the Law on Consumer Protection in 2000.<sup>9</sup> However, due to the need for more complete compliance with European Union directives, a new Law on Consumer Protection was adopted in 2004, which came into

<sup>3</sup>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, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02011L0083-20180701> [24.12.2019].

<sup>4</sup>Article 4 of the Law on Consumer Protection, Official Gazette of the Republic of North Macedonia, No. 38/2004 (amended by the Law amending the Law on Consumer Protection, Official Gazette Nos. 67/2007, 103/2008, 24/2011, 164/2013, 97/2015, 152/2015, 140/2018).

<sup>5</sup>ABA Section of Antitrust Law, *Consumer Protection Handbook* (2004), American Bar Association, 2004, 1.

<sup>6</sup>Alexander J. Bělohávek, op. cit., 41.

<sup>7</sup>Ibid.

<sup>8</sup>For example: (a) French terminology ‘contrats conclus avec les consommateurs’; (b) Italian terminology ‘contratti stipulati con consumatori’; Spanish terminology ‘contratos celebrados con consumidores’

<sup>9</sup>Law on Consumer Protection, Official Gazette of the Republic of North Macedonia, No. 63/2000 (amended by the Law amending the Law on Consumer Protection, Official Gazette of the Republic of North Macedonia, No. 4/2002).

force on 25 June 2004.<sup>10</sup> The main amendments to this law occurred with the adoption of the Law on Amendments to the Law on Consumer Protection on February 25, 2011, which introduced a new chapter that refers to dishonest market behavior, fraudulent market behavior, and a new collective protection together with the regulation of the procedure, competence, decisions and appeal procedure, in case of violation of consumer rights and aggressive behavior in the market. With the entry into force of these changes, better and more comprehensive consumer protection has been established. At the same time, the Law on Consumer Protection has become a modern law that follows the trends of changes in legislation at European and world level, taking into account the obligation of North Macedonia to harmonize Macedonian legislation with *Acquis Communautaire* resulting from the signing of the Stabilization and Association Agreement.<sup>11</sup>

The Law on Consumer Protection regulates the rights and obligations of consumers, the conditions and manner of consumer protection, the conditions for trade operations that are important for the protection of consumer rights, the rights and obligations of consumer associations, as well as the competencies of the authorities of the state administration in terms of consumer protection. Regarding the supervision, the law is harmonized in accordance with the national system of supervision and implementation of the law by the competent inspection bodies and at the same time the determination of the court proceedings is in accordance with the national legal system.

### **3. Causes of issues under consideration**

The detailed description of the causes of the issues under consideration is reflected in the Report on the assessment of the impact of the regulation<sup>12</sup> prepared and published by the Ministry of Economy. The Law on Consumer Protection, which is in force, was drafted and developed under the strong influence of European legislation. All amendments to the law are aimed at harmonizing national legislation, and this has been largely achieved. However, there are no solutions in the law arising from the new directives. In particular, it should be noted that the liability system set out in the Law on Consumer Protection regarding liability for a product that is not consistent, defective product and unsafe product has shortcomings in terms of regulating the case and thus the legal consequences in these qualitatively different situations. In addition, it is particularly important that the numerous amendments to the Law have made it difficult to monitor and understand which directly leads to the realization of one of the basic rights of consumers - the right to information. Also, as a result of the adoption of the Directive on Consumer Rights, the Law in terms of regulating contracts concluded outside the business premises of the trader and contracts concluded at a distance has undergone significant changes. On the one hand, the changes have made the Law more modern and harmonized it with European tendencies to regulate consumer rights; on the other hand, numerous amendments have made the Law dysfunctional and difficult to understand.

<sup>10</sup>*Law on Consumer Protection*, Official Gazette of the Republic of North Macedonia, No. 38/2004 (amended by the Law amending the Law on Consumer Protection, Official Gazette Nos. 67/2007, 103/2008, 24/2011, 164/2013, 97/2015, 152/2015, 140/2018).

<sup>11</sup>*The Stabilization and Association Agreement (SAA)* is a new, third generation of accession agreements offered only to the Western Balkan countries. It aims at enabling them to establish close and long-lasting relations with the European Union and prospective EU membership. The Republic of North Macedonia is the first country that signed SAA and the first country in which SAA has entered into force. SAA was signed on 9 April 2001 and following its ratification by all signatories, it entered into force on 1 April 2004.

<sup>12</sup>*Report on the assessment of the impact of the regulation* (2019), 1-2, [https://ener.gov.mk/files/propisi\\_files/plan/3\\_1389512765Нацрт\\_Извештај\\_за\\_проценка\\_на\\_влијанието\\_на\\_регула.pdf](https://ener.gov.mk/files/propisi_files/plan/3_1389512765Нацрт_Извештај_за_проценка_на_влијанието_на_регула.pdf) [24.12.2019].

#### 4. The need for new law on consumer protection

The Ministry of Economy, as the main authority for regulating and supervising the protection of consumer rights, on the occasion of the promotion of the new Consumer Protection Strategy and the Draft Law on Consumer Protection had provided consistent justification for the need to adopt a new law and changes in the field of consumer protection. The Republic of North Macedonia's moving towards integration into the common policy for protection of consumers and users of products and services, which is of special interest to both citizens and companies. The purpose of the common policy is to ensure that the consumers of our country, as well as the consumers of the EU, benefit from the existence of the internal market, have the right to free choice of goods and services with the best quality and the best possible price. According to the Ministry of Economy, the main goal of consumer protection in the Republic of North Macedonia is to improve the quality of life of citizens and, in line with the EU strategy objective, to ensure that all citizens enjoy high standards of consumer protection. As it explained, a common feature of all modern democracies is the protection of the interests of economically weaker participants, ie vulnerable categories of citizens in business transactions on the market.<sup>13</sup> Furthermore, today the consumer is considered to be a regulator of economic development that directly affects the business policy of companies and promotes competitiveness. Therefore, consumer protection is an important segment of the internal market of our country, which directly affects its functioning, ie the development of business activities and economic growth.

Such changes are the result of demands made by the EU through European Commission reports, which have consistently emphasized the importance and complexity of Chapter 28 – *Consumer protection and public health*, which has a horizontal role in creating an internal market or a single market for all participants in terms of specifying the responsibilities and competencies of institutions, economic operators and citizens. The Chapter contains consumer protection requirements regarding product safety, hazardous imitations and liability for defective products. In the last report of 2019, the European Commission underlined that:<sup>14</sup>

- No progress was made on the cross-cutting aspects of consumer protection, where alignment with the general Product Safety Directive and the collective redress *acquis* needs to be completed.
- No positive development was made on the mediation scheme, which remains expensive for consumers.
- No additional resources have been allocated, either in terms of staffing in the Ministry of Economy or state grants for consumer protection. Current resources are limited and only cover advisory services and fees from international consumer organizations. Outreach is modest and only takes the form of brochures and educational materials developed by consumer organizations.
- The use of more contemporary communications tools should be ensured.
- Action should be taken to reinforce market supervision on product safety-related issues.
- Alignment with the product safety *acquis* remains incomplete.

<sup>13</sup><http://www.economy.gov.mk/vest/287>[24.12.2019].

<sup>14</sup>*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions* (2019 Communication on EU Enlargement Policy), {COM (2019) 260 final} 90, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf>[11.3.2020].

- A web platform where citizens can find all information on consumer protection and more awareness on non-safety-related issues is needed.

#### **4.1. Consumer Protection Program for the period 2019-2020<sup>15</sup>**

This program determines the basic goals of the consumer protection policy, the measures and activities for promotion and informing the consumers, counseling, education, as well as the necessary financial means to meet the program.

The main goal of the protection policy is to promote and protect consumer rights. According to the EU Consumer Program for the period 2014-2020,<sup>16</sup> the priorities of the consumer protection policy set out in this program relate to:<sup>17</sup>

- Improving consumer protection legislation;
- Improving the information and education of consumers, as well as raising awareness about their rights;
- Realization of consumer rights by further improving access to alternative dispute resolution;
- Strengthening the cooperation between the institutions involved in consumer protection and supporting the non-governmental sector in the field of consumer protection.

As mentioned priorities are aimed at:<sup>18</sup>

- Ensuring a higher level of consumer protection, through efficient implementation of the new following laws: the Law on Consumer Protection, the Law on General Safety of Products, the Law on Technical Regulations, and the Law on Protection of Patients harmonized with the new directives of the EU as well as the Consumer Protection Strategy for 2019-2023;
- Increasing the transparency of consumer information, educating and providing support to non-governmental consumer organizations;
- Further harmonization of consumer protection legislation and facilitation of access to alternative dispute resolution;
- Coordinating the activities for supervision and strengthening of the cooperation between the institutions involved in the protection of the consumers and support of the non-governmental sector for providing information and assistance to the consumers.

As a result, the above Program aims to restore consumer satisfaction and trust, and the implementation of European standards for consumer protection will increase the competitiveness of the North Macedonian economy and facilitate its inclusion in the domestic market, which should affect the growth of economic activity as a whole. Furthermore, the initiatives proposed will, among other things, contribute to the establishment of an appropriate

<sup>15</sup>Consumer Protection Program for the period 2019-2020, Official Gazette of the Republic of North Macedonia, No. 16/2019.

<sup>16</sup>The Consumer Protection Program(2014-2020),

[https://ec.europa.eu/chafea/consumers/programme/index\\_en.htm](https://ec.europa.eu/chafea/consumers/programme/index_en.htm)[24.12.2019]. The general objective of the Program is to ensure a high level of consumer protection, to empower consumers and to place the consumer at the heart of the internal market, within the framework of an overall EU strategy for smart, sustainable and inclusive growth.

<sup>17</sup>Part I of the Consumer Protection Program for the period 2019-2020.

<sup>18</sup>Part II of the Consumer Protection Program for the period 2019-2020.

administrative structure for development and coordination of this policy, to strengthen the independence and representativeness of consumer protection associations, to improve consumer support mechanisms to resolve their complaints, such as and to establish an appropriate mechanism for out-of-court resolution of consumer disputes, and to provide adequate conditions for the implementation of product safety policies.

#### **4.2. *Draft Law on Consumer Protection***

One of the initiatives resulting from the analysis of the market is the creation of a modern legal framework, through the new Law on Consumer Protection, which on the one hand, provides a high level of protection of consumer rights, and on the other hand guarantees easier business conditions. Namely, in national terms, the codified legal protection of consumer rights in the North Macedonia has a very new history, of only two decades. Thus, consumer rights were regulated for the first time by the adoption of the Law on Consumer Protection in 2000, which in less than four years was replaced by the new Law on Consumer Protection of 2004, which due to the need for more complete harmonization has often been amended and supplemented. After long discussion and presentation of the need to adopt a new law on consumer protection, the procedure for its preparation has begun and ended with consistent transposition of the rules for consumer protection set by EU directives. More specifically, the new Draft Law harmonizes the law with several EU directives. This and the harmonization with the new Draft Law on Misdemeanors, explained by the Ministry of Economy as a proposer of the law, will enable better implementation of consumer rights through effective market surveillance, better informing and educating consumers about their rights, strengthening the independence and representativeness of consumer protection associations and will provide instruments for quick resolution of disputes.<sup>19</sup>

The footnote to the title of the Draft Law on Consumer Protection stipulates that the provisions of this Law are harmonized with several directives, as follows:<sup>20</sup>

- Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products;
- Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999 amending Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products;
- Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts;
- Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers;
- Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees;
- Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council;

<sup>19</sup><http://www.economy.gov.mk/vest/287> [24.12.2019].

<sup>20</sup>*Draft Law on Consumer Protection*,  
[https://ener.gov.mk/default.aspx?item=pub\\_regulation&subitem=view\\_reg\\_detail&itemid=51810](https://ener.gov.mk/default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=51810) [24.12.2019].



- Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts;
- Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests;
- 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.

The objectives of the proposed regulation are:<sup>21</sup>

- ✓ Better informing and educating consumers about their rights;
- ✓ Providing consumers with instruments for quick dispute resolution;
- ✓ Better realization of consumer rights through effective market surveillance;
- ✓ Further development of product safety policy;
- ✓ Strengthening the independence and representativeness of consumer protection associations;
- ✓ Strengthening the role of local and regional self-government in the implementation of the policy for protection of consumers.

## 5. Conclusion

Recently, at the global level, there has been an increase in efforts aimed at creating a more efficient legal environment for consumer protection. Taking into account the interests and needs of consumers, recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power, the Macedonian legislator is constantly taking actions in three directions. The first direction is about, the establishment of globally accepted minimum standards of consumer protection. The second direction has to do with the harmonization of the law with several directives and regulations of the European Union and the third direction tries, to encourage the development of market conditions which provide consumers with greater choice at lower prices, and to facilitate production and distribution patterns responsive to the needs and desires of consumers. The legislator also faces a challenge, providing an adequate regulatory response to the developments of new technologies and the rise of Internet as a global marketplace, but also to profit from these developments. Moreover, in addition to the commitment to providing consumer protection, efforts are not lacking in terms of promoting consumer protection, i.e. improving the information and education of consumers, as well as raising awareness about their rights.

## References

- [1]. ABA Section of Antitrust Law, *Consumer Protection Handbook* (2004), American Bar Association, 2004.
- [2]. Bělohávek, Alexander J. *B2C Arbitration: Consumer Protection in Arbitration*, New York: JurisNet, LLC, 2012.
- [3]. Abusam.A., Keesman K.J., Spanjers H., Straten G. and Meinema. K. 2002. Effect of oxidation ditch horizontal velocity on the nitrogen removal process. *European Water Management Online*, EWA 2002.

<sup>21</sup>Report on the assessment of the impact of the regulation (2019), 2-3.

- [4]. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions* (2019 Communication on EU Enlargement Policy), {COM (2019) 260 final}, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf> [11.3.2020].
- [5]. *Consumer Protection Program for the period 2019-2020*, Official Gazette of the Republic of North Macedonia, No. 16/2019.
- [6]. Kingisepp, Margus, Age Värvi. The Notion of Consumer in EU Consumer Acquis and the Consumer Rights Directive – A Significant Change of Paradigm?, *Juridica International*, XVIII/2011.
- [7]. *Law on Consumer Protection*, Official Gazette of the Republic of North Macedonia, No. 63/2000 (amended by the Law amending the Law on Consumer Protection, Official Gazette of the Republic of North Macedonia, No. 4/2002).
- [8]. *Law on Consumer Protection*, Official Gazette of the Republic of North Macedonia, No. 38/2004 (amended by the Law amending the Law on Consumer Protection, Official Gazette Nos. 67/2007, 103/2008, 24/2011, 164/2013, 97/2015, 152/2015, 140/2018).
- [9]. *Report on the assessment of the impact of the regulation* (2019), [https://ener.gov.mk/files/propisi\\_files/plan/3\\_1389512765Нацрт\\_Извештај\\_за\\_проценка\\_на\\_влијанието\\_на\\_регула.pdf](https://ener.gov.mk/files/propisi_files/plan/3_1389512765Нацрт_Извештај_за_проценка_на_влијанието_на_регула.pdf) [24.12.2019].
- [10]. *The Consumer Protection Program* (2014-2020), [https://ec.europa.eu/chafea/consumers/programme/index\\_en.htm](https://ec.europa.eu/chafea/consumers/programme/index_en.htm) [24.12.2019]. <http://www.economy.gov.mk/vest/287> [24.12.2019].