

Protection of the "weakest" party in legal relations by the Civil Code, versus the specific legal framework on consumer protection, in Albania

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ABSTRACT : The empowerment of production and commercial operators, as well as the increase in the number and type of legal relations they build in a free market, in the conditions of a consumer society, are the factors that increasingly impose on the legal framework a protective approach towards the party, which is in inferior position in these relations. The protection of the "weakest" party, or "vulnerable" party in a legal relationship of obligation, whether established by a contract or not, as a concept competes with the principle of autonomy of the contractual will, as well as with that of parity of the parties in civil legal relations. Generally with "weak party", or "vulnerable party" today is increasingly identified the position of the consumer party in the market. Legal instruments that favors the position of this party do nothing but aim to balance the asymmetry created by the free market and contractual freedom between the vulnerable position of the consumer party and that naturally favored by the market, which is the trader or producer. In this sense, the Civil Code, despite not giving any definition or qualification of the consumer, through the dispersed provisions, favors his legal position. Through the approach of legal review and doctrine analysis, focusing on a comparative interpretation between the Civil Code and special law on consumer protection, the paper aims to present a general view of the Albanian domestic law. Is the position of the consumer party legally protected, according to Albanian domestic law? How are the general regulations of the Civil Code, on the protection of the "weaker" party position, situated in front of the *lex specialis* on consumer protection? These are some of the questions that this paper seeks to answer through legal and doctrinal analysis. The findings of this paper hopefully will be useful not only for researchers, but also for legal practitioners, and even for the responsible public entities established for consumer protection. **Keywords:** *Consumer, law, Civil Code, protection.*

I. INTRODUCTION

Consumer protection and the legal framework in Albania : Consumer protection today is one of the most important policies of the European Union, therefore Albania, due to the proces of legislation harmonization, has taken some steps towards improving the domestic legal framework with an approach to this policy¹. The signing of the Stabilization and Association Agreement between Albania and the EU in 2006 has resulted in a strengthening of efforts to design and implement consumer protection policies in Albania². A year later, the government approved the first document on consumer protection: "Inter-Sectorial consumer protection and market surveillance strategy, 2007-2013"³. This document laid the foundations for the creation of consumer protection policies and provided for a number of measures aimed at the adoption in Albania of EU legislation and the adaptation of competent law enforcement institutions⁴. The second strategic document approved by Albania in this field is "Inter-Sectorial consumer protection and market surveillance strategy 2020"⁵, approved

¹ GIZ Project: Support for the approximation of economic and trade legislation with the EU *acquis*, March 2015: "Consumer Protection Legislation - Consumer Credit Explanatory".

² Specifically, Article 76 of the SAA provides: "The Parties shall co-operate in the approximation of consumer protection standards in Albania with Community standards. Effective consumer protection is necessary to ensure the proper functioning of the market economy, protection which depends on the development of an administrative infrastructure to ensure market surveillance and implementation of laws in this area ...".

³ https://shtetiweb.org/wp-content/uploads/2014/05/strategjia_per_mbrojtjen_e_konsumatorit.pdf

⁴ http://kmk.ekonomia.gov.al/faqja_e_Komisionit_për_mbrojtjen_e_konsumatorit.

⁵ <http://kmk.ekonomia.gov.al/wp-content/uploads/2015/11/Strategjia-e-Mbrojtjes-se-Konsumatoreve-dheMbik%C3%ABqyrjes-se-Tregut.pdf>

by the Council of Ministers in September 2015⁶. The strategy aims to design and implement policies to create a general legal and institutional environment that guarantees consumers the protection of health, safety and economic interests, improve education, information and awareness, support for an effective implementation of their rights, in order to empower consumers and increase their confidence in making purchases of goods and services in the market, making the market work for them⁷. Based on these strategies, the legislator has improved the domestic legal framework on consumer protection, in order to provide social justice for the weakest party in consumer (contractual and non-contractual) relations. In this context, consumer protection acts aim to achieve distributive justice⁸. The current law in force in Albania, on consumer protection⁹, was adopted in 2008 and the last changes were made in 2018, aiming at the approximation of domestic legislation with the European one¹⁰. This law is intended to protect the consumers interests in the market, as well as to determine the rules for the establishment of relevant institutions to protect the consumers rights¹¹.

Interaction of the Civil Code and the domestic specific legal framework on consumer protection: Equality of willpower of each party in the creation, amendment or termination of civil legal relations, as well as the autonomy of the contractual will, are the basic principles on which civil law is based. In a free market civil legal relations arise mainly based on the free initiative of the parties, expressed through autonomy of contractual will¹². Notwithstanding the above, the doctrine of civil law, the legal framework, but also the judicial jurisprudence, accept in both contractual and non-contractual obligations, the protection or creation of advantages over the party, which for the legislator is naturally considered "weaker" than the other. Generally, in the free market, the party which naturally presents itself as the "weakest" is the *consumer* party and precisely for this reason the legislator has tried to protect the legal position of this party. The definition of the *consumer* in a legal relationship is not made by the Civil Code but by a specific law, which protects the interests of this very important category for the market. Indeed, the Civil Code of the Republic of Albania protects the position of the party identified as the "vulnerable" party, or the "weakest" party in both contractual and non-contractual legal relations, but without ever qualifying this party as a *consumer*. Referring to the provisions of the Civil Code, "protection" of the *weaker party* in a legal relationship is explicitly granted to: the party who does not have the necessary information in the market; the party who did not participate in the drafting of the contract terms; the party addressing for contracting an entity with a dominant position in the market; a party who lacks professional experience; the party which is damaged by the purchased product, etc. All the above features, in the free market, identify the *consumer*, but not necessarily just him. In this sense, the provisions of the Civil Code, which generally favor the position of the "weakest" party, in contractual and non-contractual relations, affect the consumer.

The special legal framework for consumer protection consists of a package of laws¹³, where the main weight in the regulation of consumer relations is held by law no.9902 "On consumer protection"¹⁴. This is the most complete law in this field, which identifies and regulates in detail the rights of consumers, obligations of traders, unfair trade practices, unfair terms in contracts and contractual *compliance*, as well as the responsible public structures for the consumer protection. The law on consumer protection generally regulates the consumer legal relationship, which includes all types of relationships between traders and consumers, related to goods or services¹⁵. Adjustments to consumer relations of specific fields can also be made by other *special* legal

⁶ Decision of the Council of Ministers No.753, dated 16.09.2015.

⁷ Inter-Sectorial strategy 2020, chapter II, point 2.2, p.33.

⁸ Howells, G; Schulze R, "Modernising and Harmonising Consumer Contract Law", European Law Publishers, Munich 2009, fq.76.

⁹ Law No.9902, dated 17.4.2008 "On consumer protection", amended and added by Law No.10444, dated 14.07.2011; Law No.15/2013, dated 14.02.2013 and Law No.71/2018, dated 18.10.2018.

¹⁰ Law No.71/2018 "On some changes and additions to law no.9902, dated 17.4.2008 "On consumer protection", as amended, is partially aligned with Directive 2011/83/EU of the European Parliament and of the Council, dated 25 October 2011 "On consumer rights " and with Directive 2013/11/EU of the European Parliament and of the Council, dated 21 May 2013 "On the alternative settlement of consumer disputes".

¹¹ Law No. 9902/2008, as amended, Article 1.

¹² Article 660 of the Civil Code: "The parties to the contract freely determine its content, within the limits set by applicable law".

¹³ In addition to the law on consumer protection, this includes Law no.9863, dated 28.1.2008, "On food"; Law No.105/2016 "On plant protection"; Law No.10465, dated 29.9.2011 "On the veterinary service in the Republic of Albania"; Law No.10480, dated 17.11.2011 "On the general safety of non-food products", etc.

¹⁴ The law was approved on 17.04.2008 and has been amended three times up to date.

¹⁵ Law No.9902/2008, as amended, Article 2.

provisions¹⁶, and the implementation of the latter is not affected by the implementation of the provisions of the law on consumer protection. In cases of conflicts in the consumer relations of a specific field, in order to regulate the position of the *consumer* party, the provisions of the special law and the provisions of the law on consumer protection will apply without excluding each other, applying, in case of collision, the principle of *most favorable regulation* for the weaker party in the relationship (consumer)¹⁷. The law on consumer protection assumes the nature of *lex generalis* for those issues of consumer relations, which are not regulated by special field consumer legislation, while for those aspects of these relations, which are not regulated by any of the above laws (nor by the law on consumer protection nor by the special law), the provisions of the Civil Code will be directly applied. The latter is the normative act of "umbrella" type, which covers the general regulation of legal property and non-property (personal) relations between the subjects of law¹⁸.

A legal relationship acquires the status of being a *consumer* relationship based only on the qualities of the persons which are parties to it, *the consumer* and *the trader*, regardless of the legal fact that has created this relationship. Consequently, these relationships can be contractual (what happens mainly in practice), regardless of the type of contract that creates them¹⁹, or non-contractual ones. Based on the definition made by the special law²⁰, we can identify the elements that a subject must meet, to be included in the legal framework of consumer protection, which are: a) Being a natural person; b) The purpose of using or purchasing goods or services is related only to the fulfillment of personal needs and is not related to commercial activity, business, craft or profession. The provision of the purpose of meeting personal needs, clearly shows the will of the legislator not to consider as *consumers* the legal entities, but only natural persons, which is in line with EU Directive on consumer rights²¹. While "*trader*" can be any natural or legal person, private or public, who carries out an economic activity of any form, individually or collectively, provided to have entered into a relationship for purposes related to his economic activity, trade, business, craft or profession²². This party (trader) has and manifests as the main goal the maximization of profit, through the circulation of goods and services, which are part of his professional activity. The *trader* is the party who enters into the consumer legal relationship with the power of information and experience, which he imposes on the *weakest* party, the *consumer*. The term "trader" in the law on consumer protection thus takes on a comprehensive meaning, unlike the definition given to the same term by the law on traders and trade societies²³. Another special aspect of the law on consumer protection is the listing in a special provision²⁴ of all the rights of the consumer party, considering as basic rights of consumers: a) the right of protection of health, environment and safety of consumers life; b) the right to protection of economic interests; c) the right to appeal; ç) the right of compensation; d) the right of education; dh) the right to receive information; (e) the right to use public services; f) the right to be organized in

¹⁶ Example: Law no.52/2014 "On insurance and reinsurance activity", which has as its object the regulation of the establishment, activity and supervision of insurance, reinsurance and intermediation companies, in order for the insurance market to operate in a safe environment, stable and transparent, in protection of the rights and interests of the consumer (Article 1).

¹⁷ The second sentence of Article 2 of the law on consumer protection, until 2018, has kept this wording: "The provisions of this law will not be applied, when other legal provisions for the respective fields provide more favorable treatments for the protection of consumer rights". With the changes made by the law Law No.71/2018, this wording changed to: "The implementation of the provisions of this law does not affect the implementation of legal provisions governing specific sectors, according to the provisions of applicable law. The provisions of this law apply to those issues that are not regulated by special legislation".

¹⁸ Law No.9902/2008, as amended, Article 34, par.3: "For general aspects of contract law that are not regulated by this law, the provisions of the Civil Code on legal actions and contracts, regarding the rules for the validity, creation or effect of a contract, will be applied".

¹⁹ Sale, supply, transport, insurance, etc.

²⁰ "Consumer" is any person who buys or uses goods or services to meet personal needs, for purposes not related to trade, business, craft or profession.

²¹ Directive 2011/83/EU, dated 25.10.2011 "On consumer rights", Article 2 "Definitions": "For the purpose of this Directive, the following definitions shall apply: (1) 'consumer' means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession".

²² Law No.9902/2008, as amended, Article 3, par.14.

²³ Law No.9901, dated 14.4.2008 "On traders and trade companies", as amended, Article 2(1): "*Trader* is a natural person, within the meaning of the Civil Code, who carries out independent economic activity, which requires an ordinary trader organization".

²⁴ Law No.9902/2008, as amended, Article 4.

associations. Also, a novelty in the special legal framework on consumer protection, is the provision of alternative dispute resolution mechanisms (forums) in consumer legal relations²⁵.

II. CONSUMER POSITION IN CONTRACTUAL RELATIONS.

Restriction of contractual free will for the party with a dominant position in the market : The Civil Code reduces the autonomy of the contractual will of the party that occupies a dominant position in the market, referring mainly to the *trader*, despite the fact that it does not refer to this term, but to the term "enterprise". Thus, the Civil Code provides for the obligation of any entity, which has a dominant position in the market, precisely because of the control it exercises over the market, or part of it, to contract with any person seeking to enter into a contract within its activity object²⁶. This provision directly protects the position of consumers, depriving the trader with a dominant position (eg. water supply company) of the right to refuse to enter into a contract with a customer for subjective reasons. Refusal to enter into a contract, in this case, definitely requires a legitimate reason²⁷.

Meanwhile, the law on consumer protection does not specifically regulate the consumer relationship with operators which have a dominant position in the market, referring this regulation in special normative acts²⁸. However, this law considers as an *unfair commercial practice* and prohibits refusal to show the item to the consumer and receiving orders or delivery of the item within a reasonable time²⁹. Furthermore, the right to use public services (including, for example, drinking water supply, or public transport, which are generally provided as contracted services by market-dominant operators) is considered by law to be a fundamental right of the consumer³⁰. In this sense, any contract to access these services cannot be refused to the consumer without a legitimate reason.

Favoring the consumer position, in the implementation of the "good faith" obligation in concluding the contract : Another provision of the Civil Code, which protects the position of the consumer in the pre-contractual phase is the obligation of *good faith* in concluding the contract. The parties who are in the stage of negotiating the conclusion of a contract should behave in *good faith* towards each other. This means that when one party knew, or in all chances should have known, the cause of the invalidity of the contract or the damage that the other party might suffer as a result of that invalidity, it should communicate such information to the other party. If the informed party has not disclosed this information to the other party, it is obliged to compensate the damage suffered by the latter, because it believed through no fault of its own in the validity of the contract³¹. The party who generally has, or is presumed to have such information, is the *trader* or *producer*, which means that legal provisions favor the "weak" consumer party. Regarding the principle of *good faith*, the law on consumer protection provides a detailed explanation of "misleading"³² and "aggressive"³³ commercial

²⁵ "ADR Structure" is a permanent structure, responsible for resolving a dispute through an alternative dispute resolution procedure, according to the provisions of law no.9902/2008.

²⁶ Article 673 of the Civil Code: "An enterprise that occupies a dominant position in the market, is obliged to contract with anyone who seeks an obligation, which is part of the object of its activity, in accordance with the laws and good commercial customs. The conclusion of a contract cannot be rejected without a legitimate reason".

²⁷ A legitimate reason may be an additional criminal sentence imposed on the person, e.g. Article 30(5) of the Albanian Criminal Code provides: "For persons who have committed crimes or criminal offenses, together with the main sentence, one or more of these additional sentences may also be given: ... *Deprivation of the right to exercise an activity or craft*".

²⁸ Eg. Decision of the CM No.1304, dated 11.12.2009 "On the approval of the model of the regulation "On water supply and sewerage in the service area of Water Supply and Sewerage Companies", which provides the obligation that these companies have to guarantee the drinking water supply of the population and other consumers.

²⁹ Law No.9902/2008, as amended, Article 13(5) and Article 17(6).

³⁰ Law No.9902/2008, as amended, Article 4 (e).

³¹ Article 674 of Civil Code.

³² A commercial practice is *misleading* when it contains false information and is therefore untrue. A commercial practice is misleading even when, in any way, including the general layout, it deceives or is likely to deceive the average consumer by forcing him to make a decision which, otherwise, he would not have made, even when the information was based on true facts.... (Article 14(1) of Law No.9902/2008).

³³ A commercial practice is *aggressive* when, considering all its features and circumstances, it weakens or is likely to significantly weaken the consumer's freedom of choice or behavior for the good or service, through the

practices, qualifying them as *unfair* commercial practices. Such practices are categorically forbidden because they are considered contrary to the practice of *fair trading* and the general principle of *good faith*, precisely because they significantly weaken the consumer's ability to decide, pushing him to make a decision, which, otherwise, he would not have made³⁴. Also within the principle of *good faith*, the Civil Code protects the position of consumer customers in concluding the contract, as the latter are more likely not to have the full and the right information, compared to the other party which, being a trader in his business, has more professional knowledge than the client. In this case, the trader has the obligation to act in *good faith*, giving to the other party (customer) all the necessary information and instructions. Such an obligation is provided by the Civil Code, because the legislator presumes the trader (despite not naming it that way) as a contracting party who has professional knowledge, which the other party (including the consumer) does not have and precisely in order to balance this "asymmetry", the trader must pass this information to the other party³⁵. Meanwhile, the law on consumer protection specifically regulates what information traders are obliged to provide to consumers, regarding goods and services for sale³⁶. The law also regulates the manner of providing this information on goods for sale through labeling and giving to the consumer a recognized legal document (tax coupon or tax invoice).

In particular, the law on consumer protection regulates the pre-contractual information that the trader is obliged to provide to the consumer for the conclusion of *distance contracts*³⁷ or contracts concluded outside the shopping centers³⁸. In these types of contracts, the trader must provide to the consumer much more information on the characteristics of the goods or services, on the rights and obligations of the consumer in this legal relationship, as well as on the possibility of alternative resolution of eventual conflicts. This information will also be an integral part of a *distance contract* or of a *contract outside the trading centers* and the trader has the burden of proof to prove the provision of this information in case of disputes³⁹. Regarding the formal aspects of the expression of contractual consent, in the case of a *distance contract* concluded by telephone, the customer will be bound by the contract only after signing the offer or sending his written consent. The trader, through a stable mean of communication, within a reasonable time, gives to the customer the confirmation of the concluded contract, which includes all the pre-contractual information mentioned above and the confirmation for the consent of the contract conclusion, expressed in advance, by the consumer⁴⁰.

Protection of the position of the party which has not participated in the drafting of the terms of the contract, in the case of pre-prepared contracts : The Civil Code protects the position of the "weakest" (consumer) party even in the case of the contract drafted with forms or modules. These types of contracts, also known as *adhesion contracts*⁴¹, aim for speed and uniformity in the treatment of customers and the performance of services, as they provide the same arrangements for all potential contractors. Regarding the *adhesion*

exercise of psychological and/or physical violence, or excessive influence and thus pushes the consumer to make a decision, which, otherwise, he would not have made (Article 16(1) of Law No.9902/2008).

³⁴ Law No.9902/2008, as amended, Article 13(1).

³⁵ Article 675 of the Civil Code: "If a contracting party has professional knowledge and the other party inspires full confidence in it, the former has the obligation to provide information and instructions in good faith".

³⁶ This information includes complete, accurate, distinguishable data in Albanian for goods and services, regarding the nature, identity of the manufacturer, price, quality, quantity, usefulness, origin, method of production and use, maintenance and warranty, risks associated with these goods and services, minimum lifetime or expiry date, and price indicators (Law No.9902/2008, as amended, Articles 7, 8, 9).

³⁷ A *distance contract* is any contract for goods or services concluded under a distance selling or service provision scheme by a trader who, for the purposes of the contract, uses exclusively one or more means of distance communication, means which, without the simultaneous physical presence of both parties, can be used to enter into a contract, such as: correspondence, printed materials, print publicity with order forms, catalog, e-mail, e-commerce, fax, telephone, television, etc.

³⁸ Contracts concluded outside the shopping centers, are e.g. contracts that are concluded during an excursion organized by the trader outside the shopping center, or during a visit of the trader to the consumer's residence or to the consumer's place of work.

³⁹ Law No.9902/2008, as amended, Article 36.

⁴⁰ Law No.9902/2008, as amended, Article 37.

⁴¹ An *adhesion* contract is a contract between parties with different levels of negotiating power. Typically, these are structured as "take it or leave it" contracts, with the party with the stronger bargaining position dictating its terms and there being little or no negotiation.

contracts in the legal literature⁴² there have been debates whether these contracts suppress the freedom of will of the parties and specifically of the *client*, or *consumer*, which does not participate in the drafting of the contract terms and whose contractual will is simply reduced to accepting, or not, the signing of the contract⁴³. In order not to be in front of the violation of the autonomy of the contractual will, in an *adhesion* contract the "weaker" party must enjoy the right to add other contract terms or to change the previously drafted ones, of course (as in any other contract) in agreement with the other party. The Civil Code provides that when interpreting such a contract, the terms added to these modules or forms take precedence over the initial terms of the pre-prepared modules or forms, as long as they do not comply with them, even though they have not been repealed⁴⁴. So, in these pre-prepared contracts with standard forms, since the conditions are drafted by only one party, in order to balance the position of the weakest party (consumer), it is provided that any condition imposed by the will of both parties to the contract will be "overestimated" and will prevail over the terms of the contract imposed by only one of the parties⁴⁵.

In these types of contracts, the terms contained in the general terms of the contract or in modules and forms, which have been provided or prepared by one of the contracting parties, when there is doubt about the way of understanding, will be interpreted in favor of the other party⁴⁶. Through this provision, any ambiguity of a contractual provision, in contracts prepared with standard forms by one party, will be interpreted in the sense that provides the most favorable position, ie. with the greatest or least aggravated benefit, for the party which did not participate in the drafting of the contract. Furthermore, the terms prepared by one of the contracting parties, in order to have effect on the other party, must be made clearly known to the latter and the obligation to make them known belongs to the party who drafted them. It is even required that these predetermined conditions are not too complicated and that the weak party (the consumer) has understood them with a *common* care, that is the care of an *average* person, who does not spend much time and attention to understand them. Otherwise, the "sophisticated" conditions, predefined in the contract by the "strong" party (generally the *trader*), which require time, special attention and a high intellectual level to be understood, will not have effect when aggravating the position of the party that did not participate in their drafting⁴⁷. Meanwhile, the special law emphasizes the necessity that the contractual conditions prepared by the trader, must have an understandable wording in the Albanian language and a clear and distinct presentation, and even goes further by defining the format of the font size⁴⁸, with which these conditions must be written in the contract. The interpretation of any questionable terms is done in favor of the consumer⁴⁹.

Another important provision of the Civil Code, for *adhesion* contracts, is the one that prohibits (blocks) the legal effect of those conditions, which decide in favor of the one who prepared them, limitations of contractual liability, or which aggravate the legal position of the other party, unless the other party (the "weak" party) has approved these conditions specifically in writing, separated from the other conditions⁵⁰. In the same spirit, the

⁴² E.g. D'Agostino, Elena, "Contracts of Adhesion Between Law and Economics, Rethinking the Unconscionability Doctrine"; Chapter 1 - The Unconscionability Doctrine in a Law and Economics Perspective; SpringerBriefs in Law *ed.*, 2015.

⁴³ E.g. the *public procurement contracts*, the terms of which are set through standart forms by the will of the contracting authority, which is a party to the contract, according to the Law no.9643 "On public procurement", as amended. Likewise in *insurance contracts*, the terms of which are drafted only by one party that is the insurance party, in the form of proof of insurance, while the other (insured) party usually has only the right to sign this contract or not.

⁴⁴ Article 687 of Civil Code.

⁴⁵ <http://www.app.gov.al/legjislacioni/prokurimi-publik/dokumentet-standarte-t%C3%AB-tenderit/>: The model procurement contract, built with bylaws, provides many general conditions some of which are very essential. However, the Special Conditions of the model procurement contract, where clauses can be added by mutual consent, prevail over the general conditions. The contractual provision states as follows: "The Contract Special Conditions (CSC) shall meet the Contract General Conditions (CGC). In case of discrepancies between CSC and CGC, the former will prevail".

⁴⁶ Article 688 of Civil Code.

⁴⁷ *Idem*: "The general terms of the contract, prepared by one contracting party, have effect on the other party, if at the time of the conclusion of the contract the latter has known or should have known them, showing a usual care".

⁴⁸ The used font should be Times New Roman, font size at least 10.

⁴⁹ Law No.9902/2008, as amended, Article 28(1).

⁵⁰ Article 686/3 of Civil Code: "Legal effects are not produced by those conditions which impose in favor of the one who has previously prepared them, limitations on liability, the possibility to withdraw from the contract, to

special law considers an "unfair condition" a contractual condition, which is not negotiated separately, if this condition causes significant and distinct inequalities in the rights and obligations of the parties deriving from the contract, to the detriment of consumers. A *non separately negotiated* contractual condition is considered a condition that has been previously drafted by the trader and, consequently, the consumer has not been able to influence the content of the condition, especially the text of the previously formulated standard contract⁵¹. The special law also clarifies, listing in great detail which contractual terms will be considered to cause significant and distinct inequalities in the rights and obligations of the parties, thus aggravating the position of the consumer. All these conditions of this nature, being defined by the special law as "unfair conditions" in consumer contracts, will be invalid and will not produce any legal effect, because their effect is explicitly annulled by the Civil Code (article 686/3) and by the *lex specialis* as well⁵². In particular, the special law on consumer protection provides that the trader must seek the express consent of the consumer for any additional payment, in addition to the agreed price for the main contractual obligation of the trader. If the trader has not obtained the express consent of the consumer, but has implied it, the consumer is entitled to a refund for any additional payment, if it has been withheld from the consumer⁵³.

Advantage of the weaker party (consumer) through the possibility to withdraw from the contract : The right to withdraw from the contract, as a unilateral action, can be exercised by one party, being conditioned by the fact that the law must explicitly allow such a right or the parties must have allowed it with a previous agreement in the contract⁵⁴. It is very important the general regulation provided by the Civil Code, regarding the right stipulated by the parties agreement to withdraw from the contract. In this case, this right can be exercised as long as the contract has not started to be implemented⁵⁵. While in the provisions of the special part, the Civil Code explicitly provides for cases where the parties are individually allowed to withdraw from the implementation of the contract unilaterally. Thus in the contract of sale at the unit price of a real estate, determined by size, in order not to aggravate the position of the buyer (consumer), the Civil Code provides for the right of the buyer to withdraw from the contract. This right can be exercised exactly when the dimensions of the real estate are larger than those indicated in the contract and when the surplus exceeds one twentieth of the declared size⁵⁶. In the same approach, the law on consumer protection also recognizes the right of the latter to annul the contract, in case of non-compliance of the goods with the contract. In this case, the consumer is initially granted the right to request from the seller the repair or replacement of the goods, free of charge, and when this requirement is not met, the consumer may request a proportional price reduction or cancellation of the contract⁵⁷. But, as both acts (Civil Code⁵⁸ and special law) provide, the consumer has no right to cancel the contract, if the lack of compliance is insignificant.

The Civil Code also provides for the right of the vulnerable party to revoke the will he has previously expressed to enter into a contract, but only in the presence of certain conditions (such as the conclusion of the contract at the work place or residence of one of the parties, or during an organized excursion to a public place)⁵⁹. The presence of these circumstances presupposes that the free will to conclude a contract may have been violated, because the vulnerable (consumer) party, precisely because of this place of concluding the contract, did not have the right conditions and psycho-emotional clarity to fully protect its interests in the contract. This legal provision

suspend its implementation, or which set expiration deadlines for the other party, or restrictions on the right to challenge, on contractual freedom, in relation to third parties, the terms of arbitration or the derogation from the powers of judicial bodies, unless they have been approved separately in writing by the other party".

⁵¹ Law No.9902/2008, as amended, Article 27, point (1) and (2).

⁵² Law No.9902/2008, as amended, Article 28(2): "In case the condition is considered unfair, it is considered invalid from the time the contract was concluded. Other contractual conditions remain binding on the parties and further implementation of the contract is possible".

⁵³ Law No.9902/2008, as amended, Article 37/14.

⁵⁴ Semini, Mariana, "E Drejta e Detyrimeve dhe e Kontratave, Pjesa e Përgjithshme", Skanderbeg Books, 2016.

⁵⁵ Article 696 of Civil Code.

⁵⁶ Article 752 of Civil Code.

⁵⁷ Law No.9902/2008, as amended, Article 31.

⁵⁸ Article 699 of the Civil Code: "The contract can not be terminated if the non-fulfillment of the obligation by one of the parties is of little importance for the interests of the other party".

⁵⁹ Specifically, the Civil Code (Article 672, par.1) provides that the contracting party may withdraw from the contract, within seven days of its termination, without stating the reasons: (i) when the contract was concluded at the place of work or residence of one of the parties; (ii) when the contract has been concluded during an organized excursion to a public place; (iii) when the contract is terminated in such conditions that do not correspond to a normal negotiation situation.

directly protects the consumer, given that, in general, consumer contracts are concluded in the work place of the non-consumer party (trader, manufacturer), or in a public place. Furthermore, the Civil Code provides that in the contract of *consumer loan* (contract for the purpose of granting a loan to purchase a consumer item), the seller must notify the buyer in writing of the right to withdraw from the contract concluded under the above conditions, otherwise the waiver period is one year⁶⁰. The law on consumer protection also provides for the right of the consumer to withdraw from the contract, when it is concluded remotely or outside the shopping centers, within a period of 14 days, without giving any reason for this withdrawal and the trader is obliged to reimburse all payments received by the customer⁶¹. Withdrawal from the contract can be exercised by the consumer as a right either to terminate the performance of the contract or not to enter into the contract, in cases where the proposal for conclusion has been made by the customer⁶².

Protection of the weaker (consumer) party by providing the seller's liability for the defects of the item : In the regulation that the Civil Code makes to the contract of sale, among the main obligations of the seller is provided the obligation to guarantee the buyer for the delivery of items without defects⁶³. This obligation is directly related to the obligation to guarantee the quality of the product that the seller in the role of *trader* sells to the buyer, in the role of *consumer*. Items delivered to the buyer must be suitable for the specific use specified in the contract, or, where no such designation is made in the contract, the items must be suitable for the use which the same items are *normally* used for. Otherwise (in case of non-compliance), the items will be considered as *not in accordance* with the contract and the seller will be held responsible for this discrepancy⁶⁴. The presence of defects in the sold item, even gives the buyer the right to declare the termination of the contract, depending on whether these defects are considered *significant*⁶⁵ or *insignificant*⁶⁶ non-fulfillment of the contract.

The obligation of the seller to deliver to the consumer goods and services, which must be in accordance with the contract, is also provided by the special law⁶⁷. The latter even specifies all cases when the compatibility of the goods with the contract will be presumed⁶⁸. According to the special legal framework, the seller is responsible for the discrepancies that are noticed within the two-year time limit, from the moment of delivery of the goods⁶⁹. The preclusive 2-year term, after which the buyer loses the right to object to the defects of the item, is also sanctioned by the Civil Code, provided that this term is not inconsistent with the duration of any warranty

⁶⁰ Article 672, par.2 of Civil Code.

⁶¹ The consumer must notify the trader of his decision to withdraw from the contract before the expiration of the 14-day period, using the model form (provided as an appendix to the law), or by making another clear statement, where to submit his decision of waiving the contract. The consumer in this case is obliged to return the goods or pay the costs of returning the goods, to the trader or a person authorized by him, according to the terms and conditions specifically provided by law.

⁶² Law No.9902/2008, as amended, Articles 37/1 up to 37/8.

⁶³ Civil Code, Articles 715-718, 722, 723.

⁶⁴ The seller will be liable for any defects of the product that existed at the time of delivery to the buyer, even when the defect will appear after the moment of delivery. The responsibility of the seller for non-compliance with the contract, as a result of the defects of the sold item, will include the *assurance* according to which, for a certain period of time the items will remain suitable for their use, or will maintain the quality and certain characteristics.

⁶⁵ Civil Code, Article 722: "When the delivery of defective items constitutes a *significant* non-fulfillment of contractual obligations, the buyer has the right to request: 1. ..., delivery of items as an addition or replacement; 2. elimination of defects through correction, ...; 3. request a price reduction; 4. to declare the termination of the contract ...".

⁶⁶ *Idem*, Article 723: "When the delivery of defective items constitutes an *insignificant* non-fulfillment of the contract, the buyer may request: 1. removal or correction of defects of the delivered items, or 2. reduction of the price".

⁶⁷ Law No.9902/2008, as amended, Article 29 and Article 33/1.

⁶⁸ Law No.9902/2008, amended, Article 29(3): "Goods are presumed in accordance with the contract when: a) they match the description given by the seller and possess the qualities of the goods, which the seller has presented to the consumer as a sample or as a model; b) comply with the specific purposes which the customer has requested for and which are made known to the seller at the time of entering into the contract; c) comply with the purposes for which goods of the same type are normally used; ç) present the qualities and performance, which are normal for goods of the same type and which the consumer, reasonably, expects, according to the nature of the goods and taking into account the characteristics of the goods, made by the seller, manufacturer or representative of authorized in public statements, especially in publicity or labeling".

⁶⁹ Law No.9902/2008, as amended, Article 30, par.1.

provided by the parties agreement in contract⁷⁰. Accordingly the parties can provide in the contract a guarantee term less or greater than the 2-year term and this term determined by the parties will replaces the two-year term allowed by the Civil Code. While the special law stipulates that no contractual guarantee statement deprives the consumer of the right for the seller to be liable for contractual inconsistencies within a period of two years. In this way the special law stays even more protective on the position of the weaker party, as it provides that the 2-year term of the seller's liability can be extended through contractual guarantees but can not be reduced.

III. CONSUMER POSITION IN NON-CONTRACTUAL RELATIONS.

The Civil Code in its provisions protects the position of the consumer even in non-contractual legal relations. Thus, in dealing with non-contractual obligations arising from the infliction of damage, the Civil Code also regulates the liability of the producer arising from the products which he has produced⁷¹. Any producer bears responsibility for the products it produces and the damage to be compensated in this case should include not only the effective damage but also the missing profit. Any person who has been harmed by a defective product benefits from the right to sue the producer⁷². The producer's liability can be reduced by the Court, only in the case of joint liability, which means in the case when the producer's fault for the defects of the product competes (overlaps) with the fault of the person who has been damaged by the product⁷³. In addition to the liability arising from the production of products, producers bear non-contractual liability even when they publicly deceive about the characteristics of the products such as: composition, quality, nature, price, identity, etc. causing harm to consumers⁷⁴. The special legal framework on consumer protection also broadly regulates the trader's responsibility to inform through accurate and complete data, calling the opposite cases *unfair* commercial practices.

The other case of non-contractual liability of the producer, provided for in the Civil Code, is *unfair competition*⁷⁵, which results in harm to the economic interests of the consumer. The special law, in addition to prohibiting unfair competition as an unfairly misleading commercial practice, also expressly prohibits comparative publicity which discredits or denigrates a competitor's trademarks, goods, services, activities, unfairly benefits from the reputation of another trademark, represents goods or services as imitations of goods or services, belonging to a protected trade name, or which creates confusion between the entity promoting its goods or services and a competitor, etc.⁷⁶. The law on consumer protection has extended the meaning of the term *producer*, compared to the narrower definition given by the Civil Code, defining as "producer" only the manufacturer of the final product, or of a raw material or the manufacturer of an integral part of product⁷⁷. This law, through a reference provision to another special law⁷⁸, has also included in the "producer" definition the *importer* of the product, or other natural or legal persons involved in the *distribution chain*, as long as their activities can affect the safety of a product⁷⁹. As for the liability of the producer, the special law regulates this liability by simply referring directly to the Civil Code⁸⁰.

⁷⁰ Article 717, par.2 of Civil Code.

⁷¹ Civil Code of the Republic of Albania, Part IV "Liabilities", Title IV "Liabilities arising from causing damage", Chapter II "Liability arising from products", articles 628-634.

⁷² This lawsuit may not be brought after three years from the day the injured person had or should have been aware of the existence of the damage, the existence of defects, or the identity of the manufacturer. The right of the injured party against the producer may not be exercised later than 10 years from the day the product was first put into circulation (Article 634 of Civil Code).

⁷³ Article 629 of Civil Code.

⁷⁴ Liability for fraudulent publication is regulated by Articles 635 - 637 of the Civil Code.

⁷⁵ Unfair competition is regulated by Articles 638 and 639 of the Civil Code.

⁷⁶ Law No.9902/2008, as amended, Article 25, par.2.

⁷⁷ Article 631, par.3 of Civil Code: "Producer" within the meaning of this Code, is called the producer of a finished product, of a raw material, or the producer of a part of the product and every other person that appears as such, by putting on the product his name, his mark or another distinctive mark".

⁷⁸ Law No.9902/2008, as amended, Article 3, par.17: "Producer" is any natural or legal person, according to the definition made in law no.9779, dated 16.7.2007 "On general safety, essential requirements and conformity assessment of non-food products".

⁷⁹ Law no.9779, dated 16.7.2007, article 2, par.11: "Producer" is: a) the manufacturer of the product, when located in Albania, who assembles, packs, develops or marks a product, for which he is responsible, according to this law and any natural or legal person, who declares himself as a manufacturer, putting on the product his own name, trademark or other distinctive marks, or the person who repairs the product; b) the representative of the manufacturer in the Republic of Albania, when the manufacturer is not established in Albania; c) the

IV. CONCLUSIONS.

The doctrine of civil law proclaims the full equality of the will of the parties in drafting, concluding and implementing the contract between them, but nevertheless does not absolutize this principle, providing for its limitations. An exception to this principle is sanctioned precisely in the case when in front of entities that have experience, knowledge and favorable position in the market, is placed one or several entities whose position is weaker. This advantage or protection of the *weaker* party in a legal relationship is explicitly granted to: the party who does not have the necessary information in the market; the party who did not participate in the drafting of the terms of the contract; the party which addresses for contracting an entity with a dominant position in the market; a party who lacks professional experience; the party which is damaged by the defects of the purchased product, etc. All of the above *weaker* party characteristics, in the free market, generally identify the consumer party. In this sense, the provisions of the Civil Code, which favor the position of the "weakest" party, in contractual and non-contractual relations, indisputably affect the consumer.

The definition of the weaker party as "consumer" is made only by special law and this is the best possible solution. The provision of the "consumer" definition in the Civil Code would not be possible, as it would force the Code to make special adjustments of consumer legal relations, denaturing the mission of regulation general legal relations of obligation, realized by this code. While the Civil Code provides for the types of contracts where the consumer can be a party, as well as provisions that balance the position of the most disadvantaged party in the relationship, which protect precisely the consumer party position. In order to regulate and protect the position of the consumer party, the provisions of the special normative framework on consumer protection as well as the provisions of the Civil Code may be applied simultaneously. For consumer relations of a specific field, to regulate the position of the consumer party, will act without excluding each other the provisions of the special law and the provisions of the law on consumer protection, applying, in case of collision, the principle of the most favorable arrangement for the weaker party in the relationship. The law on consumer protection takes on the nature of *lex generalis* for those issues of consumer legal relations, which are not regulated by special legislation, while for those aspects of these relations, which are not regulated by any of the above laws, the provisions of Civil Code will be applied.

The entire legal framework "advantage" the position of the consumer party and at the same time "aggravate" the position of the other party (trader) when concluding the contract, since the consumer does not have the necessary information and is vulnerable in this report. The consumer mainly does not participate in the drafting of the terms of the contract and to balance the position of the weaker party, it is provided that any condition set by the mutual will of both parties in the contract is "overestimated" and will prevail over the terms of the contract set only by one of the parties. Also, any ambiguity of a contractual provision, in the *adhesion* contracts, will be interpreted in the sense that it provides the most favorable position for the party who did not participate in the drafting of the contract. Moreover, the "sophisticated" conditions, pre-defined in the contract by the "strong" (trader) party (for example in banking contracts), which require time, special attention and a high intellectual level to understand, will not have effect when they aggravate the position of the (consumer) party that did not participate in their drafting. For *adhesion* contracts, the Civil Code also provides for the exclusion of the legal effect of those contractual terms which are not negotiated separately and which decide in favor of the one who prepared them, limitations of contractual liability, or which aggravate the legal position of the other party. In this regard, the special legal framework clarifies, listing in great detail, which contractual terms will be considered to cause significant and distinct inequalities in the rights and obligations of the parties, consequently aggravating the position of the consumer.

The special legal framework is even more specifically protective against the position of the consumer, as in a specific way: it clearly identifies, whether grouped in a single provision, but also explained in a set of provisions, all the rights of the consumer; explains the concepts of *unfair (aggressive and misleading) commercial practices* and *contractual non-compliance*, regulating the consumer legal position in the face of these practices; tolerates consumer unilateral withdrawal from the contract; aggravates non-contractual liability, expanding the meaning of the *producer* term; and establishes forums for alternative resolution of disputes arising from consumer legal relations.

importer of the product, when the manufacturer is not established in Albania and has no representative in Albania; ç) other natural or legal persons, involved in the distribution chain, as long as their activities may affect the safety of a product”.

⁸⁰ Law No.9902/2008, as amended, Article 6: "The producer is responsible for the damage caused by the defects of his goods, according to the provisions of the Civil Code and applicable laws".

As a conclusion, we can say that the Albanian legislator has taken care of the position of the consumer party, which is weaker or more vulnerable in legal relations. Consequently the domestic legal framework is in line with European law regarding the advantage of the legal position of this (consumer) party. Both the provisions of the Civil Code and those of the special law aim to balance the asymmetry created by the free market and contractual freedom between the vulnerable position of the consumer party and that naturally favored by the market, which is the trader or producer.

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