JUDICIAL PROTECTION OF CONSUMERS

Research

Effectiveness of Judicial Protection of Consumers in the Republic of Serbia 2019–2023

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All terms used in the masculine grammatical gender
encompass both women and men to whom they refer.

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FOREWORD

Through the work of Judicial Base South, we sought to establish the current state of the effectiveness of judicial protection of consumers. Before beginning to collect material and conduct the research, it appeared that insufficient information was available about how many consumers decide to enter court proceedings and how successful they are in those proceedings.

The principal author of the research, Ivan Grujić, a lawyer by profession and the director and owner of the Association Agency in Leskovac, was instrumental in shaping the research topic. The publication was also prepared by Adrijana Mladenović, a judicial associate at the Basic Court in Niš, and Nemanja Tolić, an attorney-at-law from Niš. The entire authorial team forms part of Judicial Base South. Employees of the Committee for Human Rights Niš provided logistical, organisational and administrative support to the team.

The research and writing of the study were carried out during 2024.

Mihajlo Čolak
Niš, 2025

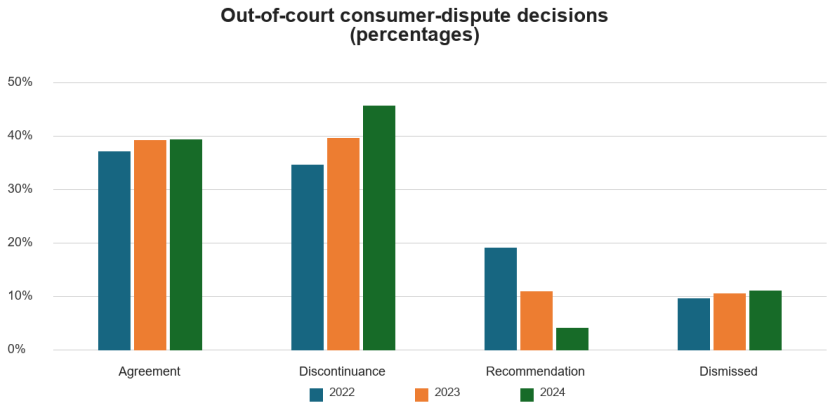
EXECUTIVE SUMMARY

Since judicial protection of consumer rights began to apply on 1 January 2011, no comprehensive analysis has been conducted in the Republic of Serbia of the effectiveness of court decisions rendered in consumer disputes. One of the principal research challenges is the absence of a separate record of court decisions in these cases. Although the Law on Consumer Protection (2021) requires Basic Courts to submit annual reports on consumer disputes, by the end of 2024 the Ministry of Justice had still not adopted the appropriate reporting forms.

Researchers from Judicial Base South (JBS)1 defined a representative sample of larger footwear and technical-goods traders operating throughout the Republic of Serbia and collected 220 court decisions in consumer disputes for the period 2019–2023. Using empirical research methods, they analysed court decisions in consumer disputes, data on out-of-court dispute resolution, data from the National Register of Consumer Complaints, and case-flow data from the Courts Portal. They also analysed relevant legislation and documents and interviewed judges, attorneys-at-law, court experts, mediation specialists, mediators in consumer disputes, and representatives of public institutions and consumer-protection associations.

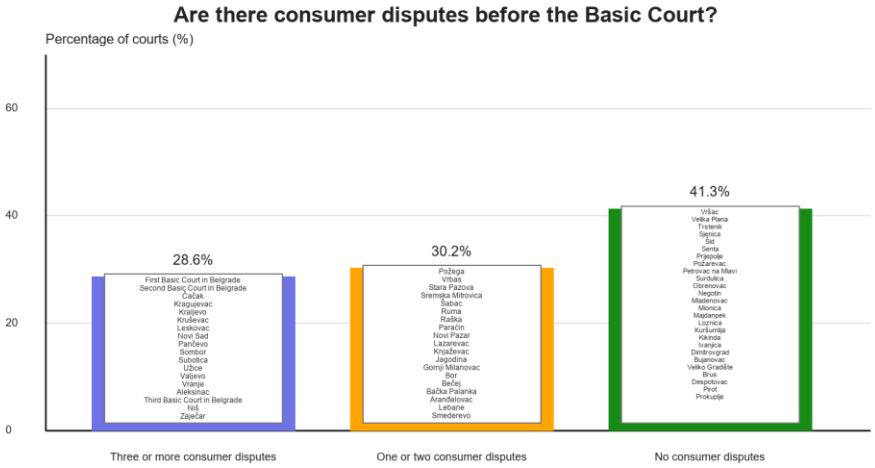
The key research findings are as follows:

1. **Approximately 40% of out-of-court consumer disputes are resolved successfully through an agreement.**

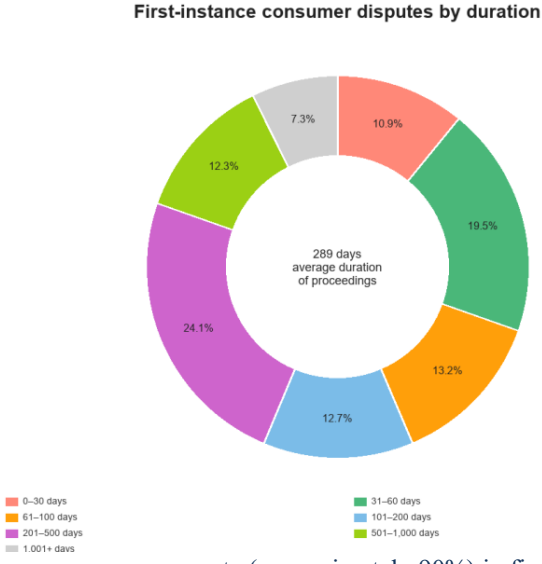


2. Approximately 41% of Basic Courts had no consumer disputes, while approximately 30% had only one or two consumer disputes.

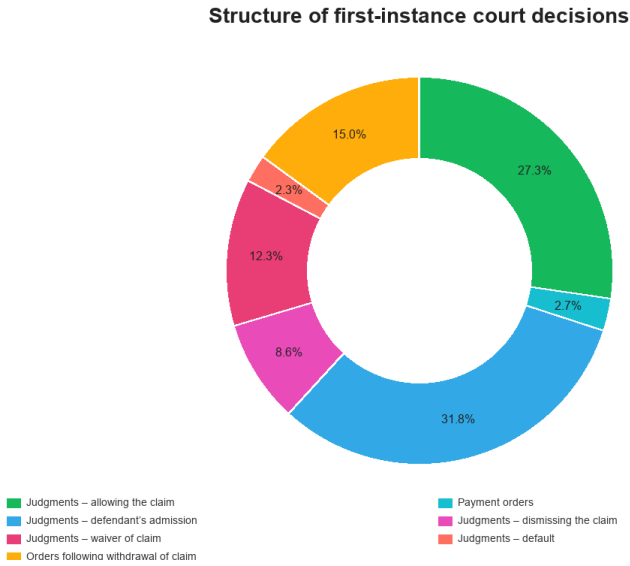
[1] https://www.pravosudnabaza.org/



3. **The average time taken to render a first-instance court decision in a consumer dispute was 289 days,** substantially exceeding the expected timeframe for the effective resolution of disputes.



4. A high consumer success rate (approximately 90%) in first-instance court disputes.



On the basis of the findings, the research makes the following specific recommendations for improving judicial protection of consumers in Serbia:

1. **Define the content of responses rejecting consumer complaints in greater detail.** The Ministry of Trade should adopt a by-law regulating in greater detail the content of a response rejecting a consumer complaint.
2. **Publicly disclose company data on consumer complaints and consumer disputes.** Large trading companies should publicly disclose the number of complaints submitted, accepted and rejected, as well as the number of out-of-court and court disputes.
3. **Link out-of-court and judicial consumer disputes.** If a trader loses both the out-of-court and the court dispute in the same matter, it should bear the costs of both procedures.
4. **Improve records of consumer court disputes.** The Minister of Justice should prescribe the manner in which consumer court disputes are recorded, and this obligation should be clearly defined in the Court Rules of Procedure. The data included in courts' annual reports on consumer disputes should also be expanded.
5. **Introduce the measurement of product quality as an indicator of the successful implementation of the Consumer Protection Strategy.** One of the key indicators for monitoring implementation of the new Consumer Protection Strategy should be the quality of goods about which consumers most frequently complain. We propose monitoring the quality of footwear and technical goods.
6. **Include a separate section on judicial protection of consumers in the new Consumer Protection Strategy.** The new Strategy should contain a separate section devoted to improving judicial protection of consumers.

1. LEGAL FRAMEWORK FOR CONSUMER PROTECTION

1.1. Concept of Consumer Protection and Its Protection under the Constitution of the Republic of Serbia

Consumer protection comprises a system of legal rules whose purpose is to protect the rights and interests of consumers, as natural persons purchasing products and services for personal use. Consumers and sellers do not occupy an equal position in the market. Sellers and manufacturers possess considerably more information about a product or service and are in a stronger economic position than purchasers. Special legal rules therefore provide consumers with additional protection alongside the rules governing obligations.

The right to consumer protection is constitutionally guaranteed. Article 90 of the Constitution of the Republic of Serbia guarantees consumer protection and specifically prohibits acts directed against consumers' health, safety and privacy, as well as all unfair practices in the market.

1.2. Protection of Consumer Rights in the European Union

The European Union (EU) has one of the world's most developed legal systems for consumer protection. As a candidate country for EU membership, the Republic of Serbia is required to align its legislation with the EU consumer-protection framework.

The most important EU directives in the field of consumer protection include:

- **Council Directive 93/13/EEC on unfair terms in consumer contracts.**[2] This Directive regulates unfair terms in contracts concluded between consumers and traders. It enables consumers to challenge such terms before a court, and Member States must ensure that national courts have the power to declare them invalid.
- **Directive 2005/29/EC on unfair commercial practices**[3] requires States to ensure enforcement of consumer-protection provisions.

The prescribed penalties must be effective, proportionate and dissuasive.

- **Directive 2009/22/EC on injunctions for the protection of consumers' interests (the Injunctions Directive).**[4] The Directive enables representative actions to protect collective consumer interests against unfair trader practices that infringe EU consumer-protection legislation. It provides for actions seeking an injunction against such practices in the Member States.
- **Directive 2011/83/EU on consumer rights.**[5] This Directive focuses on consumer rights, particularly in relation to distance and off-premises contracts. It gives consumers a right to withdraw from a contract within 14 days without giving a reason and regulates traders' obligations concerning refunds and delivery of goods. It also provides a basis for consumers to bring legal proceedings against traders where their rights have been infringed.

[2] http://data.europa.eu/eli/dir/1993/13/oj
[3] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive), http://data.europa.eu/eli/dir/2005/29/oj.
[4] http://data.europa.eu/eli/dir/2009/22/oj
[5] http://data.europa.eu/eli/dir/2011/83/oj

- **Directive 2013/11/EU on alternative dispute resolution for consumer disputes.**[6] This Directive gives consumers access to effective, fast and low-cost out-of-court dispute resolution through alternative dispute resolution (ADR) entities, including arbitration or mediation, where they have a dispute with a trader. It lays down basic rules for establishing ADR entities and guarantees their impartiality and transparency.

1.3. Law on Consumer Protection in the Republic of Serbia

The first Serbian Law on Consumer Protection to introduce judicial protection of consumers in line with EU legislation was adopted in 2010.[7] The current Law on Consumer Protection was adopted in 2021[8] with the aim of improving consumer protection, regulating market relations and ensuring fair market conditions.

The Law covers a broad range of matters, including consumer rights, traders' obligations, dispute-resolution methods and protection mechanisms.

Under the Law on Consumer Protection, fundamental consumer rights are:

1. **the right to satisfaction of basic needs** — access to essential goods and services such as food, water, housing, healthcare and education;
2. **the right to safety** — protection against products and services that may endanger consumers' life, health, property or the environment;
3. **the right to be informed** — access to accurate information needed to make informed decisions when purchasing products and services;
4. **the right to choose** — the ability to choose between different products and services at affordable prices and of appropriate quality;
5. **the right to participate** — representation in the process of adopting and implementing consumer-protection policies;
6. **the right to legal redress** — legal protection where consumer rights have been infringed, including compensation for damage;
7. **the right to education** — education about consumers' rights and obligations and the means of protecting their interests;
8. **the right to a healthy and sustainable environment** — the right to live and work in an environment that is not harmful to health and well-being.

The Law on Consumer Protection provides for four levels of consumer protection.[9]

1. **Direct contact between the consumer and the trader.** The first level of consumer protection is direct communication with the trader or service provider, by telephone, email or in person. A consumer may lodge a complaint, to which the trader or service provider must respond within eight days and which it must resolve within 15 days (30 days for technical goods and furniture).[10] If these time limits are not observed, the consumer may contact the Market Inspectorate.

[6] http://data.europa.eu/eli/dir/2013/11/oj
[7] Judicial protection of consumers in the Republic of Serbia began to apply on 1 January 2011.
[8] Official Gazette of the Republic of Serbia, No. 88/2021.
[9] The European Consumer Centres Network — ECC-Net (https://www.eccnet.eu/) also operates in the EU and provides advisory assistance in resolving cross-border consumer disputes. A consumer whose complaint has been rejected may contact the national consumer centre in their own country. That centre contacts its counterpart in the country where the goods were purchased or the service was provided, and the latter contacts the company that rejected the complaint. In addition to the EU Member States, Iceland and Norway participate in ECC-Net.
[10] Article 55 of the Law on Consumer Protection.

2. **Assistance from a consumer-protection association.** Before or after communicating with the trader or service provider, a consumer may approach a consumer-protection association. Such associations provide consumers with information, advice and legal assistance in exercising their rights.[11]
3. **Out-of-court resolution of a consumer dispute.** A consumer whose complaint has been rejected may initiate out-of-court dispute resolution within one year. The 2021 Law on Consumer Protection introduced an obligation for a company that rejected a complaint to participate in out-of-court resolution at the consumer's request.[12] Out-of-court resolution of a consumer dispute (mediation) is free of charge for the consumer and is initiated through an online platform.[13] The consumer and the trader communicate with a mediator by email. The mediator has 90 days[14] to make one of three decisions: a recommendation on how the consumer dispute should be resolved, an agreement resolving the dispute, or a decision discontinuing the procedure.[15]
4. **Judicial resolution of a consumer dispute.** A consumer may initiate court proceedings where a trader or service provider has unjustifiably rejected the complaint.

Court proceedings may be initiated irrespective of whether out-of-court dispute resolution has been attempted. If the consumer, mediator and trader have concluded an agreement resolving the dispute, there is no purpose in the consumer initiating court proceedings. 16 The Law on Civil Procedure contains a special chapter governing consumer disputes (Chapter XXXV).17

1.4. Concept of a Consumer Dispute

A consumer dispute is a domestic or cross-border dispute arising from a contractual or non-contractual relationship between a consumer and a trader.18 On the basis of the statutory definition, the Law on Consumer Protection applies to every dispute in which one party is a consumer — a natural person who acquires goods or services on the market for purposes outside their business or other commercial activity — and the other is a trader — a legal person, entrepreneur or natural person acting on the market in the course of business or for other commercial purposes, including another person acting in the trader's name or on the trader's behalf — and the parties are in a contractual or non-contractual relationship.

A domestic dispute is one in which, when the contract was concluded, the consumer had a permanent or temporary residence, and the trader had its registered office or a separate organisational unit, in the Republic of Serbia. A cross-border dispute is any dispute in which, when the contract was concluded, the trader had its registered office or a separate organisational unit in the Republic of Serbia, while the consumer had neither permanent nor temporary residence in the Republic of Serbia. The Law applies to all relations between consumers and traders that fall within its scope, except where

[11] Article 139 of the Law on Consumer Protection.
[12] Article 151 of the Law on Consumer Protection.
[13] https://vansudsko.must.gov.rs/
[14] In justified cases where the procedure is complex, the mediator may extend the time limit by a further 90 days. Article 151 of the Law on Consumer Protection.
[15] Article 163 of the Law on Consumer Protection.
[16] As a matter of formal law, a consumer may bring an action before the court, but would lose the case because the dispute has already been resolved out of court.
[17] Official Gazette of the Republic of Serbia, Nos. 72/2011, 49/2013 — Constitutional Court decision, 74/2013 — Constitutional Court decision, 55/2014, 87/2018, 18/2020 and 10/2023 — other law.
[18] Article 148 of the Law on Consumer Protection.

special legislation provides a higher level of protection.[19] It also applies to contracts for the sale of goods and provision of services, including distance and off-premises contracts.

1.5. Consumer Dispute as a Special Civil Procedure

A consumer dispute is a special civil procedure that differs from ordinary civil proceedings primarily in its urgency, as reflected in the following:

- the statement of claim is not served on the defendant for a defence; instead, it is served together with the summons to the main hearing;
- no preparatory hearing is scheduled; the main hearing is scheduled immediately, within 30 days after the court receives the statement of claim.

The Basic Court has subject-matter jurisdiction in these proceedings. In addition to the courts determined under the general rules of territorial jurisdiction, territorial jurisdiction also lies with the court in whose territory the consumer has a permanent or temporary residence. The case is heard by a single judge.

In addition to the ordinary initiation of civil proceedings by a consumer's statement of claim, civil proceedings may arise from an enforcement debtor's objection to an enforcement order based on a credible document, as provided by Article 52 of the Law on Enforcement and Security.[20] The most common example in consumer disputes is where a utility service provider initiates enforcement on the basis of the credible document 'an extract from the business books relating to utility or similar services provided'.

A trader or utility service provider (for example, EPS, Objedinjena naplata, PUC Naissus, A1, MTS or Yettel) files an application for enforcement with the locally competent public enforcement officer. This is a specific situation because it departs from the usual procedure in which the competent Basic Court issues an enforcement order and then forwards it to a public enforcement officer for implementation. The enforcement debtor (consumer) may protect their rights by objecting to the enforcement order. The objection is submitted to the competent Basic Court through the public enforcement officer handling the case. If the objection is allowed, the matter continues as civil proceedings initiated by an objection to a payment order. Although such a case need not necessarily be a consumer dispute, where it concerns a dispute between a consumer and a trader based on a contract and the consumer's objection relates to the service provided, it satisfies all statutory conditions for treatment as a consumer dispute.

An objection must be lodged with the public enforcement officer within eight days after service of the enforcement order. If it is not lodged within that period, it is deemed not to have been lodged; the enforcement debtor is also deemed to accept the statements in the enforcement order, which becomes final and enforceable. The debtor then loses the right to object, and the public enforcement officer proceeds with compulsory enforcement. The Law provides that, if the enforcement debtor does not lodge an objection, the public enforcement officer must begin enforcement within three working days after expiry of the time limit for an objection.

[19] The Law on the Protection of Financial Services Consumers regulates consumer rights relating to financial services, such as loans, insurance and other financial transactions. That Law was not covered by this research.
[20] Official Gazette of the Republic of Serbia, Nos. 106/2015, 106/2016 — authentic interpretation, 113/2017 — authentic interpretation, 54/2019, 9/2020 — authentic interpretation and 10/2023 — other law.

An objection may be lodged on the following grounds:

- the claim arising from the credible document did not arise;
- the credible document contains false information;
- the claim arising from the credible document has not fallen due;
- the obligation has been performed or otherwise ceased to exist;
- the claim is time-barred;
- the claim has not passed or been transferred to the enforcement creditor, or the obligation has not passed or been transferred to the enforcement debtor;
- a ground prescribed by a special law.

Only the enforcement debtor or their authorised representative may lodge the objection. The debtor must personally sign and give reasons for the objection and submit evidence supporting its allegations. In addition to written evidence, the consumer may raise procedural objections without submitting evidence, such as an objection that the claim is time-barred.

The merits of the objection are decided by the court with territorial and subject-matter jurisdiction — in a consumer dispute, the Basic Court competent for the territory in which the consumer has registered permanent residence.

Procedure following an objection to an enforcement order

Upon receiving the objection, the public enforcement officer must stay the procedure until the court has decided and forward the objection to the court for determination.

The objection procedure has two stages.

1. A three-judge IPV panel[21] examines whether the objection gives reasons and whether supporting evidence has been submitted, that is, whether the assertions made in the objection have been rendered plausible. If so, the panel allows the objection and the matter continues in civil proceedings as though an objection had been lodged against a payment order. If the panel rejects the objection on the merits or dismisses it as inadmissible, the public enforcement officer continues enforcement. An objection may be lodged against the panel's decision dismissing the objection as inadmissible.
2. Proceedings before a civil judge. Civil proceedings following an allowed objection to an enforcement order are, in principle, conducted under the rules governing small claims, because in practice the value of a trader's claim against a consumer very rarely exceeds the dinar equivalent of EUR 3,000 on the date the action is brought.

If a consumer appearing as defendant fails to attend a main hearing to which they were duly summoned and does not justify the absence, the court may render a default judgment if it considers that the matter has been sufficiently clarified by the written documents in the case file.22

If the consumer, as defendant, loses the case, they may appeal the first-instance judgment to the Higher Court. However, because the rules governing small claims apply, the consumer may not challenge the findings of fact or submit new facts and evidence on appeal; the first-instance judgment may be challenged only for an incorrect application of substantive law or a material violation of civil procedure.

[21] IPV is a three-judge court panel that decides objections in enforcement and security proceedings.
[22] Article 351 of the Law on Civil Procedure.

It should be emphasised that many courts treat only disputes initiated by consumers as consumer disputes, thereby denying consumer rights to consumers who appear as defendants. This approach is particularly harmful to consumer rights in view of the large number of such proceedings.

1.6. Importance of Judicial Protection of Consumers

Judicial protection of consumers is a legal mechanism initiated by a consumer before the Basic Court where the consumer considers that a trader or service provider has infringed a right.

This is the fourth and final instrument of consumer protection and the only one with which the trader or service provider must comply even if it disagrees with the decision rendered in the consumer dispute. Under the first three instruments — (1) direct contact between the consumer and trader, (2) intermediation by a consumer-protection association and (3) out-of-court resolution of consumer disputes — the trader or service provider is required only to participate.

The importance of judicial protection of consumers lies in:

1. **preventing unfair practices by traders and service providers.** Manufacturers and sellers are in a more favourable position than consumers because of their knowledge of products or services. Adequate legal mechanisms are essential to protect consumers against unfair practices. Commercial undertakings seek constant business expansion, but the prevention of unfair practices must set limits beyond which expansion may not occur to the detriment of consumers;
2. **ensuring justice and fairness.** If a consumer has not secured their rights through the preceding protection instruments, judicial protection should guarantee justice and fairness;
3. **increasing consumer confidence.** Effective legal consumer-protection mechanisms increase the confidence of consumers, traders and service providers, contributing to a better-functioning market;
4. **protecting consumers' economic standard of living.** Consumers effectively protected against unfair practices can purchase higher-quality goods and services at more favourable prices, directly improving their economic standard of living.

1.7. Judicial Protection in the Consumer Protection Strategy 2019–2024

The objectives and measures of the Consumer Protection Strategy 2019–202423 do not directly mention judicial protection of consumers. Nor is it mentioned directly in the action plans implementing the Strategy for 2019–2022 and 2023–2024.

The published reports on implementation of those action plans for December 2020–December 2021 and December 2021–December 2022 likewise contain no direct reference to judicial protection of consumers.24 Judicial protection of consumers is also not mentioned in the Judicial Development Strategy 2020–2025.25

Although judicial protection of consumers is not mentioned directly, the adoption of the new Law on Consumer Protection in 2021 introduced an obligation to maintain a separate record of consumer court disputes, as discussed above. Unfortunately, by the

[23] Official Gazette of the Republic of Serbia, No. 93/2019.

[24] Ministry of Internal and Foreign Trade (2021 and 2022), Reports on the Implementation of the Action Plan for the Consumer Protection Strategy 2019–2024 (reporting periods: December 2020–December 2021 and December 2021–December 2022). Available at: https://must.gov.rs/tekst/sr/411/strategije.php (accessed 25 July 2024).

[25] Official Gazette of the Republic of Serbia, No. 101/2020.

time this research was published, the separate record of consumer court disputes had still not begun to operate.

2. RESEARCH METHODOLOGY

2.1. Concept and Objectives of the Research

Judicial protection of consumers began to apply in Serbia on 1 January 2011, following adoption of the 2010 Law on Consumer Protection.[26] However, no analysis of the effectiveness of judicial protection of consumers in Serbia had previously been conducted because official data on these court proceedings had not been published. The 2021 Law on Consumer Protection introduced an obligation for courts to submit annual reports on consumer disputes to the Ministry of Justice.[27] The Minister of Justice has not prescribed the manner of keeping the records or the form of the reports, thereby preventing courts from fulfilling this statutory obligation.

In 2024, the Ministry of Justice prepared Draft Court Rules of Procedure that did not incorporate the obligation under the Law on Consumer Protection. This indicates insufficient interest within the Ministry in improving consumer court disputes. The authors proposed that the new Court Rules of Procedure should provide for consumer disputes to be recorded separately in Basic Courts, in accordance with the obligations laid down by the Law on Consumer Protection.

Because the effectiveness of judicial protection of consumers in Serbia had not yet been assessed, the Judicial Base South researchers decided to examine its effectiveness and consider how it could be improved. Judicial Base South brings together individuals and representatives of academia, the media and associations in an informal coalition whose objective is to strengthen rule-of-law capacities in southern Serbia, particularly in the field of justice. The coalition was formed in 2019 with the support of the Open Society Foundation Serbia.[28]

The researchers used an empirical research method. Empirical research is important for understanding the difference between legal norms — the law — and social reality, including how those norms are applied and experienced in everyday life.[29]

In examining the effectiveness of judicial protection of consumers, we focused on the period covered by the Consumer Protection Strategy 2019–2024. We sought to contribute a civil-society assessment of implementation of the Strategy and to formulate proposals that could improve the position of consumers during implementation of the new Consumer Protection Strategy.

To assess the effectiveness of judicial protection of consumers, we used quantitative and qualitative methods.

Quantitative methods

- Analysis of Basic Courts' responses and court decisions in consumer disputes
- Analysis of Ministry of Internal and Foreign Trade data on out-of-court resolution of consumer disputes (the 'Ministry of Trade')
- Analysis of data from the National Register of Consumer Complaints

[26] Before 2011, consumer protection fell within the competence of the Market Inspectorate. Consumer protection can be obtained more quickly in administrative proceedings. However, market inspectors do not have the specialist expertise needed to assess responsibility for the cause of damage to particular goods.
[27] Article 148 of the Law on Consumer Protection.
[28] Further information about Judicial Base South is available at: https://www.pravosudnabaza.org/.
[29] Empirical research is research based on empirical evidence, that is, data obtained through observation, experimentation or experience. It uses data-collection methods that enable phenomena to be observed and measured directly. Empirical research allows studies to be repeated in order to test the reliability and validity of the results.

- Analysis of case-flow data from the Courts Portal

Qualitative methods

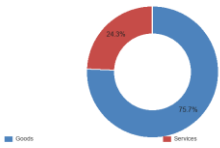
1. **Analysis of legislation and documents:**
- Constitution of the Republic of Serbia (2006)
- Law on Consumer Protection (2010)
- Law on Consumer Protection (2021)
- Law on Civil Procedure (2011)
- Consumer Protection Strategy 2019–2024
- Judicial Development Strategy 2020–2025
- Action Plan for the Consumer Protection Strategy 2019–2022
- Action Plan for the Consumer Protection Strategy 2013–2024
- Reports on implementation of the action plans for the Consumer Protection Strategy
- Draft Court Rules of Procedure (2024)

2. **Interviews:**
- Target groups: judges, attorneys-at-law, court experts, mediation specialists, civil-procedure specialists, mediators in consumer disputes, representatives of public consumer-protection institutions, representatives of companies conducting quality control of goods, and consumer-protection associations
- Topics: experience, practical challenges, perceptions of the effectiveness of judicial protection, and recommendations for improvement

3. **Surveys:**
- Opinions of consumers whose complaints were rejected and who did not pursue further protection of their rights
- Opinions of consumers who used out-of-court and judicial protection of their rights

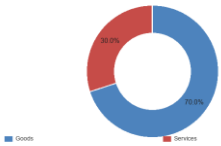
2.2. Information on the Research Sample

Reports of the National Register of Consumer Complaints for 2021, 2022 and 2023 show that the number of consumer complaints concerning goods was two to three times higher than the number concerning services. For goods, footwear and white goods attracted the highest number of complaints each year.



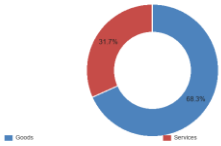
2021

Consumer complaints concerning footwear and the most frequent complaints concerning technical goods in 2021	Percentage
Footwear	21.72%
White goods	12.12%
Household appliances	6.26%
Televisions	5.89%
Mobile devices	5.85%
Computers and IT equipment	5.10%
Air-conditioning and heating appliances	2.22%
Electronic goods	0.92%
Total	60.08%



2022

Consumer complaints concerning footwear and the most frequent complaints concerning technical goods in 2022	Percentage
Footwear	21.25%
White goods	13.91%
Mobile phones	5.88%
Household appliances	5.64%
Televisions	4.35%
Computers and IT equipment	3.66%
Air-conditioning and heating appliances	2.09%
Electronic goods	1.04%
Total	57.82%



2023

Consumer complaints concerning footwear and the most frequent complaints concerning technical goods in 2023	Percentage
Footwear	24.31%
White goods	12.51%
Household appliances	7.07%
Mobile phones	5.41%
Televisions	3.91%
Computers and IT equipment	3.15%
Air-conditioning and heating appliances	1.73%
Electronic goods	1.13%
Total	59.22%

Because footwear and technical goods account for approximately 60% of consumer complaints concerning goods, the research team selected a sample on the basis of which requests for access to information of public importance were sent to every Basic Court in Serbia. The courts were asked whether consumer proceedings had been brought against specified companies between 2019 and 2023 and, if so, to provide depersonalised copies of first-instance court decisions.

We selected only first-instance decisions because the large majority of consumer disputes conclude without a hearing or after a single hearing. Submitting requests for access to information of public importance to second-instance courts would have required considerable time without providing a significant research benefit.

The sample comprised larger companies with stores selling footwear and technical goods throughout Serbia:

1. Sport Vision DOO
2. Planeta Sport DOO
3. Intersport S Trgovina DOO
4. Đak DOO
5. Deichmann DOO
6. Obuća Metro DOO
7. N Sport DOO
8. Obuća Pavle DOO
9. Office Shoes DOO
10. Adidas Serbia DOO
11. Sport Time Balkans
12. Gigatron DOO
13. Tehnomanija DOO
14. Tehnomedia Centar DOO

Adidas Serbia DOO, the authorised importer for Adidas, and Sport Time Balkans, the authorised importer for Nike, have developed retail networks in Serbia. We included them in the sample to determine whether complaints concerning footwear had

been made against authorised importers and, if so, how many there were compared with other footwear importers.

2.3. Method of Analysis

The researchers used descriptive statistics, which summarise and describe the basic characteristics of a dataset. The aim is to provide straightforward quantitative insights that assist in understanding the distribution and principal characteristics of the data.

The following examples of descriptive statistics were used to analyse the effects of judicial protection of consumers in the selected sample and period:

- **frequency of court decisions** — whether proceedings were initiated and a first-instance decision rendered in a consumer dispute before a Basic Court;
- **average duration of first-instance proceedings** — the average duration for each Basic Court and for the whole territory of Serbia;
- **proportion of successful cases** — the number and percentage of cases won by consumers and traders, by court and for the whole territory of Serbia;
- **proportion by form and type of court decision** — whether the court issued an order following withdrawal of the claim, a judgment following waiver of the relief claimed, a default judgment due to the defendant's absence, a payment order, a judgment based on the defendant's admission, a judgment allowing the claim without an admission by the defendant, or a judgment dismissing the claim in favour of the defendant;
- **number of consumer disputes with and without a hearing.**

2.4. Summary of Previous Research

Analysis of the Implementation of the Consumer Protection Strategy 2013–2018

The Ministry of Trade, Tourism and Telecommunications and its partners prepared an analysis of implementation of the Consumer Protection Strategy 2013–2018.[30] Strengthening enforcement of consumer-protection legislation had also been one of the priorities of the preceding Strategy. However, the objective was implemented only to a limited extent because of constrained resources and partners' failure to carry out activities.

The analysis found that, although the Law on Civil Procedure requires a hearing to be held within 30 days after the statement of claim is filed, lengthy civil proceedings remained common. Excessive duration and additional costs were identified as the principal obstacles to wider use of judicial protection of consumer rights.

Consumer Protection in Serbia: What Are the Possible Directions for Progress?

Dušan Protić authored a 2020 study published by the European Policy Centre (CEP), entitled Consumer Protection in Serbia: What Are the Possible Directions for Progress?[31]

The study reviews the development of consumer protection and proposes measures to improve the position of consumers in Serbia. It recommended expanding the competence of the Commission for Protection of Competition, increasing penalties in

[30] The Analysis of the Implementation of the Consumer Protection Strategy 2013–2018 was published as part of the Consumer Protection Strategy 2019–2024.

[31] Dušan Protić, 2020, Consumer Protection in Serbia: What Are the Possible Directions for Progress?, European Policy Centre (CEP). Available at: https://cep.org.rs/wp-content/uploads/2022/10/Zastita-potrosaca-u-Srbiji_studija.pdf (accessed 26 July 2024).

administrative collective-consumer-protection proceedings, introducing a consumer ombudsman, increasing funding for consumer organisations, and introducing consumer arbitration as a form of out-of-court consumer dispute resolution.

The study identified the following shortcomings in judicial protection of consumers:

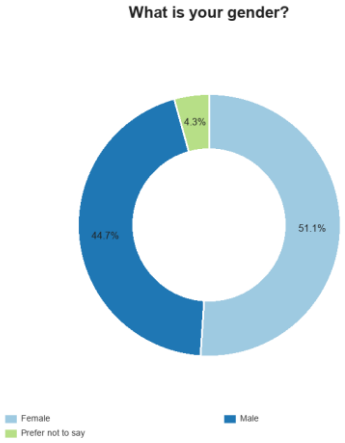
1. There is no separate record of consumer disputes in the courts.
2. Judges avoid or incorrectly apply the Law on Consumer Protection, including through insufficient knowledge of consumer rights, failure to accept the statutory presumption placing the burden of proof on the defendant, and failure to apply the exemption from court fees.
3. Consumers face 'high barriers' in court proceedings, including legal uncertainty, reluctance to initiate small-claims proceedings, and lengthy proceedings.

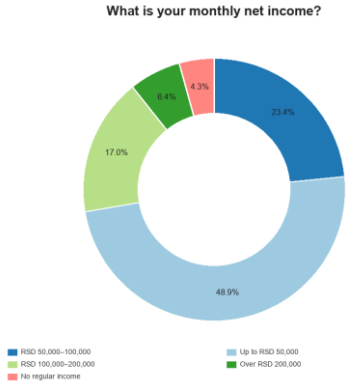
3. RESEARCH RESULTS

3.1. Results of the Survey of Consumers Whose Complaints Were Rejected

In June 2024, Judicial Base South researchers launched an online survey of persons whose consumer complaints had been rejected. The purpose was to examine why some consumers decided to pursue out-of-court or judicial protection of their rights while others abandoned the matter after their complaint was rejected.

The results of the online survey were as follows:

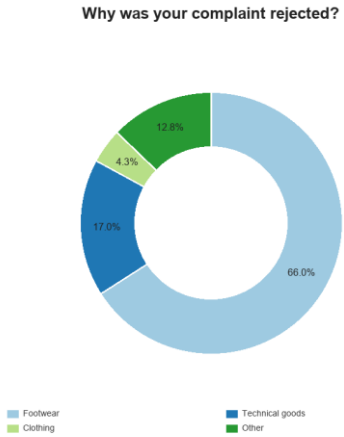


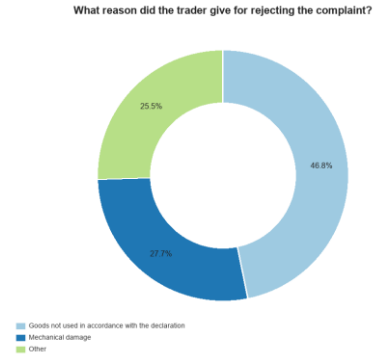


Complaints concerning footwear and technical goods most often involve items of ‘small value’. The survey results nevertheless indicate that the poorest citizens are not those who most frequently lodge complaints. Economic motives undoubtedly play an important role in the decision to lodge a complaint and subsequently initiate an out-of-court or judicial consumer dispute.

The research found that emotional reasons are among the key factors motivating consumers to persist in protecting their rights. Consumers are aware of obstacles to securing protection, but where they perceive ‘injustice’ in the trader’s conduct, they are often prepared to seek justice before a court.

One striking example recorded during the research concerned a father whose complaint about a child’s trainers was rejected on the ground that ‘the child has strange feet’. The statement caused a strong negative reaction and prompted him to initiate a consumer court dispute, which he ultimately won.

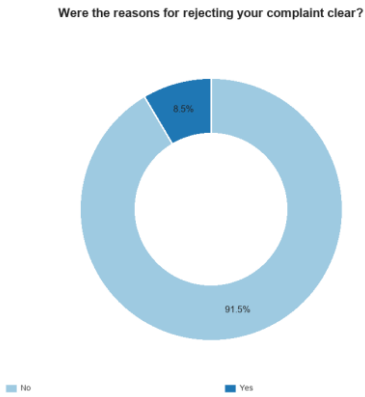


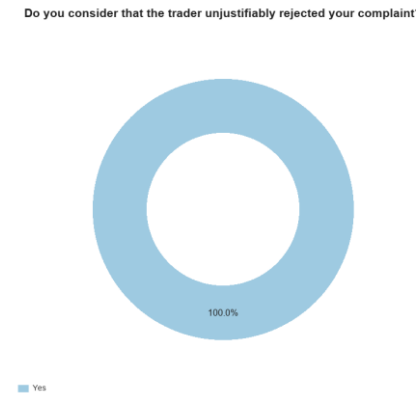


Survey participants most frequently complained about footwear, which accounted for two thirds of the complaints. The reasons sellers most often gave for rejection were that the ‘goods were not used in accordance with the declaration’ and that there had been ‘mechanical damage’.

In most cases, however, sellers did not explain in detail how the ‘mechanical damage’ occurred. Such imprecise formulations make it possible to reject every consumer complaint irrespective of whether it is well founded.

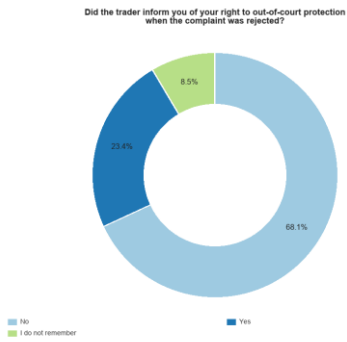
This practice underscores the need to improve the legal framework governing the content of responses to consumer complaints in order to reduce abuse and poor commercial practice in their handling.

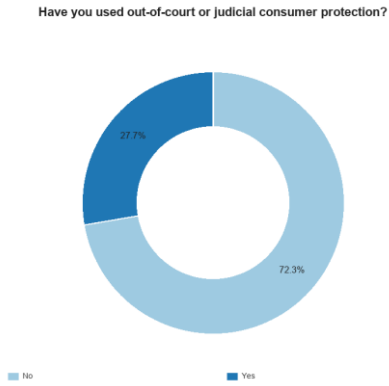




Imprecise language that can serve as a pretext for rejecting every complaint further confuses purchasers. The survey shows that as many as 90% of purchasers do not understand why their complaint was rejected.

This indicates a serious communication problem between traders and consumers that both hinders consumers in exercising their rights and undermines confidence in the complaints procedure.





Despite sellers' statutory obligation to inform purchasers of their right to out-of-court protection when a complaint is rejected, approximately two thirds of surveyed purchasers said that the trader had not provided such notice.

The respondents most frequently gave the following reasons for not using out-of-court or judicial consumer protection:

- lack of information about the procedure;
- fear of the costs and uncertainty of the procedure;
- lack of time and energy to pursue protection procedures.

When asked what might encourage more frequent use of out-of-court and judicial consumer protection, respondents identified:

- better-informed consumers;
- availability of free legal aid, such as free representation by an attorney-at-law;
- lower procedural costs;
- simpler and shorter procedures;
- giving the Market Inspectorate access to traders' records of product inspections.

Factors that could encourage traders to accept complaints more frequently included:

- increased oversight of traders' operations;
- better enforcement of the law;
- temporary prohibition of business activity for traders with a high number of unjustifiably rejected complaints.

Respondents who had used out-of-court or judicial consumer protection stated that they had done so because they felt deceived, particularly where products such as footwear did not last even six months. Very few respondents said that financial loss had motivated them to initiate the procedure.

The average satisfaction rating for out-of-court and judicial consumer-protection procedures was 3.25 on a scale of 1 to 5, where 5 was the highest rating.

When asked what they would change about out-of-court protection, respondents identified:

- a need for more genuine engagement by traders;
- greater interest on the part of mediators, and greater powers for them to establish the facts.

As regards judicial protection, all respondents emphasised the need to shorten proceedings.

Out-of-court consumer protection would be recommended to friends by 88% of respondents, while 100% would recommend judicial protection. The survey indicates that consumers who gain experience of judicial consumer protection become more inclined to use it again. This is supported by the fact that every surveyed respondent who initiated court proceedings won their dispute with the trader. The survey was completed by 50 participants from Serbia.

3.2. Results of the Analysis of Out-of-Court Consumer Disputes, July 2022–July 2024

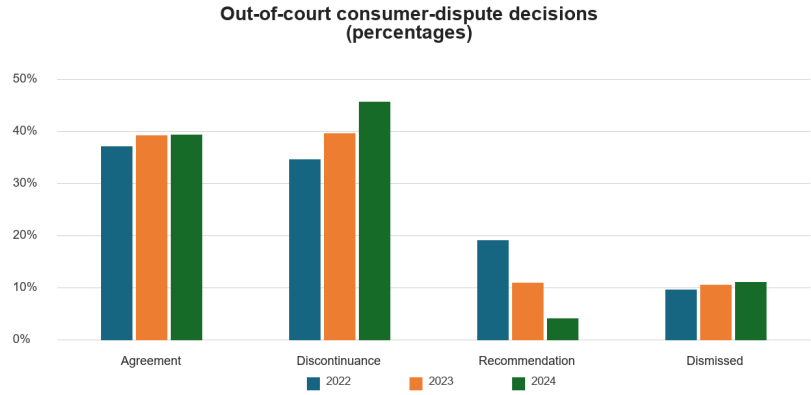
Consumer disputes have been resolved through the Information Platform for Out-of-Court Resolution of Consumer Disputes[32] since 27 July 2022. The research did not examine out-of-court resolution of consumer disputes in detail. It focused on the success rate and duration of the procedure.

In out-of-court consumer dispute resolution, the mediator most frequently makes one of three decisions:

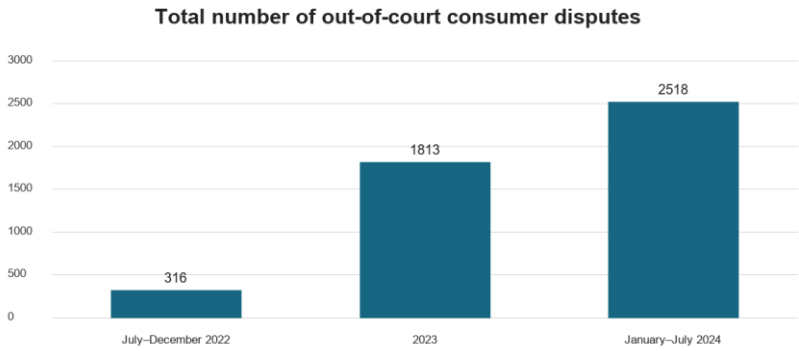
1. an agreement resolving the dispute (successful mediation);
2. a decision discontinuing the procedure;
3. a recommendation on how the consumer dispute should be resolved.

The mediator may also dismiss an application for out-of-court resolution where the necessary prerequisites are not met.[33]

At the beginning of implementation of the new out-of-court consumer dispute-resolution procedure, the percentage of agreements resolving disputes was at its highest.[34] Our most recent data show that approximately 40% of out-of-court consumer disputes are resolved successfully, by agreement.



[32] https://vansudsko.must.gov.rs/
[33] Article 160 of the Law on Consumer Protection.
[34] For one short period, 45% of out-of-court disputes were concluded successfully.



Over time, the number of consumer disputes that citizens attempt to resolve through the Ministry of Trade's platform after rejection of a complaint has increased. This is a positive development: it indicates that a growing number of citizens know about this consumer-protection mechanism and that confidence in out-of-court dispute resolution is increasing.

According to the data obtained, the average duration of out-of-court consumer dispute resolution in 2023 was 37 days, substantially shorter than the statutory time limit of 90 days.

3.3. Results of the Analysis of Consumer Court Disputes, 2019–2023

Because civil consumer proceedings are not recorded separately, consumer disputes are entered in court records as claims for damages, unjust enrichment, payment of a debt, specific performance, and termination of contract.

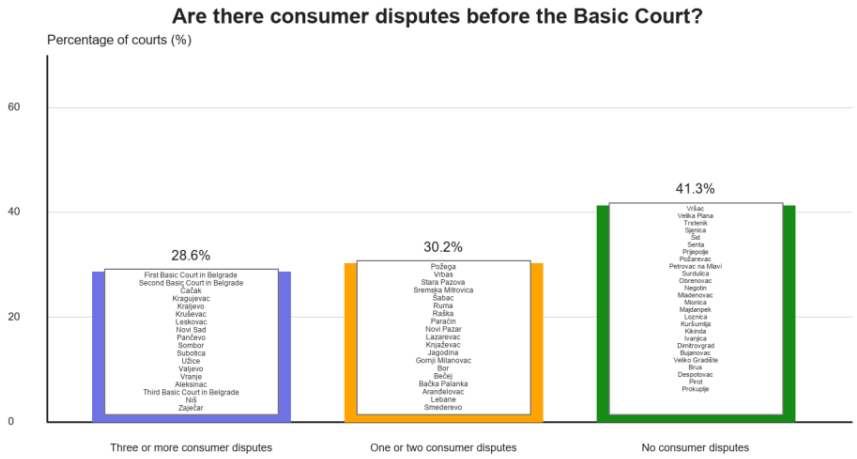
For the purposes of examining the effectiveness of judicial protection of consumers, we created a sample of larger traders — described in detail in section 2.2 — selling goods about which consumers most frequently complain: footwear and technical goods.

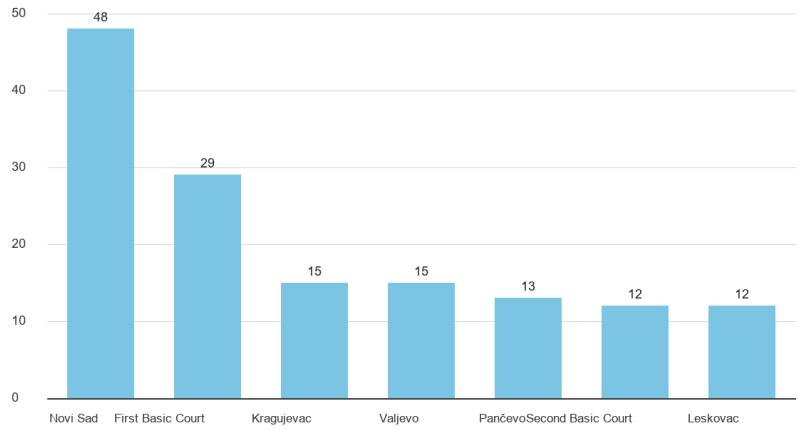
Of the 66 Basic Courts in the Republic of Serbia, only two did not respond: the Basic Court in Ub and the Basic Court in Priboj. We thank the employees of the Basic Courts for their responses and for the exceptionally high response rate of 97%.

The responses showed the following:

1. **The largest group of Basic Courts — approximately 41% — stated that they had had no consumer disputes.** Some specified that they had had no disputes involving companies named in our request for information. Others stated that they had had no consumer disputes at all.
2. **Approximately 30% of the courts stated that they had had only one or two consumer disputes.**
3. **Approximately 28% of Basic Courts reported three or more consumer disputes.**

The Basic Courts and their responses are shown in the following infographic.





We analysed 220 court decisions in consumer disputes35 and obtained data on:

1. the duration of proceedings from filing of the statement of claim to the first-instance court decision;
2. the representation of defendant legal persons;
3. the form of the court decision and type of judgment: admission by the defendant, withdrawal of the claim, waiver of the claim, absence of the claimant or defendant, allowing the claim after a hearing in favour of the consumer without an admission by the defendant, and dismissing the claim after a hearing in favour of the defendant seller;
4. who won the court dispute;
5. the monetary value of consumer disputes before the court;
6. whether a hearing was held in the consumer dispute;

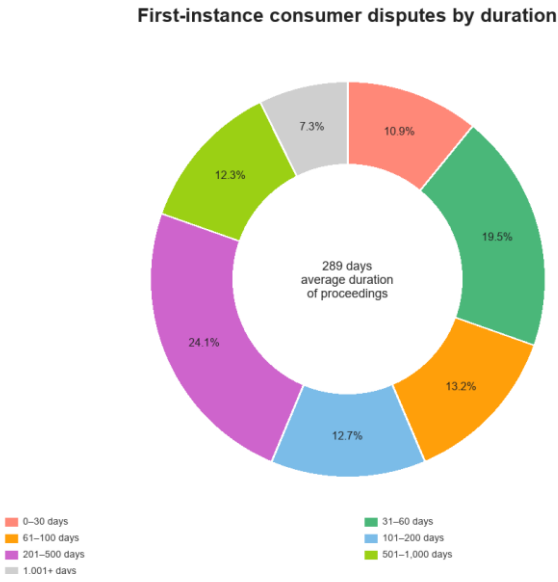
[35] Consumer disputes in which the court declared that it lacked jurisdiction and those in which the proceedings were discontinued due to the death of a party were not analysed.

7. data from Basic Courts that provided a larger number of court decisions.

1. Duration of First-Instance Consumer Court Proceedings

The Law on Civil Procedure provides that the first hearing is to be scheduled and held within 30 days after the statement of claim is filed. The analysis of court decisions nevertheless showed that only approximately 11% of consumer disputes are resolved within 30 days.

The average time taken to render a first-instance court decision in a consumer dispute is 289 days, substantially exceeding the period expected for effective resolution of such disputes.



Of the 220 consumer disputes analysed, a first-instance judgment was rendered within 30 days after filing of the statement of claim in 24 cases. In some of those cases a hearing was held, while in others it was not. Six further proceedings were recorded in which a hearing was scheduled within the statutory 30-day time limit, but the first-instance proceedings lasted longer.

Overall, this means that the statutory 30-day time limit for scheduling the first hearing or resolving the dispute was observed in 13.6% of consumer disputes.

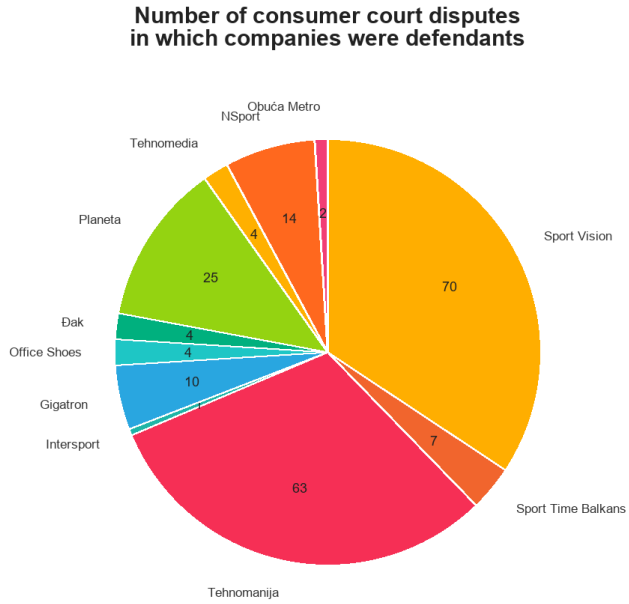
2. Representation of Defendant Legal Persons

Some Basic Courts provided decisions in which the names of defendant companies had been redacted. Despite the researchers' request for the names, which constitute information of public importance, those data were not provided.

In 16 of the 220 court decisions, we were unable to identify the defendant companies. In the remaining 204 decisions, in which the company names were available, no proceedings had been brought against the following companies in the sample:

- Deichmann DOO;
- Obuća Pavle DOO;
- Adidas Serbia DOO.

The research also established that Sport Time Balkans, the general importer for Nike goods, was a defendant in seven consumer proceedings.

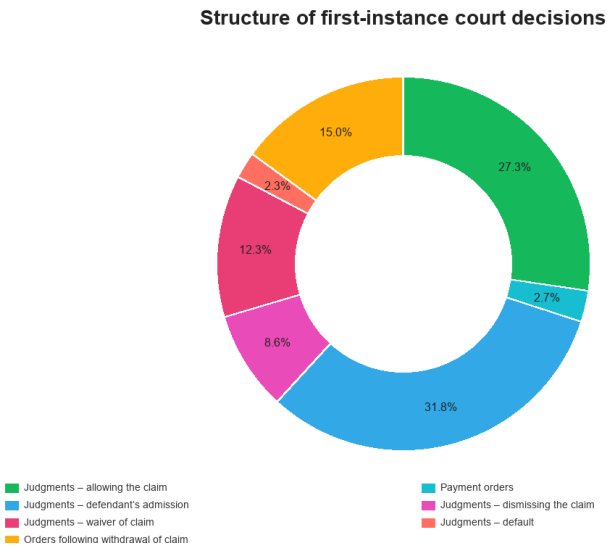


3. Form of Court Decision and Type of Judgment

First-instance decisions in consumer disputes took the form of judgments, orders and payment orders. The research found that defendant companies frequently wait for a substantial period after the statement of claim is filed and then, several days before the first scheduled hearing or at that hearing, contact the claimant consumer's attorney-at-law and propose a settlement under which they cover all costs of the proceedings on condition that the claimant waives or withdraws the claim.36 This approach indicates deliberate prolongation of court proceedings and discourages consumers from using judicial protection of their rights.

The analysis established that defendant companies certainly won 19 consumer disputes — by judgments dismissing the claim — representing 8.6% of all sampled first-instance court proceedings.

[36] The statement of claim is served on the defendant several days after it is filed.



4. Who Won the First-Instance Consumer Dispute?

By further analysing the court decisions, including judges' decisions allocating the costs of civil proceedings, we sought to determine accurately whether defendant companies had in fact been successful in cases where the claim was withdrawn or waived.

Where the court awarded the costs of civil proceedings to the defendant after withdrawal or waiver of the claim, we recorded the case as a victory for the defendant company. Using this methodological approach, we identified eight cases of withdrawal or waiver in which the consumer was ordered to pay the costs. It is therefore possible that the defendant companies won those disputes.

When judgments dismissing the claim in favour of the defendant are added, the data show that:

- **consumers were successful in 193 cases (87.7%),** confirming a high success rate in first-instance civil proceedings;
- **defendant companies were successful in 27 cases (12.3%),** including withdrawals or waivers where costs were awarded in their favour.

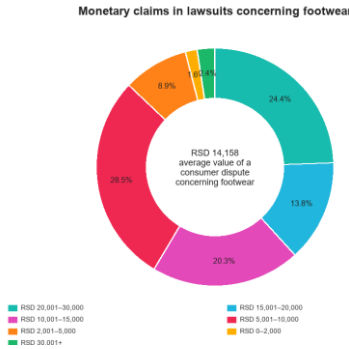
Even where costs were awarded to defendant companies in proceedings involving withdrawal or waiver, however, we cannot say with certainty that this was not the result of a settlement initiated by the defendant. It therefore remains unclear who actually bore the costs in those cases.

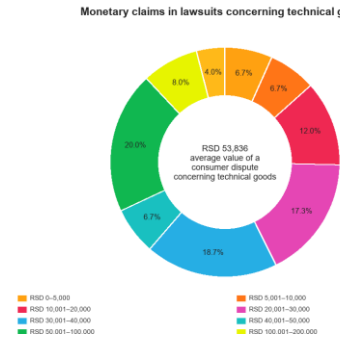
On the available data, the success rate of defendant companies — traders — in first-instance consumer proceedings lies between 8% and 12%. Conversely, the probability that a purchaser will win a first-instance consumer dispute before a court is approximately 90%.

The data indicate that court proceedings successfully protect consumer rights in a large number of cases, but also that further analysis is needed to identify possible abuse or trader strategies intended to obstruct or prolong proceedings.

5. Monetary Value of Consumer Disputes before the Court

The research team analysed the monetary amounts claimed in consumer disputes in order to understand their value. The results were divided into two groups: monetary amounts concerning footwear and monetary amounts concerning technical goods.





6. Was a Hearing Held in the Consumer Dispute?

We compared the data obtained from the court decisions with the case-flow information available on the portal.37 The analysis showed that a decision was rendered without a hearing in 108 proceedings, approximately 49% of all first-instance decisions.

The fact that half of the first-instance decisions were rendered without a hearing clearly indicates that traders are aware that they reject complaints even where those complaints are justified. This confirms the existence of a strategy of deliberately prolonging court proceedings, under which traders often admit liability or seek a settlement immediately before a scheduled hearing.

This conduct also indicates an intention to conceal the true number of disputes lost by traders in consumer proceedings. Avoiding judgments that would be recorded as unfavourable to traders undermines the transparency of court statistics and makes it more difficult to analyse the effectiveness of protection of consumer rights.

These practices underscore the need for stricter oversight of traders' conduct in complaint and court proceedings and for an improved legal framework that reduces the scope for abuse and increases traders' accountability to consumers.

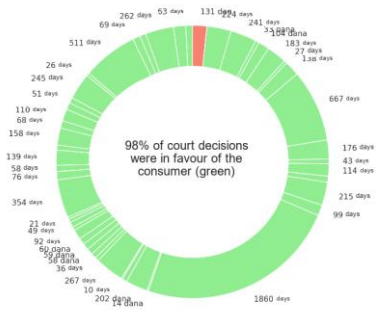
7. Analysis of Data from Basic Courts Providing a Larger Number of Court Decisions

For Basic Courts that provided a larger number of decisions, we analysed the average duration of first-instance proceedings, the outcomes of disputes and the consumer success rate.

37 https://tpson.portal.sud.rs/tposvs/

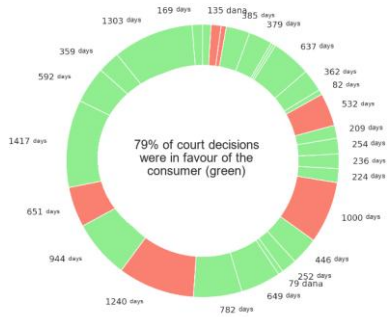
Basic Court in Novi Sad

Average duration of first-instance consumer dispute: 159 days



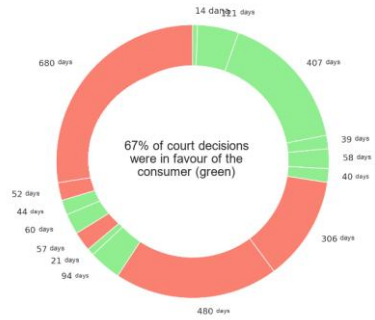
First Basic Court

Average duration of first-instance consumer dispute: 470 days



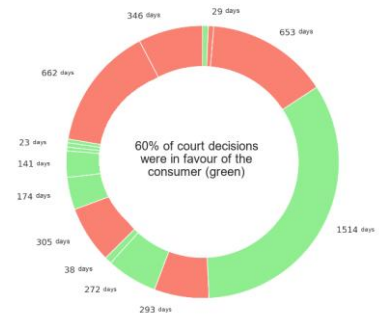
Basic Court in Kragujevac

Average duration of first-instance consumer dispute: 165 days



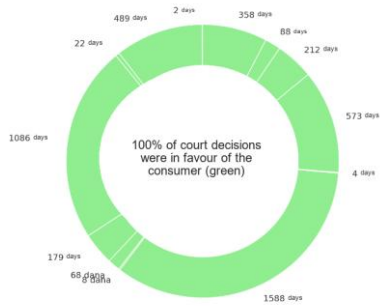
Basic Court in Valjevo

Average duration of first-instance consumer dispute: 301 days



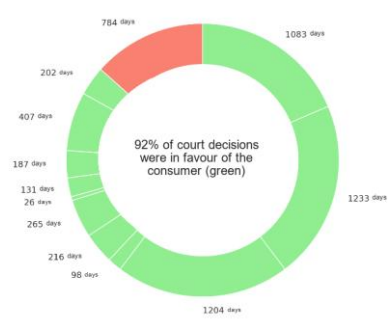
Basic Court in Pančevo

Average duration of first-instance consumer dispute: 360 days



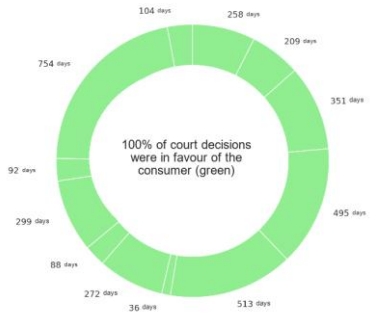
Second Basic Court

Average duration of first-instance consumer dispute: 486 days



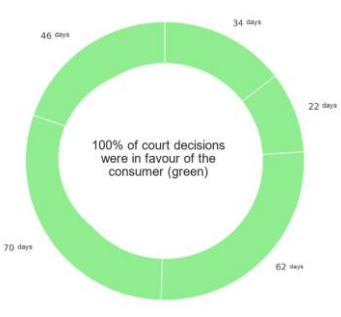
Basic Court in Leskovac

Average duration of first-instance consumer dispute: 289 days



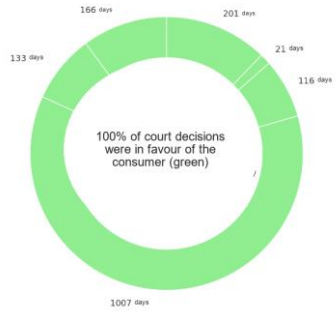
Basic Court in Niš

Average duration of first-instance consumer dispute: 47 days



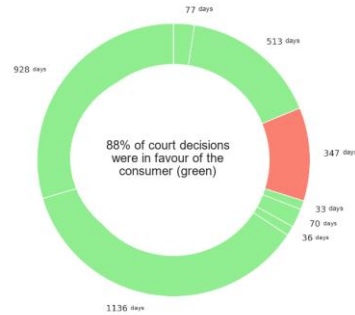
Basic Court in Vranje

Average duration of first-instance consumer dispute: 274 days



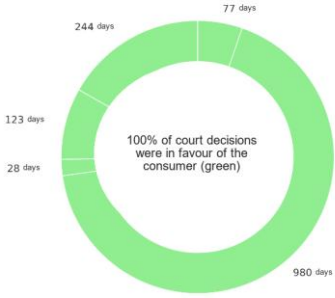
Basic Court in Čačak

Average duration of first-instance consumer dispute: 392 days



Basic Court in Kraljevo

Average duration of first-instance consumer dispute: 290 days

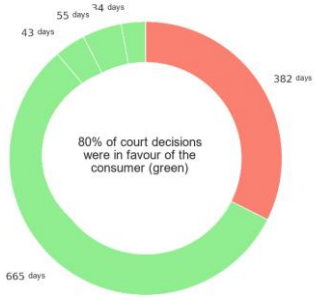


Basic Court in Aleksinac

Average duration of first-instance consumer dispute: 412 days

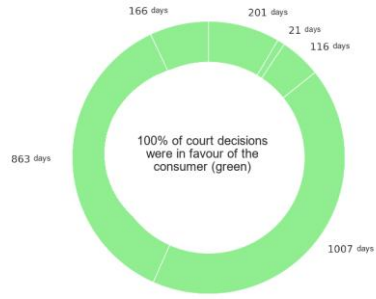
Basic Court in Kruševac

Average duration of first-instance consumer dispute: 236 days



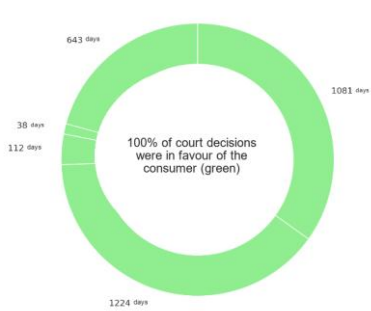
Basic Court in Užice

Average duration of first-instance consumer dispute: 396 days



Third Basic Court

Average duration of first-instance consumer dispute: 620 days



Basic Court in Subotica

Average duration of first-instance consumer dispute: 176 days

4. RESEARCH RECOMMENDATIONS

4.1. Research Findings, Conclusions and Recommendations

1. Define the Content of Responses Rejecting Consumer Complaints in Greater Detail

Article 55 of the Law on Consumer Protection prescribes the content of a response rejecting a consumer complaint. The research nevertheless shows that this is insufficient and that sellers often provide generalised responses that confuse purchasers. The fact that consumers win 90% of court disputes signals that traders are unwilling to improve their complaint-handling practices, placing an additional burden on both the court and out-of-court systems.

We propose that the Law on Consumer Protection authorise the Ministry of Trade to adopt a by-law regulating in greater detail the content of a response rejecting a complaint, for the following reasons:

- to reduce the abuse of general and unclear responses by traders;
- to encourage traders to consider complaints more carefully;
- to increase purchasers' legal certainty;
- to reduce the number of rejected complaints and consumer disputes;
- to enable the State to react more quickly to poor commercial practices;
- to define technical matters in greater detail through a by-law;
- to assist mediators and judges by providing clearer reasons from traders and thereby facilitate decision-making in out-of-court and judicial proceedings.

2. Public Disclosure of Company Data on Complaints and Consumer Disputes

- Number of complaints submitted, accepted and rejected
- Number of out-of-court consumer disputes and agreements concluded
- Number of consumer court disputes and number of disputes won

The public, and consumers in particular, have an interest in being informed about traders' conduct when complaints are rejected.

The Ministry of Trade likewise has an interest in using these data to monitor trader practices and adopt appropriate policy measures.

Publication of complaint data would yield multiple benefits, including:

- reducing the number of unjustifiably rejected complaints;
- increasing the quality of goods and services on the market;
- encouraging traders to act more responsibly towards consumers;
- strengthening consumer confidence in the system for protecting their rights.

The disclosure obligation should apply to larger trading companies, with the threshold determined by annual turnover. Companies whose annual turnover exceeds a specified amount could, for example, be required to publish the data, while smaller traders could do so voluntarily.

Complaint data could be published on the Ministry of Trade's portal or as part of companies' annual financial statements. Such transparency would enhance competition among traders and encourage them to provide consumers with better service and higher-quality goods.

3. Link Out-of-Court and Judicial Consumer Disputes

Some States link out-of-court and judicial consumer disputes in order to ensure greater trader accountability. For example, if a trader loses both the out-of-court and the court dispute in the same matter, it must cover the costs of both procedures.

We propose adoption of a similar practice in the Republic of Serbia:

- When filing the statement of claim, the claimant consumer should inform the court whether out-of-court resolution was attempted.
- If the consumer wins the court dispute, the judge should be required to order the defendant trader to pay the costs of the unsuccessful out-of-court procedure into the budget of the Republic of Serbia.

This mechanism would have several advantages:

- it would encourage traders to give more serious consideration to consumer complaints in out-of-court procedures;
- it would reduce unnecessary court disputes and relieve pressure on the judicial system;
- it would ensure fairness to consumers by making traders responsible for delaying dispute resolution.

4. Improve Records of Consumer Court Disputes

Article 148 of the Law on Consumer Protection requires courts to submit annual reports to the Ministry of Justice on the number of consumer disputes, the number of judgments rendered and the average duration of consumer disputes. Courts cannot yet fulfil this statutory obligation because the Minister of Justice has not adopted a form prescribing the content and manner of keeping those records.

The research identified a practice whereby traders, as defendants, contact consumers, as claimants, immediately before the first hearing and offer to reimburse all procedural costs on condition that the consumer withdraws or waives the claim. This practice makes it more difficult to record and analyse the true state of consumer disputes.

To improve the records, we propose expanding the data included in courts' annual reports to cover:

- number of statements of claim filed;
- monetary amounts claimed;
- number of court orders following withdrawal of a claim;
- number of judgments following waiver of the relief claimed;
- number of decisions issuing payment orders;
- number of default judgments due to the defendant's absence;
- number of judgments dismissing the claim in favour of the defendant;
- total number of judgments allowing claims in favour of claimant consumers;
- duration of consumer disputes in each of those categories.

In addition to amending the Law on Consumer Protection, it is important that the obligation to maintain court records be clearly defined in the Court Rules of Procedure.

5. Introduce Product-Quality Measurement as an Indicator of Successful Implementation of the Consumer Protection Strategy

Successful implementation and monitoring of strategic documents require indicators that enable progress to be measured and effects to be assessed. During our research, all

participants expressed the view that the quality of goods on the Serbian market was declining, particularly footwear and technical goods.

We propose that one of the key indicators for monitoring implementation of the new Consumer Protection Strategy should be the quality of goods about which consumers most frequently complain.

One of the objectives of consumer protection should be to ensure that purchasers receive higher-quality goods and services. However effective the legal framework may be, it loses significance if consumers continually receive goods and services of diminishing quality.

We propose that, when adopting the new Consumer Protection Strategy, the Ministry of Trade should:

- define a sample of goods about which consumers most frequently complain;
- determine methods for measuring the quality of those products;
- establish this indicator as one of the most important parameters for measuring the success of implementation of the Consumer Protection Strategy. For footwear, for example, a Martindale tester may be used as the standard test of textile abrasion resistance. The Martindale test measures the number of friction cycles that a material can withstand before showing signs of damage.[38]

6. Include a Separate Section on Judicial Protection of Consumers in the New Consumer Protection Strategy

The objectives and measures of the Consumer Protection Strategy 2019–2024 do not directly mention judicial protection of consumers. Nor is judicial protection mentioned directly in the action plans implementing the Strategy for 2019–2022 and 2023–2024.

We found no other strategic documents dealing in detail with judicial protection of consumers. This is a significant shortcoming because judicial protection is a key mechanism for exercising consumer rights. We propose that the new Consumer Protection Strategy contain a separate section devoted to improving judicial protection of consumers.

4.2. Research Limitations

1. Incomplete Records and Restricted Access to Information

Basic Courts do not maintain separate records of consumer disputes because the Minister of Justice has not yet prescribed how the records are to be kept. For this research, we were therefore required to select a sample of legal persons — larger traders — and, pursuant to the Law on Free Access to Information of Public Importance, request relevant information and depersonalised copies of court decisions.

The response rate was exceptionally high at 97%. Irregularities were nevertheless identified in the handling of data in the decisions provided. Many decisions redacted information that should not be concealed under the Law on Free Access to Information of Public Importance. For example, some courts redacted the names of defendant legal persons even though those data should be public and were relevant to the research.

Despite our requests for complete information about defendant companies, the courts refused to provide it, relying on differing interpretations of the legislation. As a

[38] According to the standards, the textile industry commonly uses a range of 10,000 to 100,000 abrasion cycles. Materials exceeding 50,000 cycles are generally regarded as highly durable. Materials below 10,000 cycles are of low quality, while those between 10,000 and 50,000 cycles are of medium quality.

final step, we appealed to the Commissioner for Information of Public Importance and Personal Data Protection; those proceedings are pending.

The matter illustrates the need for clearer rules and guidelines on maintaining and publishing court records in order to ensure transparency and access to information of public importance.

We did not have access to the court files. Comparing data from those files would have enabled us to understand the proceedings as a whole and, in particular:

- to read all written evidence submitted and, in particular, to determine whether the statement of claim or defence was accompanied by an expert report from a court expert in the appropriate field establishing conformity or non-conformity of the goods;
- to identify the specific reasons for lengthy proceedings in cases exceeding the average first-instance duration — for example, whether parties frequently failed to attend, requested adjournments, whether hearings were adjourned because the judge was absent or particular evidence had to be taken, or whether a short period was allowed for the parties to reach agreement;
- to determine the time between scheduled main hearings where two or more hearings were held;
- by reading submissions from traders and consumers, to examine their communications and the reasons for waiver or withdrawal where the court did not explain them in detail, including whether a settlement was reached;
- to determine whether any participant proposed mediation during the proceedings;
- to establish who ultimately bore the costs where the court decided costs by a separate order and whether costs were claimed at all;
- by reading the records of main hearings, to obtain the detailed content of every procedural act, including proposed evidence and other party applications, any objections, and whether applications were refused and for what reasons;
- to determine whether the first-instance decision was appealed and how the second-instance court decided the appeal.

2. Sampling

When forming the sample for the research into consumer court disputes, we selected several larger retail chains operating throughout Serbia. Although other traders could have been included, data from the courts showed that many had had no consumer disputes.

From the courts that had consumer disputes, we obtained 220 decisions, constituting a representative sample for analysing the effectiveness of judicial protection of consumers. The Basic Courts in Lebane and Aranđelovac informed us that they had had a consumer dispute but did not provide copies of the decisions.

The research focused on goods about which consumers complain most frequently, primarily footwear and technical goods. Where requests for access to information covered sports retailers, it was not possible to separate complaints concerning footwear from complaints concerning clothing. The analysis of decisions nevertheless showed that only footwear was the subject of the consumer disputes involving those sports retailers.

3. Qualitative Aspect

The interviews did not cover every relevant actor, including representatives of some Serbian public institutions, traders and certain specialists. Unfortunately, we were unable to arrange interviews with them.

For the research, we succeeded in interviewing most of the persons planned, including:

- judges, court experts and attorneys-at-law participating in consumer court disputes;
- mediators in out-of-court dispute resolution;
- representatives of consumer-protection associations in Serbia and abroad;
- representatives of a ministry responsible for consumer protection in a neighbouring State;
- mediation specialists;
- university professors specialising in civil procedure and consumer protection;
- specialists in testing the quality of goods;
- consumers who had used out-of-court and judicial protection.

This diverse sample provided a comprehensive view of the key aspects of consumer protection, although including further actors, such as traders and representatives of some public institutions, would have enriched the perspective and extended the research's scope.

4.3. Discussion

1. Burden of Proof in Consumer Disputes

Article 16(2) of the Law on Consumer Protection provides that 'The burden of proving the accuracy of a trader's factual statements concerning its commercial practice lies with the trader.' Article 52(2) provides: 'If non-conformity arises within six months after the risk passes to the consumer, the non-conformity is presumed to have existed when the risk passed, unless that is incompatible with the nature of the goods and the nature of the particular non-conformity. The burden of proving that non-conformity did not exist lies with the seller.' These provisions shift the burden of proving facts in consumer civil proceedings to the defendant.

The legislature thereby created an exception to ordinary civil procedure, under which the burden of proof lies with the party asserting a right. Although the provisions appear to place the defendant trader in a less favourable position, if the claimant remains passive during the proceedings they may in fact place the trader in a more favourable position.

When a consumer complaint is lodged, the trader generally sends the goods to a commercial company conducting quality control, such as Jugoinspekt, and receives a report that is usually submitted with the defence. The report is not an expert report and the commercial companies conducting quality control of goods are not registered to perform court expert examinations. It therefore does not have the evidential weight of a report and opinion prepared by a registered court expert.

Although the claimant is not required to submit evidence confirming non-conformity, it is in the claimant's interest to provide as much evidence as possible. Even though the burden of proof lies with the defendant, the defendant is not obliged to propose evidence. The defendant may therefore submit the quality-control company's

report as evidence that the non-conformity was caused by the claimant rather than the defendant, leaving the court with no other evidence on which to establish the facts.

This creates the specific situation that, if the claimant remains passive, the defendant may submit evidence in its own favour and thereby substantially improve its prospects of winning the civil dispute.

Although we consider that the legislature intended these provisions to place consumers in a more favourable position, a consumer without legal expertise enters civil proceedings against a trader that is almost always represented by an attorney-at-law.

The consumer may therefore mistakenly understand that, because the burden of proof lies with the trader, the consumer need not propose evidence to be taken in the evidentiary procedure.

2. Digital Application for Preparing Court Decisions

Court decisions are standardised documents and are therefore suitable for standardisation and automation through a digital application. We propose opening a discussion on developing an application for preparing different types of court decision, including orders and judgments. The application would use forms in which judges enter mandatory data and have space to state reasons for their decisions. It would provide the judicial system with both operational and strategic benefits.

Benefits of Introducing the Application

1. **Automatic linking of court decisions to existing judicial e-services.** The application would enable court decisions to be linked easily to other electronic services, such as the case-flow tracking system. This would eliminate errors in manual data entry and reduce labour costs by substantially shortening the time required to enter data. When comparing court decisions with case-flow data, we found numerous errors in the case-flow database and inconsistent publication practices.
2. **Effective depersonalisation of court decisions.** The application would permit decisions to be depersonalised automatically with one click, accelerating their delivery to interested parties and facilitating public access. This would be particularly important for improving transparency in the work of the judiciary.
3. **Improved court statistics and analysis of case law.** Digitisation of court decisions would enable more accurate collection of data for court statistics. This would improve analysis of case law and support public policy based on relevant and accurate data, while facilitating identification of key trends in the work of the judiciary.
4. **Improved archiving of court decisions.** Digitisation through the application would improve the archiving, searching and storage of decisions. Courts would have a secure and effective archive-management system, simplifying access to older decisions.
5. **Compatibility with existing procedures.** Introducing the application would not prevent printing or the continuation of existing court practices. Judges could continue to use printed decisions where necessary, ensuring continuity while new technologies are introduced gradually.

The proposed application would yield significant benefits through greater efficiency, fewer errors, and savings of time and costs. In addition to improving courts' day-to-day

work, it would support long-term analysis and policy-making in the justice sector based on accurate and reliable data.

Its adaptability to existing practices would allow the solution to be adopted easily without disrupting current workflows. Implementing such a system would be an important step towards modernising the judicial system and increasing the transparency and efficiency of courts.

5. ANNEXES

The annexes accompanying the research comprise all depersonalised court decisions in consumer disputes that we received. Some court responses did not redact personal data, so we redacted them before publication in accordance with applicable personal-data-protection legislation.

In other responses, courts redacted information that should be publicly accessible under the law, including basic case information. This practice substantially hinders the analysis and monitoring of case law. We therefore compared the information obtained from court decisions with case-flow data from the Courts Portal.

We consider it necessary to improve communication between courts and citizens and access to information of public importance. All court decisions should be:

- depersonalised in accordance with applicable legislation;
- publicly accessible for research and analysis;
- published in a machine-readable format to facilitate their use and further processing.

This approach would ensure greater transparency of the judicial system, facilitate analysis of case law and contribute to improved protection of citizens' rights.