

COMPARATIVE ANALYSIS IN CONNECTION WITH THE PROHIBITION OF ANTI-COMPETITIVE AGREEMENTS IN KOSOVO, NORTH MACEDONIA AND ALBANIA

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This study examines and analyzes anti-competitive agreements in Kosovo, North Macedonia and Albania. Also, it examines in some aspects the similarities and differences of the competition laws of the countries in question, with the competition law of the EU. It aims to achieve these basic objectives: to analyze the evolution of competition law in Kosovo, North Macedonia and Albania; to provide a clear analysis of the competition law of the countries included in the study, in terms of the prohibition of anti-competitive agreements; and compare it with the EU competition law; to analyze the behaviors of undertakings that constitute prohibited agreements in the sense of competition law; to analyze important decisions of the Competition Authorities, regarding the prohibition and punishment of anti-competitive agreements; and to consider punitive measures (fines) for violation of rules related to anti-competitive agreements. The analysis shows that there is a high alignment of the competition laws of the countries included in the study with the EU acquis, and that the challenge for the Competition Authorities remains the low number of imposed fines and their non-execution.

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1. INTRODUCTION

The main purpose of this study is to compare competition laws in Kosovo, North Macedonia and Albania in relation to anticompetitive agreements. Also, this study examines in some aspects the similarities of the competition laws of the countries in question with the competition law of the EU. The paper is divided into three sections. The first section discusses the legal framework in the Kosovo, North Macedonia and Albania in the field of anti-competitive agreements and its harmonization with the EU *acquis*. The second section analyzes which practices amount to an anticompetitive agreement under the competition rules of the selected countries. To this end, in addition to the study of the legislation and legal doctrine in this field, some important decisions of the National Authorities for the Protection of Competition in Kosovo, North Macedonia and Albania, regarding the prohibition of anti-competitive agreements, are also analyzed. The third section analyzes types of fines that can be imposed on undertakings for violating the rules related to the prohibition of anti-competitive agreements.

Kosovo, North Macedonia and Albania have been selected for the study, because these countries are aspirant countries for the EU, and one of the obligations arising from the SAA¹ for these countries is the alignment of the legislation with the EU *acquis*, also in the field of competition law. EU law has continuously contributed to the development of competition law in Kosovo, North Macedonia and Albania, both in terms of a roadmap and politically by providing technical assistance in drafting the first modern competition laws.²

¹ Law No. 05/I-069 on ratification of the stabilization and association agreement between the Republic of Kosovo, on the one part, and the European Union and the European Atomic Energy Community, on the other part, Official Gazette of the Republic of Kosovo, No. 34, 01.12.2015, Pristina, article 74; Stabilisation and Association Agreement between the European Communities and their Member States, on the one part, and the Republic of Albania, Official Journal of the European Union, L 107/166, 28.4.2009, see article 70; and Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, Official Journal L 084, 20.03.2004, see article 69.

² See Osmanaj, E.; Jashari, A., *Agreements, Concerted Practices, and Decisions by Associations of Undertakings in the EU, Kosovo, North Macedonia, and Albania: Comparative Overview*, European Competition and Regulatory Law Review, vol. 6, no. 3, 2022, p.

The treatment of anti-competitive agreements is also prompted by the latest developments in the market where prices are on an upward trend. Official data in Kosovo show a significant rise in consumer prices. According to KAS, the overall harmonized index of consumer prices is higher by an average of 14.2% in July 2022 compared to July 2021.³ The higher increase in prices compared to the month of July 2021, is observed in such products as: edible oils and fats (54.1%); fuels and lubricants for personal transport equipment (44.1%); solid fuels, firewood, etc. (43.5%) etc.⁴ Prices in the Kosovo market, as well as in the rest of the world, have increased since the beginning of the war in Ukraine. In general, in circumstances of pandemics and economic crises, there is a tendency for enterprises to engage in anti-competitive practices, for example by fixing prices. However, not always the parallel behavior of companies in the market or the sudden rise of prices represent a violation of competition rules, where competition authorities are required to react.⁵ In the course of the paper, it will be understood exactly which behaviors of enterprises constitute prohibited agreements from the point of view of competition.

An agreement in contract law is defined as the acceptance of an offer.⁶ The main legal form in which affairs are carried out in economic circulation are contracts. By means of the contract, the relations of the participants in the circulation of goods and the provision of services are regulated.⁷ During the exercise of their activity, undertakings naturally conclude a large number of agreements between them and they are important for the market economy. But, as Boruah points out, some undertakings in order to increase profits can end up entering into agreements that can limit the spirit of healthy competition.⁸ *Lascov et al.* state that anti-competitive agreements are a form of cooperation between companies, aimed at reducing existing competitive pressures in the market.⁹

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³ Agjencia e Statistikave të Kosovës [Kosovo Agency of Statistics], *Indeksi i Harmonizuar i Çmimeve të Konsumit Korrik 2022*, Prishtinë, Gusht, 2022, p. 4.

⁴ *Ibid.*, p. 4.

⁵ Osmanaj, E.; Jashari, A., *op. cit.* (fn. 2), p. 222.

⁶ See Sankalp, J., *Anti-Competitive Agreements: Prohibitions Under Competition Act & Indian Contract Act*, November 20, 2015, p. 1. Available at SSRN: <https://ssrn.com/abstract=2780099> or <http://dx.doi.org/10.2139/ssrn.2780099>.

⁷ Dauti, N., *Kontratata [Contracts]*, Prishtinë, 2012, pp. 9-10.

⁸ Boruah, J., *Nature of Anti-Competitive Agreement Law in India: A Brief Review* (July 12, 2021), Brillpedia, 2021, p. 1. Available at SSRN: <https://ssrn.com/abstract=3916120> or <http://dx.doi.org/10.2139/ssrn.3916120>.

⁹ Lascov, V.; Maxim, I. *et al.*, *Anti-Competitive Agreements. Forms and impact on the Competitive Environment on the market*, Revista Economica, Lucian Blaga University of Sibiu, Faculty of Economic Sciences, vol. 73, no. 3, 2021, p. 110.

As Cucu argues, agreements within the activity of undertakings whose purpose or effect is to prevent, limit or distort competition are prohibited.¹⁰ According to Dunne, the most basic feature of any agreement or cartel is that it involves coordination between competitors and thus involves a direct limitation of the competitive forces that would otherwise exist between these rivals.¹¹ Further, Dunne argues that agreements involve precisely the opposite of what neoclassical economic theory tells us is the structure of a well-functioning market: coordination between undertakings that otherwise should compete, in respect of precisely those factors about which they ought to compete most vigorously.¹²

Anti-competitive agreements can be vertical or horizontal: they are horizontal when entered into by participants of the same market level (all producers or all distributors), while vertical agreements pertain to the further steps of production and sale of a product (one producer and the other wholesale distributor).¹³ In the practice of competition law, vertical agreements are evaluated as less harmful than horizontal agreements, therefore priority has been given to the treatment of horizontal agreements, taking into account the concerns and consequences they cause for the market and competition.¹⁴

2. LEGAL FRAMEWORK

The legal framework for the protection of competition in Kosovo¹⁵, North Macedonia¹⁶ and Albania¹⁷, consists of the law on the protection of compe-

¹⁰ Cucu, C., "Agreements", "Decisions" and "Concerted practices": Key concepts in the analysis of anticompetitive agreements, *Lex ET Scientia International Journal*, vol. 20, no. 1, 2013, p. 25.

¹¹ Dunne, N., *Characterizing Hard Core Cartels Under Article 101 TFEU*, *The Antitrust Bulletin* 2020, vol. 65, no. 3, 2020, p. 383.

¹² *Ibid.*, p. 400.

¹³ Zhezha, V., *Analizë e Politikës së Konkurrencës në Bashkimin Evropian [Competition Policy Analysis in the European Union]*, Doctoral dissertation, University of Tirana, Tirana, 2016, p. 32.

¹⁴ Kazani, J.; Gruda, S., *Aspekte ligjore të së Drejtës së Konkurrencës dhe Kokurrenca në Sistemin Elektronjergjetik Shqiptar [Legal Aspects of Competition Law and Competitiveness in the Albanian Electric Power System]*, Doctoral dissertation, University of Tirana, Tirana, 2015, p. 46.

¹⁵ See Law No. 08/l-056 on protection of competition, *Official Gazette of the Republic of Kosovo*, No. 14, 07.06.2022.

¹⁶ Law on Protection of Competition (*Official Gazette of the Republic of North Macedonia*, No. 145/10)

¹⁷ Ligji Nr. 8044 date 7.12.1995 "Për konkurrencën" [Law No. 8044 dated 7.12.1995 "On competition"], *Republika e Shqipërisë*.

tition (LPC). Also, in the framework of the process of aligning the national legislation with the EU *acquis*, Kosovo, North Macedonia and Albania have adopted a series of important by-laws for the protection of competition, the number of which would be too many to list in full here. Therefore, below we will mention some of the acts that have the most direct impact in the field of anti-competitive agreements. Thus, in Kosovo, the by-laws adopted in the field of anti-competitive agreements are:

- a) Regulation No.02/2019 on the categories of specialization agreements¹⁸;
- b) Regulation No.01/2019 on some categories of research and development agreements¹⁹;
- c) Administrative Instruction No. 05-2017 on block exemptions of agreements in the insurance sector²⁰;
- d) Administrative Instruction No. 04-2017 on block exemptions of agreements in the transport sector²¹;
- e) Administrative Instruction No. 03-2017 on block exemptions of vertical agreements of entrepreneurs²²;
- f) Administrative Instruction No. 02-2017 on block exemption of horizontal agreements²³;
- g) Administrative Instruction No. 05-2012 on the criteria and terms for determining agreements of small value²⁴.

¹⁸ Autoriteti Kosovar i Konkurrences [Kosovo Competition Authority], Rregullorja nr. 02/2019 për kategoritë e marrëveshjeve të specializimit, date 14.11.2019.

¹⁹ Autoriteti Kosovar i Konkurrences [Kosovo Competition Authority], Rregullorja nr. 01/2019 për disa kategori të marrëveshjeve të kërkimit dhe zhvillimit, date 14.11.2019.

²⁰ Autoriteti Kosovar i Konkurrences [Kosovo Competition Authority], Udhezim administrativ nr. 05-2017 për përjashtimet grupore të marrëveshjeve në sektorin e sigurimeve, date 21.11.2017.

²¹ Autoriteti Kosovar i Konkurrences [Kosovo Competition Authority], Udhezimi administrativ nr. 04-2017-për përjashtimet grupore të marrëveshjeve në sektorin e transportit, date 21.11.2017.

²² Autoriteti Kosovar i Konkurrences [Kosovo Competition Authority], Udhezimi administrativ nr. 03-2017 mbi përjashtimet grupore të marrëveshjeve vertikale të ndërmarrësve, date 21.11.2017.

²³ Autoriteti Kosovar i Konkurrences [Kosovo Competition Authority], Udhezimi administrativ nr. 02-2017 për përjashtimin grupor të marrëveshjeve horizontale, date 21.11.2017.

²⁴ Qeveria e Kosovës [Government Kosovo], Udhezimi administrativ nr. 05-2012 për kriteret dhe kushtet për caktimin e marrëveshjeve me vlerë të vogël, date 11.06.2012.

In North Macedonia, the list of by-laws approved in the field of anti-competitive agreements consists of:

- a) Regulation on the Closer Conditions for Small Contracts²⁵;
- b) Decree on block exemption for certain types of insurance contracts²⁶;
- c) Regulation on Closer Conditions for the Block Exemption for Certain Types of Horizontal Specialization Agreements²⁷;
- d) Regulation on Closer Conditions for the Block Exemption for Certain Types of Technology Transfer, License or Know-How Contracts²⁸;
- e) Decree on block exemption for certain types of vertical contracts²⁹;
- f) Regulation on block exemption for certain types of contracts for the distribution and servicing of motor vehicles³⁰;
- g) Regulation on Closer Conditions for the Block Exemption for Specific Research and Development Agreements³¹.

While, in Albania, the list of by-laws approved in the field of anti-competitive agreements includes:

- a) Regulation on block exemption of categories of vertical agreements and concerted practices³²;
- b) Regulation on block exemption of categories of vertical agreements and concerted practices in the motor vehicle sector³³;

²⁵ Regulation on the Closer Conditions for Small Contracts (Official Gazette of the Republic of North Macedonia, No. 44/12).

²⁶ Decree on block exemption for certain types of insurance contracts (Official Gazette of the Republic of North Macedonia, No. 44/12).

²⁷ Regulation on Closer Conditions for the Block Exemption for Certain Types of Horizontal Specialization Agreements (Official Gazette of the Republic of North Macedonia, No. 44/12).

²⁸ Regulation on Closer Conditions for the Block Exemption for Certain Types of Technology Transfer, License or Know-How Contracts (Official Gazette of the Republic of North Macedonia, No. 44/12).

²⁹ Decree on block exemption for certain types of vertical contracts (Official Gazette of the Republic of North Macedonia, No. 42/12).

³⁰ Regulation on block exemption for certain types of contracts for the distribution and servicing of motor vehicles (Official Gazette of the Republic of North Macedonia, No. 41/12).

³¹ Regulation on Closer Conditions for the Block Exemption for Specific Research and Development Agreements (Official Gazette of the Republic of North Macedonia, No. 41/12).

³² Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority], Rregullore për perjashtimin në bllok të kategorive të marrvëshjeve vertikale dhe praktike të bashkërenduara, date 20.08.2012.

³³ Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority], Rreg-

- c) Regulation on the categories of agreements, decisions and concerted practices in the sector of maritime transport of goods³⁴;
- d) Regulation on agreements of minor importance³⁵;
- e) Regulation on categories of specialization agreements³⁶;
- f) Regulation on the exemption of categories of research and development agreements³⁷;
- g) Guideline on the evaluation of horizontal agreements³⁸;
- h) Guideline on vertical agreements³⁹.

These by-laws have achieved a higher degree of harmonization of national legislation in the field of anti-competitive agreements with the EU *acquis*. In the European Commission Progress Report 2021, Albania and North Macedonia are estimated to have a legislative framework of competition in broad compliance with the EU *acquis*. More specifically, in the progress report for Albania, for the year 2021, by the European Commission, it is emphasized that the LPC in Albania is largely in accordance with article 101 TFEU (restrictive agreements) and article 102 TFEU (abuses of dominant position). Also, the Commission assesses that Albania has implementing legislation that is broadly in line with the relevant EU regulations and the Commission guidelines.⁴⁰ Whereas, for North Macedonia, in the progress report for 2021, the Commission estimates that the country's legislative framework is broadly in line with the EU *acquis* in the field of antitrust and mergers, but the implementing legislation has not yet been aligned.⁴¹

ullore për përjashtimin në bllok të kategorive të marrëveshjeve vertikale dhe praktikave të bashkërenduara në sektorin e mjeteve motorike, date 20.08.2012.

³⁴ Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority], Rregullore për kategoritë e marrëveshjeve, vendimeve dhe praktikave të bashkërenduara në sektorin e transportit detar të mallrave, date 03.11.2014.

³⁵ Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority], Rregulloren për marrëveshjet me rëndësi të vogël, date 11.09.2009.

³⁶ Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority], Rregullore për kategoritë e marrëveshjeve të specializimit, date 26.05.2011.

³⁷ Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority], Rregullore për përjashtimin e kategorive të marrëveshjeve të kërkimit dhe zhvillimit, date 03.05.2011.

³⁸ Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority], Udhëzim për vlerësimin e marrëveshjeve horizontale, date 21.11.2013.

³⁹ Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority], Udhëzimi mbi marrëveshjet vertikale [Guideline on vertical agreements], date 10.06.2010.

⁴⁰ Directorate-General for Neighbourhood and Enlargement Negotiations, Albania Report 2021, Strasbourg, 19 October 2021, p. 78.

⁴¹ Directorate-General for Neighbourhood and Enlargement Negotiations, North

Unlike Albania and North Macedonia, in the progress report for 2021 by the Commission, Kosovo is estimated to be at an early stage and to have some level of preparation on competition. Kosovo is estimated to have a legislative framework partially in line with the EU competition *acquis*. According to the Commission, significant efforts are needed from Kosovo to further harmonize its legislation with the EU *acquis*.⁴² It is worth noting that in June 2022, Kosovo has adopted the new law on the protection of competition, which is considered to be aligned with the TFEU and the EU regulations on competition.⁴³ With the approval of the new law, Kosovo has marked an important step in completing the legal framework and aligning it with the EU *acquis*.

3. PROHIBITION OF AGREEMENTS RESTRICTING COMPETITION IN KOSOVO, NORTH MACEDONIA AND ALBANIA

As can be seen from the data presented in the table below, the LPC in Kosovo (KS)⁴⁴, North Macedonia (MK)⁴⁵, and Albania (AL)⁴⁶, prohibit collusive agreements between undertakings (enterprises), which, to a significant degree, hinder, limit or distort competition.

Macedonia Report 2021, Strasbourg, 19 October 2021, p. 73.

⁴² Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2021, Strasbourg, 19 October 2021, p. 78.

⁴³ This law is considered to be partially aligned with these EU regulations: Council Regulation (EC) No. 1/2003 of December 16, 2002 on the implementation of competition rules, defined in Articles 81 and 82 of the Treaty; Council Regulation (EC) No. 139/2004 of January 20, 2004 on the control of concentrations between undertakings (EC Union Regulation); Commission Regulation (EU) No. 330/2010 of April 20, 2010 on the implementation of Article 101 (3) of the TFEU to the categories of vertical agreements and concerted practices; Commission Regulation (EC) No. 802/2004 of April 7, 2004 implementing Council Regulation (EC) No. 139/2004 of January 20, 2004 on the control of concentrations between undertakings.

⁴⁴ Law No. 08/I-056, *op. cit.* (fn. 15), see article 5.

⁴⁵ Law on Protection of Competition of Macedonia, *op. cit.* (fn. 16), see article 7 par. 1.

⁴⁶ Law No. 8044, *op. cit.* (fn. 17), see article 3 par. 4.

Table 1: Prohibition of anti-competitive agreements in Kosovo, North Macedonia and Albania

Prohibition of anti-competitive agreements according to LPC		
Kosovo	North Macedonia	Albania
<p>Article 5 of LPC:</p> <p>“All agreements aimed at preventing, restricting or distorting competition in the relevant market shall be prohibited.”</p>	<p>Article 7 par.1 of LPC:</p> <p>“All agreements concluded between enterprises, decisions of associations of enterprises and consorted behaviour whose purpose or consequence is to distort competition are prohibited.”</p>	<p>Article 3 par. 4 of LPC:</p> <p>“Agreements and/or coordinated practices between two or more enterprises, as well as decisions or recommendations of groups of enterprises, regardless of the form, written or not, or their mandatory force.”</p>

The provision that provides for the prohibition of agreements that restrict competition in the LPC, of the states included in the study, includes the prohibition of all forms of coordination between enterprises, which have as a cause or effect the restriction of competition. Specifically, in the LPC of the countries in question, it is determined that there are three different forms through which enterprises can reach an anti-competitive agreement. These forms of prohibited conduct of undertakings (enterprises) include: a) agreements; b) concerted practices and c) decisions by associations of undertakings. Below, we will focus on the analysis of these three forms of prohibited behavior. However, since the provisions on prohibited agreements are aimed for undertakings/enterprises, we shall first stop at the analysis of the concept of undertaking.⁴⁷

The concept of undertakings/enterprises is defined in almost the same way both in LPC, in Kosovo, and in North Macedonia and Albania. Specifically, in the LPC in Albania it is determined that: “An enterprise is any natural or legal person, private or public, that performs economic activity. As enterprises are also considered central and local administration entities, as well as public en-

⁴⁷ Osmanaj, E.; Jashari, A., *op. cit.* (fn. 2), p. 226.

tities or institutions, when performing economic activities.”⁴⁸ According to the same approach, the definition of the notion of undertaking/enterprise is used in LPC in Kosovo and LPC in North Macedonia. However, in the LPC of North Macedonia there exists more extended definition of enterprise concept, which states that:⁴⁹ “Enterprise is any type of business venture regardless of how it is organized and by whom it is run (trading company, sole proprietorship, cooperative, enterprise association, etc.), free professions (lawyers, doctors, architects, accountants, notaries, etc.), public enterprises established for carrying out activities of public interest, as well as any other legal or natural person, institution and other legal and natural person that has public authorizations or a state administration body that is engaged in carrying out an economic activity, if considered or not as commercial”.⁵⁰

From the analysis of these legal definitions, it results that the main element in assessing whether an entity is an undertaking/enterprise, in the sense of competition law, is whether the entity is engaged in economy activity, while the legal status of entity is not important in determining an enterprise. Therefore, natural persons, legal entities, and public entities potentially represent entities that may be subjected to competition provisions, i.e., may fall within the definition of the term enterprise.⁵¹ It should be emphasized that the concept of undertaking defined in the LPC, in Kosovo, North Macedonia and Albania, is in accordance with the competition law of the EU, therefore, the legislators of the countries in question have been influenced by EU law. In the sense of EU competition law, the concept of undertaking includes: “any entity engaged in economic activity, notwithstanding the legal standing of it and the method it is financed”.⁵² Although the content of the concept of undertaking is the same both in EU competition law and in Kosovo, North Macedonia and Albania, there are differences in terminology between the laws in question. In the competition law of the EU and LPC in North Macedonia, the term undertaking is used, while in LPC in Kosovo and Albania, the term enterprise is used.

⁴⁸ *Ibid.*, see article 3 par. 1.

⁴⁹ Osmanaj, E.; Jashari, A., *op. cit.* (fn. 2), p. 226.

⁵⁰ Law on Protection of Competition of Macedonia, *op. cit.* (fn. 16), article 5 par. 1.

⁵¹ Jones, A.; Sufrin, B., *EU Competition Law: Text, Cases & Materials*, 4th Edition, Oxford University Press, Oxford, 2010, p. 126.

⁵² Case C-41/90 Höfner and Fritzs Elser v Macrotron GmbH [1991] E.C.R I-1979, par. 21.

3.1. Agreements between undertakings (enterprises)

In Kosovo, North Macedonia and Albania, the concept of agreement is expressly defined by law. Thus, in the LPC in Kosovo, it is determined that agreements are considered: “agreements of any form concluded between enterprises, with or without binding force, decisions or recommendations of groups of enterprises, as well as concerted practices between enterprises operating at the same level or at different levels of the market”.⁵³ In a similar way it is defined in the LPC in North Macedonia,⁵⁴ and the LPC in Albania.⁵⁵ Also, the concept of agreement is similarly defined in the EU competition law. Specifically, according to the EU competition law, in order for it to be considered an agreement within the meaning of Article 101 (1) TFEU, it is sufficient that the undertakings have expressed their common intention to behave in a specific way in the market, and it is not important how they expressed their intention, orally or in writing.⁵⁶ From this it follows that the provisions on the prohibition of anti-competitive agreements are applied to any agreement, regardless of the form of its appearance. Participants in an anti-competitive agreement very rarely make an agreement in written form. For example, out of 20 cases of anti-competitive agreements handled by the Kosovo Competition Authority (KCA), which we studied for the needs of this paper, only in two cases did we notice that the participants made agreements in written form. These cases are:

The case of the hairdressers in Mitrovica; in this case KCA has established that the owners of the hairdressing salons have raised the prices for their services by 50-75 % through an agreement signed by 21 hairdresser owners of the Municipality of Mitrovica. In this case, the KCA concluded that the agreement was made because the owners had no knowledge of the LPC, and that the participants of the agreement did not implement the agreement, and therefore there was no impact on the market and no harmed parties.⁵⁷

The case of the hairdressers in Lipjan; in this case the KCA has also concluded that it is a matter of an agreement made out of naivety. Specifically, in this case, the KCA has confirmed that the business owners (hairdressers) have reached a written agreement signed by 18 owners to increase prices by 50-65 %. Also,

⁵³ Law No. 08/1-056, *op. cit.* (fn. 15), see article 3 par. 2.

⁵⁴ Law on Protection of Competition of Macedonia, *op. cit.* (fn. 16), article 5 par. 1, 9 and par. 12, 13.

⁵⁵ Law No. 8044, *op. cit.* (fn. 17), see article 3 par. 1.

⁵⁶ Judgment of 20.3.2002, Case T-9/99, judgment of the court of first instance (Fourth Chamber), see article 199.

⁵⁷ Autoriteti Kosovar i Konkurrencës [Kosovo Competition Authority], Konkluzion, Nr. 23/17 Datë 05.10.2017, p. 2.

the KCA has found that the agreement has not been implemented, since the owners have indicated in the agreement the date of the beginning of the implementation of the agreement and the KCA has started investigations before this date.⁵⁸ In addition, after the initiation of the procedure by the KCA, the parties participating in the agreement have submitted to the KCA a non-formal annulment act of the agreement stating that they terminate their agreement and that they have never implemented it. Also, the accused parties have stated that they did not know that this action of theirs is prohibited by the LPC. For these reasons, the KCA has described this agreement as a naive agreement which had no impact or effects of distorting competition in the market; therefore, it has not initiated more in-depth investigations against the undertakings (enterprises).⁵⁹

3.2. Concerted Practices

Undertakings (enterprises) can carry out joint anti-competitive actions without leaving any evidence in the form of an agreement or a decision of their association. For this reason, it is difficult for the competition authorities in many cases to find formal evidence such as written agreements, minutes of meetings, e-mails, as the undertakings know how to hide these evidences very well or destroy them altogether by leaving no trace.⁶⁰ For these reasons, the concept of concerted practices has also been included in competition laws, making it possible for competition authorities to reach to the informal agreements between undertakings (enterprises).⁶¹ This concept originated in the American antitrust law, Section 1 of the Sherman Act, that used the term “conspiracy”, and the term “concerted actions” became widely used as well. This concept was then adopted by European legislation and is thus also found in competition laws in Kosovo, North Macedonia and Albania.⁶²

There is no legal definition of the term *concerted practice* in Albania. Whereas, in the LPC in Kosovo and North Macedonia, the definition of the term concerted practice is expressly given. It should be noted that in the TFEU, the term concerted practice is not defined. However, EU jurisprudence interprets this term quite broadly. It was first defined by the ECJ in the Dystuffs case, in which the ECJ determined that concerted practices are “a form of coordination

⁵⁸ Konkluzion, Datë 05.10.2017 [Conclusion, Date 05.10.2017, Kosovo Competition Authority], p. 2.

⁵⁹ *Ibid.*, pp. 2 – 3.

⁶⁰ Kazani, J.; Gruda, S., *op. cit.* (fn. 14), p. 53.

⁶¹ *Ibid.*, p. 53.

⁶² Cucu, C., *op. cit.* (fn. 10), p. 34.

between enterprises which, without reaching the stage of concluding a formal agreement, consciously replace practical cooperation between them to jeopardize competition”.⁶³

This term, in a similar sense, is also defined in LPC in Kosovo and North Macedonia. Specifically, in the LPC in Kosovo, it is determined that the concerted practice is: “any activity concerning an informal cooperation between enterprises and which is not based on a formal decision or agreement.”⁶⁴ In the LPC in North Macedonia, an extended definition is given to the concept of agreed practice, which states that with the concept of concerted practice “we shall understand the coordination of conduct between two or more enterprises, which without reaching an agreement, have consciously replaced practical cooperation on competition risks. This common practice may result from direct or indirect contacts between enterprises, whose purpose or effect is either to influence market behaviour or to detect future intended competitive behaviour.”⁶⁵

Thus, from these legal definitions it follows that a concerted practice is a form of conscious cooperation between undertakings (enterprises) without reaching the stage of concluding a formal agreement, but which allows the undertakings involved to accurately predict the behavior that other competitors will hold in the market.

3.2.1. Cases of concerted practices handled by the Competition Authorities in Kosovo, North Macedonia and Albania

The institutions responsible for the implementation of LPC, specifically the National Authorities for the Protection of Competition in Kosovo⁶⁶, North Macedonia⁶⁷, and also in Albania⁶⁸, are considered relatively new institutions and have not dealt with many cases of anti-competitive agreements, especially

⁶³ Case 48/69, *ICI v. Commission* (1972) ECR 619., see par. 64.

⁶⁴ Law No. 08/1-056, *op. cit.* (fn. 15), see article 3 par. 3.

⁶⁵ Law on Protection of Competition of Macedonia, *op. cit.* (fn. 16), see article 5.

⁶⁶ The Kosovo Competition Authority was established by the Assembly of the Republic of Kosovo on November 7, 2008, based on the Competition Law no. 2004/36.

⁶⁷ The Competition Authority in Albania is a public body, independent in the performance of its duties. It started its activity on March 1, 2004 based on Law No. 9121 date 28.07.2003 “On the Protection of Competition”.

⁶⁸ The Commission for Protection of Competition (hereinafter: the Commission) was established in 2005 as an independent, collegial and independent state body responsible only for its work before the Parliament of the Republic of North Macedonia.

in the form of a concerted practice. However, some statistics obtained from the reports published on the official websites of the National Competition Authorities in Kosovo, North Macedonia and Albania indicate an increasing number of cases investigated by these institutions. For example, from 2016-2020, the KCA issued a total of 58 decisions.⁶⁹ It should be noted that during the period June 2021-June 2022, the KCA was not functional due to the end of the mandate of the members of its executive body, namely the Commission for the Protection of Competition (CPC). The mandate of the members of the CPC ended in June 2021, while the appointment of new members did not take place until June 2022. So, for one year, the KCA has been dysfunctional in terms of decision-making and for this reason has not been able to exercise any investigative activity against possible distortions in the market. In the period considered as the most critical due to the economic crisis and the tendency of the undertakings to raise prices, the KCA has not been active.

Kosovo

Although there is an increase in cases treated, the number of cases in which the KCA has imposed fines still remains low. For example, out of all the cases resolved by the Kosovo Competition Authority (KCA), during the period 2016-2021, only in one case a fine was imposed. Such is the case of oil companies. Specifically, in case *Nafta*, 16 companies operating in the oil derivative market have been investigated on serious suspicion and based on participation in an anti-competitive agreement or coordinated practice as well as abuse of the dominant position.⁷⁰ In this case, KCA has discovered that 14 companies from the 16 investigated companies were included in a coordinated practice for fixing oil and gas prices⁷¹, and has fined them 4,040,450.78 euros.⁷² Whereas, against the other two accused companies, in the absence of evidence, KCA has acquitted them, thus making acquittal decisions.⁷³

⁶⁹ See Osmanaj, E.; Jashari, A., *E Drejta e Konkurrencës [Competition Law]*, Publishing house "UBT", Pristina, 2021, p. 76.

⁷⁰ Conclusion, No. 01/19 Datë 15.02.2019 [Conclusion, No. 01/19, Dated 15.02.2019 Kosovo Competition Authority], p. 1.

⁷¹ *Ibid.*, p. 3.

⁷² See Decisions of the Competition Authority of Kosovo dated 6 May 2020, No. 29/2020, No. 30/2020, No. 31/2020, No. 32/2020, No. 33/2020, No. 34/2020, No. 35/2020, No. 36/2020, No. 37/2020, No. 38/2020, No. 39/2020, No. 40/2020, No. 41/2020, No. 42/2020 [Decisions of the Kosovo Competition Authority dated 6 May 2020, No. 29/2020, No. 30/2020, No. 31/2020, No. 32/2020, No. 33/2020, No. 34/2020, No. 35/2020, No. 36/2020, No. 37/2020, No. 38/2020, No. 39/2020, No. 40/2020, No. 41/2020, No. 42/2020].

⁷³ Decision dated 6 May, No. 43/2020 [Decision dated May 6 No. 43/2020, Kosovo

It is important to note that in this case, KCA has had difficulty identifying and determining the form of an anti-competitive agreement. For example in the dispositive part of the decision KCA states that the parties violated the rules of competition by participating in “a prohibited agreement or concerted practice”. Whereas, in the reasoning part, KCA states that: “The Authority has proved that there was a concerted agreement, consequently a tacit agreement between the enterprises in the procedure through economic and statistical analysis”.⁷⁴ Although coordinated agreements and practices are two different concepts, it is difficult to make a division in thick lines between these two forms. However, legally nothing changes because the provisions of LPC, related to prohibition of anti-competitive agreements, apply equally to both concerted practices and agreements.⁷⁵ There is a considerable number of cases where the KCA has confirmed that the companies have implemented a prohibited agreement, but since they did it out of naivety and the agreement did not have any effects of distorting market competition⁷⁶, the KCA has released them from punitive measures.⁷⁷ This shows that businesses in Kosovo do not have sufficient knowledge about the competition law and would indicate a task for the KCA to propagate the law even more to businesses.⁷⁸

North Macedonia

The Commission for the Protection of Competition in North Macedonia (hereinafter CPC), has in some cases imposed punitive measures. It is interesting to note that the cases resolved by CCP in connection with prohibited agreements mainly refer to the existence of decisions of associations of enterprises/undertakings and agreements (oral/written), whereas the concerted practices are less common. Specifically, based on the cases the CPC has dealt with so far, it results that the dominant form of existence of prohibited agreements are decisions from the associations of enterprises as well as agreements.⁷⁹ One of the cases handled by the CPC, which refers to the existence of a concerted

Competition Authority] see para. 3. p. 1 and Decision dated 6 May No. 44/2020 [Decision dated May 6, No. 44/2020, Kosovo Competition Authority], p. 1.

⁷⁴ *Ibid.*, p. 4.

⁷⁵ Osmanaj, E.; Jashari, A., *op. cit.* (fn. 2), p. 230.

⁷⁶ See Autoriteti Kosovar i Konkurrencës [Kosovo Competition Authority], Konkluzion, Datë 05.10.2017, pp. 1 – 2.

⁷⁷ See Autoriteti Kosovar i Konkurrencës [Kosovo Competition Authority], Vendim, Nr. 138/18-02/D; Datë 30.03.2018, pp. 1 – 2.

⁷⁸ Osmanaj, E.; Jashari, A., *op. cit.* (fn. 2), p. 231.

⁷⁹ *Ibid.*, p. 231.

practice and that deserves to be mentioned, is the case of the company *Alkaloid Cons Import-Export and the Joint Stock Company for the production of drugs, medical equipment and supplies, trade and services "Dr. Panovski"*.⁸⁰ In this case the CPC has established that the two accused companies, in the period from 21.06.2011 to 05.12.2012, participated in 4 public procurements (bids) for the procurement of the drug with the generic name Etoposide, procured by 3 clinics in Skopje and the Clinical Hospital in Bitola, whereby they participated in the prohibited harmonized behavior, which distorts the competition, and for this the CPC has fined the accused companies in the amount of 256,800 denars.⁸¹

The other is the case of *company for production, trade, and services Orion import-export, Strumica, the company for trade services and production Signal-M import-export, Strumica, and the Driving School TT (LLC-Sole Proprietorship), and trading company for employment of disabled persons*. In this case the Commission found that the above entities, between 01.03.2006 and 31.12.2010, participated in a prohibited agreement or in a concerted practice aiming at the distortion of competition, by setting the same prices for the training of candidates to pass the driving license exam for category "B" in the territory of the Municipality of Strumica. The participants in this agreement were fined in the amount of 2,618,300 dinars.⁸²

The case of the companies *Farma Trejd, Skopje and ADDr. Panovski, Skopje*; in this case, the CPC has established that the enterprises subject to investigation, which carry out medicine trading activities in the territory of the North Macedonia, have behaved harmoniously when participating in the public tenders for the supply of the insulin, organized by the Ministry of Health. In this case, CPC imposed a sanction-fine in the amount of 109,590,500 dinars.⁸³

The case of the Promedika Doel Skopje Company, and the Neokor Medika Doo Skopje Company; in this case, CPC, found that the two companies operating in the wholesale market of medical equipment in the territory of the North Macedonia have behaved in a coordinated manner for the purpose of deforming competition, thus violating the provisions of the LPC, in relation to anti-confidential agreements, namely the coordinated practices. For what, Promedika

⁸⁰ See Решение бр.09-17/21 од 04.10.2012 год [Decision, Commission for the Protection of Competition in North Macedonia].

⁸¹ See Решение бр.09-6 / 7 од 14.12.2015 год [Decision, Commission for the Protection of Competition in North Macedonia].

⁸² See Решение бр.09-28/2 датум 11.11.2013 [Decision, Commission for the Protection of Competition in North Macedonia].

⁸³ See Решение бр. 09-14/47 од 18.10.2017 г [Decision, Commission for the Protection of Competition in North Macedonia].

Dooel Skopje, has been fined 5,087,820 dinars, while Neokor Medika SH.P.K. Skopje has been fined 158,945 dinars.⁸⁴

Albania

The Albania Competition Authority (hereinafter ACA) has dealt with and fined several cases of concerted practices, of which it is worth mentioning the following:

The case of the enterprises “Atlas” Sh.a. and “Bloja” Sh.a; in this case the ACA, from the evidence found during the inspection in the enterprises under investigation, and from the data provided by the General Directorate of Customs⁸⁵, has established that:

- these two companies, because they have significant economic power in the market of production and sale of flour for bread production, exchange information on the offer;
- keep accurate data on the quantity, price, value, customs taxes, VAT, customs payments, customs clearance costs, etc., of each other;
- share customs expenses, forwarding expenses and other expenses;
- keep accurate data on each other's bilateral obligations (receipts and debit balances), the amount of wheat purchased and customs clearance costs.⁸⁶

In this case, a fine in the amount of ALL 66,396,814 was imposed on the enterprises.⁸⁷

The case of enterprises in the new vehicles procurement market; in this case the ACA, from the analysis of the evidence administered on the competition in the new vehicles procurement market, also based on the OECD methodology “for Fighting Bid Rigging in Public Procurement”, has found that there are: a small number of bidders participating in the relevant market; that there is rotation in bidding; and signs of communication between bidders and relations between bidders after the announcement of the winning bid and similar signs in documents submitted by different bidders.⁸⁸ More specifically, in this case, the ACA

⁸⁴ Decision, No. 09-3/8 dated 25.02.2020.

⁸⁵ Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority] Vendim Nr. 125 Datë 08.10.2009 për “Vendosjen e gjobës ndaj ndërmarrjeve “Atlas” Sh.a dhe “Bloja” Sh.a për kufizimin e konkurrencës në tregun e importit të grurit dhe prodhimin dhe shitjen e miellit për prodhimin e bukës”, par. 18 and 19.

⁸⁶ *Ibid.*, par. 20.

⁸⁷ *Ibid.*, par. 25 par. 1, 2.

⁸⁸ Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority] Vendim

has found that there are signs of cooperation in the preparation of bids and relevant documents for participation in public procurements between the companies under investigation.⁸⁹ This cooperation, according to the investigations carried out by the ACA, turns out to have appeared:

- in the form of the exchange of detailed information on prices and technical specifications of vehicles, which according to the ACA, indicates the preparation of bids by a joint employee, or by a number of employees who work closely with each other;
- in a number of joint employees who mainly deal with the preparation of bids for participation in public procurements.⁹⁰

In this case, the enterprises, for participating in the concerted practice in bids, were fined by the ACA in the amount of ALL 35,606,000.⁹¹

The case in the physical security and guard services procurement market. In this case the ACA has discovered that there is a concerted practice between 5 enterprises in the physical security and guard services procurement market. ACA, from the evidence provided, has confirmed that this cooperation between the enterprises has appeared in the form of the exchange of detailed information and the preparation of bids. This is evidenced by the same signs in the preparation of the tender documents, the same staff working for the preparation of these bids, the same addresses of headquarters and operating rooms.⁹² The enterprises participating in the concerted practice in this case were fined in the amount of ALL 2,531,000.⁹³

The case in the compulsory motor third-party liability insurance (MTPL) market. In this case the ACA has discovered that 8 insurance companies have simultaneously applied the same prices for almost all products of domestic MTP.⁹⁴ Spe-

Nr. 154, date 01.10.2010 “Për ndalimin e marrëveshjes ndërmjet ndërmarrjeve “Classic” Sh.p.k, “Hyundai Auto Albania” Sh.p.k, “Noti” Sh.p.k dhe “Ultra Motors” Sh.p.k dhe vendosjen e gjobës ndaj tyre për kufizim të konkurrencës në tregu i prokurimit të automjeteve të reja”, par. 17.

⁸⁹ *Ibid.*, par. 23.

⁹⁰ *Ibid.*, par. 23.

⁹¹ *Ibid.*, par. 25 points III-VI.

⁹² Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority] Vendim nr. 240, datë 26.07.2012 “Për vendosjen e gjobës ndaj sipërmarrjeve “Eurogjici Security” Sh.p.k, “Toni Security” Sh.p.k, “Eurogjici Security I” Sh.p.k, “Nazëri-2000” Sh.p.k, dhe «Dea Security» Sh.p.k për kufizimin e konkurrencës në tregun e prokurimit të shërbimeve të sigurisë fizike dhe rojeve”, par. 28 point a.

⁹³ *Ibid.*, par. 29 points III-VIII.

⁹⁴ Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority] Vendim nr. 246, datë 10.09.2012 “Mbyllja e hetimit të thelluar në tregun e sigurimit të

cifically, in this case, ACA has discovered that all companies operating in the domestic MTPL market, starting from 1 February 2012 to 16 February have increased the insurance premium to the same extent for all domestic MTPL product classes.⁹⁵ In this case, the fine imposed on the companies was ALL 88,944,664.⁹⁶

In the case of pharmacies (wholesale and retail); in this case the ACA has found the unjustified increase in product prices, raising reasonable doubts about market sharing, the pre-determination of purchase and sale prices by conditioning supply contracts. In this case the ACA has fined a number of pharmaceutical networks, which have abused the market with the unjustified increase in the price of highly sold products during the Covid-19 pandemic, such as masks, gloves, alcohol and gel-sanitizer. Specifically, ACA has fined 24 entities of wholesale and retail trade of masks and sanitizers. In total, the fine imposed on the wholesale and retail pharmacy market is ALL 34,000,000.⁹⁷

3.3. Decisions by associations of undertakings

Regarding the term “decisions by associations of undertakings” the two main questions that arise are: first, what is the meaning of association of undertakings, and second, what does the word decision mean? The LPC in Kosovo does not define what is meant by an association of undertakings or a decision. On the other hand the LPC in Albania defines the term association of undertakings, but does not define the meaning of the notion decision of the association.⁹⁸ The LPC in Albania, for associations or groups of undertakings/enterprises states that: “Enterprise groupings are groupings of enterprises of any form, legal or factual, which are or are not legal entities, private or public, for profit or not, which protect the interests of member enterprises.”⁹⁹ The meaning of the notion association of enterprises is also defined with the LCP in North Macedonia, which states that the association of enterprises “means

detyrueshëm të autopërgjegjësishë (MTPL) dhe vendosja e gjobës për kufizim të konkurrencës ndaj ndërmarrjeve “Sigal Uniqa Group Austria Sha (Sigal)”, “Sigma Vienna Insurance Group Sha (Sigma)”, “Atlantik Sha”, “Intersig Vienna Insurance Group Sha (Intersig)”, “Interalbanian Sha”, “Alb - Siguracion Sha (Albsig)”, “Insurance Institute Sha (Insig)” dhe “Eurosig Sha”, par. 2.

⁹⁵ *Ibid.*, par. 5.

⁹⁶ *Ibid.*, par. 40, item II.

⁹⁷ See Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority] Vendim Nr. 717, date 15.10.2020.

⁹⁸ See Osmanaj, E.; Jashari, A., *op. cit.* (fn. 2), p. 232.

⁹⁹ Law No. 8044, *op. cit.* (fn. 15), see article 3 par. 2.

the association of two or more enterprises that don't conduct economic activity directly, but which has or it may have an impact on enterprise market practices, regardless the form of association".¹⁰⁰ The meaning given to the term association of undertakings in the competition laws in Albania and North Macedonia does not differ from competition law in the EU. According to EU competition law, groupings of undertakings of any form (commercial or non-commercial, private or public), which protect the interests of member undertakings qualify as associations of undertakings. Therefore, the term association in the sense of competition law is not limited to trade associations.¹⁰¹ Whereas, the term *decision* in competition law in the EU implies legally binding decisions, and decisions which, although not legally binding, are adhered to by those who are interested and also non-binding decisions which form a clear expression of the will of the association to coordinate the practices of its members in the relevant market.¹⁰² Specifically, a decision should be understood as any initiative, regardless of its form, which is taken by the association and which has the purpose or effect of influencing the commercial behavior of its members.¹⁰³

3.3.1. *Cases of decisions by associations of undertakings handled by the Competition Authorities in Kosovo, North Macedonia and Albania*

Kosovo

As it results from annual reports and decisions published for the period 2016-2022, on the official KCA website, the KCA has examined a total of 5 cases related to decisions from enterprise associations. Three most important cases are described below.

The Case of Central Bank of Kosovo (further CBK). This case is initiated by the insurance market regulator, claiming that the Executive Board of CBK has made a decision which is contrary not only to the LPC but also to the Constitution of the country. According to the complaining party, based on the de-

¹⁰⁰ Law on Protection of Competition of Macedonia, *op. cit.* (fn. 14), see article 5.

¹⁰¹ Osmanaj, E.; Jashari, A., *op. cit.* (fn. 69), p. 103.

¹⁰² See Guidelines on Cooperation between Undertakings, The Guidelines were published in the Netherlands Government Gazette [Staatscourant] on 7 April 2005 (no. 67, pages 20 to 24) came into force on 8 April 2005 and they were complemented on 21 April 2008 (no 77, page 14) and came into force on April 22, 2008, p. 4.

¹⁰³ See Petit, N., *Agreements concerted practices and decisions of associations of undertakings*, IEB-15 January 2010-Madrid, University of Liege (ULg) Global Competition Law Centre (GCLC), College of Europe, p. 50.

cision, CBK has asked the insurers to adapt the current tariffs of mandatory insurance premiums by the auto liability for the tariff group I. And, as a result, have increased arbitrarily and uniformly current tariffs of mandatory insurance premiums from the auto liability on the category of passenger vehicles, and as a result, all owners of vehicles registered in Kosovo have been damaged, paying a price that is not based on free market competition. KCA has found that the aforementioned Decision of the CBK cannot enter the category of decisions from enterprise associations, on the grounds that the CBK is not considered enterprise as it does not conduct economic activity.¹⁰⁴

The Case of the Ministry of Justice and the notaries. In this case, it has been requested by KCA to initiate the investigative procedure against the Ministry of Justice (hereinafter MoJ), claiming that MoJ, with the issuance of the decision on the annulment of the process of notary exam, has violated the principles of free market economy and free competition. MoJ, on 19 April 2019 has published the competition according to which they announced the possibility of applying/participating in the notary exam. The persons who have successfully passed the exam have submitted the request for appointment to the position of the notary, while waiting for the eventual appointment. MoJ, by the decision no. 15/2020 dated 15.10.2020, has annulled the notary exam process announced on 19 April 2019, due to suspicions of abuse/misuse in the notary exam.¹⁰⁵ The complaining party in this case, which initiated the procedure with the KCA, claimed that this decision of MoJ contradicts the Constitution of Kosovo, according to which the basis for economic regulation is the market economy with free competition. Specifically, according to the complaining party, by such a decision, MoJ violated: the entrepreneurial freedom, denying the persons who passed the notary exam to develop the entrepreneurial activity for their own interest and the public in general; consumer freedom preventing customers providing a wider market of notary services; freedom of providing services to persons who passed the notary exam.¹⁰⁶ KCA has found that in this case there are no arguments for the initiation of the investigative procedure against the MoJ. KCA has argued that the MoJ, under the appropriate act, is the competent authority for setting the number and offices of notaries in Kosovo and that the Constitution of Kosovo offers legal space, in some situations, through specific laws of specific sectors, for actions which are not described as interference with

¹⁰⁴ Autoriteti Kosovar i Konkurrencës [Kosovo Competition Authority], Konkluzion, Nr. 61/2020 Datë 15.10.2020 par. 3, p. 2.

¹⁰⁵ Autoriteti Kosovar i Konkurrencës [Kosovo Competition Authority], Konkluzion, Nr. 60/2020 Datë 15.10.2020 par. 3.

¹⁰⁶ *Ibid.*, p. 2.

economic activity to be undertaken, and as such are allowed and legal due to public interest protection.¹⁰⁷ The decision of KCA is based on Article 119 of the Constitution of the Kosovo, which stipulates that “Actions limiting free competition through the establishment or abuse of a dominant position or practices restricting competition are prohibited, unless explicitly allowed by law”.

The Case of the Municipality of Gračanica. In this case the complaining party claimed that Regulation No. 02.21/KG for waste management approved by the Municipality of Gračanica contradicts the LPC, because according to this regulation, apart from the municipal public enterprise Ekologjia, other economic operators cannot perform waste collection and disposal services without a municipal permit. According to the complaining party, this regulation limits market competition and damages other economic operators that deal with these services by creating a monopoly of these services, since only the company Ekologjia SH.A. can perform these services and that without bidding at all and without open tender regarding these services.¹⁰⁸ KCA has determined that there are no arguments for the initiation of the investigative procedure against the Municipality of Gračanica, with the assumption that in terms of the provisions of the LPC, the Municipality is not considered an enterprise that carries out economic activity and therefore does not operate in the market.¹⁰⁹ Also, KCA has reasoned that the claims of the complaining party against the Municipality of Gračanica are matters that are regulated in detail by special laws and regulations and that KCA is not competent to implement the special laws and regulations that regulate the activity of providing waste collection and disposal services.¹¹⁰

North Macedonia

As mentioned above, the cases dealt with by CPC in North Macedonia mainly refer to the existence of decisions by associations of undertakings. Four of the main cases are mentioned below; in two cases the decision by the associations of undertakings was presented in the form of a decision, in one case the decision was presented in the form of a certification and in another case the decision was presented in the form of a regulation.

¹⁰⁷ *Ibid.*, p. 3.

¹⁰⁸ Autoriteti Kosovar i Konkurrencës [Kosovo Competition Authority], Konkluzion, Nr. 356/22, date 25.11.2022, par. 2, 3, p. 2.

¹⁰⁹ *Ibid.*, par. 2.1, p. 3.

¹¹⁰ *Ibid.*, par. 2.4.

The National Insurance Bureau Case, where the CPC confirmed that the National Insurance Bureau (NIB) issued a decision which resulted in the restriction of competition. Specifically, in this matter, the CPC investigation revealed that the Assembly of the NIB, in a meeting held on 06.07.2005, instructed the Steering Board of the NIB to take a decision to increase the price of existing tariffs for third party motor liability insurance by 15 %. The Steering Board of NIB, acting in accordance with the instruction of the Assembly, took a decision to increase the price of existing tariffs for third party motor liability insurance by 15 %.¹¹¹ The NIB had informed all its members about this decision, who afterwards informed their employees that sell third party liability insurance policies from insurance companies. The NIB argued that the board decision was based on the Insurance Law. The CPC rejected this argument and found that the decision of the NIB is prohibited by the LPC, i.e. by the provisions on prohibited agreements.¹¹² The CPC also submitted to the Constitutional Court an initiative to initiate a procedure for reviewing the constitutionality of Insurance Law, which provision is defined as the legal base in the prohibited decision. The Constitutional Court rejected the initiative of the CPC on the grounds that it had already acted and decided in a previous procedure, for the same provisions of this Law. In the appeal procedure of NIB and the insurance companies, the Appeals Commission returned the case to the competence of the CPC. The CPC, reviewing its first instance decision, and having regard to the Constitutional Court Decision, replaced it with a new decision, which closed the proceedings initiated against the NIB and eight insurance companies. This decision was taken considering the fact that a new Law of Insurance was adopted in the meantime, which removed the consequences due to which the procedure was initiated.¹¹³

The Case of the Association of Accountants and Authorised Accountants of Macedonia. In this case CPC has found that the Association of Accountants and Authorised Accountants of Macedonia, in two cases, has taken prohibited decisions that determine the minimum compensation for the monthly cost of services of accounting, by directly regulating the sales prices for accounting services in North Macedonia, with the aim of preventing, limiting or distorting competition, which constitutes an open violation of the provisions of the LPC, regarding

¹¹¹ See Решение бр. 07-107/20 на 13.10.2005 г [Decision no. 09-107/20 on 13.10.2005, Commission for the Protection of Competition in North Macedonia].

¹¹² *Ibid.*, p. 3.

¹¹³ See Republika Makedonija Komisija za zatita na konkurenčijata. Godien izvetaj za rabotata na komisijata za zatita na konkurenčijata za 2005 godina, Mart 2006 [Commission for Protection of Competition of the Republic of Macedonia].

anti-competitive agreements/decisions by enterprise associations. The association in question has been fined in the amount of MKD 1,906,187.¹¹⁴

The case of the Dental Chamber. CPC has confirmed in this case that the Dental Chamber of North Macedonia, as an association of undertakings, using the same continuous relationship and opportunities in two cases, on 03.06.2006, approved a regulation of reference prices for services in health dental institutions in North Macedonia, which the dentists were obliged to implement until 02.03.2013. Whereas, on 02.03.2013, the Dental Chamber approved another prohibited decision, namely the regulation of reference prices for services in dental health institutions in North Macedonia, which the dentists were obliged to implement until 04.04.2015.¹¹⁵ CPC assessed that the Dental Chamber in this case has committed two related actions at the same time, which represent multiple misdemeanors based on the LPC and the Law on Misdemeanors. For the actions performed, the CPC imposed on the Dental Chamber a fine in the amount of MKD 62,000.¹¹⁶

The case of the Association of Private Physicians. In this case, the CPC has found that the Association of Private Physicians in North Macedonia, as an association of enterprises, brought a prohibited decision, in such a way that the Governing Council of the Association of Private Physicians in North Macedonia, approved a decision on 10.03.2012, where the price list for private patients and private services was approved. CPC found that with this decision, the purpose of which is to limit or distort competition, the sale prices of services for private patients were directly or indirectly regulated. For this violation, a sanction-fine in the amount of MKD 491,000 has been imposed on the Association of Private Physicians of North Macedonia by CPC.¹¹⁷

Albania

From the decisions published on the official website of ACA, it appears that ACA has only in two cases dealt with agreements that limit competition in the form of decisions by associations of undertakings (enterprises). Among them, it is important to mention the following one:

¹¹⁴ See Решение бр. 09-3/9 на 03.10.2018 г [Decision no. 09-3/9 on 03.05.2018, Commission for the Protection of Competition in North Macedonia].

¹¹⁵ Решение бр.09-15/4 на 07.04.2017 г [Decision no. 09-15/4 on 07.04.2017, Commission for the Protection of Competition in North Macedonia], pp. 1-2.

¹¹⁶ *Ibid.*, p. 3.

¹¹⁷ Решение бр. 09-22/17 на 31.08.2016 г [Decision no. 09-22/17 on 31.08.2016, Commission for the Protection of Competition in North Macedonia], p. 1.

The case of the National Association of City Transport (NACT); in this case the ACA has found that the members of the NACT have refused to provide accompanying subscription cards according to the amount set by the Municipality of Tirana, to the enterprise “Gerard-A” LLC, and also refused to recognize subscribers without the accompanying card with the NACT logo of the company “ALBATRANS” LLC.¹¹⁸ More specifically, during the inspections, in the office of the NACT, ACA found the decision of the association through which the NACT members, contrary to the act of the Municipality of Tirana, for giving 5500 accompanying cards to the company “Gerard-A” LLC, decided that for November 2012, the new operator “Gerard-A” LLC will be equipped with only 1,200 accompanying subscription cards, thus preventing this competitor from trading subscriptions according to the number determined by the Municipality.¹¹⁹ Also, ACA has established that NACT member companies, through the decisions made in NACT, have made an agreement, as a result of which they have limited the trading of 50 % of the amount of student subscriptions, for 2007 and about 80 % of the amount of student subscriptions for 2008-2012. ACA has found that the decisions of NACT members to limit the amount of trading of student subscriptions constitute direct evidence of an agreement, as a result of which the decision-making independence of the parties has been reduced.¹²⁰ Regarding the refusal to recognize general subscribers without the accompanying card with the NACT logo of the respective enterprise, and the refusal to give the accompanying cards of general subscribers to the respective enterprise, ACA has imposed a fine in the amount of ALL 1,589,487 to the participating enterprises. Whereas, regarding the limitation of trading the amount of student subscriptions, for the years 2007-2012, the participating companies were fined in the amount of ALL 4,490,074.¹²¹

¹¹⁸ Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority], Vendimi Nr. 290, datë 23.07.2013 “Për gjoba ndërmarrjet “Ferlut” SH.A., “Tirana Lines” Shpk, “Alba Trans” Shpk, “Tirana Urban Trans” Sh.A dhe “Parku i Transportit Urban të Udhëtarëve” shpk. për kufizimin e konkurrencës në tregun e tregimit të bile-tave për abonime mujore të përgjithshme dhe studentore (abonentë) në shërbimin e transportit rrugor të qytetit të udhëtarëve në qytetin e Tiranës”, see par. 5.

¹¹⁹ *Ibid.*, par. 24.

¹²⁰ *Ibid.*, par. 6.

¹²¹ *Ibid.*, par. 48 points I and II.

4. THE PUNITIVE MEASURES (FINES) FOR ANTI-COMPETITIVE AGREEMENTS

4.1. Kosovo, North Macedonia and Albania

Both in Kosovo¹²² and in North Macedonia¹²³ and Albania¹²⁴, for enterprises that enter into an anti-competitive agreement or in any other way participate in the agreement with which the competition is distorted, a fine of up to 10 % of the total revenues that the enterprise generated in the last financial year is foreseen.

Also, the methodology for determining fines is similarly regulated. Specifically, according to the regulations contained in the competition laws of the countries in question, the calculation of fines is done according to this procedure. First, the basic amount is determined for each undertaking or association of undertakings. The basic amount of the fine is determined by referring to the sale value of the goods for which the violation was committed, taking into account the importance of the violation. In the case of ascertaining very serious violations (such as price fixing and market sharing), the basic amount can be determined of up to 30 % of the sales value. The basic amount determined can be adjusted or adapted depending on the aggravating or mitigating circumstances.¹²⁵

It is important to mention that in Kosovo, Albania and North Macedonia, the practice of exemption from fines is applied to the enterprise which first notifies the responsible Competition Authority of the existence of a prohibited agreement in which it is also a participant. More specifically, an enterprise involved with others in an anti-competitive agreement may be granted relief, in whole or in part, from fines if it helps to discover and stop the anti-competitive agreement by providing information not previously obtained from the Competition Authority.¹²⁶

¹²² Law No. 08/l-056, *op. cit.* (fn. 15), see article 57.

¹²³ Law on Protection of Competition of Macedonia, *op. cit.* (fn. 16), see articles 59 and 60.

¹²⁴ Law No. 8044, *op. cit.* (fn. 17), see article 74.

¹²⁵ Osmanaj, E.; Jashari, A., *op. cit.* (fn. 69), p. 307.

¹²⁶ See Law No. 08/l-056, *op. cit.* (fn. 15), article 62, Law on Protection of Competition of Macedonia, *op. cit.* (fn. 16), article 63 and Law No. 8044, *op. cit.* (fn. 17), article 77.

Table 2: The number of fined cases in Kosovo during period 2016-2021

Year	Number of fined cases	Amount in €
2016	-	-
2017	-	-
2018	-	-
2019	-	-
2020	1	4,040,450,78
2021	-	-
Total	1	4,040,450,78

As it has already been pointed out in the previous section, the number of fines imposed in cases of anti-competitive agreements is low, since the number of cases dealt with so far is generally low. Thus, during 2016-2021, the Competition Authority of Kosovo issued a decision to impose a fine for the violation of competition rules in relation to anti-competitive agreements in only one case; the total fine imposed in this case is € 4,040,450,78. It is important to note that this decision has been suspended, as the punished enterprises have appealed the decision to the court and the case is still pending.

Similarly, it should be noted that one of the main challenges of KCA is the lack of specialized knowledge of judges who deal with competition cases. According to KCA, the training of judges is necessary for a more complete and adequate recognition of the peculiarities of competition law.¹²⁷ Even the European Commission recommended that the expertise of judges who deal with competition cases in KS should be improved by organizing *ad hoc* trainings. According to the Commission¹²⁸, the main challenge remains the delay in handling cases and contradictory judgments from several judicial instances.¹²⁹ Also, a study conducted by GLPS finds that judges who deal with cases of competition have a lack of specialized knowledge from this field, and as a result, they drag out the procedures and have a tendency to focus more on procedural issues, leaving aside the merit of the cases.¹³⁰

¹²⁷ Autoriteti Kosovar i Konkurrencës, Raporti i Punës, 2020 [Kosovo Competition Authority, Annual Report, 2020] Mars, 2021, p. 31.

¹²⁸ The data are extracted from the decisions published on the official website of the Kosovo Competition Authority.

¹²⁹ Directorate-General for Neighborhood and Enlargement Negotiations, *op. cit.* (fn. 40), p. 78.

¹³⁰ Grupi për Studime Juridike dhe Politike (GSJP) Raport Politikash: Të (pa) barabartë:

Table 3: The number of fined cases in North Macedonia during period 2016-2021¹³¹

Year	Number of fined cases	Amount in denars
2016	3	975,400,00
2017	6	808,662,815,00
2018	4	11,036,936,00
2019	3	122,311,619,00
2020	3	6,773,263,00
Total	19	94,976,003,300

Unlike Kosovo, in North Macedonia there are more cases in which CPC has imposed fines on undertakings for participating in the conclusion and implementation of anti-competitive agreements. Specifically, in North Macedonia, the number of fined cases during 2016-2020 is 19, while the amount of the imposed fine is MKD 94,976,003,300.

Table 4: The number of fined cases in Albania during period 2007-2021¹³²

Year	Number of fined cases	Amount in lek
2007-2010 ¹³³	4	104,780,099
2011-2014 ¹³⁴	5	98,229,225
2015-2018 ¹³⁵	2	3,990,281

Një tregim mbi Konkurrencën në Kosovë, Nr. 04/2018 [To (without) equals: A story about Competition in Kosovo] Prishtine, 2018, p. 14.

¹³¹ The data are extracted from the annual work reports published on the official website of the Commission for the Protection of Competition in North Macedonia.

¹³² The data are extracted from the decisions published on the official website of the Competition Authority in Albania.

¹³³ See Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority] Vendim nr. 67, datë 24 /12 /2007; Vendim nr. 66, datë 18/12/2007; Nr. 125 Datë 08. 10. 2009; Vendim Nr. 154, datë 01.10.2010.

¹³⁴ See Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority] Vendim Nr. 202, Datë 26.09.2011; Vendim Nr. 246, datë 09.10.2012; Vendim Nr. 240, datë 26.07.2012; Vendim Nr. 216, Datë 01.03.2012; Vendim Nr. 290, datë 23.07.2013.

¹³⁵ See Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority] Ven-

2019-2021 ¹³⁶	2	38,000,000
Total	13	244,999,605

In Albania, from the time when the Competition Authority started its operation, namely from 2007 to 2021, only 13 undertakings were fined for participating in anti-competitive agreements. The challenge for the Competition Authority in Albania remains the failure to execute the fines imposed, both for the violation of competition rules in relation to agreements and for other violations. The budget data of this institution show that for the last 3 years, the only revenues generated by this institution are those deriving from the payments of undertakings for the assessment of concentrations. During 2021, the Competition Commission adopted several decisions providing for fines, mainly related to the non-implementation of temporary measures imposed on the markets of paramedical materials and the market of agricultural inputs. All the fined companies have appealed the decision to the Administrative Court of First Instance. Four of the claims were dismissed by the court, while two were accepted. However, they were appealed by the Competition Authority to the Administrative Court of Appeal. Nevertheless, even for the cases won in court, none of the fines have been collected.¹³⁷

4.2. The punitive measures (fines) for anti-competitive agreements in the EU

Even in the EU, the highest fine that can be imposed to enterprises for participating in an anti-competitive agreement is 10 % of the total revenues that the enterprise has generated in the last year.¹³⁸ It is important to note that in the beginning, the fines imposed by the Commission have been quite low, namely during the first two decades of its work, the Commission has been criticized regarding the level of severity of fines for violation of competition rules. In particular, the fines imposed by the Commission on prohibited agreements were considered low and insufficient to deter price fixing or other anti-competitive

dim Nr. 535, Datë 17.07.2018; Vendim Nr. 495, Datë 08.02.2018.

¹³⁶ Autoriteti i Konkurrencës i Shqipërisë [Albanian Competition Authority] Vendim Nr.717, Datë 15.10.2020; Vendim Nr. 794, Datë 27.04.2021.

¹³⁷ <https://www.monitor.al/autoriteti-i-konkurrences-zero-gjoba-te-arketuara-per-te-tretin-vit-radhazi/> (last access: 05.09.2022, 13:08).

¹³⁸ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, Official Journal L 001, 04/01/2003 P.0001-0025, see article 24 par. 2.

titive behavior.¹³⁹ Since 1980, the Commission has begun to increase the level of severity of fines, seeing the increase of fines as an important tool to restrain enterprises from engaging in anti-competitive actions. Among the most important developments regarding the fines policy in the EU, the following can be mentioned: the application of the relief program for cartel members who report the cartel to the Commission; approval of the Commission guidelines on fines; promoting private enforcement of anti-cartel laws; and intensifying cooperation between competition authorities in the fight against cartels.¹⁴⁰ In particular, an important moment in relation to the policy of fines in the EU is the adoption of the Commission guidelines on the methods for determining fines. This is because the Commission has often been criticized for imposing fines arbitrarily and for lack of transparency. With these guidelines, it was intended to establish clear criteria on the basis of which the Commission will make decisions on fines, ensuring full transparency and impartiality. These developments have also influenced the increase in the level of severity of fines imposed by the Commission.¹⁴¹ As it results from the statistics published by the Commission, during 1990-2022, the amounts of fines imposed by the Commission (adjusted for court decisions) for cartels, reach the amount of € 29,745,465,612,50. In particular, it is noted that there was an increase in fines during 2005-2009 to € 7,863,307,786,50, in contrast to the previous period 2000-2004, which was € 3,157,348,710,00. The highest fine imposed for a case, from 1969 to 2022, was imposed in 2016/2017 in the Trucks case, where a fine of € 3,807,022,000 was imposed, while the highest fine imposed for an enterprise is in the amount of € 1,008,766,000, imposed against the Daimler company in 2016.

¹³⁹ Zhezha, V., *op. cit.* (fn. 13), p. 113.

¹⁴⁰ Smuda, F.; Bougette, P.; Hüschelrath, K., *Determinants of the duration of European Appellate court proceedings in cartel cases*, No 14-062, ZEW Discussion Papers from ZEW-Leibniz Center for European Economic Research, 2014, p. 1.

¹⁴¹ Geradin, D.; Henry, D., *The EC Fining Policy for Violations of Competition Law: An Empirical Review of the Commission's Decisional Practice and the Community Courts' Judgments* (February 2005), GCLC Working Paper No. 2/05, Global Competition Law Centre, Belgium, p. 2.

Table 5: Fines imposed (adjusted for Court judgments)-period 1990-2022

Year	Amount in €
1990-1994	344,282,550,00
1995-1999	270,963,500,00
2000-2004	3,157,348,710,00
2005 -2009	7,863,307,786,50
2010-2014	7,598,728,479,00
2015-2019	8,187,380,159,00
+2020-2022++	2,222,928,000,00
Total	29,745,465,612,50

Source: https://competition-policy.ec.europa.eu/system/files/2022-11/cartels_cases_statistics.pdf

Table 6: Ten highest cartel fines per undertaking (since 1969) Last change: ++08 July 2021++

Year	Undertaking	Case name	Amount in €
2016	Daimler	Trucks	1,008,766,000
2017	Scania	Trucks	880,523,000
2016	DAF	Trucks	752,679,000
2008	Saint Gobain	Carglass	715,000,000
2012	Philips	TV and computer monitor tubes	705,296,000 of which 391,940,000 jointly and severally LG Electronics
2012	LG Electronics	TV and computer monitor tubes	687,537,000 of which 391,940,000 jointly and severally with Philips
2016	Volvo/Renault Trucks	Trucks	670,448,000

++2021++	VW Group	Car emissions	502,362,000
2016	Iveco	Trucks	494,606,000
2013	Deutsche Bank	Euro interest rate derivatives (EIRD)	465,861,000

Source: https://competition-policy.ec.europa.eu/system/files/2022-11/cartels_cases_statistics.pdf

Table 7: Ten highest cartel fines per case (since 1969)

Year	Case name	Amount in €
2016-2017	Trucks	3,807,022,000
++2019/2021++	Forex	1,413,274,00
2012	TV and computer monitor tubes	1,409,588,000
2013/2016/2021	Euro interest rates derivatives (EIRD)	1,308,172,000
2008	Carglass	1,185,500,000
2014	Automotive bearings	953,306,000
2021	Car emissions	875,189,000
2007	Elevators and escalators	832,422,250
2001	Vitamins	790,515,000
++2010/2017++	Airfreight (incl. re-adoption)	739,642,616

Source: https://competition-policy.ec.europa.eu/system/files/2022-11/cartels_cases_statistics.pdf

Although, over the years, the Commission has shown a tendency to increase the level of severity of fines for cartels, the results of many studies suggest that such an increase is not sufficient to curb anti-competitive practices. Thus,

Gerardin¹⁴², Connor¹⁴³, Veljanosky¹⁴⁴, Günster and A. Van Dijk¹⁴⁵, draw conclusions that in most cases the amount of the fine is small compared to the illegal benefits of the members of the cartels and as a result the direct deterrent effect of fines may be limited. Combe and Monnier argue that fines should not be increased dramatically in the EU, but acknowledge that the level of fines compared to the illegal profit made by cartel members remains low and therefore suggest that fines should be increased at least to ensure that in any case the cartel pays the illegal profits derived from the infringement.¹⁴⁶ In particular, the level of fines is considered low considering the fact that some cartels remain undetected. In 2007¹⁴⁷ Combe, Monnier and Legal, have estimated that the annual probability of a cartel getting caught by the Commission falls between 12.9 % and 13.3 %.¹⁴⁸ Even in the USA, the authors Bryant and Eckard, in 1991, drew the same conclusion, estimating that the probability of cartels getting caught by the authorities in the USA is between 13 % and 17 %.¹⁴⁹ Thus, the probability of cartels getting caught in both the EU and the USA is estimated to be less than 20 %.

¹⁴² *Ibid.*

¹⁴³ See Connor, J. M., *Optimal Deterrence and Private International Cartels* (April 9, 2006). Available at SSRN: <https://ssrn.com/abstract=1103598> or <http://dx.doi.org/10.2139/ssrn.1103598>.

¹⁴⁴ See Veljanovski, C., *Cartel Fines in Europe - Law, Practice and Deterrence*, World Competition, vol. 29, 2007, pp. 1-30. Available at SSRN: <https://ssrn.com/abstract=920786>.

¹⁴⁵ Günster, A.; Van Dijk, M, A., *The Impact of European Antitrust Policy: Evidence from the Stock Market* (June 20, 2011). Available at SSRN: <https://ssrn.com/abstract=1598387> or <http://dx.doi.org/10.2139/ssrn.1598387>.

¹⁴⁶ See Combe, E.; Monnier, C., *Fines Against Hard Core Cartels in Europe: The Myth of Over Enforcement* (June 8, 2009), Cahiers de Recherche PRISM-Sorbonne Working Paper. Available at SSRN: <https://ssrn.com/abstract=1431644> or <http://dx.doi.org/10.2139/ssrn.1431644>.

¹⁴⁷ This estimate is based on detection durations, calculated from data reported for all cartels convicted by the European Commission from 1969 to 2007, and a statistical model of the birth and termination process that describes the initiation and detection of cartels.

¹⁴⁸ See Combe, E.; Monnier, C.; Legal, R., *Cartels: The Probability of Getting Caught in the European Union*. Available at SSRN: <https://ssrn.com/abstract=1015061> or <http://dx.doi.org/10.2139/ssrn.1015061>.

¹⁴⁹ See Bryant, P. G.; Eckard, E. W., *Price Fixing: The Probability of Getting Caught*, The Review of Economics and Statistics, vol. 73, no. 3, 1991, pp. 531–536.

5. CONCLUSION

From the information dealt with through the analysis of the competition legislation and the analysis of the decisions of the Competition Authorities of the states included in the study, the following conclusions can be drawn.

The law on competition in Kosovo, North Macedonia and Albania, as far as anti-competitive agreements are concerned, is mainly based on European competition rules and is highly aligned with Article 101 of the TFEU. The alignment of the laws in question with the EU legislation is due to the fact that Kosovo, North Macedonia and Albania, within the framework of the development of the association-stabilization process, have taken as an obligation the complete reformation of the legal framework with the aim of harmonization with the EU *acquis*. Therefore, the laws and regulations of these countries regarding anti-competitive agreements are almost the same as those of the EU.

The behaviors of undertakings (enterprises), which constitute prohibited agreements in the sense of the competition law of the states included in the study are: a) agreements; b) decisions by associations of undertakings; and c) concerted practices. These three forms of behavior are different, but the consequences related to the restriction of competition remain the same in all three cases. All three forms require coordination of the behaviors of the undertakings participating in the agreement. The provisions prohibiting anti-competitive agreements apply to any agreement, regardless of the form of its appearance.

An undertaking (enterprise) for participating in the conclusion or implementation of an anti-competitive agreement may be fined up to 10 % of the income they realized in the last year. Regarding the fines policy, we must note that the number of cases fined for violating the rules regarding anti-competitive agreements is considered low, especially in Kosovo and Albania.

What is considered a challenge is the execution of the decisions of the Competition Authorities for imposing fines in practice and the lack of expertise of the courts in the field of competition law. Another important challenge is considered the lack of practical implementation of the leniency policy. Kosovo, North Macedonia and Albania have approved a leniency program for cartels, but to date it has not been applied by their Competition Authorities.

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Sažetak

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KOMPARATIVNA ANALIZA U VEZI SA ZABRANOM SPORAZUMA PROTIV TRŽIŠNOG NATJECANJA U PRAVU KOSOVA, SJEVERNE MAKEDONIJE I ALBANIJE

Studija ispituje i analizira sporazume protiv tržišnog natjecanja na Kosovu, u Sjevernoj Makedoniji i Albaniji. Također, u nekim aspektima ispituje sličnosti i razlike zakona o tržišnom natjecanju tih zemalja s pravom tržišnog natjecanja EU-a. Osnovni su ciljevi studije: analizirati razvoj prava tržišnog natjecanja na Kosovu, u Sjevernoj Makedoniji i Albaniji; dati jasnu analizu prava tržišnog natjecanja zemalja uključenih u studiju, u smislu zabrane sporazumâ protiv tržišnog natjecanja, te ga usporediti s pravom tržišnog natjecanja EU-a; analizirati ponašanje poduzeća koje predstavlja zabranjene sporazume u smislu zakona o zaštiti tržišnog natjecanja; analizirati važne odluke tijela za zaštitu tržišnog natjecanja u vezi sa zabranom i kažnjavanjem sporazumâ protiv tržišnog natjecanja; analizirati kaznene mjere (novčane kazne) za kršenje pravila vezanih uz sporazume protiv tržišnog natjecanja. Studijom je utvrđeno da postoji visoka usklađenost zakona o tržišnom natjecanju zemalja uključenih u studiju s pravnom stečevinom EU-a, te da izazov za tijela za zaštitu tržišnog natjecanja ostaje nizak broj izrečenih kazni i izostanak njihova provođenja u praksi.

Ključne riječi: sporazumi protiv tržišnog natjecanja, tržišno natjecanje, novčana kazna, usklađena praksa, odluke udruženja poduzeća

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