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EU Consumer Law Outside the European Union: The Case of Albania

Mateja Djurovic

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Abstract The article examines the emergence of Albanian Consumer Law as an example of the application of the EU consumer *acquis* beyond the European Union. The argument is that Albanian Consumer Law was established and developed principally as a result of external pressures, whereby as part of the pre-accession process Albania has undertaken an obligation to harmonize its consumer law with EU law. In turn, the weakness of domestic pressures and factors, including a genuine commitment on the part of Albanian policy makers to develop consumer law so as to protect their citizens as consumers, resulted in a fairly slow evolution of consumer law in Albania and the lack of implementation of the initial enactments in practice. However, the empowering of a dedicated Consumer Protection Commission as the main institution in charge of enforcement of consumer law in Albania has led to some enforcement activity and a significant number of consumer protection cases. An analysis of the cases suggests the Commission is using, and upgrading, its powers so as to intervene in a number of different sectors in the economy, including against quite powerful market players.

Keywords Albania · Consumer · Consumer law · The Balkans · Enforcement · Factors · Development · Influence · European Union · Harmonization · Integration

The Republic of Albania and EU Consumer Law

The reach of EU consumer law extends beyond the frontiers of the European Union as its rules also apply in non-EU countries. Such a phenomenon is primarily present in the countries that are in the process of becoming EU Member States. On their path of European integration, and long before achieving full membership status, these countries are required to harmonize many of their national laws, including consumer law, with the EU *acquis*.

Initially, in these countries, EU consumer law was perceived as a specific legal transplant imposed from outside, therefore characterized by the absence of an operative institutional and administrative mechanism in charge of enforcement of consumer rights. The existing capacity of the domestic legal system to accept EU consumer law was generally not satisfactory and there was a lack of enthusiasm by competent policy makers to fully implement these rules into

M. Djurovic (✉)
European University Institute, Florence, Italy
e-mail: mateja.djurovic@eui.eu

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practice. Consumers were not adequately informed and educated about the significance of consumer law, and their rights under such law, or about how they can enforce such rights. The result was a limited or "black letter" harmonization of national consumer laws with the EU consumer *acquis*, whereas it took some time for consumer law to produce effects in practice and for the legal protection of consumers to begin improving, even if slowly.

The purpose of this article is to examine Albanian Consumer Law, as one of the examples of the above phenomenon. The Republic of Albania, one of the Western Balkan countries, is currently a potential candidate country for EU accession. Albania has now an almost two-decade tradition of harmonization of its national consumer law with the consumer *acquis*. However, there are few studies so far that have examined the process of adoption and elaboration of Albanian consumer policy. This article will examine both the transposition of EU consumer law and the development of legal protection of the Albanian consumer, so as to identify both the challenges Albanian Consumer Law faced through its development and to examine the responses to these challenges. The questions to be analysed in this article will focus on the consequences of the adoption of this legal transplant for the Albanian legal system and in particular for the improvement of the position of the Albanian consumer.

Early Development of Albanian Consumer Protection Legislation

Consumer law represents an innovative branch of law in Albania: the idea of establishing a particular legal regime for consumer protection has been present only since the last decade of the twentieth century. However, it took more than 10 years from the adoption of the first legislative act for Albanian Consumer Law to be eventually applied in practice to protect Albanian consumers. Prior to the adoption of its first Law on consumer protection in 1997, Albania did not have any specific rules aimed at regulating business-to-consumer relations and instead the general legal regime provided by the Albanian Civil Code applied.

Albania shared a post World War II communist past with the majority of Eastern European countries, most of which are now EU member states. The political and legal systems, as well as the principles of economic management, were based on the principles of communist ideology. As in the case of most other Eastern European countries, the idea of a specific legal regime for protection of consumers, which had been developing in the meantime in the European Community, had no impact on the Albanian legal system (for a comparative overview, see the study of Karanikic et al. (2012)).

The development of a particular business-to-consumer legal regime started only with the democratic transition and initiation of European integration processes in the last decade of the twentieth century. The radical ideological change and strong dedication to the goal of fast European integration might explain why some provisions of the European directives (such as the provisions on doorstep selling of Directive 85/577/EEC and unfair contract terms of Directive 93/13/EEC) were included in the new Albanian Civil Code which was adopted in 1994. However, the application of these rules was not restricted to business-to-consumer relations, but they also applied to business-to-business and consumer-to-consumer relations, which mean that there was no separate legal regime for consumer protection despite partial incorporation of some of EU rules into the civil code (Parapatis 2010).

The establishment of a separate legal regime dedicated to protect consumers took place in 1997 with the adoption of the first Albanian Law on Consumer Protection (Law No. 8192 of 6.2.1997). However, this piece of legislation incorporated an insignificant part of the consumer *acquis*, and thus required major further work and additional efforts on harmonization with EU

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law. Importantly, this law had no effects on improving the position of the Albanian consumer as it was apparently never applied in practice (Dollani 2010, p. 414).

In 2003, Albania adopted its second Law on Consumer Protection (Law No. 9135 of 11 September 2003), fully repealing its predecessor. The transposition of the provisions of the European Directives made by the second Law on Consumer Protection was again partial and incomplete and therefore it did not conform to the EU consumer *acquis* (Parapatis 2010, p. 169). Besides the incomplete transposition, the second Law—just as its predecessor—produced little or no effects in practice. This was the apparent result of a lack of willingness by the policy makers to invest serious efforts to develop a functional institutional mechanism that would ensure the enforcement of consumer law.

Eleven years had to pass for Albania to get its third Law on consumer protection, which was also the first one to produce detectable effects in protecting the Albanian consumer. The current consumer law (Law No. 9902 of 17 April 2008) was adopted in 2008 ("the 2008 CPL"). Despite some of its shortcomings that will be examined below and the lack of complete alignment with EU Law, the 2008 CPL represents a crucially important piece of legislation since it is the first Albanian Law on consumer protection whose provisions have been applied in practice to cases involving violations of consumer rights.

The Factors that Influenced the Development of Albanian Consumer Law

The Weakness of Domestic Factors

The democratic changes that took place in Albania at the beginning of last decade of the twentieth century brought also changes to the position of the Albanian consumer in the wider social and economic context. Namely, in a country where all trade and economic activities were strictly regulated and controlled by the state and where the state played the role of both producer and policeman, the average Albanian consumer had to adapt to the new market relations where the state commenced rapidly losing its prior dominant role in the economy. Albanian consumers were suddenly confronted with numerous privately owned companies and banks whose principal goal was to make high profit, and without the existence of an adequate legal or regulatory framework that would provide consumers with the necessary legal protection or relevant knowledge to navigate these new economic waters.

However, despite the existence of emergent domestic needs to provide consumers with legal protections, it was external factors that played the dominant role in the development of Albanian Consumer Law. In other words, the establishment and development of consumer legislation was not a product of the need or internal pressure to protect consumers as essential players in the new market relations, but rather as the outcome of pressure coming from the relationship with the EU.

The weakness of the influence of domestic factors for the development of consumer law in Albanian may in part be explained by the fact that at the outset of the transition process Albania was itself focused on building up functional state institutions in accordance with the new circumstances and economic model. The efforts of policy makers were focused on the privatization of state owned companies and on attracting foreign investments, rather than on protecting its own citizens as consumers. Such a phenomenon was also present in other countries of the region.

EU Integration as a Driver

EU membership is a foreign policy priority of the Albania. On 28 April 2009, Albania applied for the European Union membership and has the status of a potential candidate country. While

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in the Enlargement Strategy 2011–2012, the European Commission highlighted Albania's constant progress in its European integration process,[1] it is still not known when Albania will become an official candidate country and when it will initiate the accession negotiations.

Countries seeking membership of the EU are bound to implement the EU membership conditions defined by the European Council in 1993 in Copenhagen (the "Copenhagen criteria"). The 2003 Thessaloniki meeting of the European Council clearly indicated that the fulfilment of the Copenhagen criteria is a necessary prerequisite for the accession of the Western Balkans countries, including Albania, to the European Union.[2] Thus, to achieve full membership, a country must ensure:

(1) The stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities
(2) The existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union
(3) The ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union[3]

Full harmonization of the national consumer legislations with the consumer *acquis* represents a significant element of these conditions (Karanikic et al. 2012). This is because the existence of a functioning and efficient system of consumer protection is considered a necessary pre-condition for the smooth and efficient operation of the Internal Market. For that reason, over the past four decades, the EU has developed a particular legal regime aimed at providing a high level of protection for consumers. In this context, one of the main goals of EU consumer law is to place the empowered consumer at the centre of the Single Market.

Therefore, to progress further in the integration processes Albania is required to fully align its national consumer legislation with the consumer *acquis*. The establishment of an efficient system of consumer protection has been repeatedly highlighted as an important element of the integration process in all major documents between Albania and the EU, including in the annual Progress Report on Albania issued by the European Commission. Namely, every year, the Commission adopts Progress Report for each of potential candidate and candidate countries in which it assesses the progress of European integration in each of these countries. Consumer law is quite important among the areas examined, and in each of the Reports, as part of Chapter 28, Albania has been urged to continue working further on the harmonization of its consumer law with EU law. Likewise, the other documents regulating the relationship between the EU and Albania have pointed out to the requirements of the harmonization of Albanian Consumer Law.

The EU's Step-By-Step Approach

A general observation from the examination of these documents is that the EU, as part of the integration process of Albania, seeks to detect a general improvement of the position of the Albanian consumer as a result of the transposition of the consumer *acquis* into the Albanian national legal system. At the same time, it appears that the EU actors are fully aware that the position of the Albanian consumer cannot be improved overnight, but that a sustained improvement requires both time and significant efforts. This is why at the very beginning,

[1] COM (2011) 666 final of 12 October 2011.
[2] The Thessaloniki agenda for the Western Balkans: Moving towards European Integration. http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/gena/76201.pdf.
[3] Conclusions of the Presidency—Copenhagen, 21–22 June 1993, SN 180/1/93 REV 1 p. 13.

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as an initial condition of progress, the EU insisted on the full implementation of EU consumer law in Albania through adequate legislation, to be followed by the establishment and development of adequate institutional mechanism for its enforcement.

Only in the following phase, the EU has begun to concentrate on examining how the designed system works in practice and in what manner and direction it can be further improved. Nevertheless, these processes seem to be, in general, slower than the EU initially expected. This is one reason that the EU has put additional pressure to urge Albania to improve the legal framework of consumer protection and in particular its functionality and efficiency.

The Stabilization and Association Agreement

Albania signed the Stabilization and Association Agreement ("SAA") with the EU, the document that defines the integration objectives and process, in June 2006 and the SAA entered into force in 2009.[4] The SAA provides a detailed regulation of the relationship between Albania and the EU, defining the rights and obligations of both parties. As part of the wider relationship, the SAA contains requirements for the development of a legal framework for consumer protection in Albania. In the part of the SAA devoted to the approximation of laws, consumer protection was indicated as one of the important areas. Hence, under article 70(3) of the SAA, the reform of the consumer law is to be performed during the first phase of the implementation period.

The entire implementation of the SAA is divided into two execution phases with a total period of up to 10 years. The first phase was initiated with the entry into force of the SAA in 2009. During the fifth year of implementation (2014), the Stabilization and Association Council will evaluate the progress of Albania and decide whether the country has fulfilled all criteria to move to the second phase in order to achieve full association in accordance with article 6 of the SAA.

With respect to consumer law, the SAA requires effective consumer protection as an essential element of the efficient operation of a market economy. Pursuant to article 76 of the SAA, Albania needs to comply with the following four tasks:

(1) A policy of active consumer protection in accordance with Community law
(2) The harmonization of legislation of consumer protection in Albania with that in force in the Community
(3) Effective legal protection for consumers in order to improve quality of consumer goods and maintain appropriate safety standards
(4) Monitoring of rules by competent authorities and providing access to justice in case of disputes

Thus, the EU requires Albania, firstly to ensure the consumer *acquis* is duly transposed into Albanian law, but also to fully implement these rules in practice, and support them by adequate institutional and administrative capacity, which would secure effective enforcement.

The European Partnership with Albania

The European partnerships set integration priorities for the Western Balkan countries while outlining relevant EU financial assistance for the defined objectives and priorities in these countries.[5] The European Council adopted a new European Partnership with Albania in

[4] OJ L 107 of 28 April 2009, pp. 166–502.
[5] Council Regulation (EC) No 533/2004 of 22 March 2004 on the establishment of European partnerships in the framework of the stabilization and association process, OJ L 86, 24.3.2004, pp. 1–2.

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February 2008.[6] The European Partnership with Albania required the passing of a new Albanian law on consumer protection, which would repeal the Law adopted in 2003. Under the heading of "Free movement of goods," the European Partnership also imposed the requirement of reinforcing the consumer protection department of the competent Albanian ministry.[7] Furthermore, the development of administrative capacity in the area of consumer protection was underlined under the heading of "Employment and Social policies."[8] These requirements have been classified as short-term priorities to be fulfilled within 1–2 years. Thus, the passage of the 2008 Consumer Protection Law was one of the most important consequences of the adoption of European Partnership with Albania.

The Opinion on Albania's application for EU membership

In April 2009, Albania applied for European Union membership and the Commission's Opinion on Albania's application was adopted in November 2010.[9] In the Opinion, the alignment with the EU *acquis* in the area of consumer and health protection was indicated as a medium-term goal in the harmonization process,[10] which implies a period of 5 years for the execution of required harmonization.[11] In other words, full harmonization should be performed by the end of 2015. The reinforcement of judicial and institutional capacities, and particularly the development of administrative and implementation capacities were also listed as steps that are required to be taken by Albania.[12]

The European Commission's Progress Reports

An analysis of the annual Progress Reports on Albania, in which the European Commission assesses the progress of the European integration process of all candidate and potential candidate countries, show constant progress in Albanian consumer protection reforms. The 2008 Progress Report reaffirmed the adoption of the new Law on Consumer Protection and the Consumer Protection Strategy from 2007 to 2013.[13] The 2009 Progress Report indicated further progress in the area of consumer protection as a result of the establishment of the Consumer Protection Coordination Council and the Consumer Protection Council and the improvement of the entire regulatory framework.[14]

The 2010 Progress Report was issued as a more detailed Opinion of the European Commission on Albania's application for membership. In its Opinion, the Commission put particular emphasis on the enforcement of consumer law and on the need for further strengthening of country's administrative and institutional capacities.[15] The Progress Report of 2011 detects some improvement in the area of consumer protection, but highlights the need for further alignment of the consumer legislation and for strengthening the enforcement mechanisms and institutional capacities.[16]

[6] OJ L 080, 19 March 2008, pp. 1–17.
[7] OJ L 080, 19 March 2008, p. 6.
[8] OJ L 080, 19 March 2008, p. 7.
[9] COM (2010) 680 of 9 November 2010.
[10] COM (2010) 680 of 9 November 2010, p. 9.
[11] COM (2010) 680 of 9 November 2010, p. 3.
[12] COM (2010) 680 of 9 November 2010, p. 7.
[13] COM (2008) 674 of 5 November 2008, p. 26.
[14] COM (2009) 533 of 14 October 2009, p. 26.
[15] COM (2010) 680 of 9 November 2010, pp. 110–112.
[16] COM (2011) 666 of 12 October 2011, pp. 62–63.

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Similarly, the latest Progress Report of 2012 pointed to some progress in the area of consumer protection and while the development of a national consumer protection strategy was highlighted as an important next step, the consistent focus continues to be on the strengthening of the administrative and institutional capacities of competent national authorities as well as the adoption of decisions on infringement if the 2008 CPL.[17]

The Predominance of External Factors

The foregoing analysis of the factors that influenced the development of Albanian Consumer Law suggests that, on balance, consumer policy has been predominantly shaped by external, rather than domestic factors. In particular, while there was an obvious need for market regulation in the transition process, consumer law was principally advanced as part of the process of EU integration.

This weakness of internal factors and pressures may explain why for more than 10 years since the adoption of its first Law on consumer protection, such laws did not have any detectable effects in practice. It took more than a decade for Albanian Consumer Law to start to be applied and this again followed the EU's consistent underlining and insisting that the transposition of black letter law is not sufficient and that Albania had to improve its institutional and administrative capacities for the enforcement of consumer law. Furthermore, the weakness of domestic factors and forces might also explain why Albania has only modestly developed and expanded the legal framework for consumer protection to tailor it to the particularities and needs of the Albanian consumer and society and to go beyond the minimum standards required by the EU.

The 2008 Albanian Consumer Law

The Dualist Approach

The 2008 CPL, as the main source of consumer law establishes the general legal framework for consumer protection in Albania. It is a relatively short piece of legislation (with 63 articles) and apart from the substantive provisions, it also sets up the system of enforcement of consumer law, establishing and allocating powers to the relevant institutions in charge of consumer protection. By opting for a separate Law dedicated to consumer protection, rather than including consumer law provisions in its Civil Code, Albania followed the French or Italian model of dualistic regulation of consumer law outside of general private law[18] as opposed to the German or Dutch approach where the same piece of legislation contains the rules both on consumer and general private law.[19]

It is worth noting that the EU does not impose a specific approach regarding the model of adopting consumer law and countries are free to choose the model that best suits their needs and particularities (Grundmann and Schauer 2006). So far, all of the countries of the Western Balkans have opted for the dualistic approach (Karanikic et al. 2012), while Bosnia and

[17] SWD (2012) 334 final of 10 October 2012, pp. 62–63.

[18] The Code de la Consommation (France) and Codice del Consumo (Italy) as the main source of consumer law are separate pieces of legislation from the Code Civil/Codice Civile which provide the general source of private law.

[19] The Bürgerliches Gesetzbuch and Burgerlijk Wetboek contain both the rules of consumer and of general private law.

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Herzegovina was the only country in the region that strongly considered the unitary approach (Meksic 2010, p. 420).

In the case of Albania, as with the other Western Balkan countries, the preference for the dualist approach towards consumer law reflects the fact that consumer law is regarded as an innovative branch of law, adopted based on outside sources. Thus, the inclusion of consumer protection into a separate act might also reflect a fear that an attempt at incorporation could otherwise endanger the existing civil codes, their coherence and their status as a reflection of domestic factors and choices.

Main Characteristics of the Albanian Consumer Legislation

As already mentioned, the Albanian legislator decided to include the majority of the European consumer law directives in a single law, the 2008 CPL. However, in the case of some of the EU directives, not all of their provisions were incorporated into the Albanian national legislation and the transposition was thus to some extent partial and selective. This is especially the case with the provisions on distance sales contracts or the articles on consumer credit. This limited transposition would likely limit the desired effects of an EU directive given the systematic regulatory nature of consumer law directives and may be presumed to reduce the level of consumer protection of the Albanian law.

Importantly, it is not clear why only some of the provisions of the EU consumer *acquis* were transposed, whereas some other EU consumer protection rules remained outside the 2008 CPL. In particular, a key question in this context is what were the reasons and the criteria of the legislator for such a selective approach? It seems that it is not possible to give a simple and unified answer to this question given the nature of the legislative process, but the selective approach of the Albanian legislator appears to reflect a number of factors, such as the opposition to transposition of certain rules by the lobbies of powerful market participants (e.g., banks), an incorrect translation of the consumer *acquis*, a lack of understanding of the purpose of some of the rules and even negligence or omission by policy makers.

Another key characteristic of the Albanian approach is that the Albanian legislator to a large extent literally transposed the rules from the EU consumer directives without profiting from the possibility they allow to develop further provisions to provide protections beyond minimum standards. Despite such literal transposition, there are several examples in which Albanian Consumer Law was developed beyond the rules of EU consumer law to accommodate local needs and particularities. This phenomenon can be observed, for example, in the case of the definition of consumer goods which, pursuant to article 3 of the 2008 CPL, is wider than the one provided by EU law to include immovable objects. Similarly, in the case of information requirements in the area of package travel whereas EU imposes set of 11 information duties, Albanian law imposes 19 such duties.

Despite these isolated examples, the general tendency in Albania is to transpose the provisions of the consumer directives literally into Albanian law. The Albanian legislator has not taken the opportunity to develop the national consumer law further to accommodate or tailor it to the particularities of the Albanian legal system and society and to provide more effective protection for the Albanian consumer. Such opportunities exist particularly with the EU directives which require only minimum harmonization, such as Directive 98/6/EC on price indication or Directive 93/13/EEC on unfair contract terms. These allow Member States with a higher degree of regulatory autonomy to go beyond the minimum standards in drafting their national consumer laws (Schulte-Nolke et al. 2008).

Even if we examine the evolution of Albanian law over time, this tendency to track the EU provisions can be observed. Thus, the 2008 CPL was materially modified and amended

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in 2011 by Law No. 10444 of 14 July 2011 ("the 2011 Law"). The 2011 Law modified some of the provisions of the 2008 CPL in a number of relevant respects: (1) the deletion of one form of unfair commercial practices always considered as unfair introduced by the 2008 CPL (providing that discrimination of a consumer by a trader on the ground of sex, race, and on several other grounds is a type of aggressive commercial practice, which does not exist in Directive 2005/29/EC requiring full harmonization); (2) provision of missing definitions of some terms already incorporated in the 2008 CPL, which were not duly explained (such as the "invitation to purchase"); (3) update of some parts of the 2008 law in accordance with the evolution of EU consumer law (including, for instance, some of the rules from the new Timeshare Directive 2008/122/EC). In addition, the 2011 law aimed to further develop the existing legal design of enforcement institutions and mechanisms, in particular by modifying and expanding the rules governing the Consumer Protection Commission

Again the amendments made by the 2011 Law reflect the importance of external factors in the development of Albanian Consumer Law, and in particular the requirements of the EU for Albania to harmonize its national consumer law with consumer *acquis*. Namely, the main goal of adopted amendments was to include into Albanian law the rules of the directives which were adopted in the European Union after the 2008 CPL had been adopted and to correct some of the examples of improper transposition of the consumer *acquis* that were evident in the 2008 CPL. The amendments do, however, also reflect some evolution in the institutional arrangements.

The Enforcement of Albanian Consumer Law

Scarcity of EU Enforcement Rules

For years, Albania has struggled to find the most appropriate mechanism and balance of enforcement tools that would best suit its social, legal and institutional context, since it was not possible to transplant EU rules in the area of enforcement.

The 2008 CPL, as modified and amended by the 2011 Law, sets up the institutional framework for enforcement of consumer law in Albania and defines appropriate sanctions in case of breach of the law. At the EU level, the regulation of enforcement of EU rules in the national legal system is, to a large extent, left to the Member States, primarily because of the absence of necessary competence by the EU (Cafaggi and Micklitz 2009). This also applies to the enforcement of the transposed *acquis* in aspirant members.

Despite the formal allocation of enforcement competence to the national level, the EU pays considerable attention to the issue of enforcement. In particular, the EU institutions, and the Commission in particular, constantly underline the importance of enforcement in consumer protection since only effective remedies can protect the rights of consumers.[20] Accordingly, EU consumer policy is particularly focused on how to improve the enforcement of consumer law and provide consumers with the most efficient system of protection. In that context, the Court of Justice of the EU has underlined that national law must guarantee effective legal protection of the rights of individuals under relevant EU law.[21]

[20] *EU Consumer Policy Strategy 2007–2013*, COM (2007) 99 final, according to which the enforcement of consumer law represents one of the priorities; the European Union concern for the enforcement seems to be gaining even more importance, see: *Proposal of a Consumer Programme 2014–2020*, COM (2011) 707 final.
[21] Case C-432/05, *Unibet v Justitiekanskern* [2007] ECR I-2271.

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The EU directives dealing with consumer law do provide some general standards for the enforcement of consumer law. These general standards primarily require that the sanctions for breach of consumer law have to be effective, dissuasive, and proportionate,[22] as well as providing certain general directions for the design of the enforcement system for breach of the rules of these directives as in the case of unfair contract terms[23] or unfair commercial practices.[24] Moreover, one of the major exceptions to the absence of EU enforcement rules is Directive 2009/22/EC on injunctions, which provides some substantial rules on enforcement. The provisions of this directive are primarily focused on class actions and the protection of collective interests of consumers. As such, this directive was also transposed in the 2008 CPL.

As a result of this regulatory framework, Albania is left with considerable autonomy to design its own system of enforcement in consumer law. As with other aspirant members, in assessing the implementation of the consumer *acquis* in Albania, the EU does not focus on the legal design of the institutions as such, but on whether the enforcement system adopted ensures efficient protection of consumer rights. Such an approach is also reflected in Albania's SAA in article 76 which was examined above.

Another area to which the EU institutions pay particular attention in the area of enforcement is cooperation between enforcement bodies in the area of consumer law of different Member States and this focus extends to aspirant members. The regulation of this cooperation was the main objective of Regulation 2006/2004 on consumer protection cooperation. In that context, a great advantage for Albania would be to be able to cooperate with the enforcement bodies of other aspirant countries from the Western Balkans. Cooperation with other neighbouring countries, with whom Albania shares a socialist past and the European integration aspiration, can be useful since all of these countries can profit from each other's experiences, both positive and negative, so as to improve the overall level of consumer protection in the entire region.

The Institutional Setting for Enforcement of Consumer Law in Albania

The provisions of the 2008 CPL, and in particular Article 52, established an administrative body, the Consumer Protection Commission ("CPCA"), whose exclusive function is the enforcement of consumer law in Albania. Thus, the CPCA now represents the main pillar of the consumer protection system in Albania. It has already adopted more than two dozen decisions for breach of consumer law, some of which will be examined below.

It is worth emphasizing that the institutional design for consumer law enforcement in Albania has also evolved over time, and in particular if we compare the current institutional arrangements, as established by the 2008 CPL and amended by the 2011 Law to the system initially created by the earlier consumer laws. For instance, under the Albanian Law on Consumer Protection of 2003, the institution of ombudsman was accorded a very important role in enforcing consumer legislation, probably relying on the Scandinavian countries where consumer law enforcement relies principally on the ombudsman. However, this solution was eventually rejected and the 2008 law completely excludes the ombudsman from the process of consumer law enforcement, opting instead for a specialist administrative body.

The relative autonomy of the states who are members or aspirants to develop their institutional setting for enforcement in accordance with their needs and particularities also

[22] Art. 24 of Directive 2011/83/EU on consumer rights.

[23] Art. 7 of Directive 93/13/EEC on unfair contract terms.

[24] Art. 11 of Directive 2005/29/EC on unfair commercial practices.

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applies for the determination of the applicable sanctions for the breach of law. In other words, EU law does not provide precise guidelines regarding the sanctions for breach of consumer law. It just broadly requires that national laws provide sanctions which are effective, proportionate, and dissuasive. The same approach is followed in the new Directive 2011/83/EU where, in the part on penalties, article 24 only states that "Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive." This focus on the effectiveness of remedies for breach underlines the importance of the implementation of these rules on the ground so that they function in practice instead of remaining only a "black letter" law.

The 2008 CPL introduced a set of fines that are imposed on traders for violation of the law. Different state institutions are responsible for issuing fines, depending on the part of the law that has been breached. For instance, competent market surveillance bodies are responsible for the breach of provisions dealing with price indications, whereas the CPCA, as the main institution in charge of enforcement of consumer law, is competent, inter alia, in cases of violation of the rules on unfair commercial practices. These sanctions are subsidiary to criminal law sanctions for breaches of the pursuant to article 57(1) of the 2008 CPL. The fines were increased by the Law 2011 and now they range from 100,000 Albanian Leke (approximate to 710 EUR in May 2013) and going up to 2 % of trader's annual turnover for the previous year. The increase in fines is not the consequence of the inflation in Albania, but rather reflects the intent of the relevant policy makers in Albania to provide for sanctions which are more effective vis-à-vis traders, and thus provide a more efficient and dissuasive protection for the Albanian consumer.

Albanian Consumer Law in Practice: First Decisions of the CPCA

As already mentioned, one of the most notable aspects of the enforcement of Albanian Consumer Law is the growing practice by way of decided cases of the Consumer Protection Commission of Albania ("the CPCA"). In particular, in the period of more than 3 years, as of October 2009, the CPCA has adopted more than two dozen decisions dealing with specific consumer complaints. The existence of these decisions is a very promising sign of activity of the CPCA as the main institution in charge of enforcement of consumer law in Albania. Particularly when compared to other similar jurisdictions in the Western Balkans, this number of adopted decisions can be described as quite impressive, since in the case of the majority of neighbouring EU-aspirant countries, the results of the work of competent national authorities in charge of enforcement of consumer law are far less remarkable.

An examination of the decisions of the CPCA reveals both the common consumer problems in Albanian markets and the ways in which the Commission can attempt to resolve them. A particularly notable aspect of its practice is that the CPCA has condemned for breach of Albanian Consumer Law not only small or medium, privately owned enterprises, but also large and powerful market operators, such as banks, the principal Albanian suppliers of mobile telecommunications and electrical energy, as well as state entities. Such decisions seem to suggest that the CPCA is not timid in its consumer law practice and that it is willing to enforce the provisions of the consumer law even against powerful players.

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The CPCA Practice[25]

A substantial number of decisions of the CPCA deal with the question of legality of advertising practices of traders that may be considered unfair. Unsurprisingly, it is not only consumers that complain of unfair advertising in Albania, but also competitors who are also protected by the rules of the CPCA. The rules on unfair commercial practices Directive 2005/29/EC are also frequently invoked in cases before the CPCA. This likely reflects not only the very wide scope of application of the provisions of Directive 2005/29/EC on unfair commercial practice as confirmed in several decision of the CJEU,[26] but also the lack of any prior general legal framework of general obligations of fair trading on traders in business-to-consumer relations and sanctions for trader misbehaviour. Commonly the defendants are from sectors where market operators have significant market power (and were former state monopolies) and where there are substantial information asymmetries between suppliers and consumers, including the telecommunications and electricity sector, public transport and tertiary education, as well as financial intermediaries.

Telecommunications

In Albania, as in the other Western Balkan countries and the EU Member States more broadly, providers of telecommunication services frequently face complaints about inappropriate practices towards consumers and are thus the targets of consumer protection enforcement. This is both due to the lack of competition in the sector, the consequent imbalances in power and because of the weaknesses in the regulatory scheme for protection of private parties. At least four of the recent decisions of the CPCA relate to companies operating in the telecommunications sector.

In fact, the very first decision of the CPCA (Decision 1 of 7 October 2009) was based on a complaint about the permissibility of comparative advertising by an Albanian telecommunication company AMC, which was initiated by one of its competitors. The 2008 CPL includes the provisions on comparative advertising as defined by Directive 2006/114/EC on misleading and comparative advertising which establishes the legal framework for fair advertising of comparable products of competitors. The competitor complained to the CPCA on the ground that the defendant was violating the comparative advertising rules and in its decision, the CPCA identified a breach of the relevant law and ordered the cessation of the advertising practice in question. However, the CPCA decided not to impose a pecuniary fine or some other applicable sanction on the defendant, pointing out instead that additional information on the case was necessary.

Given the scarcity of the provided information, it remains unclear whether this represents the CPCA's final and definite decision or whether it was an interim measure because the parties were required to provide additional information on the case. In fact, if it is the latter, this could be a welcome procedural innovation by the CPCA. The question of interim measures to protect rights under EU law has often arisen in various Member State jurisdictions. Similarly, for an efficient system of consumer protection, where a quick response may

[25] Before the examination of these cases, a disclaimer is due: the author does not speak the Albanian language and the analysis is based on English translation of decisions made available to the author. These translations appear to be summaries of the relevant cases containing a rather scarce description of the relevant facts and the manner in which the CPCA disposed of the case.

[26] Joined Cases C-261/07 and C-299/07 *VTB-VAB and Galatea* [2009] ECR I-2949; Case C-304/08 *Plus Warenhandelsgesellschaft* [2010] ECR I-217; Case C-540/08 *Mediaprint Zeitungs- und Zeitschriftenverlag* [2010] ECR I-10909.

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be necessary to avoid on-going harm, the availability of an interim measure until the adoption of final decision on its legality can be quite useful.

In Decision 8 of 6 August 2010 of the CPCA, the object of the complaint was another telecommunications company, namely Vodafone as one of the major providers of mobile telecommunication services in Albania. The claim was that Vodafone acted unfairly and misled consumers. The complaint was based on two advertisements by Vodafone which were ultimately found to omit relevant material information that an average Albanian consumer would require in order to make an informed commercial decision. Vodafone was condemned by the CPCA for engagement in unfair commercial practices, primarily through advertising of two of its mobile phone packages. This approach appears to be in accordance with EU consumer law where the duty of information represents the most important instrument for consumer protection.

By way of remedy, Vodafone was requested by the CPCA to immediately stop with its unfair advertising practices. However, no pecuniary fine was imposed on Vodafone apart from the cessation order, though from the available information it is not clear why the CPCA opted not to fine the company.

A later decision (Decision 14 of 17 November 2011) of the CPCA also dealt with the provision of information by a telecommunications company to consumers, under the rubric of unfair commercial practices. The facts of this decision are quite similar to the Vodafone decision, in that a telecommunications services provider, Eagle Mobile was claimed to have breached the rules on unfair commercial practices by the omission of material information from its advertisements. It appears that all or most of the material information was in fact provided by the company, but in English and not in Albanian, which is the only official language in Albania. As a result, Eagle Mobile's disclosure of information was useless to any Albanian consumer who does not speak English. The CPCA found that Eagle Mobile's advertising practice in dispute represented a form of misleading omission since the required information was provided in an unclear, unintelligible, ambiguous, or untimely manner.

However, in disposing of this case, the CPCA not only ordered Eagle Mobile to cease with the unfair commercial practices as in the case of Vodafone, but also obliged the defendant to pay a pecuniary fine. From the available material, it is not possible to explain the apparently inconsistent approach of the CPCA in the two cases, given that they have very similar facts. One possible explanation for the diverse approaches of the CPCA may lie in the time gap between the cases and the question of notice to operators.[27] At an early stage of development and application of the 2008 CPL, it would be important to put traders and other actors on notice of what might be examples of breaches of the consumer law, rather than to start immediately with the imposition of more severe sanctions.

The question of the legality of the advertising practices was the subject of CPCA action in Decision 10 of 25 October 2010 in which AMC, the first and still the biggest mobile telecommunication companies in Albania, was sanctioned with a pecuniary fine and was ordered to cease with a commercial practice that was found to be both an aggressive and a misleading practice (persistent and unwanted solicitations over the phone is one of the explicitly listed aggressive practices in Annex I of Directive 2005/29/EC on unfair commercial practices). Moreover, the fact that material information was omitted from the advertising was found to represent a form of misleading omission in accordance with the transposed article 7 of Directive 2005/29/EC on unfair commercial practices.

[27] The CPCA adopted Decision 8 in August 2010, whereas Decision 14 was adopted in February 2011. A fine was also imposed in Decision 10 of 25 October 2010 (the second decision in which AMC was a defendant), discussed below.

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Education and Municipal Services

In the sector of services that were formerly exclusively provided by the government, the CPCA has been active both against new entrants to these markets, as well as against the incumbents, even where they are still operated by public entities.

The question of misleading advertising was at the centre of a case (Decision 11 of 25 October 2010) brought by a complaint of the Tirana State University against its competitor, the privately owned European University of Tirana due to its television and newspaper publicity campaign. The argument was based on misleading advertising both in the business-to-consumer context (i.e., that the publicity misleads the consumer in such a way that s/he would not have performed a transactional decision had s/he known that the information provided in the advertisement was false) and in business-to-business relations (that such an advertising practice harms the competitor).

While finding a breach of the 2008 CPL, the CPCA eventually held that no sanction was to be imposed on the European University of Tirana since the defendant concluded an agreement with the CPCA to substantially modify its advertising so that it is fully aligned with the law. The absence of a sanction may be questioned from the perspective of EU consumer law, given that the breach of the law was confirmed and in such cases the EU standard for breach of consumer law ordinarily envisages applicable sanctions that are dissuasive, efficient, and proportionate.

The rules of Directive 93/13/EEC on unfair contract terms were also applied to contracts between a student as consumer and the managers of university accommodation. Decision 23 (22 February 2012) of the CPCA dealt with a complaint by a consumer who was a student in Skodra against the student residence in which she lived alleging that the lease agreement contained two terms which were unfair and contrary to the 2008 CPL. The first contract term allowed the university accommodation provider to keep the total sum of the rent paid if a student decides to rescind the contract on university accommodation. According to the second contractual term, the registration fee of the boarding student was considered non-refundable, so the provider was entitled to keep it if a student decides to rescind the contact.

The CPCA concluded that these terms of the lease agreement were unfair and contrary to law. In accordance with the 2008 CPL, the CPCA annulled the two unfair provisions of the contract and ordered the trader not to use them in their standard forms of lease agreements anymore. Moreover, the CPCA required that the defendant compensate the student for the damage she suffered as a consequence of the annulled unfair contract terms. This decision demonstrates that apart from identifying, removing and sanctioning the unfair behaviour of traders, the CPCA also grants compensation for damages to individual consumers, again quite an important enforcement feature in a country in which access to ordinary civil courts may be difficult.

In Albania, thus, not only private entities, but also the economic activities of state entities, such as the municipalities or cities, towards consumers are subjected to the rules of consumer law. In the CPCA's Decision 12 of 8 November 2010, the defendant, in its capacity as trader, was also a state entity. Specifically, the Municipality of Tirana was accused of breaching the rules on unfair commercial practices and the information duties imposed on traders by the 2008 CPL. The precise facts of the case are unclear from the available information, but they related to the issuance of a monthly bus ticket for public transportation by the Municipality. As a result, the basis of the CPCA's decision is difficult to discern, including its methodology for concluding that the conditions in the two limbs of the general clause on unfair commercial practices (transposed article 5 of Directive 2005/29/EC) were fulfilled. In any event, the policy significance of the case it that the CPCA has again enforced the consumer law even against public entities where they interact and sell products and services to consumers.

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Financial and Credit Institutions

It would not be a surprise that Albanian consumers, as in the majority of the new Member States of the EU, have been subjected to unfair commercial practices and unfair contract terms by banks and other credit institutions. Such cases have been dealt with by the CPCA. In fact, consumer protection in the financial sector has particular salience in a country in which the collapse of informal lending and pyramid deposit schemes led to a near collapse of both political and economic institutions in the mid-1990s (Micklitz 2013).

Decision 15 of 4 February 2011 of the CPCA dealt with a dispute over a consumer credit contract that an Albanian consumer concluded with Alpha Bank. According to the stipulated consumer credit agreement, the bank had the right to change the agreed interest rate without the approval of its customers,[28] in an ambiguous and non-transparent manner, resulting in a material increase of the consumer's debt. Based on the available English version of the decision, it cannot be deduced how the CPCA dealt with the mutual relationship between the rules on unfair contract terms and the rules on unfair commercial practices and whether breach of one set rules led automatically to the breach of the other set of rules, or whether these two parts of consumer law were assessed separately.

Nonetheless, the CPCA held that Alpha Bank had breached both the provisions on unfair contract terms and unfair commercial practices of the 2008 CPL and annulled the disputed contract term. In addition, a pecuniary fine was imposed on Alpha Bank as well as an obligation not to incorporate in the future similar provision as the annulled one in consumer credit agreements. Importantly, the remedy not only disposed of the case at hand, but it had a prophylactic effect in future contracts by the defendant bank, while also putting other market players on notice.

Electricity

As is commonly the case in the countries of the Western Balkans, and as can be seen from the cases discussed above, Albanian consumers are particularly vulnerable in their contractual relationships with providers of services of general economic interest. Apart from the telecoms cases already discussed, Decision 17 of 7 November 2011 dealt with the CPCA investigation of an alleged breach of the 2008 CPL by one of the most powerful Albanian companies, which is in charge of distribution of electrical energy. The proceedings were commenced because the CPCA had received numerous complaints by Albanian consumers against CEZ Distribution for a severe breaches of Albanian Consumer Law through failures to provide energy supply to consumers for an extended period of time (in violation of the universal service obligation) as well as failures to inform consumers on time about the transfer of wickets to another place.

In an interim measure, the CPCA imposed a pecuniary fine on CEZ Distribution finding that it had not provided the required information on its economic activity that the CPCA had previously requested. The CPCA found that this information from the defendant was necessary to be able to duly assess whether the rules on services of general economic interest of the 2008 CPL were breached or not. Again, this decision is particularly notable given the complete absence of competitive pressure on the operator in electricity distribution and given the CPCA's willingness to take on the case as a form of discipline on the contracting behaviour with consumers. It is also important as a demonstration that the CPCA expects and requires from all traders to participate and cooperate in the investigations

[28] The facts of this case are quite similar to the recent decision of the ECJ in the case of Perenicova referred by a Slovakian court. Case C-453/10 *Jana Pereničová and Vladislav Perenič v SOS financ spol. s r. o.* [2012] ECR I-0000.

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of the alleged breach of consumer law and that it will sanction traders, including powerful monopolies, in cases where they refuse to do so.

Concluding Remarks

This article analysed the establishment and development of consumer law in Albania. While Albania is not a Member State of the European Union, Albanian Consumer Law represents the product of transposition, or rather transplantation, of EU consumer law as a consequence of Albania's strong commitment to become an EU Member State. As part of that process of integration, full harmonization of Albanian Consumer Law with EU law is required. Thus, the argument presented is that Albanian Consumer Law has evolved primarily under the influence of external factors given this obligation of harmonization in the integration process.

This dominance of external factors has resulted in fairly slow development of consumer law in Albania. In its rather young history of consumer protection, Albania has changed three laws on consumer protection. The first two laws, from 1997 and 2003, showed a high degree of misalignment with EU law and were ineffective in practice. It took more than 10 years and a yet further piece of legislation, as well as the creation of a special enforcement body for Albanian consumer legislation to start producing effects in practice and provide a more advanced level of protection to the Albanian consumer.

And yet, since its first decision in 2009, the CPCA has issued more than two dozen decisions, which may show that the new institutional mechanisms for consumer protection have started working and producing effects.

The available details on the CPCA's case law suggest that the Commission is adequately grappling with the application and interpretation of consumer law in accordance with the EU standards and has sought to apply it in a wide set of situations and circumstances. A particularly promising aspect is the fact that the traders condemned cover a broad spectrum of companies and entities, including large telecommunication and energy companies, banks as well as state entities in their relationships with consumers. Nonetheless, it appears that continued support, and probably ongoing monitoring, from the EU is a necessary prerequisite to secure the stability and continuity of the achieved level of protection and to encourage further improvements in the legal protection of Albanian consumers.

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