

Alternative out-of-court procedures for resolving consumer protection disputes in infringement proceedings

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Abstract

The present study is significant from multiple perspectives, addressing the interests of consumers, economic operators, and competent public authorities alike. It emphasizes the fact that contraventional procedures are often costly and time-consuming, both in terms of financial resources and institutional capacity. In this context, amicable settlement mechanisms offer a more efficient avenue for resolving disputes, thereby reducing the caseload of courts and supervisory authorities.

Through amicable resolution, consumers may obtain compensation or remedial measures more promptly, without being required to engage in lengthy and complex contraventional proceedings. For businesses, opting for such solutions enables the protection of corporate reputation, the avoidance of more severe sanctions, and the preservation of constructive relationships with clients, while simultaneously demonstrating a commitment to ethical commercial practices.

At the international and European levels, numerous states actively promote alternative dispute resolution (ADR) mechanisms to strike a fair balance between consumers' and traders' interests. Within the European Union, Directive 2013/11/EU on alternative dispute resolution for consumer disputes establishes a coherent framework for the application of such mechanisms. Amicable settlement allows the parties to identify flexible, case-specific solutions, an approach that is not always achievable within standardized contraventional procedures.

Against this background, the present scientific endeavour seeks to contribute to a deeper understanding and awareness of conflict resolution methods and techniques involving consumers. Although such disputes are contraventional in nature, the application of legally regulated amicable settlement mechanisms offers a less punitive and more constructive alternative, fostering compliance, cooperation, and legal certainty.

Keywords: contravention, consumer, legal liability, contraventional liability.

Introduction

The protection of consumer rights is essential to ensuring a fair balance between consumers and economic operators, preventing abusive practices, and guaranteeing an equitable and competitive market environment. It plays a crucial role not only in economic relations, but also in public health protection and the sustainable development of society. Contemporary consumer protection is no longer confined to purely commercial aspects or product safety issues; it increasingly encompasses ecological considerations. Current

European policies actively promote sustainable consumption, transparency regarding environmental impacts, and enhanced producer responsibility.

Chris Hilson emphasizes in his work that consumer protection and environmental justice are intrinsically interconnected, arguing that environmental policies must take into account social equity and equal access to a healthy environment. This perspective supports the view that the right to an ecologically balanced environment is a prerequisite for the effective exercise of other fundamental consumer rights (Hilson, 2008, p. 385–400).

According to the European Parliament, consumers must be guaranteed the right to make informed choices regarding the products and services they purchase, including with respect to their environmental impact. Ecological labelling, the prohibition of greenwashing, and the regulation of hazardous substances represent only some of the legal instruments designed to achieve this objective (Gugulan, Krzysztofik, 2025, p. 25-33).

Regrettably, consumer rights are not always fully respected in practice. Consumers are frequently confronted with situations in which professionals employ misleading commercial practices or include unfair contractual terms in agreements concluded with consumers. In such circumstances, consumers are compelled to resort to the legal mechanisms established by the legislator in order to obtain redress for the damage caused by professionals.

From this standpoint, legal liability, as a form of state coercion aimed at safeguarding the rule of law, has remained and continues to be a legal institution of major importance, serving as an effective instrument for the reparation of damage suffered by consumers.

The purpose of the present article is to examine and address the scientific and practical issues related to the methods of resolving conflicts arising from the protection of consumer rights within the framework of contraventional procedures.

Materials and methods

Materials

The present study is grounded in a qualitative legal research design, combining doctrinal, normative, and jurisprudential analysis in order to examine the role of amicable and alternative dispute resolution mechanisms in the field of consumer protection within contravention proceedings. The materials used in the research consist primarily of:

- national normative acts of the Republic of Moldova, including the Law on Consumer Protection No. 105/2003, the Contravention Code of the Republic of Moldova, and the Law on Mediation No. 137/2015;
- relevant decisions of the Constitutional Court of the Republic of Moldova and the Supreme Court of Justice, selected for their practical relevance in illustrating the interaction between contravention liability and consumer rights protection;
- European Union legal instruments, with particular emphasis on Directive 2013/11/EU on alternative dispute resolution for consumer disputes, as well as other sector-specific directives relevant to consumer protection;

- doctrinal sources and official legal databases, including national and European jurisprudence platforms.

Methods

The methodological framework of the study is based on a combination of classical and applied legal research methods. The formal-legal method was employed to interpret statutory provisions governing contravention proceedings and consumer protection mechanisms. The systemic and structural analysis method was used to assess the coherence between contravention liability rules and alternative dispute resolution instruments, both at national and European levels.

In addition, the comparative legal method was applied to examine the alignment of Moldovan legislation with European Union standards, particularly regarding the promotion of amicable settlement and alternative dispute resolution mechanisms in consumer disputes. This approach allowed for the identification of legislative convergences, gaps, and practical challenges in the implementation of ADR mechanisms within contravention proceedings.

The study also relies on the analysis of judicial practice, focusing on selected case law that illustrates the practical consequences of opting for judicial versus amicable solutions in consumer disputes. This empirical legal analysis supports the evaluation of efficiency, proportionality, and legal certainty associated with different dispute resolution pathways.

Finally, the logical-deductive method was used to formulate conclusions and recommendations, ensuring that the proposed solutions are derived consistently from the normative analysis and practical findings. Through this methodological approach, the research aims to contribute to a better understanding of less punitive and more efficient mechanisms for resolving consumer protection conflicts within contravention procedures.

Results and discussion

Preliminary Considerations

According to Article 6(1)(a) of the Law on Consumer Protection No. 105 of 13 March 2003,
every consumer has the right to:

(a) the protection of their rights by the State.

In the Republic of Moldova, consumer protection is governed by a legislative framework that establishes clear rights for consumers and corresponding obligations for traders, in line with European best practices. This framework aims to ensure effective state involvement in safeguarding consumer interests, promoting legal certainty, and fostering fair commercial conduct, while progressively aligning national regulations with European consumer protection standards (Pascal, 2025, p. 13-24)

Through the instruments provided by legislation, the State protects individuals in their capacity as consumers (Luntrarau, 2022, p. 26-34) by ensuring the necessary framework for unrestricted access to goods and services, guaranteeing full and accurate information regarding their essential characteristics, and safeguarding as well as enforcing the legitimate rights and interests of natural persons against abusive commercial practices (Luntrarau, 2025, p. 220-229; Luntrarau, 2025, p. 1037-1042).

With regard to the comparative law framework, it should be noted that in Romania, Government Ordinance No. 21/1992 on consumer protection, published in the Official Gazette of Romania No. 212 of 28 August 1992 and republished in the Official Gazette of Romania No. 208 of 28 March 2007, establishes a set of mechanisms made available by the State for the protection of citizens in their capacity as consumers (Truța, 2025, p.328).

This regulatory act provides the necessary legal framework to ensure unrestricted access to goods and services, while simultaneously guaranteeing the protection of consumers' rights and legitimate interests. In this context, alongside the protective mechanisms afforded to consumers, the ordinance also sets out sanctioning mechanisms applicable to economic operators whose conduct infringes upon consumers' rights and legitimate interests.

In the process of transposing European legislation, the Republic of Moldova has adapted its consumer protection regulations across various sectors, guaranteeing consumers the right to be clearly and comprehensively informed prior to the conclusion of a contract, including in the context of online purchases (Cemurtan, Pascal, 2025, p. 315-327).

Judicial protection *lato sensu*, through the restoration of consumers' infringed rights, constitutes an essential component within the broader framework of the objectives outlined above.

Given the diversity and complexity of legal relationships relating to consumer rights protection – relationships that involve multiple concepts, meanings, and interpretative approaches – as well as the commitments undertaken to implement the EU *acquis* as set out in the Republic of Moldova – European Union Action Plan, it is advisable to interpret certain notions and legal provisions in light of the relevant Directives of the European Parliament and of the Council of the European Union applicable to this field:

- **Council Directive 85/374/EEC of 25 July 1985** on liability for defective products;
- **Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013** on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (hereinafter referred to as the *Consumer ADR Directive*), published in the *Official Journal of the European Union* L 165 of 18 June 2013, as subsequently amended by **Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017**;
- **Directive 2001/95/EC** on general product safety;
- other sector-specific (“vertical”) directives aimed at ensuring safety in relation to particular categories of products, which constitute binding acts requiring implementation into the domestic law of the Member States.

According to recital (1) (introductory part) of the **Consumer ADR Directive**:
(1) In accordance with Article 169(1) and (2)(a) of the Treaty on the Functioning of the European Union (TFEU), the Union shall contribute to the attainment of a high level of consumer protection through the measures it adopts pursuant to Article 114 TFEU. Article 38 of the Charter of Fundamental Rights of the European Union provides that Union policies shall ensure a high level of consumer protection.

According to recital (4) (introductory part) of the **Consumer ADR Directive**:
(4) Ensuring access to simple, efficient, fast and low-cost means of dispute resolution at both national and cross-border level for disputes arising from sales or service contracts should benefit consumers and, consequently, strengthen their confidence in the market.

According to recital (5) (introductory part) of the **Consumer ADR Directive**:
(5) Alternative dispute resolution (ADR) offers a simple, fast and low-cost out-of-court solution for disputes between consumers and traders.

According to Article 10 of the **Contravention Code of the Republic of Moldova**:
A contravention constitutes an unlawful act – whether by action or omission – committed with guilt, presenting a lower degree of social danger than a criminal offence, which infringes upon social values protected by law, is provided for by the present Code, and is subject to a contraventional sanction.

As a matter of law, contraventional proceedings commence from the moment the finding authority is notified or acts *ex officio* with regard to the commission of a contravention, pursuant to Article 374(2¹) of the Contravention Code of the Republic of Moldova.

Practical experience demonstrates that, as a rule, the initiation of contraventional proceedings in cases involving consumers occurs following a factual complaint submitted by the consumer to the competent state authorities. Notifications addressed to consumer protection and supervisory bodies represent a natural and legitimate reaction of individuals to the infringement of their rights.

Given the degree of social danger associated with contraventions in the field of consumer rights protection, contraventional legislation has excluded the possibility of reconciliation between the victim and the offender, as provided for in Article 29 of the Contravention Code of the Republic of Moldova.

At the same time, through the introduction of Articles 451¹–451⁴ into the Contravention Code of the Republic of Moldova, the State sought to establish new procedural mechanisms within national legislation for the examination of contraventional acts, based on the personal findings of the finding authority and on cooperation agreements. In essence, these mechanisms represent simplified procedures for the establishment and examination of contraventional cases.

The new procedures for examining contraventional cases, which have successfully passed the constitutional review – namely through the Constitutional Court Decision of the Republic of Moldova No. 161 of 29 November 2022 declaring inadmissible the referral No. 67a/2022 – enable state authorities to examine cases under a more streamlined procedure, without triggering the entire mechanism of contraventional adjudication, thereby avoiding multiple time-consuming stages.

When referring to the avoidance of such time-intensive stages, this encompasses not only the reduction of costs and expenses incurred by the State in examining and resolving the conflict, but also, not least, the potential – indeed, sometimes significant – reduction of procedural costs borne by the parties involved, namely the victim and the offender.

Thus, where, for example, in the course of contraventional proceedings the offender opts for the examination of the act on the basis of the personal findings of the finding authority, in cases of contraventional liability under the conditions set out in Article 451¹ (1)

of the Contravention Code, the finding authority shall issue a decision imposing a sanction equal to one half of the statutory minimum fine provided for in the Special Part of Book I of the Contravention Code.

Likewise, where a cooperation agreement is concluded, the contravener shall be subject to a sanction equal to one half of the statutory maximum fine prescribed for the committed contravention.

It is beyond doubt that no person welcomes the imposition of a contraventional sanction upon themselves, particularly a pecuniary sanction in the form of a fine. Beyond the significant damage to the trader's or offender's commercial image and reputation – damage that inevitably results in unrealized income due to the loss of public or customer trust in the safety and reliability of the goods or services offered, and consequently in declining sales volumes – the trader or offender is also required to bear additional financial costs in the form of a fine, which in certain cases may be substantial.

In these circumstances, the offender, acting upon the awareness of having committed the unlawful act—an awareness typically reinforced by the weight of the evidence gathered by the finding authority, whose role is to administer evidence in the manner prescribed by law in order to verify the legality and soundness of the offence report (Antoci, Lile, 2023, p.86-92)—and taking into account the seriousness of the conduct, as well as an assessment of the possibility of remedying the situation in optimal terms and at minimal cost, may opt for one of the special (simplified) procedures. Such a choice primarily results in a reduction in the level of contraventional sanctions, in particular in the amount of the fine imposed.

In this context, it is also appropriate to recall that, pursuant to Article 34(3) of the Contravention Code, a contravener is entitled to pay half of the imposed fine if payment is made within three working days from the date on which the decision imposing the contraventional sanction is communicated.

However, this possibility of reduction, made available to traders or contraveners, does not in itself resolve the substantive issue of the infringement of the consumer's rights. The imposition and payment of a reduced contraventional fine does not automatically lead to the restoration or remediation of the consumer's violated rights.

In this regard, it should be noted that contraventional legislation allows, concurrently with the examination and resolution of the contraventional proceedings, for the settlement of matters relating to the compensation of damage caused to the consumer, pursuant to Article 45(2) of the Contravention Code, provided that there are no disputes regarding the extent of the damage.

Accordingly, where the trader or contravener ultimately acknowledges or accepts the commission of a contravention – particularly in the field of consumer protection – and agrees to the resolution of the case under one of the prescribed special (simplified) procedures, it may reasonably be assumed that it would be in the interest of both parties, namely the victim and the contravener, for the state of conflict, once it has arisen and been established, to be resolved definitively and comprehensively, both at the contraventional and at the civil level.

The advantages of a definitive and comprehensive settlement of the conflict lie primarily in the achievement of substantial savings in terms of costs and expenses borne by both parties to the dispute.

From the perspective of the victim or consumer, one of the most significant benefits is the considerable reduction in the time required to restore their infringed rights. As a secondary, yet important, effect, such an approach also limits the costs and expenses associated with rights restoration procedures, which may otherwise involve expenditures related to expert assessments (given that, as a rule, proving certain facts requires specialized knowledge in various fields), the payment of qualified legal assistance, travel expenses, and other ancillary costs.

From the standpoint of the trader or contravener, the benefits may be reflected in relatively lower costs – or avoided costs – associated with resolving the conflict. Among these, one of the most important advantages is the preservation of commercial reputation, with the secondary benefit of avoiding, in the event of an adverse court outcome, the obligation to compensate the victim or consumer for the costs and expenses incurred, in addition to bearing one's own costs, which would not be recoverable from the consumer.

In other words, the core advantage of a comprehensive settlement of the conflict is that the dispute is resolved definitively, here and now, with the parties generally being aware of the extent of the damage, as well as of the costs and expenses involved.

Conversely, opposition on the part of the trader or contravener, or the submission of excessive claims by the victim or consumer, typically leads to the initiation of subsequent civil proceedings. Such proceedings entail precisely those disadvantages that could otherwise be avoided through a comprehensive settlement, namely prolonged and often indeterminate periods required for the restoration of rights, increased costs and expenses, and a lack of certainty regarding the final outcome. By way of example, in the event that the consumer's claims are upheld, the trader may, in addition to the obligation to compensate for material and moral damage, also be exposed to liability for penalties accrued over the entire duration of the proceedings, alongside further reputational harm.

The key element to be taken into account when deciding whether to accept a definitive and comprehensive settlement of the conflict is the objective capacity to acknowledge, recognize, and accept potential errors or omissions that have led to the infringement of consumer rights, as well as the associated risks or losses – particularly where these can be quantified in monetary terms. Where such an assessment cannot be carried out independently, it may appropriately be supported by consultation with specialists in the relevant field.

Finally, neither the institution of mediation nor, more recently, alternative dispute resolution (ADR) mechanisms – namely consumer ADR entities – should be excluded as viable avenues for achieving such comprehensive settlements.

By way of example – serving both as an illustration and an anti-example – the case of **Cuznețova Lucia v. LLC “Chronotime”** is submitted for examination, resolved by **Supreme Court of Justice Decision No. 2ra-1062/18 of 6 June 2018**. Relevant excerpts are presented below.

On 17 June 2014, Lucia Cuznețova lodged a statement of claim before the court against LLC “Chronotime”, seeking the reimbursement of the amount of 1,200 MDL by the defendant as a result of the infringement of consumer rights, the payment by the company of a penalty amounting to 5% of the product price for each day from the date on which the

consumer's complaint was examined by the court, and the award of 5,000 MDL as compensation for non-pecuniary (moral) damage.

In substantiating her claim, the claimant stated that on 24 May 2014 she purchased a pair of earrings, model **SHEENA CRY SINI/rhs**, from LLC "Chronotime". Upon returning home and viewing the product in daylight, she observed that the colour of the earrings differed from the one she had selected in the store under artificial lighting. The colour as seen in daylight was unsatisfactory to her.

On the same day, she approached the sales assistant and requested the exchange of the earrings for another pair in her preferred colour. This request was refused. Consequently, she submitted a written application requesting the refund of the purchase price.

In its response, the seller stated that the purchased earrings fell within the scope of Annex No. 2, point 1, of Government Decision No. 1465 of 8 December 2003, and accordingly refused to return the money.

The claimant considered the refusal to refund the purchase price to be purely formal. She argued that the defendant had failed to prove that the purchased earrings qualified as jewellery possessing the characteristics listed in Government Decision No. 1456, Annex No. 2, point 1, namely that they:

- are made of precious metals;
- contain precious stones;
- are made of precious metals set with semi-precious or synthetic stones; or
- contain cut precious stones.

Furthermore, the earrings lacked the mandatory hallmark applied by the Hallmarking Chamber. Pursuant to point 23 of Government Decision No. 892 of 28 August 2001 on market surveillance in the Republic of Moldova, such products are also subject to mandatory hallmarking by the Hallmarking Chamber.

The claimant maintained that she had been misled, thereby suffering moral damage.

By the judgment of the Râșcani District Court, Chișinău Municipality, of 26 February 2016, the statement of claim submitted by Lucia Cuznețova was partially upheld. The court ordered LLC "Chronotime" to reimburse Lucia Cuznețova the cost of the earrings, model **SHEENA CRY SINI/rhs**, in the amount of 1,200 MDL. In addition, the court ordered the recovery from LLC "Chronotime", in favour of Lucia Cuznețova, of a penalty amounting to 3,450 MDL.

It should be noted that, as can be observed, the claimant Lucia Cuznețova's initial request was limited solely to the exchange of the product or the reimbursement of its price; she did not, at the outset, seek compensation for costs or damages.

The case of **Cuznețova Lucia v. LLC "Chronotime"** constitutes clear evidence of a lack of basic foreseeability on the part of LLC "Chronotime". In the circumstances described – manifestly contrary from the outset to the applicable legal provisions – this lack of foresight resulted in litigation lasting approximately four years from the date of the incident, the obligation to remedy the infringement, the obligation to pay penalties (the amount of

which exceeded the price of the product), the obligation to compensate court costs and expenses, the necessity to bear one's own litigation costs, and, finally, given that this case is publicly cited, a "deteriorated" commercial image.

Conclusions

Accordingly, by way of conclusions and recommendations applicable to both parties to the conflict – namely, the trader or contravener and the victim or consumer – it is of paramount importance to assess, wherever possible, the opportunity for a definitive and comprehensive settlement of the dispute, even if this entails relatively minor concessions. Such concessions must be weighed against the primary objective pursued: the definitive and comprehensive resolution of the conflict, as opposed to engaging in a "full-fledged" dispute characterized by uncertainty regarding the time required for resolution, the final outcome, and the overall costs of the proceedings.

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