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CONSUMER PROTECTION IN THE REPUBLIC OF CROATIA AND IN THE EUROPEAN UNION

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Abstract

The rise of the movement for the protection of consumers throughout history was led by several principal researchers, who have greatly influenced the development of the consumer protection on the territories of the Republic of Croatia and the European Union. Having signed the Stabilisation and Association Agreement, Croatia has committed to harmonize its consumer protection policies with the ones that are most effective in European Union. This paper presents the legal frame of the consumer protection in Croatia, with special attention given to the obligations of retail entrepreneurs. The awareness of Croatian consumers regarding their rights, but also obligations, towards merchants is described, and special emphasis is given on the state of commerce and consumer protection on the Croatian market. The elaboration of the current condition of trade and consumer protection in Croatia is complemented with the example of bad practice in the field of consumer protection in Croatia.

Keywords: *Consumer Protection Law; traders' commitments; consumer protection in Croatia and European Union.*

1. INTRODUCTION

This paper discusses consumer protection on the territories of the Republic of Croatia and the European Union. The purpose of the paper is to display the current condition of consumer protection in Croatia in regards to European Union, and to describe a common state of mind of wholesale and retail dealers that greatly affects consumers and creates the need for their increased protection.

The paper is divided into four sections. The first section describes the rise of the movement for the protection of consumers, its characteristics and history, as well as the principal thinkers of the movement. In particular, consumer rights and obligations are presented. The second part presents the movement's development in the European Union, and the third section deals with the state of trade and consumer protection in Croatia. In the last section, overview of the consumer protection in Croatia is complemented with an example of poor practice in that field. The data were collected from the Internet sources as well as from the literature listed at the end of the paper.

2. CONCEPT AND HISTORY

Consumer protection covers economic and legal issues, as well as issues related to the safety of consumers' health and nutrition, information and education of consumers, and the contribution of consumer associations to the development of consumer protection policies and, in general, the market economy.¹

Although the history of consumer protection goes back to Roman law, the movement, as known today, finds its origin in the late 19th and early 20th century marketplace in the United States. Small but positive steps in protecting consumers took place, such as minor legislations at a state level, but the strongest incentive was the book "The Jungle" in which the author described his abhorrence towards the meat packing industry in Chicago. Horrified, President Theodore Roosevelt had these allegations verified, and soon afterwards the US Congress passed the Pure Food and Drug Act which, along with the Meat Inspection Act, had ensured a legal framework to prosecute anyone who would wilfully violate the quality of the food and drugs used by the consumers. The public has become more aware, and in the mid twentieth century, two stalwart figures carried on with efforts in consumer protection movement: Ralph Nader and John F. Kennedy.

Ralph Nader is an American author, lecturer, attorney and political activist, most active in areas of consumer protection, humanitarianism, environmentalism, and democratic government. He began his role with research

¹ Liha, A. (2004). *Zaštita potrošača u procesu proširenja Europske unije: izazovi za Hrvatsku* from: *Pridruživanje Hrvatske Europskoj uniji: izazovi institucionalne prilagodbe*, Institute of Public Finance. pp. 192 (author's translation)

within the automotive industry in US, and the results had a major impact on the general public. Thanks to his efforts, a number of laws were passed regarding the safety and consumer protection, culminating in a historic shift in responsibility for automobile safety from the consumer to the government. Ralph Nader founded the organization "Public Citizen" and dozens of other organizations and campaigns against the dangers which he considered a threat from the multinational corporations, and his work was continued by hundreds of young activists across the country, known as "Nader's Raiders".

Parallel to his work, people's awareness of their rights increased. In 1962, US President John F. Kennedy delivered an historic address to the US Congress in which he outlined his vision of consumer rights. 'Consumers, by definition, include us all.' Kennedy said, 'They are the largest economic group, affecting and affected by almost every public and private economic decision. Yet they are the only important group... whose views are often not heard.²' This was the first time any politician had set out such principles and pointed out four basic consumer rights: safety, information, choice and voice. Over time, the consumer movement has developed this vision into a set of eight basic consumer rights that now define and inspire the work of most consumer protection organizations:³

- The right to satisfaction of basic needs - To have access to basic, essential goods and services: adequate food, clothing, shelter, health care, education, public utilities, water and sanitation.
- The right to safety - To be protected against products, production processes and services that are hazardous to health or life.
- The right to be informed - To be given the facts needed to make an informed choice, and to be protected against dishonest or misleading advertising and labelling.
- The right to choose - To be able to select from a range of products and services, offered at competitive prices with an assurance of satisfactory quality.
- The right to be heard - To have consumer interests represented in the making and execution of government policy, and in the development of products and services.
- The right to redress - To receive a fair settlement of just claims, including compensation for misrepresentation, shoddy goods or unsatisfactory services.
- The right to consumer education - To acquire knowledge and skills needed to make informed, confident choices about goods and services,

² <http://www.consumersinternational.org/who-we-are/consumer-rights> (08.07.2013.)

³ <http://www.consumersinternational.org/who-we-are/consumer-rights> (08.07.2013.)

while being aware of basic consumer rights and responsibilities and how to act on them.

- The right to a healthy environment - To live and work in an environment that is non-threatening to the well-being of present and future generations.

As a result of further work, the Department of Consumer Affairs was founded in 1970. Public officials and political appointees were given the task of teaching and representing the consumers in all major public affairs, as well as the task of increased surveillance and protection against bad actors in all aspects of the market. The Consumer Protection Act itself was passed in 1972.

But, apart from their rights, consumers have a number of obligations they must respect in order to protect themselves:⁴

- Critical awareness - consumers must be awakened to be more questioning about the provision of the quality of goods and services.
- Involvement or action - consumers must assert themselves and act to ensure that they get a fair deal.
- Social responsibility - consumers must act with social responsibility, with concern and sensitivity to the impact of their actions on other citizens, in particular, in relation to disadvantaged groups in the community and in relation to the economic and social realities prevailing.
- Ecological responsibility - there must be a heightened sensitivity to the impact of consumer decisions on the physical environment, which must be developed to a harmonious way, promoting conservation as the most critical factor in improving the real quality of life for the present and the future.
- Solidarity - the best and most effective action is achieved through the formation of consumer/citizen groups who together can have the strength and influence to ensure that adequate attention is given to the consumer interest.

3. DEVELOPMENT OF THE CONSUMER PROTECTION IN EUROPE

Consumer protection movement had sprung and flared up in US, and its impact had spread in all developed countries. However, growth of the idea happened in Europe at a slower rate. It was expected that the development of economy, competitiveness and transparent market would constitute sufficient protection to the consumer, and provide him with the greatest benefit. Therefore,

⁴ <http://www.consumersinternational.org/who-we-are/consumer-rights> (08.07.2013.)

the protection of consumers was for a long time characterized as a policy subordinate to the completion of the European internal market. From the perspective of consumer interests, the project of economic integration got its "human face" in 1991, when a special chapter devoted to the protection of consumers was brought in the Maastricht Treaty. From that time, the policy of consumer protection has become one of the leading EU policies of great importance. This policy is complementary to the Member States, but to ensure that consumers in every Member State enjoyed approximately equal protection, the EU rules predicted a minimum of legal protection in each state, and allowed them to provide a higher level of protection through their legal systems.⁵

These rules, in the form of directives, were adopted by the Republic of Croatia upon signing the Stabilization and Association Agreement in 2001. Prior to this, consumer protection in Croatia wasn't regulated by just one, but by a number of regulations covering different areas of law, and this dispersion was the main cause of the inefficiency of that policy. In 2003, the first Consumer Protection Act was brought and followed by a National Consumer Protection Program for the biennium – 05-07. The Act has been replaced by a new one in 2007, and this one has been amended twice – in 2009 and 2012.

The implementation of the Act and effective consumer protection are promoted by the Court of Honour at the Croatian Chamber of Economy.⁶ Apart from the Court, there are various associations or consumer organizations that gather citizens with the aim of informing and assisting in the realization of the consumers' rights. On a global level, the Consumers International serves as an umbrella organization for consumer associations, and in Croatia that role is reserved for the organization "Potrošač" ("Consumer").

4. TRADE AND PROTECTION OF CONSUMERS IN CROATIA

In terms of legal definition, the sale of products and provision of services covers a series of issues regarding requirements for the realization of retailer's refusal to sign the contract, sales terms, billing invoices and work orders, and the protection of personal consumers data. Therefore, among the legal obligations of traders the following are accentuated:⁷

- To clearly highlight the sales conditions and prices;
- To separate the defective products, and to emphasize that the product is defected;

⁵ Ministarstvo gospodarstva, rada i poduzetništva (Ministry of Economy, Labour and Entrepreneurship): „Mini vodič: Zaštita potrošača“; April, 2009. (author's translation)

⁶ <http://www.hgk.hr/> (09.07.2013.) (author's translation)

⁷ Zakon o zaštiti potrošača (Consumer Protection Act), revised text, from www.zakon.hr (09.07.2013.) (author's translation)

- To highlight the prices before and after reduction for products sold on sale;
- To provide all documents during sales - every product has to be labelled and technical products have to have warranty, user manual, list of services etc. All documents must be written in the Croatian language and Latin script;
- Eligibility in terms of packaging, such as: packaging must not be harmful to the health of consumers; must be adapted to the shape and weight of the product; consumers should not be deceived in terms of weight and size of the product etc. Bags used for carrying that contain, in whole or in part, logo, trademark, slogan and/or name of the manufacturer/retailer shall be considered promotional material and may not be charged;
- Liability of the retailer for defects, visible as well as hidden, and the guarantee for the proper functioning of sold items;
- Confidentiality of personal consumers' information.

In addition to these obligations, unfair business practices are expressly prohibited. These include misleading actions (business practice which contains incorrect information that may instigate the average consumer to make a decision about a transaction that would not otherwise be made), and aggressive business practices (practice that, using harassment, coercion and illicit influence, substantially reduces the freedom of choice of the average consumer).⁸

By adopting the Consumer Protection Act and its amendments, Croatia, at least theoretically, got closer to European standards. Having implemented almost all EU Directives, and even tightening certain criteria, one can say that this law is well-edited, and provides a very good basis for adequate consumer protection. What is lacking is facilitating the implementation of the law in daily practice, and that is what maximum attention should be given to in the future development of consumer protection.

4.1. State of commerce and consumer protection in Croatia

In any market transaction, there are two sides: the retailer and the consumer. Each side has its rights and obligations, which are mutually fulfilled; consumer's right is the obligation of the retailer, and vice versa, the obligation of the consumer is retailer's right. These subjects should be equal, but, mainly through entrepreneurial activity, there is a disruption of this balance on the

⁸ Zakon o zaštiti potrošča (Consumer Protection Act), revised text, from www.zakon.hr (09.07.2013.)
(author's translation)

market, due to the fact that the profit from selling a specific product several times exceeds the benefit that a consumer has upon buying that same product.

This problem leads to the conclusion that the market today endured a change of fundamental postulates in business, the primary of which is that the production is supposed to exist in order to meet consumer needs. However, this process has experienced a complete reversal, and so production today exists as an activity whose purpose is actually to serve the interests of the individual owner in the acquisition of wealth and power, and consumption is only a secondary goal. Moreover, in many cases there is over-production, and continuous efforts of entrepreneurs through sales, marketing and related services are made to induce consumption of the surplus of manufactured goods.

The result of these changes is the imbalance between consumers and retailers. On a perfect market, the trader and the consumer would be mutually complemented, and the quantity, quality and price of products on the market would be optimal. In this case, there would be almost no violation of the rights of consumers, and there would be no need for their protection. Therefore, it is clear that the development of the practice of consumer protection has a direct cause in market imperfection, or the imbalance between the retailer and the consumer. In other words, the protection of consumers should have the status of market principles, rather than being a subject of implementation of the regulatory bodies. If it were possible to return to the primary process, that the production serves consumption, this condition would be rectified and the balance would easily be established.

However, one of the key elements in this process on the market of any given country, including Croatia, is the condition of trade and the mentality of the merchant in that country. In the modern world of mass competition and the accumulation of power, the fundamental goal of almost every entrepreneur has become personal wealth and ensuring a better market position. For this purpose, the trade policy began to form in such a way that the main goal is to acquire the goods at the best price, and to sell them in the best sale conditions. Of course, this has always been a crucial trading postulate (principle of effectiveness), but rather still a lot more attention had been given to the wishes and needs of the consumers and their satisfaction, and explicit attention was paid to the good reputation of the entrepreneur.

Today, mass production has reduced the price to its lowest level, and the market is dominated by large wholesale dealers, so called "grossers", who purchase these products in huge quantities, thus inducing further lowering of the prices. To make sure that this practice does not jeopardize their business, the manufacturers are looking for cheaper ways to produce their goods, which, in most cases, negatively affects the quality of the end product. Focus on earnings took on such proportions (for some retailers) that they almost ceased to pay attention to what happens to that product when it really came into the hands of the

final consumer, and whether the consumer would be pleased with the purchased good.

"Grossers" then sell the goods to smaller wholesale dealers and only the next level (if then) in the distribution chain belongs to retailers, who do business with final consumers. As a result, the producer-consumer relationship is broken. Regardless of the number of agents, in the past this communication could always be achieved. Globalization raised the whole process to a higher level and the connection between the final consumer and the manufacturer was torn, placing small traders on the "fire line". In many cases, the small trades also aren't in direct contact with the manufacturer, and cannot influence the quality of the products they sell, yet are responsible for it.

This has created an absurdity on the global level, which brought retailers in a very unfavourable position. They are, separately, too small and too weak to have any effect or dictate the terms of a transaction. It is the wholesale dealer that determines operating conditions, and a small company is left to accept them, or give up the business with that wholesale dealer. And this creates a "vicious circle"; if a small retailer decides to operate independently in the global market, he would get a lot worse conditions by the manufacturer than those that would be achieved with the wholesale dealer, because he has no power, no competition strength, nor the market position that would allow him to achieve better conditions. These wholesale dealers are turning this to their advantage by not paying attention to the quality of the purchased goods, but only at achieving better purchase or sale conditions, because they are fully protected in the whole sale process: their name is not on the product nor the bill, and they don't have to worry about low quality products damaging their reputation of a good trader. In addition, wholesale dealers are generally protected with the contracts clause "seen-sold", which, roughly, means that the customer (in this case the retailer) buys what he sees - subsequent complaints are not taken into account.

This unenviable position of retailers can be solved in only one way, and that is by the merger of small retailers into groups that will be able to impose their conditions to wholesale dealers. In other words, if a number of small retailers comes to a wholesale dealer with a joint position, for example that they will not accept the goods under the "seen-sold" clause, the wholesale dealer will have to pay better attention regarding from whom he would buy the goods next time, and at what price and quality, if he doesn't want to lose his market share. At the same time he would still have a very wide selection, because, where there are manufacturers who sell very cheap and low-quality goods, there are also manufacturers who sell their wares at a little higher (but still very low) prices, but of much higher quality. This way the wholesale dealer will still make a good profit and end users will be satisfied, but it will not happen as long as the wholesale dealer is not forced to give up part of the huge profits realized by the already established way of doing business.

Conducting business this way becomes more common every day and, however strong on national level, reflects more and more globally. On the world market the mentality of consumerism and creating economy globalism prevails, and the trading chains that support the poor-quality mass production, where they can earn huge amounts of money, thrive in these conditions. At the same time, in the end market there are small traders who are still trying to keep up in terms of the quality of a small number of products and in achieving personal contact with the consumer, and so there is a conflict of interests of the two sides. And, as already mentioned, the “big fish” have the power to push through their interests, which leads to the deterioration of small retailers and, ultimately, dissatisfied consumers, which have to be protected.

Termination of this kind of business can be, at a state level, achieved by regulation of the laws and certain import measures, with simultaneous protection of the domestic market. This is easily feasible, following the example of the Nordic countries which are very well arranged, but the question of motives is left open: to protect consumers fully, or to realize one's own interests. So, until the prevailing mentality is altered, the market will be dominated by these conditions, and the practice of consumer protection will become more and more important. Therefore today, more than ever, it is necessary that the consumer is fully educated and informed as to what he can and cannot ask of the retailer with whom he does business with.⁹

5. CONSUMERS' AWARENESS

One of the key elements of consumer protection is the awareness of the citizens themselves, which in Croatia is still insufficient. Year after year, their knowledge and experience increases, but it will take a lot more work to get the average Croatian consumer informed in a way that he can independently look after his own interests. According to data from various surveys¹⁰, the majority of consumer complaints in retail refer to the declaration, or its inaccuracy, incompleteness or incomprehensibility.

As for the Split-Dalmatian County, according to the association “Dalmatian consumer”, the largest number of complaints and violations of consumer rights is not in retail, where it is the most visible, but in the public service sector, and in the telecommunications business. Following is the example of bad practice in the field of telecommunication services in Croatia.

One of the (relatively) recent providers of telecommunications services in the Croatian market is the mobile operator Tele2, which recently marked its

⁹ Text based on the author's research in the Association for the Protection of Consumers in Split, and information gathered through interview with the Association's legal adviser.

¹⁰ A great number of research surveys was carried out by GfK (a market research agency in Croatia); surveys were collected and analysed from a web site Potrošač – Association for the protection of consumers in Croatia, on <http://www.potrosac.hr> (09.07.2013.)

business practice with a negative example. The operator offered its consumers a new tariff, called "Revolution", which was promoted as the only tariff with which users can perform an unlimited number of calls to all Croatian fixed and mobile numbers, and send unlimited number of text messages to networks in the Republic of Croatia. During the promotion, when talking to potential consumers, even through technical support, agents persuaded the users that this was a rate without any restrictions, without the "small print" (contractual provisions written in fine print that put some restrictions) and without "catches".

It turned out that with this kind of behaviour Tele2 knowingly deceiving their consumers, since in the consumer contract a Principle of justice is stated, according to which the maximum conversation time is limited to 5.000 minutes, and the number of text messages to 3.000 messages per month. Despite this, the association for the promotion of the rights of users of electronic communications services „Telekom“ has decided not to respond, reckoning that this mobile tariff would still make a lot more good than harm to consumers because of increased market competition. This proved to be true and was reflected with a significant reduction in cost of services of other operators.

However, having a large number of users deciding to activate the specified tariff, Tele2 had changed the conversation restriction stated in the Principle of justice - from 5.000 to 2.000 minutes per month, which was meant to reduce the allowable amount of conversation for over sixty percent. In addition, there was an additional restriction towards users of the „Tomato“ network, to as low as 200 minutes per month. This behaviour was rated as misleading and possibly premeditated fraud to the detriment of users by „Telekom“, after which the association reported Tele2 to HAKOM (Hrvatska agencija za poštu i električke komunikacije – Croatian Post and Electronic Communications Agency).

The Agency has carried out an inspection of the above case, and notified the operator to promptly protect its users from unfair, misleading and illegal activities, and to inform them of their right to terminate the contract without compensation if it has not already done so, even though it was obliged. After this, followed by a revolt of a huge number of users that gave their trust to this operator, Tele2 has abandoned these changes.

This is one of the less common examples where consumers have joined together and influenced a decision that would jeopardize their rights; unfortunately, a great number of these decisions go unnoticed because they influence a smaller number of people, and those „smaller“ violations of consumer rights are not sanctioned.

Although this case ended in favour of the consumer, the question arises as to how a serious provider of telecommunication services can come up with this kind of scheme. On the European market, the rules are clear and the competition fierce and it is very difficult to realise such a scenario in any country of the EU.

6. CONCLUSION

Europe hadn't developed policies in the field of consumers' rights during their development on the US territory, but in a short time it has become one of the main goals of the EU, and has developed into one of the best policies of consumer protection in the world. Croatia has set to do the same upon signing the Stabilization and Association Agreement, but even though this policy is well-regulated on paper, in practice it is still lacking. The key elements of the policy are missing, without which all theory is completely useless. Even with the fact that the existing legislation of the rights of consumers is well regulated, and assuming that Croatian normative solutions adapt to the ones in the EU, the protection is still not complete until the conditions are met for the application of these solutions.

Upon analyzing the current situation in trade and consumer protection in the Republic of Croatia, came a conclusion that the Croatian legislature could greatly improve the current state of consumer protection. The "vicious circle" of resale through large retail chains doesn't assist the ultimate goal, which is that a good product gets into the hands of the consumer at a reasonable price. Therefore the consumer complaints arise and the entire strategy is developed to protect that consumer, when in reality all problems would be easy to solve if it were in the interest of powerful groups.

What is more disturbing, the results of a research regarding Croatian consumer's awareness of his rights and obligations are devastating. This area should be thoroughly covered and brought up to attention in the future, through the media or similar activities.

Consumer protection in European Union is one of its best policies, and it should serve as a target for Croatian efforts. When Croatia achieves that level of business, one can say that Croatia is a part of Europe; until then, no matter how invested one economy gets in other areas, it is just lagging behind the developed countries, because consumer protection is as important as any basic human right, and it is one of the most important indicators of a countries' development.

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