

Collective Redress in Consumer Protection in South East Europe: Cross-National Comparisons, Issues of Commonality and Difference

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Abstract—In recent decades, there have been significant developments in the European Union in the field of collective consumer redress. South East European countries (SEE) covered by this paper, in line with their EU accession priorities and duties under Stabilisation and Association Agreements, have to harmonize their national laws with the relevant EU acquis for consumer protection (Chapter 28: Health and Consumer). In these countries, only minimal compliance is achieved. SEE countries have introduced rudimentary collective redress mechanisms, with modest enforcement of collective redress and case law. This paper is based on comprehensive interdisciplinary research conducted for SEE countries on common principles for injunctive and compensatory collective redress mechanisms, emphasizing cross-national comparisons, underlining issues of commonality and difference aiming to develop recommendations for an adequate enforcement of collective redress. SEE countries are recognized by the sectoral approach for regulating collective redress contrary to the majority of EU Member States with having adopted horizontal approach to collective redress. In most SEE countries, the laws do not recognize compensatory but only injunctive collective redress in consumer protection. All responsible stakeholders for implementation of collective redress in SEE countries, lack information and awareness on collective redress mechanisms and the way they function in practice. Therefore, specific actions are needed in these countries to make the whole system of collective redress for consumer protection operational and efficient. Taking into consideration the various designated stakeholders in collective redress in each SEE countries, there is a need of their mutual coordination and cooperation in order to develop consumer protection system and policies. By putting into practice the national collective redress mechanisms, effective access to justice for all consumers, the principle of rule of law will be secured and appropriate procedural guarantees to avoid abusive litigation will be ensured.

Keywords—Collective redress mechanism, consumer protection, commonality and difference, South East Europe.

I. NATIONAL COMPLIANCE WITH THE RELEVANT EU ACQUIS

SEE countries, as aspirant or accession countries to become members of the European Union, are challenged with the responsibility to comply their national legal systems with the relevant EU acquis for consumer protection. From the comparative analysis carried out within this study of the actual level of compliance achieved in these countries, only minimal compliance can be noted.

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A. Directive 2009/22/EC on Injunctions for the Protection of Consumers' Interests

The Directive 2009/22/EC on injunctions for the protection of consumers' interests aims to protect consumer collective interests in the internal market. It imposes a duty for all Member States to introduce injunction procedures into their legal systems [1].

The Directive harmonises injunctions procedure across the EU. One of the achievements of the Directive is allowing consumer representative bodies and/or independent public bodies from Member States to seek an injunction in another Member State where the infringement originated. The list of designated qualified entities in Member States to seek an injunction includes a total of 313 qualified entities. This number differs from one Member State to another. There are Member States that have designated a single qualified entity, typically a public authority in charge of consumer protection (Ireland, Latvia, Lithuania, The Netherlands, Romania and Sweden), while others, (Germany and Greece) by designating to more than 70 qualified entities (public authorities and consumer organisations) [2].

SEE countries, in line with the minimal harmonisation principle of the Directive 2009/22/EC, have adopted it into their national legal systems, some of them even providing a higher level of consumer protection like Bosnia and Herzegovina, and Montenegro being fully aligned with the Directive, while some countries, like Macedonia still face existing inconsistencies in the transposition, and others like Kosovo have not adopted it at all.

B. Directive 2013/11/EU on Alternative Dispute Resolution for Consumer Disputes

Alternative dispute resolution (ADR) is an instrument to facilitate out-of-court dispute settlement regulated by Directive 2013/11/EU on alternative dispute resolution for consumer disputes. The Directive entitles voluntary submission of complaints by the consumers and guarantees independent, impartial, transparent, fair and effective dispute resolution.

SEE countries are still expected to undertake the transposition process and to align with the Directive 2013/11/EU. Only Montenegro, through the Law on Consumer Protection, has partially aligned with this Directive. The Law on Consumer Protection in Article 133-153, stipulates alternative dispute resolution procedure. The Committee for Out-of-Court Settlement of Consumer Disputes at the

Montenegrin Chamber of Commerce is organized according to the principles of the Directive. Harmonisation with the Directive is completed regarding the principles of efficiency and transparency, independence, impartiality and expertise of the members of this Committee to resolve out-of-court consumer disputes.

C. Directive 2014/104/EU on Certain Rules Governing Actions for Damages under National Law for Infringements of Competition Law Provisions

Directive 2014/104/EU sets out rules coordinating the enforcement of competition rules by competition authorities and the enforcement of those rules in damages actions before national courts. The Directive does not impose an obligation on EU Member States to introduce any mechanisms for the collective protection of rights. This Directive is not adopted in most SEE countries.

Instead of direct transposition in the law on Consumer Protection of Serbia, it is indirectly transposed in the law on Protection of Competition of Serbia. The claim for damages that have been caused by acts and actions which represent infringements of competition pursuant to this law, determined by the final decision of the Commission, could be made in a lawsuit before the competent court in a civil proceeding.

In Macedonia, the law on Protection of Competition in Article 58 determines that if damage is caused by means of any act that constitutes a violation in accordance with the provisions of this law, and thus, the person who sustains damage may request compensation in accordance with the law. Despite this provision and several amendments of this law, harmonization with the Directive is still not achieved. On the other hand, the law on Obligations of Macedonia regulates in detail the compensation for damages, which refers to its compliance with the Directive.

Montenegro, as a country carrying out accession negotiations with the EU, still does not have projections or a concrete timeframe for transposition of this Directive.

D. Commission Recommendation 2013/396/EU on Common Principles for Injunctive and Compensatory Collective Redress Mechanisms

Commission Recommendation 2013/396/EU on common principles for injunctive and compensatory collective redress mechanisms provides horizontal application of the common principles of collective redress in the fields of consumer protection, competition, investment, environment, personal data and financial services. The Recommendation respects the different legal traditions of the Member States and therefore stipulates uniform principles for judicial and out-of-court collective redress to be introduced in all EU Member States [3]. The Recommendation addresses both compensatory and injunctive collective redress.

As the Recommendation has no corresponding effect on the national legislation of EU accession countries, where a horizontal regulatory framework for collective redress is still not established, SEE countries have not aligned with this Recommendation. Despite this, some SEE countries partially follow parts of the Recommendation.

For an example, in Macedonia, separate proceedings for collective redress are not introduced but the Law on Civil Procedure stipulates the possibility for co-litigation, intervention and joinder of litigation. In addition, some specific procedures for the protection of specific rights and interests are regulated with the law on Consumer Protection, the law against Unfair Competition, the Law on Environment (for environmental damage) and in the Law on Prevention and Protection against Discrimination (class action for protection against discrimination).

In Montenegro, collective redress against discrimination where protection of collective interests is guaranteed provides for the possibility of compensatory and injunctive actions which is in accordance with the standards from Part V of the Recommendation. As well, the law on Consumer Protection of Montenegro is in line with Part III of the Recommendation by regulating the standing to bring a collective redress, verification of the admissibility of a collective lawsuit, informing the public about the initiated and completed procedures, reimbursement of legal costs of the winning party and rules of cross-border cases. The same law is aligned with Part VI of the Recommendation concerning the establishment of the Registry of Collective Redress Actions for the Protection of Consumer Rights.

In Bosnia and Herzegovina, the entity of civil procedure codes of the Federation of Bosnia and Herzegovina and of the Republic of Srpska, are harmonized with the Recommendation related to the introduced horizontal approach but are still lacking the possibility for compensation in such actions. They contain one "self-excluding" clause - provisions on disputes for protection of collective rights and interest apply, only if no other special law offering a possibility of action for protection of collective interests exists. Compensation in collective redress is possible in line with the laws on consumer protection, but not a single procedural matter related to collective redress (only the principle of urgency) is regulated [4].

In Albania, partial compliance is achieved with some provisions from the Recommendation. Referring to the areas for collective redress listed in the Preamble of the Recommendation (consumer protection, competition, environment protection, protection of personal data, financial services legislation and investor protection), Albanian legislation provides for quasi-collective mechanisms in consumer protection, competition protection, environmental protection and protection against discrimination. Considering the authorized bodies for representing the collective interests of consumers under the Recommendation, the law on Consumer Protection of Albania explicitly recognizes this right to consumer associations, regardless if they do not fully comply with the criteria set out in the Recommendation.

II. LEGAL FRAMEWORK FOR COLLECTIVE REDRESS

Compared to most European countries where a horizontal regulatory approach for collective redress is introduced, most SEE countries adopted a sectoral approach by regulating collective redress in specific sectors and by separate laws

(consumer protection, anti-discrimination, environment protection).

In Macedonia, a general legal framework for collective redress does not exist but special procedural laws in the field of civil, administrative and criminal law regulate procedures for the protection of certain rights. The basis for collective redress is introduced in the law on Consumer Protection, but the law as such has many inconsistencies in its provisions.

Kosovo is far from being in compliance with the EU *acquis*, despite the fact that specific laws provide for injunctive collective redress mechanisms, and lack detailed determination of the roles and responsibilities of consumer organizations for implementing these mechanisms.

Serbia has a specific and unique setting compared to other SEE countries, by regulating the collective redress with the Consumer Protection Law from 2014. Under this law, consumer collective redress is entrusted to administrative authorities and exercised only in administrative proceedings. In this way, Serbia differs from most European countries where administrative and civil law instruments for collective redress in civil proceedings are provided.

In Montenegro, collective redress mechanisms are present only in two fields of law (consumer protection and anti-discrimination). The national regulatory framework for collective consumer protection in Montenegro was introduced with the law on Consumer Protection from 2014. The procedure of collective protection of consumers' interests in Montenegro is regulated in a uniform manner.

Albanian legislation includes an injunctive collective redress mechanism applicable in consumer protection cases regulated with the law on Consumer Protection from 2008 (currently being under amendment procedure due to comply with the relevant EU Directives, the process was launched in July 2016). Actual Albanian procedural law does not provide for a general injunctive and compensatory collective redress mechanism according to the Commission Recommendation 2013/396/EU. Only the Albanian Code of Civil Procedure in Article 161 provides for group lawsuit, according to which the lawsuit can be filed jointly by many claimants or against many of the respondents (joint litigants). Special so-called *quasi* collective and compensatory redress mechanisms are regulated with special Albanian laws.

Bosnia and Herzegovina, taking into consideration its complex and specific setting as a state, still faces the responsibility to harmonise with EU Law in the field of collective redress. In both the Republic of Srpska and the Federation of Bosnia and Herzegovina, special civil procedures for the protection of collective interests and rights are introduced by the Civil Procedure Codes (in 2013 and 2015). In District Brčko, only the sectoral approach to collective redress mechanism is provided. The Civil Procedure Code of Brčko District does not stipulate any provision on special collective redress procedures.

Most SEE countries regulate the procedure of collective redress as a special civil procedure with applicable Civil Procedure Codes (Albania, Bosnia and Herzegovina, Macedonia, and Montenegro) and law on Contested Procedure

in Kosovo, while Serbia differs by providing only for administrative consumer protection before a competent administrative body and under the law on Consumer Protection.

When it refers to the procedural mechanisms for implementation of collective redress, two main types can be distinguished: injunctive collective action and compensatory collective action. Injunctive collective action aims at the requiring cessation of or the prohibiting a violation of rights granted under the law in order to prevent any or further harm causing damage because of such violation. Compensatory collective action aims at requiring compensation collectively by two or more natural or legal persons claiming to have been harmed in a mass situation or by an entity entitled to bring a representative action. SEE countries provide only for injunctive collective actions.

In SEE countries, in parallel to establishing a legal framework for consumer collective redress, the allocation of public funds for the consumer organizations as legitimate representatives of consumers' interests should be provided with the aim to cover their costs for initiating the proceeding, training of their professional staff, informing consumers on the running collective redress proceedings and covering the risk of losing the litigation.

Currently, consumer organisations in these countries receive modest financial incentives from the respective governments on an annual basis, which are not sufficient for their sustainable operation, or for their motivation to launch and initiate collective redress proceedings without being financially capable for taking this risk.

National Programmes for consumer protection in SEE countries provide for the possibility to grant consumer protection organisations with limited funds for their activities allocated by way of public competition. Considering the fact that these funds should be awarded and spent in the interests of consumers, the legislator in these countries restricted entitlement to their allocation only to such consumer organizations that meet the requirements stipulated by the law:

1. to be established in accordance with the law as non-profit organisations;
2. to be established to protect the rights and interests of consumers; and,
3. to be independent.

The sectoral approach towards regulating consumer collective protection is common for all SEE countries. Various areas of application of collective redress mechanisms are regulated with different special laws besides consumer protection laws.

From the analysis above and the level of achieved compliance with the relevant EU *acquis* on consumer protection, it can be considered that SEE countries need further efforts to regulate collective consumer redress in detail and to provide for its efficient application. In some of the countries, the process of legal reform is already underway and special working groups are working on drafting the amendments to the existing laws on consumer protection (Albania and Kosovo), while in all other SEE countries

concrete necessary interventions for legal reform are determined but still the process is not planned nor launched. A detailed overview of the existing obstacles and deficiencies in the legal framework for regulating consumer collective redress in SEE countries is presented next.

As Montenegro is already involved in intensive accession negotiations with the European Union and harmonization of national legislation with EU law, the collective redress mechanism should be extended to other sectors such as environment protection and the protection of copyright and related rights, thereby guaranteeing collective consumer redress before judicial and administrative bodies. In addition, considering the fact that compensatory actions are already in place under the law on the Prohibition of Discrimination, it can be expected to extend them to the law on Consumer Protection for the protection of collective interests.

The existing legal framework in Serbia, by restricting the protection of consumers' collective interests only with an administrative procedure without a possibility for their court protection, deviates from the requirements under the Recommendation Commission Recommendation 2013/396/EU. Despite the fact that the administrative procedure has its own positive sides and advantages, such as being quicker, more efficient, and less costly, it certainly limits and reduce consumer protection. Therefore, legal reform is needed to extend the list of authorized entities with active legitimacy to initiate procedures for consumer collective redress (here, the main reference is to the courts).

In July 2016, the Ministry of Economic Development, Tourism, Trade and Entrepreneurship of Albania launched the procedure for amendment of the law on Consumer Protection from 2008, with the aim to achieve full compliance with the Directive 2011/83/EU on Consumer Rights, Directive 2013/11/EU on alternative dispute resolution for consumer disputes and Directive 2009/22/EC on injunctions for the protection of consumers' interests. This draft law creates the competent authorities for alternative dispute resolution for services of public interest. In November 2016, the Ministry of Economic Development, Tourism, Trade and Entrepreneurship organized public consultations on the draft law with stakeholders and interest groups. Until today, no progress towards adoption of the law is achieved, and nor has the text been submitted to the Albanian Parliament.

As Kosovo is still missing the comprehensive approach for collective redress currently being stipulated by different laws, there is a need for further harmonization of a national legal framework with EU law and regulating more detailed provisions in specific laws. Currently, the country is carrying out amendment of the existing law on Consumer Protection due to achieve better compliance with numerous EU directives and to introduce dispute resolution through out-of-court mechanisms. In addition, the National Consumer Protection Program 2016-2020 foresees further harmonization of national legislation to comply with Directive 2009/22 on injunctions for the protection of consumers' interests and Directive 2013/11/EU on alternative dispute resolution for consumer disputes.

Currently in Macedonia and in Bosnia and Herzegovina,

there are no developments for legal amendments or reform on the way.

III. INSTITUTIONAL FRAMEWORK FOR COLLECTIVE REDRESS

In view of the existing consumer redress mechanisms in SEE countries, the following stakeholders are mostly common responsible for providing collective consumer protection: Governments, the National Assemblies, National Councils for Consumer Protection, the ministries in charge of consumer protection and other ministries responsible for implementing consumer protection policy, regulatory bodies, market surveillance authorities and other administrative bodies with competences in the area of consumer protection, competition authorities, local self-government units, consumer protection organizations, commercial and representative associations of traders (business, crafts, etc.).

Common to all SEE countries, is the adoption of bi-annual or three-year National Consumer Protection Programs as strategic documents which define consumer protection policy, priority activities and the conditions for their implementation. They are complemented with special Action Plans for their implementation by setting out tasks, responsible stakeholders, a timeframe, the necessary financial resources and other conditions. In addition, legal acts in these countries stipulate provisions for cooperation between different stakeholders for developing and implementing consumer protection system and policies. Through cooperation and partnership between the national stakeholders and their joint work on consumer information, education and advice, public awareness and knowledge on consumer protection and their rights on collective redress will be increased. In most SEE countries this cooperation is vital to take place between the ministries responsible for consumer protection in each country (either Ministry of Economy or Ministry of Trade), market surveillance bodies, regulatory bodies, the Ombudsman and non-governmental consumer protection organizations.

IV. THE ROLE OF VARIOUS STAKEHOLDERS IN COLLECTIVE REDRESS

SEE countries entitle various entities and bodies to initiate consumer collective redress proceedings and to have a role and competencies in the protection of consumer rights. All countries except Serbia stipulate the possibility for administrative and court protection of consumer collective interests. Civil procedure laws or consumer protection laws in these countries entrust the courts with a jurisdiction for conducting collective redress proceedings. A special role for consumer collective redress is given to the inspection bodies in specific cases and regulated by special laws. The Ombudsman and consumer protection organizations in all of these countries play a key role in the process of consumer collective protection.

SEE countries are characterised by modest enforcement of collective redress and case law. This has mainly resulted in adding to the many existing obstacles and deficiencies within the established national legal systems for application of

consumer collective protection. One of the key obstacles is the demotivation and financial instability of qualified entities to initiate proceedings for the protection of consumer collective interests, to cover extremely high proceeding costs and to have financial potential in the case they lose a collective dispute. Another important obstacle is lack of appropriate collective redress practice in consumer protection organisations and the courts, as well as their lack of expertise, knowledge and skills to deal with such cases.

Under the actual legal framework in Montenegro, art. 157 paragraph 1 of the Consumer Protection Law the following public administration bodies may file a complaint in cases of consumer collective protection: the state authority competent for consumer protection and other ministries and public administration bodies, consumer organizations and commercial and representative associations of traders (commercial, crafts, etc.). The law on civil procedure and the law on enforcement and securing of claims, apply to an action for the protection of collective interests. These laws stipulate the jurisdiction of ordinary courts in dealing with collective disputes. The court is also given jurisdiction to determine the value of the dispute in the amount of up to EUR 5,000, regardless of the actual economic value of the dispute. The court also has jurisdiction to order interim measures in the case when a trader has undertaken actions that violate the collective interests of consumers. A special role is also granted to the government of Montenegro, the Ministry of Economy, the Inspection Affairs Directorate and other ministries and inspection bodies. The government of Montenegro plays a role in proposing regulations, adopting the National Consumer Protection Program, and reviewing and adopting annual reports on the implementation of the National Consumer Protection Program. The Ministry of Economy is the key consumer protection policymaker entitled to bring actions for the protection of collective interests and to keep a public electronic registry of collective actions and court decisions. Consumer protection stakeholders in the field of product safety include the Institute of Metrology, Institute for Standardization, as well as the Accreditation Body of Montenegro and Customs Administration. Units of local self-government are also involved in the implementation of consumer protection policy at the local level. The Consumer Protection Council, the Market Surveillance Coordination Body, the Arbitration Committee for Out-of-Court Dispute Resolution, the Banking Ombudsman and the Consumer Protection System play an important role in strengthening, coordinating and improving the field of consumer protection in Montenegro. The Ombudsman (the Protector of Human Rights and Freedoms) is also playing a role in collective redress, but only for cases of discrimination under anti-discrimination law [5].

The law on Consumer Protection of Bosnia and Herzegovina, in Article 120, entitles the courts with jurisdiction for litigation procedures on collective redress. Article 33a of the same law stipulates that for litigation procedures in the cases of consumer protection, jurisdiction is given to the courts of general jurisdiction, but also special

jurisdiction is given to the courts in the country where the consumer redress resides. In the first instance procedure, the following courts have jurisdiction: basic courts in the Republic of Srpska, municipal courts in the Federation of Bosnia and Herzegovina, and the basic court in the District Brčko of Bosnia and Herzegovina, while in the second instance, the jurisdiction is to the following courts: district courts in the Republic of Srpska, cantonal courts in the Federation of Bosnia and Herzegovina, the Appellate Court in the District Brčko of Bosnia and Herzegovina and the Supreme Courts of the Federation of Bosnia and Herzegovina and Republic of Srpska. The law on Consumer Protection also entitles the inspection bodies with a role in consumer protection. What is interesting for Bosnia and Herzegovina and differs from many countries, not only in the region but also in Europe, is the existence of the Ombudsmen for Consumer Protection established under Article 1000 of the Law on Consumer Protection. The Ombudsmen is established as an independent public institution appointed by the Council of Ministers of Bosnia and Herzegovina upon a proposal by the relevant ministry. The Ombudsmen for Consumer Protection is entitled to initiate a proceeding before the competent court for compensation claims concerning consumer collective interests.

The law on Contested Procedure in Kosovo entitles the courts to have a key role as decision-making bodies for collective redress procedures. This role of a court is not stipulated in other special laws having provisions for collective redress such as the consumer protection law, patient protection law and competition protection law. Besides the law on Contested Procedure, the court is entitled as the decision-making body under the labour law, the law on protection from discrimination and the law on environmental protection. A special role for consumer collective redress is given to the inspection bodies in specific cases. Under the law on Consumer Protection, this role is granted to the market inspectorate who may request termination of harmful practices. The law on Labour entitles the inspectorate to impose punitive measures. The law on Food entitles the Food and Veterinary Agency to perform food inspections and requires withdrawal of harmful foods or the closure of production sites that are not in compliance with the required standards. The law on General Product Safety entitles the market inspectorate and customs with a role in consumer collective redress. The Law on Protection of Competition stipulates the competence of the Kosovo Competition Authority to be a decision-making body and to bring administrative disputes before the court. Last but not least, the law on Ombudsperson entitles the Ombudsman to promote fundamental rights and freedoms and initiate a proceeding for collective rights [6].

In Serbia, the law on consumer protection entitles the administration authority to be responsible for collective redress in administrative procedure. The responsible administrative authority for consumer protection is the Ministry of Trade, Tourism and Telecommunications. Serbia opted for this model with the argument that it will provide for

more efficient protection, and a faster, cheaper and more efficient procedure. In cases of violation of consumer collective interest, the procedure for their protection is initiated ex officio or at the request of consumer organisations or associations. In this procedure, it is confirmed whether the violation of consumer collective interests exists or not, and based on this, the responsible Ministry takes a decision. If violation of consumer collective interest is confirmed, an administrative act is issued with an administrative measure for a trader. This decision may be appealed through an administrative procedure before the Administrative Court. Consumers may also request for the initiation of a misdemeanour procedure before a Misdemeanour Court if their collective interests are violated [7].

In Albania, the law on Consumer Protection entitles the responsible consumer protection structure and consumer associations to bring collective representative lawsuits before the court for the cessation or prohibition of infringements that undermine consumer collective interests. On the other hand, the law does not entitle them to seek compensation at the court. Under Article 52 of the same law, the Consumer Protection Commission was established with the main purpose to review violations and take measures for the implementation of the provisions from the law and supporting by-laws. The Consumer Protection Commission is a decision-making body, and is charged with identifying alleged violations by complaining consumers and decides on the basis of findings, claims, complaints and any other kind of information. The law on the People's Advocate in Article 21 entitles the People's Advocate to conduct a full investigation in the case of complaints from interested persons. The People's Advocate is established as a public institution with the aim to protect the rights, freedoms and legitimate interests of any person from unlawful or improper public administration actions. The practice shows a lack of information of consumers on their rights on consumer protection. The annual report for 2016 of the People's Advocate stated that a total of 249 complaints were addressed to this institution. These were mainly for issues of overbilling from public service providers or for the quality of services offered by them [8].

The law on Consumer Protection in Macedonia entitles certain inspection bodies for consumer collective redress in cases of violation of consumer rights. The following inspection bodies perform the supervision under this law: the State Market Inspectorate, the Food and Veterinary Directorate, the State Sanitary and Health Inspectorate and the State Inspectorate for Environment. The designated bodies authorised to conduct a misdemeanour procedure under this law are: the State Market Inspectorate, the State Inspectorate for Agriculture, the State Sanitary and Health Inspectorate, the State Inspectorate for Environment and the Food and Veterinary Agency. Any authorized body may propose to the competent inspectorate to initiate a proceeding before a competent court for termination of actions contrary to the provisions of the law. The Agency for Electronic Communications is in charge for resolving consumer disputes with operators in general administrative proceedings.

Consumer protection organizations may submit a request to the agency to review information, contractual provisions or certain irregularities affecting larger consumer groups. The Food and Veterinary Agency is entitled to conduct misdemeanour procedures and issue misdemeanour sanctions. Consumer protection organizations and other stakeholders may request the Food and Veterinary Agency to initiate a procedure to prevent abuses or mass violations of the rights of consumers for cases of food safety. The courts act in cases when consumer protection organisations require them to declare null and void contractual terms which are unfair under the law on Consumer Protection. The country faces procedural obstacles, as an unlimited number of entities are entitled with legitimate interest to file lawsuits for consumer collective redress. Therefore, amendments to the law on Consumer Protection are needed to define the concept of collective interests and the government of Macedonia to identify the list of persons authorized to initiate proceedings for consumer collective redress before the courts. In addition, judicial protection for collective redress should be regulated not only by the Law on Consumer Protection, but also by the law on Civil Procedure. Proceedings before the Ombudsman are initiated by submitting a complaint. The Ombudsman deals in four areas: labour relations, consumer rights, the environment and other areas. The Ombudsman has no jurisdiction to initiate litigation for collective redress, and can only propose recommendations, suggestions, opinions and indications for removal of the established violations [9].

V. THE ROLE OF CONSUMER ORGANISATIONS IN COLLECTIVE REDRESS

Consumer organisations certainly play an important role in applying consumer redress. It is a general rule not only in EU Member States but also for the other countries to clearly specify the criteria and conditions regarding this role of consumer organisations.

From the analysis and research implemented within the European Union in the last decade, and from the practice in specific Member States which apply collective redress, the following common obstacles for applying collective redress can be listed: expensive costs of litigation, length of court proceedings, formal requirements of existing mechanisms, complexity of judicial procedures, lack of public support for financial assistance for collective redress, limited financial and human resources of consumer organisations, lack of experienced and skilled judges, lack of consumers' awareness and information on their rights to collective redress [10].

The national legal framework in SEE countries should determine the following aspects for the consumer organisations to efficiently perform the collective redress mechanism: allocation of financial resources; coordination and cooperation with the other qualified entities in the country dealing with collective redress (public authorities, lawyers, etc.); their required capacities, expertise and skills; determination of their concrete responsibilities and tasks in the process (legal advice, information to consumers, awareness raising through their website, leaflets, brochures, debates,

press releases); their role and contribution in the policy making (legal framework and country annual programme and strategy planning on consumer protection); and, their right to initiate collective consumer protection proceedings.

The Commission Recommendation 2013/396/EU on common principles for injunctive and compensatory collective redress mechanisms, specifies the key criteria to be met for designating legal standing to certified entities to bring representative action. The certified entity is required to prove its administrative and financial capacity to represent the interest of claimants in an appropriate manner. According to the Recommendation, these are clearly defined conditions of eligibility and refer to the following requirements:

1. the entity should be a non-profit;
2. there should be a relation between the main scope of action of the entity and the rights entitled by the European Union laws which are violated, and initiation of proper action for their protection; and,
3. the entity is expected to have adequate financial, human and expert capacity for representing multiple claimants [11].

In SEE countries, the established legal framework partially follows Recommendation 2013/396/EU and defines certain criteria that consumer protection organisations must meet in order to represent consumer collective interests.

For example in Albania, Article 53(3) of the law on Consumer Protection stipulates three criteria: 1. active membership; 2. experience; and 3. geographical extent. The legal form of organisation of consumer protection organisations can be either "association" or "centre". Under this, only associations, but not the centres, can represent the collective interests of consumers, which is an obstacle for the centres to initiate collective representative lawsuits. Under the current circumstance in the country, the only form that consumer protection centres may contribute to the aims of the collective representation lawsuit is by filing complaints to the responsible consumer protection structure and requesting that the latter bring the case to the court.

The Law on Consumer Protection of Bosnia and Herzegovina in Article 111(1) stipulates that the consumer protection organisation perform the activities of consumer protection and are registered as legal persons in the registry of associations in accordance with law. Article 111(2) determined that consumer protection organisations are non-profit, non-governmental organisations and cannot engage in commercial activities. The laws of Bosnia and Herzegovina and both entities stipulate a precondition for the establishment of a consumer protection organization; that is, to have three founders, who may be either legal or natural persons.

The law on Consumer Protection in Kosovo does not stipulate provisions regarding the conditions to be met by consumer protection organisations for consumer representation. Instead, a notion is made in the law that the consumer organisation is authorized to initiate the procedure for collective redress of consumers without issuing further procedures. Other specific laws provide for the possibility for consumer organizations to apply collective redress

mechanism, such that the law Against Discrimination enables non-governmental organization or Ombudsperson to initiate group action for discrimination cases affecting groups of persons which does not require the consent of the group members; the law on the Ombudsperson authorizes the ombudsperson to start a proceeding on his/her own initiative concerning the violation of the rights and freedoms of a larger number of citizens, children or persons with disabilities and their consent is not needed; and the law on the Protection of Competition authorizes consumer organizations to initiate procedures for verification of concentration and abuse of a dominant position. None of these specific laws determine the criteria or conditions that consumer organisations must meet to be certified representatives of consumer collective interests.

The law on Consumer Protection in Macedonia defines the role of consumer organisations as "established by consumers for the protection and realisation of their rights". As well the Law on Consumer Protection (Article 31-h, Article 31-i, Article 31-p, Article 31-q), do not fully stipulate the role of collective consumer advocacy by consumer organisations. According to these articles, the government, upon a proposal by the Minister of Economy, shall determine by an act, the authorized bodies that have a common interest in consumer protection; however, this act is still not adopted in the country. Lastly, the law does not define the category of vulnerable consumers that need to be separately protected because of their particular vulnerability.

The law on Consumer Protection in Montenegro in Article 162 recognizes the right to association of consumers at the local and national level for representation at national or international levels, as well as to protect the rights and interests of consumers. The law delegates responsibility to the Ministry of Economy to keep a record of organizations of consumers and associations of consumer organizations. To be certified representative of consumer collective interests, consumer organisations must fulfil the following requirements stipulated in Article 169 of the same law: 1. to be registered in the records of the Ministry of Economy for at least a year; 2. to have at least one lawyer employed, with at least three years of work experience; and 3. to actually operate and achieve results in the field of consumer protection. The Ministry of Economy is responsible to assess the fulfilment of these requirements.

Regarding the preconditions needed in Serbia for consumer organisations and associations to be certified representatives of consumer collective interests, they firstly need to be registered in a special register kept by the Ministry of Trade, Tourism and Telecommunications. For the process of registration, the following criteria must be met: consumer protection to be their core activity; be active in the consumer protection area for at least three years; have adequate personnel, financial and technical resources necessary for consumer protection activities; representatives have adequate experience, expertise and skill to perform activities in the consumer protection area; and must submit a report to the Ministry on the implemented activities and achieved results in consumer protection, including the related financial statement,

which shall certify its experience in this field for at least three years.

VI. CONCLUSION

It can be considered that SEE countries need systemic reform with thorough amendments of consumer protection laws to consistently transpose EU Directives with the aim to achieve vertical harmonization. In addition, this process will require amendment of special laws regulating consumer rights in certain areas (competition, food and product safety, electronic communications, etc.), with the aim to achieve full horizontal harmonization. SEE countries, within their legal systems, should establish mechanisms for alternative resolution of consumer disputes and adopt separate laws on alternative consumer dispute resolution regulating different forms of alternative dispute resolution (reconciliation, mediation, arbitration, etc.). In some of the countries, namely Albania and Kosovo, the process of legal reform is already on the way and special working groups are working on drafting the amendments to the existing laws on consumer protection, while in all other SEE countries, the necessary concrete interventions for legal reform are determined, but the process remains unplanned or not launched.

SEE countries are characterised with modest enforcement of collective redress and case law. This has mainly resulted because of the many existing obstacles and deficiencies within the established national legal systems for application of consumer collective protection. From the comparative analysis and research implemented under this study for SEE countries, the following common obstacles for adequate enforcement of collective redress can be listed: expensive cost of litigation, length and complexity of court proceedings, lack of public support for financial assistance for collective redress, lack of adequate legal basis for consumer protection organizations to engage in collective redress as qualified entities, limited financial and human resources of consumer organisations, lack of experienced and skilled judges, lack of consumers' awareness and information on their rights to collective redress, lack of individual opt-in to the collective action by each consumer, lack of awareness of consumers and citizens for their rights for collective redress.

The established legal framework in SEE countries, defines certain criteria that consumer protection organisations must meet to represent consumer collective interests. Still, these countries need to align further with the Recommendation 2013/396/EU and to specify in their national laws, the precise criteria entities have to meet in order to conduct efficiently procedures for collective protection. These laws should also contain clear provisions for financing of entities authorised to bring collective redress actions from public funds and third parties with prescription of explicit criteria in terms of transparent financing from third parties in accordance with the Recommendation 2013/396/EU.

The apparent lack of financial resources was a common problem reported in SEE countries, not only for public entities, but also for the consumer organizations to be sustainable and financially independent to provide collective

protection of consumers' interest, to cover extremely high proceeding costs and to have financial potential in the case they lose a collective dispute. They should establish a clear system for financing consumer organizations as a legitimate advocate of consumers and their advocate in collective disputes.

Public authorities, courts, consumers, consumer protection organisations and other parties in SEE countries are not sufficiently aware about collective redress mechanisms and their benefits for consumer protection and initiating action for the ending of infringements of consumer rights. More vigorous enforcement tools and procedures must be made available to make consumer redress effective. A prerequisite for raising consumers' awareness on collective redress is by their access to information and counselling, effective means of legal protection available to consumers, adequate compensation of damage and the creation of a system where consumers are aware of their rights and responsibilities. Public authorities responsible for consumer collective redress and representing consumer protection organisations shall have a key role in awareness-raising on consumers' rights on collective redress. SEE countries should ensure that consumers are aware of their rights on collective redress, so they can use them every day. For this purpose, regular consumer campaigns, informing citizens of their consumer rights under the laws and where they can address their problems and protect their consumer rights should take place in each SEE country. It should also be considered to introduce or/and further develop consumer education and inclusion of consumer protection topics into the educational programmes of primary and secondary schools. Protection of consumer rights and interests should also be promoted through institutions active at the local level in order to educate, inform, and counsel consumers and enable them to participate in the decision-making process.

Existing collective redress mechanisms fail to provide sufficient or effective access to justice for a wide range of citizens, particularly, but not exclusively consumers, small businesses, employees wishing to bring collective claims. In addition, in all SEE countries there is a need of adequate training of the personnel of responsible institutions being directly involved in the collective redress who are obviously lacking experience. Finally, we can say that the existing legal framework and the lack of financial and human resources create a negative environment for consumer collective protection in SEE countries.

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REFERENCES

- [1] http://ec.europa.eu/consumers/enforcement/injunctions/index_en.htm, accessed on 14/07/2017.
- [2] Report from the Commission to the European Parliament and the Council concerning the application of Directive 2009/22/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interest, COM/2012/0635 final, pp. 5-6, http://ec.europa.eu/consumers/enforcement/docs/report_inj_2012_en.pdf
- [3] <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32013H0396>, accessed on 06/07/2017.
- [4] M. Powlakić and Z. Meškić, Collective redress in consumer protection in Bosnia and Herzegovina (to be published).
- [5] V. Savković and N. Dožić, Collective redress in consumer protection in Montenegro (to be published). E. Selimi, Collective redress in consumer protection in Kosovo (to be published).
- [6] E. Selimi, Collective redress in consumer protection in Kosovo (to be published).
- [7] Jovanovic Zattila, Milena and Vukadinovic, Radovan, Collective redress in consumer protection in Serbia (to be published).
- [8] Kola Tafaj, Flutura and Teliti, Ersida, Collective redress in consumer protection in Albania (to be published).
- [9] Dabovikj Anastasovska, Jadranka and Lonchar Velkova, Marijana, Collective redress in consumer protection in Macedonia (to be published).
- [10] G. Howells Geraint and H. W. Micklitz, Guidelines for Consumer Organisations on Enforcement and Collective Redress, September 2009, pp. 14-15.
- [11] Recommendation (2013/396/EU), pp. 62-63, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013H0396&from=EN>, accessed on 23/06/2017.