
THE NOTION OF „CONSUMER“ IN LAW

Mikael Chakaldzhiyan, PhD student

Department of Public Law,
“Angel Kanchev” University of Ruse
Phone: 0878757935
E-mail: mchakaldziyan@uni-ruse.bg

***Abstract:** The article examines the quality/consumer ratio in each individual case as referred to the concept of the consumer in the law of the Republic of Bulgaria, in the direction from private to general. For this purpose, the consumer definition is considered as per the Consumer Protection Law and other laws referring to this volume of the latter. In an attempt to clarify the consumer concept in consumer law, there has been considered part of the legal framework in the field of insurance, energy, water supply. There is a review of normative acts regulating consumer relations in European Union countries .*

***Keywords:** consumer, consumer concept, consumer protection law, consumer law, quality consumer ;*

INTRODUCTION

With the achievement of a certain level of community development, the resources of paramount importance get defined, hence they become subject of the law. Relations in the field of legal regulation are always related to certain resources. Law regulates the established interactions related to the exchange of resources. Resources are the foundation in developing the legal dialogue. In it, two legal entities are involved as parties. Individualization of the legal entities, through specific signs, is a requirement for their participation as parties in a relevant discourse. For the realization of this, the law deals with a correspondingly discursive legal quality. It is precisely what makes it possible to distinguish the parties in any particular legal discourse. Lessor, heir, guarantor, landlord - these concepts are legal qualities in a given discourse. Dialogue in law is the interaction among qualities. However, for a discursive legal quality to be available, there must be a legal entity. The legal entity is a recognized by the law bearer of legal quality. There are three types of legal entities - natural persons, legal entities and collective. The generic individualization of each legal entity contains requirements which it must meet, and meeting these requirements, the entity will possess the basic legal quality - legal personality. Legal personality is this required quality of the subject, via which it acquires discursive legal qualities as a participant in society. Each subject may possess a certain quality depending on the particular legal dialogue. In accordance with each legal dialogue, the legal entity has a single, precisely defined, discursive legal quality. Any legal entity involved in the legal dialogue is obliged to comply with the discursive legal quality of the other subject in the dialogue, and it is in turn obliged to reciprocate. The emergence of discursive legal quality is the result of the occurrence of a legal fact relevant and significant to the law. The legal fact gives rise to a certain dialogue, wherein the relevant legal fact has a direct connection with the discursive legal quality without which it can not have a legal position and, at all, rights, obligations, prohibitions. Discursive legal quality is the prerequisite for the subject to have a legal position. The legal position is expressed in the legal dialogue of the subject having a discursive quality concerning a specific kind of resource, whereby the legal position contains rights, obligations, prohibitions, and in each specific legal dialogue, there interact positions with the rights, duties, and prohibitions that are relevant to it. (Dachev, I., 2004)

EXPOSITION

On Consumer Law - general notes

The speeches of the late US President John Kennedy in 1962 before the Congress, and in 1963 before the Senate, incentivized the development of consumer law as we know it today. He

expresses his view of the fact that consumers are the largest economic group while having the least real opportunity to be heard and protected (Sukareva, 2015).

57 years after Kennedy's first speech there are a number of regulatory acts, state bodies, international organizations, and consumer protection policies.

Consumer law results from the need for guarantees of fairness, equality and protection of consumers in the process of meeting their needs. It regulates legal relationships arising from the acquisition of goods and the use of services by consumers. Moreover, it regulates the activity of the supply of goods and services itself, before a particular entity acquires them thus becoming a carrier of the quality of the consumer. In order to protect consumers, the provisions of consumer protection legislation provide legal status to entities that directly or indirectly contribute to the production, supply or sale of consumer goods or services to the consumers, by prescribing the relevant rules (obligations, prohibitions) to carry out the corresponding activity, rules that incentivize the health protection and economic interests of consumers. Depending on the matter regulating the law concerned, our familiar subjects may have the quality of a supplier, trader, creditor, credit intermediary, insurer, and others.

The emergence and continued development of consumer law is the result of the factual imbalance, concerning the equality of the parties in the relations between consumers and the subjects carrying out commercial, professional or economic activity. It is the latter that are the strongest side in terms of awareness, financial capabilities and other aspects. Its goals are to protect the weaker side defined as a consumer.

The quality of consumer as per the Consumer Protection Act and some other laws using it in the same volume.

a) Under Paragraph 13 (1) of the Consumer Protection Act (Act Consumer Protection, 2019), a consumer is any natural person acquiring a good or using a service which are not intended to engage in commercial or professional activity; as well as a natural person, a party to a contract under the law under discussion, acquiring goods or services beyond the boundaries of his commercial or professional activity. Thus, we can conclude that, as per the CPA, the quality of consumer will be obtained by any natural person who has acquired goods or uses services for purposes other than his commercial or professional interests for the purpose of personal use or use in his household. The Consumer Protection Act gives rights to consumers, provides administrative-juristical protection for consumers and some of its norms are also applied in a number of other laws regulating consumer protection in a special way, depending on the matter they regulate.

b) For the purposes of the Consumer Credit Law, § 1, p.20 (Law on real estate loans for consumers, 2019) determines as a consumer any natural person concluding a credit agreement for immovable property, the reasons for which are other than the business, commercial or professional activity of the individual concerned. As regards individuated consumers, the law aims to ensure that consumers are duly informed about the receipt of real estate loans, to ensure the creditors and credit intermediaries' responsibility in the performance of their business, also to contribute for consumers' avoidance of excessive indebtedness.

c) Paragraph 1 (4) of the E-Commerce Act (E-Commerce Act 2019) uses a "consumer" in the same sense as in the CPA, in relation to them, the law regulates the obligations and responsibilities of service providers towards consumers.

Based on the established definitions in the above-mentioned laws, as well as other consumer-related normative acts, we can identify three basic signs. The first of which concerns the subject, in the general case the consumer, a natural person who concludes a contract other than his professional activity with a legal or natural person acting in the course of their trade, professional or business activity. We can add to the first sign that as consumers will also be considered the consumers of goods and services acquired by another consumer. The second sign relates to the use of goods or services. Goods may be consumable or not consumed, used only for personal or household purposes of the consumer. The same applies to services, regardless of their nature. The quality of the service provider is of no consequence. The third sign is subjective, the

reason for acquiring the goods or using the service must be the satisfying of personal or family needs. (Goleminov, Ch, 2010.)

Reasons for expanding the circle of consumers benefiting from consumer protection.

The question arises whether consumer protection will be owed to a person who has purchased a commodity, both for carrying out his trade, business or professional activities and for satisfying personal or family needs. For example, a trader purchases an electric lawn mower to maintain a small lawn in his restaurant's summer garden, but mainly uses it to maintain his villa lawn. Given that the main need is for personal purposes, consumer protection should be provided in this case. Last but not least, the imbalance in the parties' equal treatment under one contract must be taken into account; even though the buyer, in the case of an electric saw, is a trader, his knowledge of the technical specifications of the product is sparse and on that basis it would also be appropriate for him to enjoy consumer protection. (Goleminov, Ch., 2010)

It can be concluded that the purpose motivating the subject to conclude the contract is to be taken into account -whether he will use the item for professional or personal purposes. It is about dual-purpose contracts and the ratio between the qualities of a consumer or a trader of the subject using the same good for both his personal and professional interests. Dual-purpose contracts are the subject of acts adopted by EU bodies, as well as of cases of the Court of Justice of the European Union. In one of the acts of secondary European legislation, we will look at a text for dual purpose contracts, namely Directive 2011/83 / EU (Directive 2011/83 / EU of the European Parliament and of the Council of 25.10.2011). There is no provision in its content clearly defining the commented contracts, but point 17 of the preamble states that a consumer is a natural person acting outside his professional activity. However, in the case of contracts intended to achieve objectives having a commercial and personal direction, if the commercial purpose is insignificant in the light of the context of the contract, the person who has concluded it will be a consumer.(Lazikova, J., Rumanovska, L., 2016).

The manifestation of consumer signs in other areas

For the purpose of this section of the report, we will look at the definitions of encompassing subjects benefiting from goods that are subject of regulation in some other laws.

a) Pursuant to Article 2 (1) of the Insurance Code (Insurance Code 2019), the purpose of the Insurance Code is to contribute to the protection of the interests of the consumers of the offered insurance services, as well as to provide an environment for the development of a stable, transparent and efficient insurance market. Article 2 of the same article states that consumers of insurance services within the meaning of the law are: the insurer, the insured, the third beneficiary, the third injured party, other persons for whom reasons have arisen to benefit from the insurance contract as well as a natural or legal person interested in the use of dissemination services of insurance products offered by an insurer or an insurance intermediary, in relation to its subject of activity, regardless of its being or not a consumer within the meaning of the CPA. We see that the scope of the subjects that can acquire the quality of consumers of the services offered, as well as the envisaged protection of their interests, is extremely voluminous, it is explicitly stated that in order to be recognized as the consumer the relevant entity does not have to be a consumer within the meaning of the CPA and, undoubtedly, the consumers of the insurance services may also be legal entities.

b) The Energy Act gives its definition of a consumer of energy services, §1, item 41b.6) Item "b" states that they are final customers buying energy or natural gas as well as a consumer of a transmission and/or distribution network for its supply of energy or natural gas. In § 1, item 27 b. In § 1, item 27 b. "d" indicates that a final customer purchases electricity or natural gas for his own use, and § 1, item 41b. in its sub-items (a) and (b), provides that a network consumer , respectively for the use of electricity or natural gas, may be both a natural person and a legal entity. (Energy Act, 2019).

From what has been said, it follows that both natural and legal persons may have the quality of a consumer in view of § 1, point 41b. "b" of the EA and it includes a wide range of subjects compared to the definition of consumer in § 13, point 1 of the CPA.

Individual subjects that have the quality of consumers under the Energy Act may benefit from the provisions of other statutory instruments regulating consumer rights. Consider the provision of Art. 113 CPC, enabling consumers to file their claims from their current or possibly permanent address, as it derogates from the general local jurisdiction provided for in Art. 108 Civil Procedure Code (Civil Procedure Code 2018). These opportunities for EA consumers have been repeatedly subject to case law. An example of this is Order No. 478 of September 27, 2018, on an appellate private trade case №252 / 2018 on the inventory of the Dobrich District Court, the proceedings were initiated on a private complaint by a power distribution company against a decision of the court of first instance, whereby the company's objections to the local lack of jurisdiction of the case were disregarded. In the appeal, the company disputes the conclusion of the court of first instance that Article 113 of the CCP is applicable since the plaintiff in the first instance is a legal person and the application of Art. 113 of the CPC is only with regard to the consumers within the meaning of §13, item 1 of the CPA. The court dismissed the appeal, accepting that in § 1, item 41 b. "b" EA, the legal entities are consumers and the law is specific to the activity exercised by the electricity distribution company. The Court has held that the scope of the provision of Art. 113 of the CPC is not limited to the type of consumer. The definition also refers to the practice of the SCC/The Supreme Court of Cassation/ on the issue under discussion in this sense. (Order No. 478 of September 27, 2018, on an appellate private trade case №252 / 2018 on the inventory of the Dobrich District Court). In the same sense, it is also Decree No. 65 of 23.01.2019 on the appellate tr. case No 49/2019 on the inventory of the Dobrich District Court. The proceedings are at the private appeal of an electricity distribution company against a ruling of the first instance court. The arguments are based on the fact that a legal entity should not benefit from the rule of art. 113 of the CPC, given that a legal person can not be considered a consumer within the meaning of § 13, item 1 of the CPA. Here, too, the court upheld the order under appeal by holding that a legal person having the quality of a consumer under Paragraph 1 (b) "b", may use the electable local jurisdiction under Art. 113 CPC, bringing an action against an electricity distribution company, which is a monopoly in the territory of the respective region. (Order No. 478 dated 27.09.2018 on the appellate tr. case 252/2018 on the inventory of the Dobrich District Court).

c) § 1, item 2 of the Law for Regulation of the Water Supply and Sewerage Services, states that consumers are natural or legal persons, owners or consumers of properties, for which the water and sewerage services are provided, or owners and consumers of condominiums, as well as enterprises using water from the water supply networks of settlements for technological needs, or supplying it to other consumers after a specific treatment on a separate plumbing installation not intended for drinking water. Item 2b. "a" indicates which entities are not consumers, ie water and sewerage operators who purchase water from another water supply and sewerage systems and other operators and deliver it to the entities under item 2 through the Water Supply and Sewerage Systems, provided to them for management, maintenance and operation (Act on the regulation of water supply and sewerage services 2018).

The Act consideration under also uses a highly extended wording on subjects that are consumers for its purposes, explicitly stipulating that only individuals performing services and services are not consumers and can not benefit from the relevant rules laid down for the protection of such differentiated consumers.

While the definitions above differ significantly from the CPA, we can conclude that they have the hallmarks of the basic consumer law objectives, namely to protect a weaker party in terms of knowledge and economic opportunities, contracting in a sphere outside his professional, commercial or economic activity with a stronger subject in those aspects, which may often be a monopoly in the supply of goods or services subject to the relations between the two parties.

We have to make a clarification, the IC /Insurance Code/ uses "consumer" in the meaning of the CPA and does not deprive them of their specific protection. For its part in §1, item 2b. "a" of the Energy Act defines the household customer as a person using the respective type of energy for own household purposes, whereby in terms of the meaning of the law and the secondary European legislation, this is a natural person, hence, here the definition is identical to the consumer under the CPA.

Scope of consumer definitions as related to subjects in some EU Member States

Undoubtedly, the consumer definition takes into account entities that would benefit from consumer protection. There is no universal consumer definition in EU law. Depending on the relations that govern EU acts, different consumer definitions are used, whereby with some exceptions, the general rule is that a consumer is a natural person acting outside his business, commercial or professional activity. Legal entities remain outside the scope of consumer protection. For their part, at a national level, Member States agree to give more scope to consumer definitions in some areas of minimum harmonization with EU law. At national level, there are many specific variations on the content of the consumer definition, according to different criteria by which the legal entities are considered as consumers. (Mnko, R., 2013)

We will look at the definitions given in some Member States:

a) The German Civil Law in § 13 states that a consumer is any natural person entering into a legal transaction the object of which is essentially neither commercial nor in connection with their freelance (Civil Law 2019). Considering the presence of the word "predominantly", we can conclude that it is possible here to extend the circle of subjects that can be consumers, which would be determined individually in each particular case.

b) The French Consumer Code provides that a consumer, who is any natural person acting for purposes other than his business, commercial or professional activity. For the purposes of the Code, a non-professional definition is also introduced; it is any non-professionally acting legal entity. (Consumer Code 2019)

It should be noted that the scope of the subjects to whom consumer protection is due is extremely wide, bearing in mind that stipulations of the Code provide that the provisions of a relevant chapter of the law also apply to contracts between professionals and non-professionals.

c) Citizens' law in the Czech Republic determines the consumer in § 433, paragraph 2 and determines what the signs are of the weaker party, namely that this is the person who interacts with an entrepreneur outside the interests of his own business (Civil Law No89 / 2012, 2018)

This wording is defined as a rebuttable presumption in the sense that the person contracting with the entrepreneur in a sphere outside his professional, economic or commercial activity is a weaker party and protection is due to him in these interactions. (Lazikova, J., Rumanovska, L., 2016)

CONCLUSION

Since the emergence of consumer law in our familiar light in the 1960s, we have seen a tendency of expanding the circle of subjects that may have a quality of customer, there is also expanded the number of criteria that can be explored in each individual case to define a particular subject for a consumer. This process can be explained by the development of the economy and the ever-increasing factual inequality of the countries. Regulatory acts stipulating interactions in relation to the acquisition of goods or the use of services, govern which entities will have the quality of the consumer and will have the appropriate protection in relation thereto, or may restrict or not the types of entities that may be consumers. The term consumer always defines the weaker side. Its weakness is expressed in economic inequality in most cases, as well as the lack of knowledge of the resource - a good or service subject to negotiation, in view of the fact that it operates outside the limits of its professional knowledge or for purposes other than its professional

background, hence, it does not take into account the type of entity, but solely of its need for protection, having regard to the actual breach of the principle of equality of the parties. With the development of the economy, new features may emerge in the future, through which the subjects will be individualized as consumers.

REFERENCES

Code of civil procedure (2008). Retrieved from <https://www.lex.bg/laws/ldoc/2135558368> at 30.04.2019 (**Оригинално заглавие:** *Граждански процесуален кодекс(2008). Последен достъп от <https://www.lex.bg/laws/ldoc/2135558368> на 30.04.2019*)

Civil law (1896) german. Retrieved from <http://www.gesetze-im-internet.de/bgb/-BJNR001950896.html#BJNR001950896BJNG000102377> at 30.04.2019. (**Оригинално заглавие:** *Bürgerliches Gesetzbuch(1898) германски. Последен достъп от <http://www.gesetze-im-internet.de/bgb/-BJNR001950896.html#BJNR001950896BJNG000102377> на 30.04.2019.*)

Consumer protection act (2006). Retrieved from <https://lex.bg/laws/ldoc/2135513678> at 30.04.2019 (**Оригинално заглавие:** *Закон за защита на потребителите (2006). Последен достъп от <https://lex.bg/laws/ldoc/2135513678> на 30.04.2019*)

Civil code - Law No. 89/2012 (2012). Retrieved from <https://www.zakonyprolidi.cz/cs/2012-89> at 25.04.2019. (**Оригинално заглавие:** *Zákon č.89/2012(2012). Последен достъп от <https://www.zakonyprolidi.cz/cs/2012-89> at 25.04.2019*)

Dachev, L, (2004), *Legal Discourse. Rousse: Svida Publishing House;* (**Оригинално заглавие:** *Дачев, Л., (2004), Юридически дискурс. Русе: Издателство „Свида“*)

E-Commerce Act (2006). Retrieved from <https://lex.bg/laws/ldoc/2135530547> at 25.04.2019. (**Оригинално заглавие:** *Закон за електронната търговия (2006). Последен достъп от <https://lex.bg/laws/ldoc/2135530547> на 25.04.2019*)

Consumer Code, (2019) french. Retrieved from www.cjoint.com/doc/19_01/-IAooeGTxInh_codedelaconsommation2019.pdf at 29.04.2019. (**Оригинално заглавие:** *Code de la consommation (2019) френски. Последен достъп от www.cjoint.com/doc/19_01/-IAooeGTxInh_codedelaconsommation2019.pdf на 29.04.2019*)

Goleminov, Ch. (2010), *Fundamentals of Bulgarian Consumer Law.* Varna: Publishing house VFU/Varna Free University/ "Chernorizets Hrabar"; (**Оригинално заглавие:** *Големинов. Ч., (2010). Основи на българското потребителско право. Варна: Издателство ВСУ „Черноризец Храбър“*).

Insurance code (2016). Retrieved from <https://www.lex.bg/bg/laws/ldoc/2136717797> at 30.04.2019. (**Оригинално заглавие:** *Кодекс за застраховането (2016). Последен достъп от <https://www.lex.bg/bg/laws/ldoc/2136717797> на 30.04.2019*)

Law on real estate loans for consumers (2016). Retrieved from <https://www.lex.bg/bg/laws/ldoc/2136890030> at 30.04.2019. (**Оригинално заглавие:** *Закон за кредитите за недвижими имоти на потребители. Последен достъп от <https://www.lex.bg/bg/laws/ldoc/2136890030> на 30.04.2019*)

Law of regulation water supply and sewerage services (2005). Retrieved from <https://www.lex.bg/laws/ldoc/2135499390> at 29.04.2019. (**Оригинално заглавие:** *Закон за регулирането на водоснабдителните и канализационните услуги (2005). Последно достъп от <https://www.lex.bg/laws/ldoc/2135499390> на 29.04.2019*)

Lazikova, J., Rumanovska, L., (2016). *The notion of consumer in the EU law.* Slovak University of Agriculture in Nitra.

https://www.researchgate.net/publication/312176909_The_Notion_of_Consumer_in_the_EU_Law. (Accessed: 30.04.2019)

Mnko, R.,(2013), Library Briefing. Library of the European Parliament: The notion of 'consumer' in EU law,

[http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130477/LDM_BRI\(2013\)130477_REVI_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130477/LDM_BRI(2013)130477_REVI_EN.pdf) (Accessed: 30.04.2019)

Orders No. 478 of 27.09.2018 of District court – Dobrich. Rerieved from <http://vssold.justice.bg/osdobrich/2018/09/0074eb18/25292718.htm> at 30.04.2019. (**Оригинално заглавие:** *Определение номер 478 от 27.09.2018 на Окръжен съд – Добрич. Последен достъп на 30.04.2019*)

Orders No. 65 of 23.01.2019 of District count – Dobrich. Rerived from <http://vssold.justice.bg/osdobrich/2019/01/0063eb19/04912319.htm> at 30.04.2019. (**Оригинално заглавие:** *Определение номер 65 от 23.01.2019 на Окръжен съд – Добрич. Последен достъп от <http://vssold.justice.bg/osdobrich/2019/01/0063eb19/04912319.htm> at 30.04.2019 на 30.04.2019.*)

Sukareva, Z., (2015). Consumer rights. Sofia: Publishing house “New star”. (**Оригинално заглавие:** *Сукарева, З., Потребителско право. София: Издание „Нова звезда”*)

Directive 2011/83/eu (2011).

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0083>
(Accessed:30.04.2019)