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The Baltic Model for the Settlement of Individual Consumer Disputes

ABSTRACT. The aim of this study is to assess the possibilities consumers in the Baltic countries have to fulfil their rights in individual consumer disputes by using different forms of alternative dispute resolution. Special attention will be paid to the relation between the existing alternative dispute resolution (ADR) systems and the European Commission's Recommendation 1998 on ADR. The main finding is that in all three countries individual disputes are settled by the same consumer authorities which are also protecting consumers' collective interests. The system resembles in many respects the Nordic model but there are some significant differences. These differences give good reason to speak about the "Baltic model," which differs from all systems existing in the EC Member States. The most remarkable difference is the right to impose administrative sanctions if a trader refuses to comply with a decision which a consumer authority has made with respect to an individual consumer dispute. The basic structure of the Baltic model does not clash with the principles of the EC Recommendation on ADR adopted in 1998. On the contrary, in practice the Baltic model gives better guarantees for consumer access to justice in individual disputes than many systems used in the Member States.

In the EC Member States, one of the biggest problems in the protection of consumers' individual rights is the fact that normal court procedure is in most cases inapplicable. It is too expensive and too slow. Besides, consumers are reluctant to use it because of different psychological barriers. The establishment of different kinds of alternative dispute resolution (ADR) bodies has been the main avenue chosen for imposing consumers' access to justice in individual disputes. Especially during the last few decades, remarkable developments have taken place in the Member States with respect to the establishment of ADR bodies. At least five different basic models may at this moment be identified:

1. The *Nordic model* is mainly based on the operation of public complaint boards, which have been established and are financed by the State. The decisions of these boards constitute only recommendations and cannot be put into force (except in Norway where the decisions become enforceable in case none of parties takes the case to court within a certain time limit). In Denmark the model has been supplemented by authorized private boards (see, e.g., Viitanen, 1996).

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2. The *Dutch model* is quite similar to the Nordic one except that the complaint boards have been established and are run by both trade and consumer organizations in conjunction (see, e.g., Last-Nijgh, 1999).

3. The *Common Law model* is based on simplified court procedures. Small claims courts are a typical feature in common law countries. In the EC these courts may be found in the United Kingdom and in Ireland. The Irish Small Claims Procedure is particularly interesting since the right to take legal action is applicable to consumers only and its use for debt collection thereby prevented (see, e.g., Baldwin, 1997; Fagan, 1994).

4. The *Iberian model* is based on a consumer arbitration procedure. Normally, arbitration procedures are quite expensive, and hence in practice used only in disputes between enterprises. However, in Spain and Portugal a special arbitration procedure has been developed for consumer disputes (see Cabecadas, 1999; Diego, 1994).

5. The *Central European model* is based on private boards established and mainly financed by trade organizations only. The out-of-court settlement of consumer disputes based on this model exists in Germany, Belgium, and Austria.

THE COMMISSION RECOMMENDATION 1998

The EC Commission adopted on 30 March 1998 the *Recommendation on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes* (OJ No L 115, 17.4.1998, hereinafter the Recommendation). The basic idea is the same as in the substantive law directives: to ensure that out-of-court dispute settlement bodies used in the Member States fulfil certain minimum requirements. The main reason for the adoption of this recommendation was that in several countries the out-of-court procedures in consumer disputes are private and have been established by business self-regulation alone. Their neutrality, therefore, has often with good reason been questioned.

The Recommendation consists of seven principles: independence, transparency, adverseness, effectiveness, legality, liberty, and representation. The formulation of the principles is often general and quite unclear. It seems that the fact that in many Member States consumer disputes are settled mainly through private bodies has been taken

into account when drafting the recommendation: The Commission has wanted to avoid a situation in which the gap between requirements and reality would be too deep.

THE PURPOSE OF THE PAPER

Quite a lot of attention has been paid over the past few years to the development of consumers' substantive rights in the PHARE countries (see, e.g., Cambier, 1999; Micklitz & Howells, 1999; Stauder, 1999). This paper, however, focuses on out-of-court settlement of individual consumer disputes in the three Baltic countries. The aim is to assess the possibilities consumers in these countries have to fulfil their rights outside the court system by the use of different forms of alternative dispute resolution. Special attention will be paid to the relationship between the existing procedures and the European Commission's Recommendation 1998 on ADR. Together with an earlier study concerning the protection of consumers' collective interests in the Baltic states (Viitanen, 1997), it tries to form a general picture of consumers' access to justice in these countries.

THE REPUBLIC OF ESTONIA

Complaint bodies. In Estonia the main out-of-court body for solving individual consumer disputes is the *Consumer Protection Board* (hereinafter the Board), which was established in 1994. Furthermore, the *Tallinn City Pricing and Competition Board* receives more than a thousand complaints every year. However, that board does not solve individual disputes; it uses consumer complaints only as a source of material in its endeavour to protect consumers' collective interests. In addition, the *Tallinn Consumer Protection Union* has an information centre which provides individual consumers with legal advice.

Jurisdiction. The jurisdiction of the Board to settle individual consumer disputes is based on Articles 11 and 12 of the *Consumer Protection Act* (hereinafter the CPA) adopted on 15 December 1993. According to Articles 12.1.3 and 12.3, the Board has a right but also an obligation to consider consumer complaints concerning the

violation of their rights and to defend the rights and interests of the consumers in court.

The Board has a right and an obligation to handle complaints concerning consumer goods and services. However, according to Article 2.2 the CPA is applied to banking and insurance services and immovable property only in so far as these services are not regulated by other legislation. There is special legislation concerning banking and insurance services with their own supervisory bodies: the *Banking Inspectorate* and the *Insurance Inspectorate*. These bodies do not solve individual consumer disputes, however. For this reason, the Board also settles disputes concerning such services, but it regularly asks for the opinion of the Inspectorate in question before making its own decision. In complaints concerning travel services, the Board asks the opinion of the *Tourism Board* before solving the case.

Amount and nature of complaints. In 1998, the Board altogether received 3027 written complaints which concerned individual disputes. About half of the disputes concerned consumer goods (1526 cases) and about half consumer services (1501). In complaints concerning goods the main reasons for complaining were unsatisfactory methods used in the sale of foodstuffs (350) and poor quality of footwear (335), home machines (350), and textiles (70). In complaints concerning public or private services, 837 had to do with housing (water 290, heating 200), 224 with electricity and communication (electricity 88, telephone 81, post 19), and 218 with contract terms (building services 54, car service 43, dry cleaning 42).

Besides the written complaints, in 1998 the Board received altogether 6580 telephone calls, which mainly concerned poor quality footwear (2054 calls), public services (1494), private services (746), and unsatisfactory methods used in the sale of foodstuffs (451). In the same year, the information centre of the Consumer Union received 1617 oral complaints. In these cases, only legal advice was provided.

Mediation. With respect to most written complaints, a trader is asked to provide an answer in writing. Besides, in many cases both parties are invited for a meeting with the Board and normally, they accept the invitation. In these meetings, both parties may be heard at the same time, and the Board will try to achieve agreement between the parties.

According to the Board, about 2000 mediation efforts, some of them in writing, were made in 1998 and about 85 per cent of these efforts were successful.

Expertise. When a dissatisfied consumer complains to a trader, the latter has an obligation to arrange for expert examination within five days of receiving the consumer's complaint. The expenses involved are eventually borne by the party at fault. This is based on Article 44 in the *Stores Regulations* adopted on 4 April 1995. However, in case a trader neglects to meet this obligation, the consumer himself has to arrange the examination.

In footwear cases, which are the most typical complaints right now, examination by an expert costs about 400 EEK (approximately 25 euros). This sum of money often exceeds the monetary amount involved in the case. In some cases, the cost of expertise may frighten a consumer into withdrawing the complaint if the outcome of the expert report is doubtful. On the other hand, some traders, having complied with their obligation to obtain an expert examination, experience problems in getting the costs refunded from the consumer in spite of the fact that no defect was found in the product.

The Board does not have its own experts who could examine the products free of charge to both parties. Some of the civil servants of the Board have a certain amount of expertise, and hence can advise consumers concerning the probable outcome of the expert examination in those cases where a consumer is contemplating whether to obtain an expert report by himself or not. The Board itself may also solicit a report, but in practice this happens quite rarely, in 1998 only in 15 cases, and only in those cases where it feels that a report obtained by one of the parties is unreliable or that the reports obtained by the two parties are in conflict.

Hence, in spite of the fact that the Board may solicit its own expert reports, it is the parties who in the first place have to arrange an expert examination and also carry the risk of incurring expenses. Another problem related to the experts' reports is that in most areas there is no regulation prescribing the competence of experts. At present anybody may provide expert services to consumers and traders. There was a proposal whose aim was to make supply of expert services subject to a licensing procedure, but the proposal was never adopted because of heavy resistance from the business side.

Besides the potential expert fees, there are no other charges. The

Board does not collect any complaints fees: Complaining is free of charge to both parties.

Legal nature of decisions. In case the mediation fails and the Board considers the consumer's claim to be justified, it can make a decision according to the substantive rules of civil law. In 1998, the Board took about 200 decisions of this kind. Earlier on, these decisions were not binding, they were only recommendations. If traders did not comply with them, the only possibility to get redress was to take legal action against the trader in a court. Already when it started its activities in 1994, the Board had a right to impose administrative sanctions, but could do so only in order to protect consumers' collective interests, not in cases where a trader refused to rectify in an individual dispute.

However, in December 1998 the Parliament made an amendment to Article 17 of the CPA, and it entered into force in February 1999. According to this amendment, the Board is now entitled to impose administrative fines of up to 10,000 EEK (approximately 640 euros) if its decision in an individual dispute is not complied with within ten days. A trader has a right to appeal to a court which will handle the case according to the procedural rules of the *Code of Administrative Violations*. Until December 1999, no administrative sanctions have in fact been imposed. It seems that the sheer possibility of using sanctions is enough in most cases to ensure that the Board's decisions are complied with.

In case a trader neglects to comply with the decision and the Board imposes fines, this does not release a trader from his civil liability, because the fines are paid to the State, not to an individual consumer. In theory, a consumer may still take his case to a court as a civil case and the court may order the trader to rectify the defects by civil remedies in spite of the fact that a trader has already paid administrative fines.

Duration of the procedure. The Board has an obligation to settle consumer complaints within one month (Article 14.2 of the CPA). There are no statistics, but it seems that most of the cases are in practice solved within this time period.

Court actions. The Board has also a right and a duty to defend consumer rights in court (Article 12.1.3 of the CPA). In 1998, when

the legal nature of the Board's decisions was still only that of a recommendation, the Board took 7 cases to court. All of them had precedential significance. In most of these cases, the Board used its own lawyer. An interesting feature here is that if the Board loses a case, it still does not have the responsibility to pay the trial costs of the other party. This is against the main rule of the *Code of Civil Procedure* which obliges the loser to pay the expenses of the other party (Article 57 of the Code). In those cases where the Board does not take the case to court, it is very rare that a consumer brings a suit by himself. Attorney salaries are very high; they may often amount to 1000 EEK per hour or more.

THE REPUBLIC OF LATVIA

The Consumer Right Protection Centre. In Latvia a new *Law on the Protection of Consumer Rights* (hereinafter the CPA) was adopted on March 18, 1999 and entered into force on April 15, 1999. According to the CPA, the main state authority for the protection of consumers' collective interests is the *Consumer Right Protection Centre* (hereinafter the Centre). It serves also as an out-of-court dispute settlement body in the settlement of individual consumer disputes. According to Article 25.4.4 of the CPA, the Centre has a duty to consider complaints about the violation of consumer rights, to assist consumers in solving conflicts between consumers and manufacturers, sellers, and service providers, and to require fulfilment of consumers' legitimate claims.

The Centre was established on 1 January, 1998. However, it is a successor of the former supervisory bodies, the *State Committee of Trade Supervision* and the *Trade and Services Control Center*. The competence and rights of the Centre are mainly regulated by the *By-laws of the Consumer Right Protection Centre* (hereinafter the By-laws) issued on 20 July, 1999.

Jurisdiction. In the protection of consumers' collective interests the competence of the Centre is limited to non-food products except for some medical and chemical products and services. Besides, those services which are supervised by some other body are excluded, e.g., banking services. However, in the settlement of individual consumer disputes the Centre does have the competence to handle disputes concerning foodstuffs.

Amount and nature of complaints. In 1999 the Centre received altogether 565 written complaints (636 in 1998) concerning individual disputes. However, 51 of these were transferred to other institutions, mainly to the *State Sanitary Inspection.* In addition to the written complaints, the Centre received 6354 oral complaints usually made by telephone (4276 in 1998). Here, only legal advice was given in most cases. The most popular subjects of oral and written complaints are poor quality footwear or electric appliances and poor quality public services.

Complaint to a trader. On the basis of Article 27 of the new CPA, the Cabinet of Ministers approved the *Procedure of Submitting a Consumer Claim About a Low Quality Product or Service and Procedure of Expertise of the Product or Item* (hereinafter the Procedure) on 24 August, 1999. According to the Procedure, when individual consumer problems arise, a consumer should first complain to the manufacturer, the seller, or the provider of the service (Article 2). In case his oral complaint is rejected, he should make a written complaint (Article 4). The seller is then obliged to provide a written reply within three days (Article 11).

In case the complaint concerns the poor quality of a good or service and the parties cannot agree whether the commodity is defective or not, the trader has an obligation to submit an application to the Centre for the examination of the commodity within three days (Article 13). According to previous legislation, which was abolished by the Procedure, it was the trader's obligation to obtain an expert statement, but now this obligation has been transferred to the Centre (Article 23).

According to the previous regulation, in disputes concerning a commodity with a guarantee, the expert had to be a repair shop or another instance with sufficient expertise, e.g., a research centre. For other commodities except for cars, where the expert statements had to be given by a special committee of experts, the expert could be an individual person. Now, there are no longer any formal rules concerning the competence of an expert. It is enough that he is in fact an expert with respect to the commodity in question and that his neutrality cannot be questioned (Article 27.2).

In spite of the fact that the responsibility for arranging an expert examination was transferred from a trader to the Centre, the respon-

sibility for paying the expenses of expert examination did not change. In the first instance, the Centre pays the expenses; in the final instance, the expenses should be paid by the party at fault: the trader in case the commodity is found to be defective and a consumer in case no defects are found.

In practice, the organizer of the examination often finds it difficult to retrieve the expenses from the party at fault. However, the Centre is entitled to levy execution upon the expenses in case voluntarily payment is not forthcoming. An expert statement costs between 7 and 30 Lats (approximately 10 to 50 euros) in footwear cases and other cases where only a visual inspection is needed. In cases where special equipments or laboratory tests are needed, the costs can be much higher. So, by demanding an expert statement a consumer takes an economic risk, which often is higher than the economic interest of his claim.

Complaint to the Centre. In case a trader and a consumer fails to reach an agreement in the two-party negotiations, the consumer has a right to make a complaint to the Centre (Article 20 in the Procedure). There are no restrictions based on the sum of money involved. Making a written complaint is also free of charge. There are no standard complaint forms in use. However, a special questionnaire is sent to the consumers in order to ensure that their written complaint contains all relevant information.

The procedure in the settlement of individual consumer complaints is mainly written. After the Centre has received the consumer's complaint, the trader is asked to give his opinion in a written form, usually within 15 days. If the trader neglects this obligation, the Centre has the right to impose administrative sanctions. This possibility to use sanctions is based on the fact that the Centre itself is obliged to solve the complaints within a certain time period, which normally is 15 days, but 30 days in cases where special expertise is needed. These time limits have significance also in practice: Most disputes – approximately 90 per cent – are solved within one month.

In case an expert statement was not obtained before the consumer made a complaint to the Centre and the trader refuses to provide redress without an examination, the Centre will organise an examination on the request of the consumer, but as to the final economic responsibility, the above-mentioned rule is applied: The expenses are

borne by the party at fault. In the questionnaire which is sent to a consumer after making a complaint, the economical responsibility is explained.

The Centre does not employ experts who could examine the commodities. However, the Centre does have consultants on its staff who are able to give free advice regarding whether or not the consumer should obtain an expert statement. Such advice is given for complaints concerning footwear, clothes, and electric appliances, i.e., those goods which consumers most often complain about. This counselling makes it less risky to obtain a written statement and in practice the consumer is able to predict quite well whether the statement will be a positive one or not.

Mediation. In case the consumer's claim seems to be a legitimate one, the Centre tries to mediate between the disputing parties. During the mediation the Centre provides the parties with an explanation of their legal rights and obligations. The mediation attempt is usually made by letter, but can also sometimes be made by telephone; sometimes the parties are invited to a meeting in the Centre. An agreement is reached in 90 per cent of the cases, which, according to the Centre, is due to the fact that the parties have confidence in the legal expertise and neutral status of the Centre.

Legal nature of decisions. Before the new CPA, the Centre was entitled – according to Article 215.4 in the *Code of Administrative Violations* – to impose administrative sanctions if a businessman infringed Articles 155, 156, or 166.6–166.19 of the same Code. These articles concern product safety or product information, but also the sale of poor quality products (Article 155.5). However, the sole aim of these provisions is to protect consumers' collective interests. This meant that the Centre was not entitled to impose administrative sanctions in an individual dispute if the trader refused to rectify even if it was obvious that the consumer's claim was a legitimate one. The legal nature of the Centre's decision was strictly a recommendation. However, in some mass consumer disputes, the threat of imposing administrative sanctions was, in practice, used in order to persuade the trader to give rectification to a large number of consumers who had suffered losses after buying poor quality products from the same trader.

The situation was totally changed when the new CPA came into

force on 15 April, 1999. When its mediation effort fails, the Centre now has the right to make binding decisions also in individual disputes. In case its decision is not complied with, the Centre is entitled to impose administrative sanctions. Naturally, the trader in question has a right to appeal to a court. The legal basis may be found in Articles 25.6 and 25.7 of the CPA and in Article 21 of the Procedure.

The right to impose administrative fines if the Centre's decision in the individual dispute is not complied with has also completely changed whose taste it is to take the case to a court after Centre's decision. Earlier, it was the consumer who had to take the case to court if a trader refused to comply with the decision. Now it is the trader who has to appeal to a court in case he does not approve of the Centre's decision. This means that the disputing parties in the court are now the trader and the Centre. Hence, a consumer is no longer forced to participate in a court procedure which means that he does not have to carry the risk of legal expenses.

Court actions. Before the new CPA came into force, the Centre could only advise a consumer to take his case to court in case a trader refused to comply with the Centre's decision. However, in disputes which had principal significance, the Centre sometimes helped a consumer to take his case to court. This has happened 22 times since 1993. In these cases the Centre made the summons free of charge. The employees of the Centre also attended the court sessions, but their role depended much on the attitude of the judge. In some cases the Centre was allowed to act as a third party, in some cases they could only be passive followers. Even in cases where the Centre played an active role in the court procedure, it was not obliged to pay the costs of the trader if the consumer lost his case. The consumers won 9 out of these 22 cases and lost 4, whereas an agreement was reached in 2 cases. Seven cases are still pending. The legal expenses for which the loser had to reimburse the winner have varied quite a lot. Sometimes they can be quite reasonable; in one case concerning footwear, for example, the expenses were only 25 lats (approximately 40 euros).

Nowadays, the Centre's right to protect the consumer's individual rights in courts is clearly mentioned in Article 25.6 of the CPA. However, the need to take cases to court has naturally diminished since the legal nature of the Centre's decisions has been radically changed.

THE REPUBLIC OF LITHUANIA

General

Legal basis. The main act in the field of consumer protection is the *Consumer Protection Act* (hereinafter the CPA) adopted on 10 November 1994. Several additional rules have been approved later on by the Government in order to have more detailed provisions concerning consumers' rights and ways of fulfilling them. With respect to this paper, the most relevant of these is the *Rules on Replacement of Goods* n:o 1496/95 (hereinafter the Replacement Rules), adopted by the Government in 1995.

Two-party negotiations. The Replacement Rules contain a provision which is similar to that of the other Baltic countries. Its purpose is to help the disputing parties to agree when a trader does not accept the consumer's claims. According to Article 6 of the Replacement Rules, a trader has to obtain an expert statement within three days of receiving the consumer's complaint in case the parties do not agree as to whether the product is defective or not. Also in Lithuania the costs of the expert report are eventually borne by the party found to be at fault.

Consumers' right to complain to the State authorities. In case negotiations with a trader turn out to be unsuccessful, a consumer has a right according to Article 7 in the CPA to complain to an authorized authority or to take legal action against a trader in court. Consumer authorities have an obligation to investigate consumers' complaints concerning individual disputes (Article 6.6 in the CPA). In Lithuania there are at present two out-of-court bodies which are settling individual consumer disputes. They are the *State Quality Inspection* and the *Unfair Competition Division in the Competition Council*. Before November 1999 the name of the Competition Council was the *State Competition and Consumer Protection Office*.

The State Quality Inspection

General. The most important dispute settlement body is the *State Quality Inspection* (hereinafter the SQI) which now works under the

supervision of the Competition Council. The functions of the SQI are regulated by the *Decree of Lithuanian Government on confirmation of regulations of Lithuanian State Quality Inspection*, No. 390 (hereinafter the Decree) approved on 26 May 1992. The Decree has been amended twice. The main content of these amendments was organizational: The supervision of the SQI was transferred from the *Lithuanian Standardisation Service* to the Competition Council.

The SQI was established in October 1989. It has regional offices in different parts of the country. Its main tasks are related to the protection of consumers' collective interests, mainly as regards product safety and product information. Here, in 1998 the SQI made more than 15,000 checks in different parts of the country, and found more than 13,000 infringements of law. The SQI is quite well known among Lithuanian consumers. It runs its own regular pages both in national and local newspapers, and the activities of the SQI are often covered in radio and television programmes.

Jurisdiction. The SQI has also an obligation to settle individual consumer disputes. It may handle complaints concerning all consumer goods and services which fall under the scope of CPA. According to the preamble of the CPA, it covers relations between consumers and traders in those cases where these relations are not regulated by other legislation. From reading the CPA, it is not possible to discover the restrictions placed on its scope of action, but the agency does in effect not deal with financial services, insurance, travel services, and telecommunication.

Furthermore, claims in which a consumer wants to receive compensation for other damages caused by a defective product or service, stay out of the SQI's jurisdiction, because this form of redress is not mentioned in the CPA. So, for example, if a freezer is defective so that foodstuffs in it are spoiled, the consumer may ask the SQI to assist him in getting the freezer repaired or changed, but not in getting compensation for the spoiled foodstuffs. For such claims, the only possibility is to take legal action in court.

Amount and nature of complaints. The SQI receives approximately 1200 written complaints every year. Many more complaints, which render legal advice only, are made by telephone. About 60 per cent of the complaints concern food and the rest non-food products or services: mainly shoes, clothes, electric appliances, and laundry

services. The most frequent complaint concerns the poor quality of products.

Complaint handling. Received written complaints are forwarded to the inspectors of the SQI. Normally, the first step is to retrieve the product in question and to obtain various documents (receipts, contracts, etc.) from the consumer. After that an inspector visits the shop personally in order to hear the trader's opinion. The first inspection of the good or service is only visual. This is enough in more than in half of the cases. In practice complaints concerning food products are much easier to solve than complaints concerning non-food products, especially electrical appliances.

Expertise. As to the use of expertise, the Lithuanian system differs in two ways from that in force in the other two Baltic states. Firstly, in complaints in which visual inspection is not sufficient, a closer inspection can be made by experts who are on the payroll of the SQI. The SQI has its own experts in more than 30 different areas; besides that, it has laboratories in many fields: food, oil, etc. Sometimes it uses outside expertise: the laboratories of the *State Hygiene Inspection* or private experts.

The second difference is that in Lithuania, the expenses of expert statements are always borne by the trader, even when the consumer's complaint is found to be unjustified. There have been discussions as to whether this rule ought to be changed to a "loser pays" principle. In particular, foreign companies have complained about having to pay expenses in those cases where their products have in effect been found to satisfy the necessary requirements. However, more detailed inspection is carried out only in cases where the SQI staff has good reason to suspect that the product or service is defective; hence the risk that a trader has to pay expenses even when the product is not defective, is in practice quite small.

Because of the possibility to receive a free-of-charge expert statement from the SQI after a written complaint has been made, it seems obvious that there is no sense in obtaining a private expert statement before making a complaint and thereby running an unnecessary financial risk. Since the consumer authorities do not collect any complaint fees, it means that complaining is totally free of charge irrespective of the outcome of the case. In practice approximately 75 per cent of the complaints are found to be justified. To the remaining 25 per

cent belong complaints in which a consumer has lost the receipt and is unable to establish where he has bought the product.

Legal nature of the decisions. In case the SQI finds that the consumer's complaint is justified, the trader is requested to fulfil the consumer's rights based on Article 4 of the CPA: the reduction of price, etc. The SQI is entitled to impose administrative fines if the request is not complied with. The legal basis for using administrative sanctions may be found in Articles 163, 163.1, 189, 189.6, and 241.1 of the *Administrative Code*. The minimum fine is 300 litas and the maximum 4000 litas (approximately 900 euros). Fines may be imposed on individuals only, not on legal entities such as companies. On the first occasion only employees may be fined, but the second time also the directors. It might seem a bit unfair to impose fines on the employees who often have no influence on the quality of products which are on sale in the shop. However, it seems probable that in practice the company pays the fines imposed on their employees. The fined person is also entitled to appeal to a court which will handle the case by using the rules set down in the Administrative Code.

When the SQI notices infringements concerning product safety matters, softer methods such as advice or warnings are often used instead of sanctions, especially vis-à-vis new enterprises. However, with respect to the settlement of individual disputes administrative fines are always imposed when a trader neglects to comply with the SQI's request. But the need seldom arises: In the great majority of cases the threat that sanctions may be used is enough to persuade the traders to rectify.

The Unfair Competition Division in the Competition Council

General. Another State authority which also settles individual consumer disputes is the Unfair Competition Division in the Competition Council (hereinafter the Division). The Division has only 5 employees. Three of them are working with oral and written consumer complaints. Altogether the Competition Council has about 50 employees.

Jurisdiction. The jurisdictional competence of the Division to settle individual consumer disputes is the same as that of the SQI. This

means that its jurisdiction is overlapping with the SQI: Both bodies are entitled to handle consumer disputes and consumers may after unsuccessful negotiations with the trader choose whether they prefer to complain to the SQI or to the Division.

Amount and nature of complaints. In 1998, the Division received about 150 written complaints and about 1250 oral complaints (where only legal advice was given). The written complaints concerned mainly imported shoes and electrical household appliances.

Complaint handling. The Division has no experts of its own. Hence, the reasons for complaints to arrive at the Division are quite manifest: Either the defectiveness of the good or service is so obvious that there is no need for an expert statement, or the consumer has already obtained a statement on the basis of the Replacement Rules, Article 6. In the latter case, the statement indicates that the product is defective, but the trader nevertheless refused to rectify the defect and to compensate for the expenses caused by the expert statement. The first step is to contact the trader in question in order to hear his opinion. In practice traders are heard mainly by telephone. If there is still a need for an expert statement, it may be obtained by using the same principle that is found in Article 6 of the Replacement Rules: The expenses are borne by the party who is found to be at fault. For a consumer, another – less risky – possibility is to transfer the case to the SQI when technical or other expertise is needed.

Legal nature of the decisions. Approximately 70 per cent of the written complaints are justified. In these cases a letter will be sent to the trader requesting him to fulfil the consumer's rights mentioned in Article 4 of the CPA. In practice about 95 per cent of traders voluntarily comply with the request. In other cases, the Division is entitled to impose administrative fines on the basis of Articles 163, 163.1, and 169.9 of the Administrative Code. This happens only in 5 to 10 cases per year. These cases are often transferred to the SQI, because it is better equipped to draw up the protocol that is required when administrative sanctions are imposed.

To sum up, it is better to complain directly to the SQI in case special expertise is needed to investigate complicated matters or in case it is probable that administrative sanctions have to be imposed. Thus

it is not difficult to understand why the SQI receives many more complaints than the Division.

Duration of handling. The authorities are obliged to handle the case within one month (Article 7.2 of the CPA). The Division is able to solve most cases within this time period.

Court cases. The Division has also taken two cases to court. They both concerned furniture. The consumer won the first case in which the sum at stake was 18 000 litas (approximately 4300 euros). The second case is still pending. An interesting feature of these cases is that in the court, the consumer was represented by an employee of the Division who was not a lawyer. This indicates that the judge has a quite active role when civil cases are handled, which makes Lithuanian courts more consumer-friendly than courts in many EC Member States.

SUMMARY AND EVALUATION

Basic structure of the bodies. In all three Baltic states consumer authorities are entitled to settle individual consumer disputes. The greatest resemblance is with the Nordic model, in which individual consumer disputes are also mainly settled by administrative bodies. There are however some differences when the two systems are compared.

One difference is that in the Nordic countries there are different administrative bodies for the settlement of individual disputes and the protection of the collective interests, respectively. These bodies may have close organizational links to each other, but in the fulfilment of their tasks they function independently of one another. In the Baltic states the same bodies settle individual disputes and protect consumers' collective interests.

According to the EC Recommendation, the independence of the decision-making body should be ensured in order to guarantee the impartiality of its actions (*principle of independence*). According to the preamble of the Recommendation, the guarantees of independence do not have to be as strict as in the judicial system. The principle was mainly put forward in order to ensure the neutrality of private

bodies whose activities are under the aegis of business organizations alone.

The settlement of consumer disputes by consumer authorities is not against the principle of neutrality, or the Nordic model would not fulfil the requirements of the Recommendation either. I do not see any conflict with the Recommendation even if the same authorities do settle individual consumer disputes and protect consumers' collective interests. The civil servants dealing with individual disputes in these bodies are bound by the same administrative principles as all other civil servants: All parties should be treated in an equal way.

In case one still finds the present system in the Baltic states problematic, a sufficient solution would simply be to allocate the two tasks to two different independent bodies. These bodies could still co-operate closely in many practical matters as they do in the Nordic countries (with partly the same staff, etc.). In this way, an organizational reform could take place without necessitating further financial resources, something that is extremely important nowadays when considering legal reforms in the Baltic countries.

Lack of private dispute settlement bodies. One common finding in all three Baltic states is the lack of private dispute settlement bodies for consumer disputes. The reasons for this phenomenon are probably quite simple.

Firstly, the administrative bodies have played a very strong role in these countries in all fields of citizens' everyday life for decades. From this viewpoint it is only natural that they also take care of the settlement of consumer disputes.

Secondly, business and consumer organizations in these countries are not sufficiently developed to be able to shoulder these responsibilities. The experiences of Sweden and Finland indicate that further development of these organizations do not necessarily change the situation either. Most organizations are just happy that the State takes care of the dispute resolution and, what is most important, also carries the financial burden of doing so. The banking and insurance sector seems to be the only exception: This sector is very eager to establish its own dispute settlement bodies even if they have to compete with already existing public complaint bodies.

Two-party negotiations. All three countries have rules regulating two-party negotiations. These rules resemble each other to an amazing degree, which probably means that they stem from Soviet times. According to these rules, a trader has an obligation to arrange an expert examination within 3 to 5 days after receiving a consumer's complaint in case the parties do not agree as to whether the product is defective or not. The cost of the expert report is eventually borne by the party found to be at fault. However, in 1999 in Latvia this obligation was transferred from a trader to the Centre.

Jurisdiction. The jurisdiction of the consumer authorities in the settlement of individual consumer disputes is quite broad in all three countries, which means that consumers are provided with good possibilities to complain to an out-of-court body. However, in some branches of business the situation is the opposite; for example, the banking and insurance sector has been excluded from the jurisdiction of consumer authorities in Latvia and Lithuania. It is an interesting observation because the same phenomenon may be found also in many EC Member States, probably because of successful lobbying by business organizations.

The Recommendation does not require that there are out-of-court consumer settlement bodies for all kinds of consumer disputes, which may be considered as one of its clear defects. According to the *principle of transparency*, is it enough that the existing bodies clearly inform about the limits of their jurisdiction when asked.

Complaint handling. There are no complaint fees and the acceptance of complaints is not dependent on the value of the monetary amount involved in the cases. This is very important in countries where complaints concerning small values may, in practice, have a great importance for a consumer's financial situation.

All bodies receive a lot of oral complaints every year. They are mainly made by telephone. In these oral complaints only legal advice is given to consumers. For written complaints, the procedure is more formal in Estonia and Latvia. In these countries the trader is asked to send his opinion in a written form. In Lithuania the trader in question is mainly heard during a personal visit by the inspector of the SQI or by telephone.

According to the *adversarial principle* in the Recommendation, the parties are entitled to present their own opinions during the proce-

dure and to comment on the arguments presented by the other party as well as on experts' statements. In the Baltic states one cannot find any serious infringements of this principle.

Mediation. Mediation is used in the settlement of individual disputes in Estonia and in Latvia. In Latvia mediation efforts are mainly made by letter, whereas in Estonia the most common way is to arrange a special meeting in order to reach an agreement between the parties. In both countries the mediation efforts are claimed to be very successful: Success rates are claimed to be as high as 85 and 90 per cent.

Duration of the procedure. An interesting feature of complaint handling in the Baltic states is that consumer authorities have a legal obligation to settle the case within a certain time limit, which is quite short, not more than one month. It seems that these time limits are also followed in practice: In all three countries most cases are claimed to be solved within one month, which is an outstanding result when compared to, for example, the situation of Nordic public complaint boards, in which the average duration of the procedure is often a year or even more (Viitanen, 1996, p. 122).

According to the *principle of effectiveness*, only a short period should elapse between the referral of a matter and the decision. When taking into account that there is often a written procedure, there is no doubt that in this respect the Baltic states fulfil the Recommendation if the procedure in practice really is as fast as claimed.

Investigation of unclear facts. In Estonia and Latvia the consumer authorities who are settling disputes do not have their own experts who could investigate whether the commodity in question is defective or not. This means that if the parties have not obtained an expert statement before the consumer complains to the authority, the consumer has to obtain it during the procedure. The same rule concerning the burden of costs is applied also when an expert statement is obtained during the complaints procedure in an authority: They are borne by the party at fault. In Estonia the Board may, however, sometimes obtain a statement at its own expense, but in practice this happens very seldom, and normally only in cases where the statements obtained by the parties are unreliable or are in conflict with each other.

The consumer's duty to obtain a written expert statement even after complaining to the authority, reduces the consumer's willingness to complain in cases where the facts are unclear, and especially in cases where the expenses exceed the size of the monetary amount involved. Expenses very often exceed this amount, for example in complaints concerning footwear which at present are the most common complaints in all three countries. In Latvia the Centre has its own consultants who are able to give unofficial oral advice as to whether a consumer should obtain a written statement or not. In Estonia some of the civil servants of the Board have a certain expertise, so that they are also able to give preliminary advice. This kind of oral advice decreases the risk of becoming exposed to high costs, but does not totally eliminate it.

According to the *principle of effectiveness* in the Recommendation, the complaints procedure should be free of charge or imply only moderate costs. The fulfilment of this principle is easily jeopardized, if the procedure results in high costs in the form of complaint fees or any other expenses when compared to the monetary amount involved and to the financial situation of a consumer. That is why serious attention should be paid to the expenses caused by the use of outside expertise in Estonia and Latvia.

One alternative is the Lithuanian model, where the SQI has experts from several different fields on its permanent payroll. This means that in most cases outside expertise is not needed. Another alternative, perhaps not so friendly to traders, is that they should always pay the expenses irrespective of the outcome of the case. This system is also used in Lithuania when laboratory tests or outside expertise are needed. A third alternative is the Nordic model, where experts on different consumer goods and services are often appointed as members of the public complaint boards. This makes the investigation of confused facts more flexible, and diminishes the need for expensive outside expert statements. The main benefit is that the investigation of confused facts is free of charge to the consumer.

Legal nature of decisions. Many out-of-court procedures used in the Member States are only able to produce decisions which are not binding to the parties. This means that they cannot be put into force or that it is not possible to impose any sanctions against a party who does not comply with a decision. In 1998 this was also the situation in the Baltic states except for Lithuania, where the consumer author-

ities were already entitled to impose administrative sanctions to traders who neglected to comply with the authorities' decisions in individual consumer disputes.

However, during 1999 the competence of consumer authorities to use administrative sanctions was extended in both Estonia and Latvia to cover the settlement of individual disputes. The significance of these reforms to the effectiveness of out-of-court dispute resolution systems in the Baltic states is very important, because there is a clear relationship between the effectiveness of dispute settlement systems and the possibility to use force. The relevant aspect is not that these sanctions would often be needed, but that the possibility exists to use them if persuasive methods do not succeed. In practice the administrative sanctions are quite rarely used.

According to the *principle of liberty* in the Recommendation, a decision may be binding on the parties only if they were informed of its binding nature in advance and they specifically accepted this. The possibility to impose administrative sanctions seems to conflict with this principle. However, one should remember once again that the principles in the Recommendation were formulated using the existing systems in the Member States as a starting point. Administrative procedures which produce binding decisions in individual consumer disputes are not known in any Member States. Apart from Norway, which is not a Member State, the Nordic complaint boards produce only recommendations. The possibility to use force also in out-of-court procedures is another difference between the Baltic states and the Nordic countries in the settlement of individual consumer disputes.

When reading the preamble of the Recommendation, one notices that the principle of liberty was formulated in order to protect parties against out-of-court procedures which prevent their access to courts. The administrative procedure used in the Baltic states does not prevent the parties from taking legal action in a court during or after the procedure. Traders are entitled to complain to a court even if administrative sanctions are imposed and in practice they sometimes use their right to appeal. Thus I see no conflict between the principle of liberty and the possibility to use administrative sanctions.

From the consumer's viewpoint, an extremely valuable aspect of the Baltic system as compared to a normal civil procedure is that now the disputing parties become a trader and a state authority in spite of the fact that the starting point was whether a consumer good or

service was defective or not in an individual case. This means that a consumer does not carry the risk of legal expenses which in practice is the main obstacle to the use of a civil procedure in most Member States.

Court procedure. The main focus in this study was on the out-of-court procedures. The presumption that a normal civil procedure is inapplicable in the settlement of most consumer disputes or, at least, that out-of-court procedures are more preferable from a consumer's viewpoint, were in fact the starting points of this study. However, it was possible to make some observations also of the role of civil procedure in the settlement of individual consumer disputes in these countries. It seems that the obstacles which often prevent the use of a normal civil procedure in the settlement of individual consumer disputes are smaller in the Baltic states than they are in the Member States.

Firstly, it seems that the use of an attorney is not as necessary as in the Member States. In Lithuania a civil servant who had no legal education was able to handle disputed cases successfully in a court of first instance. The reason for this may be the more investigatory role of the judge in the Baltic states compared to many other countries. In many Member States it is often the passive role of the judge which forces the parties to use expensive attorneys. Another reason may simply be the lack of lawyers which means that the courts have to live with the fact that many parties are not represented at all. The second finding was that in spite of the main rule that the loser must pay his own trial costs as well as those of the other party, the trial costs seem to be quite moderate in Latvia and in Lithuania, especially when comparing them to most EC Member States.

THE BALTIC MODEL

The Baltic system in which the out-of-court settlement of individual consumer disputes takes place mainly in administrative bodies has the closest resemblance to the Nordic model which is based on public complaint boards. However, there are clear differences. The most remarkable of them is the possibility to impose administrative sanctions. Hence, there are good reasons to speak about the *Baltic model* for the out-of-court settlement of consumer disputes, a dispute reso-

lution system sui generis, which differs from all systems existing in the Member States. In spite of the fact that the Baltic states have chosen different legislative modes also in many consumer law questions, in the settlement of individual consumer disputes, one can clearly speak of a Baltic model instead of separate Estonian, Latvian and Lithuanian models. As in the Nordic countries, there are a lot of differences, but sufficiently many similarities on essential issues to legitimate the use of this new concept.

The Baltic model has many advantages when one compares it to the other out-of-court dispute resolution systems used in the Member States. Firstly, the jurisdiction of consumer authorities is general: They handle complaints concerning most consumer goods or services which are sold in different branches by organized or non-organized traders. The private boards, which exist in many Member States, handle only complaints which concern one sector of business. Furthermore, the private boards usually accept only complaints which concern traders who are members of the trade organization financing the board.

These limitations of jurisdiction mean that in the Member States where the consumer redress system is totally based on private boards – even though there may be dozens – there are always sectors of business where no out-of-court procedures are available. Moreover in sectors of business where a complaint board exist, opportunities to complain may be restricted because the board accepts complaints, only against the members of the financing trade organization. Because of the very broad jurisdiction of the Baltic consumer dispute settlement bodies, this problem – with few exceptions – does not exist in these countries.

Secondly, the Baltic model seems to be a quite fast procedure, at least faster than the Nordic model and probably faster than many other models for the settlement of individual disputes. The third benefit is the possibility to use force in case persuasion fails. It is evident that the high success rates of mediation are based on the fact that the authorities are entitled to impose administrative sanctions if necessary.

So the Baltic states have no reason to be ashamed when they compare their model with the different out-of-court procedures which are used in the EC Member States. In fact, there are good reasons to claim that in practice the Baltic model gives better guarantees for consumer access to justice in individual disputes than many systems used in the Member States. There is no need for changes in the Baltic states in order to reach an average Member State level. On the contrary,

there are many Member States which have a lot of work to do in order to ensure their citizens at least the same level of protection as the Baltic states are providing already now. There are problems especially in those Member States in which the system is based only on sectoral private complaint bodies, in countries in which the duration of out-of-court procedures is far too long, and in countries in which out-of-court procedures can produce no enforceable decisions but only recommendations.

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