

CONSUMER PROTECTION

1. INTRODUCTION

The right to the protection of consumers is a relatively new legal field with the main goal to protect the economically weaker party in the contractual relations. This issue was not paid enough attention for quite some time, however, the rapid development of technology and the accelerated economic prosperity at the global level, placed an increasing focus on legal protection and regulation of the mentioned areas, and there are no exceptions in this regard among the Western Balkan countries, including Bosnia and Herzegovina. In our country the legal protection has not been regulated by a single law for a long time, but its sources were contained in different regulations, mostly in the Law on Obligations. Such situation continued until the adoption of special laws which regulate this area in Bosnia and Herzegovina (BiH) and the Republic of Srpska (RS).

Besides providing consumers with a wide range of products and services, modern market also implies a high and unified level of consumer protection, i.e. the establishment of an institutional structure which represents basis for the implementation of the effective consumer protection policy and market surveillance as effective instruments for settling consumer disputes.

Education of consumers is not necessary only to protect their rights but also to help them get to know their obligations, since ignorance of the law is often the reason for which both sides are deprived of their rights.

2. LEGAL AND INSTITUTIONAL FRAMEWORK OF PROTECTION

Legal regulation of the consumer protection in the Republic of Srpska and Bosnia and Herzegovina represents a special form of implementation and harmonization of national legislation with the EU legislation, which represents one of the basic requirements that BiH must meet in order to become a member of EU with full membership. One of the main goals and tasks of the European Union is health and safety protection of consumers, protection of

their economic interests, informing, education and effective organization of consumers. Besides, the effective consumer protection is necessary in order to secure the proper functioning of the market economy.

The Republic of Srpska gives its contribution to the fulfillment of obligations BiH undertook by signing the Stabilization and Association Agreement through the harmonization of its consumer protection standards with the EU standards.

Legal institute of consumer protection is, in accordance with the rules, regulated by special laws, since in such situations, the safety, protection of health and economic interests of consumers, are regulated not only by law on consumers but also by antitrust laws, and indirectly by encouraging the economic efficiency and promoting the competition culture within a society.

Due to the complexity of socio-economic organization, the consumer protection in Bosnia and Herzegovina is regulated by the entity and state laws. The relations between consumers, producers and traders in the territory of BiH were regulated for the first time by the Law on consumer protection in BiH adopted in 2002, which was originally designed as a temporary solution, while the new law, which is still applicable, was adopted in 2006.

At the entity level the first law in the Republic of Srpska was adopted in 2012 ("Official Gazette of the Republic of Srpska", no. 6/12) and in 2014 ("Official Gazette of the Republic of Srpska", no. 63/14) certain amendments and annexes to the Law were made. However, the Federation of Bosnia and Herzegovina has not adopted a special law yet and consequently the provisions of the Law on Consumer Protection in BiH are applied.

Observing the relationship of the two aforementioned laws, it can be concluded that the Law on consumer protection in BiH is directed to principal regulation of providing services of general economic interest which meet the basic needs of consumers, while the Law in the Republic of Srpska deals with more types of services, and processes the mentioned service of general economic interest in a more detailed and multi-efficient manner.

The law on consumer protection in the Republic of Srpska determines the basic rights of consumers when buying goods and services, protection of consumers' safety and health, the obligation of performing trade activities in a fair way, sale of products and service providing, product labeling, liability and guarantee for the product or service, unfair commercial practice, services of general economic interests, agreements concluded outside the business premises, sale on the basis of distance contracts, unfair provisions in consumer contracts, electronic payment instruments, travel package arrangements, time usage of real estate in tourism, holders of the consumer protection, protection of consumer rights, monitoring and penalty provisions, as well as other issues regarding the protection of consumers.

The above given issues which are regulated by the law, shall be processed in more detailed way below, focusing on extra-judicial and judicial protection of the consumer rights.

3. BASIC CONSUMER RIGHTS

In order to be able to determine basic consumer rights, it is necessary to first define the consumer and seller terms.

According to the legal definition, a consumer is a natural person who buys, orders, acquires or uses products or services for his/her own needs and for the needs of his/her household or to who an offer for goods and services was directed. A seller is defined as a company or an entrepreneur that sells the goods or provides services to consumers in the scope of its business or for other commercial purposes. It is obvious that only a natural person may act as a consumer, which implies that legal entities may not be considered consumers in any way.

Basic consumer rights in the Republic of Srpska include the following:

- 1) the right to meet basic needs implies the access to the essential products and services, such as, food, clothes, shoes, living space, water, electricity, health care, education and hygiene,
- 2) the right to safety implies the right to have protection from the goods and services endangering life, health, property or environment, i.e. which are not allowed to possess or use,
- 3) the right to information implies the right to have available the accurate information necessary for the reasonable choice among the offered goods and services,
- 4) the right to choose implies the possibility of choice between different goods and services, at reasonable prices and with the guarantee of quality,
- 5) the right to hear the voice of consumers implies the right to be represented through the associations for consumer protection and to participate in the work of competent authorities dealing with issues of interest to consumers
- 6) the right to legal protection implies the right to demand protection in legally determined proceeding in case of violation of rights and the right to compensation for pecuniary and non-pecuniary damage caused by a seller,

- 7) the right to education implies the right to acquire basic knowledge and skills necessary for the proper and reliable choice of goods and services, as well as the skills on basic rights and obligations of consumers and the way of exercising the same and
- 8) the right to healthy and sustainable environment implies the right to live and work in the environment that is not risky for the health of consumers.

Exercising the above mentioned rights of consumers in BiH is possible only if all participants in the chain of supplying such services participate in building complete and self-sustainable consumer protection system honestly and with responsibility. Strengthening consumers in terms of raising the level of their awareness, as well as changing habits of consumers of today's society in BiH, are imperative and a precondition for their more powerful action towards their improvement.

Consequently, the consumer may not waive the rights which are proclaimed by law, nor be deprived of rights allocated to him/her by the Law on Consumer Protection. The seller is not allowed to request provisions in the consumer contracts which are contrary to the law, which are unfair or concluded in such way to cause damage to consumer. If there are such provisions, they shall be declared null and void.

For all relations not regulated by the Law on Consumer Protection, and which belong to the field of consumer protection, provisions of the laws regulating obligation relations in the Republic of Srpska, i.e. provisions of the Law on Obligations are applied subsidiarily. In case of disputes regarding the interpretation of certain legal provisions, the same are interpreted and applied in favour of consumers, according to the principle **in dubio pro consumente**. Therefore, pursuant to the above said, it can be concluded that the regulations which are more favourable for the consumers are those which are applied in every specific case.

The subjects important for the realization of consumer protection, that is, the subjects prescribed by law as holders of legal consumer protection are responsible for the realization of proclaimed rights of consumers.

4. UNFAIR COMMERCIAL PRACTICES

The unfair commercial practices are prohibited by the Law. In terms of this Law, the unfair commercial practice implies that the seller operated contrary to the requirements of

professional diligence, and that the seller significantly violated or may significantly violate the economic behavior of the average consumer by not allowing the consumer to make a reasonable choice due to which consumer may make a decision that otherwise, in relevant conditions, would not be made. In addition, deceptive and aggressive commercial practices, as well as the violation of the duty to provide information are also considered to be unfair commercial practices.

A commercial practice is considered to be deceptive if it contains inaccurate information due to which the commercial practice is incorrect or if in some other way, including its entire presentation, and even if the information is factually correct, it deceives or may deceive an average consumer, and thus makes or may make the consumer bring a business decision that would not be brought otherwise. Additionally, commercial practice is considered deceptive if in a particular case, taking into consideration all characteristics and circumstances of the case, and all limitations to the specific means of communication, it does not contain important information which, depending on the context, an average consumer needs to make a business decision based on being completely informed and thus leads or may lead the consumer to make a decision which would not be made otherwise.

The Law prescribes a whole range of explicitly given cases which are considered deceptive commercial practice. In most cases it refers to giving untruthful statements that may lead consumers to deception or make them behave in the way they would not have behaved otherwise. Untruthful statements refer to the statements of the sellers that they are acting in accordance with the relevant code of conduct when they are not, that this code of conduct has been approved by relevant authority or specific organization, or that the commercial behavior of the seller is approved or supported by relevant authority or specific organization.

This category also includes: untruthful statement on the expiry date of the product and availability of the product in order to make the consumers make the purchase without delay, untruthful statement on the compliance of the product with the regulations, untruthful statement on the termination of business or the change of business premises, functions of a specific product, rewards or promotional games. There are some other unfair actions of the seller which are also considered to be deceptive. These are: unauthorized highlighting of the quality label and similar, concealing the valid reason for the doubt referring to the fact that the ordered product can be delivered, representing consumers rights as special advantage when purchasing, imitating product of another seller, providing untruthful information about market conditions, abuse of the terms “guarantee”, “gratis”, “free” etc.

Aggressive business, on the other hand, implies behavior of a seller which through the method of harassment, force or illegal influence (in terms of the abuse of position of power) undermines the consumer freedom and behavior. This may refer to different ways of behavior

such as visiting consumers without their consent, multiple addressing consumers without their will, avoiding the exercise of the consumer rights under an insurance policy, informing consumers about the possible consequences on the employment and existence due to their refusal to buy the product, etc.

The Law prescribes specific criteria for determining intrusive commercial practices. Some of them are the following: time, place, nature and duration of the aggressive practices, use of threatening or offensive language or actions, the fact that the seller intentionally, with the aim to influence the consumer's decision regarding the product, uses unfortunate or other difficult circumstances that the consumer found himself/herself in, which may influence the ability of the consumer's judgment, difficult or disproportionate non-contractual obstacle set by the seller upon the consumer who wants to exercise his/her contractual rights, including the right to terminate or cancel the agreement or choose other product or other seller and the threat of the seller that certain actions which are not in accordance with the law shall be conducted against the consumer.

The Law stipulates that the ministry whose jurisdiction includes issues of the consumer protection shall encourage sellers who adopted certain codes to act in compliance with the same, but also to inform the consumers on the existence and the content of the same.

5. EXERCISING LEGAL CONSUMER PROTECTION

In case of violation of consumer rights, they may exercise their rights in extra-judicial and judicial proceedings. Multiple protections of consumers are envisaged to raise the awareness of this category of population so that they may exercise their rights in the most efficient and effective way possible.

A consumer dispute may be defined as a specific dispute arising from the contractual relationship between the seller and the consumer. The basic principle of extra-judicial settlement of consumer disputes is the equality of the parties included in disputes. Although, observing legal provisions, it may be concluded that more attention is paid to the rights of consumers and obligations of sellers, while only a few provisions refer to the rights of sellers. In order to ensure the highest quality implementation of consumer protection policy, it is necessary to establish cooperation between many subjects responsible for its implementation.

According to the applicable legislation, the subjects responsible for the protection of consumers in the Republic of Srpska are:

- The Government of the Republic of Srpska,
- The Ministry of Trade and Tourism,
- Other republic administrative bodies within their jurisdiction defined by law governing the actual jurisdiction of the administrative bodies,
- Agencies, funds and regulatory bodies within their jurisdiction in accordance with the law governing their jurisdiction,
- Bodies of local self-government units,
- The Chamber of Commerce and Industry of the Republic of Srpska and the Chamber of Skilled Crafts and Entrepreneurship of the Republic of Srpska,
- Consumer protection associations,
- Educational institutions and the media,
- The Republic Administration for Inspection Activities of the Republic of Srpska and other relevant inspection bodies,
- The insurance ombudsman and
- The banking ombudsman.

The bodies responsible for the consumer protection at state level are:

- The Ministry of Foreign Trade and Economic Relations,
- The Ombudsman for Consumer Protection in BiH,
- BiH Consumer Protection Council,
- The Council of Competition of BiH,
- The competent authorities of entities and Brcko District,
- The office for competition and consumer protection in the Federation of Bosnia and Herzegovina and the Republic of Srpska,
- Associations of consumers,
- Education institutions and the media,
- Inspection and other organs in accordance with the law.

Associations of consumers have particularly important role in the protection of individual and collective consumer rights, which is the main purpose of their existence. Additionally, they give important contribution in creating the consumer protection policy at entity and state level. Today there are about ten associations which exist and defend the interests of the consumers in the Republic of Srpska, which consumers may contact and request legal assistance and protection.

6. EXTRA-JUDICIAL AND JUDICIAL PROTECTION

Extra-judicial protection – steps in resolving the consumer disputes

1. Written claim of consumer send to seller

Products intended for consumers use must be safe for life and health of consumers and environment. The seller is obliged to provide products and services to the consumer in a manner which is not inconsistent with the professional attention and good commercial practice. Consumers may and can seek the protection of their rights with the seller that caused the violation of one of their rights. In accordance with the aforementioned the seller is obliged to keep a special Book of Claims. In case of defective products or services, wrongly calculated price and other defects, the consumer has the right to file a written claim. If the defect is obvious the seller is obliged to respond to the written claim within 8 days from the day of its receipt.

In order to correct the identified defects, the seller is obliged to do one of the following upon the request of and as chosen by the seller:

- 1) To remove the defect of the product at its own cost;
- 2) To replace the defective product with the identical new one;
- 3) To return the money paid for it and reimburse the actual reasonable costs of returning the defective product or
- 4) To reduce the price of the product.

In case of a product with visible defects, the consumer submits the request to the seller in written form within 8 days from the day of providing the product or the service. If the defect is detected later, the request is submitted within 60 days from the day of detecting the hidden defect, and no later than two years from the day of obtaining the product. The consumer is obliged to submit a copy of the receipt along with the mentioned request, in order to support his/her allegations on the said violation, i.e. defect.

2. Solving disputes through the consumers protection associations

Consumer protection associations should have the most important role in the protection of consumers. In order to exercise their rights, the consumers may, in addition to judicial protection, use some other mechanisms to protect their rights, and contact some of the consumers associations that operate in the territory of the Republic of Srpska.

Consumer protection associations are associations established in accordance with the law governing the establishment and the legal position of the associations, whose field of action is the achievement of goals and protection of consumer rights. Consumer protection associations must act independently of sellers and must not acquire financial funds from the sellers.

Consumer associations are very important subject of the consumer protection system since they have a role of the mediator between sellers, consumers and competent bodies, whose obligation to protect individual and collective interests of consumers is legally defined. Besides, consumer associations are equal partners in making political and other decisions important for consumers, they inform consumers on prices, quality, control and safety of products and services, participate in the development of the program, and are authorized for filing collective lawsuits with the aim to protect collective interests of consumers. The decision passed upon collective lawsuit is applicable to all consumers who address the association, and the specific decision brings changes in practice, having in mind that the same in the subject area is very deficient.

Consumer informs the association in written form on the violation of his/her rights and submits the accompanying documents. The association is obliged to conduct proceeding, or to mediate in resolving claims and to inform the consumer on the result.

3. The role of Ministry and state administration bodies in settling consumer disputes

The Ministry of Trade and Tourism of the Republic of Srpska is the ministry responsible for consumer protection. The Ministry is competent to propose to the Government the Program for the consumer protection which is adopted for a period of two years, to take care of the implementation of the Program, to study and make proposals regarding the consumer protection policy, to cooperate with consumer protection associations and monitor their work, to keep records of the associations and unions for the consumer protection in the Republic of Srpska, to monitor the situation in the field of consumer protection and to propose to the competent authorities the amendments to the regulations concerning the consumer protection

which are within the framework of its competence, and to coordinate and cooperate with the competent bodies in Bosnia and Herzegovina. The goal of the Ministry of Trade and Tourism is to strengthen the work of association in the Republic of Srpska through the implementation of projects related to informing and educating consumers as well as through sub-financing for material and overhead expenses. Strengthening the administrative consumer protection through the enhancement of cooperation with other holders of consumer protection is reflected in the established practice of the Ministry to cooperate with all institutions, i.e. subjects responsible for the consumer protection.

In order to improve this field a Department of Consumer Protection was established as an organizational unit within the Trade Sector in the Ministry of Trade and Tourism, whose main aim is to protect the rights and needs of consumers in the Republic of Srpska. This Department, acting as The Office for Consumer Protection since its establishment in 2004, has been making great efforts and paying special attention to the development of consumer associations. Accordingly, the Department of Consumer Protection closely cooperates with the consumer associations and prepares annual programs for the protection of consumers which are consistent with the state annual program for the protection of consumers

At the state level, the jobs which are under the competence of the Ministry of Trade and Tourism of the Republic of Srpska, are performed by the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina.

A protection provided by the competent bodies of **the Republic Administration for Inspection Activities of the Republic of Srpska and other competent inspections** and organs in accordance with their competences is also at the consumer's disposal. The Republic Administration for Inspection Activities performs inspections and other related professional activities, and performs the same in the field of consumer protection. Inspection control related to the consumer protection is also performed by the inspectors in the units of local self-government.

In order to make it possible for the consumer to address the inspection authority it is necessary to first address the seller at who the violation occurred, i.e. whose products/services are defective, in case that the seller did not react upon the consumer's claim. The deadline for addressing the inspection authority is 90 days from the day of discovery of the defect or violation of rights, no later than 6 months from the day of the violation. Inspection and other competent organs are obliged to consider the request for the consumer protection, and to inform the consumers in written form on the performed actions within 15 days from the day of the receipt of the request.

The role of Republic Administration for Inspection Activities of the Republic of Srpska is to control the implementation of regulation in the field of consumer protection and fair competition. The inspection authorities act upon specific claims submitted to inspection by consumers in relation to the exercise of individual rights of consumers and it usually refers to the rejection of consumer claim on different products and services. In all situations where confirmed that the consumer claim is justified, i.e. that the seller unreasonably rejected consumer claim, the inspector shall issue a decision based on which it shall be ordered to the subjects of inspection to act in accordance with the provisions of the law and to ensure the exercise of the relevant rights to the consumers.

BiH Consumer Protection Council was established at the state level, based on the decision adopted by the Council of Ministers of Bosnia and Herzegovina. It consists of the members of government and non-government sector, i.e. representatives of public institutions, entity bodies, including the representatives of consumer associations, which allows it a higher degree of independence and objectivity in its performance. Within its competences, the BiH Consumer Protection Council especially proposes to the Council of Ministers of Bosnia and Herzegovina an annual program for the protection of consumers and monitors its implementation, determines the grounds for the consumer protection policy, directs the scope of activities which are financed, or co-financed from the budget of Bosnia and Herzegovina. The fact that a very few consumers are adequately informed on their legal rights, and similarly the significant number of sellers, service providers and producers, is a reason for frequent violations of the consumer basic rights and the laws governing the field of consumer protection in BiH.

4. Settlement of disputes before the competent boards in the Republic of Srpska

Regarding the violation of the consumer rights under the Law on Consumer Protection, the extra-judicial protection of rights is to be achieved through the Arbitration Commission for the Consumer Disputes established within **the Chamber of Commerce of the Republic of Srpska** and the Arbitration Commission for Consumer Disputes established by **the Crafts and Entrepreneurial Chamber of the Republic of Srpska**.

In order to initiate the proceeding before the Commission it is necessary that the seller and the consumer try to reach an agreement with each other first. The proceeding is initiated by a claim which must be submitted within 30 days from the date on which the seller informed the consumer in written form that the claim is not accepted, i.e. upon the expiry of 30 days which is a legal deadline for the seller to respond to the claim.

Members of the Commission are obliged to conduct the proceeding impartially and independently, and are not allowed to act as representatives of the parties to the dispute, nor are allowed to receive or seek guidelines and instructions from them. The Law also stipulates specific cases when there is no possibility to settle the dispute before the competent Commissions and they include:

- death, physical injuries or impaired health of consumers
- providing health or legal services to the consumers and
- transfer of rights over the real estate.

Besides, the Commissions do not settle disputes with a value greater than **10.000,00 BAM**.

5. Ombudsman for Consumer Protection in Bosnia and Herzegovina

The institution of the Ombudsman for consumer protection in Bosnia and Herzegovina was established by the Law on consumer protection in Bosnia and Herzegovina in 2006. The word ombudsman comes from the Swedish and from the very beginning it is used for a representative, i.e. guard of the interests of the citizens. The Ombudsman for consumer protection in Bosnia and Herzegovina also acts in this regard, with the main goal to protect the interests of the citizens and control the work of public institutions.

The institution of Ombudsman has a status of a legal entity and acts as an independent body with the aim to promote good and efficient implementation of consumer protection policy in Bosnia and Herzegovina. The Law on consumer protection in BiH, as a basic law of the institution of Ombudsman, prescribes duties and powers of the Ombudsman, regulating at the same time the relations between the consumers, producers and sellers in the territory of Bosnia and Herzegovina. The institution is determined to efficiently implement the protection of consumer rights allocated to them in accordance with the applicable regulations, and to tailor the society to the consumers. The claims of the consumers are used as the main method of collecting information on violation of the rights of consumers. The claim is filed in written form, but the Ombudsman shall decide whether to consider the filed document as a claim which is not filed in a prescribed form or does not contain all elements necessary for a claim if it is obvious what it refers to. The majority of claims are related to the sector of economic services of general interest (the delivery of energy, water, telecommunications, postal services and public transport), then financial and commercial sector. Besides acting upon individual

claims, the Ombudsman is also authorized to protect collective interests of consumers and in this regard pass instructions and initiate court proceedings.

According to the legislation, the duties of the Ombudsman for consumer protection in BiH are the following:

1) to provide information on rights and duties of consumers and support the activities of consumer associations;

2) to monitor and propose the activities considering the relations between the companies and consumers, as prescribed under this Law, regulations governing the contractual relations or some other law;

3) to investigate the market activities directed towards the consumer ex officio or upon the claims and to coordinate its activities with the activities of entity market inspections;

4) to pass decisions and take other actions in case of consumer claims or violation of good business practices;

5) to issue guidelines or recommendations on specific standard conditions or activities which are applied in specific business sectors or used by specific economic operators;

6) to recommend the use of specific terms of the agreements when the same are intended to be used in specific sectors of business;

7) to negotiate with the representatives of certain trade associations the models of agreements applied in specific sectors of business;

8) to propose and initiate the settlement of consumer disputes through the application of mechanisms for alternative dispute resolutions;

9) to keep the contact with the Institution of the Human Rights Ombudsman of BiH regarding the issues of mutual interest, especially the services of general interest or public services;

10) to propose to the Consumer Protection Council of BiH and the Council of Ministers of BiH the necessary improvements to the Law on Consumer Protection, and to make its contributions regarding the guidelines and the efficiency of policy in the field of consumer protection;

11) to investigate the influence of other initiatives of authorities on the protection of consumers.

Within the broad range of powers allocated to the institution of the Ombudsman, there are few that must be emphasized: the resolution of claims filed by individual consumers, provision of information and technical support to consumers organized in consumer associations, cooperation with the media and educational institutions, and as the main and most important task, the collective protection of consumer rights, as economically weaker party in relations with sellers of goods and providers of services.

In this regard the Ombudsman for consumer protection in BiH is authorized to:

- 1) give instructions to stop performing activities which are not in compliance with the legislation considering consumers and to bring these instructions before the court;
- 2) initiate proceeding before the relevant court;
- 3) to initiate proceeding before the relevant court in case of damages to collective interest of consumers, in accordance with the provisions of the Law on Consumer Protection.

From the aforementioned it is clear that the Institution of the Ombudsman for consumer protection in BiH has primarily the role of mediator and promoter, having in mind that its recommendations, instructions and other decisions do not have the binding legal force but only referral character. Therefore, it is left to free will of those whom it may concern to decide whether they shall act accordingly, or they would otherwise wait for the possible initiation of court proceeding.

Judicial protection

Consumer dispute is any dispute arising from the contractual relations between the seller and the consumer. The Law on Consumer Protection of the Republic of Srpska and the Law on Consumer Protection of Bosnia and Herzegovina have been determined as the method of resolving consumer disputes before the court. The courts are specific and most effective type of protection of consumer rights and interests. The competent court shall issue an act by which it orders the termination of every action or practice contrary to the provisions of the Law on Consumer Protection or other regulations, which may harm common interests of consumers. The characteristic of this proceeding is the urgency in acting.

In this regard, the Republic of Srpska adopted in 2013 the amendments and changes to the Civil Procedure Code of the Republic of Srpska in relation to the claims for the protection of collective rights and interests. The new changes and amendments to the Civil Procedure Code

regulate the issues of consumer protection and exercise of their rights, in substantive and procedural terms, in more comprehensive and detailed way. The Law very thoroughly defines the issues concerning the submission of claims, active and passive procedural legitimacy, as well as the opportunities for specifying claims, i.e. what is required from the court.

Active and passive procedural legitimacy

The actively legitimate subjects to file a claim to the competent court are associations, bodies, institutions or other organizations established in accordance with the law, which under its registered or legally defined business deal with the protection of legally defined collective rights and interests of citizens (where such power is explicitly provided by a special law along with the conditions determined by that law).

The other authorized claimants may be joined to the claimant in a proceeding initiated by the claim for protection of collective rights and interest as interveners, if the claimant approves it. Physical and legal entities whose collective interests are protected by the filed claim, and the reason for the same, may also intervene in the proceeding.

On the other side, physical or legal entities performing certain activities or work in general, through its performance, or failure, seriously violate or endanger collective rights and interests. Rights and interests may include the interests referring to the environment, moral, ethics, consumers, anti-discrimination and others legally prescribed interests which must be seriously violated or endangered by the activity, i.e. work in general of the entity against which the claim is filed. The actions of the defendant, which may violate or endanger the interests and rights of persons who the claimant is authorized to protect, may be the adoption of specific rules on terms and manner of performing the activities of the defendant or his corresponding practice, construction of certain objects, failure to install the prescribed protective and other devices, etc.

In case of violation of provisions referring to the presentation of the agreement or including the unfair provisions to the consumer agreements, the proceeding before the competent court may be initiated jointly or individually against more sellers from the same economic sector or their associations which use or recommend the same practice or include the similar unfair provisions to the consumer agreements.

Jurisdiction

In case of disputes for the protection of consumer rights the competent court shall be the one under whose jurisdiction is the territory in which the consumer has a permanent or temporary residence. Therefore, the court that has general territorial jurisdiction over the defendant or the court under whose jurisdiction is the place of action which violated the collective interests or rights due to whose protection the claim was submitted, shall decide in the first-instance claims, unless otherwise prescribed by special regulation.

Determination of the claim

Unless otherwise provided by special law, the claimant may request the following:

- 1) to determine that certain actions, including the omission of the defendant, violated or endangered legally protected collective interests and rights of the persons who the claimant is authorized to protect,
- 2) to prohibit undertaking of any action that would violate or endanger the interests or rights of the persons who the claimant is authorized to protect, including the use of specific contractual provisions or the business practice,
- 3) to order to the defendant to take actions in order to eliminate the existing or potentially harmful general consequences of the defendant's illegal actions, including the establishment of the previous condition or condition most similar to that, or condition in which potential violation of the protected collective interests or rights would not be possible, and
- 4) to publish in the media the judgment by which one of the claims is accepted at the expense of the defendant.

The competent court, deciding consumer disputes, usually issues a condemnatory judgment by which it orders the termination of every action or practice which is contrary to the provisions of the Law on Consumer Protection or other regulations, and which violate the collective interests of consumers. In addition, the court has the power to order the announcement of the entire judgment or its part in the media, or to request the statement from the defendant regarding the judgment.

The subjects responsible for the consumer protection in the same proceeding are authorized to request the compensation for the damage caused to collective interests of consumers. Physical and legal entities may in separate litigations for damages refer to the legal finding in the judgment, based on which the requirements of the claim for protection of collective rights and interests shall be adopted, that specific actions, including the omission of the defendant, violated or endangered legally protected collective interests and rights of the persons who the claimant is entitled to protect. In this case the legal finding in the litigation shall be legally binding for the court.

Security measures

Before the beginning of or during the proceedings initiated by the claim for the protection of collective rights and interests the court may, at the proposal of the claimant, determine the court security measures prescribed by law, if the claimant proves:

- 1) that the defendant acted in a way which violated or seriously endangered collective interests or rights protected by the claim and
- 2) that determining a measure is necessary in order to eliminate the danger of irreparable damage or to prevent the violence.

On the basis of the court security measure the claimant may request from the court to temporarily determine the rules by which the defendant shall proceed in performing its activities, in accordance with the requested change, i.e. amendment to its rules or practice.

Counterclaim

Physical or legal entity that is performing certain activity due to which a person entitled to file a claim for protection of collective rights and interests states that it violates or endangers collective interests or rights of the persons who the claimant is authorized to protect by such claim, is entitled to file a claim by which it shall request to be determined that certain actions, even omissions, do not violate or endanger those collective interest or rights, i.e. that they are not violated nor endangered in illegal way. In this particular case, it is a claim filed by the defendant, now counterclaimant, with a request to determine that the collective rights and interests of the claimant, now defendant in the counterclaim, are not violated or endangered.

Claimant in such litigation may request that a person entitled to file a claim for protection of collective rights and interests is forbidden to act in a certain manner, especially in relation to public releases, damages, and announcement of the judgment in the media at the expense of the defendant.

The claim for protection of collective rights and interests may, as defendants, include also the persons authorized to represent the person entitled to file a claim, or members of its organs, but it may also include its prominent members who appear in public on its behalf.

The counterclaimant may request that the claimant and persons authorized for representation, compensate special damage in the amount that shall be determined by the court as estimated by the same, if it is proved that the mentioned claim was obviously ungrounded and that the conduct of the litigation regarding the claim, especially its monitoring by the media, seriously harmed the reputation and business interests of the counterclaimant.

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