



TOMIĆ STEVIĆ DULIĆ

ADVOKATSKA KANCELARIJA

TSD NEWSLETTER

Advokatska kancelarija TOMIĆ STEVIĆ DULIĆ informiše o aktuelnostima u radu Kancelarije i u zakonodavnom reljefu RS / Die Rechtsanwaltskanzlei TOMIĆ STEVIĆ DULIĆ informiert über aktuelle Themen der Kanzlei und über den Rechtsrahmen der RS / The TOMIĆ STEVIĆ DULIĆ Law Office is informing about the actual activities of the Law office and the Law frame in RS/ Юридическая контора TOMIĆ STEVIĆ DULIĆ информирует о самых актуальных событиях, о работе конторы и законодательном релiefe РС / Glavni urednik/ Chefredakteur / Editor-in-Chief / Главный редактор: Ljubica Tomić /Lektor/Lektor/Proof reader/Лектор: Ivana Radović, Vojislava Katić, Nevena Stević, Magda Braun / Br. 32/11

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The Law on Consumer Protection

Practical implementation of the Law on Consumer Protection

The practical implementation of the Law on Consumer Protection ("Official Gazette of the RS", No. 73/2010), which came into effect on 01 January 2011, has raised a number of issues which have not been provided for explicitly, thus creating a need for more detailed and precise provisions for certain cases.

Bearing in mind that the Law does not provide for by-laws and that its provisions are not sufficiently precise or defined, the interpretations of the Law by the Ministry of Trade and Services gain in importance.

The issues raised are related to the implementation of the Law in leasing transactions, the liability of traders for the lack of conformity of consumable goods and the obligation of traders to indicate and advertise the selling price of the goods in RSD.

- ***Implementation of the Law related to the leasing agreements***

The Law on Consumer Protection addresses explicitly only the sale of goods through sale and purchase agreements, without addressing the sale of goods through leasing in cases where legal entities appear as purchasers and owners of goods until final payment of the price (lessors), while users of goods to whom such goods are delivered under delivery agreements may be natural persons as well (lessees).

The lack of provisions leaves the implementation of the Law unclear when it comes to the rights enjoyed by the consumers, who are natural persons, arising out of the lack of conformity of goods in these legal transactions, because the purchaser from the delivery agreement is a leasing company which is not a natural person and which purchases the goods in order to pursue commercial activities (lessor).

According to Opinion of the Ministry of Trade and Services Ref No 011-00-00352/2010-04, the provisions of the Law on Consumer Protection concerning the rights of consumers, as purchasers, arising out of the lack of conformity of goods shall apply to the lease agreements where the lessee has the option to purchase the goods upon expiry of the period of lease (finance lease), but these provisions shall not apply to the lease agreements with no option to purchase the subject of lease, where the lessee returns the subject of lease to the lessor upon expiry of the period of lease (operative lease).

Thus, the legal status of the user of financial lease as a consumer is far more favourable than that of the user of operative lease in respect of nonconformity of the subject of lease with the agreement.





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- ***Application of the rules concerning liability for the lack of conformity of goods in relation to certain types of goods***

The Law on Consumer Protection defines conformity of goods as their conformity with the agreement and the description given by the trader. The conformity is further defined based on whether the goods are fit for normal use or for the special use for which the purchaser intends them, such purpose being known to trader, and if the goods meet the reasonable expectations of the consumer related to such goods.

The trader is liable for the lack of conformity for a period of 2 years of the sale of goods, and the burden of proof of conformity of goods with the agreement rests with the trader during a period of 6 months following their sale.

However, as certain goods may constitute the so-called consumable material or ancillary material in their nature, in cases of such goods it is not justified to apply the provisions governing the liability of traders for the lack of conformity of goods and the provisions on the burden of proof resting with traders.

In that respect, the Law provides that the burden of proof of the lack of conformity of goods, *i.e.* the legal presupposition that the goods did not conform to the agreement, shall not exist in the first 6 months from the sale, where that is contrary to the nature of the goods and the nature of the lack of conformity.

The Law, therefore, left it to the court practice and relevant inspections to define the goods that will not be covered by the general principle of "conformity".

- ***Application of the rules concerning the indication and advertisement of the selling price of the goods or services***

The Law provides for obligations on part of traders existing prior to concluding the agreements for sale of goods, relating to indication and advertisement of the selling price in an unequivocal, legible, and easily noticeable way, in the currency which is the lawful means of payment in Serbia.

The Ministry of Trade and Services which monitors the implementation of the Law on Consumer Protection took the stand, stated in its Opinion Ref No 011-00-00352/2010-04 that the Law must be followed to the letter, meaning that traders are under the obligation to indicate the selling price of goods on such goods in RSD and to advertise the selling price of goods in RSD.

As the price of imported goods is tied to foreign currency and fluctuations in RSD exchange rate, the literal application of the above provision creates the need for traders to adjust, on a daily basis, the prices of goods indicated on goods, packages, points of sale, pricelists, as well as the goods displayed in the shop windows, and to advertise the selling price in RSD, which will render the operations of the traders considerably more difficult.

The Law on Consumer Protection introduced a number of



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standards and new solutions which certainly improve the position of consumers, however, bearing in mind the field of application of the Law, the broad-spectrum definitions therein contained, as well as the fact that some legal situations have not been provided for, the implementation of the Law in practice will surely create the room and the need to amend the Law and introduce more detailed provisions.

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