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Slovakia as an Example – Advancing Consumer Policy in Serbia in Light of EU Accession

by Tatjana Peškir, APOS

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EXECUTIVE SUMMARY

On its path to EU membership Serbia will have to adjust its consumer protection system. Experiences from EU countries with similar policy backgrounds, such as Slovakia, are crucial in identifying the proper course of action for all stakeholders. Accession conditions defined by the European Commission for this particular area and the existing institutional framework were taken into account in analyzing information collected in Slovakia and proposing possible improvements for Serbia. This paper provides adequate information on EU policy towards accessing CEE states in consumer protection and background information on preexisting conditions in those countries. The similarity of the Slovak and Serbian systems enabled the author to form a conclusive opinion on the qualities of the current plans in Serbia. Recommendations towards a major shift in Serbian public policy were given, assessing the current vision and existing mechanisms as insufficient for Slovakia, as an EU country, and Serbia as well. The proposed shift advocates the need for an independent public body in consumer protection, modeled on bodies functioning in other areas in Serbia and other new EU member states.

About the authors:

Tatjana Peskir graduated from Management in Public Institutions. Her work experience, while studying, includes translating and statistics. As a member of APOS (Association of Consumers of Serbia), her goal is to enhance the quality of life in her country.

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1. Introduction

Euro-integration is a process dominating all areas of policy, within and outside the EU. In such a climate, the idea of exchanging ideas and know-how between involved countries has arisen, and led to a project financed and organized by the NGO Pontis foundation (Slovakia). In cooperation with the NGO Center for Democracy (Serbia), Pontis has enabled APOS to learn from the experience of their colleagues in Slovakia. Interviews were conducted during a study trip (10th-15th May 2010) to Slovakia (Bratislava and Poprad region), involving significant stakeholders of consumer protection in Slovakia¹. One of the plans was to also discuss the use of pre-accession funds by civic organizations for consumer protection. This second objective had to be abandoned though since none of the interviewed subjects had any knowledge of the existence of such funds available to them at the time.

The necessity to pay more attention to developing functioning systems of consumer protection is clear to the European Commission. One of the preconditions for a functioning internal market is consumer faith, and that is related to equal levels of consumer protection across the entire EU. On a national level, in the EU and in Serbia, the importance of this policy area does not seem to be clear. This paper hopes to present a different outlook on the issue amongst stakeholders in Serbia.

Serbia has declared its intentions of becoming an EU member as soon as possible, and is advancing on the road towards this goal. As a stakeholder in consumer protection in Serbia, APOS is striving to learn as much as possible from countries that have already joined the EU. This will enable us to direct our actions efficiently, pursuing solutions that seem to work in similar environments or avoiding those that did not deliver. We will also be able to recommend more appropriate actions to other stakeholders of consumer protection in Serbia, such as consumers, the government, and other NGOs.

Slovakia has proved an interesting choice to learn from. With a similar past, and a very similar form of public consumer protection, the lessons learned are very straightforward. Also, having been a member for 6 years now, Slovakia is not one of the newest members still struggling with what membership means. It can therefore be presumed that the current state of consumer protection in Slovakia can be attributed to EU policy rather than a preexisting condition, and that the preexisting conditions are of extreme relevance if they remain the dominant influence after 6 years of membership.

Influences from the past are very similar in most Eastern European countries: a tradition of corruption in administrative institutions, low levels of know-how and dedication in administrative officers, suspicion towards structures of civic society and hierarchical thinking. These exist in Slovakia, as confirmed through the conducted interviews, and as an active stakeholder APOS can also confirm a similar situation in Serbia.

¹ Included were the Bratislava Trade Inspection, the European Consumer Center, Forum Spotřebitelov, A3S and ZSS.

EU policy has influenced the development of consumer protection in countries with these issues both through action and inaction. The most significant documents reflecting this are mentioned in this paper, and their impact is discussed in short form.

2. Current situation in Serbia

Consumer protection in Serbia has been established very similarly to systems in surrounding EU and non-EU countries, and is also burdened by much the same issues:

- 1. Focus on administrative protection against individual and collective infringement of consumer rights.** The causes for this problem are twofold. First, the European Union has shown in many declarative and mandatory papers² their preference for such a structure, preferring to deal with one administrative authority in their communications regarding establishment of consumer protection than with a complex system, such as those existing in original EU countries. This has led to administrative authorities holding a dominant position compared to civic organizations. Such a scenario seems to have been consciously favored by the EU . It has since proven to have had unsatisfactory results.
- 2. Lack of social institutions necessary for a functioning system of consumer protection.** High levels of professionalism in legal professions, independent and well educated judges, high quality of expert witnesses, and professionalism in administrative bodies would bring the envisioned legislation to life. None of these prerequisites can be confirmed as typical in any Eastern European state, and certainly not in Serbia.
- 3. Emphasis on transposition, neglect of enforcement.** Although Serbia has had a Consumer Protection Law since 2005, not a single court verdict has been issued based on this law. So far there is no strategy involving active education of consumers to enable them to use the tools at their disposal. Working in the field, consumer protection NGOs often come across officers of the Trade Inspection body - being the main administrative enforcement body - who lack interest and/or knowledge of consumer protection. According to official data, this body has resolved 6,000 consumer complaints in 2 years (in other words, it has helped less than 1% of voters).

A new law is being drafted and its current form is in the process of being verified by the government. The law focuses on implementing EU Directives and establishing additional administrative enforcement bodies in the Ministry of Trade and Services. Since the current text is only a draft, a detailed comment is neither possible, nor necessary for the purpose of this paper.

There are also several EU-financed projects underway: ZAP, organizing education of consumer protection stakeholders, the Ministry of Trade and Services has been awarded 2.5 Mil. EUR of IPA grants in 2009, to strengthen their administrative capacities and for work on the new law. Consumer organizations are involved in projects with partners from the EU.

² White Paper on Enlargement (1995), EU Consumer Strategy 2007/2013 etc.

3. Consumer protection in EU accession context

Several tools can be used to protect consumers: ex post private (private lawsuit), ex post public (administrative penalty), ex ante private (signing a contract), ex ante public (inspecting imported goods at the border). For a fully functioning system of consumer protection, a balance of all these modules is needed. For example, we can have as many signed contracts as we want (ex ante private), but if courts do not function, lawsuits cannot be brought (ex post private). We cannot protect consumers without public engagement either, for example in cases where their health is endangered, or a systemic revision of a trade branch is necessary (banking, telecommunications...).

Then again, this area of policy has been developed very individually in all countries that boast truly good and functioning systems, because it depends so much on the behavior of consumers, which is rooted in culture. In the US, the judicial function of individual and class action redress and punitive damages play an enormous role. In the UK, a direct relationship between producer and buyer is established while the seller is simply an intermediary, and judicial protection is an important factor as well. Germany has a separate ministry for this area, and, uniquely, a completely independent body established by the state. In Eastern Europe, the demands of EU officials can be seen during and after accession to establish one uniform system of consumer protection, a 'one size fits all' approach with all the issues that can be foreseen to arise out of it.

The first mention of such an approach can be seen in the 1995 "White Paper: Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union" where it is stated that the public consumer protection system should be integrated into one designated authority. During the accession process, those countries which had decided to use the natural link of consumer and competition protection to form strong independent bodies were recommended, through the Regular Reports on Progress, to divest those bodies of consumer protection prerogatives and focus on antitrust. This is relevant because in the Regular Reports, EU officials commented upon the independence of bodies that deal with anti-trust, while it was not a crucial demand for those that deal with consumer protection .

When considering the preference the EU has shown for public, administrative enforcement in Eastern Europe, a paper from 2003 lists the advantages of such a system:

1. sufficient investigative powers;
2. sufficient guarantee of confidentiality and professional secrecy;
3. proven efficiency and effectiveness of a public dimension to enforcement in Member States where such exist;
4. impartiality and accountability.

Corruption, lack of professionalism in public servants and lack of interest in this particular policy area in Eastern Europe are just a few problems which indicate that those advantages may not be working out that well in practice.

The European Parliament has considered the situation, and in the days leading to the adoption of the 2007/2013 Consumer Protection Strategy by the Commission, a Resolution was adopted, recommending in 45 very specific points to the Commission an approach with more consideration of the particular issues of the new Member States (enforcement problems, low levels of cooperation between stakeholders and lack of financial funds for education of consumers). This Resolution was dismissed in the adopted Strategy with a

simple sentence: "In its consultations on the present document the Commission found little support for this view."

According to interviews conducted with Mrs. Stasenkova and Mrs. Cerna, both prominent figures in Slovak civic organizations for consumer protection, they feel abandoned by the EU, and see emphasis on transposition of relevant laws to be the finish line for efforts by the European Commission. They have tried to both inform relevant EU bodies about the need for more pressure on national governments in this policy area, and communicate to them that they work with and for consumers with little experience of asserting themselves. Both are confident that the existing system is barely functioning and see a dire need for change. Although Mrs. Stasenkova is a member of the European Consumer Consultative Group, and Mrs. Cerna has for years been the director of the Slovak Trade Inspection, they feel that their voice has not been heard.

One of the areas in which we were hoping to gain knowledge from our colleagues in Slovakia is the use of pre-accession funds. We have seen in Bulgaria and Romania that many civic organizations were poorly prepared and failed to use the funds available to them in different programs. We were very surprised to learn from our Slovak colleagues that they did not recall any projects, calls for proposals or anything similar connected to pre-accession funds with the specific theme of consumer protection. This attitude seems to have changed, as we see in our own example and in neighboring countries as well.

4. Findings from the trip to Slovakia

On the trip to Slovakia, meetings were held with stakeholders in the public and civic domain. They all seemed to agree on one thing: that consumer protection is not a top priority for their government. This influences their work on many levels. In the Bratislava region Trade Inspection, they feel that their institution has not gained in importance since joining the EU. It takes several years to properly educate an inspector, and they have a high rate of turnover because of the low salaries. They feel they need more personnel, and expressed that need in a clear and vocal way during the interview. This is very important when taking into account the view of consumer organizations which deem the Trade Inspection to be corrupt. If we consider both to be true, it seems that even when inspectors pursue cases they do not have the manpower. Communicating with the Trade Inspection, they claim it is mostly small companies which make consumer rights infringements. Civic organizations see it differently: they have problems with bigger companies, which are represented by expensive lawyers in court, and do not even respond to invitations for ADR. A common ground for those in civic society is their view on ADR: a smoke screen, masking the powerlessness of the consumer, since the decisions are not binding³. It is big business where civic society is challenged most: an individual consumer, with ADR, limited funds and access to legal counsel at their disposal, against companies with ample funds for both legal aid and plain corruption. Mrs. Cerna's organisation has not met with interest in its efforts to educate judges about consumer law. All interviewed civic society stakeholders claim that the courts are not a viable alternative: the costs are prohibitive and the procedures lengthy. Although the consumer is exempt of court fees, there are lawyers' fees. Even with new regulations limiting a case brought directly by the consumer to 6 months in duration, the result is that judges dismiss cases because of an overloaded schedule which does not allow them to truly resolve them in the given time. One organization has reported incidents of the

³ Mrs. Stasenkova, Mrs. Cerna and Mr. Tulak all voiced this opinion.

Ministry of Justice declining to execute a decision by the Trade Inspection, citing their 'unwillingness to limit the free market'.

Limited funds are available for consumer protection organizations through the Ministry of Economy. According to Mr. Tulak, another consumer activist, in one recent year a total of 120,000 EUR was granted, divided between 7 different organizations. His organization received 8,000 EUR, and while this is a grant, it cannot be considered enough for a substantial improvement in consumer education.

At the current rate we will be where Slovakia is now in several years time. That is not where we want to be, especially not in several years. A structurally different system of consumer protection is necessary, and one way to achieve this springs to mind, a way tried and tested in other parts of Europe, and even in Serbia: an independent commission, answering directly to Parliament.

Serbia has several examples of such bodies that do significant amounts of work, are recognized as positive examples of administrative engagement on topics in society and are known to do respectably well in protecting citizens in their scope of work. The most notable are the Anti-corruption Agency and the Commission for Protection of Competition. Both agencies show elements of the aforementioned advantages which the European Union officers have found to grace public defenders of consumer protection, and it can be reasonably expected that such would be the case with a similarly established Commission for Consumer protection, with similar authorization to impose fines, undertake investigations etc.

5. Conclusion and recommendations

Neglecting the underlying causes for the unsatisfactory situation in Slovakia and Serbia, minor changes targeting specific issues could have been proposed. Such propositions would, with the underlying causes still present, not lead to any results. Consumer protection in Serbia suffers from the same issues which dominate countries in Eastern Europe with a similar past. The currently envisioned system is not achieving the set goals in EU countries ridden with the same background problems – slow courts, corruption and low levels of professionalism in public service. A new approach is necessary to prevent losing time as what did not work for others is tried out.

It would be a substantial effort, requiring much support on different government levels, to speed up courts and make them more useful to the consumer. Corruption and low levels of professionalism in public servants is an opponent that consumer protection cannot conquer. Findings from Slovakia show that enforcement of consumer protection through the Trade Inspection has not been significantly improved through transposition of laws. What is necessary is a quick solution amenable to existing government structures and culture. **Forming an independent commission, similar to the Serbian Commission for Competition Protection, or the Anti-Corruption Agency, would change the nature of consumer protection in Serbia. The investigative and punitive powers of this body could be designed similarly to those of the Commission for Competition Protection in Serbia, or the OCCP in Poland. A joint body, protecting competition and consumers, is also an option that would give good results. Such change can and should occur now. The new law, a draft of which is currently being reviewed by the government, proposes a new administrative body, under the Ministry of Trade**

and Services, to resolve consumer issues. This proposal is very illogical in itself, since the same ministry already runs the Trade Inspection, which has failed to deliver sufficient levels of enforcement. Altering that section of legislation in order to propose a body such as described above, the new law could achieve more enforcement instead of just transposition.

In order for such a change to occur, consumer protection should be recognized as a broader interest at government level. This should not be difficult if one takes into account that good consumer protection ensures a higher quality of life, more disposable income and a faster circulation of money.

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