



PROVISIONAL INSTITUTIONS OF SELF GOVERNMENT

KUVENDI I KOSOVËS
СКУПШТИНА КОСОВА
ASSEMBLY OF KOSOVO

LAW No.2004 / 17

ON CONSUMER PROTECTION

The Assembly of Kosovo,

According to Regulation Nr. 2001/9 of May 15 2001 on a Constitutional Framework for Provisional Institutions of Self-Government in Kosovo, Chapters 5.1(d), 9.1.1, 9.3.3, 11.2,

and pursuant to Regulation No.1999/1 of June 25 1999 of United Nations Interim Administration Mission in Kosovo on the Authority of United Nations Interim Administration in Kosovo, amended by UNMIK Regulation No. 1999/24 of December 12 1999 on the Applicable Law in Kosovo, and for the purpose of protecting consumers in the free market of Kosovo,

and convinced that the content of provisions would eliminate unlawful business practices, and advance local protection in conformity with international standards,

Approves:

LAW ON CONSUMER PROTECTION

CHAPTER I

GENERAL PROVISIONS

Article 1

This Law determines, regulates and protects principal consumer rights in their business deals, in services and other forms in the free market. The Law ensures protection of health, environment and economic interests of consumers.

Definitions and interpretation rules

Article 2

Each of the following terms, whenever used in this Law, shall have the given meaning, unless the context in which it is used requires otherwise:

Ministry means the Ministry of Trade and Industry of established under the Regulation No. 2001/19 of UNMIK.

Minister means the Minister of the Ministry of Trade and Industry.

Consumer means any natural person who buys and uses goods or services primarily for his personal needs, but not for purposes related to commercial activity, namely for the resale of such goods.

Seller means a legal and/or physical person who sells goods or conducts services for the consumer.

Merchant under this law means a legal and/or physical person, who conducts commercial activities and who has been registered for to carry out such activity.

Supplier means a registered legal and/or physical person, who supplies and delivers goods to the seller in accordance with his trade activity of his profession.

Producer- means a legal and/or physical person who puts his name, trademark, or any other distinctive mark on consumer goods, as well as the importer of goods in Kosovo who operates within his trade activity.

Consumer commodity means anything tangible, movable, measurable meant for selling to consumers in any possible legal form.

Contract means any agreement between the producer, seller, supplier and provider of services on one side, and consumers on the other, whose aim is transferring of ownership of goods or execution of services.

Guaranty- means the liability of producer, seller, supplier or provider of services established by the contract, toward consumers for repairing, exchanging in kind, or returning the amount paid to the consumer for such goods.

Declaration means a document by which the producer declares its personal responsibility that a commodity and/or service offered by him/her is in conformity with a given standard and technical specification.

Defect of a commodity means the lack of safety of the commodity or service paid by the consumer.

Reparation means insuring the state of commodity is in accordance with the sales contract, in case of its inconsistency with it.

Selling price of a commodity means the ultimate price given for the commodity unit or for its quantity, including taxes.

Basic consumer rights

Article 3

3.1. This Law regulates the fundamental right of consumers upon purchasing goods and services, as well as on other forms of receiving goods and services in the market, such as:

- a). The right to protect economic interests of consumers;
- b). The right to health, asset, and life protection
- c). The right to legal protection of consumers
- d). The right to information and education of consumers

- e). The right to be organized in consumer associations in order to protect the consumers' interests and the right of representation of consumers in the work of bodies dealing with issues related to the interest of consumers.

3.2. The rights of consumers may be limited in extraordinary circumstances, for the purpose of protecting the interest and security of Kosova, its nature, environment, human health, but not such that it would bring the consumers in an unequal positions.

CHAPTER II

SAFETY OF CONSUMERS

Article 4

4.1. Producers and providers of services are liable to place safe goods and services in the market.

4.2. Safe goods and services are considered such goods and services which meet:

- a. Domestic standards,
- b. European standards defined in International Convents,
- c. Legitimate consumers requirements related to safety.

4.3. The rules and regulations regarding the specific health and safety standards and requirements which a product or service must satisfy in order to be placed in the market shall be established pursuant to special laws on this subject.

Article 5

Additional obligations of producers and sellers in the area of product safety and the appropriate enforcement measures in this area shall be set out in special laws on this subject.

Article 6

The liability of the producer or seller for the damage caused by the defectiveness of its products shall be regulated by a special law on this subject.

CHAPTER III

SELLERS OBLIGATIONS TOWARD THE CONSUMER

Article 7

7.1. The seller of commodities and the provider of services is liable to:

- a. Sell the amount, the quantity and the exact size of the goods and to enable, at consumers' request certification of the accuracy of a commodity;
- b. Sell goods and services according the content, quality and characteristics foreseen by the legislative provisions.
- c. Sell goods and provide services according to declared prices.

7.2. In open market spaces these rules shall be determined by relevant local governmental unit structures.

7.3. The seller of goods shall not give out personal information of the consumer, and of the legal and physical person who is engaged inside the enterprise of the seller (corporation), without prior written consent of the consumer.

7.4. For the servicing and maintenance services of products, whose value is over 50 Euros, the seller shall give a pro-forma invoice and an employer directive with a description of duties, a description of the material and equipment used for the servicing. The employer directive shall be co-signed by the seller and the consumer, and one copy shall be given to the consumer.

7.5. If during the servicing, as mention in paragraph 4 of this article, additional work is necessary and additional parts are required (the expansion of the employment directive), the seller must receive in advance the written consent of the consumer, in cases where the expansion of the employment directive results in an increase of the final price by five percent (5%).

Article 8

The seller of commodities and services is liable to meet all technical- hygienic and sanitary requirements in accordance with a special law on this subject.

Article 9

9.1. The seller of goods or services shall ensure that the goods he sells have labels which contain information and instructions about the producer, its address, designation of goods, quantity, composition, quality, date of production and expiration date, the manner of usage, their in case they are not and their price.

9.2. For food products labeling information shall be set out by other by-laws.

9.3. The seller has not the right to remove, change or overwrite the label and the sections where are put the information on ingredients and other product characteristics stated by the producer and/or distributor.

9.4. In cases when it is impossible to label a commodity, the seller is liable to provide, if requested by the consumer, the required information in accordance with Article 1 of this provision, or in any other form by presenting the relevant documentation.

9.5. The Ministry of Trade and Industry shall prescribe through an administrative instruction exemptions on certain items from the labeling requirement in this Article.

Price of goods and services.

Article 10

10.1. All goods offered to consumers must have the selling price.

- a. For packaged goods the unit price must also be stated, besides the overall package price,
- b. For goods that are not packaged/bulk goods the unit price stated in the presence of the consumer is considered acceptable.
- c. In cases when the unit price is the same as the selling price, it suffices to attach the selling price on such a commodity.

10.2. For all offered services the ultimate price is the one to be shown to the consumer. If the ultimate price is not quoted on the contracting time, the service provider is liable to show its price calculating approach/method.

10.3. The seller of commodities and/or services is liable to show clearly the price of the good or service provided, which is also visible and readable for the customer. The price shall always be quoted in Euro.

10.4. The seller must preliminarily inform consumers quite clearly about the prices of goods he sells or services he provides.

10.5. The information about the price or the fact the information is not complete should not create the impression that:

- a. The price is lower than the real one,
- b. Fixing of the price depends on circumstances, which is in fact is not true,
- c. The price includes operations or services, for which separate charges are to be paid,
- d. The price has been or will be increased, or will not change and this is not true.

10.6. It is categorically prohibited creating or using situations for speculative profits.

10.7. This Article does not apply to goods and services offered through an auction or for the selling of art works.

Article 11

11.1. The seller may by no means discriminate consumers, and in particular he/she dare not refuse the sale of commodities exhibited and prepared for sale. The seller may not either condition the sale of commodities or delivery of services with the buying of other commodities or services, except when such a restriction constitutes a mandatory commercial practice.

11.2. The seller is liable to inform the buyer about the terms and the manner of advertisement conditions for commodities and services which have defects, including the place where the advertisement is made as well as appropriate conditions required for its repair set out by the guaranty.

11.3. If during the guaranty deadline the condition of goods deteriorates pursuant to the manner described in the guaranty, so that it is considered as defect, then the seller or provider of services should respond to the given guaranty.

Article 12

12.1. Within his/her selling unit the seller:

a. Must show the commodity to the consumer, if the nature of the commodity permits this;

12.2. The seller is obliged to determine reserved commodities, their expiration date and the reason of their reservation. The same must apply for sold and paid goods, which are to be placed in the designated exhibition place, until they are sent or taken by the buyer/consumer.

12.3. The seller must preliminarily inform consumers when selling second hand or modified commodities, as well as goods with defects which do not affect their safety. These goods must be kept separately from other goods, and they have to be labeled as “used goods or “goods with defects”.

Article 13

If the seller has information indicating that goods sold to the consumer are not safe, he/she is liable to inform immediately such a consumer. If it is impossible to inform the consumer in person, the seller is liable to inform consumers through the administrative authority that responsible for the enforcement of this Law.

Invoices

Article 14

14.1. The seller, supplier and/or service provider must issue the consumer, for each sold item, a correct, clear and readable invoice.

14.2. The seller, supplier and/or service provider is liable to enable the consumer check the exact calculated amount related to the quality and quantity of bought goods or provided services.

14.3. The must abide by and expose clearly conditions for retail sale.

14.4. After the invoice is issued no other additional payment is permitted for the same item.

Selling of defective goods

Article 15

If the seller sells deficient or faulty goods, he/she must physically separate such goods from other items, and place them in a distinct, visible and readable manner in places that are separate from non-defective items, and put on them the label ‘defective goods’ or ‘second ‘irregular goods’.

Article 16

16.1. During selling of goods, the seller is liable to issue the consumer the document recommended by the producer, in order to provide the consumer the necessary usage instruction.

16.2. Documents mentioned in Paragraph 1 of this Article must be written in a clear, visible, readable manner in the official language. The Law does not exclude the possibility of using other languages that are understandable for the buyer.

Packaging of goods

Article 17

17.1. Packaging must be safe as regards the health of consumers, and must have a standard shape and mass, in order not to confuse the consumer.

17.2. Wrapping in accordance with the order made, and decorative details of goods and services, obliges the seller to indicate and make clear the price for such service, if such service exists.

17.3. The seller is obliged to keep the bought packed goods, if requested by the consumer.

Commodity declaration

Article 18

18.1. Each commodity must have a declaration which must include at least the following data:

- a. Name of producer or importer,
- b. Brand name which the commodity is sold ,
- c. Type and make of commodity,
- d. Unit mark of the commodity, if it is important sign for the identification of the commodity,
- e. Production, and expiration date,
- f. Name of company (full address) of the producer for imported goods and name (full address) of importer and the origin of the place where it is imported from,
- g. Warning about the possible use of the product, if such a risk exists.

18.2. The Ministry of Trade and Industry shall prescribe in secondary legislations rules which require declarations to include additional information and rules that exempt certain commodities from having a declaration.

18.3. All information in the declaration must be visible, readable and written in the official languages. This Law does not exclude the possibility of using other languages and symbols that are understandable to the consumer. For the declaration data of imported goods, the importer bears the responsibility.

18.4. A more detailed information on the declaration, as well as other conditions required for special goods or sets of goods, shall be set out by the Ministry of Trade and Industry, in cooperation with the relevant Ministry.

18.5. The full address under Article 18.1, point (f), must contain location, street, house number, telephone/fax number, and electronic address if it exists.

Article 19

19.1. Discarded commodities (refuse items) are items offered for sale, and which were not packaged and measured previously in the presence of the consumer.

19.2. Commodity packaged in advance is considered the sale of a commodity and package required by the consumer for further processing.

19.3. For scattered goods that are meant Commodities for sale, declaration in packages must be readable, and be put in a conspicuous selling place, if such goods are not put in special packages.

Provisions on discounted goods

Article 20

20.1. The discounted goods must be readable and distinctively marked and must contain the price before and after the discount.

20.2. Goods reduced because of their expiration date must indicate in a distinct, clear and readable manner the best before date.

Article 21

21.1. The seller must separate physically discounted goods from the goods which are not discounted and labeled them in a distinct, clear and readable manner as ‘discounted goods’ ‘discount, ‘price reduction’ or ‘sale’.

21.2. If the seller offers reduction prices for faulty goods, he/she must inform immediately consumers about the faults of such goods.

Selling of electricity, water and telecommunication services

Article 22

22.1. Selling of electricity and water shall be calculated pursuant to the actual consumption, read in consumer’s meters.

22.2. The measuring manner and calculation of electricity and water shall be regulated by separate laws.

22.3. The supplier is liable to notify in advance the consumer about all conditions and terms of electricity and water consumption.

22.4. The supplier is liable to indicate in the invoice the data that will enable the consumer to examine the amount and quantity of consumed electricity or water.

Article 23

The supplier is liable to respect the written (declared) standards on the quality and continuity of electricity and water services.

Invoicing of Telecommunication Services

Article 24

The provider of telecommunication services must issue to consumers an invoice for provision of such services, which will contain the necessary information for the calculated total amount, which shall oblige the consumer for price, value, taxes and the total amount to be paid in Euro for that period.

Article 25

At the consumer's request, the provider of telecommunication services must show to the consumer, particularly when dealing with a written appeal that contests the accuracy of an invoiced amount recorded in the invoice, without calculating additional expenses.

Publicizing of goods and services

Article 26

26.1. According to this Law, publicizing of goods and services implies presentation of any form which a person expresses in media, for the purpose of promoting a product, a service or the company itself.

26.2. Misleading advertising means any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and by which, by reason of its deceptive nature, is likely to affect their economic behavior or which, for those reasons, injures or is likely to injure a competitor.

26.3. In determining whether advertising is misleading, account shall be taken of all its features, and in particular of any information it contains concerning:

- (a).the characteristics of goods or services, such as their availability, nature, execution, composition, method, and date of manufacture or provision, fitness for purposes, uses, quantity, specification, geographical or commercial origin or the results to expected from their use, or the results and material features of tests or checks carried out on the goods or services;
- (b).the price or manner in which the price is calculated, and the conditions on which the goods are supplied or the services provided;
- (c). the nature, attributes, and rights of the advertiser, such as his identity and assets, his qualifications and ownership of industrial, commercial or intellectual property rights or his awards and distinctions.

26.4. Comparative advertising means any advertising which explicitly or by implication identifies a competitor or goods and services offered by a competitor.

Article 27

27.1. Misleading publicizing is prohibited.

27.2. Comparative publicizing is permitted only in such cases when it meets preconditions set out in Article 28, Paragraph 1 of this Law.

Article 28

28.1. Comparative publicizing is permitted if:

- a. It is not misleading pursuant to afore mentioned provisions of this Law;
- b. Comparison is made between goods required for necessity needs;
- c. If material characteristics (qualities) of different goods and services are objectively compared, and which are important, compatible and verifiable;
- d. If it does not create confusion in the market, i.e. confusion between publishers and, competitors, or confusion between the producer and the provider of services that publicize competitive goods and services;
- e. If it does not discredit the competitor in the market, hi/her activities, products, services, trademarks, or protected brands ;
- f. If compared goods are of the same origin and trademark;
- g. If it is not aiming to exploit unfairly the renown trademark, the protected brand, goods and services or other marks of competitors in the market;
- h. If it is not aiming to exploit unfairly origin trademarks of competitive goods or services;
- i. If it is not dealing with publicized goods and services which imitate goods and services of the protected brand or name.

28.2. If the comparative advertising is dealing with goods and/or services publicized as special ones, the announcement must determine the time limit, within which the special offer is valid..

CHAPTER IV

OBLIGATIONS OF CENTRAL ADMINISTRATION

Article 29

The Government of Kosovo, through the Ministry of Trade and Industry, shall realize protection of consumers by imposing implementation of this Law on production, trade or service entities.

Article 30

A section on consumer protection shall be established within the Ministry, entitled with the following tasks:

- a. To study and introduce proposals related to any consumer protection issue;
- b. To study and introduce proposals for legal regulation of issues dealing with consumers and efficient application of laws dealing with consumers;
- c. To study and present educational programs for consumers;
- d. To study market conditions and present proposals for an effective functioning of the Section,
- e. To follow technological, economic and legal developments in the consumer section;
- f. To cooperate and exchange of opinions with domestic and foreign consumer associations,
- g. Maintaining contacts with public consumers in any possible form and means systematic contact development with various demographic segments of consumers.

Article 31

31.1. Where a contract between a seller or supplier and a consumer includes terms that are unfair to the consumer, such unfair terms shall not be binding on the consumer. The contract itself only remains valid and enforceable if this is possible excluding the unfair term.

31.2. A contractual term which has not been individually negotiated shall be regarded as unfair if it causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the customer.

31.3. A term shall always be regarded as not individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract.

31.4. Where a seller or supplier claims that a standard term has been individually negotiated, the burden of proof in this respect shall be incumbent on him.

31.5. An indicative and non-exhaustive list of the terms which may be regarded as unfair are those set out in Annex 1 of the European Directive 93/13/EEC on Unfair Terms in Consumer Contracts.

Kosovo program for consumer protection

Article 32

32.1. The national consumer protection program sets out the political protection policy for five years, and prioritizes the jobs to be performed within the scope of consumer protection policy.

32.2. The Kosovo Consumer Protection Program shall be prepared by a Council nominated by the Government consisting of representatives from the Ministry of Trade and Industry, Consumer Protection Organizations, Kosovo Chamber of Commerce and other experts in the field of consumer protection.

32.3. The Kosovo Consumer Protection Program shall be endorsed by the Government and transmitted to the Assembly no later than six months after the law comes into force.

32.4. The Kosovo Consumer Protection Program shall be adopted by the Assembly no later than 90 days after it is received.

32.5. The tasks regarding establishment of consumer protection policies, in particular follow up and evidencing of jobs carried out under the Consumer Protection Program, administered by the Ministry of Trade and Industry.

Article 33

Consumer Protection Program shall in particular establish:

- a. The principles and goals of consumer protection policy;
- b. Tasks which priority when drafting the consumer protection policy;
- c. The program for the utilization of financial resources required for the implementation takes outlined in the Kosovo consumer protection program;
- d. The size of the program framework for the administration of funds required to promote development activities of consumer organizations.

CHAPTER V

CONSUMER ORGANIZATION

Article 34

34.1. The Consumer Association is established for the purpose of protecting the rights of consumers and their interests. It is a civil organization, independent from producers, suppliers or providers of services.

34.2. Registration of the Consumer Association is carried out in accordance with procedures set out for organizations perform non-economic activities.

34.3. The activity of consumer associations is regulated and governed by their statutes.

34.4. Consumer representatives participating in central administration bodies, for issues dealing on consumer protection rights, shall be appointed by the association itself.

34.5. The Consumer Protection Association presents its members and interests of all consumers, gives opinions on proposed bylaws that may have influence on consumers; and through its representative takes part in meetings which are important for consumers; mediates between central bodies and consumers, as well as between the seller and consumer, for the purpose of protecting consumer interests.

34.6. The Consumer Protection Association informs consumers on their rights, and draws up the list of retailers that have damaged consumers, or have purposefully sold goods which were dangerous to the health and safety of consumers.

Article 35

Consumer protection associations shall carry out the following functions:

- a. Inform consumers about their rights and liabilities in the market;
- b. Follow up through authorized domestic labs, if necessary foreign ones, additional research for goods introduced into the market;
- c. Follow through authorized persons, comparative test results and presents them through the media;
- d. Offer assistance to injured parties against sellers;
- e. Keep documentary evidence on charges filed from consumers and on the proceedings taken for their solution;
- f. Initiate court procedural proceedings at the competent court, requesting from the court to deny a certain retailer, or an association of retailers from the same sector, to make use of unjust contractual provisions in standard contracts;
- g. Carry out other necessary duties related to consumer protection.

Treatment of appeals

Article 36

36.1. For every right that has been violated, the consumer or the consumer protection association can appeal at the competent administrative bodies, which are legally accountable for the protection of consumers.

36.2. When competent administrative bodies, in charge for consumer protection, ascertain violation of provisions of this Law, it is obliged to impose enforcement of the Law on producers, sellers, suppliers and service providers.

36.3. If within two weeks time limit, after the notification of producer, seller, supplier or the provider of services, the requests are not met, consumers, consumer protection bodies and associations are entitled to file an appeal at the court.

CHAPTER VI
INSPECTION AS A SUPERVISORY ENTITY

Article 37

The application of this law shall be supervised and controlled by the central competent inspector and other Municipal inspectors, in compliance with the competencies set out the law.

Article 38

38.1. The inspector shall issue a decision for temporarily prohibiting the selling of a product, if he finds out that:

- a. The retailer who sells faulty goods has not separated physically such goods from other ones, and has not labeled in a clear and readable manner the goods in the actual selling space that they are defective and faulty (Article 15);
- b. The retailer does not provide the consumer with necessary documents during his sale (Article 16.1);
- c. On discounted goods prices before and after the discount have not been indicated in a clear and readable manner (Article 20, Paragraph 1);
- d. Discounted goods whose minimum expiration date has not been indicated in a clear and readable manner (Article 20, Paragraph 2);
- e. The retailer who has not separated physically reduced goods from the goods that have not been reduced, and has not indicated in a clear and readable manner that they are reduced goods (Article 21, Paragraph 1),

38.2. An appeal against the decision under Paragraph (1) of this Article does not postpone execution of decision.

Punitive provisions

Article 39

39.1. A fine of 2.500 up to 10.000 € shall be imposed on a physical or legal person that publishes misleading advertisement according to article 26, or comparative advertisement according to article 28.

39.2. A fine of 250 up to 500 € shall also be imposed for violation against a natural person.

Article 40

40.1. A fine of 400 up to 4.000 € shall be imposed on a legal person-retailer if:

- a. The selling price has not been labeled in a clear and readable manner on all reduced goods offered in the shop, and special selling conditions of certain goods in the selling premises have not been indicated in a clear and readable manner (Article 10.1);
- b. The final price and the calculation method has to be indicated for services offered to consumers (Article 10.2);
- c. The retail selling price of goods and services is not indicated in a clear and readable manner in €, in the manner prescribed in Article 10.3;
- d. Packaging of goods is unsafe for the consumer's health, and causes the consumer as regards the mass and size of the good (Article 17.1);
- e. Does not comply with the packaging standard regarding the sold goods (Article 17.3);
- f. Does not comply with the issued guaranty (Article 11. 3);

40.2. The natural person, responsible before the legal person shall be imposed a fine of 250 up to 500 €.

40.3. The competent inspector shall impose a fine of 50 up to 100 € when ascertaining a violation committed by a natural or legal person.

Article 41

41.1. A fine of 1.000 up to 5.000 € shall be imposed on a legal person – retailer if:

- a. The seller does not issue a clearly written invoice to the consumer (Article 14. 1);
- b. The seller denies the consumer access to the bill of bought goods (Article 14. 2);
- c. The seller does not comply to conditions of retail prices (Article 14 point 3);
- d. If an additional bill is allowed for the same commodity (Article 14. 4);
- e. If the amount of electricity or water consumed by the consumer is not invoiced pursuant to the fact read in the consumer's meter (Article 22.1);
- f. The supplier does not inform in advance the consumer for all consumption terms of electricity and water (Article 22 .3);

41.2. The natural person, responsible before the legal person of the retailer and the publisher shall be imposed a penalty for a committed violation of 100 up to 400 €.

Article 42

42.1. A penalty of 2.000 up to 10.000 € shall be imposed for violations committed by any legal person-retailer, if he sells products which have no declaration or if the declaration does not contain all set out in Article 18, items 1, 2 and 3, and Article 19. point 1 and 3 of this Law.

42.2. The natural person, responsible before a penalty starting from 400 up to 500 €.

Article 43

All payments that result from the application of the provisions of this Law shall be made to the Kosovo Consolidated Budget.

CHAPTER VII

TRANSITIONAL AND CLOSING PROVISIONS

Article 44

According to provisions set out in Article 18.4, the Ministry of Trade and Industry, in cooperation with other competent Ministries, shall issue internal bylaws within six (6) months time limit after the date this Law enters into force. Until the approval of provisions under Article 22.2 of this Law, applicable regulations used for actual calculation of electricity and water shall apply.

Article 45

45.1. From the day this Law enters into force, it shall supersede any previously issued regulation, and provisions defined by this Law shall apply.

45.2. This Law shall enter into force after its approval by the Assembly of Kosovo and its promulgation by the SRSG.

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