

The Producer's and Seller's Liability under Bulgarian Law

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A. Introduction

On 10 June 2006 the new Bulgarian Consumer Protection Act¹ (hereafter: CPA) came into force. It repealed the former Bulgarian Consumer Protection and Trade Rules Act² which was operative until that time and transposes the Consumer Sales Directive 1999/44 and the Product Liability Directive 85/374 into Bulgarian law. The provisions of the CPA considerably changed the consumer sales law in Bulgaria. These changes concern not only the situation of the consumers, but also of the sellers and the producers.

B. Various Regimes for Sale Contracts

Depending on the numerous particularities, several regimes for different kinds of sale contracts apply. As regards B2B-contracts, the general civil regime of Art. 183 et seq. of the Obligations and Contracts Act (hereafter: OCA) applies, along with the specific provisions regarding the commercial sale and purchase under Art. 318 et seq. of the Commercial Act³ (hereafter: CA). While B2C-contracts are regulated by the CPA, cases of non-business-contracts are only governed by the general civil regime of the OCA. The Convention on the International Sale of Goods (CISG) is applicable to international commercial sales contracts.

C. Rights of the Buyer under the CPA and OCA

The rights of the buyer in cases of flaws or non-conformities in the purchased good are regulated by the both OCA (Art. 193 et seq. OCA) and by the new CPA (Art. 104-142 CPA). In order to clarify the differences between the situation under the OCA and the CPA, a comparison is made with the previous regulation of the OCA which used to be applied to consumer sales and “non-consumer” sales.

I. Difference between Flaw and Non-conformity

The OCA uses only the term “flaw” (Art. 193-199 OCA), while the CPA uses the term “non-conformity” instead. Both terms have to be thoroughly analysed in order to identify the differences between them.

¹ Prom. State Gazette (SG), No. 99/2005, am. SG No. 30/2006.

² Prom., SG No. 30/1999, repealed SG No. 99/2005.

³ Prom., SG No. 48/1991, latest amendment SG No. 104/2007.

1. Flaw under the OCA

According to Art. 193(2) OCA, a flaw is present where:

1. the goods are unfit (in part or in full) either
 - a. for “the use provided for in the contract”, or
 - b. for “the ordinary use”; the ordinary use is a criterion only if there is no explicit arrangement as regards the quality of the goods. In case of generically defined goods, Art. 64 OCA can be applied, and where the good is individually defined and no “average quality” thereof can be defined, its fitness is judged on the grounds of “the purpose of the contract, the established practices and the good faith” (Art. 20 OCA).
2. Or, due to this specificity (deviation from the average quality, or from the tacitly agreed, or from the ordinary quality) the price of the goods has been reduced. This second hypothesis obviously contains the idea that the goods will form the subject of a subsequent sale.

2. Non-conformity under the CPA

According to Art. 106 CPA, non-conformity is present where the goods:

1. do not comply with what has been agreed between the parties. This is the case when the goods:
 - a. do not possess the characteristics agreed by the parties (Art. 106 first line, sentence 1 CPA); or
 - b. are not fit for the particular use for which the consumer bought them (Art. 106 third line CPA); this particular use having been stated by the consumer at the time of the conclusion of the contract, and the seller having agreed to sell them for this use; or
 - c. do not conform to the description the seller has given by way of a sample or a model (Art. 106 second line CPA).
 - d. do not conform to public statements as regards the goods’ specific characteristics described in advertisements or to statements as regards the goods’ qualities originating from the labelling thereof (Art. 106 forth line CPA).⁴

⁴ These latter statements can be made “either by the seller, or by the producer, or by a representative thereof”.

2. Are not fit for the ordinary use of goods of this type (Art. 106 first line, sentence 2 CPA); or do not possess the ordinary qualities and characteristics of the goods of this type (Art. 106 forth line CPA).

The comparison between the terms “flaw” (OCA) and “non-conformity” (CPA) shows certain differences. Most of these differences are however only terminological in nature. While the OCA uses broader definitions, the CPA defines “non-conformity” more detailed and includes certain hypotheses in its definition which the OCA does not regulate explicitly. The only essential difference between “flaw” and “non-conformity” can be found concerning the reduction in price. While under the OCA this issue is a sufficient condition for “flaw”, the CPA is silent in this regard. Actually, this seems to be a logical approach. The OCA’s thinking is (somewhat archaic) that goods have a long life and that there is a possibility that they will be resold several times. In contrast, the CPA’s concept is that (consumer) goods have a comparatively short life and that they will not be resold by the consumer.

However, within the meaning of the CPA only, a “non-conformity” is also present if the responsibility for an installation is borne by the seller and the goods have been installed improperly or for improper installation by a consumer due to incorrect instructions for installation (Art. 106 forth and fifth line CPA).

II. Situation for the Consumer under the OCA

1. Flaws under the OCA

The OCA, which was also applicable to consumers before the CPA came into force, distinguishes between obvious and hidden flaws, considerable and inconsiderable flaws, and flaws known or unknown to the buyer.

a. Obvious and Hidden Flaws

According to the OCA, there are two types of flaws, the obvious and the hidden ones (Art. 194 OCA). An obvious flaw can be noticed in the course of “an ordinary inspection”, while the hidden flaw is identified in the course of a specialised or long-continued use of the good only. This division into obvious and hidden flaws results from the general regulation of sale in the OCA. The Consumer Protection and Trade Rules Act (repealed)⁵ had no special regulation on these matters, and because of that, the general regime of the OCA was used while the

⁵ Prom., SG No. 30/1999, latest amendments SG No. 30/2006, repealed SG No. 99/2005, the repeal coming into force on 10 June 2006.

Consumer Protection and Trade Rules Act was operative.⁶ The seller has to receive “immediate” notice of the obvious flaw; otherwise the good is deemed to have been approved. The hidden flaw has to be notified to the seller immediately after it has been identified or the buyer loses his rights. Under the CPA this differentiation almost lost its significance for consumers. It is replaced by another classification of non-conformities – those which are known to the consumer and those which are not known to him.

b. Considerable and Inconsiderable Flaws

According to the OCA, only a considerable flaw gives the right to terminate the contract (Art. 87(4) OCA). The inconsiderable flaw can only result in a claim for price reduction, replacement or repair. However, every flaw provides the buyer with the right to claim damages. In practice, the legal consequences of the flaw being either “considerable” or “significant” are the same under the OCA and the CPA.

c. Known and Unknown Flaws

If the buyer is aware of the flaw (regardless whether it is obvious or hidden) at the time the sales contract is concluded, he may neither invoke this flaw later nor draw rights from it. The burden of proof for the buyer’s knowledge lies with the seller (Art. 155(1) of the Bulgarian Civil Procedure Code (hereafter: CPC)).⁷ If the seller is aware of the flaw and has intentionally failed to disclose it, the period during which he is liable for the flaw is extended (Art. 197 OCA) and the buyer has no obligation to notify the flaw (Art. 194 OCA).

2. Rights of the Consumer under the OCA

Under the OCA the consumer had, in the event of a flaw, the right to terminate the contract, to have the purchased price reduced, to claim repair of the good or to seek replacement. He could claim each of these rights at his own discretion, without observing any consecutive order. Apart from the rights mentioned, the consumer could always claim compensation for the damages he has suffered. Under the CPA, the consumer has the same rights; however he cannot freely choose the order of his rights.

3. Limitation Period under the OCA

The limitation period for goods under the OCA is six months. It begins with the delivery of the good. In the course of these six months the flaw must have manifested itself and the seller

⁶ From 3 July 1999 until 9 June 2006.

⁷ Prom., SG No. 59/2007, effective since 1 March 2008.

should have received notice thereof. The limitation period is three years if the seller was aware of the flaw and intentionally did not disclose it. The limitation period may be prolonged or shortened if the parties so agree (Art. 197(1) sentence 3 OCA). However, in B2C-relationships the possibility to shorten the period is excluded now by virtue of Art. 111(1) CPA.

III. Situation for the Consumer under the CPA

The rules for the consumer sales stem from the general provisions of the OCA (Art. 193-199 OCA) and the special provisions of the CPA (Art. 104-129 CPA). As already mentioned before, the CPA is only applicable to B2C-relationships and is *lex specialis* concerning this type of legal relationships. In cases of non-conformity of the goods with the contract the consumer has only rights against the seller and not against other persons in the contractual chain.

1. Non-conformity under the CPA

a. Known and Unknown Non-conformity

The CPA does not divide non-conformities into obvious and hidden ones. Under the CPA it is decisive whether the consumer of the contract was aware or could not have been unaware of the non-conformity at the time of the conclusion (Art. 109 CPA). At first sight it seems that the CPA *mutato nomine* envisages the same differentiation into obvious and hidden flaws, which is regulated in Art. 194 OCA. However, this is not the case. Art. 194 OCA requires that the buyer should examine the good, and when having identified an obvious flaw, immediately notify the seller thereof otherwise the good is deemed to be approved. Art. 109 CPA does, however, not impose the obligation on the consumer to examine the goods or to notify the seller. Thus, a considerable difference exists here between the CPA and the OCA.

b. Significant/Considerable and Insignificant/Inconsiderable Flaws/Non-conformity

Both the CPA and the OCA foresee the differentiation between considerable/inconsiderable (OCA) respectively significant/insignificant (CPA) flaws or non-conformities. The new CPA does – despite the different wording – not introduce any changes with regard to this aspect (see Art. 114(3) CPA and Art. 87(4) OCA).

2. Rights of the Consumer under the CPA

According to the OCA the buyer has – in case of a flaw – the four aforementioned rights, and, additionally the right to claim for damages. Under the CPA the consumer has also the same

rights: termination, price reduction, repair, and replacement. Along with these rights he again has the right to claim for damages, which can be added to any exercised right (Art. 113(4) CPA).

The difference between the remedies of the OCA and the CPA is that the latter imposes limitations on the consumer's choice, while the buyer under the OCA has an unlimited choice of rights. Under the CPA the consumer has to exercise his rights in a fixed consecutive order ("cascade" claiming). Thus, the consumer is initially entitled to claim either repair or replacement; i.e., in the first place the consumer does not have the right to reduce the price or to terminate the contract (see Art. 112(1) CPA). However, the latter rights can be exercised when the repair or replacement have been refused or have not been performed within one month following the request (regardless the number of attempts, see Art. 113(1), (2) and Art. 114 CPA). It should be added that the repair and the replacement must be free of charge (Art. 113(3) CPA) and that he has in any case (regardless the outcome of the repair or replacement) the right to claim for damages (Art. 113(4) CPA). The consumer cannot ask for repair or replacement when they are impossible or disproportionate. In cases of insignificant non-conformities only price reduction is available to the consumer (Art. 114(3) CPA – analogically, Art. 87(4) OCA).

3. Limitation Period under the CPA

The limitation period under the CPA is two years. It begins at the time of the delivery of the goods. In the course of these two years the seller is liable for any non-conformity of the goods. Although there has been no court practice in these matters until now, it is the author's opinion that where the seller has intentionally failed to disclose the non-conformity, the general regulation of Art. 197(1) sentence 2 OCA applies and the period will be extended by one more year. This two year limitation period may, as already mentioned, be extended, but not be shortened (Art. 115(1) in combination with Art. 111(1) CPA). The limitation can be extended due to the time needed for repair, replacement or negotiations between the parties (Art. 115(2) CPA).

During the first six months after the delivery there is a rebuttable presumption that the non-conformity already existed at the time of the delivery, unless the presumption is incompatible with the nature of the good or the nature of the non-conformity (Art. 108 CPA). After that period the consumer has to prove that the non-conformity already existed at the time of delivery (*a contrario* Art. 108 CPA).

4. Commercial Guarantee under the CPA

In case of a commercial guarantee the consumer's rights may only be improved, but not worsened (argument under Art. 111(1) CPA). No improvement of the consumer's right is present if the guarantee limits certain rights while improving or enhancing others, e.g. if the period of free repair is extended from two to five years, but the consumer has to bear the costs of transportation.

Under Art. 117(1) CPA the guarantee may be provided either by the seller, or by any participant preceding him in the contractual chain (distributor, importer or producer). The guarantee is binding only on the person who has given it (Art. 117(2) CPA). The consumer may claim his rights only against the issuer of the guarantee. However, the guarantee does not release the final seller from his statutory obligations, even where the guarantee is totally compliant with the consumer's statutory rights. In this case the consumer may choose between his statutory rights or his rights stemming from the commercial guarantee.

It should also be pointed out that, although the commercial guarantee has to be given in writing (Art. 118 CPA), the failure to observe this form does not result in the invalidity of the guarantee (Art. 121 CPA), and thus might only create difficulties in proving the consumer's rights.

D. Raising a Claim

Under the CPA, the claim consists of raising the non-conformity before the seller, in combination with seeking any of the rights possibly arising from the non-conformity. The claim is an attempt at the voluntary settlement of the dispute between the consumer and the seller. At the same time the claim is also a prerequisite needed for the consumer to exercise his right of termination or price reduction (Art. 114(1) CPA) through the court. However, the claim is not a prerequisite needed for the consumer to seek repair or replacement of the goods (Art. 113, and *a contrario* from Art. 114(1) CPA).

The claim under the new regulation is similar to the notification of a flaw under the previous regulation, the latter notification also being a prerequisite for claiming one's rights. However, the raising of the claim does not prevent the consumer from bringing a case before a court (Art. 129 CPA). This provision is aimed at making it impossible for the seller to protract the decision on the claim until the expiration of the general limitation period. The claim must be raised within two months after identifying the flaw, but not later than two years following the delivery of the goods.

According to the OCA, the notification has to be given "immediately". However, in return, the notification may as well be given after the limitation period has expired. This would be

essential only in the rare case in which the flaw is identified on the last day of the guarantee period, and the notification thereof is given on the next day (the limitation period has already expired). As the claim (unlike the notification) should not necessarily be raised “immediately” – it should be raised within two months of identifying the non-conformity – it is reasonable for the claim to be limited to the maximum period of two years after delivery. The actual result in practice would otherwise be an extension of the period of liability of the seller by two months, and thus, the guarantee period, which is an extended one in itself, would become two years and two months instead of two years.

E. Respondent

The consumer is of course entitled to claim against the final seller any right resulting from the non-conformity of the goods (Art. 105 et seq. CPA) and from the seller’s commercial guarantee (Art. 117(2) CPA).

The consumer does not have a direct claim against the producer for non-conformity of the goods: he can only claim rights against the producer inasmuch as such rights originate from a producer’s commercial guarantee.

The producer is in principle only liable for damages caused by defective goods under tort law. In these cases the consumer must conduct proceedings against the (Bulgarian) producer for this kind of damages. The consumer has no rights against the seller, the importer and the distributor for this kind of damages (argument under Art. 134 CPA). If the producer is not situated within the territory of Bulgaria, or the claim against him may not be brought before a Bulgarian court, the producer is not released from liability. However, these circumstances involve the seller, the importer or the distributor.

In addition, the seller’s receivables originating from satisfying the consumer in relation to the non-conformity of the goods may as well be claimed against the producer (Art. 116 CPA). Although the law does not contain an explicit text thereof, the seller may as well claim against the producer his receivables resulting from satisfying the consumer for the damages resulting from a defect, the liability for which is borne by the producer (*analogia legis* from Art. 116 CPA).

Importers and distributors are also not directly liable to the consumer for the non-conformity of the goods. Such rights of the consumer against these persons may also arise only if they have been given a commercial guarantee.

F. Right of Redress

The legal basis for the final seller's claim of redress arises from one single provision within the CPA, namely Art. 116 CPA.⁸

I. Respondent

The respondent to the final seller liable to the consumer is “the person who has caused the non-conformity (of the consumer product)”. Although this clause is supposedly clear in its wording problems can arise in many cases as the non-conformity could be traced back to a number of reasons. Thus those liable could, for example, be each member of the contractual chain who:

- has stored the goods incorrectly or has stored the goods beyond their expiration date and thereafter brought the goods into circulation, and in doing so has failed to mention, or has misled as to the circumstance that the expiration date has passed;
- the producer, if he is liable for the non-conformity;
- the importer, who is to be treated in the same manner as the producer or the major distributor who distributes the goods under his trademark and is likewise to be treated in the same manner as the producer (Art. 104(2) CPA).

Amongst one another these persons are not, however, jointly liable, but rather separately. This means that the final seller has to make an assessment as against whom his claim is to be directed. In a claim against the incorrect person the final seller at least risks the payment of the court costs.

Art. 116 CPA creates uncertainty regarding the question of who is in a “direct or indirect contractual relationship” with the final seller. With this rather poor expression the legislator practically reproduces the requirements of the Directive 99/44 (Art. 4 of the Directive 99/44) that the respective respondent has to be a member of the contractual chain. Therefore, the “direct or indirect contractual relationship” does not have to be in existence at the time in which the claim is brought (as appears to result from the CPA); a relationship is sufficient, whether it be past or implied.

However, the claim for redress ends with the actual producer. The producer's distributor should then remain exempt from claims of redress. An alternative solution would be an over-

⁸ Art. 116 CPA: The seller, who is liable for a non-conformity of a consumer good, has a claim for redress of the losses suffered against the person who caused the non-conformity if the seller is in a direct or indirect contractual relationship with such person, as also against the producer, if he is liable for the non-conformity. Clauses in the contract are void if they exclude or restrict such rights of the seller.

interpretation of the statute (which alludes to members of the contractual chain and to the producer – as the end of the chain). Such a solution would lead to a complete escalation of the liability of the entire manufacturing process. Such a solution eventually means that virtually a great part of the industry should be liable for claims for redress from each individual final seller.

II. Losses Covered

The claim for redress covers only the losses suffered excluding the lost profits. This limitation is unusual for the Bulgarian legal system, and somewhat alien thereto (Art. 82 OCA⁹); from an economic perspective it however appears to be reasonable. Covering all losses (thus including lost profits) could cause an unjust and exaggerated liability of the respondent, which would lead to an (also not justifiable) indemnification of the final seller. The final seller is also a merchant and also ought to carry his share of the risk; this is especially convincing from an economic perspective when one considers the amount of the retail mark-up.

A peculiarity of the Bulgarian legal system on this aspect has to be mentioned. According to frequent case law “losses suffered” are only those losses actually suffered i.e. the upcoming – when also expected with absolute certainty – damage is not capable of being compensated. This has the consequence that the final seller not only ought to owe something to the consumer in order to take action for redress, but shall also have actually paid this “something”. This peculiarity can lead to possible solvency problems for the final seller, although the losses suffered also include the statutory interest on the debt (Art. 86 OCA) and thus this can also be subject of the claim for redress.

Furthermore, the principle of mitigation of loss is also applicable here – the redress would be rejected if the final seller does not have to satisfy the consumer’s claim or not in the respective amount. This of course does not mean that the final seller should always wait until a judgment goes against him; on the contrary, a legitimate claim from a consumer is always – and without additional costs – to be satisfied, therefore the respective claim for redress is also to be permitted.

III. Commercial Guarantee and Redress

At first glance the question of redress is not present with the commercial guarantee. The terms of commercial guarantees are of course to be met by the issuer thereof. If the commercial

⁹ Art. 82 OCA: The damages shall cover the losses suffered and the loss of profit as far as they are a direct and immediate consequence of the non-performance and could have been foreseen upon the arising of the obligation.

guarantee is given by the producer the discussion cannot at all be of redress as the producer is in any case the “end of the line” for liability. If the guarantee is given by a wholesaler or final seller this only serves the increase of their turnover and therefore ought not to be compensated by a predecessor in the contractual chain (*cuius commoda eius incommoda*).

However, there are indeed many situations in which a claim for redress appears justifiable. This is always the case where the content of the commercial guarantee accords with the content of the statutory liability for products not in conformity with the contract. In doing so it is irrelevant as to how the consumers’ claims have been satisfied. As long as the economic value of the performance from the commercial guarantee corresponds to, or covers the value of the (statutory) satisfaction of the claim then a claim for redress ought to be allowed.

Even clearer are the situations in which the predecessor in the chain of distribution (producer, importer, wholesaler) forces the final seller to give a guarantee or to pay for a commercial guarantee issued by a third party. In these situations, as long as the commercial guarantee is the *economic* equivalent of the statutory liability for the non-conformity, they have to ultimately be economically borne by the party who would otherwise bear the (statutory) responsibility for redress.

However, in this respect the case is problematic in which the final seller – unsolicited by a predecessor in the chain of distribution – voluntarily issues a commercial guarantee with a benefit exceeding the statutory minimum. In these cases the aforementioned principle of “*cuius commoda eius incommoda*” ought to apply and the issuer of the guarantee should bear the costs himself. However, not to 100%, but just to the fraction that exceeds the economic equivalent of the statutory liability. Bearing the costs of the commercial guarantee to 100% would arise, for example, in the case that the duration of the commercial guarantee exceeds the two year period as provided by statute and the non-conformity of the contract first appears after this two year period.

IV. Redress Applicable to Certain Types of Contracts only

The liability for redress for the members of the contractual chain is expressly regulated in the matter of the purchase of consumer goods. This *sedes materiae* allows for the reasoning that it concerns a *lex singularia* of which *interpretatio extensiva* would not be acceptable. In actual fact it is not the case. The liability for redress, although tailored to the purchase of consumer goods, can be applied to further types of contract in the by means of *analogia legis*. In doing so, for the application of the *analogia* it is not of primary significance that a consumer contract is concerned. It is rather more significant that a chain of distribution is concerned.

Following these contemplations the question is however, for which type of contracts (apart from sale) can one speak of chain of distribution. With contracts for services one cannot speak of a “chain of distribution” in a strict sense as the service – in its final form – is only made available by the direct provider of the service; in this form the service did not previously exist. As such, where services are concerned it is not possible for one to speak of a “chain”. However, this is not so clear. Materials, know-how, intellectual property etc. are “installed” in the performance of many services. The non-conformity of the service can therefore not be traced back to the actions of the provider of the service himself, but rather to the characteristics of the parts to be “installed”. In these cases it is to be further examined whether or not the provider of the service has taken the necessary care attributable to the ordinary tradesman. If no accusations were to be made against the provider of the service then the liability for redress by analogy can be applied here; conversely – if the provider of the service is responsible for the poor choice of the parts and auxiliary materials then he can not claim for redress.

The liability for redress can also be applied to consumer purchases of licences *analogia legis*. This is to be particularly noted as, in terms of the CPA, only the *res corporales* are to be understood under “goods” (Art. 104(3) CPA).

G. Assessment

I. Flaw and Non-conformity

“Flaw” under the OCA, on the one hand, and “non-conformity” under the CPA, on the other hand, are almost identical in their substance. However, the OCA does not regulate the cases of incorrect installations of the purchased goods, while the CPA extends the seller’s liability to these cases as well. The division of the flaws into obvious and hidden ones, which is of great practical importance under the OCA, is without significance under the CPA. The differentiation of the flaws/non-conformities into considerable/inconsiderable respectively significant/insignificant and into known and unknown ones are common to both. In practice, the legal effect of these differentiations is the same in the OCA and in the CPA. The OCA regulates those cases in which the flaw in goods either damages the goods itself or impedes their use or reduces their price. The CPA regulates the situations in which the purchased goods are not in conformity with the contract; however, it does not deal with those hypotheses in which the non-conformity reduces the price of the goods. This short review shows that, as regards the hypotheses in which the seller’s liability arises, ultimately the CPA is more advantageous to the consumer.

II. Legal Consequences under the OCA and the CPA

The type of the buyer's rights are the same under the OCA and the CPA. However, this uniformity is only a seeming one. According to the CPA, the rights of the consumer are considerably limited in comparison with those under the OCA. The limitations concern the consecutive order in which these rights may be exercised. Although limited, the rights of the consumer are expanded to the extension of the limitation periods (six months under the OCA and 24 months under the CPA). This prolongation of the limitation period goes along with the mandatory nature of the CPA regulation, which allows only the extension of this period.

The scope of liable persons in cases of a flaw/non-conformity of the good is the same under the OCA and the CPA and comprises only the final seller. Under the CPA the buyer may have rights not only against the final seller, but also against persons preceding him in the contractual chain providing that one of them has given a commercial guarantee. However, this does not constitute a change for the better in comparison with the previous regulation of the OCA. The CPA only specifies that such a commercial guarantee may be given and regulates the consequences thereof. However, such a commercial guarantee may as well be given under the previously operative regime of the OCA (Art. 9 in relation to Art. 22 OCA). In this case, what the OCA tacitly allows is explicitly specified by the CPA. Thus, there is no essential difference between the two Acts in this regard.

III. Right of Redress

The right of redress is regulated in the materials on the purchase of consumer goods. These can be applicable against the parties preceding the final seller until the producer. The damage suffered (*damnum emergens*) can be compensated, however not the lost profits (*lucrum cessans*). A claim for redress can also be applicable due to a satisfied guarantee, insofar as the guarantee corresponds with the statutory guarantee in its extent and duration. The right of redress is only regulated for the purchase of consumer goods and indeed only for the cases of non-conformity. The right of redress can however also be approved for a number of special cases of service contracts and licensing agreements via an analogous application.

H. Conclusion

Considering what has just been said about the CPA and the OCA it can be concluded that the rights of the consumer under the CPA, compared to the buyer's rights originating from the OCA's general civil regime, are of the same type. Under the CPA the consumer may exercise

them in a strict consecutive order only but he has the advantage of the longer limitation period of two years.

This conclusion gives the impression that the legislator has taken two steps forward and one step back. The new regulation of the CPA cannot be purely qualified as established only and solely in favour of the consumer. It takes account of the traders' interests as well, this is however not a weakness, but evidence of its balance.