



Research Article

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Consumer protection: The genesis of consumer right in Albania

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Abstract

The study of the consumer right in juridical sciences is an innovation for the Albanian legislation. By means of this paper we would like to explain the genesis of consumer right. In order to explain the genesis of consumer right, we have focused since its very first steps to the present protection of this right. In order to determine which were the first hints of the emergence of this right and how it developed, we have reviewed legal resources from all time periods during which the consumer has enjoyed a protection. From our study, we have concluded that the use of the word consumer is something new for the legislation of our country. Nowadays, several laws have been approved and state mechanisms have been established with the intent to maintain consumer protection at a high level. Their approval derived directly from the development of this right. In the last part of this paper, we also focus on the factors that influenced the emergence of this right. These factors have been crucial for the complete and accurate establishment of what we today call the rule of law. The establishment of the rule of law enabled the approval of laws on consumer protection, but also the generation of an environment where the consumer enjoys the same level of protection as any other consumer in the neighbouring states.

Keywords: right, buyer, consumer, consumer protection, influencing factors, legal resources.

1. Introduction

Each one of us has the right to enjoy protection as a consumer. This consumer protection right is granted by law. In this paper we will explain how the consumer right emerged in our country years ago and its development throughout the years. Before we explain the first stages of the emergence of consumer right, we should first explain what shall we understand by consumer. The meaning of the term consumer has been different in any of the stages that we will address below. Based on the modern definition of the term consumer, we shall say that according to the Law of 2008, by consumer we shall mean (Law No. 9902, dated 17/04/2008 On consumer protection, Article 3/6):

"any natural person, who as such buys and uses products, which fall out of the trading and business purposes"

Above we explained the meaning of the term consumer, but it is necessary to explain what we shall mean by "right". The explanation of the word right derives from the explanation of its two meanings, because according to some authors the right may be used both in the objective and subjective meaning (Omari, 2004). By "right" in the following meaning (Omari, 2004):

- a. Objective – we shall mean a conglomerate of behavioural rules, juridical norms that are used to regulate relations of a social nature;
- b. Subjective – we shall mean all the rights that an individual enjoys.

The use of both these meanings in tandem results in the meaning of the word "right". In this study we cannot examine them separately, since they unify under one umbrella meaning. Studying separately the word "consumer" and the word "right", by *consumer right* we shall mean the entirety of juridical norms that protect the economic and social interests of the consumer. Consumer right is a new branch of law that is being implemented in our country. Despite this fact, we have concluded that this right as a discipline has been implemented since times before the creation of the first Albanian state. During these times we observe an indirect consumer protection and not a full protection of the consumer

rights. We will describe it as an indirect implementation because of different social-juridical relations between parties. In some occasions it was an obligation to protect the consumer interests.

Our study will start by taking into consideration the application of the consumer right from the time of the Albanian pashaliks. When we talk about the consumer during this period, we shall not assume that such consumer is similar to the present one. With the development of cities, any individual who purchased goods was to be called a consumer (Mandro, 2008). The person buying the product could pay for the product's value in one way or another. The goods came from the Ottoman Empire and from other countries with which our country had established trading relations. The goods entering our country during that time were thought to be safe. These goods would not undergo any form of inspection because their safety was taken for granted. The main subjects that were recognized by the law in the 1600s' were the seller and the buyer. During this time period there was no state institution inspecting the safety and quality of the products. Given these circumstances, people deemed that the only way possible to be ensured that the product was of good quality was to rely on the fact that this product was coming from abroad. Few were the food products that people bought, since they produced their own food. By producing their own food or by exchanging their products with each other, they distinguished between good and non-good food products to fulfil their demands.

Under this paper we will review the Canon of Lekë Dukagjini, which has been applied in Northern Albania (Luarasi, 2001). If we are to make a parallelism, this Canon uses the word pawn and the lending of an item. Based on this part of the Canon of Lekë Dukagjini, from a comparative perspective, the relationship between the lender and the borrower is similar to the word consumer nowadays. We shall say that there is a resemblance since the person borrowing an item had to do so for personal purposes only and was not allowed to extract any sort of profit from the borrowed item. This Canon binds the borrower to pay his debt to the other person (Canon of Lekë Dukagjini, Article 82). The person was bound to pay his debt and could not keep the item for himself. This was the only applicable manner to protect the consumer back then.

2. Methodology

In this paper, I have used the historical and analytical methods. Both these methods have been combined throughout the paper.

I have used the historical method in order to explain how the consumer right emerged, but also to highlight the legal resources that were used to protect the consumer. By using this method in the paper we can explain how the buyer-seller relationship worked, and also its resemblance to current juridical relations. Through this method we can also explain the importance that the consumer right has.

I have used the analytical method in this paper to explain how the consumer right developed from then till now. Through the analytical method we can determine which were the factors that influenced the development of this right. What we want to accentuate with this paper is that these factors were the source from which the consumer right emerged.

The topic I have chosen to tackle is of special interest to our country. Each one of us must be informed on how the consumer rights have been protected years ago, so that we can compare the importance that the consumer right has today and the protection that the consumer enjoys in the Albanian society. By means of this paper we would like to show how this right has been protected throughout different periods of time and which are the factors that influenced the emergence of this right, since today we can easily affirm that the Albanian consumer enjoys the same manner of protection as any other consumer in the neighbouring countries.

3. Manners of Consumer Protection Based on the Civil Code of King Zog

During his reign, the laws of the time were distinguished for their democratic spirit, that much that we can affirm of being in front of a full codification of this right at the same level as our neighbouring countries (Lica & Goxhaj, 2015). Juridical relations of a civil nature were protected by the Civil Code of 1929 or currently known as the Civil Code of King Zog. Based on this Code we will try to explain how the consumer interests were protected. During this time period we don't have a specific right to protect the consumer. The word consumer was unknown at that time. However, by interpreting the contracts we can say that we have a resemblance with the consumer contract applied nowadays, and by making this comparison we shall also determine the protection that has been provided to the consumer. By analysing some of the contracts provided for in the Code, we will conclude on how the consumer rights were protected and which were them. We mentioned above that the word consumer was unknown at the time and the legislator used the words buyer or receiver of an item. During the time of the application of the Civil Code of 1929, the sanctions that were to be applied to

the buyer were severe.

The juridical relations of a civil nature were regulated by some sort of contracts provided for in the Civil Code. The individual was obliged to obey every point of the contract; the obligation weighed on both the buyer and the seller. The seller was bound to sell good quality products to the buyer and to not abuse with the pricing. According to provisions in the Civil Code of 1929, the sale was a contract by means of which an item passed from the seller to the buyer (Civil Code of 1929, Article 1390). The seller was bound to sell to the buyer the right weight of the product. All products that were sold to the buyer without being weighed resulted in the risk falling *en bloc* upon the seller (Civil Code of 1929, Article 1932). The consumer had the right to buy products, but only those products that the seller had under his possession. All of the products that the seller sold to the buyer, of which he was not the owner, would lead to a cancellation of the sale at the buyers request (Civil Code of 1929, Article 1401).

The buyer was bound to pay the price of the purchased item. He could not avoid the obligation of paying the item's price. His obligation could never be abolished. We are talking about items and we must hereby explain that during this period every object that could be bought or sold was to be called an item. There was no difference whether or not these items were to be food or non-food products. At this time there was no way to distinguish between the consumer and buyer.

Nowadays the consumer contract is recognized by law. This contract is the juridical tool which intends to protect the consumer right, but in 1929 such a contract was not applied and was not known at the time. A similar contract to the consumer contract that was applied in 1929 was the exchanging contract. By means of this contract, parties exchanged items between each other. The parties were not bound to exchange items when one of the them had doubts on this item's ownership. The exchange of the items had to be done based on the regulations provided for in the law (Civil Code of 1929, Article 1480).

4. The Factors that Influenced the Emergence of the Consumer Right

The factors that influenced the emergence of the consumer right in Albania are as follows:

1. Social factors;
2. Economic factors;
3. Political factors.

All of these factors have influenced the emergence and development of the consumer right. Regardless of the amount of their influence, these factors contributed to the emergence of a new right in our country. Compared to other countries, where the protection of the consumer interests is of great relevance, our country also offers consumer protection at the same level. We mentioned above that these factors have had an influence, but how did they influence the emergence of the consumer right in our country? Taking into consideration these factors we can answer this question that arises in this paper, as follows:

A. *Social factors*, which we listed first, have had a major influence. The development of social relations made consumer protection indispensable some years ago. By analysing legal resources we shall say that social factors contributed to the evolution of the term consumer as follows:

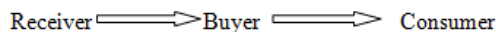


Fig.1 The manner in which the word consumer evolved.

Source: Author's impression based on literature

We are showing this scheme to illustrate how the use of the term "consumer" has evolved, but this scheme is also a clear indicator of the development of the consumer right. As the receiver of the product, years ago, the consumer did not enjoy the right of raising a claim to protection based on the law and neither was there a state mechanism in place to ensure his protection. By analysing this scheme we shall say that initially instead of the term consumer, the term receiver of the product was used, a definition used during the time of the Ottoman Empire rule in our country. With the development of the social conditions, instead of the term receiver, the term buyer of the product started to be used, leading to the present consumer.

B. *Economic factors*, were the core elements for the development of the consumer right. Consumers as well as economic factors are two closely intertwined elements nowadays. The consumer is an important element intrade relations. He has been depicted as such because with his influence he will extend the effects of trade development to the

economic development of the country as well. A country's economic development is the factor that affects the endorsement of different trade deals. With the development of trade deals in the regional or international level, the strengthening of protective measures and the approval of new provisions to guarantee consumer protection emerged as a necessity. While exercising his trade activity, the merchant must not employ unfair trade practices (Malltezi, 2001). Unfair trade practices negatively affect the consumer, because they violate his economic interests. In such case economic development must lead to the protection of the consumer's economic interests. Every trade practice that will be applied by the merchant or by different trade companies must increase the level of consumer protection. The provisions stipulated in the law on consumer protection shall be implemented only in instances of unfair trade practices that arise between the merchant and the consumer (Dollani, 2015). A trade practice shall be deemed unfair only in those cases when it violates the consumer interests. The consumer interests are violated in those cases when the consumer does not have the possibility to protect himself from inherent danger. The developments that today's market is facing, make consumer protection even more essential (Zaimi & Zhilla, 2015).

C. *Political factors*, had a major influence given that due to political developments in the country, our legislation was exposed to further amendments. Currently, the legal grounds based on which a person enjoys protection have increased, one of those being the consumer right. Nowadays we have a stronger rule of law, where the protection of the consumer rights occupies a crucial position. Political developments introduced the necessity of making changes in different facets (Omari, 2004). In the field of consumer protection, certain laws have already been approved that will result in the strengthening of the consumer right, even if they are to operate in different aspects in which the consumer must be protected. All of the political factors had a positive impact in the establishment of the consumer right that we have today. The positive effects are as follows:

- a) Harmonisation of our legislation with that of the European Union. Consumer protection became very important after the endorsement of the Stabilisation and Association Agreement (Katro & Teliti, 2014);
- b) Implementation of new policies to protect the consumer;
- c) Increase in number of the rights that the consumer enjoys nowadays in comparison to the Law of 97' (Law No. 8192, dated 06/02/1997 " On consumer protection").

The development of the consumer right is a very important element, since with its development every consumer is better protected. The development of this right made it possible for our legislation to be similar with that of other countries as far as provisions on consumer are concerned. All of these factors influenced the approval of a specific law on consumer protection for the first time, a law which dates back in 1997 (Teliti, 2013). The law on consumer underwent multiple amendments, thus marking the approval of another law which is applied today and which dates back in 2008. Afterwards, specific laws on consumer in the fields of energy (Law No. 9072, 2003), electronic communications (Law No. 9918, 2008), tourism (Law No. 9734, 2007), medications (Law No. 9223, 2004), food (Law No. 9863, 2008) were approved. All of these laws combined together make up for what we call consumer right nowadays. These juridical norms are exceptional in the way they protect the consumer and in the provisions they apply to make this right more effective. New policies were enacted to protect the consumer, and these policies aimed to:

- a. Increase the consumer trust and strengthen it in the marketplace (Cross-cutting strategy 2007-2013);
- b. Increase consumer safety on food products (2014-2020 Strategy).

Despite that these policies would be developed in different periods of time, they made a major contribution in the increase of the consumer protection level. Political factors still play a major role in the modernization of the legislation on consumer and also in the enhancement of the state mechanisms that will ensure his protection.

5. Conclusions

At the end of this paper we conclude that consumer right is a new branch of law in our country. The word consumer has attained different shapes depending on the period of time during which it was protected. That was also explained throughout every single part of this paper according to the respective period. Although it is a new right, we must say that consumer protection dates back many years ago, since the time of the Albanian pashaliks. During this period the protection provided was minimal and the word receiver had the same meaning as the word consumer today.

Throughout the years, the governing models through which our country was run were not the only ones to change. The rights of the individuals were also developed, thus ensuring a greater level of protection. With the establishment of the Kingdom in 1929, rough measures started to be applied in juridical-civil relations, where provisions were made on the protection of the then buyer, similar to today's consumer. Even if these provisions were of a rough nature, their goal was to avoid any abusive action towards the buyer and to also offer him trust and security about items he would purchase in the market.

Many were the factors that impacted the creation of the modern time consumer right. The factors that we studied in this paper are social, economic and political ones. These factors enabled the enactment of many laws, that would later be categorized in laws with a general scope and laws with a specific scope, and also the enactment of several strategies. Now we can say that the consumer right has developed on the basis of standards of other developed countries.

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