

LEGAL COMPETENCE AND CONSUMER BEHAVIOUR

In line with European standards and international practice the current legislation in Bulgaria soundly guarantees the protection of consumer rights. Nevertheless, the consumers are not always familiar with it and don't always feel protected and it is a precondition for wrong decisions. Regarding that we analyse the correlation between the level of consumer's legal competence in the case of quality mismatch and his consumer behaviour when deciding a purchase and the warranty service of durable goods. Statistically we defend the thesis that the lack of legal knowledge influences the consumer behaviour in a negative way and favours the existence of unfair commercial practices. Proposals for increasing consumer legal awareness and guidelines for refinement of the legal base are highlighted.

JEL: D18; M31

1. Introduction

Regarded at large, consumers are the engine of modern economic development and have the power to determine its speed and direction. Out of this mass, however, the individual consumer is weak and vulnerable in the world of large business corporations which, driven by the desire for quick profit, often harm his interests. The lack of equilibrium in the strength, information and resources available to both parties puts consumers at a disadvantage (Lyubenova, 2013). The scale of this imbalance justifies the claims that consumer protection must be a top priority for the European Commission (Nancy, 2016). At the same time, the common examples of abuses by merchants and producers, the flooding of the market with poor quality goods and the constant attempts to mislead the consumer lead to the emergence of the unprecedented crisis of consumer trust that we are witnessing today (Bozic, 2017). Possible reasons for this trust deficit can be sought, on the one hand, in the lack of an adequate mechanism to protect consumer rights and, on the other hand, in the low legal competence of the consumers themselves. In this context, the

¹ Vanya Krалеva, Ph.D., is Chief Assistant in "Marketing" Department in Economic University – Varna, e-mail: vanya.krалеva@ue-varna.bg.

² Ivaila Dimitrova is Assistant in "Legal Sciences" Department in Economic University – Varna, e-mail: ivaila.d@ue-varna.bg.

analysis of the existing legal framework for the protection of consumer rights and the study of consumer awareness of their rights gains momentum.

Historically, the first consumer protection law in Bulgaria was drafted in 1992 but it was not submitted for discussion to the National Assembly, and only afterwards in 1999 the Law on Consumer Protection and Trading Rules was promulgated (Valchev, 2016). By 2006, when a new regulatory framework was drawn up and adopted with regards to Bulgaria's EU membership, this law guaranteed the protection of consumers' lives, health and property, their economic interests, access to judicial and extrajudicial protection, the right to association and the right to information. At present, a system of consumer protection laws is in force in Bulgaria, including the Constitution of the Republic of Bulgaria (1991) and the Consumer Protection Act (2005), and a number of sectoral laws such as the E-Commerce Act (2005), the Tourism Act (2013), the Energy Act (2003), etc. Although the Constitution uses the term "consumer protection", it refers not to the protection of the individual rights of a particular consumer but to the overall protection of consumers, the set of rules covering all possible areas of violation of their rights and legitimate interests (Constitutional Court Decision No. 4, 2007). Moreover, the obligation to provide adequate legal regulation of consumer rights stems also from Art. 38 of the Charter of Fundamental Rights of the European Union (2012) which provides for a high level of consumer protection in Union policies. Union law requires the development and strengthening of consumer rights, in particular through well thought-out regulatory measures and improved access to simple, efficient, expeditious and inexpensive means of redress, including out-of-court mechanisms for consumer protection (Regulation (EU) No. 254, 2014).

In the context of the gradual harmonization of the Bulgarian legal framework with the European one, an information campaign and two large-scale studies financed by the European Commission were made - Consumer Protection and Rights in Bulgaria, Wave 1 (Gallup, 2009) and Wave 2 (Gallup, 2010). Although these studies reflect users' self-assessment of their basic legal knowledge and the effectiveness of the campaign, they do not analyse in detail the exact rights consumers are aware of and of which they are not. At the same time, despite the existence of a rich regulatory framework for the protection of consumers' rights, the insufficient knowledge about it and the lack of an adequate mechanism to control its compliance create prerequisites for unfair commercial practices, misleading the consumer and changing consumer behaviour (Kraleva and Dimitrova, 2017). Alarming data about the actual level of consumers' legal competence reveals the Consumer Empowerment Index conducted in 2011. According to the survey Bulgaria is on the bottom of the list with critically low levels of consumer skills, awareness and engagement (Nardo et al., 2011).

In response to the problems raised, an analysis of the relationship between consumer behaviour and the level of awareness of two general consumer rights - the right to guarantee compliance with the sales contract and the right to claim - has been made in this article. The main research goal is to reveal some of the mechanisms under which these rights are violated and to provide guidance for their adequate protection. Due to the significant differences in the pattern of behaviour in the purchase of various types of goods, the subject of the study is limited to consumer decisions in the choice and after-sales service of durable

goods only. For the purpose of the research goal an interpretation of the normative basis has been presented, an analysis of the results of an empirical research has been made and some general conclusions and recommendations for raising the awareness of the consumers and improving the normative basis in their defence have been proposed.

2. Legal definitions and terminological differences in the terms used. Discussion on the legal basis.

This article discusses two basic consumer rights regulated by the CPA, namely the right to guarantee compliance with the sale contract and the right to claim. These two rights are in full compliance with the general principles of civil law, which state that parties must act in good faith when signing contracts (OCA, Art.12, 1950). Given the general principles of contract law, the vendor is obliged to pass on to the buyer an item that corresponds to the contract of sale. The Consumer Protection Act also provides that the trader is responsible for any lack of conformity of consumer goods with the sales contract (CPA, Art.105, 2005). Moreover, the special law stipulates that the trader is responsible for any lack or inconsistency that existed at the time of delivery of the merchandise and occurred within two years of delivery even if he did not know about the non-compliance. It should be emphasized that CPA presumes that any non-conformity of the consumer merchandise with the sales contract, which occurs within 6 months after the delivery of the merchandise, is deemed to exist at the time of its delivery. The refusal of the legal presumption lies with the trader who has to prove that the lack of conformity is due to the nature of the merchandise or the nature of the non-compliance (CPA, Art.108, 2005).

In the interpretation of the legal provisions, it is important to specify that the term "consumer", according to § 13, point 1 of the CPA, should be understood as any natural person who acquires goods or uses services that are not intended to carry out commercial or professional activity and any natural person who, as a party to a contract under this Act, acts outside the scope of his commercial or professional activity. According to the above-mentioned legal definition, legal persons cannot be consumers at all, even if they do not have a commercial capacity (universities, non-profit associations, foundations, etc.).

For the purposes of § 13, point 2 of the CPA, a "trader" is any natural or legal person who sells or offers for sale goods, provides services or concludes a contract with a consumer as part of his trade or profession in the public or private sector, and any person acting on his behalf and at his own expense.

The law applies to each consumer contract. A consumer contract is a transaction whereby a commodity reaches its final recipient - a person who intends to use its utility rather than profit from it by re-introducing it to the market. Consequently, the categorization of a contract as a consumer contract depends only on the capacity of the parties in the particular case - "trader" and "consumer" within the meaning of the CPA.

It should be noted that the trader is the seller or the manufacturer party to the contract. As a seller, the law has defined any natural or legal person who, in the course of his professional or commercial activity and on the basis of a contract of sale, sells consumer goods. The

manufacturer is the person who makes the product, the importer of the product in the territory of the European Union or of a country party to the Agreement on the European Economic Area, and any person who presents himself as a manufacturer by affixing his name, trademark or other distinctive sign (CPA, Article 104, 2005).

In the context of the relationship between the trader and the consumer in the event of non-compliance of the consumer goods with the sale contract under Art.1 of the CPA, the right to claim arises. The claim is, in essence, a notification to the trader of the identified defect. It should be borne in mind that it is a matter of reducing the fitness of the merchandise, but not of total unfitness, which should be treated as a complete failure. The purpose of the claim is to restore the fair market equilibrium by providing the consumer with the opportunity to respond to qualitative and quantitative deviations of the product after its purchase or, respectively, in the service after its delivery.

When making a claim, the consumer may choose between repairing the merchandise and replacing it with a new one, unless this is impossible or the method of compensation chosen by him is disproportionate to the other. In practice, the trader will be able to dispose of liability for inconsistency of the merchandise / service with the agreed upon only in the following cases: 1) if he explicitly notified the consumer of the non-conformity or 2) the non-conformity is due to materials provided by the consumer.

Receipt of complaints takes place throughout the business hours at the place of purchase where the merchandise was purchased, respectively the service was ordered, either at the business address of the trader or at another place specified by him. The claim may also be made at any of the trader's premises on the territory of the country in which a similar commercial activity takes place, while the right to choose a place to make a claim belongs entirely to the consumer.

The law does not establish a requirement for a particular form in which the claim is to be made, but in practice it is necessary to make a request to the consumer in writing to submit a complaint. Pursuant to Art. 125, para. (2) to (4) of the CPA, the consumer must also attach certain documents proving the basis of his claim: (a) a receipt or invoice; (b) protocols, acts or other documents establishing the non-conformity of the merchandise or service with the contract; (c) other documents establishing the amount and the ground of claim. The trader, for his part, must write down the claim in his claim book. Within one month of submitting the claim, the trader is required to repair the merchandise free of charge or replace it with a new one. Otherwise, the consumer has the right to terminate the contract and to be reimbursed the amount paid or to demand a reduction in the price of the consumer product (CPA, Art.113, 2005). Of particular importance is the fact that, under the legal framework, the trader is obliged to reimburse the amount paid by the consumer when, after the same product has been repaired three times within the warranty period, there is a subsequent inconsistency of the merchandise with the contract of sale.

When making a claim, the consumer may refer to the legal guarantee or the commercial guarantee, whichever is better for him. The legal guarantee is the guarantee provided by the Consumer Protection Act. It entitles the consumer to a claim for all purchased goods, including second-hand products or products purchased through the Internet. The time limit for making it is two years, but not later than two months after the discovery of the non-

compliance for goods and 14 days for services, which cannot be shorter by agreement between the two parties. Upon expiry, the consumer may only make a claim if the purchased item is additionally protected by a commercial guarantee which provides for a warranty period longer than two years. The commercial guarantee is a written statement from the trader or the manufacturer of the commodity by which he undertakes to assume obligations to the consumer supplementary to those of the legal guarantee. It is not mandatory. The commercial guarantee binds the one who grants it to remove at his expense the defects and damages that occur within the warranty period. The additional guarantee may cover either the extension of warranty periods or additional rights and privileges granted to the consumer. However, it cannot "replace" or "displace" the rights of the consumer by law. Therefore, the consumer has the right to claim the merchandise or service regardless of whether the manufacturer or trader has provided a commercial guarantee for the goods or services (Kraleva and Dimitrova, 2017).

In many cases, traders provide a guarantee of 1 month, 6 months or 1 year. What is important here is that the two-year guarantee specified in the CPA also applies and consumers are misled by the incorrect behaviour of traders who refuse to accept a claim after the expiry of the shorter term of the commercial guarantee. That is where many of the problems come from, as consumers do not know that the commercial guarantee does not rule out the legal guarantee, and traders do not always fulfil their obligations under the special law. Furthermore, according to Art.119 of the CPA, the trader is obliged, in the framework of the application for the commercial guarantee, to inform the consumer in writing about the existence of a legal guarantee. This should be done in Bulgarian and be formulated in a clear, comprehensible and readable way.

For failure to fulfil these obligations, the trader bears administrative-criminal liability (CPA, Article 221, 2005). Consequently, regardless of the commercial guarantee, the trader is responsible for the lack of conformity of the consumer goods with the contract of sale under the legal guarantee under Art. 112-115 of the Consumer Protection Act. It is important to note that when the trader refuses to satisfy the consumer's claim as well as in breach of the obligations under the warranty provided, additional safeguards are provided for the consumer. The person concerned may seek the assistance of the Commission for Consumer Protection, as well as the competent court.

3. Legal competence and consumer behaviour – empirical research

The above interpretation of the CPA highlights two basic consumer rights - the right to a legal guarantee of compliance with the sales contract and the right to claim. In order to meet the research goal of determining the level of consumer information on these rights and the possibility of influencing their consumer behaviour before and after purchase, a study was conducted. Social networks were the main channel for distribution of the survey. The choice of the online method is based on the ability to reach a large number of geographically dispersed respondents within relatively short terms and at the lowest possible cost. The LimeSurvey platform was used to produce and disseminate the electronic questionnaire and the data were collected from 04 to 22 April 2017 using a convenience

sample. A total of 489 responses were received, of which 346 were complete. For the analysis only the full responses were used.

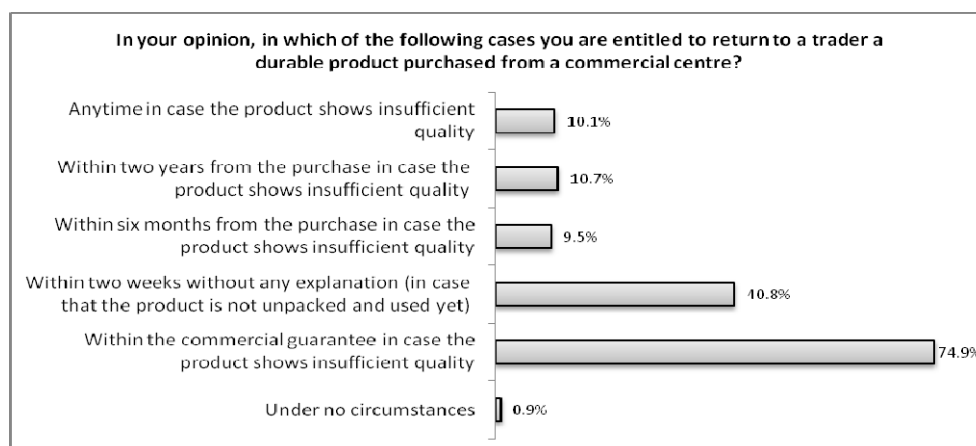
The profile of the surveyed respondents includes 77.2% women and 22.8% men. Higher education respondents predominate, with 55.5% holding a Master's degree and 25.1% a Bachelor's degree. The age structure has the following distribution: 16.2% are aged 18 to 25; 23.1% are between 26 and 35; 33.5% are from 36 to 45; 14.7% are aged 46 to 55 years and 12.4% are over 55.

The results of the survey show that despite the information campaigns conducted after the entry into force of the CPA, consumers are extremely poorly informed about their rights. Asked in which cases they believe they have the right to return a durable product purchased from a commercial centre, only 10.7% of the respondents indicate a two-year period after the purchase, provided the product shows insufficient quality (i.e. within the legal guarantee provided in Art. 112-115 of the CPA). At the same time, the relative share of those who responded affirmatively to the question asked once again at the end of the questionnaire, but with a slightly different wording, namely, "Do you know that within 2 years of the purchase you have the right to claim for quality mismatches of the merchandise?" is 33.2%. The difference in outcome can be attributed to the distortion caused by the inconvenience that some respondents feel confessing to their incompetence. For this reason, we believe that a more objective assessment of consumer awareness of their rights gives the first question.

Another sign of poor legal competence is the relatively low percentage of respondents (over 40%) who think they can return the merchandise within two weeks without any explanation, provided that they have not unpacked and used it - a right which is reserved only in case the product is purchased at a distance or over the Internet.

Figure 1

Consumer awareness regarding the right to claim



Unsatisfactory awareness is also demonstrated by consumers as regards to the responsibilities and powers of the Commission for Consumer Protection. The highest is the share of respondents who are aware that the Commission deals with resolving consumer disputes (72.4%) and with its role as an observer of unfair commercial practices (65%). Significantly lower is the proportion of those who recognize it as a body that supervises the market for dangerous goods, provides information about the safety of goods and consumers' rights and removes unfair terms in the general terms of consumer contracts and distance sales.

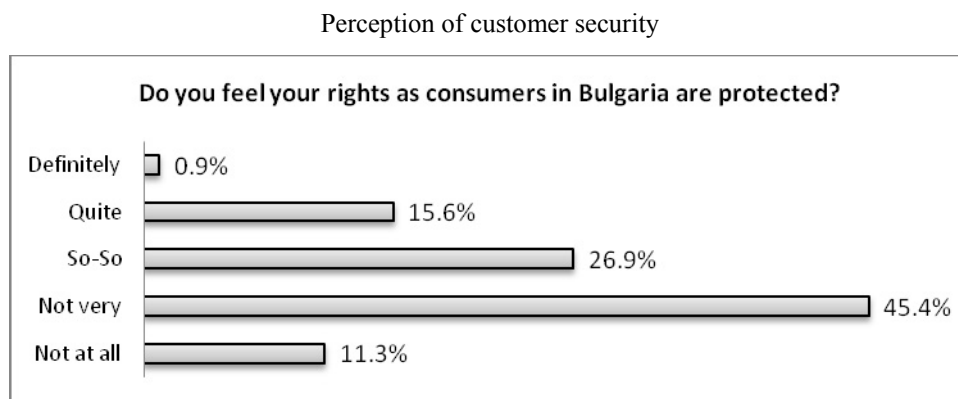
Figure 2

Consumer awareness of the Commission of Consumer Protection responsibilities and powers



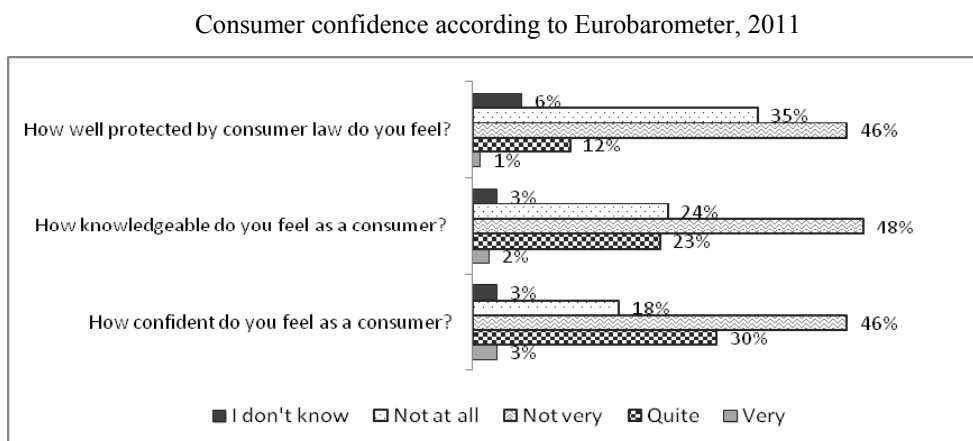
Asked if they had addressed to the Commission for Consumer Protection in the past year because their claims had not been satisfied by a trader, 72% said they did not have to. A little over 10% have contacted the Commission - 18 people to get information and 19 people to file a complaint. The rest of the respondents remained passive in resolving the problem because they did not believe that filing a complaint would have an effect (12.7%) or because they did not know how to submit it (5.2%). The cross-sectional analysis of these data with the answers to the question "Do you feel your rights as consumers in Bulgaria are protected?" shows the existence of a weak but statistically significant correlation between the perception of security and the contact with the Commission for Consumer Protection (χ^2 rect: $\alpha = 0,05$; Asymp.Sig.(2-sided) = 0,000; Cramer's V = 0,181; Approx.Sig. = 0,000). In fact according to the data analysed only about 16% of the respondents felt that their rights as consumers are protected to a certain extent (Fig. 3). There is also a statistically significant correlation between the sense of security and the awareness of the right to a legal guarantee within 2 years (χ^2 rect: $\alpha = 0,05$; Asymp.Sig.(2-sided) = 0,003; Cramer's V = 0,214; Approx.Sig. = 0,003). These data show that the confidence in the consumer rights protection system is directly related to the fact that consumers in Bulgaria are poorly informed about their rights.

Figure 3



Compared to the official data from the Eurobarometer conducted in 2011 the results from this research show that regardless of the massive information campaigns the awareness of Bulgarian consumers of their rights, their confidence as consumers and their perception of being well protected have not improved at all (Fig. 4). In this sense, we can conclude that conducting additional campaigns to inform citizens about their rights as consumers would have a strong impact on their consumer self-esteem only if an out-of-the-box approach is used.

Figure 4

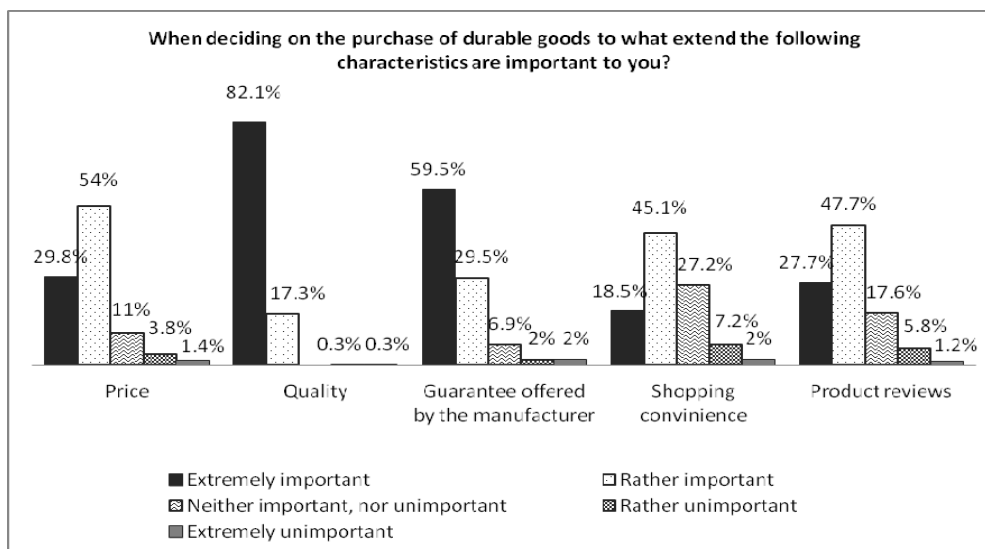


Source: NARDO, M., LOI, M., ROSATI, R. & MANCA, A. 2011. The Consumer Empowerment Index. *A measure of skills, awareness and engagement of European consumers*. Luxemburg: Publication Office of the European Union.

Concerning consumer behaviour, the study shows that the quality of the product is of utmost importance when deciding on the purchase of durable goods (82.1% indicate this characteristic as extremely important and 17.3% as rather important). Secondly, respondents point out the provision of a guarantee by the manufacturer, which is extremely important for nearly 60% and rather important for almost 30% of the survey participants. For the most part, consumers rate the price, convenience of shopping and product reviews as being rather important (Figure 5). A weak correlation between these characteristics and the demographic profile of the respondents is recorded only in terms of price as a selection factor on which the gross monthly income may affect (χ^2 test: $\alpha = 0,1$; Asymp.Sig.(2-sided) = 0,072; Cramer's V = 0,134; Approx.Sig. = 0,072), as well as with regard to the provision of a guarantee by the manufacturer that is more important to the ladies (χ^2 test: $\alpha = 0,1$; Asymp.Sig.(2-sided) = 0,068; Cramer's V = 0,159; Approx.Sig. = 0,068).

Figure 5

Key factors when choosing durable goods

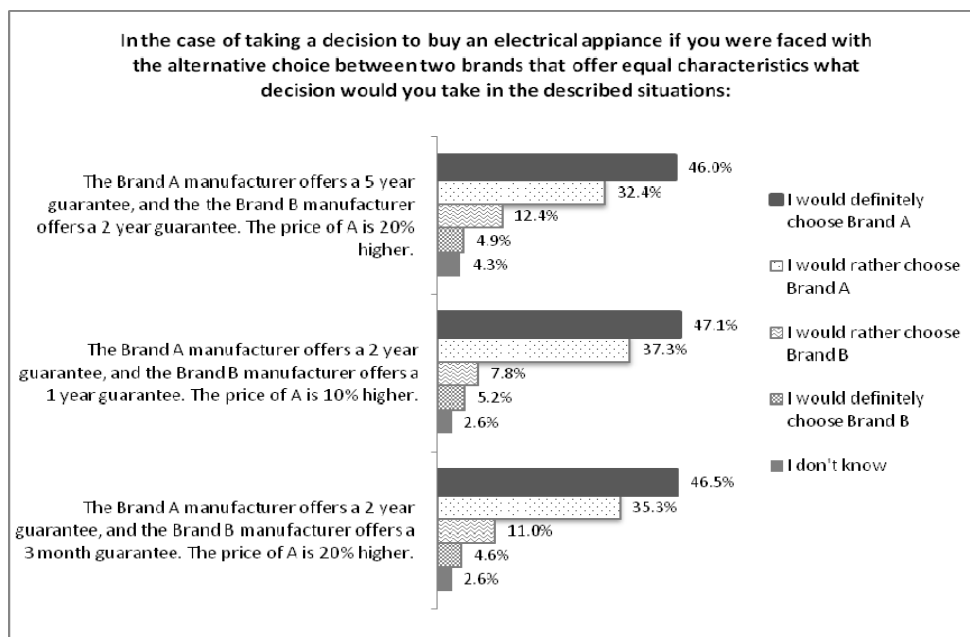


Indicative of the importance consumers place on security is also their willingness to pay a higher price for receiving warranty service. By comparing two alternative brands of electrical appliances that offer a different warranty period, around 80% of respondents would pay 20% higher price to get a longer warranty (Figure 6). These data testify that the provision of warranty service is a factor that strongly influences consumer behaviour. Consumers not only tend to prefer one brand to another based on the availability and duration of the warranty provided by the manufacturer but would also pay a higher price for it. At the same time, manufacturers offering warranty services with a duration close to or even shorter than the legal one may take advantage of this completely fictitious competitive advantage. In this sense, lack of information about the CPA allows for the development of

unfair commercial practices and consequently leads to a distortion of the market mechanism.

Figure 6

The period of warranty service as a factor affecting the choice of durable goods



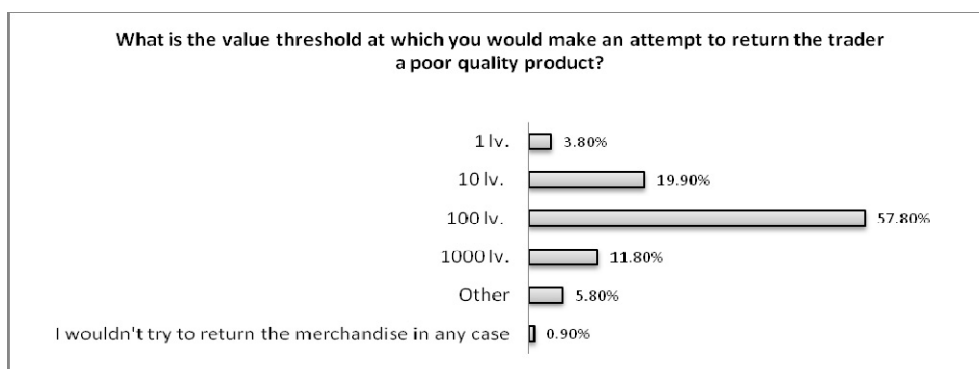
A major problem might also be the possibility of influencing consumer behaviour after purchase through the provision of warranty service shorter than 2 years. Asked what they would do if, after having purchased a durable product without warranty offered by the manufacturer, it turns out that a month later it was damaged by routine use, 56.6% of the respondents said they would try to return the product to the seller; 17.3% will contact the Commission for Consumer Protection, 11.3% would turn directly to the manufacturer, and 7.8% would directly dispose of the product. In case the purchased product had a 1-year warranty provided by the manufacturer but a week after it had expired the product got damaged, consumers' reactions would be as follows: 12.7% would try to return the merchandise to the seller, 32.4% would contact the service office indicated on the guarantee card with a request for warranty service despite the expired warranty period, and 50.9% would consult a service of their own choice and possibly repair the item on their own expenses. These data confirm that the provision of a commercial guarantee with a shorter than the legal guarantee period directly affects consumer behaviour. Notwithstanding the obligation of the trader / manufacturer implied by Art.119 of the CPA to inform in writing the consumer of his right to a legal two-year quality assurance guarantee in the warranty card, many traders intentionally ignore it. In the event that the commercial guarantee is

shorter than the legal and the information about it is missing, it obviously misleads the consumer. As a result, more than half of the consumers who participated in the survey stated that they would take over the repair of the goods for their own cost after the expiry of the term mentioned in the warranty card.

What might also be interesting is how the price of the product influences the readiness of consumers to seek their rights. The study shows that the threshold value at which respondents would attempt to return the trader a product with quality deviations, is usually 100 BGN (57.8%) or 10 BGN (19.9%). Surprisingly, there is no statistically significant relationship between the respondents' income level and the threshold value at which they would return a poor quality product (χ^2 test: $\alpha = 0,05$; Asymp.Sig.(2-sided) = 0,551). Among the respondents, there are people who, although having an income higher than the maximum insurance threshold, are ready to return a poor quality even if it costs only 1 lev. At the same time, respondents with income close to the minimum salary are reluctant to the poor quality of much more expensive items. This could again be explained by the lack of confidence in the system for consumer rights protection and the feeling that the voice of the consumer is not heard.

Figure 7

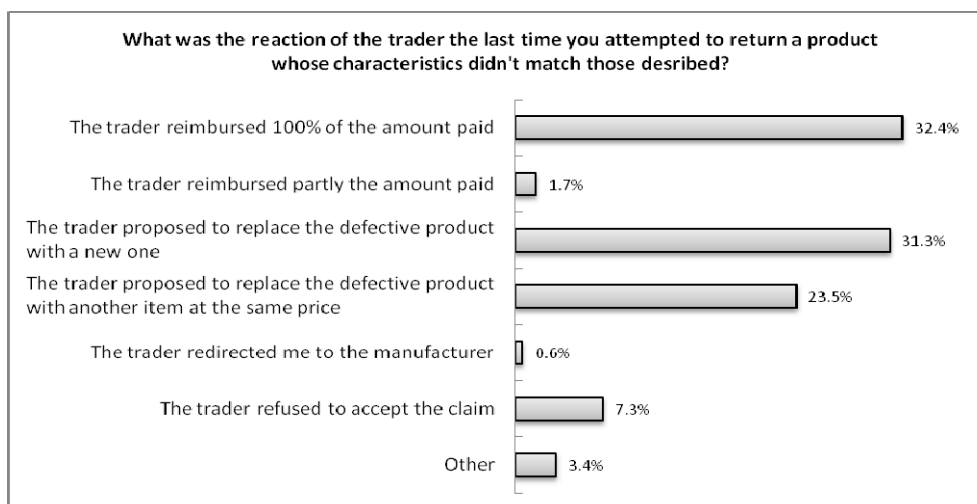
Value threshold of consumers' claims for poor quality goods



Over half of the respondents (51.7%) declare that they have returned a product to the store because it did not match the description. The survey shows that the most common commercial practice in this case is to reimburse the amount paid (33%), replace the defective product with a new one (31.8%) or with another item but at the same price (23.3%). In almost 10% of cases, the trader violated the law by refusing to accept the claim, reimbursing only part of the amount paid, or redirecting the consumer to the manufacturer.

Figure 8

Commercial practices in case of claims

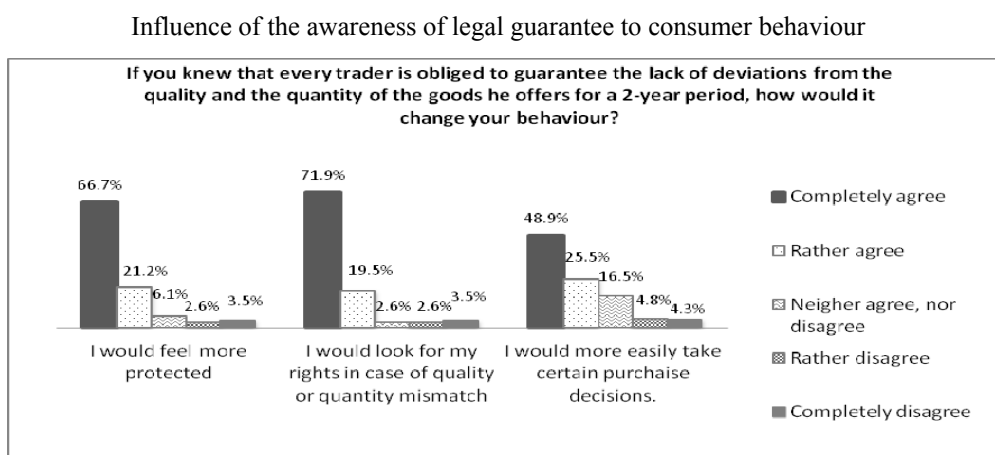


Significantly more often, traders breach another obligation, namely to inform consumers of the possibility of making a claim within two years in the event that the product shows quality deviations. Only 12.1% of survey respondents said that the last time they purchased a durable product they were informed by the trader of this particular right. In view of the fact that the lack of information on the legal guarantee has a significant impact on consumer behaviour before and after purchase (as evidenced by the analysis made here), it is of utmost importance that such information is to be provided in a timely and accessible manner. In the present text of the CPA, the trader is obliged to inform the consumer, but the actual compliance with this prescription can only be traced to the presence of a warranty card. In cases where the trader or manufacturer does not offer an additional guarantee, the consumer is expected to be informed orally about his right to claim. Analysis of the data from this study shows that this does not happen in most cases; therefore, there is no credible way to prove that the trader has not provided the required information. In this sense, we believe that it is appropriate even if a commercial guarantee is not provided, the trader to be obliged to inform the consumer of the existence of a legal guarantee in writing. It can be done for example by means of a notice placed in a prominent place on the commercial premises or as a requisite of the financial document certifying the purchase. This would make it easier for the staff and, above all, would enable control authorities to verify that the law is being respected. The absence of the opportunity to document misuse leads to the impossibility of imposing a sanction and by itself creates a prerequisite for non-compliance with the law. It may also provoke the manifestation of corrupt practices by the controlling authorities - an issue that has become an extreme malice in modern society.

At the same time, the study shows that if informed of the existence of a legal guarantee for two years after the purchase, nearly 88% of the respondents would feel more secure; over

90% would be looking for their rights in case of quality or quantity mismatch, and about 75% would more easily take certain purchase decisions.

Figure 9



These data show that consumers would significantly change their behaviour if they were better informed. This, on the other hand, would lead to a more adequate consumer response in case of deviations in the quality and quantity of goods marketed and, on the other hand, to an increase in the consumption of goods which up to that moment had caused some concern. In this sense, imposing an obligation on traders to display a notice board informing consumers about the existence of a legal guarantee or adding this text as a requisite of the financial document certifying the purchase would have a positive impact on both the consumers' confidence that their rights are protected and on the turnover of the trader himself.

4. Conclusion

The presented analysis of empirical data on the level of consumer awareness of their rights and the possibility of influencing their behaviour before and after purchase allows us to make three main conclusions. Firstly, despite the campaigns to inform consumers about the legal basis for the protection of their rights, the level of awareness among Bulgarians remains critically low. According to the Consumer Empowerment Index conducted in 2011 the share of consumers feeling confident, knowledgeable and protected is only about 11% which is the lowest value registered in the EU (Nardo et al., 2011). Unfortunately, the results from the current study reveal no progress since then. This has a significant impact on building a sense of security, a trust in the means of control, and hinders the attempts to claim consumer rights.

Secondly, poor consumer awareness of their rights has a direct negative impact on consumer behaviour, as it leads to purchasing decisions and after-sales service decisions that are detrimental to the consumer himself. Often it can result in paying extra for securing quality protection that is already provided by law, making a preference for a brand that offers longer warranty even if it is fictitious or repairing faulty goods at consumers' own expenses. The lack of legal competence is a prerequisite for the manifestation of unfair commercial practices.

Thirdly, the current text of the CPA states that the trader is obliged to inform the consumer about the existence of a legal guarantee but in case a supplementary commercial guarantee is not provided it is supposed to be done only verbally. This does not provide an effective control mechanism for compliance with the law and leads to its non-observance.

In view of the conclusions drawn, we can summarise that effective measures are needed to raise consumer awareness of their fundamental rights, such as the right to a legal guarantee and the right to claim. This can be achieved by a minimal change in the legal framework that obliges traders to inform in writing, via a notice board or other appropriate means, about the existence of a two-year legal guarantee of compliance with the sales contract. This can have a positive impact on consumer confidence and would help Bulgaria catch up with the EU27 average on the legal awareness pillar of the Consumer Empowerment Index.

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