CONSUMERS RIGHT AS A FUNDAMENTAL RIGHT

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Abstract - After the Nice Treaty, December 2000, the fundamental rights were included in a single act, the so-called Charter of the fundamental rights. The aim was to give them greater focus and visibility. The member states intended to include in it the fundamental principles of the European Convention of the Human Rights (1950) and those derived from the constitutional traditions common to EU countries. The consumer's right in the Nice Treaty, shaped as a constitutional character but also took a legal form and guarantees for the consumer "in a higher level of protection". With the entry into force of Stabilization and Association Agreement, previously approved by the Albanian Parliament, Albanian must comply the national legislation to the CE directives. That is that the Albanian legislation about the consumer protection should be brought to a higher level of protection, should be constitutional rights. This article describes the constitutional character of the consumers right according to the EU legislation and the should be a constitutional character of the consumers right in the Albanian legislation.

Key words - Consumer, fundamental right, constitution, charter.

I. CHARTER OF FUNDAMENTAL RIGHTS

Thought the approval of the Nice Treaty, December 2000 took formed the incorporation into one single Charter of the fundamental rights to give them greater focus. The aim was to include in it the fundamental principles of the European Convention of the Civil Rights (1950) and the principles deriving from the constitutional traditions of the member states. The Charter begins with an entrance in the name of the people of Europe, referring to the universal values, the invisible and conventional values, on which it was built the European Union, on diversity of cultures and traditions in Europe[1], divided into 7 (seven) chapters: Dignity, Freedom, Equality, Solidarity, Citizen rights and Justice, and the last General part[2] . Essentially there are 50 rights included in one Charter, taken from the European Convention on Civil Rights, Social European Charter, European Charter of the Social Rights of the Employee, decisions of the European Court of Justice and The Court of the Human Rights, together with the constitutional customs and traditions of the member states[3]. Although the Charter was created without authorities who exercise restrictive measures, at this time it has a legal impact as a result of the reference from the European Court of Justice and the First Instance Court.

The wider usage of the Charter it was in the Case BESTU VS General Secretary for Trade and Industry, which subject was on "Annual Leave". The General Attorney referring to the Article 31 of the Charter states that: "The Charter gives final and reliable confirmation to the fact that the right for annual leave it is a fundamental right[4]."

According to the Article 7 of the Treaty, the European Council can declare the existence of a serious and continuous violation of the fundamental rights. If this happens, the Council can suspend some rights of the violation state. The Nice Treaty has added this procedure as a preventive instrument. Based on a proposition of 1/3rd of the Member State, the Parliament, Commission or the Council can decide with the qualified majority by 4/5th and with the approval of the European Parliament can declare that a high risk exists that a Member state is violating a fundamental right and directs an ad hoc recommendation to this state. Competent court for the review of the disputes is the Justice Court (article 46) but only for the procedures established pursuant to Article 7 and not for determining the appropriateness of the decision taken on this procedures.
The customers right to the Nice Treaty, under the form of the European Charter of Fundamental Rights took a constitutional form[5], legal form also , specifically for the customer and provides a guarantee for "a higher level of protection" (Article II-98). Here we must distinguish between requests / claims of the customer dealing with fundamental rights recognized by the constitutions of the Member States and repeated in form even expand in the European Charter, known as "economic rights" which are set on par with the rights of "the professional".

[1] Paul Craig and Grainne de Burca, European Union Law: Text, Cases and Materials, Oxford University Press, New York, 2003, p. 259

[2] http://europa.eu/legislation_summaries/justice_frëdom_security/combating_discrimination/l33501_en.htm

[3] Sionaidh Douglas-Scott, Constitutional Law of the European Union, Pearson Education, Edinburg, 2002, p.475

[4] Case C-173/99 Broadcasting, Entertainment, Cinematographic and Theatre Union (BECTU) 2001 ECRI-4881, opinion of Advocate General delivered on February 8th, paragraph 26.

[5] Celotto e Pistoria, L'efficacia giuridico della Carta dei diritti fondamentali dell'Unione Europea (rassegna giurisprudenziale 2001-2004), in Giur.it., 2005, pp.427ss.

First Program on Consumer Protection held on 14 April 1975[6], these two categories were treated equally. But today's perspective has changed, even in the EU law can be used formal categories which recognize the right resources and the list of priority, such as in national legislation.

II. ALBANIAN CONSUMERS LAW AND PROTECTION

In the Albanian legislation, the consumer protection is one of the key areas that directly relate to the protection of human rights. But as a new and unexplored field the consumer protection it should and must be expanded with firmer and wider protection. The Constitution of the Republic of Albania in Part II, Chapter I states that: "The rights and fundamental freedoms are indivisible, inalienable and inviolable and stand at the basis of all legal order[7]". More consumer protection finds regulation in the Civil Code of the Republic of Albania, in Title IV, Chapter II. Here sanctioned responsibility arising from products, publication rogue, and unfair competition[8]. The legal framework on the protection it is completed with Law 9902 dated 17/04/2008 "On protection of consumers' change". The purpose of this law is to protect the interests of consumers as the weaker party in the contractual relationship, as well as rules determining the relevant institutions and building to protect consumer rights[9].

The singular reference in the right beneficiaries enables the passage of this right and its exercise by the individual and not the group of customers. So for the exercise of this right is sufficient for its violation of even one customer and the latter can be protected through mechanisms established by law. The enjoyment of this right individually made so that everyone from consumers to be protected from possible fraud during the sale or receipt of service.
Albanian state by signing the Stabilization and Association Agreement with the European Union recognizes and so-called Copenhagen criteria, adopted in Denmark in 1993, among other things, defined as political demands important: stability of the institutions and knowledge of the application of the principles of democracy the rule of law. The preamble of the Stabilization and Association Agreement, which entered into force on 01/04/2009 emphasized the commitment of the parties to respect human rights and the principles of the rule of law.
In this regard, if we analyze the normative system in the Constitution, we see a clear tendency to embed international norms in the domestic law of the country, creating two system to various publications report rates. The first system regulates the ratio of internal acts with classical norms of public international law, and the second regulates relations arising between the rates of internal norms of international organizations (the Treaties of the European Union in this study), in which Albania adheres[10]. In the first case, the ratio between international agreements ratified by the law of the Republic of Albania with domestic rates, based on two basic principles: first, the principle of direct application of ratified international agreements; secondly, the principle of the supremacy of international agreements over domestic laws, in case of conflict between them. Here affirmed the aforementioned principles as a direct application of the norms of the European Union, explicitly provided for in the agreement ratified by the Republic of Albania. The principle of the supremacy of the norms of the international organization, extend to all "national law"[11]. So, in the case of an accession of Albania into the European Union, therefore implemented "supremacy clause" Community legislation which expressis verbis has supremacy over national laws, including the Constitution of Albania.

CONCLUSIONS

So, as a result of the reasoning above, since the Republic of Albania through the Stabilisation and Association Agreement and the Treaty of Nice has accepted the lead of these Community acts on the Albanian legislation has accepted the establishment of the right of consumer protection right basic. It remains to be realized in practice this procedural tool derived from the SAA.

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[6] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31975Y0425(02):en:HTML

[7] Law 8417, date 21/10/1998 "Albanian Constitution", amended by law 9675, date 13/01/2007, amended by law 9904, date 21/04/2008 and by law 88/2012, date 18/09/2012.

[8] Law 7850, date 29/07/1994 "Civil Code of the Republic of Albania", amended by law 8781, date 03/05/2001, amended by law 17/2012, date16/02/2012, amended by law 121/2013, date 18/04/2013.

[9] Law 9902, date 17/04/2008 "For the protection of the consumer", amended by law 10444, date14/07/2011, amended by law 15/2013, date 14/02/2013.

[10] Anneli Albi, EU enlargement and Constitutions of Central and Eastern Europe, Cambrige University press, 2005, p.9-14

[11] Constitution, article 122/1 e 2.

[6] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31975Y0425(02):en:HTML
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