

# **Analysis on the Legal Mechanisms for Consumer Protection in the Comparative Right: Kosovo Case**

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## **Abstract**

In this paper we would like to analyse and to treat the legal bases of: Legal analysis on the legal mechanisms for consumer protection in the comparative right, the role and importance of these legal mechanisms in developed countries and paying attention by special emphasis over the Republic of Kosovo. An important highlight will be over the comparative aspect of legal analysis in Kosovo, Macedonia and Albania. We also take into consideration the legal analysis of cases of violations and misleading commercial practices. Commercial practice is misleading when it contains false information and is therefore untrue. A commercial practice is misleading even when, in every possible way, including the overall appearance, misleads or is likely to mislead the average consumer, making or likely to make the consumer. The paper aims to provide a complete overview of the key issues related to the legal mechanisms for consumer protection in comparative law by treating them both theoretically and in the way that judicial practice, especially our judicial practice, has understand and apply procedural provisions regarding legal mechanisms for consumer protection in comparative law and issues arising in this regard. In this regard, the research questions include: 1. which are the main problems facing Kosovo's judicial practice in the context of the implementation of substantive and procedural provisions on cases and legal mechanisms for the protection of consumers in comparative law? 2. Is Kosovo facing poor implementation of the law, respectively non-implementation of material provisions and procedural provisions in Kosovo, for the protection of businesses and consumers? What are the causes that may affect the non-implementation of the legal framework, which is thought to be the best solution in this regard? The research questions that come out under the law are; in which cases should a relationship be referred to legal remedies for consumer protection in comparative foreign law? All these issues tend to give a comparative look at the international and national level. The expected results from this research consist in deepening theoretical and practical

knowledge on legal mechanisms for consumer protection in comparative law, comparative analysis in Kosovo and beyond.

**Keywords:** Legal relationship, civil service, civil servants, recruitment, training, legal aspect, the Civil Service Commission, consumer role

## 1. Introduction

### The Importance and the Argument of this Subject

The importance and reasonableness of this topic lies in analyzing respectively the comparison of domestic and international legislation in terms of regulating the legal bases of legal mechanisms for consumer protection in comparative law. Legal remedies are not the same in all countries, which vary from one country to another. The preparation of new legislation on consumer protection is not an easy matter for a country with a higher legal culture and tradition, nor less for Kosovo. Currently in Kosovo, for regulating and protecting consumer rights, today application is the consumer protection law, which by its content is in compliance with international, European standards and in accordance with international human rights conventions.

#### *1.1 Introduction*

The paper aims to provide a complete overview of the main issues related to the legal mechanisms for consumer protection in comparative law, by treating them both theoretically and in the way that judicial practice, especially our judicial practice has understand and apply procedural provisions regarding legal mechanisms for consumer protection in comparative law and issues arising in this regard. Regarding the practical implementation of the legal framework, in the results of many research conducted by different scholars, it is noticed that Kosovo faces poor or improper implementation of legal provisions.

In order to give this work the importance it deserves, we will list some of the empirical data that emerge from these researches that will help us to approach to the problem more easily, have a general overview of the problems facing our court practice, understand the causes that affect the non-implementation of the legal framework and on this basis we propose a reasonable solution to improve the situation.

## 2. Methodology

The Scientific research work will become more accessible and easier if it is based on the relevant built-in and verified methodology. The methodology that will be used during the drafting of the paper will be based mainly on the domestic and foreign doctrinal points of view. The methodology used will be in the function of achieving the objectives and goals set out in this paper. Methods that will mainly support the paper are: methods of analysis and synthesis, historical methods, research methods,

descriptive and interpretative methods as well as comparative methods. Empirical, statistical and graphical methods will also be used. In the process of scientific knowledge, the analysis is the first and the most fundamental.

*The research methodology will be extended into a scientific work on questionnaires and the construction of research variables.* Scientific research work becomes more accessible and easier if it is based on the relevant methodology built up and verified. The methodology used will be in function of the realization of objectives and goals set out in the paper. Methods in which the work will mainly be supported are: method of analysis and synthesis, historical methods, research methods, descriptive and interpretative methods as well as comparative methods. Empirical, statistical and graphical methods will also be used.

*Methodology: This paper upon the characteristics and features it carries is based only on the qualitative method of analysing the issues addressed in it. It aims to answer the questions: How? Why? What's the way?*

The impossibility of using the quantitative method is a result of the lack of cases judged by the Albanian courts in the field of consumer credit contracts and travel packages. So there are no numeric values in this paper. Another factor that has hampered me in using this method is the lack of the existence of an educated and informed consumer regarding the rights he enjoys in these two contracts. The qualitative method includes within it the research, descriptive, interpretative and comparative method.

### **3. Literature Review and Hypotheses**

#### *3.1 Historical background of legislative consumer protection*

Passing from consumer-like contracts to the development of consumer law in the world Consumer protection has its roots in people's daily lives. The concept of being consumer finds its expression in ancient times, at the time of people living in caves. People exchanged commodity goods in function of satisfying their own satisfaction or meeting the needs for food. In its origins, most forms antique dealership consists in the exchange or replacement of some items with others. According to Roman lawyer Paulus: "Sell and purchase originates in the exchange of items." The sales contract reflects the first stages of the birth of a civil legal relationship where one of the parties was weaker than the other. In the absence of matching commodity exchange interests, people created some kind of valuable material that would serve as commodity equivalence.

The legal analysis of the consumer credit contract and travel package contract is further supplement by the descriptive method. Through it are reflected the historical aspects of the development of consumer protection in the world and in Albania.

The descriptive method is an indispensable tool for clarifying different terms and concepts, from legal to practical aspects, realizing the knowledge of the theoretical part and the approach to reality. The original part of the work consists in the interpretation that the author has made to various issues and somewhat problematic in the area of consumer credit and travel package contracts. The interpretative method best justifies the presence of the jurisprudence of different national or international courts, in further completing the descriptive method, i.e. based on the data and facts upon which the interpretation is made.

In an attempt to clarify in detail the stage of approximation of Albanian legislation with European Union law, in order to clarify clear and precise concepts and developments in the field of consumer protection, the paper sets out somewhat comparatively these national developments in relation to Italian legislation and jurisprudence, as well as English. Correlation, as a scientific method used in social sciences, analyses the relationship between these variables: a. linking the obligations of the trader with the rights of the consumer, b. the link between not informing the consumer of the rights he enjoys in each of his contracts and legal remedies, c. the link between the full or partial non fulfilment of the obligations arising out of the consumer credit contract, the bank or the travel package contract, the organizer or seller, and the rights that the law recognizes to customers in this case.

The most important part is the finding of a strong positive correlation (whose values range from 0 to +1) between the small amount of customer information and its decline in the total decision-making power of the trader.

The method of analysis and synthesis are in unity with each other. There can be no synthesis of analysis, but no synthesis of analysis would make sense. Analysis and synthesis have a common research object, but the approach and the procedure are opposite. By contrast, the synthesis studies the whole unit by joining elements and parts in general, and also understands them, their features and relationships between them and their entirety or their relationship within it.

#### **4. Research Goal Analyze**

Through the method of analysis I intend to analyse the native and international legislation in place for the regulation of legal relations in general, as well as in particular the analysis of all the problems encountered in practice regarding consumer protection. Through the historical method, we will look more closely into the course of historical development of the creation of the first rules and their evolution.

The research method or the literature review will be used throughout the paper, especially in the first phase of the work. This method involves in itself the process of collecting various materials in function of the structure and writing of the subject, both in written forms and in electronic format. As a necessary tool for clarifying

different terms and concepts, from legal to practical aspects, descriptive methods will also be used.

By means of a comparative method, the novelties and advantages of the study object will be highlighted. Only after a comparative method can we come up with accurate conclusions based on persuasive arguments as well as problems with the subject of the study. The emperor method is another method that will be used during the work. The results that can be gained through this method are very important, especially for practical implementation. This is the gathering of scientific facts on the basis of which the truths and the legality of the sciences are verified.

Consumer protection is one of the areas that have undergone development around the second half of the 20<sup>th</sup> century. The historical background implies that the consumer concept took shape when the market economy developed with great leaps. The market became very fierce and the pressure on traders on the consumer was enormous. The European accession was created as a structure that originally meant a barrier-free in geographical area where the free flow of goods, services, capital and people would be realized.

Such a common market needed discipline, where all actors had well-defined rights and obligations. This law made a general adjustment without analysing many legal aspects of consumer relations. This use brings about a lack of market equilibrium in regarding contractual freedom and equality of will between entities. The consumer has very little or no information about the rights and special protection enjoyed by the law as the weakest party in this legal relationship. A consumer means any natural person who buys and uses goods or services to meet his / her own needs and not for purposes that are related to commercial activity, respectively for the resale of those goods.

#### *4.1 Consumer protection in the context of the common market*

Understanding the problems of consumer protection in the context of the common market is how to understand the core issues of European market integration. The laws have been aimed at protecting consumers for centuries. These laws have been drafted in various forms and acts, including laws regulating contracts, aspects of civil and criminal relations. Apart from acts that have the primary and direct consumer protection purpose, other acts extend their effects in function of this aim, with the aim of minimizing fraud by traders, freedom of the will or the facilitation of conflict resolution procedures where one party are the consumer themselves.

Consequently, consumer protection limits have not yet been fully set up. This paper aims to present and analyse the protection offered to the consumer in two of the most recent developed contracts by the first legislator; this was from a comparative point of view with the community lawmaker, that of Italian and English one.

The paper focuses on the rights and obligations of the parties in the consumer credit contract and the package travel package. To be successful in this venture, we have analysed a number of issues. First, the concept of consumer credit contract is analysed and travel package contract, individualizing the concept of consumer, merchant by the right to be informed about the non fulfilment of the contractual obligations in these two contracts.

Secondly, it is taken into consideration the relationship between consumer protection and market economy. The state, by law, should play only a limited role in protecting consumers, because consumer protection is effectively achieved through the functioning of free and open markets. Legal acts should be used to ensure that markets operate freely in the best possible way, while respecting free competition and consumer's will. When markets fail to function properly, the state interferes through the law to address this development in the best possible direction. Through its representative it gives opinions on proposed legal acts that may have an impact on consumers, participates in meetings that are of interest to the consumer, and mediates between central bodies and consumers, as well as between traders and consumers in order to protect the interests of the latter.

The treatment of the consumer credit contract aims to enrich the legal doctrine, but also to be a means of educating the consumer in relation to his rights and obligations during the stage of consumer credit advertising at the pre contractual and contractual stage. Consequently, the borrower cannot be protected under the legal framework of the consumer. From a detailed observation of the Court's judgments, all execution orders issued by this institution, with a pair of second level Banking Loans, in the role of the lender and a natural person in the role of the borrower, have as a legal basis the Code civil.

*4.2 Consumer protection approach is an essential element for local and regional development, consumer contracts.*

All of these contracts refer to the provisions regulating bank credit or loan contract. Another reason that has further stimulated me for analytically and comparatively treating legislation with other legislation is the "misuse" of the term consumer credit by the Bank of Albania Second level. These financial institutions advertise as consumer loans, a series of loans that are out of the scope of law enforcement "On Consumer Protection". Consequently, whatever their denomination, these will be assessed as mortgage loans or other bank loans, provided for ordinary consumption purposes.

## **5. We Recommended These Conclusions**

There is almost no consumer lawsuit related to consumer credit, the legal basis of which is the law "On Consumer Protection", with the plaintiff party and the respondent party to a Level Bank of Secondly, the Consumer Protection Notice

informs consumers of their rights as well as the list of dealers who over the past years have harmed consumers or deliberately sold hazardous goods to the health and safety of the consumer. a consumer or consumer protection association may appeal to the competent administrative bodies charged with consumer protection law.

The Law on Protection of Competition in Kosovo's Economic Market and the Protection of Consumer Protection Rights offers legal protection in the sense of ensuring a free and effective competition in the market. The regulation of the relationships brought within the economic market is realized with the application of the law on competition preserving consumer protection rights, which should be a legal framework for the application of the relevant competition regulation policy to preserve consumer protection rights in order to prevent misuse and to achieve the basic principles of consumer protection business law in terms of functioning of the free market and its protection from unfair competition.

Preserving Consumer Protection Rights and Market Competition is the basis for the functioning of a market economy where market competition is a form of rivalry between enterprises. The Competition is an economic phenomenon where two or more market operators operate simultaneously and produce the same or similar products and who compete against one another through the quality, price and other characteristics of the goods or services.

Kosovo's identified challenges to the report are more or less the ones identified by the Commission itself. The three main recommendations given by the European Commission are for Kosovo to: - Ensure the approximation of legislation with EU law and to start implementing it in the area of accreditation, standardization, metrology and market surveillance, and to amend the law in the section of technical requirements for products and their conformity assessment;

- Refocus the capacities of the State Agency for Standardization, the Metrology Agency and the Kosovo Accreditation Agency;

- Strengthen market surveillance and improve inter-institutional co-ordination to ensure implementation of legislation. In the Standardization section, it should be remembered the monitoring of the implementation of Law no. 03 / L-144 on Standardization implemented by the Commission in 2015.

The European Commission's report has highlighted precisely the elements mentioned in the Commission's final report in November 2015 on the protection of consumer rights. These include the need for law amendment and capacity building and business co-operation to implement standards in quality. These consumer contracts share a set of concepts, the phases through which the consumer legal relationship is crossed, and the obligation to provide information well-defined at every stage of the relationship that is created between the consumer and the trader. These two so important

consumer contracts that have taken a development nowadays are also regulated by other subsidiary acts for the protection of consumer rights.

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