Lithuania Overview

I. Introduction

Consumer protection policy in Lithuania is a new field of law which was created in order to ensure rights and interests of consumers. The legal basis of consumer protection is the Law of 19 September 2000 (No.VIII-1946) of the Republic of Lithuania “On Consumer Protection”\(^1\). The purpose of this law is to create the rights and to co-ordinate the relationship of consumers and sellers, producers and service providers that other laws do not regulate. The main jurisdiction over matters of consumer protection falls under the National Consumer Protection Council under the Ministry of Justice.\(^2\) It is an executive body that monitors compliance with the Law on Consumer Protection in relation to European Union (EU) requirements as well as applies penalties against the violators of consumer rights within its competence. In addition, Law on Product Safety of 1 June 1999 (No. VIII-1206)\(^3\) establishes the main requirements for product safety, duties and liabilities of producers, sellers and service providers for placing unsafe products on the market in the Republic of Lithuania and the damage they cause to the consumers. Furthermore, the major objective of this law is to guarantee that only safe products are placed on the market of Lithuania. Since 14 February 2004 the European Parliament and Council Directive No. 2001/95/EC on general product safety have modified this law.\(^4\) The provisions of new Civil Code (CK) of the Republic of Lithuania (Volume six “Obligations Law”, Part III, Section IV- "Liability for Damages Caused by Defective Products or Services", Articles 6.292- 6.300) have been harmonised with the main European Directive 85/374/EEC on liability for defective products.\(^5\) Also the Civil Code introduces contractual liability and liability in tort.

\(^1\) Seimas of the Republic of Lithuania (www3.lrs.lt)
\(^2\) National Consumer Protection Council ( www.nvtat.lt )
\(^3\) Seimas of the Republic of Lithuania (www3.lrs.lt)
\(^4\) O.J. L 011, 15/01/2002, p.4-17 ( www.europa.eu.int )
\(^5\) O.J. 1985 L 210/29 ( www.europa.eu.int )
II. The Product Liability Regime

A. Contract

1. General Contractual Rules

In the contractual obligation the most fundamental aspect is to state the rights and duties of the producer and consumer, and to ensure that both parties fulfil these rights and duties. Under the contract each person is required to comply with its conditions (Art. 6.256 (1) CK). Failure to do that is the basis for contractual liability.

The right to demand compensation appears when defective quality goods are sold or services rendered to the consumer. These rights concerning purchase-sales contract are foreseen in the Civil Code. Article 6.333 (1) CK provides that the seller is required to deliver things to the buyer which quality is in conformity to the conditions set forth in the purchase-sales contract or other documents which emphasise the quality of goods. The same article stresses that the seller is held liable for the product defects if the buyer proves that these defects occurred before the delivery of the product.

2. Latent defect warranty

Article 6.333 (2) CK foresees the seller's obligation to guarantee the buyer that things comply with the conditions of the contract. Furthermore, this article provides that “the seller has to guarantee that there are no latent defects in the thing which would make it unsuitable for the use for which it is intended, or which so reduce such use that the buyer would not have purchased it, if he had known of them, or would have given lesser price for it”. When the seller guarantees the product quality he is held liable for defects unless he proves that these defects appeared after the product was delivered to the buyer because he breached safety rules, there was a third party involved or force majeure.
Moreover, the seller’s liability depends on his awareness of the defect before the delivery of the product. If the purchased good did not fulfil the quality requirements and if the seller did not notify its defects to the buyer, then the buyer has the following options: to exchange the defective product into a good one, to reduce the price, to demand elimination of defects during the reasonable period of time (not later than 2 years prior to delivery of the product). According to the contractual conditions, there is no liability exemption for the seller only in cases where he reveals the product defect to the buyer also when the buyer acquires things from a person who is not a professional seller (Art. 6.334 (4) CK).

3. Limitation Period

The limitation period (if there is no other period for the quality warranty) the buyer may bring the claim for the product defect during the “reasonable term” but not later than 2 years from the supply of the product (Art. 6.338 (2) CK).

II. The Product Liability Regime

B. Tort

If the purchased product causes damage to consumer, his health or property not arising from the contractual duties then the relationship between parties is qualified as a tortious liability for damage. Article 6.248 (1) CK states, that civil liability arises when the responsible person is at fault excluding circumstances foreseen by law or contract, where civil liability occurs without fault. The fault may also consist in imprudence or negligence in accordance to the terms of article 6.248 (2) CK.

As it was stated in a case judged by the Supreme Court of Lithuania⁶, the fault of the defendant for the damage caused to the claimant arose because of non compliance with the technical measures while filling bottles with mineral water. In this case the claimant

II. The Product Liability Regime

C. Strict Liability

1. Specific Regimes

1.1 The Law of 19 September 2000 on Consumer Protection.

a) Consumer Rights

"Consumer" as specified under the Law on Consumer Protection, means a natural person, who intends to buy, buys and uses goods or services to meet his own personal or household needs. In addition, "service provider" is described as a person who supplies services to the market.

Consumers in Lithuania have the following established rights:
1) to obtain and use goods or services in accordance to their own care;
2) to purchase goods or services that meet safety and quality requirements;
3) to receive relevant information on goods and services, and on the procedure of their rights protection;
4) to demand compensation for loses and protection of infringed rights;
5) to gain support from state and local institutions for breach of consumer rights;
6) to freely create consumer organisations;
7) to receive education in the sphere of consumer protection (Art. 3, law on consumer protection).
b) Quality of Goods and Services

According to the general rule, the quality of goods (services) must not be worse than the quality standards established by the law or specified in the contract. The sellers or suppliers (in case of services) obligation is to ensure the quality of goods sold or services rendered. If non-food goods are sold to consumer which does not meet the standards contained in their documentation, or does not comply with the requirements set forth under the contract (unless it is proved that the defects appeared through the fault of the consumer), a consumer has the right to demand the following from the seller within the warranty period (if it is not specified, within 6 month (2 years from 1 January 2004) after the purchase):

1) to replace the product which is of unsatisfactory quality;
2) to eliminate the defect in the product without an extra payment;
3) to reduce the price in the product;
4) to terminate the contract and refund the money, except when defects of the good are insignificant (Art. 7(3) law on consumer protection).

1.2 The Law of 1 June 1999 on Product Safety

a) Product Safety

The main principle of product safety requirement is to ensure that products, which enter the market of Lithuania, are safe. The term "safe good", as defined in article 3 (5) of the law on product safety, is any good as described by the producer or as reasonably foreseeable, including duration, does not cause any risk to lives or health of consumers and does not cause risk greater than permitted by legal acts. Additionally, "safe service" is defined as any service that is provided and complies with required standards for safe service foreseen in legal acts, and that does not cause any risk to lives of consumers greater than allowed by legal acts, while providing it or afterwards.
The producer, distributor and supplier of a service according to article 4 (2) of the law on product safety must ensure product compliance with safety requirements envisaged by Community law and legal regulations of the Republic of Lithuania, when placing them on the market. Products and services are regarded to be safe if they conform to Lithuanian standards giving effect to European standards or, if such standards does not exist - to the state of the art and technology and reasonable consumer expectations in relation to safety.

b) Obligation to Ensure Product Safety

The producer, importer and seller (service supplier) have an obligation to place only safe products on the market, to secure that consumers are provided with relevant information concerning risks related to the product, also to inform the appropriate monitoring institutions if the defective product is discovered and to eliminate it from the market. As it is specified in the Law on Product Safety, in cases where state institutions are not able to detect weather product is safe or not, state expert examinations shall be initiated.

c) Liability

The liability of an importer, who breaches its duties according to the Law on Product Safety, is presumed as that imposed on the producer. Moreover, joint and severe liability of the seller and/or producer is foreseen for material damage caused to consumers by the defective product. Also the seller may be held liable for damages when the producer cannot be recognised. This Law further imposes fines from 500-5,000 LTL (145-1,448 EUR) on producers who place dangerous products on the market Article 24 of this law foresees producers, sellers or service providers release from liability.

The fundamental point of the Law on Product Safety is that it incorporates the concept of strict liability (liability without fault) for producers, sellers or service suppliers. Additionally, this Law is applicable only when goods and services are purchased for personal or household purposes.
1.3 Civil Code of 17 July 2000 (CK)\textsuperscript{7}

The provisions of the Council Directive on liability for defective products\textsuperscript{8} were integrated into the Lithuanian Civil Code (CK). According to the Civil Code, damage caused to a consumer is compensated under the civil liability rules independent of fault. The Directive also foresees the objective liability. Furthermore, the Civil Code introduces not only the liability of the producer (as it is envisaged in the Directive) but also the liability of the service provider for the damage caused by defective product.

a) Product

Product, as defined in article 6.293 (1) CK, means all movables with the exception of primary agricultural products and game even if incorporated into another movable or into an immovable. Electricity is also included.

b) Service

Service according to article 6.293 (2) CK, means the result of an activity intended to meet the exact material and non-material needs of a definite consumer. Furthermore, this article excludes health support, legal support, education, electricity, heat, gas, centralised supply of drinking water and transport services where the supplier of these services is liable in accordance to the contractual liability rules before the consumer.

c) Producer

The definition of a producer (service provider) is understood in a broad scope. For instance, article 6.292 (2) CK provides that the "producer" is the manufacturer of a

\textsuperscript{7} Civil Code of the Republic of Lithuania (17 July 2000), Volume six “Obligations Law”, Part III, Section IV “Liability for Damage Caused by Defective Products or Services”.

\textsuperscript{8} Directive no. 85/374 of 25 July 1985
product as well as a producer of any raw material or the manufacturer of a component part, or service provider who puts his distinguishing feature (e.g. trade mark, name) on the product. The same article, paragraph 3, also extends the liability of an importer. The supplier may also be held liable but only in cases where the producer of a product cannot be identified (paragraph 4).

d) Defect

Under the article 6.294 CK, a product is defective when it does not provide the safety which a person is entitled to expect. The following circumstances shall be taken into account in order to constitute the defective product (service):

1) the presentation of the product (service);
2) the use to which it could reasonably be expected that the product (service) would be put;
3) the time when the product (service) was put into circulation;
4) design and other shortages of the product (service);
5) other circumstances.

A product shall not be considered defective for the sole reason that a better product is subsequently put into circulation (Art. 6.294 (2) CK).

e) Damage

Article 6.299 CK defines "damage" as damage caused to a person following personal injuries as well as damages to property (only if used for private purposes).

f) Proof of defect, damage and causation

Under article 6.295 CK, injured person only needs to prove that the purchased product (service) was defective and that the causal link existed between damage and defective
quality products. It means that the victim has to prove that the product (service) was
defective and it caused the reason for damages to occur. Moreover, it is necessary to
consider the following conditions for liability:

1) damage;
2) unlawful actions;
3) causal link between unlawful actions and damage.

Unlawful actions shall be treated as actions, which do not constitute the quality
requirements for safe good (service). Additionally, unlawful actions of the producer arise
when he manufactures the defective product and puts it into circulation. In case of the
service provider, when he renders unsafe services.

g) Defences

• statutory defences

Article 6.298 (1) of the Civil Code provides exemptions from liability (basically those
established in article 7 of the Directive). The producer is not liable if he proves the
following:

1) that the product was not put into circulation;
2) that the defect did not exist at the time when the product was put into circulation
   or that this defect appeared after;
3) that the product was neither manufactured for sale or distribution by him nor
   manufactured or distributed by him in the course of his business;
4) that the defect is due to compliance of the product with mandatory regulations
   issued by the public authorities;
5) that the state of scientific and technical knowledge when the product was put into
   circulation do not enable the producer to discover the defect;
6) that the defect is attributable to the design of the product, in case of a manufacturer of a component, which the component has been incorporated or to the instructions given by the manufacturer.

The above mentioned article, paragraph 3, gives another statutory defence which allows to reduce or disallow the liability of the producer when the damage is caused both by a defect in the product and by the fault of the injured person, or the fault of any person for whom the injured person holds responsibility.

h) Time Limits

The claims for the damages caused by defective products are subject to two limitation periods. The first period concerns 3 years from the day when the victim realise or should have realised about the damage, defect and the producer of the product (Art. 6.300 (1) CK). In some cases the period may be limited because the expert opinion is necessary in order to constitute the amount of damages. The second limitation is 10 years. It means that if the defect appears after 10 years, then the liability cannot be applicable and the right to make a claim is void (Art. 6.300 (2) CK). Furthermore, the producer may be released from liability if the victim's fault is evident. Also the claim may be declared void or the compensation for damage may be reduced on the grounds of the victim's negligence.

Other Liabilities

Furthermore, other liabilities may apply in order to restore the rights of an injured consumer. The Code of Administrative Violations sets forth warnings, confiscation of goods and equipment, and the prohibition of commercial activities, including a variety of fines which may be up to 30,000 LTL (8,675 EUR). Also the Criminal Code of the Republic of Lithuania provides criminal liability for the production, sale or storage of
counterfeit goods. Such crimes may be subject to penalties of up to 125,000 LTL (36,148 EUR) or even to imprisonment of up to 6 years.⁹

⁹ [www.infolex.lt/portal/ml](http://www.infolex.lt/portal/ml) “Doing Business in Lithuania”.