

Serbia: New Consumer Protection Law

The National Assembly of the Republic of Serbia adopted the new Consumer Protection Law on 9 September 2021 (*Zakon o zaštiti potrošača, Official Gazette of the Republic of Serbia no. 88/2021*) (hereinafter the "**New Law**"), with the goal of amending the observed shortcomings of the previous law and enabling the harmonization of the regime governing consumer rights with European regulations.

Although the New Law does not differ much from the previous Consumer Protection Law (*Zakon o zaštiti potrošača, Official Gazette of the Republic of Serbia no. 62/2014, 6/2016 – other law and 44/2018 – other law*), the New Law seems to provide mechanisms that should prove better in protecting consumer rights in practice.

Key Novelties

The New Law sets up norms which obligate traders to participate in out-of-court settlements, if the dispute is not otherwise resolved. Prior to concluding a contract for the sale of goods or provision of services, the trader is obliged to inform the consumer in a clear and understandable manner in the Serbian language or the language of a national minority about the possibilities of out-of-court settlement of potential disputes. The consumer will be able to initiate an out-of-court procedure only if he has previously stated a complaint or objection to the trader, and after receiving the trader's decision about it. In the complaint, the consumer will have to state the facts on which he based his allegations as well as provide relevant evidence. The trader is obliged to participate in the procedure of out-of-court settlement of consumer disputes before the competent body, and the conditions for establishment and work of this body are defined by the Ministry of Trade,

Srbija: Novi Zakon o zaštiti potrošača

Narodna Skupština Republike Srbije je 9. septembra 2021. godine usvojila novi Zakon o zaštiti potrošača ("*Službeni glasnik RS*", br. 88/2021) (u daljem tekstu: **Zakon**), kojim nastoji da izmeni nedostatke prethodnog zakona i da omogući harmonizaciju prava sa evropskom regulativom.

Iako se novi Zakon ne razlikuje u mnogome od starog Zakona o zaštiti potrošača ("*Službeni glasnik RS*", br. 62/2014, 6/2016 - dr. zakon i 44/2018 - dr. zakon), novine koje unosi u pravni sistem se uglavnom odnose na bolji mehanizam zaštite prava potrošača.

Najbitnije novine

Novi Zakon propisuje obavezu trgovcima da učestvuju u vansudskim sporovima sa kupcima, ukoliko dođe do njih. Trgovac je dužan da pre zaključenja ugovora o prodaji robe ili pružanju usluga, potrošača na jasan i razumljiv način na srpskom jeziku ili jeziku nacionalne manjine obavesti o mogućnosti vansudskog rešavanja spora. Vansudski postupak će moći da pokrene potrošač samo ukoliko je prethodno izjavio reklamaciju ili prigovor trgovcu, a nakon prijema odgovora ili odluke prodavca o izjavljenoj reklamaciji. U izjašnjenju potrošač će morati da navede činjenice na kojima zasniva svoje navode i dokaze. Trgovac je obavezan da učestvuje u postupku vansudskog rešavanja potrošačkih sporova pred telom za vansudsko rešavanje potrošačkih sporova, a čije uslove za osnivanje i rad utvrđuje Ministarstvo trgovine, turizma i telekomunikacija. Kazna za one privredne subjekte koji odbiju da učestvuju u medijaciji ili ne objave obaveštenje da kupac ima pravo na vansudsko rešavanje spora iznosi 50.000,00 RSD. Vansudsko rešavanje potrošačkog spora u skladu sa ovim zakonom može da traje najduže 90 dana

Tourism and Telecommunications. The market inspectors are authorized to impose penalties in the amount of RSD 50,000.00 to the trader if the trader refuses to participate in mediation or does not inform the consumer about their right of out-of-court settlement of disputes. Out-of-court settlement of a consumer dispute in accordance with the New Law may last for a maximum of 90 days from the day of submission of the proposal, and in exceptional cases, when the subject matter of the dispute is complex, the period of 90 days may be extended by a maximum of another 90 days, of which the competent body will have to inform the consumer and the trader without delay.

The reason for introducing mandatory out-of-court dispute resolution is to try to reduce the pressure on the courts in connection with numerous consumer disputes. The New Law will oblige the courts to record every consumer lawsuit and to submit, once a year, data on the number of consumer disputes, and the average duration of consumer disputes to the ministry in charge of justice, on the prescribed form, no later than March 31 of the current year for the previous year.

As another novelty, the New Law introduces restrictions on direct advertising, providing for prohibition of direct advertising by telephone, fax or e-mail, and other resources of distance communication, without the prior consent of the consumer. Anyone who doesn't want to receive calls or messages from the seller, will be able to apply in the "Do not call Register". This register is maintained by the Ministry of Trade, Tourism and Telecommunications, and contains consumer data, such as name and surname, unique identification number of the consumer, telephone number and date of entry in the register which should enable Traders to easily obtain information about people who do not want to receive their advertisement. Traders who do not abide by the data from the "Do not call register", will also risk to pay penalties in the amount of RSD 30,000.00 for entrepreneur and RSD

od dana podnošenja predloga, a u izuzetnim slučajevima, kada je predmet spora složen, rok od 90 dana se može produžiti za najviše još 90 dana, o čemu će telo bez odlaganja morati da obavesti potrošača i trgovca.

Cilj uvođenja obaveze vansudskog rešavanja spora je pokušaj da se smanji pritisak na sudove u vezi sa mnogobrojnim potrošačkim sporovima. Novi Zakon obavezaće i sudove da evidentiraju svaku tužbu potrošača i da jednom godišnje dostavljaju podatke o broju potrošačkih sporova, donetih presuda i prosečnoj dužini trajanja potrošačkih sporova ministarstvu nadležnom za poslove pravosuđa, na propisanom obrascu, najkasnije do 31. marta tekuće godine za prethodnu godinu.

Novine Zakona se odnose i na ograničenja kod direktnog oglašavanja, pa tako Zakon predviđa zabranu direktnog oglašavanja telefonom, faksom ili elektronskom poštom i drugim sredstvima komunikacije na daljinu, bez prethodnog pristanka potrošača. Svako ko ne bude želeo da prima pozive ili poruke moći će da se prijavi popunjavanjem obrasca kod mobilnog operatera ili operatera fiksne telefonije i prijave se u registar "Ne zovi".

Registar se vodi pri regulatornom telu nadležnom za elektronske komunikacije (RATEL), koji sadrži podatke potrošača, kao što su ime i prezime, jedinstveni matični broj potrošača, broj telefona i datum upisa u registar. Trgovci će moći lako da se informišu, s obzirom da je registar javan u delu koji se odnosi na brojeve telefona i datum upisa u registar.

Trgovci koji se ne budu obazirali na podatke iz registra "Ne zovi", rizikovaće plaćanje novčane kazne u iznosu od 30.000,00 RSD za preduzetnike ili 50.000,00 RSD za pravna lica. Trgovci bi mogli biti kažnjivani i prekršajno ukoliko pozivaju potrošače čiji su brojevi uneti u navedeni registar.

Ono što je takođe bitno za potrošače je da prodavac ili pružalac usluge dužan da sačini proračun sa specifikacijom usluge, ukoliko vrednost prelazi 5.000,00 RSD. Pre otpočinjanja

50,000.00 for legal entities or risk misdemeanor liability.

Another important novelty introduces the obligation for seller or provider to make a preliminary calculation of expenses which surpass RSD 5,000.00. The trader, before starting to provide the service, is obliged to obtain the written consent of estimation made in this manner. If the provider doesn't deliver the specification, the consumer may refuse to pay the relevant price.

The New Law also provides more effective legal protection of consumers in the field of tourism (i.e. passengers). One significant novelty is the binding nature of pre-contractual information, which defines that the passenger must be provided with information on other costs which are not included in the selling price of the tourist trip.

In addition, the organizer of the trip will have more responsibility, so it will be responsible for all mistakes that occur due to technical deficiencies in the process of booking the trip and related services.

In the end, while the New Law increases penal policy for legal entities, on the other hand it provides that misdemeanor proceedings cannot be initiated or conducted if two years have elapsed from the day the misdemeanor was committed, except for articles related to the collective interest of consumers and their protection measures, where the statute of limitation is three years from the day the offense was committed.

Application of the Law

The New Law has entered into force on 11 September 2021, but begins to apply three months after its entry into force, i.e. from 11 December 2021 except for the provisions relating to out-of-court settlement of consumer disputes, which apply six months after the entry into force of this Law, i.e. from 11 March 2022.

pružanja usluge, trgovac je dužan da pribavi pisanu saglasnost potrošača na proračun. Potrošač može da odbije plaćanje cene, ako mu pružalac usluge ne dostavi specifikaciju. Ako je cena ugovorena bez izričite tvrdnje trgovca za tačnost proračuna, trgovac ne može da zahteva povećanje cene za više od 15 odsto proračuna.

Primenom novog Zakona pruža se veća zaštita potrošača u ostvarivanju prava iz ugovora o turističkom putovanju. Jedna od značajnih novina je obavezujuća priroda predugovornih informacija, koja predviđa da se putniku moraju pružiti informacije drugih troškova, koji nisu obuhvaćeni jedinstvenom prodajnom cenom turističkog putovanja, stoga putnik neće biti u obavezi da ih snosi ukoliko ne bude upoznat sa njima. Pored toga, organizator će imati veću odgovornost, pa će tako biti odgovoran za sve greške koje nastanu usled tehničkih nedostataka u procesu rezervisanja putovanja ili usluga.

Zakon na kraju pooštava kaznenu politiku za pravna lica, ali i predviđa da se prekršajni postupak ne može pokrenuti ni voditi, ako proteknu dve godine od dana kada je prekršaj učinjen, izuzev članova koji se odnose na kolektivni interes potrošača i mere njihove zaštite, gde produžava zastarelost prekršaja na tri godine od dana kada je prekršaj učinjen.

Početak primene

Zakon je stupio na snagu 11. septembra 2021. godine, ali počinje sa primenom tri meseca od dana njegovog stupanja na snagu, to jest 11. decembra 2021. godine, osim odredaba koje se odnose na vansudsko rešavanje potrošačkih sporova, koje se primenjuju po isteku šest meseci od dana stupanja na snagu ovog Zakona, to jest 11. marta 2022. godine.