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**Different Regulatory Frameworks of Conformity and Guarantees in Consumer Sales  
Contracts in the Selected CEE Countries**

**Theses of the PhD Dissertation**

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## **1. The Subject and the Aim of the PhD Thesis**

The subject of the doctoral thesis concerns the legal position of the consumer in the case of a lack of conformity of the goods with the sales contract in Croatian, Slovenian, Hungarian, Czech, Slovak, Polish, Romanian and Serbian national legal systems. The choice of the topic is influenced by the recent developments in the field of consumer sales law, which exert a direct and inevitable impact on the national laws of the Member States.

Specifically, the departing point for the development of the consumer sales law at the level of the European Union was the enactment of Directive 1999/44/EC of the European Parliament and of the Council on certain aspects of the sale of consumer goods and associated guarantees (hereinafter referred to as “Directive 1999/44/EC”). This legal act was characterised by the minimum harmonisation approach, meaning that Member States were allowed to introduce or retain in force more stringent provisions aiming to ensure a higher, more advanced level of consumer protection.<sup>1</sup> Consequently, the pertaining provisions introduced by the national legislator could differ from the European model, causing a lack of uniformity between the national legal orders of the Member States.

Directive 1999/44/EC was finally repealed by adopting Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods (hereinafter referred to as “Directive (EU) 2019/771”), whose principal objective is to “strike the right balance between achieving a high level of consumer protection and promoting the competitiveness of enterprises, while ensuring respect for the principle of subsidiarity”.<sup>2</sup> The most significant feature of this Directive is its maximum harmonisation approach, constituting a notable shift from the minimum harmonisation approach of Directive 1999/44/EU, meaning that the Member States cannot introduce or retain in force provisions differing from those contained in the Directive, comprising more, or less stringent provisions to ensure a higher level of consumer protection.

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<sup>1</sup> Directive 1999/44/EC, Art. 8, Sec. 2.

<sup>2</sup> Directive (EU) 2019/771, Recital 2.

The inevitable modifications brought by the transposition of Directive (EU) 2019/771 to national legal orders of the Member States influenced and conditioned the content and the manner of comparison in this doctoral thesis. Specifically, the legal regulation in force before the implementation of Directive (EU) 2019/771, when the examined legal systems were based on Directive 1999/44/EC, is presented in order to determine the level and importance of amendments. However, the only exception in this regard is Serbia, as a candidate country for membership in the European Union, which has not yet transposed Directive (EU) 2019/771. Consequently, solely the legal regulation in force today in Serbia, as an example of the legal order and the position of the consumer still influenced by Directive 1999/44/EC, will be examined.

The choice to select the national legal orders of Croatia, Slovenia, Hungary, the Czech Republic, Slovakia, Poland, Romania, and Serbia was determined by several reasons. First, it may be stated that all the examined countries belong to the common Central European cultural circle, sharing similar values. The historical occurrences of the last century brought Serbia, Croatia, and Slovenia together as components of the same state, which was the case with the Czech Republic and Slovakia as well. Moreover, all the analysed countries shared similar, especially economic, development hallmarked by the absolute predominance of socialism/communism and the subsequent transition period to the neoliberal market economy. Moreover, these countries, except Serbia, which is a candidate country as previously mentioned, became Member States of the European Union, which exerts a decisive influence on their national legal systems, including the regulation of the consumer sales law.

Furthermore, the scientific literature written in the English language with the main objective of analysing and comparing the regulation on the consumer's position in the event of a lack of conformity in the mentioned countries is scarce and seldom found. In that regard, taking into account all the outlined reasons, this doctoral thesis may contribute to a comprehensive understanding of the manners (of) and national-specific legal solutions introduced by the transposition of Directive 1999/44/EC and Directive (EU) 2019/771 in the selected countries. The extensive scope of issues analysed in this doctoral thesis aims to provide a complete and exhaustive overview of the legal position of the consumer in the event of defective performance by the seller in the national legal frameworks of the chosen countries.

The principal objective of the doctoral thesis is to determine whether the modifications brought by the transposition of Directive (EU) 2019/771 significantly and radically changed the consumer's position in the examined legal frameworks, i.e. whether the consumer's condition improved or the modifications negatively affected his/her position. To be able to provide an answer to this question, a detailed and meticulous examination of each legal matter deriving from the seller's defective performance is required. Therefore, the concluding remarks, as the final chapter of the doctoral thesis, will structurally follow the content of the national chapters and qualitatively assess the level of transformation achieved in the consumer's condition concerning the specific legal issue. Based on the results applying individually to the analysed national legal systems, a more general and overall conclusion on the totality of the issues affecting the consumer's legal position will be provided. In this regard, the space given in this doctoral thesis to the Serbian regulation serves as an example of the national legal framework based on Directive 1999/44/EC and belonging to a country which is not a Member State of the European Union. Thus, it becomes indispensable to consider and include in the overall conclusion, as a sample of comparison, the consumer's position within Serbian law.

Furthermore, the assessment of the modification of the consumer's legal position requires the precise evaluation of specific additional issues. First, it is necessary to evaluate whether the particular legal provisions constitute a correct or verbatim transposition of the respective parts of Directive 1999/44/EC and Directive (EU) 2019/771. In connection with that, it will be assessed whether the national rules differ solely linguistically from the European model or whether they represent a more detailed, peculiar, and country-specific legal solution affecting the consumer. Taking into account particular legal solutions in the national legal framework, it is possible to determine to what extent, and in which regard, these national legal orders diverge from each other and whether these divergences exercise a beneficial or detrimental influence on the consumer's condition at a national level and by way of comparison.

Naturally, the minimum harmonisation character of Directive 1999/44/EC rendered possible the existence of a considerable number of major and more significant differences between the national legal systems, allowing the national legislator to introduce or retain more specific, country-tailored legal solutions. One of the tasks of this doctoral thesis is to single out and shed light on these differences and assess their impact on the consumer's overall position in the event of the lack of

conformity of the goods with the sales contract. In doing so, in conjunction with the relevant case law of the CJEU, the available case law developed by the national courts of the examined countries proves to be of paramount importance.

In addition, given that the maximum harmonisation character of Directive (EU) 2019/771 impedes the national legislator from deviating from its legal provisions, relegating such possibility to specific and expressly allowed legal issues, it is inevitable that the previously existing divergences between the national legal frameworks of the examined countries which form part of the European Union significantly and considerably diminished. Therefore, this doctoral thesis also aims to determine whether the national legislator used such options and assess their influence on the consumer's position. It should also be established whether certain national legislatures proved to be particularly tenacious and persistent in retaining, where permitted, the country-specific legal solutions, or even concerning the legal issues covered by the maximum harmonisation clause.

## **2. Structure of the PhD Thesis**

The doctoral thesis contains separate chapters devoted to the regulation of the lack of conformity of consumer goods with the sales contract in Croatia, Slovenia, Hungary, the Czech Republic, Slovakia, Poland, Romania, and Serbia. The final chapter contains concluding remarks, providing answers to the questions posed. Each chapter, except the one regarding the Serbian legal framework, is divided into eight subchapters, dealing with the same legal issues. Namely, the chapters analyse the regulation that was in force before the transposition of Directive (EU) 2019/771, as well as that currently in force based on the mentioned Directive. The only exception in this regard is Serbia, whose legal framework is still influenced by Directive 1999/44/EC. Consequently, the chapter on the regulation of the subject of this doctoral thesis in Serbia consists of seven subchapters.

The first or introductory subchapter concerns legal sources. Specifically, it focuses on the place within the legal system where the rules that govern the consumer's position in the case of a deficiency in consumer goods, representing the transposition of Directive 1999/44/EC and/or Directive (EU) 2019/771, are located. Particular emphasis is placed on whether these rules are contained in the Civil Code or other legal act (for example Obligations Act) constituting *sedes materiae* in the domain of civil law, or they are incorporated into a specific consumer protection act, or another legal act dedicated solely and exclusively to the issue of the lack of conformity of

consumer goods with the contract. In addition, it will be clarified whether the application of these legal provisions is limited to sales contracts concluded in the consumer context.

The subsequent subchapter regards the most significant definitions of consumer sales law. More precisely, it presents how the notions of consumer, seller, consumer sales contract, and goods, as well as other important concepts, are defined in the examined legal frameworks. A separate subchapter is dedicated to the issue of the lack of conformity or defect. It deals with whether the national legislature established a general rule or enumerated specific situations in which there is a non-conformity of the consumer goods with the contract, focusing on whether a presumption of conformity is introduced. In addition, this chapter investigates whether the notion of non-conformity combines subjective and objective criteria.

Furthermore, a particular subchapter concentrates on the point in time at which the defect has to exist as a prerequisite for the seller's liability. The same subchapter deals with the circumstances exonerating the seller from liability. The subsequent part is devoted to the deadline during which the lack of conformity needs to emerge to hold the seller liable, as well as to the burden of demonstrating the existence of the circumstances leading to the seller's liability. This part also examines the conditions of the presumption of non-conformity.

The only part missing in the chapter on the Serbian legal framework but contained in the chapters on all the other examined countries, concerns the goods with digital elements. Moreover, a separate subchapter concerns the legal remedies at the consumer's disposal, with particular emphasis on their hierarchy and interrelations between them, the conditions of their exercise, and the existence of the consumer's obligation to previously notify the seller of the lack of conformity. Finally, the last subchapter is dedicated to the guarantees that provide additional protection to the consumer. In this part, the conditions of the guarantee, its content, the potential hierarchy between the available remedies, and the difference between the contractual/commercial and mandatory guarantee (for the legal systems where it exists) are covered.

### **3. Methods Used in the Research**

The pillar research method utilised in this doctoral thesis is the comparative method, which is two-fold. Specifically, the comparison is internal since the regulation on the consumer's position in the event of defective performance, implying several specific legal issues, influenced by

Directive 1999/44/EC, is interpreted and compared with that based on Directive (EU) 2019/771, within the same national legal framework. Thus, the comparison, which exclusively concerns non-conformity in consumer sales contracts, is performed within the same national legal system. Moreover, the comparison is also external since the specific issues affecting the consumer's position within eight different national legal orders (Croatia, Slovenia, Hungary, the Czech Republic, Slovakia, Poland, Romania, and Serbia) are discussed and compared. In addition, the external comparison of the legal solutions that ceased to be applicable due to the transposition of Directive (EU) 2019/771 presupposes the implementation of the historical comparison.

Furthermore, providing an answer to the question whether the consumer's position significantly changed with the amendments brought by the transposition of Directive (EU) 2019/771 necessitates employing the functional method, as part of the comparison. Namely, it presupposes identifying and comparing the specific legal solutions and evaluating their impact on the partial and overall position of the consumer in the examined national legal orders.

The correct application of the comparison implies several other types of interpretations. Primarily, it is necessary to identify and individuate the legal source(s) within the national legal framework in which the relevant provisions are (or used to be) situated and delimit their application from other legal sources which do not directly concern the subject of the doctoral thesis. Such activity is performed by employing systematic interpretation. In this regard, determining whether the relevant legal provisions are contained in the Civil Code (or other legal act with the *sedes materiae* position in the domain of civil law) or in a specific act dedicated to consumer protection issues and delving into the (potential) interrelation between them requires the implementation of the structural method.

Once the pertinent legal source is found, grammatical interpretation, focusing on the linguistic understanding of the content of the relevant legal provisions and their literal meaning, and technical interpretation, considering the specific legal language and used terminology, are applied. It presupposes the use of the hermeneutical method, while the examination of the content of the relevant legal provisions and the applicable legal notions and concepts requires the use of the analytical method. Finally, since this doctoral thesis inevitably takes into account the case law of the national courts and the CJEU, as well as the clarifications provided by the national and international legal theory, the judicial and doctrinal interpretations are also applied and contained



therein. In that sense, the legal literature written in the national languages of the examined countries is used, together with that written in English, Italian, Spanish, and French.

#### **4. Summary of the Research Results**

Although the level of significance of the amendments constituting the transposition of Directive (EU) 2019/771 concerning the consumer's position is not identical in all areas covered in this thesis, with the principal definition of the consumer sales law and the existence of a lack of conformity in a certain point in time conditioning the seller's liability being the least affected by the modifications, it is possible to provide a general conclusion that the new regulation in all the examined legal frameworks (except Serbia) demonstrates a substantial and notable change compared to the regulation based on Directive 1999/44/EC. This kind of change is preponderantly due to the maximum harmonisation character of Directive (EU) 2019/771, as opposed to the minimum harmonisation character of Directive 1999/44/EC, allowing the national legislatures to depart from its provisions, which option was widely used (although not in an identical manner) by the analysed national systems, and provide a higher level of consumer protection. The areas mostly affected by different, novel, or even considerably more precise legal solutions concern the determination of the lack of conformity/defect, the duration of the presumption of non-conformity, and the interrelation and hierarchical order between the remedies available to the consumer. Moreover, the distinct regulation of the goods with digital elements represents a complete novelty, since this type of goods was not covered by special legal provisions prior to the transposition of Directive (EU) 2019/771.

The options provided by the same Directive to introduce different, country-specific legal solutions have been utilised by the examined national legislator, although not consistently and not in the same way. In essence, the national legal system, taking advantage of such opportunities in one field (for example, the Slovak and Polish legislators regarding the longer duration of the presumption of non-conformity), refrained from doing so in another field (exempli causa, in circumventing the hierarchy of remedies, as done by the Slovenian legislator). Consequently, there is no complete uniformity between the analysed national laws, which influences the position of the consumer in the specific country. The existence of the mandatory guarantee in Hungarian and Slovenian law, as well as the legal producer's liability for the defect in Hungarian law, as a reassurance that the consumer's claim will be fulfilled, additionally undermines the level of similarity between the

examined national legal systems. However, although these distinct legal solutions represent an additional burden imposed on the seller and/or producer, they raise the level of consumer protection as the realisation of consumer remedies may be directed toward two different subjects.

The determination of the influence of the recent amendments on the consumer's position at the level of national law varies, being dependent upon the specific area, and without affecting each examined national framework in the same manner. In that regard, providing more precision to the concept of lack of conformity and the formal requirements connected to the commercial guarantee, prolonging the duration of the presumption of non-conformity, introducing specific provisions governing goods with digital elements, as well as establishing more transparent and proactive requisites for the seller's exemptions from liability regarding the objective requirements for conformity in all the analysed national laws improve the consumer's position compared to the previous regulation. On the other hand, reducing the number of remedies at the consumer's disposal, establishing a clearer, more solid hierarchy between these remedies based on the ancient principle "*Pacta sunt servanda*", as well as retaining or introducing (as occurred in Slovak law) the consumer's obligation to notify the seller of the defect within two months of its detection as a means of inducing discipline and imposing a higher level of attention to the consumer, constitute novelties which are more favourable to the seller's position. Therefore, the improvement of the level of consumer protection has not been achieved equally in all the examined fields, since the modifications brought to the area of consumer remedies prove to be more beneficial to the seller, as the other party to the consumer sales contract, toward whom these remedies are directed. However, taking into account that the modifications that are more beneficial to the consumer prevail, the overall, general conclusion is that the recent amendments, although not without exceptions, have a positive impact on the consumer's position in the examined national laws. In that regard, they may serve as a point of reference or model to the Serbian legislator while transposing Directive (EU) 2019/771.

## 5. List of Publications Related to the Phd Thesis

Jokanović, I., Dudás, A. (2022) “Legal Position of the Consumer in the Event of a Lack of Conformity of the Goods in Croatian and Serbian Law“, *Acta Universitatis Sapientiae Legal Studies*, 1/2022, pp. 23-45.

Jokanović, I., Dudás, A. (2023) “The hierarchy of consumer rights in the event of a lack of conformity of the goods in Slovenian, Croatian, and Serbian law“, *Zbornik radova Pravnog fakulteta u Novom Sadu*, 57(1)/2023, pp. 209-234.

Jokanović, I. (2023) “Lack of conformity of the goods with the contract and sustainability issue - Directive (EU) 2019/771”, *Central European Academy Law Review*, 1(1)/2023, pp. 83-102.

Jokanović, I. (2023) “The Lack of Conformity and Consumer Rights in Hungarian Law”, *Acta Universitatis Sapientiae Legal Studies*, 2/2023, pp. 75-94.

Jokanović, I., Dudás, A. (2024) “Consumer Rights in the Event of Lack of Conformity of the Goods in Czech, Slovak, and Polish Law”, *Central European Journal of Comparative Law*, 2/2024, pp. 101-121.

Jokanović, I. (2025) “Consumer Sales Guarantees in Serbian, Croatian, and Slovenian Law”, *Arhiv za pravne i društvene nauke*, 2/2025, pp. 71-95.