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Procedia - Social and Behavioral Sciences 220 (2016) 150 – 158

Procedia
Social and Behavioral Sciences

19th International Conference Enterprise and Competitive Environment 2016, ECE 2016, 10–11
March 2016, Brno, Czech Republic

Complaints under the purchase contract after the recodification of Czech civil law

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Abstract

One of the objectives of the new codification governing complaints of defects under the New Civil Code (NCC) was to abolish the dualism of regimes set for non-commercial and commercial purchase contract, regulated separately by the Civil Code 1964 and Commercial Code 1992. Before the NCC entered into force, the Czech law has two separate legal regimes governing the rights of the purchaser concerning defects of the subject of the purchase. There was always a differentiation between the rights of the buyer under the Civil code and rights under the Commercial Code. The Civil Code governed contracts in which one party was a consumer or an entrepreneur who, however, was not acting in performance of the business. The Commercial Code, by contrast, governed contracts concluded between entrepreneurs in the performance of their business. The New Civil Code introduced a uniform scheme for the application of the rights for defects, which is based on the legal rules contained in the former Commercial Code.

The present paper analyses the statutory regulation of rights for defects of the goods sold. Using the methods of functional analysis and legally formalistic comparison it examines the modes of their application – both from the perspective of a trader and from the perspective of the customer and/or of the public inspection body.

The first assessment and reviews of the implication of the new legislation in practical terms and by the case law suggest that the in meeting the objective desired by the NCC – to increase the transparency of the procedure for complaints – the new legislation stacked in the middle of the way. It is obvious that the new rules respect the former régime of commercial contracts. The business sphere has undoubtedly welcomed this feature of the legal regime as the merchandisers are familiar with this rules. The second issue is, however, how this modification in the general regulation meets the expectations of the consumers to provide sufficient legal certainty in consumer disputes running across the Member States of the European Union.

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Peer-review under responsibility of the organizing committee of ECE 2016

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Keywords: Liability for defects; defect performance; complaints; quality guarantee; warranty term

1. Introduction

Almost daily, when buying goods and services, the individuals find themselves in the legal position of consumers. Often they are forced to deal with the question how to apply their rights stemming from liability for defects of the goods purchased (with often considerable value). Consumers are exposed to the growing influence of the advertising and promotion and as a rule they are usually not able to get enough information about the growing range of products. But also seen by the look of the other contractual party – producers and sellers of goods – these are often exposed to the difficult situations, when large chain stores, carrying out the sale of goods, are represented by un-motivated and unskilled staff. As a result, the relationships between vendors and consumers are becoming more and more complicated. Therefore the law of European Union has to pay significant attention to the issues of consumer protection in the context of the sale of goods. These issues – underlying obligatory harmonisation by the national laws of Member States – were taken into consideration by the Czech legislator when preparing the recodification of the Civil Code. The new regulation has brought a huge breakthrough into the whole concept of *ius privatorum* of the Czech Republic. Previous to the adoption of the New Civil Code (hereinafter “NCC”) in 2012 the regulation of the commercial and non-commercial purchase contract was separated and split both in the Civil Code and Commercial Code in form of two complex sets of rules. Such a duplicity was based on the dualism of the *ius privatorum* that reached to the legislation of both civil law and commercial law. This phenomenon had in Czech Republic its roots in the history of Austrian – Hungarian Monarchy and its *Allgemeines Buergegesetzbuch*. (Janků, Kelblová, Uhlířová & Zapletalová, 2014) However, the Czech Republic – taking the regulation in several other European states as a model – has decided to get rid of the dualism in *ius privatorum*.

2. Goal and methods

The present paper looks in more details at the upcoming regulation of the rights from faulty performance of purchase contracts and examines the complaints of defected performance. The first feedback and reviews on the new rules brought by the NCC and applied by the practice, as well as the reaction provided by the case-law of national courts suggest that in the achievement of the established goal – to increase the transparency of the procedure of complaints – the new codification got stuck in the halfway. As we may see when comparing the previous and the current regulations, the NCC rules are based on the rules contained in the former Commercial Code. Therefore it seems to be useful for our paper to analyse and compare the impact of the new legislation as perceived from the perspective of the merchandisers on one side and from the perspective of the consumers and/or the public authorities (trade inspection). We will use the method of functional analysis as well as the method of legal formalistic comparison.

The new rules were welcomed without any doubts by the entrepreneurs. They may know them well from previous legislation. In juxtaposition to this we will evaluate how (and if) the new rules meet the requirements for the consumer protection, i.e. whether they provide sufficient legal certainty in consumer disputes across the Member States of the European Union, in which the EU-harmonised law rules shall apply.

3. Discussion

3.1. The terms and types of complain of defects

According to the NCC it applies in general that if the obligations from the purchase contract are not implemented properly (i.e. as regards the agreed quantity, quality, performance, delivery of incomplete documentation, or delivery of other goods than ordered), for the buyer shall arise rights from defective performance aimed at the elimination of the defects. In addition, if the buyer is a consumer, as a defect shall be considered even that if the goods do not match with the purpose of use claimed by the seller.

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