

HOW TO IMPROVE THE CONSUMER RIGHTS?

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In this brief

We are presenting the key recommendations that emerged from the study "Monitoring Report on the proceedings of Competent Regulatory Bodies and Institutions upon Consumer submissions". The study is available in Macedonian and Albanian language on our website isie.org.mk.



Our goal:

To strengthen the capacities of civil society organizations and media to better track and report about the procedures for resolution of consumer disputes.

About the project

The project Watchdog of Consumer Justice: Strengthening Capacities of CSOs and Media to Monitor, Promote and Advocate for Consumer Protection in North Macedonia, is implemented by the Institute for Strategic Research and Education - ISIE from Skopje in the period December 2019—December 2020.

The goal of the project is strengthen the capacities of the civil society organizations and the media to better track and report about the procedures for resolution of consumer disputes. The project is particularly focused on proceedings of various regulatory bodies and agencies, as well as inspection organs, in resolving consumer disputes.

This project is implemented with a grant awarded by the Swedish International Development Cooperation Agency through the 'Nordic support for the progress of North Macedonia' project, which aims to strengthen the capacity of Republic of North Macedonia for integration into the European Union, as well as to assist in inclusion of civil society organizations and the media during all phases of the accession process. At the local level, the project will contribute to balanced socio-economic development through the improvement of the local infrastructure of the less developed municipalities and support for new employment.

Within the framework of the project, ISIE has prepared this brief, through which we want to stimulate the interest of civil society organizations and media for the protection of consumer rights in our country.

METHODOLOGY

The research covered the competent regulatory bodies and institutions for dealing with submissions submitted by consumers and citizens when their rights are endangered. In this sense, this document includes: (1) The Agency for Electronic Communications (AEK); (2) The Insurance Supervision Agency (ASO); (3) Food and Veterinary Agency (FVA); (4), the State Market Inspectorate (DPI); (5) National Bank (NBRSM); (6) the Energy and Water Services Regulatory Commission (ERO) and (7) the Housing Regulatory Commission (RCC).

These entities were selected based on the fact that each of them is competent to act on a significant range of relations which involves consumers. The intention of the monitoring was to see the strengths and weaknesses of each of the individual entities and through their positive experiences and practices, to influence the improvement of the weaknesses of another entity, i.e. the best practices to be an example for improving the performance and / or legal framework that refers to another entity.

For the needs of the research, 7 research tools (requests for access to public information) were prepared, which contained about twenty indicators through which immediate primary data were provided by the mentioned subjects. The survey was conducted in the period January - April 2020. Also, for the purposes of the monitoring report, thirty relevant laws were analyzed, as well as the annual reports from these institutions.

Finally, in order to analyze the transparency of these institutions to the civil sector, we have prepared a brief test of indicators in the area of responsiveness of these bodies, and related to the search for free access to public information, which we provided to these entities. Based on the responsiveness of the institutions and the quality of the given answers, each of the institutions was allocated an appropriate number of points, which are presented in the third part of each individual analysis in the form of a test for openness to the civil sector.

Test for evaluation of openness towards the civil society sector

Indicator	Possible points	AEK	ASO	FVA	DPI	NBRSM	RKE	RKD
Was the response to the request submitted timely?	Yes (3) Yes, with submitted appeal (2), No (0)	3	3	3	3	3	3	3
Has the answer to all questions been provided?	Yes (3), Partially(2), No (0)	3	3	3	2	2	3	2
Are the answers to the requested information contained in the Request * clear, concise and precise?	Yes (3), Partially(2), No (0)	3	3	3	3	2	3	2
Have the requested documents covered by the Request * been submitted in full?	Yes (3), Yes, by submitting a link to the website (2), Yes, by submitting information that the documents are publicly published on the website of the entity, but without providing a separate link to the document (1), No	1	2	3	2	2	3	1
Did the legal entity holding the information request compensation provided for by the Information Delivery Act?	Yes (0), No (3)	3	3	3	3	3	3	3
Total points		13	14	15	12	12	15	12

The following can be stated from the conducted research:

- ⇒ On average, the procedure for protection of consumer rights before these entities lasts one month. The procedure takes the longest in the proceedings before AEK. Therefore, the recommendation consists of speeding up the time for resolving disputes before AEK.
- ⇒ The lodging of the submissions in all the mentioned entities is without compensation for the applicant entity.
- ⇒ The monitoring also showed a limitation in terms of human resources. This is most noticeable in the implementation of the Law on Housing, where there are only 10 municipal inspectors at the state level. Weakness in human capacities is also seen in the systematization of jobs, where works related to consumer protection are performed by persons with education who are not entitled. Hence, we recommend strengthening the number of persons working to protect the rights of consumers and to regulate the systematization in the direction of increasing the number of persons with legal education.
- ⇒ It is noted that, in accordance with the submitted data, the National Bank NBRSM, in the annual work report does not include data on acting on complaints. Also, some of the bodies, although they include data on the number of submissions, omit those data to quantify and differentiate according to the subject and the outcome. This would mean clearly and precisely indicating and determining the reasons for the violation of consumer rights. Our recommendation is to introduce such content in the annual report, in order for organizations that monitor the transparency of the NBRSM or any other entity to have easier access to data.
- ⇒ Many entities (with the exception of AEK and ASO) have responded that they have not prepared publicly available guidelines that will allow consumers to become aware of their rights when conducting a dispute. Therefore, we recommend the preparation of appropriate guidelines that will be publicly available, and in order for the interested parties to be familiar with the ways and conditions for initiating a procedure, as well as the stages of the procedure.
- ⇒ In some of the entities it is possible to submit a complaint electronically, but the possibility for electronic monitoring of the steps and action taken after the submission is absent. Therefore, one of the main activities in the future should be enabling the submission of applications and complaints electronically, where this is not possible now, as well as introducing the possibility of electronic monitoring of the case. This is especially important in the newly evolving situation with the COVID-19 virus.
- ⇒ With regards to upgrading the human capacities, it is noted that the employees of these entities in a very small part have attended some trainings in 2018 and 2019. Some of the entities finance the trainings themselves, while some of them use financial support from external donors.
- ⇒ In the actions undertaken by the entities, it is noticed that for none of the entities or an employee in them have been submitted complaints according to the Law on Complaints and Proposals, or a report in accordance with the Law on Protection of Whistleblowers.
- ⇒ The research found that many of these entities have not prepared internal acts for processing citizens' submissions. In this regard, we recommend development and adoption of appropriate internal acts for action.
- ⇒ A special recommendation that we would give is the consistent application of Article 10 of the Law on Free Access to Public Information. This provision creates an obligation to publish almost thirty documents on the websites of these entities. In this way, access to the information needed by CSOs will be facilitated, and of course, the degree of transparency and accountability will be increased.

In this brief, only some of the conclusions and recommendations of the research are listed .

RECOMMENDATIONS FOR THE LEGAL PROVISIONS

- ⇒ We recommend legal intervention through which the collective bodies of the regulatory bodies related to consumer rights will provide for the selection of a member who is an expert in the field of consumer protection and consumer law.
- ⇒ We believe that it is necessary in the governing body of the regulatory bodies related to consumer rights with an appropriate intervention to enable a representative from the civil society organizations to be elected as a member.
- ⇒ It is noted that in certain legal regulations on the part of professional competencies, abstract and legally inaccurate terms are used (for example, Article 50 of the Law on National Bank). Therefore, these vague phrases should be replaced with clear and precise terms.
- ⇒ Certain legal regulations, such as the Law on Electronic Communications, in Article 16 regarding the conditions for appointing members of the Commission of this regulatory body, requires "knowledge of computer programs for office work". We believe that such a provision is pointless for a decision-making body.
- ⇒ The analyzed laws also requires a minimum of five years of professional experience. The Energy Law requires a minimum of ten years of professional experience for a member of the ERC. It is interesting that Articles 50 and 50-a of the Law on the National Bank do doesn't require a minimum period of professional experience for members of the Banking Council, but Article 64 of the same Law requires a minimum period of professional experience for Chief Internal Auditor. In this sense, with legal intervention, this type of ambiguity should be specified, in order to provide measurable criteria and application of a merit system.
- ⇒ Regarding the cooperation with the civil society sector and the expert public, it is necessary to introduce binding legal mechanisms for consultative participation of the civil society sector and the expert public in certain decision-making processes.
- ⇒ Regarding the principles and postulates contained in the relevant laws, we consider that the provision of Article 7 of the Law on Food Safety, the so-called Risk analysis. This postulate should be integrated in all laws, i.e. mandatory introduction of the concept of risk assessment, in all segments of interest to consumers. The Housing Act completely excludes general consumer protection postulates.
- ⇒ In terms of innovation of dispute resolution tools, we want to single out the concept of mediation from Article 54 of the Law on Electronic Communications. This should be taken into account, although not directly related to mediation as a way of resolving consumer disputes, but as a concept for other legal texts. Namely, we consider that a similar mechanism, following the example of Article 54 of the Law on Electronic Communications, can be taken into account for resolving other similar situations.
- ⇒ We consider that the most important thing is that the competent bodies should be more seriously involved in the phases before the dispute, i.e. through the authorizations they have for controlling the contents of the agreements (and / or the general and special conditions of the agreements) on the basis of which they are concludes the contract.



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