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ATTILA DUDÁS**

Consumer Rights in the Event of Lack of Conformity of the Goods in Czech, Slovak, and Polish Law

- **ABSTRACT:** *This work analyses and compares the remedies available to consumers in case of lack of conformity of the goods with the contracts in Czech, Slovak, and Polish law. The Czech Republic and Poland have already transposed Directive (EU) 2019/771 in 2022, but due consideration is also given to the previous regulation based on Directive 1999/44/EC, because rules in the Slovak Civil Code are still based on Directive 1999/44/EC. The authors' primary objective is to determine similarities, particularities, and divergences between the examined national laws. Each examined legal order entitles the consumer to the remedies of repair, replacement, price reduction, or termination of the contract. Although the interrelation between the remedies and requirements for their application considerably diverged when all the examined legal orders were influenced by Directive 1999/44/EC due to its minimum harmonisation approach, their hierarchy – comprising repair and replacement as the primary remedy with price reduction and termination of the contract as the secondary set of claims – is noticeable. However, the nature of price reduction, as the secondary remedy, is disputed in Czech law. An important exception exists in Slovak law where price reduction substitutes replacement as the primary remedy when the goods are sold for a lower price or when the lack of conformity affecting the second-hand goods is attributable to the seller's fault. The transposition of Directive (EU) 2019/771 in Czech and Polish law has made the relation between the remedies uniform in these legal orders. It dispelled any doubts regarding their hierarchy in Czech law. Thus, repair and replacement are considered primary while price reduction and termination of the contract are secondary remedies in both the Polish and Czech national laws.*

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- **KEYWORDS:** conformity, Czech Civil Code, Slovak Civil Code, Polish Civil Code, Polish Consumer Rights Act, repair, replacement, price reduction, termination of the contract

1. Introduction

The adoption of Directive 1999/44/EC in certain aspects of the sale of consumer goods and associated guarantees indicates that the legislative organs of the European Union have paid particular attention to the issue of the consumer's legal position in sales contracts, especially in the event of lack of conformity of goods. This directive, notably inspired by the United Nations Convention on Contracts for the International Sale of Goods,¹ is characterised by the minimum harmonisation approach. Thus, Member States were allowed to adopt or maintain in force more stringent provisions to ensure a higher level of consumer protection.² It is stated that it had 'the greatest impact on contract law'.³

The mentioned directive was repealed by Directive (EU) 2019/771 as regards certain aspects concerning contracts for the sale of goods. Contrary to the former, Directive (EU) 2019/771 is hallmarked by the maximum harmonisation approach.⁴ Accordingly, Member States of the European Union are not allowed to maintain or introduce provisions differing from those laid down in the same directive, which comprises more or less stringent provisions to ensure a different level of consumer protection, unless otherwise provided for in the directive.⁵

The rules of consumer sales contracts in the Czech Republic, Slovakia, and Poland have been preponderantly influenced by the *acquis communautaire*. This work focusses on remedies at the consumer's disposal when there is lack of conformity of the goods with the contract in the mentioned countries. Since the Czech Republic and Poland have amended their legislation by transposing Directive (EU) 2019/771, but Slovakia has not done so yet, the previous legal solutions are also covered in this work.⁶ Finally, for sake of clarity, each section commences with a brief discussion devoted to the legal sources of the relevant rules. The authors' primary objective is to determine similarities and differences between the examined national laws.

1 Afferni, 2022, p. 194; Schwenzer, 2014, p. 44.

2 Directive 1999/44/EC, Art. 8, Sec. 2.

3 Twigg-Flesner, 2008, p. 59.

4 Carvalho, 2020, p. 33.

5 Directive (EU) 2019/771, Art. 4.

6 Remark of the editor: The manuscript was submitted in the beginning of 2024 and the peer-reviewing process conducted in the spring. Later on, in the same year Slovakia also transposed Directive (EU) 2019/771.

2. The Czech Republic

■ 2.1. Legal Sources

Provisions on the consumer's position in the event of lack of conformity of the goods with the contract in the novel Czech Civil Code⁷ (hereinafter referred to as "the CzeCC") – which was adopted in 2012 and replaced the old 1964 Civil Code⁸ – are based on Directive 1999/44/EC. Namely, the relevant rules are contained in Subsection 5 (Sections 2158–2174), devoted entirely to consumer sales contracts. The general rules on the performance of the contract (Sections 1916–1925) are also applicable.⁹ It is worth mentioning that certain relevant provisions are included in the Consumer Protection Act (hereinafter referred to as "the CzeCPA"),¹⁰ where Section 19, governing the procedure of handling and resolving the consumer's claims, is of particular importance.

The Czech legislator transposed Directive (EU) 2019/771 by Act No. 374/2022,¹¹ amending the CzeCPA and CzeCC. The new rules entered into force on the 30th day after the promulgation of this act¹² – that is, their application commenced on 6 January 2023. The mentioned amendments did not introduce any conceptual difference, since the CzeCC remained *sedes materiae* for defective performance in the case of consumer sales contracts, supplemented by the CzeCPA, which contains rules on accepting and deciding on the consumer's claims.

■ 2.2. Consumer's Rights

In essence, before the 2022 amendments, the CzeCC differentiated three categories of remedies at the consumer's disposal: repair and replacement as rights aiming to ensure performance of the contract, termination of the contract, and appropriate price reduction.¹³ Concerning the right to replacement, the Czech legislator made it subject to the requirement of proportionality, the purpose of which was to protect the seller.¹⁴ Namely, in the event of the consumer goods' lack of conformity with the contract, the CzeCC entitled the consumer to request the supply of new,

7 Občanský zákoník [Civil Code], Sbírka zákonů [Collection of Laws], No. 89/2012.

8 For more information about the codification of civil law in the Czech Republic, see Veress, 2022, pp. 13–34.

9 Hrádek, 2020, p. 9.

10 Zákon o ochraně spotřebitele [Consumer Protection Act], Sbírka zákonů [Collection of Laws], No. 634/1992.

11 Zákon, kterým se mění zákon č. 634/1992 Sb., o ochraně spotřebitele, ve znění pozdějších předpisů, a zákon č. 89/2012 Sb., občanský zákoník, ve znění pozdějších předpisů [Act amending Act No. 634/1992 Coll., on consumer protection, as amended, and Act No. 89/2012 Coll., Civil Code, as amended], Sbírka zákonů [Collection of Laws], No. 374/2022.

12 Act No. 374/2022, Part III, Art. V.

13 Hrádek, 2020, p. 12.

14 Tichý, 2014.

flawless goods unless it was disproportionate to the nature of the defect.¹⁵ Since the term “disproportionate” (*nepřiměřený*) was not defined in the CzeCC,¹⁶ the Czech legal theory interpreted it as the condition of being ‘subject to assessment of the value of the item and the cost of replacing the part of or repairing it’.¹⁷ The consumer was entitled to request goods of the same or even better quality.¹⁸ However, if the lack of conformity affected only a part of the goods, the consumer was entitled to request the replacement of that part.¹⁹

In case it is impossible to exercise the right to replacement due to disproportion in relation to the defect’s nature, particularly when the lack of conformity could be removed without undue delay, the consumer is entitled to have the goods repaired free of charge.²⁰ It may be inferred that the proportionality condition or test distinguished between the rights to replacement and repair, since the disproportionality hindered the consumer from opting replacement over repair. Such a legal solution seems similar to the one adopted in the Proposal for a Directive of the European Parliament and of the Council on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771, and (EU) 2020/1828 stipulating that where the costs for replacement are equal to or greater than the costs for repair, the seller shall repair the goods to ensure their conformity.²¹

Furthermore, the CzeCC places the replacement remedy at the consumer’s disposal, involving the goods in their totality or only in part, even if the lack of conformity could be fixed, if the consumer is unable to use the goods properly due to repeated occurrence of lack of conformity after the repair or because of a large number of defects.²² According to the case law of the Supreme Court of the Czech Republic, repeated occurrence of lack of conformity after the repair is to be interpreted as a situation in which ‘the same defect, which has already been removed at least twice during the warranty period, occurs again’.²³ Moreover, a defect is considered the same if it ‘had the same manifestations in the properties of the purchased goods’, while how it was removed had no importance.²⁴ Interestingly, the consumer is also entitled to terminate the contract in the abovementioned cases.²⁵ Therefore, validity of the consumer sales contract depends on the free will of the consumer, who could opt for the remedy of replacement to preserve it.

15 CzeCC, Sec. 2169 (1).

16 Chvátalová, 2015, p. 351.

17 Hrádek, 2020, p. 12.

18 Hajnal, 2022, p. 186; Hrádek, 2020, p. 12.

19 CzeCC, Sec. 2169 (1).

20 CzeCC, Sec. 2169 (1).

21 The Repair of Goods Proposal, Art. 12.

22 CzeCC, Sec. 2169 (2).

23 Decision of the Supreme Court of the Czech Republic, File No. 33 Cdo 1323/2013.

24 Decision of the Supreme Court of the Czech Republic, File No. 33 Cdo 1323/2013.

25 CzeCC, Sec. 2169 (2).

Besides the abovementioned cases regarding unsuccessful repair, another situation in which the consumer could terminate the contract concerns the impossibility of replacing the goods or their part.²⁶ Thus, the relevant criterion enabling the termination of the contract is the possibility of replacement, the purpose of which is to protect the seller's position.²⁷ However, the minor nature of the lack of conformity hinders the use of this remedy.²⁸ It is worth mentioning that the legal effect of termination of the contract is the cessation of the obligations of the contractual parties *ex tunc*.²⁹ It presupposes the consumer's obligation to return the goods to the seller at the latter's expense, while, on the other hand, the seller is obliged to reimburse the price paid by the consumer.³⁰ The Supreme Court of the Czech Republic decided that the seller is not entitled to compensation for a reduction in the value of the goods resulting from their 'normal (usual) use and related wear and tear until the contract is cancelled' if the buyer used them in good faith during the period when the contract was in force.³¹

Finally, the consumer is entitled to obtain the appropriate price reduction if he/she did not exert the right to terminate the contract or the remedies of replacement or repair of the goods.³² Moreover, the appropriate price reduction is available to the consumer when the seller could not replace the goods in their totality or in part, repair them, or provide a remedy within a reasonable time, or when the seller provided such a remedy that caused substantial difficulties to the consumer.³³ The conditions of reasonable time and substantial difficulties caused to the consumer that render the appropriate price reduction possible were introduced to protect the consumer's position.³⁴ The notion of reasonable time was to be determined by considering the type of lack of conformity, difficulty of the repair, specific circumstances of the case, and intensity of the consumer needs.³⁵

Some in the Czech legal literature argued that the appropriate price reduction in Czech law was not a secondary or tertiary claim but a separate primary claim available to the consumer in case of lack of conformity of the goods with the contract.³⁶ Thus, repair, replacement, and appropriate price reduction are primary remedies, while termination of the contract is only a subsidiary remedy at the consumer's disposal. In that case, it may be inferred that the hierarchy

26 CzeCC, Sec. 2169 (1).

27 Tichý, 2014.

28 Eliáš, 2012, cited in Chvátalová, 2015, p. 351.

29 Veress et al., 2022, p. 467.

30 Hrádek, 2020, p. 13.

31 Decision of the Supreme Court of the Czech Republic, File No. 30 Cdo 68/2007.

32 CzeCC, Sec. 2169 (3).

33 CzeCC, Sec. 2169 (3).

34 Tichý, 2014.

35 Tichý, 2014.

36 Tichý, §2169 in Švestka, Dvořák, Fiala et al., 2014, p. 983, cited in Hradek, 2020, p. 13.; Hrádek, 2020, pp. 15-18.

of remedies in Czech law differs from the legal solution contained in Directive 1999/44/EC, which distinguishes repair and replacement as primary and price reduction and termination of the contract as secondary remedies.³⁷ On the other hand, some legal scholars defined the appropriate price reduction as a subsidiary right³⁸ and ‘the last means of legal protection’.³⁹

In addition, the consumer is entitled to compensation for damage incurred by lack of conformity. Namely, the CzeCC explicitly envisages that a right from defective performance does not exclude the right to compensation for damage. At the same time, what could be achieved by exerting the right from defective performance could not be claimed on other legal grounds.⁴⁰ The Supreme Court of the Czech Republic explained the difference between liability for defects (i.e. lack of conformity) and liability for damage. It asserted that ‘liability for defects aims to provide remedy for deficiencies of the seller’s own performance and ensures that the buyer receives from the binding legal relationship performance without any defect’. In contrast, the purpose of liability for damage is ‘to compensate for material damage incurred as a result of a breach of a legal obligation or as a result of another fact recognised by law’.⁴¹

Although Directive 1999/44/EC permitted the Member States to oblige the consumer to inform the seller of the lack of conformity within two months from the date on which he/she detected such lack of conformity,⁴² the CzeCC did not contain any provision in this regard in the subsection dedicated to the sale of consumer goods.⁴³ However, the legal theory claimed that good morals demand that such notification should be made without undue delay, considering that such a delay is *contra bonos mores*.⁴⁴ Good morals are to be interpreted as ‘rules that must be unconditionally upheld in the society’.⁴⁵ Furthermore, the CzeCPA stipulated that the consumer’s claim is to be settled without delay, within 30 days of lodging the claim at the latest, unless a longer period was agreed between the seller and consumer.⁴⁶ Thus, the contractual parties could agree on extending the period within which the seller is obligated to eliminate the lack of conformity.

The transposition of Directive (EU) 2019/771 into Czech law brought significant novelties. If appropriate price reduction is considered as a separate primary claim, it indicates a change in its qualification in the remedial scheme, being added

37 Directive 1999/44/EC, Art. 3, Sec. 2. For more details, see Weatherill, 2013, p. 163; Miklitz and Reich, 2014, p. 180.

38 Chvátalová, 2015, p. 351.

39 Tichý, 2014.

40 CzeCC, Sec. 1925.

41 Decision of the Supreme Court of the Czech Republic, File No. 25 Cdo 1612/2004.

42 Directive 1999/44/EC, Art. 5, Sec. 2.

43 Hajnal 2022, p. 186.

44 Tichý, §2165 in Švestka, Dvořák, Fiala et al., 2014, p. 971, cited in Hradek, 2020, p. 14.

45 Dudás et al., 2022, p. 182.

46 CzeCPA, Sec. 19 (3).

alongside termination of the contract as a secondary remedy. On the other hand, repair and replacement remained the primary set of remedies. It may be stated that the novel regulation introduced a more precise and coherent interrelation between the remedies. The consumer is still entitled to compensation for damage since the mentioned Section 1925 of the CzeCC was not amended.

Concerning primary claims, the Czech legislator, transposing Article 13, Section 2 of Directive (EU) 2019/771, allowed the consumer to demand from the seller the elimination of the lack of conformity by delivering new goods without defect (replacement) or making repairs. Nevertheless, the consumer's freedom of choice is not absolute, since the chosen remedy will not be utilised if such a claim is impossible or disproportionate compared to another remedy, particularly considering the significance of the lack of conformity, value of the goods if there were no lack of conformity, and whether such lack could be addressed by an alternative remedy without significant inconvenience to the consumer.⁴⁷ The impossibility of the chosen remedy can be legal or factual, as stated in Recital 48 of Directive (EU) 2019/771.⁴⁸ It is worth underlining that the proportionality test is to be conducted in relation to another remedy.⁴⁹ More precisely, it is applied exclusively in relation to repair and replacement, as affirmed by the Court of Justice of the European Union (CJEU) in the *Weber and Putz case* (Joined Cases C-65/09 and C-87/09).⁵⁰ The Explanatory Memoranda for Act No. 374/2022⁵¹ explicitly mention as disproportionate the consumer's request to replace the goods in their totality when the lack of conformity concerns solely a part of the goods and can be addressed by replacing that part, as in the case of a non-functioning car air conditioner.⁵²

Moreover, the seller is entitled to refuse to bring the goods into conformity if it is impossible or disproportionate, especially considering the significance of the lack of conformity and the value the goods would have without it.⁵³ This provision represents the transposition of Article 13, Section 3 of Directive (EU) 2019/771.

The CzeCC mandates the seller to eliminate the lack of conformity within a reasonable time from the moment he/she has been notified about it by the consumer without causing significant inconvenience to the consumer and considering the nature of the goods and the purpose for which the consumer purchased them.⁵⁴ The notion of reasonable time should be interpreted as 'the shortest possible time necessary for completing repair or replacement'.⁵⁵ In this regard, the CzeCPA envisages that it is of paramount importance that the consumer's complaint,

47 CzeCC, Sec. 2169 (1).

48 Explanatory Memoranda, p. 142.

49 Explanatory Memoranda, p. 142.

50 Mišćenić et al., 2021, p. 67; Michel, 2018, p. 223.

51 *Zákony Pro Lidi*, 2022.

52 Explanatory Memoranda, p. 143.

53 CzeCC, Sec. 2169 (2).

54 CzeCC, Sec. 2170 (1).

55 Directive (EU) 2019/771, Recital 55; Explanatory Memoranda, p. 143.

including elimination of the lack of conformity, is to be settled and the consumer must be informed of it no later than 30 days from lodging of the claim, unless the seller and consumer agree on a longer period.⁵⁶ The rule in Section 2170 (1) of the CzeCC may be regarded as an incomplete transposition of Article 14, Section 1 of Directive (EU) 2019/771, since it does not stipulate that the seller shall remove the lack of conformity “free of charge”. Although the Explanatory Memoranda explicitly stated that the seller is obliged to ensure the removal of the lack of conformity at his/her own expense,⁵⁷ the CzeCC only specifies that the seller bears the cost of taking over the goods.⁵⁸ Interestingly, it introduces the consumer’s liability for the storage fee payment to the seller if the consumer does not take over the goods within a reasonable time after the seller notified him/her of the possibility of taking them over after the repair.⁵⁹ This legal solution, not envisaged in Directive (EU) 2019/771, has been influenced by initiatives from business organisations.⁶⁰

Having transposed Article 14, Section 3 of the new Directive, the Czech legislator foresees a specific rule applicable to the situation wherein elimination of the lack of conformity requires disassembly of the goods, the assembly of which was carried out in line with their nature and purpose before the lack of conformity became apparent. In that case, the seller’s obligation to repair and replace comprises dismantling the non-conforming goods and installing replacement or repaired goods, or bearing the associated costs.⁶¹ It is worth mentioning that this provision was introduced in Directive (EU) 2019/771 under the influence of the CJEU’s jurisprudence, more precisely by the already mentioned *Weber and Putz case* (Joined Cases C-65/09 and C-87/09).⁶²

Regarding the subsidiary set of remedies, the consumer is entitled to the appropriate price reduction or termination of the contract in the following cases:

1. if the seller refused to remove the lack of conformity, or he/she did not remove it by Sec. 2170, paras. (1) and (2);
2. if the lack of conformity manifests itself repeatedly;
3. if the lack of conformity represents a fundamental breach of contract or
4. if it is apparent from the seller’s statement or the circumstances of the case that the lack of conformity will not be eliminated within a reasonable time or without significant inconvenience to the consumer.⁶³

56 CzeCPA, Sec. 19 (3).

57 The Explanatory Memoranda, p. 143.

58 CzeCC, Sec. 2170 (2).

59 CzeCC, Sec. 2170 (3) and Sec. 2159 (3).

60 The Explanatory Memoranda, p. 143.

61 CzeCC, Sec. 2170 (2).

62 Rodrigo, 2022, p. 1300; Loos, 2016, p. 12.

63 CzeCC, Sec. 2171 (1).

This provision transposes Article 13, Section 4 of Directive (EU) 2019/771. The issue of repeated occurrence of the lack of conformity is to be assessed objectively according to the circumstances of the case. The Explanatory Memoranda, influenced by Recital 52 of the mentioned directive, explicitly states that it would be justified to allow the seller another attempt to remedy the lack of conformity if the goods are complex or have higher value.⁶⁴ Furthermore, the fundamental breach of contract, rendering possible the immediate use of the secondary set of claims, is defined in Czech law as a remedy for a case wherein the party in breach of contract, at the time of its conclusion, knew or should have known that the other party would not have concluded the contract had it foreseen such a breach.⁶⁵

Termination of the contract is not admissible when the lack of conformity is insignificant.⁶⁶ The Czech legislator introduced a rebuttable presumption that the lack of conformity is not insignificant, with the burden of proof on the seller.⁶⁷ Therefore, if the seller demonstrates the minor significance of the lack of conformity, the appropriate price reduction is the only secondary remedy at the consumer's disposal. These rules represent the implementation of Article 13, Section 5 of Directive (EU) 2019/771. It is worth noting that the CJEU, in case C-32/12 (*Duarte case*), authorised the national court to grant on its own motion an appropriate price reduction when the consumer unsuccessfully invoked the termination of the contract because of the minor nature of the lack of conformity and because the national law rendered the application of price reduction impossible or considerably difficult.⁶⁸

Moreover, the CzeCC, transposing Article 16, Section 3 of Directive (EU) 2019/771, obliges the seller, in case of termination of the contract, to reimburse the consumer the price paid without undue delay after receiving the goods or after the consumer proves that he/she sent them back.⁶⁹ It may be inferred that the consumer's action of returning the goods to the seller precedes and triggers the seller's obligation to reimburse the price. It seems that the Czech lawmakers did not transpose Article 16, Section 1,⁷⁰ and Section 2⁷¹ of the mentioned Directive.

64 Explanatory Memoranda, p. 143.

65 CzeCC, Sec. 2002 (1).

66 CzeCC, Sec. 2171 (3).

67 CzeCC, Sec. 2171 (3); Explanatory Memoranda, p. 144.

68 Jansen, 2014, p. 990.

69 CzeCC, Sec. 2171 (4).

70 Art. 16, Sec. 1: 'The consumer shall exercise the right to terminate the sales contract by means of a statement to the seller expressing the decision to terminate the sales contract'.

71 Art. 16, Sec. 2:

Where the lack of conformity relates to only some of the goods delivered under the sales contract and there is a ground for termination of the sales contract pursuant to Article 13, the consumer may terminate the sales contract only in relation to those goods, and in relation to any other goods which the consumer acquired together with the non-conforming goods if the consumer cannot reasonably be expected to accept to keep only the conforming goods.

In line with Article 15 of Directive (EU) 2019/771, the CzeCC stipulates that the appropriate price reduction should be determined as the difference between the value of the goods without lack of conformity and the value of non-conforming goods received by the consumer.⁷²

Finally, the Czech legislator did not set a deadline for notifying the seller of the lack of conformity, with the reasoning that introducing such a notification deadline could restrict consumer rights.⁷³ The consumer's position is further strengthened by the provision stating that the court will grant the rights arising from the lack of conformity, even if it was not pointed out without undue delay after the consumer could have discovered it with sufficient care.⁷⁴

3. Slovakia

■ 2.1. Legal Sources

The relevant provisions governing the consumer's position in the event of lack of conformity in Slovak law are contained in the Civil Code⁷⁵ (hereinafter referred to as "the SloCC"), while the Consumer Protection Act⁷⁶ (hereinafter referred to as "the SloCPA") regulates in detail the process of realisation of consumer rights.⁷⁷ The transposition of Directive 1999/44/EC occurred with the adoption of Act no. 150/2004 Coll.⁷⁸ amending the SloCC. Slovakia has not yet transposed Directive (EU) 2019/771, because of which the Commission of the European Union initiated a procedure against this Member State.⁷⁹

■ 2.2. Consumer's Rights

The SloCC differentiates addressing the lack of conformity by repair and replacement, termination of the contract, and appropriate price reduction. The Slovak legislator enables the consumer to have the lack of conformity eliminated through repair free of charge in a timely and proper manner.⁸⁰ Moreover, the seller is

72 CzeCC, Sec. 2171 (2).

73 Explanatory Memoranda, p. 141.

74 CzeCC, Sec. 2165 (3).

75 Občiansky zákonník [Civil Code], Zbierka zákonov [Collection of Laws], No. 40/1964.

76 Zákon o ochrane spotrebiteľa a o zmene zákona Slovenskej národnej rady č. 372/1990 Zb. o priestupkoch v znení neskorších predpisov [Act on Consumer Protection and Amendment to Act of the Slovak National Council No. 372/1990 Coll. on offenses as amended], Zbierka zákonov [Collection of Laws], No. 250/2007.

77 Mészáros, 2020, p. 74.

78 Zákon z 2. marca 2004, ktorým sa mení a dopĺňa zákon č. 40/1964 Zb. Občiansky zákonník v znení neskorších predpisov [Act of March 2, 2004 amending Act No. 40/1964 Coll. Civil Code as amended], Zbierka zákonov [Collection of Laws], No. 150/2004 Coll.

79 https://ec.europa.eu/commission/presscorner/detail/EN/INF_22_5402 (accessed on 31 January 2024)

80 SloCC, Sec. 622 (1).

obliged to repair the goods without undue delay.⁸¹ The SloCPA contains more precise provisions on the deadline for performing the repair, stipulating that the seller shall carry it out immediately after determining the method of how the consumer's complaint will be resolved. At the same time, in justified cases, it may be settled even later. However, it may not take longer than 30 days from the date of filing the complaint.⁸²

Moreover, the consumer may request replacement of the goods, or if the lack of conformity does not concern the goods in their totality, replacement of the flawed part, unless the seller incurs disproportionate costs because of the price of the goods or the gravity of the lack of conformity.⁸³ As the SloCC gives equal merit to these two remedies, treating them as the primary set of claims, as evident in the provision enabling the seller to always replace the defective goods instead of repairing them if it does not cause serious difficulties to the consumer.⁸⁴ It is worth underlining that this requirement, limiting the application of the remedy of replacement, is introduced in the consumer's favour.

Furthermore, the SloCC envisages that if the lack of conformity cannot be removed or prevents the goods from being used properly as goods without a defect, the consumer is entitled to request their replacement or terminate the contract.⁸⁵ The same remedies are at the consumer's disposal if the lack of conformity can be removed and the consumer cannot use the goods properly due to reappearance of the lack of conformity after the repair, or due to a larger number of defects.⁸⁶ It may be stated that the Slovak legislator demonstrated the endeavour to preserve the contract's validity by permitting the consumer to replace the goods. Thus, the contract's validity exclusively depends on the consumer's free will, expressed by his intention to not exert his/her right to terminate the contract. The Supreme Court of the Slovak Republic interpreted the reappearance of lack of conformity after the repair as the situation 'when the same defect that was removed during the warranty period occurs again', while the same defect signifies that 'the defect has the same manifestations in the properties of the goods, it is not important how the defect was removed'.⁸⁷

The appropriate price reduction is available to the consumer if other irremovable defects exist.⁸⁸ Interestingly, the SloCC introduced a peculiar legal solution applicable when the goods were sold at a lower price, or when second-hand goods have lack of conformity for which the seller is responsible. In these cases, the consumer is entitled to appropriate price reduction instead of replacement of

81 SloCC, Sec. 622 (1).

82 SloCPA, Sec. 18 (4).

83 SloCC, Sec. 622 (2).

84 SloCC, Sec. 622 (3).

85 SloCC, Sec. 623 (1).

86 SloCC, Sec. 623 (1).

87 The Supreme Court of the Slovak Republic, 4 Cdo 10/2009.

88 SloCC, Sec. 623 (2).

the goods.⁸⁹ Thus, the remedies of repair and termination of the contract remain at the consumer's disposal. It may be inferred that, in this situation, the appropriate price reduction, substituting the replacement, becomes a primary remedy.

The hierarchy of remedies in the SloCC, consisting of repair and replacement as primary remedies and appropriate price reduction and termination of the contract as the secondary set of claims, follows the spirit of Directive 1999/44/EC. However, placing appropriate price reduction, instead of replacement, into the primary set of remedies – when the goods were sold for a lower price or lack of conformity affecting the second-hand goods was attributable to the seller's fault – notably diverts from the model introduced by the European legislator in the mentioned directive. In addition, the SloCPA grants the consumer the right to an adequate financial compensation from the person liable for violating a right or obligation established by the SloCPA and special regulations in case of a successful claim of such a violation in court.⁹⁰ It is worth noting that this provision is applicable when consumer rights are exerted by courts, that is, in judicial proceedings.⁹¹

Finally, the Slovak legislator did not use the opportunity provided by Article 5, Section 2 of Directive 1999/44/EC to institute a two-month period for the consumer, starting from the date of detection of the lack of conformity, to inform the seller about it to benefit from his/her rights. It may be stated that the legal solution of the Slovak law is more beneficial to the consumer since the SloCC envisages that the rights arising from the liability for lack of conformity expire if they are not exercised within the warranty period.⁹² It is worth mentioning that the warranty period is 24 months.⁹³ However, the Slovak legislator introduced two exceptional solutions applicable in the case of perishable and second-hand goods. Concerning perishable goods, the consumer shall exercise his/her rights no later than the day following the purchase.⁹⁴ Regarding second-hand goods, the consumer's rights can be exercised within 24 months from the date of receipt of the goods or until the expiry of a period agreed upon by the seller and consumer, which cannot be shorter than 12 months.⁹⁵

89 SloCC, Sec. 624.

90 SloCPA, Sec. 3 (5).

91 Mészáros, 2020, pp. 81–82.

92 SloCC, Sec. 626 (1).

93 SloCC, Sec. 620 (1).

94 SloCC, Sec. 626 (2).

95 SloCC, Sec. 626 (3) and Sec. 620 (2).

4. Poland

■ 4.1. Legal Sources

Directive 1999/44/EC was first transposed into Polish law in 2002 by adopting the Act on Special Conditions of Consumer Sales.⁹⁶ This Act was repealed in 2014⁹⁷ by transposing the mentioned directive in the Polish Civil Code (hereinafter referred to as “the PoCC”).⁹⁸ This occurred jointly with the transposition of Directive 2011/83/EU on consumer rights into the PoCC.⁹⁹ It is worth noting that the rules on warranty for defects were applicable to both consumer sales contracts and contracts concluded outside the consumer context. However, the exclusive application of certain provisions to consumer sales contracts was explicitly specified.¹⁰⁰

The Polish legislator transposed Directive (EU) 2019/771 by adopting the Act of 4 November 2022, amending the Consumer Rights Act, Civil Code, and Private International Law Act.¹⁰¹ The novel provisions entered into force on 1 January 2023.¹⁰² The legal rules relevant for the assessment of the consumer’s position in the event of lack of conformity are now contained in the Consumer Rights Act (hereinafter referred to as “the PoCRA”). The PoCRA explicitly stipulates that the provisions of Book Three of Title XI, Section II of the PoCC shall not apply to agreements obliging the transfer of ownership of goods to the consumer, particularly including sales contracts.¹⁰³

■ 4.2. Consumer’s Rights

Prior to the transposition of Directive (EU) 2019/771, the hierarchy of consumer’s rights followed the spirit of Directive 1999/44/EC. Namely, in case of lack of conformity, the consumer was entitled to price reduction or termination of the contract.¹⁰⁴ However, the seller could prevent the realisation of these consumer requests if he/she immediately, and without excessive inconvenience to the consumer, replaced

96 Ustawa z dnia 27 lipca 2002 r. o szczególnych warunkach sprzedaży konsumenckiej oraz o zmianie Kodeksu cywilnego [Act of July 27, 2002 on Special Conditions of Consumer Sales and Amending the Civil Code], Dziennik Ustaw [Journal of Laws], 2002/141/1176.

97 Dębski, 2016, p. 76.

98 Ustawa z dnia 30 maja 2014 r. o prawach konsumenta [Act of May 30, 2014 on Consumer Rights], Dziennik Ustaw [Journal of Laws], 2014/827; Kodeks cywilny [Civil Code], Dziennik Ustaw [Journal of Laws], 1964/16/93.

99 Jagielska, 2020, p. 43; Hejbudzki, 2018, pp. 218–219.

100 Jagielska, 2020, p. 43.

101 Ustawa z dnia 4 listopada 2022 r. o zmianie ustawy o prawach konsumenta, ustawy - Kodeks cywilny oraz ustawy - Prawo prywatne międzynarodowe [Act of 4 November 2022 amending the Act on Consumer Rights, the Civil Code and the Private International Law Act], Dziennik Ustaw [Journal of Laws], 2022/2337.

102 Act of 4 November, Art. 5.

103 PoCRA, Art. 43a (1).

104 PoCC, Art. 560 (1).

the defective goods or removed the lack of conformity by repair.¹⁰⁵ Such a limitation of the consumer's rights was not applicable if the goods had already been replaced or repaired by the seller or the seller failed to fulfil his/her obligation to replace the goods or eliminate the lack of conformity by repair.¹⁰⁶ It was stated in the Polish legal literature that the requirement that repair or replacement take place immediately signified that they were to be carried out as soon as the consumer handed over the goods and a preliminary examination confirmed their defectiveness.¹⁰⁷ At the same time, the notion of excessive inconvenience to the consumer should have been interpreted while considering the specific situation of a particular consumer.¹⁰⁸ It is worth mentioning that lesser nature of the lack of conformity excluded the right to terminate the contract.¹⁰⁹ Therefore, in that case, price reduction was the only secondary remedy at the consumer's disposal.

Moreover, the PoCC permitted the consumer to demand the replacement of the flawed goods, instead of repairing them as proposed by the seller and, *vice versa*, to request the lack of conformity to be removed by repair instead of the replacement requested by the seller. Such a possibility was excluded if it were impossible to bring the goods into conformity with the contract in the manner chosen by the consumer or it required excessive costs compared to the method proposed by the seller. The notion of excessive costs was to be determined considering the value the goods would have had if there were no lack of conformity, the type and significance of the lack of conformity, and inconvenience to which the buyer would have been exposed if the manner chosen by the seller were to be realised.¹¹⁰ It is worth underlining that this provision, which essentially concedes to the consumer the liberty of choice between repair and replacement as the primary set of remedies, was applicable only if one of the contractual parties was a consumer.

Substantially, the consumer could terminate the contract or request price reduction when the lack of conformity appeared for the first time if the seller did not use his/her right to eliminate it by repair or replacement immediately and without excessive inconvenience to the consumer.¹¹¹ Since termination of the contract and price reduction were conditioned by the impossibility of removing the lack of conformity by repair or replacement expressed in terms of time and inconvenience to the consumer, it seems that repair and replacement were treated as primary set of remedies. On the other hand, the price reduction and

105 PoCC, Art. 560 (1).

106 PoCC, Art. 560 (1).

107 Dębski, 2016, p. 79.

108 Dębski, 2016, p. 79.

109 PoCC, Art. 560 (4).

110 PoCC, Art. 560 (2).

111 Jagielska, 2020, p. 45; Dębski, 2016, p. 77.

the termination of the contract were considered the secondary or subsidiary set of claims.

The consumer was also allowed to request replacement or repair independently.¹¹² Interestingly, the Polish legislator stipulated that if the consumer demanded a replacement or repair, or made a statement on the price reduction, specifying the amount for which the price was to be reduced, and the seller did not respond to this request within 14 days, such a request was considered as justified.¹¹³ This provision applied solely to consumers. However, it should be underlined that this rule was not applied to the termination of the contract.¹¹⁴

In addition to the mentioned primary and secondary claims, the consumer was entitled to compensation for damage. Namely, if the consumer made a statement on termination of the contract or opted for a price reduction, he/she was allowed to demand compensation for damage suffered by concluding the contract without knowing about the existence of lack of conformity, even if the damage resulted from circumstances not attributable to the seller's liability. The PoCC explicitly mentioned reimbursement of the costs of concluding the contract; collecting, transporting, storing, and insuring the goods; and incurring expenditure as long as the consumer did not benefit from such expenditure.¹¹⁵ This right did not prejudice the obligation to redress the damage caused according to the general principles of tort law.¹¹⁶ The same provision also applied if the lack of conformity was eliminated by repair or replacement.¹¹⁷

Finally, the Polish legislator abolished the two-month time limit, starting from the discovery of lack of conformity, for the consumer to notify the seller. Therefore, the consumer could inform the seller about the lack of conformity and enforce his/her claim throughout the warranty period of two years, regardless of the moment of its discovery.¹¹⁸

The hierarchy of claims, consisting of repair and replacement as primary remedies and price reduction and termination of the contract as secondary remedies, is retained in the transposition of the Directive (EU) 2019/771 into the PoCRA. However, the PoCRA does not mention the right to compensation for damage. Since the mentioned directive follows the principle of maximum harmonisation,

112 PoCC, Art. 561 (1).

113 PoCC, Art. 561⁵.

114 Jagielska, 2020, p. 50.

115 PoCC, Art. 566 (1).

116 PoCC, Art. 566 (1).

117 PoCC, Art. 566 (2).

118 Jagielska, 2020, p. 47; Dębski, 2016, p. 78; Hajnal, 2022, p. 187.

a significant part of the rules is identical to the rules contained in the CzeCC.¹¹⁹ Thus, only the peculiarities and divergences of the Polish regulation compared with the legal solutions from the CzeCC shall be examined.

Unlike the CzeCC, which only specifies that the seller bears the costs of taking over the goods, the PoCRA explicitly stipulates that the costs of repair and replacement – including, in particular, the costs of postage, transport, labour, and materials – shall be borne by the seller.¹²⁰ This provision, together with the requirements to carry out repair or replacement within a reasonable time from the moment the consumer informed the seller about the lack of conformity and without undue inconvenience to the consumer, transposes Article 14, Section 1 of Directive (EU) 2019/771. It should be emphasised that the costs of postage, transport, labour, and materials are mentioned by way of example; thus, the liability of the seller accrues for all possible expenses.

Moreover, the PoCRA obliges the consumer to make the goods subject to repair and replacement available to the seller. On the other hand, the seller shall collect the goods from the consumer at his/her own expense.¹²¹ The Polish legislator does not charge the consumer storage fee to be paid to the seller if the consumer does not take over the goods within a reasonable time after the seller notified him/her of the possibility of taking them over after the repair. If the remedy of replacement is being applied, the consumer is not liable to pay for the normal use of goods that have subsequently been replaced.¹²² This provision is in accordance with Article 14, Section 4 of Directive (EU) 2019/771. It should be noted that it was introduced in the mentioned directive under the influence of the CJEU judgment in the *Quelle case*.¹²³ Namely, the CJEU affirmed that Article 3 of Directive 1999/44/EC

119 The identical legal solutions as in the CzeCC are regarding the following issues: the alternative choice between repair and replacement granted to the consumer (Art. 43d (1) of the PoCRA); situations in which such alternative choice is excluded, that is, the consumer's choice does not oblige the seller (Art. 43d (2) of the PoCRA); situations in which the seller is entitled to refuse to bring the goods into conformity (Art. 43d(2) of the PoCRA); the requirement to carry out repair and replacement within a reasonable time and without undue inconvenience to the consumer (Art. 43d (4) of the PoCRA); the issue of dismantling the non-conforming goods, installing replacement or repaired goods or bearing the associated costs (Art. 43d (6) of the PoCRA); situations in which the consumer may request price reduction and termination of the contract (Art. 43e (1) of the PoCRA) with the only difference that the PoCRA mentions the lack of conformity of such a serious nature instead of the fundamental breach of contract; minor relevance of the lack of conformity that impedes the termination of the contract (Art. 43e (4) of the PoCRA); the definition of price reduction (Art. 43e (2) of the PoCRA); and non-existence of the deadline for notifying the seller about the lack of conformity.

120 PoCRA, Art. 43d (4).

121 PoCRA, Art. 43d (5).

122 PoCRA, Art. 43d (7).

123 Carvalho, 2019, p. 83.

... is to be interpreted as precluding national legislation under which a seller who has sold consumer goods which are not in conformity may require the consumer to pay compensation for the use of those defective goods until their replacement with new goods.¹²⁴

The PoCRA explicitly states that a consumer exercises the subsidiary set of remedies (price reduction or termination of the contract) by submitting a statement.¹²⁵ This legal solution aligns with the rule contained in Article 16, Section 1 of Directive (EU) 2019/771, extending it to price reduction. In that manner, the PoCRA dispels any doubt on how to exercise the price reduction.¹²⁶ Transposing Article 16, Section 2 of the mentioned Directive, the Polish lawmaker introduced a general rule, according to which when lack of conformity solely concerns some of the goods delivered under the contract, the consumer may terminate the contract only regarding the flawed goods. However, it is possible to terminate the contract entirely if the consumer cannot be reasonably expected to keep only the conforming goods.¹²⁷ Such a rule is inspired by the principle of preservation of the contract.¹²⁸

Regarding the obligations of the contractual parties in the event of the termination of the contract, the PoCRA requires the consumer to return the goods to the seller immediately at the seller's expense. On the other hand, the seller shall reimburse the price to the consumer immediately, but not later than within 14 days from the receipt of the goods or proof of their return.¹²⁹ This deadline is introduced to guarantee a certain degree of legal certainty to the consumer and induce the seller to fulfil his/her obligations.¹³⁰ The same time limit (immediately, but not later than within 14 days) also applies to the seller's obligation to reimburse part of the price paid by the consumer, commencing from the receipt of the consumer's statement on the price reduction.¹³¹ Finally, using the opportunity to determine the modalities of reimbursement conceded by Article 16 of Directive (EU) 2019/771, the Polish lawmaker specifies that the seller reimburses the price using the same payment method as the consumer did, unless the consumer expressly agrees to a different reimbursement method not causing any costs to him/her.¹³² Thus, it is admissible to use another reimbursement method solely by explicit consumer consent, provided that it does not lead to any cost to the seller.

124 CJEU, Case C-404/06 of 17 April 2008.

125 PoCRA, Art. 43e (1).

126 Romanò, 2020, p. 358.

127 PoCRA, Art. 43e (5).

128 Afferni, 2022, p. 292.

129 PoCRA, Art. 43e (6).

130 The Reasoning, p. 9.

131 PoCRA, Art. 43e (3).

132 PoCRA, Art. 43e (7).

5. Concluding remarks

The rules on the consumer's position in the event of lack of conformity of the goods with the contract in the examined countries are based on the European Union directives. While the Czech Republic and Poland transposed Directive (EU) 2019/771, the Slovak regulation is still influenced by Directive 1999/44/EC. However, it is expected that Slovakia will implement Directive (EU) 2019/771 in the near future. The relevant rules are contained in the Civil Codes of the Czech Republic and Slovakia. On the other hand, the Polish legislator decided to transpose Directive (EU) 2019/771 into the Consumer Rights Act, excluding the application of the Civil Code provisions on this subject matter.

All the examined countries envisage the following remedies: repair, replacement, price reduction, and termination of the contract. The interrelation between the mentioned remedies and the requirements for their application diverge, primarily when the rules of all the studied countries are based on Directive 1999/44/EC. Such a divergence results from the minimum harmonisation character of the mentioned directive. Nevertheless, the hierarchy of the remedies available to the consumer also existed in the Czech Republic and Poland before the transposition of Directive (EU) 2019/771. Polish law distinguished repair and replacement as primary and price reduction and termination of the contract as secondary remedies. Conversely, the legal nature of price reduction in Czech law was disputed, since the Czech legal theory characterised it as a separate primary claim and “a last means of legal protection”. Moreover, Slovak law differentiates repair and replacement as primary remedies and price reduction and termination of the contract as the subsidiary set of claims. Interestingly, price reduction becomes a primary remedy, substituting replacement, when the goods are sold for a lower price or the lack of conformity affecting the second-hand goods can be attributed to the seller's fault.

Implementation of Directive (EU) 2019/771 within Czech and Polish law due to its maximum harmonisation character renders identical the interconnection between the claims and their hierarchy (repair and replacement as the primary with price reduction and termination of the contract as the secondary claims). However, there are certain differences between these two laws. For example, the Czech lawmaker charges the consumer a storage fee to be paid to the seller if the consumer does not take over the goods within a reasonable time after the seller notified him/her of the possibility of taking them over after the repair. On the other hand, the Polish Consumer Rights Act contains a precise deadline for the seller's obligation in case of price reduction and termination of the contract. Moreover, the Polish legislator determined the means of reimbursement, specifying that the seller shall reimburse the price using the same payment method as the

consumer did unless the consumer expressly agrees to a different reimbursement method that does not entail any cost to him/her.

Finally, it is worth underlining that none of the examined countries instituted a time limit for the consumer to inform the seller about the lack of conformity to be able to use his/her rights, which is an option provided for by the directives.

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