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A Basic Outline of Slovenian Consumer Protection with an Emphasis on Alternative Dispute Resolution

Abstract

Consumer protection today represents a modern segment of human rights, which in recent years has carved out a wider role in national, European and international law. The objective of this paper is to show the fundamental principles of consumer protection in the Republic of Slovenia, where intensive consumer protection began to take root after the country gained its independence in 1991. In the subsequent 25 years, numerous legal acts have been adopted and documents introduced which either in whole or in part address the protection of consumer rights. The foremost and most basic legal act is the Consumer Protection Act, which has been repeatedly amended and supplemented, with the intention that Slovenian legislation should follow and be harmonised (mainly) with European and international trends in consumer protection. The last important step was taken with the adoption of Out-of-Court Resolution of the Consumer Disputes Act, which entered into force on 14 November 2015. This Act has transposed in the Slovenian legal system Directive 2013/11/EU on alternative dispute resolution for consumer disputes.

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1. Introduction

Consumer law in the Republic of Slovenia has in recent years rapidly gained in importance and strengthened its position in the Slovenian legal system. A number of legislative acts, which either entirely or partially extend into the field of consumer protection, have been adopted. The last such legislative act was one adopted in 2015. It provided the transposition of Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (hereinafter: Directive 2013/11/EU) into the Slovenian legal system. Since the consumer is the weaker party, and often lacks a legal education or knowledge, activities aimed at raising awareness among consumers and ensuring their legal protection in the event of violations of their rights have increased in recent years in the Republic of Slovenia as well. Various government and private stakeholders are addressing these issues, in which they are brought together by their common aim – to better protect consumers. Consumer protection today is oriented towards alternative dispute resolution, which should also enable consumers to resolve their disputes with traders based on lower financial barriers (Primorac & Miletić 2016, p. 363).

2. Brief Historical Overview of Consumer Protection in the Republic of Slovenia

The first time “consumer” was mentioned officially in Slovenia was in 1955, when the Decree on Trade, Trade Businesses and Stores (*Uredba o trgovanju, trgovskih podjetjih in trgovinah*) was issued, amongst others establishing consumer councils. The councils were intended to strengthen social control in trade through participation of consumers. However, these councils were not very successful, since it was not completely clear what their tasks were supposed to be and what powers could actually be delegated to them. In practice, their function remained mainly advisory, and their operations led to no significant progress in consumer rights protection (Pernek 1981, pp. 194–201).

The next significant step towards more efficient protection of consumers was the SFRJ Constitution of 1974, which stated that local communities are

authorised to make decisions in order to pursue their common interests and satisfy common needs, including consumers' interests (Article 73). In 1989, amendments to the Constitution of 1974 deleted Article 73 and determined instead that the Republic of Slovenia shall ensure protection of consumers in accordance with its constitution and statutes. In the years following Slovenian independence, a number of sectoral acts were issued and/or amended with the express purpose of protecting consumers, but they did so only partially, each act only for its area of relevance, e.g. the Obligations Act (*Obligacijski zakonik*), the Trade Act (*Zakon o trgovini*), the Act Regulating Quality Control of Agricultural and Food Products in Foreign Trade (*Zakon o kontroli kakovosti kmetijskih in živilskih proizvodov v zunanjetrgovinskem prometu*), the Market Inspection Act (*Zakon o tržni inšpekciji*), the Standardisation Act (*Zakon o standardizaciji*).

1991 saw the establishment of the Slovene Consumer Association (*Zveza potrošnikov Slovenije – ZPS*), which has significantly contributed to raising awareness of consumer protection. ZPS edits the “ZPStest”, a journal that provides modern consumers with independent information.

The already apparent need to protect consumer rights was therefore partially addressed in various acts and executive regulations, until a more comprehensive Consumer Protection Act (*Zakon o varstvu potrošnikov*, hereinafter: ZVPot) was adopted on 26 February 1998 (*Uradni list RS/Official Journal RS*, 20/98; amendments: 110/02, 14/03, 51/04, 98/04 (official consolidated version) 114/06; 126/07, 86/09, 78/11, 38/14, 19/15; 55/17) and became binding on 28 March 1998. The original wording of ZVPot from 1998 (*Uradni list RS* 20/98) did not yet contain a provision on out-of-court dispute resolution, which had only just begun to take root in Europe. In Slovenia, the first beginnings of alternative dispute resolution can be traced back to 1994, when the Ministry of Family approved the first project on mediation. The ministry responsible for family matters thereby supported the project *Pomoč staršem in otrokom ob razvezi z novo metodo – mediacijo* (Assistance for parents and children after a divorce with a new method – mediation). Within the framework of this project, the first mediators in family matters were trained in Slovenia. This project was followed by a pilot project of the Ljubljana District Court on alternative dispute resolution, which in 2001 constituted the second step in alternative dispute resolution in Slovenia.

The possibility of out-of-court resolution of disputes was therefore explicitly included in ZVPot only with subsequent amendments thereof (*Uradni list RS*, 38/14). We may thus conclude that the Republic of Slovenia had created the explicit legal basis for resolving consumer disputes with alternative (out-of-court) forms of dispute resolution prior to the adoption of Directive 2013/11/EU (comp. Article 43b(1)(11) and Article 48b(1)(4) ZVPot). The harmonisation with EU law

was achieved through amendments of ZVPot, which implemented provisions of directives into Slovenia's legal system. These include:

a) Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (*Zakon o spremembah in dopolnitvah Zakona o varstvu potrošnikov – ZVPot-D/the Act Amending the Consumer Protection Act – ZVPot-D: Uradni list RS, 86/09*);

b) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (*Zakon o spremembah in dopolnitvah Zakona o varstvu potrošnikov – ZVPot-D/the Act Amending the Consumer Protection Act – ZVPot-D: Uradni list RS, 86/09*);

c) Council Directive of 13 June 1990 on package travel, package holidays and package tours (90/314/EEC) (*Zakon o spremembah in dopolnitvah Zakona o varstvu potrošnikov – ZVPot-C/the Act Amending the Consumer Protection Act – ZVPot-C: Uradni list RS, 126/07*);

d) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (*Zakon o spremembah in dopolnitvah Zakona o varstvu potrošnikov – ZVPot-D/the Act Amending the Consumer Protection Act – ZVPot-D: Uradni list RS, 86/09*);

e) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (*Zakon o spremembah in dopolnitvah Zakona o varstvu potrošnikov – ZVPot-F/the Act Amending the Consumer Protection Act – ZVPot-F: Uradni list RS, 38/14*).

ZVPot is *lex specialis*, because the special rights of the consumer take precedence on the strength of the Obligations Code (Možina 2015, p. 16). At the same time ZVPot in its Article 37(4) in respect of liability for clerical errors refers to the use of Slovenian Obligations Code (CO): *Uradni list RS: 97/07 – official consolidated version, 64/16*. The Consumer Protection against Unfair Commercial Practices Act adopted in 2007 is a part of the consumer *la* regime (*Zakon o varstvu potrošnikov pred nepoštenimi poslovnimi praksami: Uradni list RS, 53/07 – ZVPNPP*). This legal act lays down the company practices and failings considered to be unfair commercial practices vis-à-vis consumers, and regulates administrative and judicial protection against unfair commercial practices vis-à-vis consumers (Article 1 ZVPNPP).

In 2010, the Consumer Credit Act was adopted (*Zakon o potrošniških kreditih: Uradni list RS, 59/10, 77/11, 30/13, 81/15 in 77/16 – ZPotK-2*). Additionally, various

general laws have been adopted. These laws relate to alternative dispute resolution, but they can also be used for consumer disputes: in 2008, the Mediation in Civil and Commercial Matters Act (*Zakon o mediaciji v civilnih in gospodarskih zadevah: Uradni list RS, 56/08*) and the Arbitration Act entered into force (*Zakon o arbitraži: Uradni list RS, 45/08*). These were followed in 2009 by the Act on Alternative Dispute Resolution in Judicial Matters (*Zakon o alternativnem reševanju sodnih sporov: Uradni list RS, 97/09 in 40/12*). *Lex specialis* laws governing certain specific areas of law have also been adopted, including ones containing provisions on the out-of-court resolution of consumer disputes. For example:

a) the Insurance Act (*Zakon o zavarovalništvu: Uradni list RS, 99/10* – official consolidated version, 90/12, 56/13, 63/13, 93/15) – Article 217(2)(6);

b) the Financial Instruments Markets Act (*Zakon o trgu finančnih instrumentov: Uradni list RS, 108/10* – uradno prečiščeno besedilo, 78/11, 55/12, 105/12 – ZBan-1J, 63/13 – ZS-K, 30/16 in 9/17) – Article 294 and 295;

c) the Patients' Rights Act (*Zakon o pacientovih pravicah: Uradni list RS, 15/08 in 55/17*) – Articles 2(9), 71, 72...;

d) the Energy Act (*Energetski zakon: Uradni list RS, 17/14, 81/15*) – Article 50.

There is a good deal in all that to potentially confuse everyday consumers, who can get lost in the multitude of legal acts regulating the protection of consumers, the hyper-regulation and attendant legal fragmentation, which can render consumer protection less effective (Knez 2016, p. 33).

A major step in the consumer protection arena was taken 21 October 2015, with the adoption of the Out-of-Court Resolution of Consumer Disputes Act (*Zakon o izvensodnem reševanju potrošniških sporov: Uradni list RS, 81/15*, hereinafter: ZIsRPS). With ZIsRPS, which entered into force on 14 November 2015, Directive 2013/11/EU was transposed into Slovenia's legal system, the objection of which is the creation of a Pan-EU framework for consumer dispute resolution and modernisation of the Consumer-to-Business (C2B) structures and bodies for dispute resolution in EU Member States.

3. The Main Bodies Responsible for Consumer Protection in the Republic of Slovenia

3.1. General Remarks

Persons who want to exercise their rights arising from various legal relationships and legal transactions in which they participate as consumers may enlist the assistance of various governmental and non-governmental bodies,

agencies and other organisations. Their common aims are, broadly speaking, to protect, educate and inform consumers, to monitor developments in the market and commercial practices that might violate consumer rights, and to take appropriate measures in cases of infringement of those rights. Until 2011, the following consumer protection actors were listed in ZVPot as those authorised to carry out certain tasks related to consumer protection: the Consumer Protection Office, consumer organisations, providers of consumer education and the Human Rights Ombudsman.

The Consumer Protection Office was one of administrative authorities within the Ministry of Economy. It was authorised to perform professional, administrative and development activities related to education and informing consumers about consumer protection and public service – Article 6 of the Decree on Administrative Authorities within Ministries (*Uredba o organih v sestavi ministrstev: Uradni list RS, 35/15, 62/15, 84/16, 41/17 in 53/17*). The Office was appointed to act as the single liaison office and worked as national contact point and coordinator of activities of competent authorities under Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

But in 2011, the Consumer Protection Office was abolished following some major changes in the organisation of public administration in the Republic of Slovenia, which also resulted in amendments to the ZVPot (Act Amending the Consumer Protection Act – ZVPot-E: *Uradni list RS, 78/11*). On 20 December 2011, functions and responsibilities of the Consumer Protection Office were thereby assumed by the Ministry of Economic Development and Technology (hereinafter: MEDT).

3.2. The Ministry of Economic Development and Technology (MEDT)

The Consumer and Competition Protection Division at the MEDT performs the following tasks:

- to plan and adopt consumer protection policies,
- to perform regulatory functions,
- to ensure the monitoring and harmonisation of regulations drawn up by other ministries in areas connected with consumer protection,
- to promote the development and operation of non-governmental consumer organisations,
- to ensure the implementation of public consumer advice, information and education services on the basis of public invitations to tender or concessions, etc. (Ministry of Economic Development and Technology 2016).

The European Consumer Centre Slovenia (hereinafter: ECC Slovenia), which has been a part of the network of European Consumer Centres since 2006, has also been working under the MEDT since 2014. It is tasked with providing advice and assistance to consumers who make purchases in other EU member states, in Norway, or Iceland, or who are travelling there and encounter problems when enforcing their rights with providers of goods and services.

On its website (<http://epc.si/pages/en/about-us/ecc-slovenia.php>), ECC Slovenia invites consumers to enlist its assistance if they need advice to help them avoid problems while purchasing and travelling across Europe and save unnecessary costs; if they want to know their rights in the event of problems with a cross-border purchase; if they need assistance contacting a trader based abroad; if they want to know how their complaint can be solved and what their rights and responsibilities in dispute resolution are; if they want to fill out an online complaint form whenever they cannot reach an agreement with a trader based outside their home country; if they need professional assistance in asserting their consumer rights and help with other cross-border purchase issues; or if they want to inquire about European and/or national consumer protection legislation. They are, however, not authorised to take legal or enforcement action against a trader or represent the consumer before court, and they cannot help consumers with commercial disputes, disputes involving state authorities, handle consumer complaints if the trader is based in the consumer's home country, or intervene if the trader is based outside the EU, Norway and Iceland. In 2015, the ECC Slovenia successfully assisted consumers in 220 cases/complaints, as well as consumers from other EU Member States (30 from 220) through cooperation with other members of the ECC network, in a number of cases related to consumer complaints (Evropski potrošniški center Slovenije 2016, p. 7).

3.3. Consumer Organisations

Consumer organisations are defined as organisations that are (1) registered as societies, institutes or other organisations that are not engaged in profitable activity; (2) established by consumers with the aim of protecting their rights; (3) recorded in the register of consumer organisations with the MEDT. In order to be entered into the register, such organisations must be neutral and independent from the interests of providers of goods and services, meaning that such organisations are not allowed to acquire any funds from providers of goods and services (Article 63 of ZVPot). Additional requirements (e.g. that the organisation must have suitably equipped business premises, an functioning website, and have publicly noted office hours, among other stipulations) and the procedure for entry into the register are regulated in detail by the Rules on the procedure

and requirements for entry of consumer organisations into the register (*Pravilnik o načinu vpisa in pogojih za vpis potrošniških organizacij v register: Uradni list RS*, 8/12).

In 2001, 12 consumer organisations were registered in the Republic of Slovenia. For financial reasons, the number of registered consumer organisations was significantly reduced over the years, to the great detriment of consumers (as it portends more limited competition). Nowadays, the role of business chambers (e.g. The Chamber of Craft and Small Business of Slovenia) and associations (e.g. Slovenian Advertising Chamber), which determine the level of consumer protection in the country with their codes, terms, conditions of business activity and arbitration is also important in the field of consumer protection (Osredkar 2001, p. 6). Currently (November 2017), the following consumer organisations are listed in the register with the Ministry:

a) the Slovene Consumer Association (*Zveza potrošnikov Slovenije*, hereinafter: ZPS) – the oldest and best-known consumer organisation in Slovenia is Slovene’s Consumer Association, which was established in 1991. An independent, non-profit and internationally recognised non-governmental organisation, its main activities include informing, campaigning, advising, testing, educating and representing consumers, and international activities¹. ZPS advises members and non-members, but also helps them with individual consumer-related problems and with the enforcement of their rights, especially in the areas of defective goods and products, prices for telecommunication services, unfair commercial practices, tourism and insurance, to name a few. It regularly participates in the legislative process for the adoption or amendment of any act relevant for consumers in the Republic of Slovenia, while its lawyers also represent members in court proceedings (if only in cases of important questions related to consumer rights).

ZPS is especially active online. Its website (www.zps.si) offers information on current topics, tests and comparisons of products (more than 3,000 products were tested in 25 years of its existence), warnings regarding dangerous products that have had to be removed from the market, product- and price-comparison tools (e.g. laptops, tuna fish, washing detergents). In 2015, more than 850,000 individuals visited their website. Internationally, ZPS has a very broad network and is a member or a partner in various international organisations and projects (e.g. the European Consumer Organisation – BEUC, Consumers International – CI, International Consumer Research and Testing – ICRT, the European Consumer Voice in Standardisation – ANEC, the Transatlantic Consumer Dialogue – TACD, European Food Safety Authority – EFSA, etc.);

¹ For details on ZPS’s activities, see (*Zveza potrošnikov Slovenije* 2016).

b) International Consumer Research Institute (Mednarodni inštitut za potrošniške raziskave, hereinafter: MIPOR) – is a research institute that was established by ZPS (with the cooperation of the British Consumer Association) in 1993. MIPOR's main activities include: (1) comparative testing of goods and services in accordance with internationally accepted rules, such as neutrality and independence of organisations and individuals that perform the testing, as well as of publications that publish the results of the tests. In 2015, MIPOR conducted 38 tests on products including tuna fish, cheese, wooden pellets, laptops, diapers. Six of the tests were done in Slovenia while 32 were international tests; (2) publishing: together with ZPS, MIPOR regularly publishes a magazine ZPStest (previously VIP) with articles on various relevant topics, as well as various other educational publications; (3) research activity for Slovenia and Central and Eastern Europe: especially on food, accommodation policy, public services, quality of products and services, protecting e-consumers, health care, banking, the environment and tourism; (4) education: organisation of international seminars and domestic events for both adults and children²;

c) the Gorenjska Consumers Association (Združenje potrošnikov Gorenjske) – The Association of Consumers Gorenjska is a regional organisation established to protect consumer rights (<http://www.potrosnik-zdruzenjedor.si/>).

3.4. Market Inspectorate of the Republic of Slovenia (MIRS)

The above consumer protection agencies have a broad range of measures and powers at their disposal. However, they are generally not empowered to impose sanctions on those who violate those rights. This authority is instead granted to the Market Inspectorate of the Republic of Slovenia (hereinafter: MIRS), which oversees the implementation of acts and regulations³ adopted for protecting consumer rights (Article 70 of ZVPot) and the execution of Slovenian legislation governing consumer protection, product safety, trade, catering, crafts, services, pricing, tourism, competition protection and copyrights.

MIRS is affiliated with the MEDT, but operates independently and autonomously in the entire territory of the Republic of Slovenia. To effectively

² For more details on MIPOR's activities, see (MIPOR 2016).

³ In addition to ZVPot, these acts are: Rules on Price Indication for Goods and Services (*Uradni list RS*, 63/99, 27/01, 65/2003); Rules on goods to be covered by a warranty for proper operations (*Uradni list RS*, 73/03, 92/03); Consumer Credit Act, Official consolidated text (*Uradni list RS*, 77/04); Rules on the conditions to be met by credit intermediaries (*Uradni list RS*, 102/00); Order on the form and contents of the label showing compliance with the requirements of consumer crediting (*Uradni list RS*, 102/00); Average Effective Interest Rates Applying to Consumer Credits of Banks and Savings Banks (*Uradni list RS*, 66/04); Rules on the reporting of creditors with regard to conclusions of credit agreements and to the agreed effective interest rates (*Uradni list RS*, 75/04).

protect consumer rights through the surveillance of legal entities and the management of consumer complaints, MIRS has several measures in its arsenal, including administrative decisions forbidding the sale or advertising of a product or service and imposing fines on a legal entity if their behaviour, or failure to act, commits an offence. Anyone can notify MIRS about irregularities in the market. MIRS is then required to investigate such reports and to take appropriate action⁴. MIRS's scope of responsibility is continuously expanding, now including oversight of the implementation of Regulation (EC) No 2006/2004, which deals with consumer credit and unfair business practices⁵.

In 2015, MIRS received 197 reports of violations under ZVPot (254 reports in 2014) and 60 reports of violations under the Consumer Protection against Unfair Commercial Practices Act (52 reports in 2014). On the basis of these reports, and in the framework of the surveillance actions, 10,754 inspections were performed in the area covered by ZVPot, and 147 administrative decisions and 1,377 admonitions were issued for violations. Inspectors also issued 152 decisions for minor offences and 188 payment orders. Especially problematic are cases of unfair commercial practices, unfair contract terms, seasonal sales, distance contracts, catalogues and other advertising materials of tourist agencies, warranties and instructions, consumer credits⁶.

In addition to MIRS, other bodies may also encounter cases related to the protection of consumer rights and may exercise their powers and take measures in order to protect those rights, for example the Health Inspectorate, the Veterinary Administration, the Inspectorate for Agriculture, Forestry, Hunting and Fisheries, the Inspectorate for the Environment and Spatial Planning, and the Inspectorate for Electronic Communication and Electronic Signature.

4. Out-of-court Resolution of Consumer Disputes in Slovenia

In 2012, Slovenia adopted the Resolution on the National Program of Consumer Protection 2012–2017 (*Uradni list RS*, 47/12), hereinafter: ReNPVP12-17 2012. It emphasises that Slovenia's consumers cannot gain extensive expertise based on

⁴ See also Market Inspectorate of the Republic of Slovenia, http://www.ti.gov.si/en/areas_of_work/consumer_protection.

⁵ Ministry of Economic Development and Technology, Biennial Report (Article 21 of Regulation (EC) No 2006/2004) of 13 March 2013, http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/docs/cpc_biennial_2013_sl_en.pdf (accessed: 8.08.2016).

⁶ For more, see Market Inspectorate of Republic of Slovenia, Business Report for 2015, <http://www.ti.gov.si/fileadmin/ti.gov.si/pageuploads/dokumenti/TirsPoslovnoPorocilo2015.pdf> (accessed: 8.08.2016).

which they could make reasonable purchase decisions for every occasion, nor do they have the time to become fully informed about market supply (*caveat emptor*) (Trstenjak, Knez & Možina 2005, p. 29). The increased need for consumer protection results from many factors: the integrity and complexity of markets and market relations, deregulation trends, the opening up of markets, globalisation of supply and demand, the increased cross-border purchase of goods and services, technological development (the possibility of distance selling, especially of online shopping, cashless transactions, shorter product life), the growing number of products and services whose quality is almost impossible to assess at the time of purchase (for example, electricity, healthcare services, insurance, investments, internet services, etc.). As a result, purchasing decisions depend mainly on one's trust in a brand and/or trader. Moreover, the importance of the services sector, including financial, consulting and other services, is likewise increasing. All of these factors result in consumers being insufficiently aware of their rights and therefore unable to effectively protect them (ReNPVP12-17 2012).

Since access to legal protection constitutes a fundamental right, enshrined under Article 23 URS (also Article 6 ECHR), Slovenia is obliged to ensure proper judicial protection in the field of consumer protection. The exercise of this fundamental right can be guaranteed both in judicial and alternative dispute resolution procedures. Alternative dispute resolution is especially important for consumer protection, because traditional litigation is often not the most suitable form, considering the relatively low economic value of a dispute and the difference in economic strength of the parties, legal knowledge and experience (ReNPVP12-17 2012). In 2012, Slovenia thus resolved to regulate alternative dispute resolution for consumer protection.

Slovenia adopted ZIsRPS, which transposed Directive 2013/11/EU into the country's legal system. On 21 May 2013, Regulation (EC) No 534/2013 on online dispute resolution for consumer disputes (hereinafter: Regulation 534/2013) was adopted as well. Directive 2013/11/EU and Regulation 534/2013 are two interrelated and complementary legal instruments (Grgurić 2014, p. 24), which strive to bolster EU consumer protection. The objective of Directive 2013/11/EU is to establish a Pan-EU framework for consumer dispute resolution and the modernisation of C2B structures and bodies for dispute resolution in the EU Member States (Hodges & Creutzfeldt 2013). It is among the measures intended to strengthen the EU internal market by protecting consumers and providing access to ADR (Creutzfeldt 2016, p. 2).

On 14 November 2015, when ZIsRPS entered into force, Slovenia fulfilled the objective established by ReNPVP12-17 from 2012. ZIsRPS regulates out-of-court settlement of domestic and cross-border disputes arising from contractual relationships between traders and consumers, resolved through

mediation (also adjudication and arbitration) by the body conducting out-of-court resolution of consumer disputes. ZIsRPS also sets out the principles and general rules of procedures for out-of-court resolution of consumer disputes and rules and conditions of operation for persons conducting out-of-court resolution of consumer disputes (Article 1 ZIsRPS). However, the following disputes are explicitly excluded from ZIsRPS' scope:

- 1) disputes brought by the trader against the consumer;
- 2) disputes relating to the provision of healthcare services, including the prescription, dispensation and provision of medicinal products and medical devices where these are provided to the patient by healthcare workers and associates;
- 3) services provided by non-economic services of general interest (Article 3 ZIsRPS). Comparison of Article 3 ZIsRPS and Article 2 (2) of Directive 2013/11/EU leads to the conclusion that Directive 2013/11/EU excludes a broader area from its scope in comparison with Article 3 ZIsRPS. Namely, Article 2(2) provides that Directive 2013/11/EU does not apply to: "(...) (a) procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed or remunerated exclusively by the individual trader, unless Member States decide to allow such procedures as ADR procedures under this Directive and the requirements set out in Chapter II, including the specific requirements of independence and transparency set out in Article 6(3), are met; (b) procedures before consumer complaint-handling systems operated by the trader; (c) non-economic services of general interest; (d) disputes between traders; (e) direct negotiation between the consumer and the trader; (f) attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute; (g) procedures initiated by a trader against a consumer; health services provided by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices; (i) public providers of further or higher education".

In Article 4(1) ZIsRPS defines the following terms for its own purposes:

- a) a consumer is a natural person who acquires or uses goods and services for purposes outside of their professional or gainful activities;
- b) a trader is a natural or legal person who performs gainful activities, irrespective of their legal form. Obligations of a trader under this law shall also apply to other legal and natural persons not engaged in gainful activity if they provide goods and services to consumers;
- c) a domestic consumer dispute is a dispute arising from a contractual relationship between a trader and a consumer, whereby at the time of ordering goods or services the consumer resided and the trader was established in the Republic of Slovenia;

d) a cross-border consumer dispute is a dispute arising from a contractual relationship between a trader and a consumer, whereby at the time of ordering goods or services the consumer resided within the EU Member State and the trader was established within the Republic of Slovenia;

e) a procedure for out-of-court resolution of consumer disputes is a procedure in which one or more independent third persons resolve a domestic or cross-border consumer dispute;

f) a body conducting out-of-court resolution of consumer disputes is a permanently established body governed by public or private law in the Republic of Slovenia that provides the resolution of domestic and cross-border consumer disputes using the procedure from paragraph e and is entered in the register of persons who conducting out-of-court resolution of consumer disputes in accordance with Article 35 ZIsRPS;

g) a person conducting proceedings with the body conducting out-of-court resolution of consumer disputes is a person conducting proceedings for the out-of-court resolution of consumer disputes or a person deciding proceedings with a binding decision;

h) a person involved in proceedings with the body conducting out-of-court resolution of consumer disputes is a person involved in proceedings for out-of-court resolution of consumer disputes or a person deciding proceedings in a senate with a binding decision;

i) online sales or online service is a sales contract or a service contract where the trader, or the trader's intermediary, has offered goods or services through a website or by other electronic means, and the consumer has ordered those goods or services on that website or by other electronic means;

j) an online consumer dispute resolution platform is a single point of entry for consumers, established under Regulation 524/2013/EU for the resolution of disputes arising from online trade or online services between the consumer residing and the trader established in the European Union.

According to ZIsRPS, a trader who is a legal person is considered to be established in a place which is entered in the business register as its seat, or where its management body has its seat, or where it has a business unit, branch or agency. A sole trader is considered to be established where he or she has his or her place of business (the second paragraph of Article 4 ZIsRPS). A body conducting out-of-court resolution of consumer disputes governed by private law is considered to be established where it carries out activities of out-of-court resolution of consumer disputes, while a body governed by private law is considered to be established in the place which is entered in the business register as its seat (the third paragraph of Article 4 ZIsRPS).

The person, who by the provider of out-of-Court resolution of consumer disputes conducts or participates in procedures for the settlement of consumer disputes, must be professional, independent and impartial (Article 5 ZIsRPS). Thus, Directive 2013/11/EU as well as ZIsRPS see in guaranteeing the principle of professionalism one of the basic criteria and the essential conditions for successful out-of-court settlement of consumer disputes. Directive 2013/11/EU emphasises that it is essential for the successful activity of the system of alternative dispute resolution (Grgurić 2014, p. 24). Especially to provide the necessary confidence in its procedures, it is essential that the natural persons in charge of alternative dispute resolution possess the necessary expertise, including a general knowledge of the law. But Slovene ZIsRPS does not determine what is meant by “general knowledge of the law” (Pogorelčnik Vogrinc 2015, p. 261). In particular, those natural persons should have sufficient general knowledge of legal matters in order to understand the legal implications of the dispute, without being obliged to be a qualified legal professional (36 of Directive 2013/11/EU). Directive 2013/11/EU thus explicitly obliges EU Member States to ensure that the natural persons in charge of alternative dispute resolution should possess the necessary expertise, which comprises the necessary knowledge and skills in the field of alternative or judicial resolution of consumer disputes, as well as a general understanding of law (Article 6(1)(a) Directive 2013/11/EU). The Slovenian legislature, on the strength of its professionalism, went a step further than Directive 2013/11/EU. In Article 27, the ZIsRPS sets down that the person who as the provider of the out-of-court resolution of consumer dispute resolution conducts the process of the out-of-court resolution of consumer disputes, must be qualified for its management. He or she will have acquired legal knowledge from an accredited programme leading to a second degree law degree; or his or her level of education in law acquired after study programmes in accordance with the law regulating higher education corresponds to the level of education of at least the second degree (Article 27(1-2) ZIsRPS). Based on the above we conclude that Slovenian ZIsRPS requires legal education as a condition for managing the out-of-court resolution of consumer disputes. However, it is not necessary for the person to pass the state law exam. Croatian draft Law on Alternative Resolution of Consumer disputes, which is intended to carry out the implementation of the Directive 2013/11/EU in Croatian law, has no such article, which would determine the legal education a person must possess in order to lead out-of-court settlement of consumer disputes (Ministarstvo gospodarstva 2015, p. 11).

Elsewhere in Europe, even Germany is considering tightening up the credentials one must have to preside over out-of-court settlement of consumer disputes. In fact, German legal proposals are going even one step further than the Slovenian legislation: The person to preside over out out-of-court settlement

of consumer disputes should be, according to the German proposal, a “Volljurist”, which means, according to Slovenian law, one who, in addition to possessing a legal education, has passed the state law exam. In Germany’s thinking, only the Volljurist can ensure the legality of consumer disputes presidings, which often adjudicate extremely complex disputes and often do not differ from court proceedings (Tonner & Berlin 2014, p. 33).

The Slovenian legislature justified the *ratio* it employed to tighten the qualifications one must possess (the necessity of legal education) after ZISRPS (and in Germany) as compared with Directive 2013/11/EU, which prescribes only minimum standards (Pogorelčnik Vogrin 2015), by citing the complexity of legal relationships, in which the definition of the legal issues often requires the legal qualifications of the contractor out-of-court resolution of consumer disputes is implemented. In addition to a law degree, the person should also have accumulated sufficient experience in out-of-court or judicial resolution of consumer disputes. The requirements have been made so stringent in order to ensure greater consumers derive greater benefits and have them protected (Republika Slovenija – Ministrstvo za gospodarski razvoj in tehnologijo 2015, p. 46). Individuals presiding over out-of-court resolution of consumer disputes may have the stingency of the requirements relaxed if a dispute involves more people. In this case, ZISRPS does not require all persons involved to have a legal education. The person should have at least a diploma of the first cycle study programme or an education obtained by study programmes, which must be in accordance with the law governing higher education, and must correspond to the level of education at least of the first cycle study programmes (Article 27(3) ZISRPS).

5. Conclusions

The dynamics of human life bring with them rapid development and new challenges in consumer protection. While at the time of its independence in 1991 Slovenia took significant consumer protection measures, this protection continues to receive insufficient attention. After all, consumer protection concerns each of us as we step into the role of consumer, which occurs almost every day. Thanks to the preponderance of information today, particularly online, the modern consumer is informed, yet still not enough. Consumers remain unable to find, choose, evaluate and apply relevant information, and they can likewise struggle to distinguish between legal and lay. All these circumstances generate conflicts that consumers can resolve in different ways, in or out of the courts, th latter option of which is gaining in popularity. Slovenia has adopted ZISRPS 2015, which represents the transposition of Directive 2013/11/EU, the Slovenian legal order, thereby fulfilling

the primary goal pursued in 2012 with ReNPVP12-17 2012. This aim is fulfilled but there are open questions and problems which will have to be solved in the coming years.

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Zarys ochrony konsumenta w prawie słoweńskim ze szczególnym uwzględnieniem pozasądowych metod rozstrzygania sporów
(Streszczenie)

Ochrona konsumenta stanowi obecnie nowoczesny dział praw człowieka, który w ostatnich latach zaczął odgrywać coraz ważniejszą rolę w prawie krajowym, europejskim i międzynarodowym. Celem artykułu jest przedstawienie podstawowych zasad ochrony konsumenta w Słowenii. Po uzyskaniu przez ten kraj w 1991 r. niepodległości nastąpił intensywny rozwój ochrony praw konsumentów, w ciągu 25 lat przyjęto liczne akty prawne i wprowadzono dokumenty, które w całości lub w części dotyczyły tego zagadnienia. Najważniejszym i najbardziej podstawowym aktem prawnym w tym zakresie jest ustawa o ochronie konsumentów, która była wielokrotnie zmieniana i uzupełniana, tak aby zapewnić słoweńskiemu prawodawstwu harmonizację głównie z europejskimi standardami i zgodnie z międzynarodowymi tendencjami w zakresie ochrony konsumentów. Ostatni ważny etap stanowiło przyjęcie ustawy o pozasądowym rozstrzyganiu sporów konsumenckich, która weszła w życie 14 listopada 2015 r. Ten akt prawny stanowił implementację do słoweńskiego prawodawstwa dyrektywy 2013/11/UE w sprawie alternatywnych metod rozwiązywania sporów konsumenckich.

Słowa kluczowe: ochrona konsumenta, pozasądowe rozstrzyganie sporów, Unia Europejska, Słowenia.