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## Consumer Protection in Sales Transactions in Hungary\*\*

**Abstract.** Sales transactions are the basic and most frequent transaction consumers conclude in their everyday lives. Therefore, it is very important to know what rights consumers have, and which procedures and remedies are available when their rights are infringed. The paper aims to give a comprehensive overview of consumer protection issues arising out of the sales contract in Hungary, from the advertising activity, via the contract itself, and until the enforcement of consumer's rights. Attention will be given even to consumer education and information, as important tools for making smart purchase choices. Since a wide range of issues will be covered the paper aims to give a structured summary of consumer's rights, remedies, institutions, enforcing mechanisms, procedures and educational and information tools and methods. The approach of the paper is original as the protection of consumers is analyzed from both civil and criminal law point of views. Besides focusing onto consumer protection in Hungary in general, the paper will present some unique practical data from a smaller territorial unit, the city of Szeged.

**Keywords:** consumer protection, sales contract, civil and criminal law, Hungary, Szeged

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## I. Introduction

The paper aims to determine how consumers are protected in Hungary when concluding, the basic and most frequent transaction in their everyday life, the sales transaction. In other words it explores what rights consumers have according to the law in force, and which procedures and remedies are available when their rights are infringed. In exploring consumer's rights and remedies a complex approach is taken, and the protection of consumers is analyzed from both civil and criminal law point of views.

The paper deals with consumer sales transactions. However, as sales contract in the Hungarian Civil Code is defined as a contract for the sale of *goods*, the features of the sale of goods contract will be considered, together with mentioning some special ways of sale like distance contracts and doorstep selling, but some contracts that otherwise could be considered as sales contracts and some selling arrangements like time-share agreements and package holidays will stay outside the scope of this paper.

The paper aims to give a comprehensive overview of consumer protection issues arising out of the sales contract in Hungary, from the advertising activity, via the contract itself, and until the enforcement of consumer's rights. Attention will be given even to consumer education and information, as important tools for making smart purchase choices. However, since a wide range of issues will be covered, there is no place for an indebt analysis. Therefore, the paper aims to give a structured summary of consumer's rights, remedies, institutions, enforcing mechanisms, procedures, educational and information tools and methods, pointing onto some compelling problems but leaving room for further research and discussion.

Since the research (that this paper is based on) has been conducted in Szeged, the capital of Csongrád County, the city with county rights (*megyei jogú város*)<sup>1</sup> and its own university, the paper will, when dealing with the application of the law in practice, present unique, location specific data related to consumer protection in Szeged.

After the introduction the paper will give a short overview of the crucial definitions (consumer, sales contract) and present the legislation in force (civil and criminal law). Thereafter it turns to the enforcement of the law, to its mechanisms and procedures, also briefly showing the institutional framework of consumer protection in Hungary. The last part spreads some light on consumer education and information. The paper is concluded with a short assessment of

<sup>1</sup> The local authorities have extended powers but are not independent territorial units.

the main research findings and some remarks on the future of consumer protection in Hungary.

## II. Definitions

Before turning to the legislation in force and its enforcement, it is necessary to determine how the crucial terms, the consumer and the sales contract are defined according to the Hungarian law.

### 1. Who is a consumer?

Interestingly, the Hungarian law knows a couple of definitions, they are given by the CLV Act of 1997 on Consumer Protection<sup>2</sup> (hereinafter: CPA), the Act IV. of 1959 on the Civil Code of the Republic of Hungary<sup>3</sup> (hereinafter: CC), the Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition (hereinafter: PUTPUC) and the Act LVIII of 1997 on Business Advertising Activity (hereinafter: BAA).<sup>4</sup>

The most detailed definition of a consumer is given by § 2 (a) CPA, according to which a consumer is “*a person who purchases, buys, orders, receives, or uses goods for non-business or non-professional purposes, or for whom a service is rendered, furthermore who is the addressee of information or an offer related to goods or services*”.

The CPA talks about consumers as *persons*, which leads to a conclusion that both natural persons and business organizations (with or without legal personality) can be considered as consumers,<sup>5</sup> whereby the main criteria for delimiting consumers from non-consumers is the aim of the purchase. A consumer is a person, who buys, orders or receives goods for a *non-business, non-professional purposes*.

The CPA addresses consumers as persons who *buys, orders, receives or uses* goods. Therefore, the notion of a consumer is wider than the buyer, and tenants, lessees, even receivers of a gift and family members of a purchaser

<sup>2</sup> Comments and analysis of the definition of consumers can be found in Fazekas, J.: *Fogyasztóvédelmi jog* [Consumer Protection Law]. Miskolc, 2003. 62–67.

<sup>3</sup> The definition of a consumer has been implemented into the CC with 1997 amendments.

<sup>4</sup> Act LVIII of 1997 on Business Advertising Activity.

<sup>5</sup> See also court decisions *Bírósági Határozatok (BH)* 2000, 554 and *BH* 2006, 343.

can be considered consumers.<sup>6</sup> It also extended the notion of a consumer from realized transactions to those situations when there is not contract yet, but the rights of a consumer had been infringed due to some information or offer to conclude a contract (e.g. in the advertisement).<sup>7</sup>

The CC defines a consumer as “*any person who is a party to a contract concluded for reasons other than economic or professional activities*”. This, definition, though much more simple than in the CPA, encompasses (explicitly or implicitly) almost all elements than the CPA, but limits consumers to persons who are party to a contract, and consumer transactions to realized transactions.

The PUTPUC in § 8 (1) determines consumers as *customers, buyers and users* that thereby define consumers in a much wider manner. A consumer can be anyone who is a customer, a buyer or a user, a natural person or a business organization even when buying goods in the course of its business or professional activities.

§ 2 (g) of the BAA defines consumers as “*all private individuals, legal entities and economic associations without legal entity towards whom or to which advertising is directed*”. Therefore, a consumer is anyone to whom the advertisement is directed, regardless of a purpose (professional or non-professional) in connection which the advertisement is received. Moreover, it is not necessary to actually receive the information but is sufficient if the advertisement is published and a person, a consumer falls within the critical category of a group of persons towards whom the information is directed.

In addition to these definitions, Ministerial Decrees, that implement EU directives into the Hungarian legal system, often overtook the definitions given by the directives. Taking into account that directives mostly delimit consumers to natural persons, the confusion is even greater.

Having more definitions and different definitions within one legal system is not the best solution. Problems arose when in an instant case the legislation itself does not give any guidance as to who is a consumer. In like situations, the best solution is to determine under which legal branch the problem falls and apply the corresponding definition, and in case of a doubt use the definition of the CPA.<sup>8</sup>

<sup>6</sup> Fazekas: *Fogyasztóvédelmi jog* (2003). *op. cit.* 63.

<sup>7</sup> *Ibid.* 66.

<sup>8</sup> *Ibid.* 67–68.

## 2. *What is a sales contract?*

The essence of sales contract is determined by the CC. However, it does not give a definition as to what constitutes a sales contract, but rather determines the mutual obligations of buyer and seller. Namely, the seller is obliged to hand over the goods and to pass the title on goods onto the buyer, while the buyer is obliged to take the goods and to pay their purchase price [§ 365 (1) CC]. Further on, the CC also defines the consumer contract. A consumer contract is any contract concluded by a consumer and a person acting within the scope of its economic or professional activities [§ 685 (e) CC].

It can be concluded, that in a *consumer sales contact the business organization, a person acting within the scope of its trade or business is obliged to hand over the goods and to pass title on them, while the consumer (natural person or business organization) is obliged to take possession of the goods and to pay for their price.*

## III. Civil and Criminal Law Protection of Consumers in Hungary

The civil and criminal law protection of consumers is considered from a practical point of view, starting from a pre-contractual phase (advertising), from the initial “contact” of the consumer with the goods, throughout the content of the contract and the rights and remedies of a consumer in case of non-confirming performance by the seller. The liability of the seller will also be considered for injuries caused by a defective product, and for crimes and offences. However, the civil and criminal law protection of consumers in Hungary will be presented as a brief overview of consumer protection regulations pointing onto the main features of the Hungarian law and legal system without detailed analysis and scientific elaborations.

### 1. *The pre-contractual phase: Advertising and labeling*

Advertising is the major activity of the companies that influences (and induces) consumer in making their purchase choices. Basic rules on advertising can be found in the BAA, whereas additional provisions are laid down in the PUTPUC and sanctions in the Criminal Code.

Business advertising is any “*communication facilitating the sale or use in any other way of products, services....; the popularization of the name, designation or activity of an enterprise; or the familiarization of goods or identification of goods*” [§ 2 (h) BAA].

The most important notions regarding advertising are that, of course, the advertisement should contain true information, the advertised goods and the advertiser should be clearly identified, and ultimately the sales contract should be performed according to the advertisement or label. Covert and misleading advertising (§ 6 & 7 BAA) is expressly forbidden, comparative advertising is allowed under certain conditions (§ 7A BAA).

In case of a breach of law, a business organization is liable for an offence or a crime. The *Act LXIX. of 1999 on (minor) offences* (hereinafter: MOA) incorporates only one offence involving advertising relating to pornographic advertisements and the advertising of sexual services [§ 145 (1) MOA].

Misleading consumers is a crime, called: *Deception of Consumers*. “Any person who, in respect of any essential feature of a product, publicly states false facts, or true facts in a deceptive way, or provides deceptive information on any essential feature of the product for the purpose of rendering it more desirable, is guilty of a misdemeanor punishable by imprisonment for up to two years, community service work, or a fine” (§ 296/A CRC).

Therefore, the information has to be stated to the general public, it has to be deceptive (false information or a true information that becomes deceptive in the context) and the advertiser has to be aware of the true features of the advertised goods and of the fact that the information published is potentially deceptive. However, in order to have a crime, the publication of the information is sufficient, and practically none consumer has to be decided.<sup>9</sup>

Besides advertising, another important factor that influences purchase choices and often contains crucial information are labels. Even though labeling requirements strongly relate to information of consumers, due to its close links with advertising and the structure of the paper itself, the rules on labeling will be discussed at this point. The CPA deals considerably with rules relating to labeling, whereby the most important provisions are those on the exact content of labels and the language requirements, or that labels should be only or also in Hungarian language (§ 9 & 10 CPA). If goods are accompanied with the Users or Instructions Manuals, it should be also written in Hungarian language (§ 11 CPA). Besides general rules contained in the CPA, there are other legislative acts that regulate a more narrow market of goods<sup>10</sup> or only certain aspects of

<sup>9</sup> For a more detailed analysis see Tóth M.: *Gazdasági bűnözés és bűncselekmények* [Economic Criminal and Crimes]. Budapest, 2000. 178–184. This is the only crime in the CRC that has no monetary limits, or in other words, the same circumstances cannot lead to an offence in case the harm done to consumers was not substantial. See 186 above.

<sup>10</sup> Like the Ministerial Decree on shoe labeling 4/1998 (I. 16).

labeling.<sup>11</sup> Regarding price indications, prices of goods should be indicated twofold. They should contain the sale price and the unit price (§ 14 CPA). In case any doubt occurs regarding the content of the labels, the CPA declares: the burden of proof is on the distributor (seller) (§ 16 CPA).

A business organization that violates rules on labeling harms competition and is liable for a crime: *False Marketing of Goods*. “Any person who produces a product with distinctive appearance, packaging, labeling or name, from which a competitor or his product having distinctive features can be recognized, and who does so without the consent of such competitor, or who acquires such product for the purpose of placing it on the market, is guilty of a felony punishable by imprisonment for up to three years” (§ 296 CRC).

If a sufficient amount of production material (e.g. raw material, labels) has been acquired for marketing purposes, but the actual marketing did not take place, the person will be liable for preparatory actions of the crime.<sup>12</sup> If until the discovery only an unsubstantial amount of goods has been placed on the market, a business organization will not be liable for a crime but rather for an offence.<sup>13</sup> An offence will be committed also when a person publicly states a false statement (on the label) to the general public, but the amount of goods placed on the market (carrying false statement) is not substantial.<sup>14</sup>

False Marketing of Goods is a crime, because it is designed to safeguard the interests of both consumers and competitors. Therefore, if a business organization labels its products with a confusingly similar label with its competitor, it will be liable for the above criminal act even if the goods are otherwise of a perfect quality.<sup>15</sup>

## 2. The content of the sales contract

Regarding the content of the consumer sales contract the most important provisions are those related to unfair contract terms. Consumers often have no choice but to sign a pre-printed form contract that contain a number of pre-formulated terms by the business organization. Consumers thereby have no

<sup>11</sup> Like the Government Decree on providing uniform codes for the goods 145/1991 (XI. 22).

<sup>12</sup> Horváth, T. at all: *A magyar büntetőjog különös része* [The Special Part of the Hungarian Criminal Law]. Budapest, 1999. 632.

<sup>13</sup> Court decision: *BH* 1996. 404; In case of an offence the fine of up to HUF 100.000 is payable, according to § 71 of the Government Decree on some offences 218/1999 (XII. 28).

<sup>14</sup> Court decision: *BH*, 1999. 103.

<sup>15</sup> Court decision: *BH*, 1998. 552.

choice but to take or leave the contract, and are not in a position to negotiate its terms (contracts of adhesion). General provisions regarding unfair contract terms can be found in the CC.

The CC firstly defines standard contract terms,<sup>16</sup> emphasizing their non-negotiated character;<sup>17</sup> regardless whether they are integrated into a written contract or provided in a separate document [§ 209/A (3) CC]. It also contains a set of rules on the incorporation of standard contract terms into the contract; however these rules relate to all contracts (consumer and business) and are of less relevance to consumer contracts.<sup>18</sup> Rules of the CC that are consumer focused relate to contract interpretation and unfair contract terms.

Regarding contract interpretation, the CC incorporates the *contra proferentem* rule according to which if the term is not clear it will be interpreted in favor of the consumer [§ 207 (2) CC].

A standard contract term that has not been individually negotiated is regarded unfair in consumer contracts if, contrary to the requirements of good faith and honesty it causes a significant and unjustified imbalance in the parties' rights and obligations arising under the contract [§ 209 (1) CC]. The unfairness of a contractual term is assessed, taking into account the nature of the contract and all the circumstances that existed at the time of contract conclusion [§ 209 (2) CC]. The CC also states which terms will not be regarded as unfair, these are: terms relating to the definition of the subject matter of the contract, the price of the goods and terms defined by legal regulations [§ 209 (4 & 5) CC].

Unfair contract terms will be declared null and void. Nullity can be invoked by the injured party, provided the injured party is a consumer [§ 209/A CC] or by an organization that represents consumer interests [§ 209/B CC].<sup>19</sup>

<sup>16</sup> Calling them "standard contractual conditions". See § 205/A (1) CC.

<sup>17</sup> If doubt arises whether the term has been individually negotiated, the burden of proof is on the party who claims it was negotiated. See § 205/A (2) CC.

<sup>18</sup> For example it provides that contract terms which have not been individually negotiated will become part of a contract only if they have been previously made available and if the other party accepted the terms explicitly or via conduct that implies acceptance [§ 20 5/B (1) CC]. Moreover, the party that intends to use its standard clauses has an obligation to explicitly inform the other party of any standard term that differs substantially from usual contractual conditions [§ 20 5/B (2) CC].

<sup>19</sup> The organization that represents consumer interests (like the NACPH) can ask the court to grant an injunction against an unfair term in standard contracts (or general conditions of business that is part of the standard contract) of a business organization, provided it is unfair, regardless whether the term has been actually used. Following such judgment the user of the unfair term or condition shall satisfy any claim the consumers may have against him.



Provisions of the CC are further specified with the *18/1999 (II.5) Government Decree on unfair terms in consumer contracts*<sup>20</sup> that relates to both standard terms in consumer contracts and to unfair terms in individual contracts conclude by consumers.<sup>21</sup> The Decree lists contract terms that will be regarded as unfair (§ 1 of the Decree) differentiating between those that will be regarded unfair in any event, and those that will be regarded unfair until the opposite is proven (§ 2 of the Decree).

### 3. *Performance of the contract*

The seller is obliged to deliver (or hand over) goods that are of a quality and quantity specified in the sales contract. Regarding characteristics of goods, according to the CC, goods should be as goods of the same type under like circumstances, or goods that a consumer can reasonably expect taking into account any public statement on the specific characteristic of goods made in advertising or on labeling. Accordingly, goods should fit for any particular purpose which the consumer made known to the seller at the time of contract conclusion (§ 277 CC).

If the delivered goods does not confirm to the contract the seller is liable for lack of conformity (implied warranty) [§ 315 (1 & 3) CC].<sup>22</sup> Conformity is estimated at the time of delivery of goods, however, any lack of conformity that becomes apparent within six months after delivery is presumed to have existed at the time of delivery unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity [§ 305/A (2) CC]. But the seller will not be liable for the lack of conformity, if the consumer was or could reasonably have been aware of the defect at the time of contract conclusion [§ 305/A (1) CC].

In the case of non-conformity firstly, the consumer can choose between repair and replacement, or if repair and replacement is not possible it can ask for a price reduction or rescind the contract. However, rescission is possible only if the lack of conformity is substantial (§ 306 CC).

<sup>20</sup> 18/1999 (II. 5) Government Decree on unfair terms in consumer contracts.

<sup>21</sup> Kertész, Á.–Wallacher, L.: The Ministerial Decree 18/1999 (II. 5) on Unfair Contract Clauses in Consumer Contracts and Related Rules in the Civil Code. In: *Szerződési jog–fogyasztóvédelem* [Contract Law–Consumer Protection]. Budapest, 2000. 77.

<sup>22</sup> It has to be noted that all provisions regarding consumer rights arising out of non-conforming goods in the CC are of a mandatory character. Therefore, any agreement to the contrary will be regarded as null and void.

Any repair or replacement should be completed within a reasonable time and without any significant inconvenience to the consumer. If the seller is unable or unwilling to comply with the above requirements, the consumer is entitled to repair the goods itself and reimburse the expenses incurred from the seller (§ 306 CC).

The consumer has to notify the seller on the lack of conformity within the shortest possible time, or within two months after it has noticed the lack of conformity. The consumer is liable for any damages resulting from late notification (§ 307 CC).

According to the general rule, the consumer is entitled to invoke its warranty rights in the limitation period of six months upon delivery of the goods (unless a different period is prescribed by a special regulation) or within two-years after delivery. This period, however may be shorter (but not less than one year) in case of second-hand goods, if the parties reach an agreement to that effect. The limitation period is suspended for the period when the goods are being repaired and the consumer cannot use them (§ 308 CC).<sup>23</sup>

However, even though the limitation period for consumer contracts is extended (from six months to two years), the burden of proof shifts. Namely, within six months of warranty, the burden of proof is on the seller, and after six months it shifts to the consumer, when the consumer has to prove the goods have been defective at the time of delivery. This is of course very difficult in practice, taking into account that not many consumers are in hold of the necessary technical or other relevant information.

Besides warranty rights, consumers are entitled to damages resulting from the lack of conformity (§ 310 CC). Costs incurred in bringing goods into conformity with the warranty, particularly the costs of postage, labor and material are on the seller. When the goods are replaced or the contract is rescinded, the consumer will not be liable to compensate for the loss in value resulting from proper use of the goods (§ 309 CC).

The other particularity of the defective performance is guarantee rights. The CC states that where a guarantee is provided under the contract or the law, the guarantor will be released from liability during the guarantee period if he is able to prove that the cause of the defect occurred after performance. The liability of the seller is determined in accordance with the conditions laid down in the guarantee statement of the contract, the applicable regulation, or the relevant advertising [§ 248 (1 & 2) CC].

<sup>23</sup> The limitation period is suspended until the consumer waits for the expert report, having been discovered the defect on the goods (court decision: *Bíróági Döntések Tára*, 2004. 1057).

Therefore, the difference between the guarantee and warranty is that the guarantee can also be contractual. However, the particularity of the Hungarian legal system is that a mandatory guarantee can be provided by the law. This is done by the *Government Decree on obligatory guarantee for certain durable consumer products*.<sup>24</sup> Namely, the seller is obliged to undertake a guarantee, meaning that within a minimum of one year starting from the delivery of goods it will repair or replace the defective products. The rules therein relate only to durable consumer goods, like household appliances, transportation means. The guarantee claim is enforceable by the presentation of the warranty certificate, provided by the seller at delivery. Unlike warranty, in case of a guarantee, the burden of proof is on the seller.

Consumer rights are the same in both warranty and guarantee claims. However, the procedure of their enforcement is regulated in separate acts,<sup>25</sup> and if at the initiation of claim six months passed after delivery the burden of proof is different in case for warranty and guarantee claims. As in many cases both the rules on mandatory warranty and mandatory guarantee are applicable there is a legal uncertainty as to which rules are applicable in the instant case.<sup>26</sup>

In case of non-confirming delivery, the consumer will invoke its warranty or guarantee rights and ask the seller to remedy the fault. However, the seller is also criminally liable for Marketing of Poor Quality Products, False Display of Quality, and Defrauding Consumers.

*a) Marketing of Poor Quality Products<sup>27</sup>*

A person who sells or places on the market poor quality products as if they were good quality is guilty of a felony punishable by imprisonment for up to three years. However, if a person acts out of negligence, it will be liable for a misdemeanor with imprisonment of up to one year, community service or fine. The same punishment goes to a person who only engages in preparations for the sale or placement on the market of poor quality products. On the other hand, a person who violates the rules applicable for determining the quality<sup>28</sup> and the qualification of a product, and thereby makes possible for such product

<sup>24</sup> 151/2003 Government Decree on obligatory guarantee for certain durable consumer products.

<sup>25</sup> 49/2003 Ministerial Decree on handling guarantee and warranty claims within consumer contracts.

<sup>26</sup> Fazekas, J.: *Fogyasztóvédelmi jog* (Consumer Protection Law). Budapest, 2007. 133.

<sup>27</sup> See § 292–294 CRC.

<sup>28</sup> Rules that make possible quality estimation are laid down e.g. in 2/1981 (I. 23). Ministerial Decree on Certain Aspects of Quality Protection.

to be sold, or to a bad quality product to be placed at the market, is guilty of a felony punishable by imprisonment for up to three years.

The product that is subject to mandatory national standards is considered to be of poor quality if it fails to meet the lowest quality requirements defined in the standard.<sup>29</sup> When the product is not subject to a standard a product is of a poor quality when it cannot be used for its designated purpose, or its use has been diminished considerably.

*The 218/1999 Gov. Decree on offences* establishes the offence variation of the above crime, which will occur when the value of goods that have been sold or placed on the market are not exceeding the amount of HUF 50,000 (§ 75 of the Decree). In this case a person will be punished with a fine and the goods will be confiscated. When the product in question is foodstuff the Decree does not sets any limit as to the value of the goods, hence in any case a person will be liable for an offence (§ 84 of the Decree).

#### *b) False Display of Quality*

According to § 295 of the CRC, any person, who certifies false data related to substantial amount or monetary value of goods, regarding their quality in a document attesting quality, is guilty of a felony punishable by imprisonment for up to three years. A person who only acted in negligence will be punished for a misdemeanor by imprisonment for up to one year, community service or fine.

This crime therefore relates to forgery of documents that testify the quality of goods.<sup>30</sup> The most important element in this crime is the substantial amount or monetary value of goods regarding which the false data is presented. This condition is satisfied provided the value is more than two million but less than fifty million HUF [§ 318/A (c) CRC].

A person who fails to present the quality of the goods or fails to give necessary information to consumers is responsible for an offence.<sup>31</sup>

#### *c) Defrauding Consumers*

According to the crime Defrauding Consumers (§ 328 CRC) any person who, in the process of supply of goods directly to consumers, engages in an activity for defrauding consumers by false measurement or calculation or by degrading

<sup>29</sup> National standards of products can be found in the Act XXVIII. of 1995 on national standardization.

<sup>30</sup> It can be considered a special way of a document forgery. Tóth: *Gazdasági bűnözés és büncselekmények. op. cit.* 161.

<sup>31</sup> § 74 of the Decree on offences.

the quality of goods is guilty of a misdemeanor punishable by imprisonment for up to one year, community service or fine provided such act did not result in a criminal act of a greater gravity. If a person engages in defrauding the consumers in a form of business activity is guilty of a felony punishable by imprisonment for up to three years.

In order to have a crime a person has to be engaged in defrauding consumers as a continuing activity. The number of activities and consumers that are defrauded is not relevant, a consumer has only have to be defrauded on more than one occasion.<sup>32</sup> In case of only one intentional act, the act will be qualified as an offence.<sup>33</sup>

#### 4. *Product liability issues*

Product liability is regulated with the *Act X of 1993 on Product Liability* (hereinafter: PLA).<sup>34</sup> Regarding damages, material or non-material damages due to death, injury or any impairment of health [§ 4 (a) PLA] caused by a defective product [§ 2 (1) PLA],<sup>35</sup> the PLA determines the liability of the manufacturer. The distributor (seller) of the defective product is liable for damages only in case the manufacturer cannot be identified, or until the distributor does not reveal to the name of the manufacturer (§ 4 PLA). In case products are imported the liability lies on the importer. However, the importer can later reclaim the amount paid for compensation from the manufacturer [§ 3 (2) PLA]. This exemption is understandable, as in case of an imported product the manufacturer is a foreign business organization, and cross border law suits are extremely expensive and troublesome for consumers.

Since the liability of a seller and the importer is basically an exception from the main rule, and between the manufacturer and the buyer of a final product there is no contract concluded, the deeper elaboration on product liability issues will stay outside the scope of the paper, since it primarily deals with contractual liability and is not invited to settle issues of tortuous liability.

<sup>32</sup> Horváth at al.: *A magyar büntetőjog különös része. op. cit.* 754.

<sup>33</sup> § 78 of the Decree on offences.

<sup>34</sup> Act X of 1993 on Product Liability.

<sup>35</sup> A product is defective if it fails to provide a level of safety generally expected, with special regard to the purpose of the product and the way in which it can be reasonably expected to be used, the information provided in connection with the product, the date of the sale of the product, and the current state of scientific and technological achievements.

### 5. *Some contemporary ways of sale*

As a consequence of a modern commerce apart from the traditional sales contract some special ways of sale developed, from which distance contracts and door-to-door sales will be mentioned at this point.

#### a) *Distance sales contacts*

Distance contracts in Hungary are regulated by *Government Decree on distance contracts*<sup>36</sup> that practically regulates all kinds of distant sales contracts concluded between absents via TV, telephone, catalogues, e-mail, etc. It guarantees the “classical” rights of consumers in respect of distance contracts, namely the right for sufficient information (orally and in writing) and the right of withdrawal from the contract without any reasons. Withdrawal can be done within eight working days<sup>37</sup> from the time of the contract conclusion.

#### b) *Door-to-door sales*

Doorstep selling is regulated in Hungary with *Government Decree on contracts concluded away from business premises and on certain conditions of doing business away from business premises*.<sup>38</sup>

When contracts are concluded during a visit by a trader to the consumer's home or its place of work, provided the visit did not take place at the express request of the consumer, the consumer can withdraw from such contract without giving any explanation within eight working days from the time of contract conclusion or delivery of goods.<sup>39</sup> The seller (trader) is obliged to inform, at the time of contract conclusion, the consumer on how and to whom he should communicate the withdrawal. In case of withdrawal the consumer has no obligation to reimburse the seller for the decrease in the value of goods that occurred due to their regular usage.

<sup>36</sup> 17/1999 (II. 5) This Decree implemented (except Art. 8) the Directive 97/7/EC of the European Parliament and the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.

<sup>37</sup> According to the principle of minimum harmonization, the Government Decree gives one day longer time to consumers to change their minds in respect of the concluded sales contract than the EC Directive.

<sup>38</sup> 370/2004 (XII. 26) Government Decree on contracts concluded away from business premises and on certain conditions of doing business away from business premises that implemented the Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises.

<sup>39</sup> Here, the deadline for withdrawal is even more extended than stated in the directive that requires a cancellation period of 7 days, whereas the Decree stipulates 8 working days.

#### IV. The Institutional Framework of Consumer Protection in Hungary

Before turning to the mechanisms of enforcement of consumer rights, it is necessary to give a brief overview of the institutional framework of consumer protection in Hungary as these institutions are empowered to enforce or to assist in enforcing consumer's rights.

##### 1. Central government: the Ministries

On the level of the central government the issue of consumer protection is in the hands of ministries. The main responsible ministry is the *Ministry of Social Affairs and Labor* (Szociális és Munkaügyi Minisztérium) that has a separate *Consumer Protection Department*. The operation of the *Advisory Committee for Consumer Protection* (Fogyasztóvédelmi Tanácsadó Testület)<sup>40</sup> stands also within the competence of the Ministry. The *Ministry of Economy and Transport* (Gazdasági és Közlekedési Minisztérium) is responsible for EU and national legislation in the field of product specific directives, business advertising activity and commercial regulation. The *Ministry of Justice and Law Enforcement* (Igazságügyi és Rendészeti Minisztérium) bears the overall responsibility for the coordination of the transposition of the EU legislation and its integration into the national legal system. It is responsible for the regulation of consumers' economic interests in the field of contract law, competition law or procedural law.

##### 2. Public Agencies

Among the public agencies the *National Consumer Protection Authority* plays a crucial role in defending consumer's interests and shaping the consumer protection policy, whereas the *Hungarian Competition Authority* has some importance in the field of consumer protection, especially regarding business advertising activity.

<sup>40</sup> The council is taking part in shaping the consumer policy, it advises the Ministry, follows the enforcement of consumer protection legislation, etc. See more at <http://www.szmm.gov.hu/main.php?folderID=1139&articleID=32444&ctag=articlelist&iid=1>.

*a) National Consumer Protection Authority*

The *National Consumer Protection Authority* (Nemzeti Fogyasztóvédelmi Hatóság) has been established in 2007<sup>41</sup> (hereinafter: NCPA) by the transformation of its legal predecessors the *General Inspectorate for Consumer Protection* (Fogyasztóvédelmi Főfelügyelőség). It is a central administration body with independent scope of duties and authority under the managerial and financial control of the government responsible for consumer policy. The NCPA has its central administration and seven regional establishments as well as their representations throughout Hungary. For the paper the Dél-alföldi Regional Authority of the NCPA (NFH Dél-alföldi regionális felügyelősége) seated in Szeged with representations in Kecskemét and Békéscsaba are important. The competence of central and regional bodies is split so that the regional authorities act/decide in the first instance and the central bodies in the second. The NCPA is responsible for monitoring the enforcement of the consumer protection legislation, and takes part in shaping consumer policy in Hungary. It is a principle body for market surveillance and quality control, and often represents the first instance in deciding offences against consumer interests.<sup>42</sup>

*b) Hungarian Competition Authority*

The *Hungarian Competition Authority* (Gazdasági Versenyhivatal) is responsible for the implementation of Directive 84/450/EEC as amended by Directive 97/55/EC (misleading and comparative advertisement).

*c) The Local Government*

Though the CPA delegates certain competences to local governments (§ 44 CPA), however their role in Szeged is still marginal.

*d) National Consumer Organizations*

A great number of NGO's deals with protection of consumers in Hungary, from which the most powerful is the *National Association for Consumer Protection* (hereinafter: NACPH) (Országos Fogyasztóvédelmi Egyesület).<sup>43</sup>

<sup>41</sup> In Accordance with the Action Plan for Consumer Protection Policy in the period of 2007–2013, the institutional system of consumer protection in Hungary has been renewed with the NCPA. It was established with the Government Decree on National Consumer Protection Authority 225/2007 (VIII. 31) and the Government Decree on the amendments of some government decrees in compliance with the establishment of the National Consumer Protection Authority 226/2007 (VIII. 31).

<sup>42</sup> [www.nfh.hu](http://www.nfh.hu)

<sup>43</sup> [www.ofe.hu](http://www.ofe.hu)



being the only NGO defending consumer's interests that covers the entire country and all consumer issues. The paper focuses on the activities of the NACPH in Szeged (hereinafter: NACPH Szeged). The NACPH Szeged has a separate legal personality and as consumer protection in Hungary is organized on regional bases, it is further a member of a wider regional association with NACPH's in Békéscsaba and Kecskemét.<sup>44</sup>

Besides the NACPH there are other consumer associations that tend to protect a wide range of consumer interest, but are much less significant for the shaping of consumer protection policy in Hungary.<sup>45</sup>

Individual consumer organizations are gathered in further, wider associations, from which the most significant is the *National Federation of Associations for Consumer Protection in Hungary* (Fogyasztóvédelmi Egyesületek Országos Szövetsége).<sup>46</sup>

## V. The Enforcement of Consumer Rights

Consumers can enforce their rights guaranteed by the law in courts or rather by taking advantage of alternative dispute resolution mechanisms.<sup>47</sup>

### 1. Courts

In Hungary there is no special court procedure for the resolution of consumer-disputes. Although a simplified procedure, order to pay procedure (fizetési meghagyásos eljárás) exists that allows the settlement of simple complaints in a faster way, it has no special consumer oriented features. In accordance with the Civil Procedure Act (hereinafter: CPRA)<sup>48</sup> this procedure can be applied when the amount of claim is for the payment of a sum of money and will be applied in any event when this amount does not exceeds HUF 200,000 (§ 313 CPRA). However, the order to pay procedure was rarely if ever applied for

<sup>44</sup> Regional Consumer Protection Association of Délalföld.

<sup>45</sup> E.g. the Hungarian Association of Consumer Protectors and Association of Conscious Consumers.

<sup>46</sup> [www.feosz.hu](http://www.feosz.hu)

<sup>47</sup> See for more on out-of-court and in-court mechanisms of settling consumer disputes in the National Report of Hungary within the project titled: An analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings, prepared by The Study Centre for Consumer Law–Centre for European Economic Law Katholieke Universiteit Leuven, Belgium.

<sup>48</sup> Act III of 1952 on Civil Procedure.

consumer redress in Szeged, and not because of the monetary limit of the claim but due to particularities of consumer disputes. Most disputes arising out of the consumer-business sales contract relate to defective goods, whereby a consumer is in first instance entitled (and in the same time obliged) to ask for repair or replacement of goods, and only if these remedies are not available the consumer can ask for the reduction in purchase price or rescission of the contract. Since, the order to pay procedure is applied for payment of a sum of money or handing over a movable property [§ 313 (1) CPRA] the order to pay procedure in consumer disputes is applicable only in case of rescission of the contract, when the consumer is entitled to claim back the paid purchase price. However, since rescission of the contract is only a subsidiary remedy of a consumer (after repair or replacement) the application of this special procedure comes rarely in consumer disputes. Therefore, the main problem is not in monetary limit of HUF 200,000 but rather in the fact that the order to pay procedure is applicable only for monetary payments, whereas the same remedy is only subsidiary for consumers.<sup>49</sup>

Besides the order to pay procedure there is another simplified procedure that is perhaps more suitable for consumer disputes called: *preliminary proof or preliminary proving procedure* (előzetes bizonyítás). Before submitting the claim or during the civil procedure when warranty issues are disputed [§ 207 (c) CPRA], the interested party may ask the court to grant an expert witness hearing, during which both parties are entitled to ask questions from the judicial expert. Appeal is possible only against the court's negative (rejecting) decision on granting the procedure [§ 209 (2) CPRA]. This procedure is sensible when goods of a substantial value have been purchased, and also when the burden of proof is on the consumer, since the costs of the procedure itself have to be covered initially by the consumer, as this procedure helps the consumer to prove the goods have been defective at the time of delivery. After the expert report is ready, the procedure ends, and the consumer can decide, whether it will be based on the expert report, commence a regular civil procedure and sue the seller, or provided the report is favorable for the consumer, to settle the dispute with the seller out of court.<sup>50</sup>

Despite the fact that even the regular court procedure usually lasts (if there are no complications) approximately one year, not many consumer cases appear in courts of Szeged. Consumers, most probably, unwilling to accept the

<sup>49</sup> Dudás, E.: pers. conv., 6 Dec. 2007.

<sup>50</sup> *Ibid.*

expenses and inconveniences coming with the process itself, sue the seller only if the value of goods is substantial (e.g. a purchase of a car).<sup>51</sup>

Collective action for damages or collective redress (közérdekű kereset) is foreign to the Hungarian legal system, similarly to other Continental- European legal systems. However, according to the CPA the consumer protection authority, organizations representing consumer interests or the public prosecutor may file a claim against any party causing substantial harm to a wide range of consumers by illegal activities. The claim can be filed even if the identity of injured consumers cannot be established (§ 39 CPA). This possibility was, however, not yet exercised in Szeged.<sup>52</sup>

## 2. *Alternative Dispute Resolution (ADR)*

In Hungarian legal system there is only one out-of-court procedure, which has specifically been designed for the resolution of consumer-business disputes. There are other out-of court procedures that have a more general scope of application (arbitration, mediation), however, these procedures are less suitable for the resolution of consumer disputes that usually involve small claims and a wide range of types of disputes.

### a) *Arbitration*

The *Act LXXI of 1994 on arbitration*<sup>53</sup> (hereinafter: AA) regulates the arbitration procedure (választott bíróság). Parties may settle their dispute in an arbitration procedure if at least one of the parties engages professionally in economic activities and the dispute is connected to that professional activity, moreover the parties are in command of the subject matter of the lawsuit and they have agreed on arbitration (§ 3 AA). Therefore, arbitration can be used for solving consumer disputes. However, consumer disputes involve generally small claims and contracts are concluded in most cases orally while the arbitration agreement has to be in writing [§ 5 (3) AA].

### b) *Mediation*

Mediation in Hungary is regulated by *Act LV of 2002 on Mediation*.<sup>54</sup> (hereinafter: MA). Mediation (közvetítés), as a special alternative dispute settlement method can be used by natural or legal persons to settle their disputes in

<sup>51</sup> *Ibid.*

<sup>52</sup> Varga, J.: pers. conv., Nov. 20. 2007.

<sup>53</sup> Act LXXI of 1994 on arbitration.

<sup>54</sup> Act LV of 2002 on Mediation.

connection with personal and property rights, provided the parties are not bound by statutory provision [§ 1 (1) MA]. Therefore, in principle, consumer disputes can be resolved by mediation. However, mediation has a number of disadvantages for consumers. The process results only in an agreement (settlement) that is basically a new contract and can be subject of further procedures. Additionally, until the very end the parties can withdraw (change their minds) from mediation (§ 35 MA). Further, parties' choice in choosing a mediator is limited to the Register of Mediators which is maintained by the Hungarian Ministry of Justice.<sup>55</sup> Lastly, the mediator is entitled for remuneration, and the reimbursement of expenses (§ 27 MA). Therefore, while mediation could be a fast and simple way to resolve consumer disputes, it neither offers lasting and optimal outcomes nor is it a cheap solution for consumers.<sup>56</sup>

It has to be noted, that neither mediation nor arbitration is applied as a dispute resolution method of consumer disputes in Szeged.<sup>57</sup>

### *c) Consumer Arbitration Boards*

Dispute resolution by the Consumer Arbitration Boards (Békéltető testület) (hereinafter: CAB) is the only ADR method in the Hungarian legal system that is specifically designed for solving consumer disputes. The CAB has been introduced and is regulated by the CPA.<sup>58</sup>

The CAB are independent bodies that operate at the regional chambers of commerce. There are a total of 20 arbitration boards in Hungary, of which one is in the capital and each one of the remaining 19 is in different County. One CAB is situated at the Chamber of Commerce and Industry of Csongrád County in Szeged. The CAB's are comprised of the representatives of consumer associations (in Szeged only the NACPH has designated members) and the representatives of the Chamber of Commerce and Industry of Csongrád County, thereby the interests of both consumers and businesses are represented.<sup>59</sup> Instant cases are decided in tripartite panels (hereinafter: Panel) whereby two arbitrators are from the NACPH and one from the Commercial Chamber. The competence of the CAB extends to all kinds of consumer disputes.<sup>60</sup>

<sup>55</sup> § 5–12 of the MA.

<sup>56</sup> National Report of Hungary... *op. cit.* 47. fn.

<sup>57</sup> Varga, J.: *pers. conv.*, Nov. 20.

<sup>58</sup> See § 18–39 of the CPA.

<sup>59</sup> According to § 18 (5) CPA the local government can also has its representatives in the CAB, however, this right is not exercised in Szeged.

<sup>60</sup> Especially regarding disputes the quality and safety of goods and services, the application of product liability regulations and the conclusion and performance of contracts (§ 19 CPA).

The CAB is established for the purpose of attempting to reach an agreement (settle a dispute) between a consumer and a business organization in a quick, efficient, simple [§ 18 (1) CPA] and free of charge ways.<sup>61</sup>

A prerequisite for commencing a proceeding is that the consumer has attempted to settle the case directly with the business organization (§ 27 CPA). The consumer has to record its complaint in the Consumer Complaint Book (jegyzőkönyv) in writing, at premises of the business organization. One copy stays with the business organization and one with the consumer. If the business organization is unwilling to remedy the consumer's complaint the consumer can commence the CAB procedure, by a written petition to the chairman of the CAB.<sup>62</sup> The Chairman shall review the complaint within three working days, and provided the CAB has jurisdiction, it will schedule the hearing date within thirty days of the commencement of the proceedings [§ 29 (2 & 3) CPA]. The Chairman shall notify the parties regarding the date of the hearing deliver them a copy of the petition and the list of CAB members, requesting the parties to make their choice of a panelist. If the parties fail to appoint a member the Chairman will do so ex officio [§ 29 (4) CPA]. In the notice, the business organization affected by the complaint shall be ordered to file a written statement (response) within 5 days with regard to the legitimacy of the complaint, the circumstances of the case, and acceptance of the decision of the Panel as obligatory (submission). The business organization will be warned that, should it fail to file a statement regarding the merits of the case, the Panel will pass its resolution based on the information at its disposal [§ 29 (5) CPA].

The procedure at hand is lead by the Chairman, during which the Chairman attempt to negotiate an agreement between the parties [§ 30 (1) CPA]. Proceedings are public; however either party may request the exclusion of the public [§ 30 (3) CPA]. If one of the parties fails to appear at the hearing in spite of having been properly notified or fails to present its evidence, the Panel shall continue the proceedings and shall pass its resolution on the basis of the information in its possession [§ 31 (2) CPA]. Unless the Panel terminates the proceeding [§ 31 (4) CPA] it will conclude the procedure within 60 days of its commencement [§ 31 (6) CPA] and bring a decision (a resolution) with simple majority votes [§ 31 (5) CPA].

<sup>61</sup> The procedure is free of charge from 2004. Before, consumers needed to pay HUF 1000 at the initiation of the procedure. See Fekete, O.: A fogyasztóvédelem aktuális kérdései [Contemporary Questions of Consumer Protection]. *Magyar Közigazgatás*, 55 (2005) 608.

<sup>62</sup> On the exact content of the petition, see § 28 (3) CPA.

The resolution can be a recommendation (the business organization stated upon commencement of the proceeding that it will not avail itself to the decision of the Panel), or obligatory (the business organization declared it will accept the decision of the Panel as obligatory, upon commencement of the proceeding (submission) or upon announcement of the resolution (§ 32 CPA).

Obligations from the resolution have to be fulfilled within 15 days from the day of its announcement (adoption) [§ 33 (3) CPA]. The resolution of the council is not subject to an appeal [§ 34 (2) CPA] and it is passed without prejudice to the consumers right to have his claim enforced in a regular court proceeding [§ 34 (1) CPA].

Within 15 days from receiving the resolution, any party may have the resolution annulled by the competent court,<sup>63</sup> however, only on grounds laid down by the CPA [§ 34 (3) CPA].

In case the business organization (the seller) does not comply with an obligatory resolution, the consumer protection authority or the commercial chambers in question will be entitled to publish the decision [§ 36 (2) CPA] or the Panel, the consumer or the organization initiating the proceedings may request the court to have a writ of execution attached to the CAB resolution [§ 36 (3) CPA].

The CAB can make its own rules of procedure within the available legal framework (§ 37 CPA). However, in Szeged this step has not yet been done.

In practice, when a consumer is not satisfied with the goods purchased and cannot settle the dispute with the seller, it will firstly turn to the Complaint Office. The Complaint Office in Szeged is operated by the NACPH. Complaints can be submitted in person, via telephone or online. Most of the times, the consumers are advised how and where to complain, but the complaint offices do not participate in settling the complaint in any way. The Complaint Office receives approximately 18–20 complaints/day or 1600/1800 per year.<sup>64</sup> They relate (in percentages): to foodstuff (9%); clothing (32% from this shoes 29%); guarantee, warranty (37%); public utility services (19%) and other (3%).<sup>65</sup> Most of the complaints are settled, after getting the advice from the complaint office, between the consumer and the seller.

All complaints arrive to the Complaint Office, and the activists thereby decide which cases will fall under the competence of the NCPA. The NCPA is

<sup>63</sup> The annulment procedure of the resolution is not an administrative procedure (court decisions: *EBH* 2005. 1284; *BH* 2005. 411; *Közigazgatási–gazdasági döntvénytár*, 2006. 67).

<sup>64</sup> Varga, J.: pers. conv., Nov. 20, 2007.

<sup>65</sup> *Ibid.*

competent to take actions when besides infringing the rights of an individual consumer the business organization also committed an offence. Approximately 10% of all complaints are forwarded in the lack of competence to the NCPA and around the same (10%) passes to the next level, to the CAB.<sup>66</sup>

After receiving the complaint the NACPH activist will check whether all the conditions are fulfilled, and direct the consumer to file a petition for the commencement of an CAB proceeding. At the hearing parties, due to the small amount of claims, participate by themselves (without lawyers). Since disputes usually involve bad or insufficient quality products, parties are asked to provide proof regarding the quality by showing an expert report.<sup>67</sup> Both parties can submit their own reports, but since the aim of the proceeding is to reach an agreement between the parties, none of the parties is legally bound to accept the expert report.

In practice business organizations many times would not come to the hearing, and though a resolution can be brought in their absence, they are not obliged to act by it. Only in about 25–30% business organizations accept the decision (resolution) of the CAB as an obligatory.<sup>68</sup> Therefore, the success of the CAB depends mainly on the good will of a business organization, whether in course of protection of its reputation it will be willing to co-operate and settle the dispute with the consumer.

The other deficiency of the CAB procedure is the fact that the free of charge character of the procedure loses its weight, as consumers usually incur non-refundable expenses in order to take part in the proceeding.<sup>69</sup>

## VI. Education and Information of Consumers

A right for information and education are amongst the basic rights of consumers.

In the era of new information technologies and increasingly sophisticated strategies for promoting products and services the need for consumer education is indispensable. This need became even more significant after Hungary became an EU Member State and part of the European single market. The aim of consumer education is to raise the awareness or to help individual

<sup>66</sup> *Ibid.*

<sup>67</sup> Quality checks are done by independent organizations.

<sup>68</sup> Varga, J.: pers. conv., Oct. 16, 2007.

<sup>69</sup> The most expensive is the expert report on quality of the product, which expense in most cases is not refunded to the consumer, and which is sometimes a more substantial amount than the value of the goods (dispute) in question.

consumers to understand and apply their rights and thereby take full advantage of market opportunities.<sup>70</sup> Nowadays education of consumers is more important than legal over-regulation, as it teaches consumers how to use effectively their rights and the available information when making purchase choices.<sup>71</sup>

Section 17 of the CLV Act is devoted to Consumer Education, according to which the education of consumers should be primarily done in schools [§ 17 (1) CPA] during primary and secondary education. As education is primarily a State responsibility [§ 17 (2) CPA] consumer protection education is included into the National Basic Curriculum (Nemzeti Alaptanterv).<sup>72</sup> However, in practice in the fulfillment of its task the State cooperation with the NCPA and consumer organizations [§ 17 (5) CPA]. Accordingly, organizing consumer protection education is one of the tasks consumer organizations should strive at [§ 45 (1) (h) CPA].

In Szeged, the NACPH has a significant role in providing education for young consumers. It visits 15–20 primary and high schools, 2–3 times a year. Their campaign is named: “Gaining necessary knowledge for becoming aware consumers”.<sup>73</sup>

Besides, the NACPH also organizes an accredited 30 hour specialization course in consumer protection for school teachers and professors.

The NACPH is involved in other interesting activities in the field of consumer education. It organizes a consumer protection competition for pupils and announced a drawing competition for children between 8 and 13, with the topic: “Shopping in hypermarkets”.<sup>74</sup> Since consumer education became one of the explicit goals of education in Hungary only in 2007,<sup>75</sup> the NACPH in the future expects an increase in its activities in providing education for consumers.<sup>76</sup>

<sup>70</sup> See [http://ec.europa.eu/consumers/cons\\_info/index\\_en.htm](http://ec.europa.eu/consumers/cons_info/index_en.htm) (Last visited: October 15, 2008).

<sup>71</sup> Fazekas: *Fogyasztóvédelmi jog* (2007). *op. cit.* 71.

<sup>72</sup> 243/2003 (XII. 17). Gov. Decree on the issuance, introduction and application of the National Basic Curriculum as amended in 2007.

<sup>73</sup> Varga, J.: pers. conv., Oct. 16, 2007.

<sup>74</sup> OFE Hírlevél (NACPH Newsletter), 2007. No. 53. 8. [www.ofe.hu](http://www.ofe.hu)

<sup>75</sup> Consumer education became one of the goals of Hungarian education only in 2007, with the amendments of 243/2003 (XII. 17) Gov. Decree. In the section on pupils economic education the National Basic Curriculum states: “The school education system plays a principle role in developing aware consumers from the pupils, whereby they will be able to assess the risks, benefits and costs of their choices”.

<sup>76</sup> OFE Hírlevél, *op. cit.*



Informing consumers is just as important as their education. However, it suppose consumers are already aware of their rights and thereby need to be equipped with sufficient information to make smart purchase choices. Consumer information should fulfill two criteria. It should be complex or complete, include the pros and cons of a product or service, and it should be plural or multilevel, namely provided not just one sided from the other contracting party (seller) in the course of contract conclusion but gained from governmental and non-governmental organs and agencies.<sup>77</sup>

The CPA is considerably devoted to Consumer Information; primarily focusing on labeling requirements. On the other hand, the CPA establishes a duty of consumer organizations to operate consulting offices for providing information to consumers and aiding in the enforcement of consumer rights [§ 45 (1) (g) CPA] and to inform the consumers by the making public their experiences [§ 45 (1) (i) CPA].

The NACPH Szeged is operates a consulting office, or a Consumer Complaint Office where the activists are available to consumers for all kinds of advices and questions of the consumers. However, the majority of cases relates to consumer claims, whereby the consumers are advised on how to enforce their rights.

The NACPH Szeged is active in informing the consumers in their County and in Szeged. Approximately once a month its activists are guests in Telin TV in a program called: “Szótér”. They are also appear regularly in radio programs at Rádió 7, Rádió 88 and Radió MR6 Szeged.

Regarding printed media, a couple of is devoted exclusively to consumer, namely the “Kosár Magazin”,<sup>78</sup> the “Fogyasztóvédelem” magazine<sup>79</sup> and the “Kontroll” newspaper.<sup>80</sup> However, even though these media cover a wide range of topics, they are not well known, or not solicited among consumers, which fact diminishes their practical importance. However, the “Délmagyar”, the regions most wide spread daily newspaper regularly publishes news related to consumer protection.

A significant step has been taken by NACPH, when in October 2007 it launched a one year EU funded consumer information project, called: “In the

<sup>77</sup> Fazekas: *Fogyasztóvédelmi jog* (2003). *op. cit.* 72.

<sup>78</sup> The magazine of the NACPH and is published monthly. See [www.kosarmagazin.hu](http://www.kosarmagazin.hu)

<sup>79</sup> Published four times a year by the NCPA. See <http://www.nfh.hu/portal/hasznos/szaklap>

<sup>80</sup> Published monthly by NCPA. See [www.origo-haz.hu/akontrol](http://www.origo-haz.hu/akontrol)

EU consumers have rights. Get to know yours” that already showed its positive results.<sup>81</sup>

Though consumer education is viewed as educating pupils in primary and high schools, today the internet become just as an important education tool. Besides providing information on consumers’ rights and remedies, ways to enforce there rights, a great deal of useful information can be found therein for everyday purchase choices.<sup>82</sup>

## VII. Conclusion

Hungary underwent a great deal of legislative changes from the time of regime change and signing the Europe Agreement in 1991. The harmonization process with *acquis communautaire* has been mainly finished by April 2004 that required a total of almost 50 peaces of new or amended legislation!<sup>83</sup> However, changes are still ongoing, towards more solid consumer rights and their more effective protection. In this light the institutional framework has been reformed just recently, and the former General Inspectorate for Consumer Protection was transformed into the National Consumer Protection Authority in September 2007.

Since the paper aimed to offer location specific data, focusing primarily at consumer protection in Szeged, it presented unique data related to the city and to Csongrád County. However, the same fact also made limits to the paper, as some possibilities that are given by the law, more accurately by the CPA have not yet been taken advantage in Szeged, thereby some issues practically stayed outside the scope of the paper. This relates for example to the possibility that organizations providing representation of consumer interests (like the NACPH) may file a claim against any party causing substantial harm to a wide range of consumers by illegal activities, and to the role of local government is in the filed of consumer protection that is still marginal in Szeged. Since the paper

<sup>81</sup> For example: for some time there is already a possibility to file an online consumer complaint, but till the beginning of a campaign none arrived to the NACPH Szeged. After the initiation of the campaign within 1 or 2 weeks around 10 claims have been filed online!

<sup>82</sup> Information and education of consumers via the internet is very impressive in Hungary. Web pages dealing with consumer issues vary from official presentations of the ministries, throughout web sites of different consumer organizations until consumer forums.

<sup>83</sup> Fazekas, J.–Sós, G.: A fogyasztóvédelmi jogharmonizáció 10 éve – II. Rész (10 Years of Consumer Law Harmonization – Part II). *Külgazdaság*, 48 (2004) 77.

focused on Szeged, it did not explore further whether these possibilities have been used in other parts of Hungary, perhaps in the capital, Budapest.

Due to being an EU Member State consumer protection is influenced by EU legislation. However, having more and different definitions of a consumer is not a sensible solution and causes confusion and legal uncertainty in practice. Moreover, according to all definitions of Hungarian legislative acts, consumers can be both natural persons and business organizations, which is not in compliance with EU directives that delimit consumers to natural persons.

Even though the protection of consumers, without a doubt, is on a high level, there are still some lacks in the legal system that is waiting to be remedied. Regarding substantial provisions, the confusion related to guarantee and warranty rights of consumers should be abolished. Regarding procedural rights, it would be sensible to introduce class actions, collective redress for consumers. Consumers, usually due to small claims and no prior legal knowledge, are deterred from enforcing their rights in regular court proceedings. Class actions would free consumers from all inconveniences of the court procedure and their rights would still be effectively protected. Today, Hungarian consumers mostly turn to the CAB seeking justice. However, as it was shown, in practice even favorable decisions of the CAB do not guarantee protection, as they are not obligatory for business organization. That leads to a conclusion, that the enforcement of the consumer's right depend on the will of the seller. In most Western European countries, business organizations are aware that nothing can harm them more than a bad reputation, however, it seems Hungarian business people seldom visited their neighbors, as in practice only a small percentage of resolutions is complied with.

In the filed of criminal law, though certain behaviors of business organizations are recognized as criminal acts, it still cannot be said that there is a Consumer Protection Criminal Law in Hungary. There is a need to look for a substantial connection between consumer protection and criminal law<sup>84</sup> that has not yet been done, neither in theory nor in practice.

The education of consumers should be continued, and perhaps intensified, as until now much less attention has been devoted to education and information of consumers from making legislative changes in the light of harmonization process. Major improvements are expected in the future, as consumer education become part of the National Basic Curriculum only in 2007. The information

<sup>84</sup> Karsai, K.: Gondolatok a büntetőjogi fogyasztóvédelemről [Thoughts on Criminal Law Protection of Consumers]. *Acta Juridica et Politica*, Szeged, Tomus LXIX. 2007. 1–48.

of consumers is also expected to improve in the future after the EU financed information project.

The future of consumer protection in Hungary is the future of consumer protection in EU that is defined by the EU Commission's document: "EU Consumer Policy Strategy in the period of 2007–2013".<sup>85</sup> The aim is to empower EU consumers, which will have real choices, accurate information, market transparency, effective protection and solid rights. It remains to be seen how Hungary will live up to these challenges.

<sup>85</sup> <http://europa.eu/scadplus/leg/en/lvb/l32054.htm>