

# Legal divergences in terms of customer rights in Kosovo

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## **Abstract**

*Customer protection is a worldwide known and respected phenomenon, whereas in Kosovo its regulation is in early beginnings. Historically, the origin of Kosovo customer law is from 2004 when it was first regulated by the Law. Despite all the amendments and additions made to this act in 2009, there are still no signs of positive results on this respect. The purpose of this paper is to highlight the importance of customer protection and to emphasize that customer protection legislation is not sufficiently harmonized with the Law on Obligation Relationships reflecting certain legislative divergences. These divergences result in no unique legal terminology, and also in various interpretations due to the underlying weaknesses. For the purpose of legislative security for customer protection, it is necessary to harmonize the terminology referring to the customer as a buyer, etc.*

**Keywords:** customers, rights, law, business, service, trade.

**JEL Classification:** K20, K23

## **1. Introduction**

*In terms of literature review, this paper is based on three sources. First, in the local legislative framework, comparing it from the critical point of view between itself and the legislation of other countries; second, in historical data; and third, in works and contributions of well-known authors who have treated and published customer law as their topic in prestigious magazines.*

*Research Methods:* Historical data has been used to clarify legal norms throughout history and the need for incorporation of these norms in our Laws along the history on the issue in question; Systematic analysis method to address the diversity of legal resources (jurisprudence, legal acts, scientific articles, university books), all these in order to make the necessary conclusions; Logical analysis method to draw conclusions based on logic rules; Teleological analysis method to interpret legal norms and resources based on their purpose; Comparative analysis method to compare the authors' approaches, and comparison of local and international norms. Philosophical analysis method to interpret legal sources in the spirit of the law philosophy; Theoretical analysis method which is used to interpret legal resources, such as clarifying the terminology content of legal terms.

Customer protection in Kosovo in the legal context is a relatively new concept. In this area, customer law is one of the new disciplines of the legal system and legal science. This discipline was created as a result of rapid economic and technological developments using inventions and innovations in the production

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field of new products and services. Actually, this represents a linkage fact. This is a direct proof of the link, respectively relation between the rights of intellectual property and the rights of the customer. We will pay special attention to the position of customers in the market, ways of protecting them, and the perception of impact of new technologies on trade development as well as their impact on the position of customer rights.

Developing countries have an obligation to adopt sustainable consumption models which ultimately protect the customer, while respecting the principle of shared responsibility between producers and customers depending on the activity being carried out.

## 2. Historical context

In the modern sense, costumer protection is a phenomenon of today and has to do with strengthening the rights and power of costumers towards the business world<sup>2</sup>. The first event marking the beginning of policies in favor of the costumer is the "Antitrust" (the Sherman Act) of 1890, which was in fact not intended and designed to protect the costumer, but to protect small trade and artisan production from the monopolist superpower and from the concentration of large industries. Sherman Act, in fact, excluded all actions that tended to create a profit from a monopoly situation. In the first part, Sherman Act prohibited all practices restricting competition conditions (such as price control), while in the second part it banned companies which had monopoly on a market sector, to extend this monopoly also in other sectors. Implementation of these policies gave the costumer the choice of a wider range of products and enabled fair competition for artisans and small traders.

Costumer right originated in the US during the thirties of the last century as a social-legal reaction when new industrial products emerged. Later it also appeared in Europe exactly after World War II.

New products significantly improved the quality of people's lives, but they also posed the risk of using technically unsuccessful products. Sometimes the risks to life and health of customers were due to structural mistakes - hidden defects in products. It is clear that the customer as a user has become a weak (poor) party than a trader or service provider. This is because the trader, or the service provider, has information about the product or service that it offers, knowledge, skills and economic strength. Under such circumstances, the general rules of contract law were no longer sufficient to provide the necessary protection to customers as a poor contractor in dealings with traders or service providers. It was necessary to create a new system of legal customer protection, which would be based on principles other than the principles of civil contracts law. It was imperative for the state to intervene in regulating private - legal relations with traders, respectively service providers and customers by foreseeing protection instruments, mainly the obligation for fully

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<sup>2</sup> John Keneth Galbraith., *The Good Society: The Human Agenda*, Houghton Mifflin Company, Boston NY., 1996, p. 2-5.

informing the customer for reclamation and the right of customer for complaint - a contradiction. In the historical context, it is necessary to emphasize that the most important contribution to the development of customers' right was provided by former US President F. Kennedy (1962). This former president promoted four customer rights, known as security rights, information rights, rights to choose, and rights to listen to the voice of customers.

The development of European customer protection law in the historical sense occurred a bit later than the American one. In 1975, the European Commission approved the First European Community Program for Customer Protection, including the information policy. Motivated by the speech of President Kennedy addressed to the Congress, this document in the context of basic customer rights also adds to the list: the rights for health protection, rights for economic interest protection, the right for correction, rights for information and education, and the right for participation.

In addition to these four customer rights, the Resolution 39/248 of the United Nations General Assembly, dated 09.03.1985, inaugurated four other customer rights: the right to satisfy basic needs, the right for customer education, the right for notification, and the right for a healthy and sustainable environment. (United Nations Conference on Environment and Development, 1992) Customer right has even entered in the highest human rights act of the European Union, the Fundamental Rights Charter of the European Union, which states that Union policy should provide a high scale of customer protection<sup>3</sup>.

Under the European Union there are no unified and comprehensive solutions when customers are concerned. This is because customer issues are specifically addressed depending on the problems that arise in certain areas. Customer protection in the EU is regulated by directives requiring the minimum harmonization standard with the aim of approximating them with existing solutions from different customer protection systems of EU member states, which are defined by national legislation. The purpose and implementation of directives in national legislation was to ensure a minimum level of protection of customer rights in all member states. This means that it remains on the will and the possibility for member states to resolve certain more complex issues in the area of customer legislation according to their estimates. However, in the last decade there was an upward trend from a minimum requirement to a maximum harmonization requirement. The maximum harmonization principle is mainly related to the Unfavorable Commercial Practices Directive 2005/29 EU and the Customer Rights Directive 2011/83. Accordingly, maximum harmonization implies that EU member

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<sup>3</sup> Mutua, Makau W. and Howse, Robert L., *Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization (2000)*. HUMAN RIGHTS IN DEVELOPMENT YEARBOOK 1999/2000: THE MILLENNIUM EDITION, pp. 51-82, Hugo Stokke, Anne Tostensen, eds., 2001; Buffalo Legal Studies Research Paper No. 2010-008. Available at SSRN: <https://ssrn.com/abstract=1533544>, consulted on 10.03.2018.

states are no longer obliged to only establish a minimum level of protection under a specific directive<sup>4</sup>, but they should set a maximum allowable level of protection.

In Europe, Sweden is the leading state in the area of customer protection. This country has given the most contribution in the development of European and global customer legislation. In 1971 it adopted the Law on Unfair Contractual Provisions. The Swedish law of 1971 for the prohibition of non-concrete (unreasonable) clauses contained only seven provisions and as such became a clear example of both the scope and the quality (importance of the law), which could not always be related. Therefore, this act was small in size, but in content and scope it was able to make a significant impact in many countries. In 1986, according to Braithwaite and Drahos<sup>5</sup>, sales of goods to customers in Sweden were separate from the provision of services.

The Swedish state is also known because of the ombudsperson institution for the protection of customer rights. The Ombudsperson Institution was introduced as a separate type of administration control in a large number of countries. The first ombudsman was appointed in 1809 as a parliamentary ombudsperson in Sweden, and then in other Scandinavian countries. Today, the People's Advocate is an institution that, in addition to monitoring the law enforcement by executive institutions and administration authorities, its basic duty is also protection of the rights of citizens, particularly from illegal and irregular administration<sup>6</sup>. Over time, people's advocates were assigned for various areas such as environmental protection, children's rights, protection of national minorities, protection of persons with special needs, and protection of customer rights. For demonstration purposes, Bosnia and Herzegovina has also implemented the Customer Ombudsman Institution in 2006, following the example of Sweden<sup>7</sup>.

For the protection of customer rights in Germany there is an old tradition that emerged shortly after World War II. Today, sixteen customer organizations associated with the Federal Customers Association operate in Germany. They play an important role as counseling centers, because they provide assistance in informing and educating customers, as well as in solving customer extrajudicial disputes. They also have an impact on creating customer policy and proposing legal solutions<sup>8</sup>. However, competent for customer protection is the Ministry of Food and Agriculture. Competences of this ministry cover also the area of bringing

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<sup>4</sup> Christian Twigg-Flesner, *A Cross-Border-Only Regulation for Customer Transactions in the EU*, Springer, New York, 2012, p. 43.

<sup>5</sup> John Braithwaite, Peter Drahos, *Global Business Regulation*, Cambridge [u.a.]: Cambridge Univ. Press, 2000, p. 24. [www.law.du.edu/forms/writing-competitions/documents/winners/5.pdf](http://www.law.du.edu/forms/writing-competitions/documents/winners/5.pdf), consulted on 10.03.2018.

<sup>6</sup> Linda C. Reif, *The Ombudsman, Good Governance, and the International Human Rights System*, Martinus Nijhoff Publishers, 2004, p.125-171.

<sup>7</sup> Sanja Filipović, & Gordana Tanić., *The policy of customer protection in the electricity market*, 2006 <http://www.doiserbia.nb.rs/img/doi/0013-3264/2008/0013-32640879157F.pdf>, consulted on 10.03.2018.

<sup>8</sup> Matthew Hilton, *Customers and the State since the Second World War*, „The Annals of the American Academy of Political”, vol. 611, 1, 2007 p. 66-81.

customer protection policies. Actually, customer protection policies are not focused solely on economic policies. They are also instruments, respectively means for commercial control oriented by economic entities in order to increase productivity and investments in development and innovation, to advance business and increase profits. In this country, customer protection specifications ultimately present the quality assurance of products and services. They are an important tool for certifying the quality of German products and services in order to build trust in traders, namely service providers and customers.

Customer protection provisions in the Federal Republic of Germany are regulated by both the Civil Code and the Law on Unfair Business Activities. This is an important thing for customer protection, which means that customers actualize their rights most often at the courts of general jurisdiction. Unlike Germany, with regard to ensuring customer protection policies, France has chosen an administrative approach. In this case, under the Ministry of Economy and Finance there is a General Directory for Competition, Customer Affairs and Fraud Prevention. Certain aspects of customer protection extend to the criminal context as well. The Public Prosecutor, in cases determined by law concerning fraud or similar cases, decides whether or not to initiate criminal proceedings. But even the General Director has great powers, so that can impose many penalty measures against economic entities that violate the rights of customers, including also ban of activities. There are also authorizations and settlement of disputes between traders and service providers and customers<sup>9</sup>.

Under the European projects in 2003, the Franco--German Customer Protection Center was established<sup>10</sup>. It turns out that protection, interests and customer security are among the main objectives of EU to enable the improvement of lives of European citizens. After more than two decades since the establishment of this Center, it turns out that European customers should be able to practice their rights effectively, thus markets would serve the customers and not customers to serve the markets, which is also shown in "1993-2013 Europe for customers - is it about you? The 20th anniversary of the European Customer Centers, Strasbourg, 2013". Thus, markets have to allow and create conditions for customers to engage in fair trade activities. The EU's general principle and goal regarding customer protection is the continuous improvement of legislation implementation by strengthening cooperation with national authorities as well as with stakeholders<sup>11</sup>.

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<sup>9</sup> France country profile. April 2011, European Commission, April 2011, accessed: November 27, 2012, [http://ec.europa.eu/customers/archive/empowerment/docs/FR\\_web\\_country\\_profile.pdf](http://ec.europa.eu/customers/archive/empowerment/docs/FR_web_country_profile.pdf), consulted on 10.03.2018.

<sup>10</sup> Jana Valant., *Customer protection in the EU - Policy overview*,. EPRS | European Parliamentary Research Service, September 2015 – PE 565.904, [http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS\\_IDA\(2015\)565904\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA(2015)565904_EN.pdf), consulted on 10.03.2018.

<sup>11</sup> Alma Sinanaj, *Consumer protection in Albania*,. „Law Journal Albania” May 2017, p. 1-11, <http://lawjournal.al/sites/default/files/faqosur-%20al%20-%20albanian%20legislation%20engl.pdf>, consulted on 10.03.2018.

In the United Kingdom, responsible for making customer policy is the Department for Business, Innovation and Skills<sup>12</sup>. The Office of Fair Trading is responsible for protecting the competition and protecting the customer. In addition, there is a regulatory body of the Office of Gas and Electricity Markets (OFGEM). This office acts as a regulatory body independent of the Government of the United Kingdom. It executes business supervision in the field of energy. It is financed from license fees paid by companies operating in the UK market. OFGEM handles complaints of a large number of customers. The purpose of their work is to prevent violations of customer rights by large energy companies<sup>13</sup>.

It should be noted that among the most important customer organizations is Customer Focus. This organization was presented in 2007 by joining organizations such as *Energy Watch*, *Post Watch* and *National Customer Council*. This organization protects customer rights in England, Scotland and Wales, while Northern Ireland provides customer assistance only in the field of postal services. Its work is funded mainly by the UK Government, but the customer focus is independent in its work from the United Kingdom, Department of Business, Innovation and Skills. There is no dilemma that the United States of America is the place for establishing customer rights, but also for the establishment of competition law. Due to actual remarkable competition in the US market there is a comprehensive customer rights protection provided with excellent beforehand information. Also, the right of customer repentance has been developed, which can be valid for withdrawals over a period of 30 days.

The Federal Chamber of Commerce institution is of very special importance which oversees the work of business entities and, if necessary, has the power to take actions against fraud traders and fraud service providers. It is also important to mention the US justice system, where the independence and authority of courts is at the forefront as well as implementation of the restorative justice principle<sup>14</sup> without any alternative. This means that all violators, either related to intellectual property rights or customer rights, pay 10 times more for the damage than the damage caused in case of a lost dispute. This restorative justice system is a special ex ante protection model, as such representing a powerful mechanism for protecting and preventing effects on the customer market. A strict criminal policy has given excellent results as a precautionary measure in the context of customer protection from vendors and irresponsible service providers.

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<sup>12</sup> Department for Business, Energy & Industrial Strategy, <https://www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy>, consulted on 10.03.2018.

<sup>13</sup> OFGEM (Office of Gas and Electricity Markets), 2017, <https://www.ofgem.gov.uk>, consulted on 10.03.2018.

<sup>14</sup> John Peysner & Angus Nurse, *Representative Actions and Restorative Justice: A Report for the Department for Business Enterprise and Regulatory Reform (BERR)* – Lincoln Law School University of Lincoln., December 2008, [http://eprints.lincoln.ac.uk/3298/1/BERR\\_Report.pdf](http://eprints.lincoln.ac.uk/3298/1/BERR_Report.pdf), consulted on 10.03.2018.

In addition, it should be noted that in order to protect collective interests of customers, a special lawsuit could be filed, *class action*<sup>15</sup>. Collective lawsuits are a powerful tool to protect collective interests of customers, being endangered by any unfair action of a trader, or service provider. This lawsuit is an instrument which represents the parties not only in the area of customer protection, but also in the area of responsibility for product damage, competition protection and abuse in the security market.

### 3. Regulation of legal customer protection in Kosovo

Legally, customer protection system in Kosovo started to be implemented for the first time under UNMIK's interim government, more accurately on 19.10.2004 by UNMIK Regulation 2004/42, respectively Law no. 2004/17 on Customer Protection. This law is based on Regulation no. 2001/9, dated 15 May 2001, of the Constitutional Framework for Interim Self-Government in Kosovo (Chapter 5.1 (d), 5.7, 9.1, 9.3.3, 11.2); Regulation no. 1999/1, dated 25 June 1999, concerning the authorizations of the UN Interim Mission in Kosovo, as supplemented by UNMIK Regulation no. 1999/24 dated 12 December 1999 on the applicable Law in Kosovo with a view to protecting the customer in the free market in Kosovo. Adoption-amendments to the Law 2004/17 were made in 2009 (03/L-131), at the time when customer protection was still a part of the Department of Commerce at the Ministry of Trade and Industry. The main purpose of this change was the establishment of the Customer Protection Council.

After the declaration of independence, the issue of customer protection has been raised into constitutional category. As such, the Constitution of the Republic of Kosovo, with the provisions of paragraphs 3 and 7 of Article 119, precisely and expressively guarantees customer protection. There is no dilemma that this important field is currently regulated by more than 30 laws, including other sub-legal acts.

Amendments to Law 2004/17, in the current Law in force (04/L-121) occur in 2012. This Act regulates a number of issues, in particular in relation to seller, manufacturer and supplier's obligations. However, the current law has failed to address new concrete areas along with customer rights, such as: sale of shares, discounts, open market sales and defective goods; public services; payments; contracts; financial services; unfair terms; commercial practices; advertising; internet sales; information and education; Dispute Solving and Collective Protection (TIM, 2015). Current Law on Customer Protection No. 04/L-121, shall be continuous subject to amendment-supplementing for the regulation of this act. Mainly, amendment - supplements should be sought alongside the two main processes: first, based on harmonization with current EU legislation and national laws related to customer protection, in particular with the Market Inspectorate,

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<sup>15</sup> For more information see: Legal Information Institute - Cornell Law School Wex Legal Dictionary. Retrieved 5 May 2015. *Class Action* [https://www.law.cornell.edu/wex/class\\_action](https://www.law.cornell.edu/wex/class_action), consulted on 10.03.2018.

respectively in relation to handling of complaints; Second, on the basis of special important amendment - supplements that relate to the Council and the structure of the Council for Customer Protection.

#### 4. Terminology definition of customer protection law

In order to determine more accurately and clearly the content of the Law on Customer Protection, it is necessary to identify the terminological changes used therein. The current Law on customer protection in Kosovo has defined the content, respectively the terminological definitions of subjects. In this respect, the terms "customers", "merchants" and "suppliers" are used (Law No. 04/L-121 on Customer Protection). In Article 3 point 1.1. the term customer means any natural person who buys and uses goods or services to meet his or her needs for purposes that are not related to commercial activity. In addition to this legal provision, under point 1.2. the term trade means any natural or legal person who sells or acts in the market as a business, or carries on his business activity as a person acting on behalf of a wholesaler, or a producer; in point 1.3. the term service provider is meant for the person selling goods or providing services to the customer; and in point 1.4. the term supplier refers to any producer, natural or legal person that provides goods to sellers (Law No. 04/L-121 on Customer Protection).

What can be considered as a weak element of this law, depending on the development of certain business relations, is the lack of the term "buyer" and the differences that this term has with the term "customers". This is due to the fact that when a certain business relation is regulated by the law on customer protection, it is a relation that is also regulated by the Law on Obligation Relationships (Law No. 04/L-077 on Obligation Relationships). In accordance with the LOR provisions, the term buyer refers to a particular natural or legal entity that is a party to a relation in which the other party is a trader or service provider. This relation is *inter partes*. The buyer is, therefore, a person who buys a product, or receives a service, and this relation is based on the principle of will and equality autonomy of the contracting parties. Freedom of contract is dominant, meaning that under Article 17 of LOR, the contracting parties are free to determine their contractual relations with their will, which is limited by mandatory regulations, public order and good business practices - the normative enactibility principle. Before concluding a contract, the buyer is the one who has to see what goods he/she is purchasing, or what service he is being provided by the seller or their provider. This is reflected in his conscience.

According to Article 461 of the LOR (Law on Obligation Relationships), the buyer is obliged to accept the item by ordinary checking it, or should do so as soon as possible and without delay should inform the seller of visible defects within a period no longer than eight days, under threat of losing this right. When it comes to the hidden defects which the buyer cannot detect on the occasion of ordinary re-inspection when goods are taken over, then in accordance with Article 462 of the LOR, the buyer is immediately obliged to notify the seller of such defects, without delay and within eight days of their detection, threatening the loss



of rights. The deadline within which it is possible to detect a hidden flaw is six months from the date of item delivery for things that have no guarantee. In case of technical products for which a guarantee certificate is issued, this objective period shall be valid for one year from the date of delivery.

Unlike the rights of the buyer being regulated by LOR, customer right is a complex right which implies that this happens not only as a subjective right, similar to protection through individual indictments, but at the same time it is a civil right, or part of human rights and part of public order, subject to public protection.

The essential difference between the rules of contractual law and customer rights, inter alia, is expressed in a different legal position of the buyer in relation to the customer deriving from the development of the *caveat emptor* principle up to *caveat venditor* principle. That is why the basic principle of customer law is the buyer *caveat venditor* (cautious) - the trader to be careful. Namely, under the customer law trader or service provider's conscience is reflected in the trader or the service provider's responsibility in terms of characteristics of product or service that is delivered to the customer, which should be in accordance with the information at the phase of pre- informing the customer.

It is necessary to point out the fact that at the same time customer right is considered to be: the subjective right established on the basis of a concept of legal content and the concept of content in the mandatory legal enforcement of contract and compensation of damage; in the right of citizens - concerning the exercise of fundamental rights of individuals, as well as the rights of competition, namely from the enforcement of valid business rules; in human rights - owned regardless of the way of regulation by the national legal system, because it derives directly from the provisions of the law on human rights<sup>16</sup>.

From this point of view, the concept of the term customer is based on limiting the freedom of contracting through imperative legal norms. Customer rights are a category of objective rights that can be identified only partially by the buyer's authorization in a particular contractual relationship. These rights according to Tabaroši<sup>17</sup> cannot be denied to the customer because they are created in order to preserve the market system and not only to protect individual interests.

It is necessary to emphasize that in addition to individual interests, customers also have collective interests. In a collective sense, customers own separate identities and they do not diminish it with their identities as individuals, or the collective interest as a common good. Modern theory sees the collective customer interest as a trans-individual and abstract interest, which goes beyond particular interests of individuals and cannot be reduced in their amount. According to Babović<sup>18</sup>, this is about common interest of the entire customer community, i.e.

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<sup>16</sup> S. Tabaroši, *Kaznenopravna zaštita potrošača*, u: Đ. Ignjatović, *Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja*, II deo, Beograd, 2008, p. 84-85.

<sup>17</sup> *Idem*, p. 85.

<sup>18</sup> Branka Babović, *Individualna i kolektivna zaštita potrošača*, „Časopis za pravne i društvene nauke”, Beograd, Vol. 62, No. 2/2014, p. 73.

individuals related by entering into market relationships with professionals in order to meet their personal, unprofessional needs.

Normally, customers as members of a particular population coexist and interact with collective interests. Therefore, the rights of the consumer belong to the group of collective human rights. Rights exercised by a group of people are called group or collective rights. The category of collective rights today is often classified as: human rights for self-determination, minority rights, economic, social and cultural rights and solidarity rights. Collective rights define a particular identity of a particular group, such as collective rights, and precisely collective rights serve to the rights of individual members of the group. The liberal perception emphasizes Deferdarević<sup>19</sup>, which today dominates and stands for the viewpoint that collective rights serve to exercise and protect the rights of individuals.

As we have noted, customer rights belong to the second generation of human rights, so-called collective rights. These rights are not only related to individuals, but also to a certain collectivity that is formed on different bases. Such as collective rights, they are very similar to intellectual property rights, and the rights for environmental protection. It should be pointed that when it comes to human rights of the first generation, such as classical civil and political rights, it is the duty of the state to support itself and not to influence exercise of rights with its activities.

Meanwhile, when it comes to the second generation of human rights - collective rights, which undoubtedly include customer rights, it is the duty of the state to behave proactively with its activity and to create preconditions for the exercise of these rights. We think that in this area, the Republic of Kosovo should engage more, first of all, in determining the collective interest of customer rights in accordance with international standards. In addition, Kosovo has not managed yet to provide adequate protection of collective customer rights and their implementation in practice. State institutions do not violate the fundamental rights of individuals, but according to Meškić<sup>20</sup>, their actions fail to act, or rather fail to provide adequate protection of individuals' rights.

## 5. Conclusions

Protection of consumer rights in Kosovo is exercised by legislation, governmental policies and implementation by state institutions for customer protection, market actors, or customer protection associations. The law also guarantees fundamental rights of customers, including: the right to protect customer's economic interests, the right for life-threatening protection, protection of health and property, the legal aspect of customer protection, the right for complains, the right to compensation, etc. Up to now, steps have been taken to

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<sup>19</sup> Mirjana Nadaždin Deferdarević, *Individualna i kolektivna ljudska prava – kontroverze jedne podjele*, Zbornik radova, Pravni fakultet Univerziteta Istočno Sarajevo, 2011, p. 48-59.

<sup>20</sup> Zlatan Meškić, *Pravo potrošača na zaštitu kao osnovno pravo prema Povelji osnovnih prava Evropske unije*, „Anali Pravnog fakulteta Univerziteta u Zenici”, 2014, p. 52.

adopt the legal basis in accordance with the *acquis communautaire*. However, the legal and institutional framework needs to be strengthened and legislation should be implemented by well-organized institutions, thus influencing the formation of good trade practices in this respect. However, this area in Kosovo is the least legally regulated sector in comparison with the countries in the region. It is still lagging behind the legal standards applied in EU countries and other developed countries of the world, such as USA, UK, France, Japan. Actually in this respect, some basic issues have not been resolved properly. This refers to changes in the definition of the customer concept under the Customer Protection Law and the Law on Obligational Relationships.

The controversial issue, which is poorly regulated in the Customer Protection Law in Kosovo, has to do with the definition of the concept of customer collective interests, or collective protection. It was assessed that collective interest is a trans-individual interest that is abstract in itself. The main responsibility for such protection lies on customer organizations. The purpose of collective interest protection of customers is to prevent the occurrence of damages that a large number of customers may face. It is sufficient for a single customer in the market to be affected, namely, to identify the potential of harm for one or more customers, and that the customer organization should have the ability to act in order to protect the collective interests of customers. In this case, the customer organization would base its active legitimacy on protecting the public interest due to the vulnerability of the customer as a collectivity.

From the institutional point of view, there are three ways for customer protection: government initiatives/policies, respective legal framework, and market actors through fair competition and self-regulation mechanisms. With all the positive tendency of the legislation for customer protection, there is still room for improvement with regard to new projections, in full compliance with EU provisions. In fact, drafting of the new Strategy 2014-2020 Strategy for Customer Protection and Market Surveillance should be assessed, which places customers in the center and aims to strengthen them by giving them an active role in the market.

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