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**CONSUMER FINANCE LEASE**

Theses of a PhD dissertation

**MISKOLC**

2009

## I. A SUMMARY OF THE RESEARCH ASSIGNMENT AND THE RESEARCH OBJECTIVES

Due to the fast economic and technical development, the contract types inherited from Roman law and collected in great codes of private law in the modern era were no longer able to meet the requirements set by the economy, and the resulting more complicated life circumstances necessarily entailed crossing the boundaries of traditional contract types, and generating new ones. Dogmatically, it lay in the liberty of contracting and the liberty of contract types within that, which also represented a starting point for the parties to break free of the restriction of format and contents, and to stipulate rights and obligations in their contract subject to their own interests.

Being an atypical legal institution originally “borrowed” from the United States of America, where a legal system of *common law* prevails, lease penetrated Europe in the second half of the 20th century. For a while, the legal systems in countries laid on continental legal bases regarded lease contracts, which were challenging the frameworks of classic contract typology, merely as a peculiar phenomenon. Initially, representatives of the legal science were engaged in developing the characteristic criteria and types of this legal institution within the continental legal framework, in classifying lease in the traditional contract typology, as well as in analysing the three-pole system of legal relationships present in finance lease. However, efforts of the European Communities to standardise private law bordering on consumer protection have been increasingly felt in contract law in the past decades, and have necessarily affected financing contracts, which represent major significance in the efficient functioning of the internal market, and in finance

lease contracts among them.

This research scrutinises consumer finance lease, with regard to the fact that the number of cases when a finance lease contract is concluded by subjects in the position of consumers in order to satisfy consumption needs or private needs cannot be neglected. The other lease type, operating lease is not addressed here, because, on the one hand, finance lease represents a more dominant subtype of lease, and, on the other hand, the lessee as the consumer's need for extra protection against the lessor as a quasi creditor are more palpable for finance lease as a financing contract.

With lease gaining ground in Hungary after the change of regimes, the version of finance lease attached the attribute "consumer" also appeared and caught on, but a conscious distinction between consumer and non-consumer finance lease has not been typical either in the literature or in the practice of law to date. A more clear-cut distinction between the consumer and non-consumer versions of finance lease is not present despite the fact that an increasing amount of different normative legal materials available on consumer contracts and enforcement of consumer rights would justify considering it.

The research objective is to shed light on the necessity of extra protection of consumer rights pertaining to consumer finance lease, and to formulate proposed solutions for legislation, judicial application of law and everyday contracting practice, also considering those provisions in the new drafts of the Civil Code that constitute the underlying norms to consumer finance lease, as well as those that are specifically applicable to lease contracts.

Prior to presenting a detailed analysis of the consumer finance lease, the

dissertation intends to provide an overview of the legal institution of lease, particularly of its finance subtype. The starting point for the dissertation is a presentation of the development stages of lease in Hungary and internationally. Historical development in the event of lease is inseparably intertwined with considerations of economics. Outlining the historical development of lease, our aim is to represent the economic, tax law and accounting impetuses that had a definitive role in the development and propagation of lease. The chapter - also bordering on the field of economics - enumerating lease types defines the criteria for distinguishing operating and finance lease relevant to this topic. Examination of financial lease within the system of contracts, distinction from other contract types, an analysis of the structure of the legal transaction, as well as attempts at parallel definitions of the notion of finance lease from the aspects of the legal science, legislation and application of law are presented as the basis of legal dogmatism relevant to the subject.

The goal of analysing consumer finance lease, which constitutes an immanent part of the dissertation, is to explore the segments and fields of finance lease where intervention and action is needed in consumer's interest. In the absence of a direct legal regulation, the court rulings, stances, business regulations and general terms and conditions, as well as specific lease contracts will be worked through in detail.

The dissertation presents the norms applicable to consumer finance lease contracts under BGB (the German civil code) as a potential alternative remedy to problems revealed concerning the Hungarian practice. We intentionally do not wish to discuss Hungarian legal practice parallel to German legal regulation. This conscious structural segmentation is justified by the fact that the German civil law formulates legal norms expressly focusing on consumer lease contracts, whereas on

presenting the Hungarian solution, only underlying normative legal materials and the judicial and contracting practices may be relied on.

With respect to the fact that the development of law in Hungary and in Germany have in many cases covered parallel paths in the course of progress in legal history, a question arises why neither country's effective civil code regulates lease contracts, still, the German civil code provides norms governing consumer finance lease contracts. The answer to this question leads to an in-depth scrutiny of the sources of the European Union's law, namely, Council Directive 87/102 EEC on consumer credit, as well as application of this directive in each member state, consequently not ignoring the European Communities' efforts to standardise private law. In addition to examining the relationship between Council Directive 87/102 EEC on consumer credit, which provides grounds for variation in the German and Hungarian practice and the consumer finance lease, the dissertation also addresses potential impacts of the new Directive 2008/48 EC on consumer credit affecting consumer finance lease. Beyond the directive, an explanation of the detailed rules of consumer finance lease contracts under BGB brought about as implementation of Council Directive 87/102 EEC was considered desirable because the German legislator – as opposed to its Hungarian counterpart – applied the directive to domestic law by significantly benefiting from the potentials provided by minimum harmonisation and by paying attention to regulating consumer finance lease.

Considering that both the legal science and legislation are still divided concerning the issue whether to identify lease contracts in our new Civil Code being prepared, the dissertation devotes a chapter to codification of lease contracts in the new Civil Code, briefly flashing up the key paradigm shifts related to codifying the lease contract within the codification of the Civil Code. The dissertation discusses the

normative text of the Bill on lease contracts from the aspects of consumers and consumer finance lease, as well as the possibility of incorporating the consumer finance lease in the new Civil Code.

In the concluding part of the dissertation, in addition to synthesizing the findings from each unit of thought, the benefits and drawbacks of the solution models presented are evaluated, and the consequences drawn are used to formulate suggestions addressed to the Hungarian legislation and application of law.

## II. RESEARCH METHODOLOGY AND SOURCES

The whole dissertation is permeated by a *complex approach to the subject*, as a result of which it applies a mix of research methods varied for each chapter, keeping its primary *approach of private law* throughout. The dissertation discusses consumer finance lease from the aspect of private and civil law, and provides limited space for public law approach – principally for reasons of consumer protection.

Considering that lease is a legal institution principally inspired by the economy, its discussion from a legal aspect is in many cases difficult to be distinguished from economic approaches; consequently, aspects of economics also infiltrate certain chapters of the dissertation.

The chapter presenting a historical development of lease internationally and in Hungary applies a combination of a *historical method* and an *economic approach*, which yields an *interdisciplinary* approach, precisely with a view to pointing out the economic factors that have a definitive role in the evolution and propagation of lease.

On examining the position taken by finance lease in the system of contracts, exploration of a taxonomic position of finance lease and its relationship with other legal institutions, i.e. taking account of “external” features within the branch of law and “internal” ones within the legal institution is unavoidable. The entire chapter is characterised by seeking a conclusion through comparing and conflicting views and positions, as well as by application of an analytical method.

The chapter entitled Attempts to define the notion of finance lease discusses the notion of finance lease from three parallel aspects, i.e. legal science, legislation and application of law, arriving at results yielded by the benefits of parallel interpretation.

On giving a detailed analysis of the Hungarian practice of consumer finance lease, the dissertation heavily relies on the *results of judicial application of law* and the *practice of contracting*. A number of court rulings were worked through, and business rules, general terms and conditions of lease companies were subjected to a detailed comparative analysis by the author in the course of developing the dissertation.

The research was not devoid of using the *comparative* method. Highlighting the German regulatory model in this field was a result of a conscious decision, as it is the only country governed by continental law where the legislator regulates consumer finance lease in the code of private law, which may be exemplary to the Hungarian legislature in the codification process of the new Civil Code.

*Exploration* of the *cause* for the difference between the Hungarian legal practice and the German regulatory model leads us to embed the subject in a broader

context: to consider the European Communities' efforts to standardise private law bordering on the field of consumer protection, and to examine the relationship of European law governing consumer credit and the consumer finance lease. This outlook is an important part of the research also because not even Hungarian legislation can ignore the steps that lead towards full harmonisation of the European Communities' law governing consumer credit.

The chapter presenting the anomalies related to codification of lease contracts in the new Civil Code and the ability to incorporate the consumer finance lease in the new Civil Code is characterised by chronological and critical methods, as well as one confronting different views.

Despite the fact that the dissertation rotates the use of research methods, it seeks to comply with the requirement set for dissertations to be a closed and coherent whole consisting of interlinked thematic units derived from one another. With that in mind, on finding a structure and the internal proportions of the dissertation, the emphasis was on giving a general overview of the subject, followed by a presentation of problems encountered in the domestic legal practice of consumer finance lease, and, finally, concluding with an enumeration of alternative solution models that underpin our critical observations and solution proposals formulated concerning consumer finance lease.

Characteristically, the whole dissertation pragmatically seeks to recommend proposals and conclusions concerning the problems revealed on exploring the Hungarian practice of law, which can be utilised in both legislation and application of law.

### III. RESEARCH RESULTS AND THEIR UTILISATION OPTIONS

1. The mostly economy-inspired legal institution of lease is a relatively new “multidimensional” formation in our law of obligations. Its evolution and development were chiefly influenced by economic factors and motivations, which even today determine the intensity of its development. The historical and present day evolution of lease is closely intertwined with the current environment of tax law, accounting and the economy: favourable legal regulation or economic media may result in increased volumes of lease, while an unfavourable legislative decision or economic atmosphere may bring about setbacks.
2. Adapted to the needs of the economy, lease is present in innumerable formats in practice, with new lease types constructed and propagated on a continuous basis. Because of the multidimensional nature of lease and the material differences between the two basic types, operation and finance lease, it seems doubtful whether a uniform approach to and regulation of lease is possible at all. In the light of the attempts made to define the notion of finance lease, it can be established that the uniform notions of lease elaborated by legal literature and the judicial practice are typically suitable to define the criteria of either operating lease or finance lease.
3. Codification of atypical *contracts* or ones comprising elements of multiple contracts has appealed to authors of legal literature thinking within the system of traditional contract typology of continental law, ever since such contracts emerged. The thought of incorporating and regulating lease as a *sui generis* contract built in the fashion of mosaic from multiple contract types in our code of private law has re-emerged in the process of codifying the new Civil Code, and, concluding from the

text of the current Bill, this issue will apparently come to be settled by identifying lease contracts by name in the Civil Code, despite differing views. The Bill of the new Civil Code has assumed a considerable duty by working out a uniform set of norms governing all lease types, because, in our view, the multidimensional and varied nature of lease, as well as the differences of operating and finance lease almost render uniform codification impossible.

**4.** Finance lease, which represents a decisive lease type and the subject of the dissertation at the same time, is a contract that combines elements of hire purchase with reservation of ownership, rental, lease and loan contracts, nevertheless resulting in an arrangement of new quality, which does not fit in with any of the contract types. Finance lease breaks through the boundaries of the classic relative structure of the law of obligations, assuming close cooperation of three parties, the supplier, the lessor and the lessee. Finance lease transactions are more than just bilateral contracts between lessor and lessee, they are a peculiar and complex legal process comprising a chain of contracts arranged similarly to a geometrical triangle. The lessor positioned at a vertex of the triangle concludes two legally distinct contracts with two different contracting parties: a contract of property transfer (or, exceptionally, a contract of assignment) with the supplier, and a financial lease contract with the lessee. Despite the fact that in the triangular system of legal relationships under the finance lease contractual relationships are only set up between the supplier and the lessor, and between the lessor and the lessee, a legal relationship also emerges between the supplier and the lessee through a cross-impact of contracts and cooperation of the parties. As a consequence of all these, finance lease no longer represents two legally distinct contracts with three parties participating but a three-pole system of legal relationships among the supplier, the lessor and the lessee.

**5.** A decisive current tendency of contracts in Hungarian law is a spirit of consumer protection intensified by the European Communities' efforts of legal harmonisation, or standardisation, instead. Extra consumer protection and unordinary regulation of consumer contracts under contract law heralds a new field, development in the law of consumer contracts. The need for extra consumer protection arising from consumers being exposed and under-informed has unnoticeably penetrated the traditional legal institutions in the law of obligations as a result of the European Communities' efforts, and its impact is felt in all contract types. It is also the case with finance lease.

Despite the above, a conscious distinction between consumer and non-consumer finance lease is not characteristic of either the Hungarian legal literature and judicial practice, or the practice of contracting, although experience shows that it would be justified to consider.

**6.** Examination of the domestic contracting practice of finance lease contracts may lead us to the conclusion that a number of segments in finance lease would need action in consumers' interest. To our judgement, as early as in the *pre-contractual* period, emphasis should be given to enable lessees in a consumer position to make substantiated decisions concerning contracting, and to be aware of the consequences of their agreed obligations. A key role should be attributed to the obligation to inform the consumer prior to contracting, pointing out supplying clear information that is unambiguous even to laymen, as well as the contents. We consider it necessary for lessors not to make distinctions when developing the standard contracts on the grounds whether they are about to contract with a consumer or a prospective lessee not in a consumer position. Also, particular significance should be attributed to ensuring that the standard contracts of lessors

are cleaned of indecent stipulations. The dangers intrinsic to finance lease transactions that waive insurance on the lease object or have a disproportionately long term and low deductible should be eliminated. The consequences of a long term and a low amount, or absence of a deductible for financing vehicles result in a constantly lower vehicle value compared to the financed value, which, in the event of early termination of the contract, generates extra payment obligations to the lessee, in addition to that of returning the lease object. Similarly, broad exercising of unilateral contract modification on the lessors' part, or stipulation of the rules of settlement to be followed on prepayment also requires intervention. In addition, incorporation of guarantees protecting consumers in the event of contract breach or contract termination is also considered crucial.

The dissertation offers alternative solutions to problems arising in the Hungarian legal practice. One is the regulatory model set up by the BGB. Although the German legislator does not identify lease or finance lease in the code of private law, consumer finance lease is still mentioned under the law of consumer credit. Using the opportunity to apply the referral technique, section 500 of the BGB extends application of certain legal norms governing consumer credit contracts also to consumer finance lease contracts. These include – just to mention the key requirements – a written format, statutory contents elements of the contract, attempted applicability of the regulation of the linked contracts to finance lease, granting the lessee a consumer right to rescind the contract, linking the lessor's right of immediate termination to strict conditions, specification of a procedure for settling partial deliveries other than generally, and providing guidelines to settlement to be followed on contract termination. A positive point of the BGB is the legislative recognition that consumer finance contracts apparently converge, and demand is seen for uniform regulation. Regulation in the BGB is also forward-minded from the aspect that it recognises the need for extra consumer protection for

the lessee through incorporating a regulation expressly relevant to consumer finance lease contracts. A negative point is that it wishes to regulate finance lease contracts without defining the notion, which leads to a necessity that applicability to persons and objects must be determined by the legal science and the application of law. Regulation through referring norms does not in all cases adequately suit the legal institution of finance lease, which in cases raises problems of legal interpretation both in the legal literature and in the judicial practice.

On comparing the German regulatory model and the Hungarian practice, the question may arise concerning the reason why no regulation of lease is available under civil law in Hungary, while the German BGB formulates norms governing consumer finance lease. On examining the reasons for the difference, we may arrive at the conclusion that the BGB has regulated consumer finance lease contracts pursuant to the implementation obligation arising from Council Directive 87/102/EEC on consumer credit, initially in the act on consumer credit, subsequently, after the *Schuldrechtsreform* – in the BGB with almost invariable contents. In Hungary, the directive was applied in the norms regulating consumer credit in the act on credit institutions and financial institutions and the act on consumer protection, without the scope being extended to consumer finance lease.

Consequently, the dissertation examines in detail the relationship of Council Directive 87/102 EEC representing the starting point for the German regulatory model, as well as Directive 2008/48 EC abrogating it, and consumer finance lease. In terms of subject, the effect of Council Directive 87/102 EEC extended to all finance lease transactions that entail transfer of ownership, while Directive 2008/48 EC is only applicable to the lease contracts that require acquisition of the lease object, as an obligation. A benefit of Directive 2008/48 EC on new consumer credit

agreements, which relies on full harmonisation, is that it reflects on the overwhelming majority of problems raised concerning the Hungarian practice of finance lease. In this issue, the obligation to provide information is emphasised in the period prior to contracting, and particularly in commercial communication and advertising. By creating “General information on European consumer credit” published as an appendix to the directive, and by defining the statutory content elements to the obligation to provide information prior to contracting, it provides consumer information needed to compare offers and to make substantiated decisions. The directive introduces consumers’ right to rescind the contract, and provides for linked credit agreements, the possibility and rules of prepayment, the method of calculating and indicating the annual percentage rate, statutory content elements of credit agreements, requirements applicable to credit intermediaries, etc. A drawback of the new direction is that its effect only covers finance lease contracts that require acquisition of the ownership title of the lease object. In this way, the directive removes a significant portion of finance lease contracts from the scope of effect. Our position is that nothing justifies such distinction of finance lease contracts from the aspect of extra consumer protection, as ultimately, the lessee of consumer finance lease involving transfer of ownership needs extra protection irrespective of the fact whether acquisition of ownership of the lease object is an obligation or an option. Implementation of the directive would represent a suitable solution for consumer finance lease, which requires purchase of the lease object, while it would result in unjustified distinction of finance lease transactions that provide for acquisition of the ownership of the lease object as an option only.

**7.** As a further potential solution to problems raised in connection with the Hungarian legal practice, the dissertation analyses the Bill on the new Civil Code, particularly its provisions addressing the consumer, consumer contracts, consumer

credit and lease contracts. Despite devoting a whole chapter to consumer contracts and emphasizing their importance, the bill on the new Civil Code does not refer to consumer finance lease, either linked to consumer credit contracts or to a uniform regulation of lease contracts.

The Bill renames consumer credit as a consumer credit contract, based on the debtor's person, and only intends to integrate its key features of private law in the Civil Code, while the detailed rules would still remain to be provided for in the act on credit institutions and the act on consumer protection. Relying on the economic contents of consumer credit, the regulatory scope of consumer credit contracts – in a way similar to Council Directive 87/102 EEC on consumer credit and Directive 2008/48 EC – would extend to deferred payment and hire purchase; as opposed to the directives, however, it would not apply to other similar financial solutions.

The Bill on the new Civil Code attempts to codify lease contracts in a uniform way, and does not make a distinction between the two basic types of lease, operating and finance lease, and neither does it provide different rules for consumer lease or consumer finance lease. The explanation of the Bill also reveals that not even underlying considerations of consumer protection were taken into account on producing the uniform normative materials for lease contracts. A benefit of the regulatory model offered by the Bill is that it does not intend to position the detailed rules of the directive on consumer credit and the full set of norms applicable to the law of consumer credit within the framework of the code. However, the absence of lease-related consumer protection attitude may be brought up as a criticism.

**8.** As seen above, each solution pattern has its benefits and drawbacks. We would

agree with the solution whereby the Hungarian legislator would comply with its implementation obligation arising from Directive 2008/48 EC on consumer credit agreements, to be completed by 12 May 2010 in a way that the directive – similarly to other consumer-related directives – would be represented in a separate piece of legislation, eliminating the current duplicate representation, and the effect would be extended to consumer finance lease as a standard. The effect of such a separate piece of legislation in terms of subject would be extended to finance lease, which requires acquisition of the ownership of the lease object as an obligation pursuant to the directive, while for finance lease outside the effect of the directive, the Hungarian legislator would decide on applicability of the law of consumer credit within its own competence. To our stance, it would not be contrary to the aim of the directive striving for full harmonisation, as lease contracts that do not require acquisition of the ownership of the lease object as an obligation fall outside the effect of the directive, i.e. the member states are free to draw up and maintain rules on this issue, which may deviate from the directive.

**9.** At the same time, we are not supportive of identification of consumer credit in the Civil Code, not even with a limited scope of regulation. On the one hand, incorporation of consumer-related principles in a code of private law – also drawing the lessons from the -example of the BGB – may trigger frequent amendments due to quickly changing legislation in the European Communities; on the other hand, we do not see reasonable criteria for distinction between the basic legal forms of consumer credit to be laid down in the new Civil Code and the detailed rules set forth in separate pieces of legislation. Should the new Civil Code still identify consumer credit contracts, the definition of the notion – even if the phrase ‘consumer credit’ is not used – must be in harmony with the community directive, and its effect in terms of subject must also include other financial solutions in addition to hire purchase and deferred payment, and would also

comprise consumer finance lease. If the effect of consumer credit contracts in terms of subject is not extended to other financial solutions, including consumer finance lease, the consumers that use a contract type that contains elements of lending and falls external to the notion of consumer credit contracts will incur a disadvantage. In our opinion, nothing justifies the distinction whereby extra protection excludes consumers who conclude finance lease agreements that also contain elements of lending and ultimately entail transfer of ownership, or happen to use a credit type inspired by the economy. Consumer contracts that contain financing elements, such as consumer contracts or consumer finance lease also function as each other's alternatives on the market, which necessitates extra protection of consumers on equal considerations.

**10.** As we have mentioned above, we are not convinced that, in terms of codifying lease, uniform codification of lease contracts – equally applicable to operating and finance lease – is the adequate solution. A uniform regulation is only possible within a general and broad framework at an abstract level, which does not reckon characteristic criteria of each lease type and the problems arising from those in the application of law. Should the legislator still decide to identify lease contracts in the Civil Code in a uniform way, we recommend the following proposals to the legislator for consideration, in order to ensure that our Civil Code places due emphasis on lessees potentially taking up the position of consumers, in addition to the ownership interests of the lessor:

- In the current text of the Bill, the rules of each contract type combined with lease contracts are reflected, almost literally at certain points, which results in unjustified extension of the scope of the code and in weakening of its coherent system. It is precisely for this reason that we recommend application of a norm that refers to the relevant rules of lease in terms of use and assignment of use

(sections 5:342-343 of the Bill) to avoid repetitions. In addition to omitting paragraphs (1) and (3) of section 5:342 and section 5:343 of the Bill, we recommend referring back to sections 5:290-291 of the Bill.

- The Bill deems an agreement on statutory elements as a prerequisite to validity of the lease contract (section 5:341 of the Bill), the absence of which entails invalidity of the lease contract. Considering that reinstating the original situation used as a legal consequence of invalidity for finance lease would frustrate the lessee's expectation to obtain ownership of the lease object on expiry of the lease term, we recommend a requirement that invalidity of the lease contract for lack of statutory content elements can only be referenced in the lessee's interest.

- Imposing a requirement of bearing risk of damage on the lessee should be stated at the level of acts, as it is a material criterion to lease contracts, which distinguishes them from other contract types. Imposing the requirement of bearing risk of damage at the level of acts is particularly justified on codification of lease contracts because the general principle of *casus nocet domino* under civil law is not represented in lease contracts. The principle of legal security also calls for making this feature of lease contracts unambiguous to everyone, particularly to consumers, if the lease contract is codified in the Civil Code. By not addressing the risk of damage, the current bill seemingly suggests that imposing the requirement to bear risk of damage on the lessee is not necessarily a concomitant of lease contracts, whereas practice is quite different.

- Pursuant to the Bill, for a period of being impeded or restricted by a third person in proper use, the lessee must pay a reduced or no lease fee, if the lease contract requires the lessee to pay the insurance premium and bear any damage to the object, and any insurance payment or damages are due to the lessor. (paragraph (3) of section 5:345 of the Bill) To our stance, the wording of the

Bill is inaccurate at this point, as we do not think that the lessor would waive the payment obligation of the lease fee, if the insurance amount or damages were due to them, but they would not actually receive it. We propose rewording the last clause to say “and the insurance amount or damages have been paid to the lessor.”

- On codifying lease as a typical arrangement of assignment, we believe that exercising the right of rescission originally held by the lessor against the supplier should be allowed for the lessee, with the proviso that the lessee may only exercise it with the lessor’s consent. Our reason for it is that by raising the arrangement of assignment, which has been established by practice, to the level of acts, the Bill compensates exclusion of liability due to the lessor’s default, except for the right of rescission that may be enforced as a warranty claim, but the lessee’s disadvantage resulting from exclusion of liability. As it has also been pointed out – correctly – in the judicial practice, assignment is only valid in a case and to an extent that it is suitable for full remedy of the prejudice to interests. Considering that use of the right of rescission by the lessee, which may also be enforced as a warranty claim, would terminate the chief security of the lessor, it is obviously not justified to allow the lessee to exercise the right of rescission independently; at the same time, we have no objection to allowing the lessee to use such right with the lessor’s consent. Let us note that in our opinion not even this solution is suitable to provide full remedy to the prejudice to interests resulting from exclusion of liability. A more detailed explanation of the procedural protocol and conditions of the lessor’s consent to it is subject to the lessors’ standard contracts.

- From the aspect of consumer protection, resolution of a currently existing problem at the level of law is worthy of attention, resulting from the fact that, in the case of a consumer lease contract, the lessee may only exercise warranty

rights arising from a contract of sale and purchase, which is not deemed as a consumer contract, against the lessor, whereas the lessee has concluded a consumer lease contract with the lessor. With regard to the fact that the legal consequences of default allow for more favourable rules to be applied to consumer contracts, raising the assignment arrangement to the level of law and exclusion of the lessor's liability in their current forms may adversely affect the lessee in a position of the consumer, particularly so if no statutory or contractual warranty is available for the specific lease object. It is precisely for this reason that it could be stated in law that the lessee may enforce rights arising from contracts of sale and purchase against the seller, in line with the rules of consumer contracts, if the lease contract is deemed as a consumer contract.

- It would be expedient to limit the lessor's right of termination with immediate effect to cases of severe contract breach specified in the lease contract, thus avoiding a possibility of allowing unlimited ground for the lessor to use termination with immediate effect for reasons for termination worded on a broad scale in lease contracts.
- It would be expedient to stipulate that the lessor may only use their right of termination with immediate effect upon the lessee's non-payment of lease fees and other costs arising from the contract, if the lessor has called on the lessee by setting a deadline and warning them of the legal consequences, and the lessee has not complied with their payment obligation within the extended deadline, either. Maintenance of the lease contract is also an interest of the lessor, still, termination of the contract with immediate effect has very severe legal consequences to the lessee. Calling on and warning the lessee of the legal consequences would provide a possibility for the lessee to "save" the contract through subsequent payment within the extended deadline and not to let a delay of a few days alone provide grounds for the lessor to terminate the contract with immediate effect.

**11.** In order to promote more efficient protection of finance lessees in the consumer position, our proposals for the legislator recommended for consideration are the following:

- We suggest that indication of the annual percentage rate is made compulsory also for finance lease on commercial communication, particularly in advertisements. Let us we note that extending the implementation of the new directive on consumer credit agreements to all finance lease types would bridge this problem.
- With respect to the fact that only consumers adequately informed and advised are aware of the consequences of their agreed obligations, we consider adoption of a general form/sheet specified in a relevant piece of legislation for the obligation to provide information prior to contracting – even if the related costs are charged to the lessee – either specifically for consumer finance lease, or for any financing consumer contracts encountered in the finance sector, which would define detailed content elements of such information. The form should accurately identify the lessor and the supplier or the entity providing financial service, as well as the seller, in addition to all costs, fees, interest incurred in connection with the contract, and any possibility and way of changing these, the typical criteria and legal consequences of the legal transaction in a form intelligible to all, as well as the way of enforcing consumer complaints. If the legislator adopts the use of “General information on European consumer credit” published as an attachment to Directive 2008/48 EC – as we have suggested – as a standard for consumer finance lease, we address our suggestion to lessors to set forth in their standard contracts the way of enforcing consumer complaints, or to hand over the information brochure entitled ‘Lease in Focus’ issued by the Hungarian Financial Supervisory Authority in each case

prior to contracting, in order to provide easy-to-understand information.

- In order to counterbalance the possibility for lessors charging unrealistically high extra fee items on prepayment with reference to their announcements, we regard as worthy of considering an amendment to Government Decree 18/1999. (II.5.) on conditions deemed as indecent in contracts concluded with consumers - also proposed by Expert Recommendations - saying: “in consumer contracts, a contractual condition, in particular, that requires the consumer to pay excessive amounts on the consumer’s non-performance or non-contractual performance or on early discharge of their debt must be regarded as indecent until proved otherwise.”
- If the new Civil Code identifies intermediation of consumer credit as a subtype of agency contracts, the relevant rules could be extended to intermediating consumer finance lease accordingly. Let us note, however, that the regulation of consumer finance lease would also remedy this set of problems on implementing Directive 2008/48 EC.
- According to our stance, the notional definition of consumer in the new Civil Code should be expediently narrowed down to natural persons only – in harmony with the directives of the European Community -, thus avoiding excessively broad regulation providing grounds for abuse. If the legislator accepts the current text of the Bill (section 5:33 of the Bill), it would be the employee statistical data and balance sheet results – not necessarily reflecting exposure – in the event of micro-enterprises, among others whether they are considered as a consumer in a specific case. On concluding a lease contract as a contract typically used for financing small and medium sized enterprises, lessors would incur further administrative burdens and costs to explore the consumer criteria applicable to a specific lessee, or to clarify the consumer position of a lessee other than a natural person. If, however, the lessor disregards examination of consumer parameters, and exclusively decides whether to contract with the

consumer on the grounds whether the lessee signs a declaration previously worded by the lessor, stating that they conclude the contract in a capacity other than a consumer, a situation may arise where the lessor does not provide extra consumer protection despite their obligation to do so.

**12.** Even provisions of law formulated as a result of careful and prudent legislative work are worthless without efficient application of the law. Consequently, both the judicial application of the law and the practice of contracting must assume a role in promoting it. Our recommendations addressed to the application of law are as follows:

- Judicial application of the Hungarian law should pursue more resolute action in line with the decisions of the European Court of Justice to enforce the legal consequences of nullity of indecent stipulations in consumer contracts not negotiated on an individual basis. If the Hungarian *judicature* examined nullity of indecent stipulations and general terms and conditions of consumer contracts not negotiated on an individual basis in legal actions being processed in front of them, the lessor would thus be forced to eliminate the stipulations obviously giving rise to concern out of their terms and conditions, or adjust them adequately. In the absence of it - being aware of the passivity of Hungarian consumers - filing public claims alone is no sufficient remedy for the problem. In our opinion, only a more active role assumed by the judicial forum to serve consumers' interest can achieve that the general terms and conditions and blank contracts offered by lessors are cleaned of indecent and suspicious stipulations giving rise to concern.
- Application of the law should, in the future, pay more attention to invalidity of termination with immediate effect, which results in severe legal consequences for the lessee, in cases where the grounds for termination were

other than severe contract breach specified in the contract.

- For lessors, we recommend working out a special blank contract and general terms and conditions, expressly for consumer finance lease contracts. These standard contracts would ensure treatment of consumer finance lease contracts differently from general ones, as well as ensuring representation of consumer rights.
- We recommend for lessors to elaborate in their standard contracts in more detail the conditions and timeframe for giving their consent to lessees on their rescission from contracts to transfer ownership enforced as a warranty claim, or, as an exception, from contracts of assignment.
- In order to avoid subsequent legal disputes concerning whether the lessee concluded the contract in their capacity as a consumer or not, we recommend to lessors that they consider specifying the purpose of contracting in the lease contracts, as well as the criteria for establishing validity of capacity as a consumer.
- For lessors, development of internal self-regulation would deserve consideration in any case, which would suggest a requirement for a maximum term and a minimum deductible. That would help avoid under-financed lease objects and an ensuing payment obligation of the lessee due to early termination of the lease contract. It would be similarly justified to require mandatory conclusion of an insurance contract, which could prevent lease fee payment obligation despite the lease object's unusability due to destruction or impairment.

**13.** The dissertation undertakes to analyse the legal institution of finance lease relatively rarely elaborated in the Hungarian law of contracts, and from an aspect never before applied in the Hungarian legal literature: consumer protection. Resulting from the fact that this subject is hardly discussed, and also from an

original approach to the subject, the dissertation is reckoned to fill a niche in the Hungarian legal literature of contracts.

Issues of consumer finance lease are particularly topical at the time of crisis experienced and taking its toll even today, as well as for codification of lease contracts in the new Civil Code. The key opportunity of utilising the dissertation precisely lies in the processes of codifying the new Civil Code and implementing Directive 2008/48 EC on consumer credit agreements. The critical approach and comparative method applied in the dissertation promote utilisation of recommendations and findings put forward in the dissertation for Hungarian legislation, and also provide ground for further research.

In addition to the Hungarian legislature, representatives of judicial application of law will also most probably be able to benefit from the research results, with regard to the fact that the dissertation lays particular emphasis on processing the judicial and contracting practice of finance lease, addressing certain recommendations expressly to *judicature*.

We only hope that the recommendations and findings presented in the dissertation also reach lessors, and urge them to increase consideration of consumer rights and to accept our suggestions.

The research results may also be utilised by organisations of consumer interest representation, as it may urge them to act more actively concerning finance lease, even in the form of filing public claims.

The dissertation may provide help in university education, particularly with studies

addressing the fields of consumer protection or atypical contracts, as well as with writing related university course books and notes.

## **IV. A LIST OF PUBLICATIONS RELATED TO THE SUBJECT OF THE DISSERTATION**

1. Finance lease in the light of imminent codification of the Civil Code  
*Studia Iurisprudentiae Doctorandorum Miskolciensium, Tomus 2/2., Bíbor Kiadó, Miskolc, 2002. pp. 433-453.*
2. Historical evolution of operating lease, and development of the relevant legal regulation  
*PhD Forum (Doktoranduszok Fóruma), Miskolc, 6 November 2002, Group publication of the Faculty of Law at the University of Miskolc, 2003, pp. 263-268.*
3. Is it necessary to regulate lease under civil law?  
*Collega, 2003/1., pp. 35-36.*
4. Concluding a lease contract  
*PhD Forum (Doktoranduszok Fóruma), 6 November 2003., Novotni Alapítvány, Miskolc, 2003, pp. 415-420.*
5. Issues of contract breach with lease contracts  
*Studia Iurisprudentiae Doctorandorum Miskolciensium, Tomus 4/2., Bíbor Kiadó, Miskolc, 2004, pp. 285-307*
6. Expiry and termination of lease contracts  
*Collega, 2005/2, pp. 142-145*
7. Credit or lease for vehicle financing?  
*PhD Forum (Doktoranduszok Fóruma), 4 November 2004, Group publication of the Faculty of Law at the University of Miskolc 2005, pp. 341-347*
8. Lease contracts in the new German insolvency procedure

- Studia Iurisprudentiae Doctorandorum Miskolciensium, Tomus 6/2., Bíbor Kiadó, Miskolc, 2005, pp. 333-352*
9. Legal attributes of finance property lease  
*Collega, issue 2006/2-3, pp. 172-174*
10. Property lease  
*Studia Iurisprudentiae Doctorandorum Miskolciensium, Tomus 7/2., Bíbor Kiadó, Miskolc, 2006., pp. 329-344*
11. International finance lease  
*Collega, 2007/2-3., pp. 180-183*
12. The position of the consumer with lease contracts  
*In: A fogyasztóvédelem új irányai az elméletben és a gyakorlatban (New courses of consumer protection in theory and in practice), ed.: Szikora Veronika, Center Print Nyomda, Debrecen, 17-18 May 2007. Conference proceedings, pp. 205-215*
13. Lease contract in the new Civil Code  
*Gazdaság és Jog, 2008/7-8, pp. 9-16*
14. Consumer finance lease in German law  
*Under publication in the volume summarising the conference held in May 2008 in Debrecen for young tutors of private law.*
15. Historical development of lease  
*Debreceni Jogi Műhely, issue 2009/2*  
[http://www.law.klte.hu/jogimuhely/01\\_hun\\_index.htm](http://www.law.klte.hu/jogimuhely/01_hun_index.htm)
16. Finance lease contract in the judicial practice  
*To be published in the May 2009 issue of Jogtudományi Közlöny*