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Legal and administrative means of consumer protection system

1. *Consumer Protection System* is an obviously much broader category than *Quality Protection System,* the latter being an integral and almost the most important part of the former, functioning with optimal efficiency when set in the frame of a Consumer Protection System organized according to given social and economic conditions; this, naturally, presupposes the existence of a properly organized flexible and comprehensive Consumer Protection System.

The legal problems related to Consumer Protection System have been dealt with by legal science extensively, although it is the evaluation of classical methods and means of civil law that usually stands in the foreground of these studies. Less comprehensive is, however, the research on other legal means of quality protection system, especially those presenting their syntethized relationships with economic policy. There can be no doubt as to the progress' needs to set „quality protection" studies in the stricter sense of the term into the wider frame of consumer protection, which is seen to be striven after within the main stream of research called „Socialist Company".

2. In accordance with its title, the present study is concerned not only with aspects of Civil Law, its profile actually being different. As a matter of fact, also other legal institutions of the fields treated before are surveyed, mainly with the aim of arousing interest in them. Corresponding to this, the paper has a threefold division: I. Certain legal institutions and means *serving consumer protection in general;* II. Certain legal *institutions serving quality protection in general;* III. Specific institutions of *Civil Law* and legal solutions serving quality protection in a direct manner.

It is almost needless to stress the fact that in spite of a certain degree of separability there is a very close structural and in the efficiency manifested connection between these three fields, the boundaries are often bulrred, making the discussion of the individual institutions or solutions within one group or the other arbitrary.

I.

CERTAIN LEGAL INSTITUTION AND LEGAL MEANS SERVING CONSUMER PROTECTION IN GENERAL

1. Even the statement included in the Introduction has pointed out that *Consumer Protection System is extremely comprehensive and, at the same time, complex category.* A well known fact of economics is that consumption is a peripheral sphere of economic activities, being on the final account the

objective of all production, whereas the consumer is the user of the social product, thus being the one for whom production is being done. The *final objective* of Consumer Protection System is described by the name itself; there is no need for any etymologycal performance. The means of realization are, however, wide-ranged and heterogenous, if we regard their economic-political, economical or even legal instrumentalia, simultaneously showing an ever expanding trend. Concerning the consumer protection topics of economical or economic-political character it will be sufficient to refer *e. g.* to the problems of economic-interest systems, or the questions of price-policy, trade-policy, market-policy, marketing, market-organization, or the limitation of competition, including also the studies of consumer psychology, a discipline known in Hungary mainly as *„buyer's psychology"*. The concept is a collective one also from the point of view of *legal approach:* as regards the efficiency of the system, the institutions and solutions of property law, of administrative-organisational and processual law, as well as those of directly sanctioned (criminal law, regulations pertaining petty offences or economicpenal) character have equal importance.

2. The fact that economic and legal problems of consumer protection came into the foreground has been a phenomenon of the last one or two decades throughout the World. Lajos Vékás, a Hungarian author said on the Pages of Jogtudományi Közlöny in November 1978 with a slightly dramatic touch (an attribute used by the author himself): „A new ghost haunts the developed capitalist world: the ghost of consumer protection". The same is said by dr. Ewa Letowska (Warsaw) in her paper „The protection of consumers from the point of view of legal policy": „It would be a mistake to regard the endangerment of consumers' interests as a phenomenon having turned up suddenly in our days. Both the various traditional enforcement agencies (public health authorities, quality protection authorities) and the long-established penalisation of cheating and speculation, as well as the first fundamentals of the co-operative movement, had their roots in the firm opinion that there was a need to protect the consumers' interests. The slogan of consumer protection has become one of the most actual problems of legal-policy in recent times only, but then on an international scale, as evidenced by numerous legislative iniciatives, changes in legal interpretations and institutional solutions on state and communal levels." (Panstwo i Prawo, 1978. No. 4.)

It can be rightly stated that as regards legislation, economic-political evaluation and, consequently, scientific research, the institution of consumer protection has been given an ever increasing attention in the socialist and the capitalist societies alike.

The development of consumer protection system and the creation of conditions of an efficiently functioning consumer protection system have obviously different motivations in socialist and capitalist economic systems. Needless to say, the development of a proper structure and the assertion of its system of means could be said to follow almost naturally from one of the basic functions of *socialist state,* as it affects all members of the society in the strictest sence of the word, giving a significance to this problem which is not only of economic-political character.

On the other hand, in the case of *developed capitalist countries,* the state preference given to consumer protection in essentially justified by the fact — as it has been pointed out in a very persuasive manner by Lajos Vékás and

amás Lábady — that a certain balancement of the unequal positions of mo-opol-capitalist producers on the one side and of consumers being at their ercy on the other is an *economic necessity:* it is a means for stabilizing ca-italist production conditions, perhaps not the most significant one, but one egarded as very useful. In her paper cited before, adds to this that „the clas-ical system of consumer protection turn inoperative as a consequence of the arkets' inperspicuity, and of the lack of equal chances between consumers nd their contracting parties — at least in a sphere where the mobilization of protecting measures and mechanisms necessitates personal activities by the party interested."

Anyhow, mass legislation in capitalist countries is related to the fact mentioned before. Related acts and legislations have been passed — only to name a few, but the most important ones — in the United Kingdom (1973), in Japan (1968), in Scandinavia (firstly in Sweden) in 1970—71. We should also mention the ABG-Gesetz passed in 1976 and in force since 1.4. 1977, and the UNFAIR TRADE TERMS ACT effective since March 1977 in the USA, where Ralph Nader's book has been of paramount importance in the discovery and approach of the topic. Lastly, we should mention the new consumer protection law of Austria in force since October 1979. The Consumer Protection Charter (543/1973) of the Council of Europe and its related Recommendation No. 705 should also be mentioned in this connection.

3. From what has been said before it follows that we feel obliged to present *Hungarian Legislation,* namely in what relation and depth it realizes the protection of consumers' interests. Completeness cannot be aimed at in this paper, the primary principle in selection being to deal mainly with the related rules of recent legislations.

Already at the beginning the question raises „is there a legislation for consumer protection in socialist countries at all?". We fully agree with the definitively positive answer given by Endre Lontai, the more so because we arrive in our study to the same conclusion although in other contexts. As Lontai has put it: „... we have a consumer protection law competitive as to its contents (and often in its instrumentalia, as well). (A regrettable fact is, however, that we are not always skilful enough to give it a proper propaganda.) The differences are mainly in terminology and approach, because the topic dealt with by the western „consumerist" literature has been very extensively discussed also by the socialist legislative and legal literature under the heading „quality protection". The author continues by pointing out — that „the difference is of course not only of terminological character. The difference in approach could be traced back partly to the (steadily decreasing) differences in supply, to different consumption models, but primarily to the different social structures, and also to certain differences in the respective legal system. Thus, in socialist countries the state direction and supervision of economic organizations (establishments, companies) based on social (state) property and performing planned economic activities allow several „direct" interferences, namely in the interest of consumers, which have to be compensated by necessarily different (and perhaps less efficient) legal methods in capitalist countries based on market economy." (Lontai, E.: Fogyasztóvédelmi aspektusok az iparjogvédelem területén, *Állam- és jogtudomány,* 1979. december (3) (Some other aspects of the same topic are dealt with also by the quoted paper of dr. Ewa Letowska. We will return to this later.)

4. As regards the Hungarian legal regulations, the Internal Trade Act, the Code of Civil Law, the Code of Criminal Law as amended (inclusive the legislations concerning petty offences) have the greatest principal and practical significance. In *this part* some legal items will be dealt with which are not directly of quality protection character, but none the less serve consumer protection. Those of directly quality protection character will be discussed in the following part of our paper.

A) Doubtlessly it is the Acta I of 1978, the so called *Internal Trade Act,* which has the utmost importance with regard to the legal regulation of our consumer protection system. It is not only so because its Chapter IV bears the title „Protection of Consumers' Interests". *Beyond Chapter IV,* the fundamental concept of this Act — beside defining the *responsibility of supply* — the protection of consumers' interests, so that *it can be observed in the whole of this Act.* As a matter of fact, this legislation asserts the trade-political aspects of consumer protection. And it does that in a very laudable way so that — as stressed by Gábor Dobos in his paper published in *Magyar Jog* (May 1978) — the protection of consumers' interest has its beginning not at the time when a consumer's complaint is being settled by the trade. The trade has to observe the consumers' interests in all phases of the trading process, *i. e.* from ordering goods through selling them to the settling of possible consumers' complains.

In order *to demonstrate this requirement,* attention need be called to certain *legal principles.* There is a provision requiring that parts and accessories must be provided continously by the manufacturer, or importer throughout normal useful life of goods; simultaneously with the marketing of durables, the conditions of maintenance and repair have to be provided (Art. 17, Para. /1/ and /2/).

Art. 22, Para. (1) specifies in a very detailed way the obligations of information to be given to buyers. Art. 25 tries to solve by legislation a critical and well-known problem by forbidding wendors to ask for or accept any separate benefit or advantage. It is seemingly of administrative value only, but from the point of view of raising the cultural level of trade, Art. 33 is likely to have a positive effect by establishing, the so called „the buyers' booklet" (complaint-book).

These were only random examples of rules directly serving the consumers' interests in the frame of Internal Trade Act. It should be noted that some other items of the Act, such as the provisions concerning standards, or directly the protection of quality, or protecting honest trading as well as the provisions relating to the so called forum-system, will be dealt with later. All the same, these selected principles have proven that — as Gábor Dobos has put it — this basically sectoral legislation does not bear the mark of a „status-symbol".

Would someone classify it as „prestige" legislation, he also would have to admit that in its final outcome the act will serve the *prestige of consumer protection.*

B/a) Among the consumer protection provisions of our *Civil Code* as amended by Act IV of 1977, first of all a *new* provision of Art. IV. Para. (2) should be mentioned. According to this: „the law prohibits dishonest trading, especially the abuse of economic superiority, furthermore the aquisition of illicit profits". However surprising it may sound, this requirement has been formulated in codification and in such form for the first time in our legislation.

It should be especially stressed that by setting this principle in the introductory provisions of Civil Code an important step has been taken, not only because it defines a general requirement of economic ethics with a fundamental objective and forced. It is not a declarative principle of law, but — we hope legal practice will prove it — a normative rule offering a direct base — in case of infringin of this rule — for using „classical" sanctions of civil law, beside the well-known sanctions of penalizing character —, e. g. nullity, indemnification etc.

b) Art. 209 actually specifies a nominated case of the general prohibition contained in Art. 4, Para (2), giving provisions allowing social and individual actions against *General Terms of Contract* in case of certain but very extensively established factual elements. The importance of this *new legal principle* cannot be overestimated. In order to be objective we should note that in the western countries there is a certain degree of consumer protection provided by definite legislation or legal practices against items detrimental to the interests of public. (A short survey of this is given by the paper of Győző Varga on the pages of the 1978. April issue of Magyar Jog.) Following, however, from the capitalist structure of economy, and in natural synchron with it from the way of legal thinking, the prohibitive solutions of legislative or legal character are inherently of limited potential, mainly because in the last analysis these are principally opposite to the idea of the liberty — or freedom — of contracting or defining contracts' contents. A very interesting remark in this relation has been made by Vékás concerning the solutions used in Sweden, which could be otherwise regarded as very positive: „The unanimous critic of scientific statements and evolutions have been of great help to Swedish legislators in recognizing as the first in Europe: under the present conditions of mass-production and inevitably stanardized trade contract, the only protective means of classical contractual law (contractual freedom, almost complete disposivity), the „fire-extinguishing" work of the courts are by far not sufficient to prevent possibilities of abuse of these forms of contracts; new, modern and effective legal instruments are necessary." Concerning the problematical situation of regulation in capitalist countries, Letowska remarks, that „the ignorance of consumers and the weakening of their positions mean at the same time an obstacle to the assertion of means serving as balancing factors against their endangerment". The consumer is, namely, either ignorant of his rights and possibilities, or has no proper „impact" to enforce them, thus the protective mechanisms represent a merely potential protection".

This short *outlook of comparative law* had but a single aim: to prove that the quoted passage of Civil Code as amended is a *highly modern* solution even at international standards. The provision of possibilities of social or individual inpugnment, and at *legislative level* and *at courts,* is perhaps one of the most important achiement in legal protection of the consumers' interests.

C/a) In the following paragraphs the related provisions of Act IV of 1978, the *Criminal Code* are dealt with briefty. Is should be noted that these are largely rules of direct quality protection character; in spite of this, and because of relationships of a more general character, the rules will be mentioned here, in the Part dealing with the protection of consumers' interests.

The concept of *product of inferior quality* is given by Arts. 294 and 137, Para. (9). From the point of view of judging the behaviour, *significant quantity or value* is of definitive importance, and the delineation of this will be deli-

neated by the practice of courts, as it has been put in the ministerial preamble of the Act.

Art. 295 penalizes false certification of quality. Several rules give provisions for certifying quality to protect the consumers' interests. Concerning the protection given by criminal law, not all date of quality certifications enjoy such protection, but only those which are of importance relating to the quality of product.

Finally, the preamble to Criminal Code states in relation to Art. 296 that false product marks deceive the consumers as to the product's origin, thus mostly interfering with their interests. Such acts represent a threat to the position of economic life. According to the legal object protected marking means trade marks, brand marks, manufacturers' name etc. A quality badge can be regarded as a marking when representing not only a classification, but also that the product is a branded article of protected quality.

Obviously, and quite rightly too, the *new legislation* considers qualification such an act a crime justified only if the liable action has involved *products of significant quantities or of significant values.*

b) It follows from what has been said before that actually, our legal *provisions concerning petty offences* sanction several types of behaviour which do not come any more under the category of criminal liability. Thus, as regards our topics, the field of liability for petty offences has been extended by new legislation. Relevant and sanctioned acts of the legislations concerning petty offences are by titles only: defraud of buyers; bribery; preventing the buyer from checking weighings; breaching rules concerning opening hours; abuse with the licence to pursue detail trade; infringement of rules concerning documentary discipline; settling of quality claims not according to rules; omission of giving obligatory receipts or bills; unlawful retaining of goods; interfering with checking of prices, irregular administration of menu and/or drink cards, inappropriate handling of complaint-tooles etc.

A brief glance on this list of titles makes obvious that there are penalizing legal items serving the protection of consumers directly or indirectly.

D) Finally, concerning the system of sanctions a recent enactment, No. 20/1979. (V. 26.) MT, should be mentioned, which has amended enactment No. 20/1973. (VII. 25.) MT on *economic penalties.* A complete presentation is impossible in the frame of this paper, although the newly formulated Art. 2 contains several important items of consumer protection.

Only to mention a few *examples:* economic penalties shall be imposed if the company involved seriously violates or jeopardizes the legitimate interests of the population, especially if the company

— regularly or in significant quantities or in significantvalues produces of markets products of poor quality;

— regarding products of significant quantities or value, gives regularly false statements as to the product's quality or gives certification to this, or fails to observe important rules concerning essential information to be given to consumers;

— markets products regularly or in significant quantities or values with marks not corresponding to said products, or uses product marks suitable for defrauding the public;

— fails to fulfil its obligations to continuously supply parts and accessories, or provide repair services, as stipulated by separate legislation.

Also Art. 2, Para. d/, Subpara. 3 should be referred to, which threatens by economic penalty any organization pursuing economic activities threatening significant interests attached to the protection of quality by violating its obligations defined by a provision of law; or Subpara. 5 penalizing the behaviour when a company has ceased to produce certain articles (parts), thus creating severe difficulties in the supply of goods.

5. Concerning the efficiency of legal means serving the protection of consumers' interests a cardinal question is whether the relevant provisions of law are of *cogent or dispositive* character; or *whether they have imperative or permissive effects.* To put it in a different way: its here a possibility for the parties to come to an agreement to the contrary, or, on the other hand, to permit different solutions in legal provisions of lower levels. Here only the first question will be dealt with. A fact is that the acknowledgement of disposivity can significantly lower or even nullify the value of an enactment passed with the best intentions. With respect to all this we regard as necessary to mention separately Art. 314 of Civil Code which belongs to the *common provisions on breaching contracts.* Viewed dogmatically, the dilemma is a real one. We could think, that since the rules concerning contracts are generally of *dispositive* character, so this is valid also for the system of sanctions threatening the breaches of contracts: this the exclusions and limitation of liability are a principle prevailing both in theory and as a main rule.

On the other hand the general principle of legal dogmatics could be quoted, according to which *cogency* is fundamental in the domain of sanctional systems, and the dispositive character of the provision should be expressed by the law in a given case. There is no need to deal with this dogmatical confrontation here. This would be of no practical use mainly because Civil Code is — at least our interpretation — of „basically dispositive" character; but it is also true that the exceptions contained in Art. 314, — namely that the liability for breach of contract cannot be excluded for damages caused deliberately, by gross negligence, or by crimes, furtheron for behaviour causing damages to life, to corporal integrity or social property, and especially that no legal entity may exclude or limit its liability for breaching contract — have yielded the result that in *this field* of our Civil Law the principle of *cogency* prevails in order to ensure the protection of the most significant interests.

From the point of view of consumers' protection this principle has an equal significance and importance to that mentioned before with relation to the impugnable character of general terms of contract, and this also deserves a positive evaluation in international comparison.

There is a connection with this in Art. 32, Para (3) of Internal Trade Act, according to which a trading organization may not deviate from the consumers' due rights to the latter's disadvantage neither unilaterally nor contractually; we could also refer here to the rules of warranty regulation or of the enactment concerning the settling of consumers' complaints, both of which are of „claudicatively cogent" character.

6. It may seem curious or even strange that two special contracts will be mentioned here from the recent legal institutions and provisions *concerning consumer protection* which were not regulated previously in our Civil Code, namely the *contract for public services* contained in Arts. 387 and 388 and the *travel contract* regulated by Arts. 415 and 416. This selection might seem arbitrary, in our opinion, however, it is a convincing evidence of a trend saiming

at the recognition of consumer protection at a legislative level. The legislative recognition of the fact of the subjects of the public services contract are in the relationship of co-ordination and have equal rights, that is they are contracting parties. The significance of this has to be appreciated properly even if deviating legislative regulations are allowed by the Civil Code itself; it should be remembered, however, that these regulations can only be of legislations of higher levels according to Art. 685, Para (a). On the other hand, the introduction of travel contracts or basic principles into the Act is an evidence in itself of the need of legal regulation of this service concerning so many citizens. This legal regulation has been, in fact, performed at a different level by means of an enactment of Order No. 11/1978. (III. 1.) of the Council of Ministers.

The up-to-date regulation of *public services* in the amended Civil Code should be regarded as very positive even by international standards. This topic increasingly dealt with also the in legal literature of socialist countries. As Letowska has put it: „A paradoxical situation can be observed concerning the legal regulation of public services: these relations also contain certain elements of administrative character (e. g. concerning execution or in the field of unilateral modification of the conditions of services). Although the necessity of democratizing the administration-citizen relationship and decreasing the autoritative and discretional character is generally stressed in arguments concerning these relationships, we are more in inclined, to justify a privilegized autoritative status of a company only because that relationship shows certain elements of administrative legal relations".

7. As quoted before Lajos Vékás in his paper published in the Jogtudományi Közlöny — propounds the question: *is there a demand for consumer protection under our circumstances,* is there a need for a special legal protection of consumers in an economic system based on the social ownership of the means of production where the supply of the population is ensured mainly through state or co-operative organisations. *(This problem has been dealt with in a previous part of this paper but in another context.)* His chain of thoughts continues as follows: Moreover it is questionable whether the study of experiences collected in capitalist countries could be of any use for us. When the differences of principles and pecularities of the topic are kept in mind, such investigations can be doubtlessly successful and necessary for they can promote better understanding of our own problems by offering ideas means and methods to solve them.

We *definitely agree* with this conclusion. Therefore, first we will give a brief survey of some institutions functioning in the *developed capitalist countries* realizing administrative control or social type legal protection of consumers, and then will deal with the Hungarian system of related organizations.

a) In the capitalist countries the activities of *specialized authorities* are regarded as perhaps the most efficient means of consumer protection. The *Swedish* solution is considered today as a classic one, therefore we shall begin with it. Several organizations operate in this field there, with tasks and functions of state and authoritative character. The most important Swedish consumer protection authority is the Office of Consumer-Ombudsman. This authority supervises selling activities and the general conditions affecting consumers. Its jurisdiction is defined by the Act on Means of Selling and Dishonest Contract. The Ombudsman is a high-ranking state official with legal qualification appointed for a definite time for managing the Office's activities with

personal responsability. His office continuously and regularly controls the forms of selling and terms of contracts which are regarded as significant, and also takes measures following reports. It should be noted that the Swedish model is being almost exactly copied by other — mainly Scandinavian — countries, but it is at least considered in all capitalist countries. In the German Federal Republic, the so-called Kartell-Büro is functioning, its main task being to act against manouvres limiting competition, but it serves consumers' interest as well.

In the *United Kingdom,* the Office of the Director General of Fair Trading has been created by the Fair Trading Act of 1973. This office supervises the interest of consumers, similarly — at least partly — to the Swedish Ombudsman.

The Consumer Product Safety Commission has been created by the Consumer Safety Act (1972) in the United States of America. This has an authoritative jurisdiction to specify safety requirements, to prohibit marketing of dangerous products; to order the change or repair of already marketed ones, to inform the public, to develop terms of warranty etc.

Beside these organizations of administrative power we should also mention — even if only by titlessome spontaneous protective associations. The so called Consumers' Associations, established especially in the GFR (Varga), and consumer protection organizations operating in the US mainly by informing the public at large (Lábady).

b) Let us begin the presentation of the *Hungarian situation* with the conclusion. We think that essentially there is nothing to be ashamed of as to its organizational system. We can rightly state that the system of organizations serving the various sectors of consumer protection with state or social characters has been developed in an organized manner. A very important feature is that in very significant questions the *legal protection is ensured by the courts.* The function of the Consumer Ombudsman can be performed by the prosecuting attorney, and this is basically and functionally true despite the humorous saying that the Consumer Ombudsman — from the point of view of his activities — is the same as the public attorney, only it is absolutly different. But let us continue: observing of legal provisions and administrative regulations serving the protection of consumers' interests and social property is controlled by the trade inspectorates; the quality control organisation reports the deficiencies observed to the authorities having power to take measures, initiate procedures etc. (Internal Trade Act, Art. 38, Para /2/ and /3/). As to the social organisations, the people's control commissions of various levels deserve mentioning, one of the most important tematical investigations of which has been the investigation of services rendered to the public. Finally, also the social organisation of various compositions and jurisdictions could be mentioned.

Lastly, a decisive point: mentioned several times before, Internal Trade Act explicitly defines the responsibility of the *Council of Ministers* for the protection of consumers' interests, specifying the related role of the *Minister of Internal Trade* from the sectorial point of view (Art. 36), also having special provision for the very important related runctions of the *Councils.*

Thus, the picture is a very positive one from the *organizational point of view.* On the other hand, an organization *in itself* is merely a frame, and a precondition of efficient functioning. No doubt, there are many things yet to

do. A detailed discussion of the related difficulties and contradictions would hardly be possible within the scope of this paper. One thing is, however, sure, at least for us, namely, that *there is no need* to transplant consumer protection organizations of foreign countries. We have enough perhaps more than enough organizations serving consumer protection. Let us just mention how many institutions may indicate the impugnement of general terms of contracts or the imposing of economic penalties. Also this is referred to by László Sólyom in his paper on protection of environment, where he mentions *„popularis actio"* (Jogtudományi Közlöny. 1978. No. 11). Instead of organizational development, *increasing the weight and efficiency of these organizations* would be of higher importance. This could really serve the protection of consumers' interests concerning the organizational system.

8. Within the topic of consumer protection we will deal in the following with a most interesting suggestion contained in József Pálfalvi's article „Economic Identity of Interests, Legal Dividedness" (Jogtudományi Közlöny, 1978. No. 9.). He points out very convincingly, that in serving intensively the protection of consumers' interests, the — let is call it so — *„protection of producers' interests"* should not be forgotten either. „Why is it so", asks the Author, „that in case of delivery and service contracts between economic organization the non-observance of construction, application, operating specification of the contract, i. e. contract-violating behaviour of the ordering party cannot be penalized the same way as it is done with the supplier of products of deficient quality?" *This idea seems to be very useful.* It is so despite the well-known fact that a legally co-ordinated relationship not necessarily means the identity of interests, and de facto equal rights. And this puts consumer protection into the foreground, *adding more social weight to it.* (Letowska points out in her quoted publication that in passing the Civil Code of the GDR in force since 1. January 1976, the principle has been accepted that the rights of consumer citizen are more extensive in the relation of civil law, whereas the obligations of the contracting parties have to be specified in a stricter way.

According to her opinion a decisive factor in accepting this solution was that the de facto equality of chanches between the parties did not exist, and this need be balanced by widening the consumers' rights and by lightening the obligations of the stronger partners.

On the other hand it is also a fact, that the prevention or sanctioning of practicizing consumers' rights in an abuse-like way is a social interest too.

9. As to the *administrative* (constitutional, administrative) *aspects* of consumer protection a well known and generally accepted concept is that consumer protection, of course in a more narrow sense than it is used today, or more rightly said, „public protection" or „communal protections", historically had been first realized by administrative-legal and organizational means and methods, by regulation of public health, food-protection, market-protection or policing, to quote examples from the widest field possible. The development of conditions of production and distribution, the extraordinary rate of technological-technical progress under today's circumstances, and in connection with these, the enormous increase in social demands and expectations, have made it as a matter of course that also the *field of administrative aspects of consumer protection has dramatically widened.* In this context has written Gyula Eörsi: „The law of consumer protection combines all rules of consumer protection. Here belong *e. g.* the quality protection containing elements of admi-

nistrative, civil law and labour law characters; the separate state organisation of consumer protection — possibly with a separate court (Sweden) —, the creation of associations to protect common interests, the separate law of the general terms of contract mentioned before, the law concerning, deceptive advertising and fradulent contracts etc. (Eörsi Gyula: Contract-law. General Aspects. Lectures. Tankönyvkiadó Bp. 1979).

Thus, there is a world-wide tendency also in this field aimed, at a *complex regulation* of the related problems, so that the legal branches act individually in efficient regulation through their specific methods and sanctional systems, but beside this relative — and sometimes barely recognizable — separation it is their *collective* effect which achieves optimal efficiency of consumer protection system. The validity of this statement could be demonstrated through several related legal institutions. A hardly contestable fact is *e. g.* that the „standard system" which has an outstanding importance in consumer protection features several administrative aspects, but — as it has been presented in other contexts — the effects of civil law can be strongly felt, especially in more recent legal provisions. Also the topic of quality control could be referred to, where beside of its internal company related aspects, the control activities performed by state and social organisations, and again the control exerted by the consumers themselves (by buyer, ordering partner, etc.) different legal methods and means dominate.

From what has been stated in the introduction of this paper it follows that the concept that regards consumer protection as essentielly idendical with quality protection is outdated. We deal with this problem only because certain administrative means of quality protection are often classified as instruments of consumer protection. (This has been done by Lontai, *e. g.* in his referred paper by putting the obligatory markings serving the information of the consumer, the instructions of use, the problems of quality control etc. into this category.) The method of discussion could be justified through the very close interrelationship mentioned before. We would even risk the statement that because of these versatile complexity and close internal relationships it would be practically useless to strive after a rigid separation of legal-dogmatic motivation concerning consumer protection and quality protection, respectively. (Lontai in our opinion rightly — refers to state and administrative measures, taken temporarily in emergency situations, the price-regulating activities of the state on foreign trade, and the *planning* which has a paramount importance in the administrative mechanism of the state, and the means of planned administration.) In the present study, the structure chosen is such that the varius legal solutions of quality protection system (which is a narrower category than consumer protection, but has a special role within this frame), will be dealt with in the Part II., whereas Part III. will be devoted to the classical legal instrumentalia of Civil Law.

II.

SOME LEGAL INSTITUTIONS AND LEGAL MEANS SERVING QUALITY PROTECTION IN GENERAL

1. The quality protection system treated within the wider context of consumer protection system has a number of components. To give a few examples:

a) Specification of quality *requirements* of products (state specifications; specification by the contract system; related functions of centralized pricing). Here should be cited the relevant Art. 29, Para. (2) of Internal Trade Act: „The quality of goods to be supplied, the ways and means of quality control and certification shall be specified exactly, unambigously and with professional competence and in consideration of the buyers' interests in the contract relating to the procurement of goods by the economic organizations."

b) Certifying quality (certification of quality, technical description, quality marking, certification of quality by means of data marked on the product, or certification of quality on consignment notes).

c) Controlling the compliance of quality specifications by administrative and non-administrative means and methods. In this connection as one of the most recent provisions Art. 29. Para. (4) of Internal Trade Act should be mentioned ordaining the regular examination of goods stored in warehouses and shops; or Art. 30, Para. (2) of the same Act, which makes the marketing of new or imported products contingent of a performance of quality inspection according to a separate legislation, and *especially* Art. 30, Para. (2) which rules that „Goods not suitable for proper use, or the marketing of which would endonger life or health of consumers or would otherwise threat public interests, further on goods on which preliminary quality inspection has not been performed. shall not be marketed".

d) The means influencing indirectly the efficiency of quality protection system have an ever increasing importance. Such are *e. g.* the system of distinquishing classification of products, tagging of goods, showrooms, Forum of Goods of Outstanding Quality etc.

2. The scope of present study would not allow us to deal in a more detailed way with the *quality inspection of goods,* which has a very high importance concerning the proper functioning of a quality protection system. Yet: Art. 29. Para. (3) of Internal Trade Act ordains at a *statutory level* that on accepting goods, economic organizations shall ensure that only goods of proper quality, and in compliance with the specified quality requirements, be marketed. Another interesting topic would be the relationship of quality protection and advertising or publicity. It should be mentioned, however, that the Act I. of 1978 in accordance with the already mentioned provision of Civil Code ruling on the honesty of trade quasi as a specified form of it prohibits the publication of any adventisment which is against the law, exaggerative, suitable to deceive, makes unjustified comparisous, advertises goods not available in sufficient quantities or depraves public morals (Art. 34. Para. /2/).

3. Finally, a point of almost cardinal importance under the circumstances of our days' trade is the *fair information of consumers.* Without going into details we refer to Arts. 21, 22, 23 of Internal Trade Act, which sets new requirements from several acpects and can be favourably compared to the solution and regulations used in the most developed capitalist countries.

4. Considering again the limited scope of our study requiring extreme brevity, some institutions will be described below which are developing intensively with relation to the modernization of our *quality protection system*, or the development of which is a pressing requirement of economic policy.

a) The extremely increased importance of *standards* in the frame of the quality protection system is in fact related to two statutory provisions. Art. 26, Para. (1) of the repeatedly quoted Internal Trade Act contains a provision of negative evaluation concerning products that fail to conform to standards. The Civil Code as amended lends significance previously unknown in our legislation to the time of suitability as specified by standards from the point of view of the term of enforcing claims. We regard this solution as a very modern one. The act introduces this „standard-law" into the *claim enforcing mechanism*. Besides, the normative or interpretative role of standards in delineating legal requisites remains unchanged.

A well-known fact is that standardization is regulated in Hungary by enactment No. 19/1976 (VI. 12) of the Council of Ministers, but it is perhaps less well-known that today there are some 10 000 national and 4000 sectorial standards contributing to the fulfilment of technical and economic requirements. Obviously, the development of a proper system of standards is primarily a question of economic policy depending largely on the economic environment, whereas the elaboration of specific standards in determined by the level of technology attained. Based on this it can be rightly stated that the standards have become or should become means serving quality protection also by legal instruments, thus deserving a more favourable evaluation legally as well. *A point not all of secondary importance:* The provision of Art. 308, Para. (2) of Civil Code as amended says that in case the obligatory term of suitability is *longer* than 3 years, this applies also to the term of enforcing claims and we only hope that in the practice of courts this will not be restricted to goods intended to be used for a long period of time (where the objective term of enforcing claims is anyway 3 years), but will be applied also to products where this objective term is one year.

Finally: we fully agree with the trend which asserts the multi-stage character of quality requirements and parameters in Hungarian standards. This is in compliance with the standardization agreement in the frame of CMEA, and with the international practice of standardization.

b) The ever increasing role of trade-marks serving quality protection and consumer protection can be referred to here only very briefly. This is true despite the well-known fact that the function of trade-marks is primarily not to indicate or certify quality, but to show the indentity of goods or, in other cases or in combination with the former, to indicate the origin (manufacturer) of product. Thus, according also to Hungarian legislation (Act IX. of 1969), in failure to produce the required quality, the licencee of the trade-mark will not be amenable under the law of trade-marks. The more severe would then be the response of the market. Thus it can be stated, that *the relationship of trade-marks and quality is based not only on unwritten rules, but also on general practical experiences.*

Also Hungarian codified legislation on trade-marks has certain important provisions:

ba) Distinquishing marks indicating quality only *(e. g.* „Outstanding Quality") is not suitable for we as trade-mark because it is in the last analysis a

commonplace, and has no essential disitinquishing character. Trade-mark and quality-mark are not identical; the forme must be suitable for distinquishing.

bb) The Act knows the institution of collective trade-mark (Art. 4, Para. /3/). This is applied with the aim to maintain quality parameters of goods marked with identical trade-marks at uniform levels, thus saving the consumers from being deceived. In the case of individual trade-marks, *i. e.* those belonging to a single company, the Act regards maintenance of the requested level of quality the part of the licencee in his own interest as ensured, whereas in case of collective trade-marks further safeguards are desirable to avoid defrauding of the consumers.

bc) The same safeguards are necessary in case the holder of a trade-mark gives permission to a third party to use the trade-mark (licence), because maintaining quality should be connected to efficient safeguards.

Finally, we have the feeling that trade-marks firstly separate all undistinquished goods from all other similar or identical goods, but beside of their traditional function, they effectively assure *consumers that the trade-marked product has definite characteristics, qualities,* and right the ones which are expected by the consumers. (This was called by Sándor Vida as negative or positive effect in his paper published in Jogtudományi Közlöny, February, 1979.) As a matter of curiosity: the consumer protecting function of trade-marks is mere and mere deliberate in the Western countries too. General Director Alan Thrierr has said in his lecture bearing the title „Trade-marks and Consumers" on the situation in France: Although the French Trade-mark Act has been passed fundamentally in the licencees' interests, it takes public interests also in consideration, since certain behaviours can be amenable under legislations concerning frauds, marks of origin, unfair competition and deceptive advertising".

5) Regarding the extension of legal means of quality protection system, an unduly and even inexplicably seldom used form is the *customer service contract.* There have been some motions concerning its use; this is reported in József Pálfalvi's formerly quoted paper in Jogtudományi Közlöny. But these are only initiatives of various companies, the this is the more strange as the institution is relatively fully regulated by II. Chapter of Act NO. 8 of 1978 concerning foreign trade relations. To avoid any misunderstanding: the field covered and coverable by customer service contracts is quantitatively wider, and, thus, qualitatively different from the *„customer service benefits"* the numbers of which show a welcome increase. The general application of customer service system would have had a better fair, should the Civil Code as amended contain at least some basic principles concerning it.

This is a legal institution most suitable forco-ordinating certain activities of economic organizations, and could well serve to settle liability and risk-facing problems likely to occur even within the best co-operations, and would facilitate to put these problems into the care of the most interested economic organizations.

III.

INSTITUTIONS OF CIVIL LAW AND LEGAL SOLUTIONS DIRECTLY SERVING QUALITY PROTECTION (CORRELATION OF CIVIL CODE AS AMENDED AND QUALITY PROTECTION)

1. We should stress the fact that the relevant legal material is not only included in the Part „Faulty compliance", but also the special provisions of Civil Code within the *common rules of contracts* and *specified contracts need be considered*. We have to call the attention to the latter even if we take into consideration that the number of such special provisions shows a welcome decrease with the *aim of unification*.

Also of importance are, of course, other provisions connected to the amended Civil Code and having high significance in this respect.

Special mentioning is due to Act No. 2 of 1978 on the introduction of Civil Code; enactment No. 13/1978. (III. 1.) of the Council of Ministers on accounting costs resulting from the settling of customers' quality claims, the interministerial enactment amending enactment No. 4/1969 on the smallest obligatory proportion of warranty; enactment 4/1978. (III. 1.) of the Minister of Internal Trade on the settling of quality claims of customers; and enactment 16/1976 of the Council of Ministers of the older provisions concerning the warranty on repair services etc.

2. The Civil Code as amended has doubtlessly *greatly modernized* the material of Act IV. of 1959, and we could duly state that it contains a strongly *consumer-oriented* legislation. This is proven among others by the radically new regulation of the claim enforcing system, especially the elimination of the two-phase claim enforcing system; the change of loss-of-right terms into terms of limitation; the unambigous definition of the date of beginning; the elimination of loss of right effects of the omission of obligatory inspection; the introduction of obligatory term of suitability into the system of claim enforcing terms.

The new legal regulation is modern in many ways also from the point of view of extending the warranty claims to accessories; a most significant fact is that the liability to bear the costs has been raised to the level of a warranty claim by Act No. IV of 1977. We should also mention the fact that the new regulation has eliminated the individual-concentrating effect of separation and selection, the same applies to the *jus variandi* prohibition; we could only agree with the amendment of Civil Code when it classifies the omission of reporting damages similarly to the sanctional requirements connected to the requirement of mitigation of damages (Art. 340, Para. (1), thus eliminating the qualification of the omission of this administrative task as a cause for loss of rights.

3. There can hardly anything to be said as yet on the effects of *legal practice* of the warranty for accessoirs or other warranties because of the very short time passed since the coming into force (1. March, 1978) of the Civil Code as amended (Act. No. IV of 1977). We should mention, however, that a lecture of the Author published in Hungary deals with the items of the amended Civil Code regarded by the Author as problematic ones. (Kemenes, Béla: Quality protection in the service of consumers, paper on the 9th National Conference of the Hungarian Society of Lawyers.)

A most welcome fact is at the same time that the *Hungarian legal literature* has dealt recently very intensively with the problems covered in this stu-

dy. Almost every issue of our professional periodicals contains papers or articles related to this topic. Especially heartening are the comparative legal papers on foreign legal solutions, relating often to the legal and economic-political aspects of quality protection or consumer protection too, beside the problems of civil law in a stricter sense of the word. Obviously, the future studies devoted the topic will need the intensification of this method and approach.

REFERENCES

[1] Dobos, Gábor: Kinek a törvénye? Gondolatok a Belkereskedelemről szóló törvényről. Magyar Jog, 1978. V. (Whose law? Meditations on the Internal Trade Act)

[2] E. V. Hippel: Verbraucherschutz, Tübingen, 1974. (Consumer Protection)

[3] Lábady, Tamás: On the civil law safeguards of consumers' interests, and on the consumer protection system, Acta Juridica, 1978/3—4.

[4] Lábady, Tamás: A fogyasztóvédelmi rendszerről és a fogyasztók érdekeinek polgári jogi védelméről. Magyar Jog, 1976. 10. sz. (On the civil law safeguards of consumers' interests and on the consumer protection system)

[5] Letowska, Ewa: A fogyasztó védelme jogpolitikai szempontból. Panstwo i Prawo 1978. 4. szám. Hungarian translation in: Magyar Jog, 1979. No. 6, Translated by Hlavathy Attila (The protection of consumers from the point of view of legal policy)

[6] Lontai, Endre: Fogyasztóvédelmi aspektusok az iparjogvédelem területén. Állam- és Jogtudomány. 1979. XXII/3. (Consumer protection aspects in the field of trade law)

[7] Pálfalvi, József: Gazdasági érdekazonosság, jogi tagoltság. Jogtudományi Közlöny, 1978. 9. sz. (Economic identity of interests — legal dividedness)

[8] Thierr, Alain: Védjegy és fogyasztó. A MIE Közleményei. 19. sz. (Trade-marks and consumers)

[9] Varga, Győző: A fogyasztóvédelem polgári eljárásjogi eszközei a fejlett tőkés országokban. Külföldi Jogi Szemle 4. sz. 348. old. (Procedural instruments in the Civil Law of developed capitalist countries serving consumer protection).

[10] Vékás, Lajos: Fogyasztóvédelem Svédországban. Jogtudományi Közlöny, 1978. nov. (Consumer protection in Sweden)

[11] Vida, Sándor: Utal-e a védjegy a vállalatra? Jogtudományi Közlöny, 1978. febr. (Do trade-marks refer to the companies?)

[12] Zárójelentés a vásárlók, fogyasztók, felhasználók minőségi kifogásaira vonatkozó jogi rendezés érdekében végzett vizsgálatról. (Szerkesztette: Kemenes Béla). Budapest, 1972. I—III. (Final report on the study performed on legal regulation of quality claims of customers, consumers and users — Ed.: Béla Kemenes)

[13] Kemenes, Béla: Minőségvédelem a fogyasztók szolgálatában. (Korreferensek: Schagrin Tamás, Szirtes János, Török István) A Magyar Jogász Szövetség IX. Országos Munkaértekezlete, 1979. 147—191. old. (Quality protection in the service of consumers) (Coreferates: Tamás Schagrin, János Szirtes, István Török) (Paper presented at the 9th National Conference of the Hungarian Lawyers' Association)