

ENFORCEMENT AND EFFECTIVENESS OF CONSUMER LAW IN THE CZECH REPUBLIC

Monika Pauknerová*, Helena Skalská**¹

Abstract: *This Article brings a general overview of legislation on consumer law in the Czech Republic, notably with respect to enforcement of consumer law. Czech law knows various ways how to enforce consumer rights such as court proceedings, out-of-court dispute resolution or sanctions for breach of consumer law. Consumer organizations play also an important role. Regarding out-of-court dispute resolution, attention has been paid in particular to specialized administrative agencies and proceedings before the Czech Trade Inspection Authority. Authors also shortly describe the development of arbitration, which is, however, no longer allowed in the case of consumer disputes.*

Keywords: *consumer law, enforcement, alternative dispute resolution, the Czech Republic*

1. LEGAL FRAMEWORK FOR CONSUMER PROTECTION

Czech consumer law is largely influenced by EU law, and therefore, it provides a relatively high level of consumer protection. Consumers are protected by the Charter of Fundamental Rights of the EU (Article 38) and by European regulations and directives, namely by the Regulation EC No. 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (hereinafter the Regulation on consumer protection cooperation).

The basic legal framework of consumer protection in Czech law consists of Act No. 89/2012 Sb., the Civil Code (hereinafter CC), and Consumer Protection Act No. 634/1992 Sb. (hereinafter CPA). The Civil Code regulates the concept of the consumer and the entrepreneur, consumer contracts *stricto sensu* (prohibited provisions in consumer contracts, distance contracts, contracts negotiated away from business premises, and timeshare contracts), europeanized types of civil contracts (consumer sales contracts and contracts for a package tour) and product liability. Even though Czech private law has been extensively re-codified with effect as of 1 January 2014, there have not been many alterations made in the area of consumer law (substantive) contained in the Civil Code, which continues to follow the regulation as stipulated in the previous Civil Code (Act No. 40/1964 Sb.). Changes of Czech consumer law mostly depend on changes of EU legislation in this matter.

The Consumer Protection Act encompasses both public and private provisions. CPA primarily regulates certain requirements for business activities, which are important for consumer protection in the area of the sale of goods or products or the provision of services, including the prohibition of unfair business practices; it also regulates the out-

* Professor, JUDr. Monika Pauknerová, CSc. DSc., Faculty of Law, Charles University, Prague, Czech Republic and Institute of State and Law of the Czech Academy of Sciences, Prague, Czech Republic

** Mgr. Helena Skalská, Ph. D. student, Faculty of Law, Charles University, Prague, Czech Republic; advocate

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of-court resolution of consumer disputes, information databases on the credit rating and creditworthiness of consumers, the responsibilities of public administration in the area of consumer protection and rights, associations of consumers or other legal persons created for consumer protection.

2. THE GENERAL DESIGN OF THE ENFORCEMENT MECHANISM

Enforcement mechanisms play an important role in the area of consumer protection. Consumer disputes are specific. The subject of a single dispute is very often a petty amount, and therefore, consumers often consider whether to enforce their rights at all. Another distinguishing feature of consumer disputes can be seen in that although a single case of consumer damage is of minimal value, in total, one trader might cause significant harm, and can benefit from his wrongful conduct and have a competitive advantage. This may be followed by further unlawful practices adopted by other traders to counterbalance the advantage of the first trader. Quality and effective means of consumer protection therefore contribute to better functioning of the market and competition.

In the model of enforcement of consumer law of the Czech Republic courts have, for a long time, played the role of the main authority. Besides the courts, some administrative agencies have also been authorized to resolve disputes between consumers and traders in some specific market areas, particularly in telecommunication services, energy and financial services. Recently, alternative dispute resolution (hereinafter ADR) has been actively supported, especially with regard to the need to comply with EU legislation as well as because of the high costs and duration of judicial dispute resolution. In February 2016, an amendment of the Consumer Protection Act, i.e. Act No. 378/2015 Sb., (hereinafter CPA Amendment), introduced a new concept of the ADR mechanism for consumer disputes. The consumer, however, does not obtain an enforceable legal title such as a judgment or an award as a result of this proceeding.

3. COURTS AND THE ENFORCEMENT OF CONSUMER LAW

The Czech judicial system does not distinguish a specialized court in charge of consumer disputes. Consumer disputes are decided by general district courts. As there is no specialized court, there is no special procedure before courts for consumer disputes. There are, however, some specific provisions applicable to consumer disputes.

Specific provisions concern injunctions for the protection of consumer rights. Under ss. 159a and 83 (2) of the Act No. 99/1963 Sb., the Civil Procedure Code (hereinafter CPC), the decisions in disputes regarding injunctions for the protection of consumer rights are binding for the parties to the proceedings and also for other persons having identical claims against the defendant on the basis of the same legal actions or legal conditions (*res iudicata*). Pending litigation in this matter is also an obstacle to other proceedings against the same defendant commenced by other plaintiffs (consumers) having claims arising from a similar legal situation and having the same demands (*lis pendens*).² In this matter,

² S. 83 (2) (b) CPC.

a court may also award a right to publish the judgment at the expense of the unsuccessful party.³ Another specific characteristic of consumer disputes is the possibility to file an appellate review to the Supreme Court even against a judgment, which awards money in an amount of less than CZK 50,000.⁴ Generally, appellate reviews against such judgments are not allowed.

The Act No. 549/1991 Sb., on Court Fees, does not stipulate any special tariff or taxes for consumer disputes. The fact that costs of proceedings are not insignificant is probably the main reason why many consumers do not proceed with the enforcement of their rights.⁵ A court may, under extraordinary circumstances, grant to a plaintiff an exemption from court fees.⁶ It must be justified by the circumstances of the plaintiff and it cannot be a case of arbitrary and apparently unsuccessful law enforcement. However, the above-mentioned exemption applies to any plaintiff given that it is justified by his situation, not only to consumers.

We should also shortly introduce protection provided to consumers within private international law. Both EU regulations⁷ and the Act No. 91/2012 Sb., on Private International Law (hereinafter PIL Act), contain special provisions on disputes arising from consumer contracts that modify general rules on the applicable law and jurisdiction for contract obligations in favour of consumers. The main aim is to provide consumers with the protection given by the rules of the country of their habitual residence or by Czech law.⁸ In relation to consumer contracts, consumers are also protected by jurisdiction rules, which are more favourable to consumers than general rules and in which the autonomy of the parties is limited.⁹

4. SPECIALISED AGENCIES AND THE ENFORCEMENT OF CONSUMER LAW

In the Czech Republic, there are administrative agencies that are authorized to decide disputes between consumers and traders in particular areas of the market. However, there is no specialized agency or other form of non-judicial institution in charge of enforcing consumer law generally, regardless the market area.

The Czech Telecommunication Office (hereinafter CTO) is a central administrative body and was established on the basis of the Act No. 127/2005 Sb., on Electronic Communications and on the Amendments to the Other Acts (hereinafter the Electronic Communications Act). CTO is an independent regulatory institution. CTO is among others authorized to resolve disputes between consumers and traders concerning electronic communication

³ S. 155 (4) CPC.

⁴ S. 238 (1) (c) CPC.

⁵ Explanatory memorandum to Act No. 378/2015 Sb., regarding part dealing with ADR, ch. 1.2.5.

⁶ S. 138 CPC.

⁷ E.g. Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) and Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I).

⁸ Regulation Rome I, Preamble 25 and Art 6 and s. 87 (2) PIL Act.

⁹ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I recast) and s. 86 (1) PIL Act.

services; in particular, it has the exclusive authority to resolve disputes between electronic communication service providers and the other party to a contract on electronic communication services or the user of the services, including proceedings on objections against decisions of the trader on consumers' complaints.¹⁰ A motion to commence proceedings before CTO may be submitted by either of the parties. If either of them files a motion to commence proceedings before a court, this motion will be denied for a lack of jurisdiction. Decisions are to be issued within four months, in particularly complex cases within six months. If proceedings are commenced by a consumer, a decision is to be issued within 90 days; in particularly complex cases this time limit can be extended.

Another administrative agency in charge of enforcing consumer rights in a specific market area is the Energy Regulatory Office (hereinafter ERO). ERO was set up under the Act No. 458/2000 Sb., on the Conditions of Business and State Administration in Energy Industries and Changes to Certain Laws (hereinafter the Energy Act) as an administrative authority responsible for regulation in the energy sector.¹¹ One of the competences of ERO is to protect consumers' interests. There are two main categories of consumer disputes decided by ERO. The first group can be characterized as proceedings that can be commenced only by customers. This category includes disputes about the discharge of obligations arising from contracts on the supply or distribution of electricity or gas and disputes over whether a legal relationship between a licence holder and a customer was concluded, remains or was terminated. The second category of disputes includes disputes over the limitation, suspension or resumption of supply of electricity or gas due to illegal consumption of electricity or gas. In this case either party may commence the proceedings. Either of the parties may also commence the proceedings given that they have agreed to submit the dispute to ERO. However, ERO does not have the exclusive jurisdiction in the above-mentioned disputes. The plaintiff may choose between administrative proceedings before ERO and court proceedings. As opposed to the court proceedings, the proceedings before ERO are free of charge. However, ERO may decide on the reimbursement of costs.

Lastly, we will analyse the specialized administrative agency called the Financial Arbitrator (hereinafter FA). FA covers one of the most discussed areas in relation to consumers, i.e. financial services. FA was established on basis of the Act No. 229/2002 Sb., on Financial Arbitrator, in the course of harmonisation of the Czech law with the European legislation.¹² FA is a dispute resolution body with the competence to decide disputes between financial institutions and their customers. Proceedings before FA may only be commenced by the

¹⁰ S. 129 (1) Electronic Communications Act. The Electronic Communications Act does not state that the other contracting party or the user of services must be a consumer.

¹¹ See more on <https://www.eru.cz/en/>.

¹² Particularly with Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers (repealed by the directive 2007/64/EC of the European Parliament and of the Council), Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes, Commission Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes and Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in euro.

customer. FA is not competent to hear disputes between financial institutions or between private persons, individuals or legal entities. Proceedings are not subject to a fee and FA cannot adjudicate the costs of the proceedings to be borne by any party. Decisions (awards) are to be issued within 30 days, in particularly complex cases within 60 days. The main advantage of proceedings before FA is that the proceedings are free of charge and are considered faster than court proceedings.

5. ALTERNATIVE MECHANISMS FOR THE RESOLUTION OF CONSUMER DISPUTES

Alternative dispute resolution is a system for resolving disputes using alternative procedure, as opposed to the typical court proceedings. ADR is an effective tool for consumers, traders and indeed the state, as it allows to unburden the courts of cases that are not usually very complex and hearing them before courts is disproportionately costly and time consuming. ADR brings speed, simplicity and low-cost resolution. ADR mechanisms have developed very dynamically in the Czech Republic in the last 5 years. The promotion of ADR mechanisms for consumer disputes in Czech law is also a result of the EU legislation.¹³

5.1 Arbitration

The most traditional ADR mechanism in the Czech Republic is arbitration. Arbitration rules are found in the Act No. 216/1994 Sb., on Arbitration (hereinafter the Arbitration Act). Arbitration is a dispute resolution mechanism which is conducted privately. Arbitrators are not public authorities; rather, they are private individuals. Arbitration courts are not state agencies, however, there are some aspects in which arbitration is publicly supervised.

From Czech courts jurisprudence over the last 20 years it is very clear that arbitration in consumer disputes has not been without troubles, but it was held that arbitration *per se* does not violate the Constitution of the Czech Republic in terms of depriving the party of his or her lawful judge.¹⁴ The public often considered arbitration as a consumer dispute resolution to be unfair, because arbitration agreements or clauses were drafted in favour of traders and unofficial arbitration centres were viewed as traders' private courts and were not considered independent and impartial.¹⁵ One of the most common problems was the lack of information on consumer's side. However, consumer disputes were not excluded from arbitration on the basis of the lack of arbitrability.¹⁶ Therefore, the validity

¹³ In particular Directive 2013/11/EU on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC. Under this Directive, all EU Member States should allow and ensure that all disputes between a consumer and a trader arising from the sale of goods or the provision of services can be submitted to the entity of ADR mechanisms, even via online means.

¹⁴ Judgment of the Constitutional Court of the Czech Republic, Case No. IV ÚS 2157/08 of 24 September 2008.

¹⁵ RABAN, P. Autorizovaní rozhodci nebo adju dikátoři? Je efektivně zajištěna spravedlnost ve spotřebitelských vztazích? *Bulletin advokacie*. 2010, No. 6, p. 16.

¹⁶ BĚLOHLÁVEK, A. *B2C Arbitration. Consumer Protection in Arbitration*. Juris Net LLC, 2012, pp. 180–181.

of arbitration clauses in consumer contracts was examined mainly on the basis of substantive consumer law, in particular the protection of consumers against unfair contractual terms.¹⁷

The Arbitration Act was amended in 2012 by the Act No. 313/2012 Sb. (hereinafter the Amendment) with a huge impact on the arbitration of consumer disputes. The conditions for the conclusion of arbitration agreement, for awards and also for arbitrators were set stricter for consumer disputes. The Amendment also introduced an exception regarding the review of arbitral awards, when under s. 31 (g) of the Arbitration Act a court shall set aside an arbitral award if arbitrators or a permanent arbitration court decided a dispute arising from a consumer contract in conflict with the consumer law or manifestly contrary to good morals or public order. However, a complete review of arbitral awards relating to the merits of consumer disputes was not accepted.¹⁸

Despite the Amendment of 2012, consumer disputes were entirely excluded from arbitration by the amendment of the Arbitration Act with effectiveness from December 2016. Thus, arbitration agreements concluded with consumers are nowadays invalid due to the lack of arbitrability.

5.2 Mediation

Another ADR mechanism in the Czech Republic is mediation which is regulated by the Act No. 202/2012 Sb., on mediation (hereinafter the Mediation Act). There are no specific rules or mechanisms for the mediation of consumer disputes. Mediation involves an independent third party - a mediator - helping parties reach an agreement. Supervision of the fulfilment of mediators' obligations is exercised by the Ministry of Justice of the Czech Republic, unless the mediator is an attorney.¹⁹ The Ministry of Justice also administers the list of mediators.²⁰

5.3 Proceedings under the Consumer Protection Act

We should also mention the ADR mechanism enacted by the Consumer Protection Act Amendment with effectiveness from February 2016 which implemented the Directive 2013/13/EU on alternative dispute resolution for consumer disputes. This CPA Amendment introduces ADR for consumer disputes arising from sale contracts and service contracts. It should be emphasized that ADR under CPA does not prevent the parties from exercising their right of access to the judicial system.

Firstly, the part of the Consumer Protection Act concerning ADR defines the entities authorized to settle consumer disputes or to bring the parties together with the aim of

¹⁷ Legal regulation of unfair contractual terms in Czech law is based on EU Directive 2011/83/EU of the European parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council and earlier Council Directive 93/13/EEC.

¹⁸ BĚLOHLÁVEK, A. *B2C Arbitration. Consumer Protection in Arbitration*. Juris Net LLC, 2012, p. 182.

¹⁹ S. 13 Mediation Act. In case of an attorney, supervision is exercised by the Czech Bar Association.

²⁰ S. 15 (1) Mediation Act.

facilitating an amicable solution. Section 20e CPA specifies such ADR entities. Under this section, ADR entities are CTO, ERO, FA and Czech Trade Inspection Authority (hereinafter CTIA), or another entity authorized by the Ministry of Industry and Trade.²¹ Certain doubts exist about authorization of Czech Trade Inspection Authority to ADR mainly among traders.²² The fact that CTIA as an ADR entity also exercises supervision of traders and is competent to impose sanctions is the principal reason for such criticism. The lack of experience can also be mentioned. Under the Consumer Protection Act, ADR entities have certain obligations concerning particularly the provision of information about the procedure to consumers. In the case of cross-border disputes, European Consumer Centre of the Czech Republic helps consumers to access the entity authorized to out-of-court settlement of consumer disputes.²³ The Consumer Protection Act states that a trader is obliged to inform consumers on the subject of ADR for consumer disputes in a clear, comprehensible and easily accessible way and provide a link to the web page of the ADR entity.²⁴ There is no need to conclude any agreement regarding the competence of CTIA or another entity, it is given by law.

The Consumer Protection Act also contains provisions on ADR procedure before the Czech Trade Inspection Authority (ss. 20n – 20y CPA). A motion for resolving the dispute may be filed by a consumer (if failing to resolve a complaint directly with the trader), but not later than 1 year following the date when the consumer contacted the trader. Proceedings are not subject to a fee and parties cover their own costs. Once the ADR before CTIA is commenced, the trader is obliged to file his statement concerning the dispute within 15 business days of the delivery of information about the motion being filed by the consumer.²⁵ Dispute resolution before CTIA is to be ended within 90 days from its commencement. This period can be extended by other 90 days in particularly complex cases.

There are unfortunately certain shortcomings of the ADR before the Czech Trade Inspection Authority such as the lack of an enforceable legal title, its hybrid character, the lack of experience of CTIA in the resolution of such disputes.²⁶ The hybrid character of this proceeding can be seen in the fact that the aim of the whole process is to reach an agreement by the parties and CTIA is not authorized to decide the case,²⁷ yet the parties must submit evidence to CTIA. Moreover, the rules assume mainly written proceedings which are not usually used when the aim is to reach an agreement.

²¹ Another ADR entity authorized by the Ministry of Industry and Trade is the Czech Bar Association, which settles disputes between attorneys and consumers.

²² VEJVODOVÁ, A. Místo soudu k ČOI. In: *Právní rádce* [online]. 1. 2. 2016 [2017-07-05]. Available at: <<http://pravni-radce.ihned.cz/c1-65143620-misto-soudu-k-coi-startuje-novy-zpusob-reseni-spotrebitelskych-sporu>>.

²³ S. 20i (1) CPA.

²⁴ S. 14 CPA.

²⁵ S. 20s (1) CPA.

²⁶ See e.g. SIK-SIMON, R. Mimosoudní vyrovnání – levnější a rychlejší řešení spotřebitelských sporů. In: *epravo.cz* [online]. 19. 12. 2014 [2017-07-05]. Available at: <<http://www.epravo.cz/top/clanky/mimosoudni-vyrovnanilevnejsi-a-rychlejsi-reseni-spotrebitelskych-sporu-96427.html>> and HORÁČEK, T. Nové aspekty ochrany spotřebitele. In: *Právní prostor* [online]. 28.7.2016 [2017-07-05]. Available at: <www.pravniprostor.cz/clanky/obcanske-pravo/nove-aspekty-ochrany-spotrebitel>.

²⁷ If an agreement is not concluded, CTIA may issue a legally non-binding opinion on the subject of the dispute.

5.4 Online dispute resolution

Online dispute resolution (hereinafter ODR) shall be mentioned in connection with the ADR mechanism. ODR is provided by the EU Regulation on on-line dispute resolution.²⁸ Disputes arising from consumer contracts concluded online shall be resolved through a platform for ODR operated by the European Commission and available on the internet.²⁹

6. ENFORCEMENT THROUGH COLLECTIVE REDRESS

Czech law does not know collective redress *stricto sensu*. We do not find any provisions on representative action, group action, model or test case or class action in the Civil Procedure Code. Even though the Czech law does not recognize any form of collective redress, recently there have been medialized cases concerning bank charges³⁰ which were very often connected to the term “class action”. However, in the cases in question, legal proceedings against the same defendant involving a claim arising from a similar legal situation were based on individual actions, despite the image media provided.³¹

Regarding collective redress, we should however mention s. 83(2) and s. 159a (2) of the Civil Procedure Code. Under s. 159a (2) CPC decisions issued in disputes regarding matters mentioned in s. 83 (2) CPC are binding for the parties to the proceedings and also for other persons having identical claims against the defendant on the basis of the same legal actions or legal conditions. S. 83(2) CPC includes, beyond others, also injunctions for protection of consumer rights.³² Pending litigation in this matter is also an obstacle to other proceedings against the same defendant commenced by other plaintiffs having claims arising from a similar legal situation and the same demands.³³

Regulation of collective redress in Czech law is insufficient and the provisions on *res iudicata* and *lis pendens* are problematic since they do not contain any means to guarantee the protection of third parties or any specific procedural rules, as is typical for collective redress as a special legal institution.³⁴ Another shortcoming of the current legal regulation is that it deals only with actions for injunctions but it does not relate to compensation of consumers. It should be mentioned that it has been called

²⁸ Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes.

²⁹ See <https://webgate.ec.europa.eu/odr/main/index.cfm?event=main.home.chooseLanguage>.

³⁰ See e.g. NĚMEC, J. Spor o bankovní poplatky může skončit exekucemi. In: *Ekonom* [online]. 19. 12. 2015 [2017-07-05]. Available at: <<http://ekonom.ihned.cz/c1-63557480-spor-o-bankovni-poplatky-muze-skoncit-exekucemi>>.

³¹ ZEMAN, M. Hromadné žaloby v současném českém právu. In: *epravo.cz* [online]. 19. 11. 2014 [2017-07-05]. Available at: <<http://www.epravo.cz/top/clanky/hromadne-zaloby-v-soucasnem-ceskem-pravu-95906.html>>.

³² Injunctions for protection of consumer rights are also regulated by Directive 2009/22/EC of the European parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests.

³³ S. 83 (2) (b) CPC.

³⁴ WINTEROVÁ, A. Hromadné žaloby (procesualistický pohled). *Bulletin advokacie*. 2008, No. 10, p. 21 et seq.

for new legal regulation of collective redress, especially in connection with consumers.³⁵

With regard to the above mentioned, the position of consumer organisations should also be reminded.³⁶ The recent development of Czech consumer law shows that consumer organisations play more and more significant role in consumer protection as they also provide forums for persons with similar claims and offer them some basic legal advice and information for enforcement of their rights.³⁷

7. THE ROLE OF CONSUMER ORGANISATIONS IN ENFORCEMENT OF CONSUMER LAW

There are many independent organisations³⁸ focusing on the protection of consumers in the Czech Republic. Consumer organisations in the Czech Republic are decentralised, meaning that they have seats in various places outside of the capital city of Prague, such as Brno, Ostrava or Pilsen. Consumer organisations are not subject to any mandatory legal conditions, except for the general conditions applicable to any legal person. Most of the organisations are set up as associations. There are, however, certain specific requirements for organisations authorized to file actions for injunctions under the Consumer Protection Act (s. 25 CPA), i.e. actions to abstain from unlawful conduct in consumer matters. These organisations must be: a) established under the law of the Czech Republic; b) active in consumer protection for at least two years; c) impartial and non-profit, and d) without any financial debt towards the Czech Republic.

The options of consumer organisations in the enforcement of consumer law are slightly limited. The Consumers Protection Act contains general provisions (s. 25 (2) CPA) on the collective representation of consumers in accordance with Directive 98/27/EC on injunctions for the protection of consumers' interests. An organization, however, must have a legitimate interest in consumer protection or must be stated in the list kept by the European Commission. Collective representation by consumer organizations before the courts in cases of unfair competition is also laid down in s. 2989 CC. Consumer organisations in the

³⁵ This matter was broadly discussed within the EU; see the Green Paper on Consumer Collective Redress (2008). Compare PALLA, T. Potřeba hromadných žalob ve spotřebitelských sporech. In: *epravo.cz* [online]. 21. 5. 2009 [2017-07-05]. Available at: <www.epravo.cz/top/clanky/potreba-hromadnych-zalob-ve-spotrebitelskych-sporech-56464.html>; BALARIN, J. – TICHÝ, L. Kolektivní ochrana procesních práv v ČR: Sen či skutečnost? (Návrh právní úpravy a jeho odůvodnění). *Bulletin advokacie*. 22. 3. 2013 [2017-07-05]. Available at: <<http://www.bulletin-advokacie.cz/kolektivni-ochrana-procesnich-prav-v-cr-sen-ci-skutecnost-navrh-pravni-upravy-a-jeho-odvodneni>>. This matter was also discussed within a small symposium on collective redress in Poslanecká sněmovna on 16 June 2017. See VÁLOVÁ, I. Hromadné žaloby: Stávající právní úprava neexistuje. Budoucí je našťestí v nedohlednu. In: *Česká justice* [online]. 18. 6. 2017 [2017-07-05]. Available at: <<http://www.ceska-justice.cz/2017/06/hromadne-zaloby-stavajici-pravni-uprava-neexistuje-budouci-nastesti-nedohlednu/>>.

³⁶ See the next chapter.

³⁷ For more information, see e.g. <http://www.hromadnezaloby.cz/> ran by Český spotřebitel s.r.o.

³⁸ Kontakty na vybrané spotřebitelské organizace. In: *Ministerstvo průmyslu a obchodu* [online]. 22. 9. 2017 [2017-07-05]. Available at: <<https://www.mpo.cz/cz/ochrana-spotrebitele/kontakty-pro-spotrebitele/kontakty-na-vybrane-spotrebitelske-organizace-5724/>> or Přehled spotřebitelských poraden podle krajů. In: *Ministerstvo průmyslu a obchodu* [online]. 11. 8. 2017 [2017-07-05]. Available at: <<https://www.mpo.cz/cz/ochrana-spotrebitele/informace-pro-spotrebitele/prehled-spotrebitelskych-poraden-podle-kraju-152488/>>.

Czech Republic are authorized to file proposals to the government bodies related to their consumer protection activities. The relevant bodies are obliged to inform the organisation about their proposal without further due or up to two months from receiving the proposal (s. 26 CPA). Consumer organisations are also authorized to act as an extrajudicial dispute resolution body, if authorized by the Ministry of Industry and Trade (s. 20 (f) CPA). Moreover, the organisations have competences that are not regulated by law, such as publicizing, consulting, and lobbying.

8. SANCTIONS FOR BREACH OF CONSUMER LAW

Sanctions can traditionally be classified as private and public; consumer protection, however, is mixed in this respect. Consumer protection provided by private law is usually designated as subsequent protection, while protection provided by public law is primarily considered as preventive. Unlike public protection, which does not usually require an active approach by the consumer, private protection, as a rule, requires activity on the part of the consumer and the consumer has the right of active control over the process.³⁹

The main means of private consumer protection is the right to withdraw from a contract, namely in the case of distance consumer contracts and contracts negotiated away from business premises (ss.1829–1838 CC), financial services (ss. 1846–1851 CC), and time-shares (ss. 1861–1865 CC), where the principle *pacta sunt servanda* (s. 3 (2) CC) has been significantly restricted in favour of consumer protection. Special rules for consumers, in the sense of derogation from the fundamental law of contractual relationships, are used in three different situations that occur when making a contract: approaching the consumer away from the business premises of an entrepreneur (s. 1828 (2) (a) CC), making a contract during a package tour organized by an entrepreneur for the purpose of promoting and selling goods or providing services (s. 1828 (2) (b) CC), and making a contract of suretyship with a consumer under these circumstances.⁴⁰

Special regulations provide for the sale of goods in stores (special provisions on the sale of goods – ss. 2158–2174 CC), and regulate the issue of quality upon takeover and the rights arising from a defective performance. The buyer, as a consumer, has a right to request the replacement of a component part, the repair of a thing, reasonable reduction of price, the supply of a new defect-free thing or the withdrawal from the contract – and all this under the conditions laid down by the Civil Code and/or the Directive 1999/44/EC, on certain aspects of the sale of consumer goods and associated guarantees, which was implemented by the Civil Code.⁴¹

A general type of consumer protection may take the form of invalidity of juridical acts. The grounds for invalidity may consist of the inconsistency with good morals or with the law (if so required by the purpose of the statute), in this case primarily the inconsistency

³⁹ Compare KANDA, A. – MATEJKA, J. Spotřebitelské smlouvy a jejich význam v informační společnosti. In: *Pocta Martě Knapové k 80. Narozeninám* (Liber Amicorum Marta Knappová). Praha: ASPI, 2005, p. 162.

⁴⁰ Compare in detail TICHÝ, L. *Obecná část občanského práva*. Praha: C.H. Beck, 2014, pp. 470–481.

⁴¹ Compare detailed explanation in TICHÝ, L., PIPKOVÁ P.J., BALARIN, J. *Kupní smlouva v novém občanském zákoníku. Komentář*. Praha: C.H. Beck, 2014, p. 371 et seq.

with the rules of consumer protection (s. 580 CC). Inconsistency with mandatory provisions that enforce consumer protection in cases of manifest disruption of public order may also be relevant (invalidity of a juridical act under s. 588 CC): the argument here is that providing effective consumer protection is an inherent part of public order in a democratic state.⁴² We should mention another type of sanction applicable to consumer contracts whereby the relevant provision (for example, a derogating stipulation – s. 1812(2) CC – or a disproportionate stipulation – s. 1815 CC) is disregarded. It means that such acts should not cause legal consequences. We can assume that public bodies must *ex officio* take into consideration the fact that the relevant provision is disregarded. Such a concept would be compliant with the European legislation and with current case law. The Constitutional Court, in its decision file No. Pl. ÚS 1/10, stated that the concept of the relative invalidity of consumer contracts is contrary to the Czech constitutional order, in particular to the principles of equality, proportionality, and legal certainty, and that it is incompatible with the principle protecting the effectively weaker contracting party (the consumer), which in private law rectifies the principle of autonomy of will.⁴³ Public bodies are in charge of supervising observance of specific provisions of the Civil Code in certain cases. For example, the Czech Trade Inspection Authority (hereinafter CTIA) is the general supervisory body for s. 1852 ff. CC (timesharing), while the Czech National Bank is the general supervisory body for s. 1841 ff. CC (financial services).

Administrative sanctions can be found in the Consumer Protection Act (CPA) as well as in individual statutes which regulate controlling bodies, namely in the Czech Trade Inspection Authority Act No. 64/1986 Sb. Controlling bodies may impose minor security measures for the removal of any defects discovered, such as a binding instruction, or a coercive measure, such as the suspension of the sale of products or the provision of services, or may close down the business premises, but they may also impose more severe sanctions, such as the duty to remove the product from the market (s. 23a CPA). Administrative delicts may carry a fine of up to CZK 50,000,000 (in case of imminent danger to life), see s. 24 CPA. Supervisory bodies may also immediately impose a fine of up to CZK 5,000. Persons being investigated who obstruct or otherwise interfere with the inspection may be imposed a fine of up to CZK 50,000. The director of the CTIA may impose doubled financial penalties for a repeated delict. While there are a variety of sanctions, another question is how the supervisory bodies apply them. The Czech National Bank is the subject of much criticism, as its auditing and supervisory activity has so far been insufficient.⁴⁴

The Act No. 40/2009 Sb., the Criminal Code provides special protection to consumers by defining the crime of causing damage to a consumer in its s. 253: a person who causes not insignificant damage to a thing of another by causing damage to a consumer, in par-

⁴² Compare for example, SELUCKÁ, M. Vymezení spotřebitelských smluv. In: ONDŘEJ, J. et al. *Spotřebitelské smlouvy a ochrana spotřebitele, Ekonomické, právní a sociální aspekty*. Praha: C.H. Beck, 2013, p. 7.

⁴³ Compare SKALSKÁ, H. *Postavení slabé smluvní strany při uzavírání smluv v obchodním styku*. Diploma thesis, Charles University, 2014, pp. 68–69.

⁴⁴ Compare SIK-SIMON, R. Správné právní sankce za porušování spotřebitelských práv v České republice a v Maďarsku. In: TICHÝ, L. (ed.). *Ochrana spotřebitele*. Centrum právní komparatistiky, Univerzita Karlova v Praze, Eva Rozkotová, Beroun 2014, p. 218 ff.

ticular by cheating on the quality, quantity, or weight of the goods, or who places on the market products, work, or services in larger quantities and conceals their material defects, will be punished by a term of imprisonment of up to one year, prohibition of activity, or forfeiture of a thing or other property value. Criminal prosecution of usury may also be taken into account; a too high interest rate charged on a loan may qualify as the crime of usury under s. 218 of the Criminal Code. The issue of usury may be assessed as a special case of conflict with good morals. The Supreme Court stated that, as a rule, a conflict with good morals is constituted by an interest rate that significantly exceeds the interest rate common at the time of its negotiation, in particular with regard to the highest interest rate charged by banks providing credits or loans.⁴⁵

9. SUMMARY

Czech consumer law is largely influenced by EU law, and therefore, it provides a relatively high level of consumer protection. For many years, judicial resolution of consumer disputes was the main enforcement mechanism of consumer rights. Unfortunately, it seems to be inappropriate with respect to a value of consumer disputes, and it does not provide any specific conditions for resolution of consumer disputes. Another shortcoming is the lack of collective redress. Positive reviews are connected to proceedings before specialized administrative agencies, i.e. CTO, ERO and FA. They are definitely much faster and cheaper than court proceedings.

There has been substantial progress regarding out-of-court enforcement mechanisms in the last 5 years. In 2012, the Mediation Act was enacted providing another ADR mechanism, which is suitable for consumer disputes. In 2012, the Arbitration Act was amended to make arbitration more appropriate enforcement mechanism for consumer disputes. However, since December 2016 consumer disputes have been excluded from arbitration. In 2015, the CPA Amendment was enacted and brought a new ADR mechanism, i.e. proceedings before the Czech Trade Inspection Authority. As mentioned above, the whole system is still far from perfect, the protective instruments should be at least more deeply interlinked and maybe also inspired by some other legislations, showing effective results in this field.

⁴⁵ Compare ONDŘEJ, J. *Spotřebitelské smlouvy, právní aspekty lichvy a rozpor s dobrými mravy*. In: ONDŘEJ, J. et al. *Spotřebitelské smlouvy a ochrana spotřebitele. Ekonomické, právní a sociální aspekty*. Praha: C.H.Beck 2013, p. 131 ff., with further references and NS 21 Cdo1484/2004.