

LACK OF CONFORMITY AND SELLER'S LIABILITY IN CROATIAN, SLOVENIAN, AND SERBIAN LAW

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This study analyses and compares consumer sales law legislation in Croatia, Slovenia, and Serbia, focusing on the concept of the lack of conformity, the seller's liability, exemptions from liability, time limits, and the burden of proof regarding the existence of the defect. Although Croatia and Slovenia transposed Directive (EU) 2019/771, the previous regulation influenced by Directive 1999/44/EC is also analysed to assess the significance of the amendments concerning the mentioned issues. Considering that Serbia still adheres to Directive 1999/44/EC, the manner in which Directive (EU) 2019/771 is transposed in Croatian and Slovenian law could constitute an example or model for the Serbian legislature. Both Croatian and Slovenian laws differentiate between and require the fulfillment of both subjective and objective requirements for conformity, a legal solution that could serve as a reference point for the Serbian legislature, which imposes on the seller a general obligation to deliver the goods conforming with the consumer sales contract and sets a presumption of conformity. On the other hand, the seller's liability for the lack of conformity existing at the time of delivery and appearing within two years thereafter, and the freedom of the contractual parties to reduce this deadline for

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second-hand goods remain the common aspects in all the examined legal orders. However, the presumption that the defect existed at the moment of delivery is more beneficial to the consumer's position in Croatian and Slovenian law, since the period of its application extended to the non-conformity emerging within one year. Conversely, in Serbian law, this presumption is still applied if the defect becomes apparent within six months.

Key words: lack of conformity; consumer law; seller's liability; Croatia; Slovenia; Serbia

1. INTRODUCTION

The enactment of Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees (hereinafter Directive 1999/44/EC) initiated the process of harmonising regulations concerning the consumer's position in the case of a lack of conformity of the goods with the contract. A key feature of this Directive, significantly influenced by the United Nations Convention on Contracts for the International Sale of Goods¹, was the minimum harmonisation approach.² It granted Member States the flexibility to enact more stringent provisions to ensure higher levels of consumer protection.³

Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods (hereinafter Directive (EU) 2019/771) represents another decisive step in modernising the consumer protection law.⁴ It follows the principle of maximum harmonisation;⁵ hence, Member States may not retain or introduce diverging provisions, be they stricter and more lenient, intended to ensure a different level of consumer protection unless explicitly permitted by the Directive itself.⁶

¹ Schwencer, I., *Regional and Global Unification of Contract Law* in: Keyes, M., Wilson, T. (eds.), *Codifying Contract Law – International and Consumer Law Perspectives*, Ashgate, Farnham, 2014, p. 44.

² Twigg-Flesner, C., *Consumer Sales Directive* in: Schulte-Nölke, H.; Twigg-Flesner, C.; Ebers, M. (eds.), *EC Consumer Law Compendium – The Consumer Acquis and its Transposition in the Member States*, Sellier European Law Publishers, Munich, 2008, p. 407.

³ Directive 1999/44/EC, Art. 8, Sec. 2.

⁴ Tot, I.; Bilić, A.; Jakšić, T., *Editorial: Exploring the Transposition of the Sale of Goods and Digital Content and Services Directive*, Zbornik Pravnog fakulteta u Zagrebu, Zagreb, vol. 74, no. 5-6, 2014, p. 773.

⁵ Carvalho, J. M., *Introducción a las Nuevas Directivas sobre Contratos de Compraventa de Bienes y Contenidos o Servicios Digitales* in: Amayuelas, E. A., Lapuente, S. C. (eds.), *El derecho privado en el nuevo paradigma digital*, Colegio Notarial de Cataluña, Madrid, 2020, p. 33.

⁶ Directive (EU) 2019/771, Art. 4.

The consumer law legislation of Croatia and Slovenia, already Member States of the European Union, and that of Serbia, a candidate country, has been shaped by *acqui communautaire*. This paper concentrates on the notion of lack of conformity, the relevant moment according to which the seller's liability is determined, exemptions from liability, time limits, and burden of proof regarding the existence of non-conformity in Croatian, Slovenian, and Serbian law. Although the Croatian and Slovenian legislatures transposed Directive (EU) 2019/771, the prior regulation, which was based on Directive 1999/44/EC, is also analysed with the intention of determining the significance of the modifications within the national law brought about by the amendments concerning the mentioned issues. Serbia represents an example of the regulation of these matters within a legal order still influenced by Directive 1999/44/EC, to whom the Croatian and Slovenian examples could serve as reference points for the further development of consumer protection law. Thus, this study aims to identify similarities and, in particular, specific differences between the three legal frameworks as well as provide an answer to whether the modifications introduced in Croatian and Slovenian law substantially differ from previous legal solutions.

2. CROATIA

2.1. Lack of Conformity

The major feature of Croatian legislation is that it followed the German BGB model regarding the means of transposition of Directive 1999/44, choosing to principally transpose it by amending the general rules of contract law laid down in the Obligations Act of 2005 (hereinafter CroOA)⁷ and only partially into the Consumer Protection Act⁸ (hereinafter CroCPA).⁹ The same method was retained for the transposition of Directive (EU) 2019/771, which occurred in 2021. Thus, the applicable rules are still contained in the CroOA, with certain provisions enshrined in the 2022 CroCPA.¹⁰ Determining the importance of amendments requires analysis and comparison with the previous regulation.

⁷ Zakon o obveznim odnosima [Law on Obligations], Narodne novine [Official Gazette], No. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23.

⁸ Mišćenić, E., *Consumer Protection Law* in: Josipović, T. (ed.), *Introduction to the Law of Croatia*, Kluwer Law International, Alphen aan den Rijn, 2014, p. 287.

⁹ Croatia adopted Consumer Protection Acts in 2003, 2014, and 2022.

¹⁰ Zakon o zaštiti potrošača [Consumer Protection Act], Narodne novine [Official Gazette], No. 19/2022, 59/23.

Before the implementation of Directive (EU) 2019/771, the legal solution in the CroOA differed from that of Directive 1999/44/EC. Namely, the Croatian legislature chose the positive definition of the lack of conformity/material defects (*materijalni nedostatak*).¹¹ Notably, the CroOA introduced *numerus clausus*, envisaging alternative cases of lack of conformity.¹² Therefore, it was sufficient that the goods did not comply with at least one of the prescribed cases/requirements to enable the consumer to resort to the available remedies.

One of the cases of lack of conformity was when the goods did not have the necessary qualities for regular use or circulation.¹³ In essence, this case incorporated two separate situations regarding the lack of necessary qualities that affect the regular use and circulation of goods. This provision is similar to Art. 2, Sec. 2 (c) of Directive 1999/44/EC, which established the presumption that goods conform to the consumer sales contract if they are fit for the purposes for which goods of the same type are normally used. Croatian legal theory stated that the regular use of goods was to be determined objectively, taking into account the nature of the given goods.¹⁴

Moreover, a defect existed when the goods did not possess the necessary qualities for the specific purpose the consumer required them for if such a specific purpose was known or should have been known to the seller.¹⁵ The similarity of this provision to Art. 2, Sec. 2 (b) of Directive 1999/44/EC¹⁶ is noticeable. However, it may be stated that the legal solution adopted in Croatian law favoured the consumer more, since its application was not subject to the particular obligation to inform the seller about the specific purpose, interpreted in the Croatian legal doctrine as a purpose differing from the normal and usual use of the goods¹⁷

¹¹ Petrić, S., *Odgovornost za materijalne nedostatke stvari prema novom Zakonu o obveznim odnosima*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Rijeka, vol. 27, no. 1, 2007, p. 103.

¹² Mišćenić, E., Kunda, I., Petrić, S., Butorac Malnar, V., Vrbljanac, D., Winkler, S., *Europsko privatno pravo—posebni dio*, Školska knjiga, Zagreb, 2021, p. 52.

¹³ CroOA, Art. 401, Sec. 1 (1), in the text in force until 01 January 2022.

¹⁴ Gorenc, V.; Pešutić, A.; Belanić, L.; Momčinović, H.; Perkušić, A.; Slakoper, Z.; Vukelić, M.; Vukmir, B., *Komentar Zakona o obveznim odnosima*, Narodne novine, Zagreb, 2014, p. 687.; Mišćenić, E., *et al.*, *op. cit.* (fn. 12), p. 53.

¹⁵ CroOA, Art. 401, Sec. 1 (2) in the text in force until 01 January 2022.

¹⁶ The goods were presumed to be in conformity with the contract if they were fit for any particular purpose for which the consumer requires them and which he made known to the seller at the time of conclusion of the contract and which the seller has accepted.

¹⁷ Gorenc, V., *et al.*, *op. cit.* (fn. 14), p. 687.

imposed on the consumer.¹⁸ Consequently, the lack of conformity would have existed even when the seller became aware of the specific purpose required by the consumer from other sources.¹⁹ Interestingly, the Croatian legislature did not explicitly require that the specific purpose was known or should have been known to the seller at the time of the conclusion of the contract.

Another case of lack of conformity concerned a situation in which goods lacked qualities and characteristics explicitly or implicitly agreed upon or stipulated.²⁰ As this provision vindicates the will of the parties regarding the qualities and features of the goods expressed in the consumer sales contract, it corresponds to the general rule of Directive 1999/44/EC obliging the seller to deliver goods that are in conformity with the contract. However, it is worth noting that Croatian legislature did not elevate this provision to a general rule. Essentially, it is only one of the cases wherein there is a lack of conformity.²¹ This also comprises the qualities and characteristics of goods stipulated in a legal act.²²

Furthermore, there was a lack of conformity when the seller delivered goods that did not conform to a sample or model unless they were shown only for the purpose of providing information to the consumer.²³ This case presupposes that a sample or model was shown to the consumer before the conclusion of the contract. This corresponds to Art. 2, Sec. 2 (a) of Directive 1999/44/EC.

The lack of conformity also existed when the goods did not possess the qualities inherent to other goods of the same type and which the consumer could have reasonably expected from the nature of the goods, particularly taking into account public statements made by the seller, manufacturer, or their representatives on the qualities of the goods (advertising, labelling, etc.).²⁴ This provision considers that the common law is inspired by consumers' reasonable expectations²⁵ and influenced by the nature of goods and public statements made by specific subjects. Croatian legal theory underlined that a consumer's reasonable expectations could encompass durability.²⁶ This provision is based

¹⁸ Petrić, S., *op. cit.* (fn. 11), pp. 104-105.

¹⁹ Miščenić, E., *et al.*, *op. cit.* (fn. 12), p. 53.

²⁰ CroOA, Art. 401, Sec. 1 (3) in the text in force until 01 January 2022.

²¹ Petrić, S., *op. cit.* (fn. 11), p. 104; Miščenić, E., *et al.*, *op. cit.* (fn. 12), pp. 52-53.

²² Miščenić, E., *et al.*, *op. cit.* (fn. 12), p. 53.

²³ CroOA, Art. 401, Sec. 1 (4) in the text in force until 01 January 2022.

²⁴ CroOA, Art. 401, Sec. 1 (5) in the text in force until 01 January 2022.

²⁵ Gorenc, V., *et al.*, *op. cit.* (fn. 14), p. 688.

²⁶ Petrić, S., *op. cit.* (fn. 11), p. 105.

on Art. 2, Sec. 2 (d) of Directive 1999/44/EC. The seller could be exonerated from liability for public statements given by the manufacturer and his/her representative based on which the consumer expected the goods to have specific qualities in the following cases:

- 1) if the seller did not know or could not have known about the public statement in question;
- 2) if the public statement was withdrawn until the moment of the conclusion of the contract;
- 3) if the public statement did not influence the consumer's decision to conclude the sales contract.²⁷

The aforementioned situations were determined alternatively, signifying that even one could exempt the seller from liability for the public statement. It is worth noting that the seller can only be exempt from public statements made by the manufacturer and his/her representative. This possibility did not exist in the event of the seller's own public statements, in which the legal solution was more advantageous to the consumer's position than that in Directive 1999/44/EC.²⁸ Moreover, unlike the Directive, the CroOA does not explicitly place the burden of proof on the seller. Based on the general rules of civil law, it was presumed that the seller acted in good faith and the burden of proof concerning the seller's knowledge of the public statement was placed on the consumer, whereas in the other two cases, it was placed on the seller.²⁹

Finally, the CroOA envisaged that a lack of conformity existed when the goods were incorrectly assembled, provided that the assemblage service formed part of the performance of the sales contract.³⁰ Unlike the Serbian Consumer Protection Act (hereinafter SrCPA), the CroOA explicitly required that the assemblage derives from the sales contract. Furthermore, there was also a defect when incorrect assembly resulted from deficiencies in the assembly instructions.³¹ These two provisions were based on Art. 2, Sec. 5 of Directive 1999/44/EC.

The transposition of Directive (EU) 2019/771 introduced significant novelties. The amended CroOA distinguishes between subjective and objective requirements for conformity, although without explicitly employing these specific terms. Unlike its European counterpart, the Croatian legislature uses

²⁷ CroOA, Art. 401, Sec. 2 in the text in force until 01 January 2022.

²⁸ Petrić, S., *op. cit.* (fn. 11), pp. 106-107; Mišćenić, E., *et al.*, *op. cit.* (fn. 12), p. 54.

²⁹ Petrić, S., *op. cit.* (fn. 11), p. 107.

³⁰ CroOA, Art. 401, Sec. 1 (6) in the text in force until 01 January 2022

³¹ CroOA, Art. 401, Sec. 1 (7) in the text in force until 01 January 2022.

a negative approach to determine in which cases there is a defect.³² Concerning subjective requirements, the CroOA, transposing Art. 6 of the mentioned Directive, establishes the existence of a lack of conformity in the following cases:

- 1) when the goods do not correspond to the description, type, quantity, and quality or do not possess the functionality, compatibility, interoperability, and other features as required by the sales contract;
- 2) when the goods are not fit for any particular purpose for which the consumer requires them and which the consumer made known to the seller at the latest at the time of the conclusion of the sales contract and in respect of which the seller has given acceptance;
- 3) when the goods are not delivered with all additional accessories and instructions, including instructions for installation, as required by the sales contract;
- 4) when the goods are not supplied with updates as stipulated by the sales contract.³³

The complete determination of the content of these cases is conditioned by the parties' free will expressed in the sales contract. Thus, the subjective requirements for conformity stem from the specific contractual relationships between consumers and sellers.³⁴ Although the sales contract is not explicitly mentioned in the situation regarding the particular purpose of the goods, the fact that the consumer informed the seller thereafter and the seller accepted it presupposes that such a particular purpose forms part of the sales contract.³⁵ Compared to the previous legal solution, the Croatian legislature explicitly requires that the consumer makes known to the seller the particular purpose; that is, the seller's potential knowledge of the particular purpose from other sources is not relevant. Furthermore, the timeframe of the notification made by the consumer is also specified, given that it should be done "at the time of the conclusion of the sales contract at the latest".

³² Kanceljak, I., *Transposition of Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods in Croatian private law*, in: Santaolalla Montoya, C. (ed.), *Consumer Protection in European Union: Challenges and Opportunities*, Publications Office of the European Union, Luxembourg, 2023, p. 95.

³³ CroOA, Art. 401, Sec. 1.

³⁴ Mišćenić, E., *et al.*, *op. cit.* (fn. 12), p. 55.

³⁵ Slakoper, Z.; Nikšić, S., *Novo uređenje odgovornosti za materijalne nedostatke u hrvatskom obveznom pravu*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Rijeka, vol. 43, no. 2, 2022, p. 541.

Concerning the objective requirements of conformity, by virtue of Art. 7 of Directive (EU) 2019/771, the CroOA envisages that a lack of conformity should also exist in the following situations:

- 1) if the goods are not fit for the purposes for which the goods of the same type would be normally used, considering any existing law of the European Union and the Republic of Croatia, technical standards, or if such technical standards do not exist, applicable sector-specific codes of conduct if they exist;
- 2) if the goods do not correspond to the quality and description of a sample or model that the seller placed at the consumer's disposal before the conclusion of the sales contract;
- 3) if the goods are not delivered with additional accessories, including packaging, installation instructions or other instructions, as the consumer may reasonably expect to receive;
- 4) if the goods do not correspond to the quantity or do not possess qualities and other features, including those related to durability, functionality, compatibility, and security normal for goods of the same type and which the consumer may reasonably expect given the nature of the goods and taking account of any public statement made by or on behalf of the seller or other persons in previous links of the chain of transactions, including the manufacturer, particularly in advertising or on labelling.³⁶

Notably, the objective requirements of conformity stem from the consumer's reasonable expectations.³⁷ They are always applied, regardless of whether they have been specified in the consumer sales contract.³⁸

Compared to the previous regulation, it may be stated that the rules in force today provide a more comprehensive list of circumstances to be taken into account while determining the objective requirements of conformity. The CroOA explicitly stipulates that the normal use of goods of the same type should be determined by considering the EU and Croatian legal acts, technical standards, or sector-specific codes of conduct. At the same time, before the transposition of Directive (EU) 2019/771, the CroOA did not provide any indication for deter-

³⁶ CroOA, Art. 401, Sec. 2.

³⁷ Mišćenić, E., *et al.*, *op. cit.* (fn. 12), p. 55; Afferni, G., *La responsabilità del venditore per i difetti materiali del bene*, Edizioni Scientifiche Italiane, Napoli, 2022, p. 262.

³⁸ De Franceschi, A., *La vendita di beni con elementi digitali*, Edizioni Scientifiche Italiane, Napoli, 2019, p. 86; Twigg Flesner, C., *Conformity of Goods and Digital Content/Digital Services*, in: Amayuelas, E. A., Lapuente, S. C. (eds.), *El derecho privado en el nuevo paradigma digital*, Colegio Notarial de Cataluña, Madrid, 2020, p. 56.

mining the regular use of the goods. Moreover, the Croatian legislature clarifies that a sample or model should be shown to the consumer before concluding a sales contract. Finally, durability, functionality, compatibility, and security were explicitly enumerated among the features that consumers can reasonably expect. Interestingly, functionality and compatibility are also included among the subjective requirements of conformity. Although Croatian legal theory already considered durability a part of the consumer's reasonable expectations³⁹, the explicit mention of this feature is a novelty.

The CroOA, transposing Art. 7, Sec. 2 of Directive (EU) 2019/771, states that the above-mentioned public statements from Art. 401, Sec. 2 (4) do not bind the seller if he/she demonstrates that:

- 1) he/she did not or could not have known about the public statement in question;
- 2) by the time of the conclusion of the contract, the public statement had been corrected in the same or comparable way as it was made;
- 3) the public statement could not have influenced the consumer's decision to purchase the goods.⁴⁰

This provision introduced two important novelties. First, the burden of proof that at least one of the enumerated circumstances exists is explicitly placed on the seller. Moreover, the possibility of the seller's exemption is extended to his/her own public statements. It is not limited anymore to those statements made by the manufacturer and his/her representatives. Such a legal solution is less favourable to the consumer's position than the previous one.

Finally, the Croatian legislature included in the section pertaining to the objective requirements for conformity the case when a defect results from incorrect installation (the so-called IKEA clause). In other words, a lack of conformity also exists when goods are installed or assembled incorrectly, provided that the installation or assemblage service forms part of the sales contract and was carried out by the seller or a person under his/her responsibility.⁴¹ The last case of lack of conformity concerns the situation when the installation or assembly was intended to be carried out by the consumer and was done by him/her, but the incorrect installation or assembly is attributable to the shortcomings in the instructions provided by the seller or, in the case of goods with digital elements, provided by the seller or the supplier of digital content or digital service.⁴²

³⁹ Petrić, S., *op. cit.* (fn. 11), p. 105.

⁴⁰ CroOA, Art. 401, Sec. 3.

⁴¹ CroOA, Art. 401, Sec. 2 (5).

⁴² CroOA, Art. 401, Sec. 2 (6).

2.2. Emergence of the Seller's Liability

Before the implementation of Directive (EU) 2019/771, the CroOA established the seller's liability for the lack of conformity existing at the moment of passing risk to the consumer, regardless of the seller's knowledge of it.⁴³ This provision was in concordance with Art. 3, Sec. 1 of Directive 1999/44/EC. It should be noted that the issue of the seller's fault due to lack of conformity was irrelevant.⁴⁴ The 2014 CroCPA⁴⁵, by virtue of Art. 20 of Directive 2011/83/EU, determined when the risk of loss or damage was passed on to the consumer. Namely, as a general rule, it was the time of handing over the goods into the possession of the consumer or a person designated by the consumer, but other than a carrier.⁴⁶ However, an exception was allowed when the carrier was chosen at the consumer's proposal. In that case, the relevant moment of the passing of the risk of loss or damage to the consumer was that of the delivery of the goods to the carrier.⁴⁷

The consumer's position was reinforced by a provision establishing the seller's liability for the lack of conformity emerging after the passing of risk to the consumer if it resulted from a preexisting cause.⁴⁸ This rule was not contained in Directive 1999/44/EC. However, the legal doctrine interpreted the provision from Art. 3, Sec. 1, that envisages that "the seller shall be liable to the consumer for any lack of conformity which exists at the time the goods were delivered", as including hidden defects appearing after the delivery.⁴⁹ Interestingly, at the time of its adoption, the CroOA excluded the seller's liability for a minor lack of conformity.⁵⁰ Such a legal solution was contrary to the minimum level of consumer protection established by Directive 1999/44/EC.⁵¹ In the Directive the minor relevance of lack of conformity hindered the consumer from termi-

⁴³ CroOA, Art. 400, Sec. 1 in the text in force until 01 January 2022.

⁴⁴ Klarić, P., Vedriš, M., *Gradansko pravo*, Narodne novine, Zagreb, 2012, p. 418.; Mišćenić, E., *et al.*, *op. cit.* (fn. 12), p. 90.

⁴⁵ Zakon o zaštiti potrošača [Consumer Protection Act], Narodne novine [Official Gazette], No. 41/2014.

⁴⁶ 2014 CroCPA, Art. 45, Sec. 1.

⁴⁷ 2014 CroCPA, Art. 45, Sec. 2.

⁴⁸ CroOA, Art. 400, Sec. 2 in the text in force until 01 January 2022.

⁴⁹ Afferni, G., *op. cit.* (fn. 37), p. 205; Mišćenić, E., *et al.*, *op. cit.* (fn. 12), p. 58.

⁵⁰ CroOA, Art. 400, Sec. 4. in the text in force until 2008.

⁵¹ Petrić, S., *op. cit.* (fn. 11), p. 109.

nating the contract.⁵² On the other hand, Croatian law exonerated the seller from liability, meaning that the consumer could not seek any remedy from the seller. The Croatian legislature abolished this provision in 2008 by amending the CroOA.⁵³

Moreover, the CroOA, transposing Art. 2, Sec. 3 of Directive 1999/44/EC, envisaged that the seller was not liable if the lack of conformity at the time of the conclusion of the contract was known or could not have remained unknown to the consumer.⁵⁴ This situation presupposed that the consumer, aware of the defect, accepts the contract when concluding the sales contract.⁵⁵ However, the seller could not be exempt from liability, including defects that could be easily noticed if the seller stated that the goods were flawless or possessed certain qualities or features.⁵⁶ The Croatian legislature did not determine the form in which the seller's statements should be made. It seems that oral statements were sufficient for instituting a stricter seller's liability. Finally, grounds for the seller's release from liability enshrined in Directive 1999/44/EC that the lack of conformity had its origin in materials supplied by the consumer were not transposed into Croatian law.

The transposition of Directive (EU) 2019/771 into the CroOA did not introduce numerous novelties in this regard, apart from rules on goods with digital elements. In other words, the rules establishing the seller's liability, notwithstanding the fault⁵⁷, which includes the lack of conformity resulting from a pre-existing cause⁵⁸, remained the same. The novel 2022 CroCPA did not modify the rules concerning the passing of the risk of loss or damage to consumers.⁵⁹ However, CroOA introduced a specific rule applicable to goods to be installed or assembled by the seller or a person under his/her responsibility. In this case, the passing of the risk to the consumer occurs when the installation or assemblage is complete.⁶⁰ This legal solution is in line with Recital 40 of Directive (EU) 2019/771.

⁵² Directive 1999/44/EC, Art. 3, Sec. 6.

⁵³ Zakon o izmenama i dopunama Zakona o obveznim odnosima [Law on Amendments to the Obligations Act], Narodne novine [Official Gazette], No. 41/2008.

⁵⁴ CroOA, Art. 402, Sec. 1 in the text in force until 01 January 2022.

⁵⁵ Miščenić, E., *et al.*, *op. cit.* (fn. 12), p. 89.

⁵⁶ CroOA, Art. 402, Sec. 4 in the text in force until 01 January 2022.

⁵⁷ CroOA, Art. 400, Sec. 1.

⁵⁸ CroOA, Art. 400, Sec. 2.

⁵⁹ 2022 CroCPA, Art. 49.

⁶⁰ CroOA, Art. 400, Sec. 7.

Finally, a rule has been retained from the previous regulation, although not envisaged by Directive (EU) 2019/771⁶¹, regarding the case when the seller is released from liability due to the consumer's knowledge of the lack of conformity.⁶² The seller's statements that the goods have no defect or possess particular qualities or features still exacerbate his/her liability.⁶³ However, the CroOA, transposing Art. 7, Sec. 5 of Directive (EU) 2019/771, exempts the seller from the lack of conformity in the sense of the above-mentioned objective requirements for conformity if two requirements are met. Namely, to take advantage of this provision, which is applicable solely in the consumer context, the seller must inform the consumer at the moment of the conclusion of the contract that a particular feature of the goods varies from the objective requirements of conformity. The consumer must accept such variation expressly and separately when concluding the contract.⁶⁴

2.3. Time Limits and Burden of Proof

Before the amendments in 2021, the CroOA stated that the seller was not liable for any lack of conformity appearing two years after the delivery of the goods.⁶⁵ This legal solution represented the transposition of Art. 5, Sec. 1 of Directive 1999/44/EC. The Croatian legislature allowed parties to extend this deadline.⁶⁶ It may be inferred that the two-year time limit was applied when the contractual parties did not agree on a longer period.⁶⁷ The Court of Justice of the European Union (hereinafter the CJEU) in Faber case affirmed that "the onus is, in principle, on the consumer to furnish the evidence that a lack of conformity exists and that the lack of conformity existed at the time when the goods were delivered".⁶⁸ Additionally, the CroOA stipulated that a two-year time limit ran from delivering the repaired goods or replacing parts in the respective cases.⁶⁹

⁶¹ De Franceshi, A., *op. cit.* (fn. 38), p. 112.

⁶² CroOA, Art. 402, Sec. 1.

⁶³ CroOA, Art. 402, Sec. 4.

⁶⁴ CroOA, Art. 401, Sec. 4.

⁶⁵ CroOA, Art. 404, Sec. 2 in the text in force until 01 January 2022.

⁶⁶ CroOA, Art. 404, Sec. 4 in the text in force until 01 January 2022.

⁶⁷ Miščenić, E., *et al.*, *op. cit.* (fn. 12), p. 77.

⁶⁸ Faber, C-497/13, ECLI:EU:C:2015:357, Para. 52.

⁶⁹ CroOA, Art. 405.

Influenced by Art. 5, Sec. 3 of Directive 1999/44/EC, Croatian lawmakers facilitated the consumer's position by introducing a presumption that non-conformity existed at the moment of the passing of risk if the non-conformity appeared within six months. However, that presumption was rebuttable (*praesumptio iuris tantum*), given that the CroOA permitted the seller to demonstrate that the lack of conformity did not exist at the time of the risk being passed.⁷⁰ Thus, the burden of proof was placed on the seller as an exception to the general rule that the consumer needs to prove the circumstances in which his/her claim is based. Moreover, the presumption was not applicable if it was incompatible with the nature of the goods or the nature of the lack of conformity.⁷¹

The CJEU, in the above-mentioned Faber case, provided important indications concerning the consumer's obligations related to this presumption. To benefit from the reversed burden of proof, the consumer is obligated to "furnish evidence that the goods sold are not in conformity with the relevant contract".⁷² It is important to stress that such an obligation does not require proving "the cause of that lack of conformity" nor establishing that "its origin is attributable to the seller".⁷³ Thus, it is sufficient to demonstrate that a lack of conformity exists. In addition, the consumer has to prove that "the lack of conformity in question became apparent, that is to say, became physically apparent, within six months of delivery of the goods".⁷⁴ Furthermore, the CJEU rules that Art. 5, Sec. 3 of Directive 1999/44/EC "must be regarded as a rule of equal standing to a national rule which ranks, within the domestic legal system, as a rule of public policy".⁷⁵ Consequently, a provision of national law transposing the mentioned Art. 5, Sec. 3 must be applied *ex officio* by the national court.⁷⁶ The intention of the CJEU was to protect the consumer who omitted to invoke the application of the mentioned presumption.⁷⁷

Concerning second-hand goods, the CroOA used the opportunity provided by Art. 7, Sec. 1 (2) of Directive 1999/44/EC, allowing parties to agree on a one-year period of the seller's liability for lack of conformity.⁷⁸ It is noteworthy that

⁷⁰ CroOA, Art. 400, Sec. 3 in the text in force until 01 January 2022.

⁷¹ CroOA, Art. 400, Sec. 3 in the text in force until 01 January 2022.

⁷² Faber case, Para. 70.

⁷³ Faber case, Para. 70.

⁷⁴ Faber case, Para. 71.

⁷⁵ Faber case, Para. 56.

⁷⁶ Faber case, Para. 56.

⁷⁷ Patti, F. P., *Tutela effettiva del consumatore nella vendita: il caso "Faber"*, La nuova giurisprudenza civile commentata, Padua, vol. 1, 2016, p. 14.

⁷⁸ CroOA, Art. 404, Sec. 3 in the text in force until 01 January 2022.

such a reduction was optional and dependent upon the parties' will. Namely, the general two-year time limit also applied in the case of second-hand goods if the contractual parties had not decided to reduce it. In this regard, the contractual clause stipulating the seller's liability for a period shorter than one year would have been null and void.⁷⁹

The transposition of Directive (EU) 2019/771 introduced an important change compared to the previous regulation. That is, the provisions establishing the seller's liability for the lack of conformity that appears within two years of the delivery of goods⁸⁰ and allowing the parties to agree on a reduced one-year time limit in the event of second-hand goods⁸¹ are retained. The same applies to the possibility of extending the two-year time limit⁸² and expiry in the case of repaired goods or replaced parts.⁸³ However, the presumption that a lack of conformity exists at the moment of the passing of risk becomes more beneficial to consumers. According to Art. 11, Sec. 1 of Directive (EU) 2019/771, its duration extends from six months to one year.⁸⁴ The Croatian legislature did not use the possibility, favouring the consumer, offered by the Directive in Art. 11, Sec. 2 to introduce a two-year period⁸⁵ for its application. Other elements of this presumption remained the same.

3. SLOVENIA

3.1. Lack of Conformity

The Slovenian legislature transposed Directive 1999/44/EC in 2002 by amending the Consumer Protection Act (hereinafter referred to as "the 1998/2002 SloCPA").⁸⁶ The transposition of Directive (EU) 2019/771 occurred with the adoption of the novel Consumer Protection Act in 2022 (hereinafter

⁷⁹ Miščenić, E., *et al.*, *op. cit.* (fn. 12), p. 89.

⁸⁰ CroOA, Art. 404, Sec. 2.

⁸¹ CroOA, Art. 404, Sec. 3.

⁸² CroOA, Art. 404, Sec. 4.

⁸³ CroOA, Art. 405.

⁸⁴ CroOA, Art. 400, Sec. 9.

⁸⁵ Josipović, T.; Kanceljak, I.; Nikšić, S.; Petrović, S.; Poljanec, K.; Babić, D. A.; Zgrabljic Rotar, D.; Baretić, M., *Obvezno pravo* in Josipović, T. (ed.), *Privatno pravo Europske Unije – posebni dio*, Narodne novine, Zagreb, 2022, p. 89.

⁸⁶ Zakon o varstvu potrošnikov [Consumer Protection Act], Uradni list RS [Official Gazette of the Republic of Slovenia], No. 20/98, 25/98, 110/02, 14/13 (official

referred to as “the 2022 SloCPA”).⁸⁷ Moreover, the Obligations Act (hereinafter referred to as “the SloOA”)⁸⁸ is applicable when a specific issue is not governed by the 2022 SloCPA.⁸⁹ The same rule was also contained in the 1998/2002.⁹⁰

In line with Art. 2, Sec. 1 of Directive 1999/44/EC, the previous 1998/2002 SloCPA introduced a general obligation imposed on the seller to deliver the goods that conform with the contract to the consumer, rendering him/her liable for the lack of conformity (the exact term used was a material defect—*stvarna napaka*) relating to the performance of the contract.⁹¹ The Slovenian legislature specified situations in which a defect is considered material. First, it was the case when the goods did not possess the features necessary for their regular use or placing in circulation.⁹² It is worth noting that the adequacy of the goods for their regular use was to be assessed by taking into account goods of the same type and by having regard to any statement on their features provided by the seller or manufacturer, in particular through advertising, presentation of the product, or indication of the goods.⁹³ This specification was advantageous to the consumer, who could use the available remedies when the goods did not comply with the unilateral statements given by the seller or manufacturer.⁹⁴ On the other hand, the seller could not be released from liability for these statements since the 1998/2002 SloCPA did not transpose Art. 2, Sec. 4 of Directive 1999/44/EC.⁹⁵

Another case of the existence of the lack of conformity (material defect) concerned the situation wherein the goods did not have the features necessary for the special use for which the consumer bought them and which was known

consolidated version), 51/04, 98/04 (official consolidated version), 126/07, 86/09, 78/11, 38/14, 19/15 and 31/18.

⁸⁷ Zakon o varstvu potrošnikov [Consumer Protection Act], Uradni list RS [Official Gazette of the Republic of Slovenia], No. 130/2022.

⁸⁸ Obligacijski zakonik [Obligations Code], Uradni list RS [Official Gazette of the Republic of Slovenia], Nos. 83/01, 28/06, 40/07, 97/07 (official consolidated version), and 64/16.

⁸⁹ 2022 SloCPA, Art. 3, Sec. 1.

⁹⁰ 1998/2002 SloCPA, Art. 37, Sec. 4.

⁹¹ 1998/2002 SloCPA, Art. 37, Sec. 1.

⁹² 1998/2002 SloCPA, Art. 37, Sec. 2 (1).

⁹³ 1998/2002 SloCPA, Art. 37, Sec. 3.

⁹⁴ Brus, M, *Zahtevke za odpravo stvarne napake pri potrošniški prodajni pogodbi*, Pravosodni bilten, Ljubljana, vol. 1, 2020, p. 33.

⁹⁵ Twigg-Flesner, C., *op. cit.* (fn. 2), p. 424.

or should have been known to the seller.⁹⁶ The 1998/2002 SloCPA did not explicitly require consumers to inform the seller about the particular use of goods before concluding the contract. Thus, it may be inferred that the fact that the seller was aware of this circumstance and discovered it from external sources was relevant to establishing liability.

Furthermore, there was a lack of conformity (material defect) when the goods did not possess the characteristics and features that were expressly or tacitly agreed upon or prescribed.⁹⁷ It is worth emphasising that this case presupposed noncompliance with the explicit or implicit contractual stipulations or requirements contained in a legal act. Therefore, it incorporated both subjective and objective elements.

Finally, non-conformity also existed when the seller delivered goods that did not comply with the sample or model unless they were presented only to inform the consumer.⁹⁸ This situation implies that they were presented before the conclusion of the contract.

It is worth noting that the determination of lack of conformity/material defect in Slovenian law diverged conceptually from the provisions contained in Directive 1999/44/EC. Namely, considering the specific words used in the repealed 1998/2002 SloCPA (*napaka je stvarna*—a defect is material), it may be inferred that the Slovenian legislature established *numerus clausus* prescribing each possible case in which the lack of conformity (material defect) existed. If the prescribed criteria are not met, it is presumed that the goods conform to the sales contracts.⁹⁹ On the other hand, Directive 1999/44/EC in Art. 2, Sec. 2 envisaged situations in which consumer goods were presumed to be in conformity with the contract. Moreover, the Slovenian legislature did not transpose Art. 2, Sec. 5 of the same Directive (the so-called IKEA clause).¹⁰⁰

Following the wording and spirit of Directive (EU) 2019/771, the novel 2022 SloCPA differentiates subjective and objective requirements for conformity. Goods should comply with both requirements to meet the requirements of conformity with the sales contract.¹⁰¹ Transposing Art. 6. of the mentioned

⁹⁶ 1998/2002 SloCPA, Art. 37, Sec. 2 (2).

⁹⁷ 1998/2002 SloCPA, Art. 37, Sec. 2 (3).

⁹⁸ 1998/2002 SloCPA, Art. 37, Sec. 2 (4).

⁹⁹ Twigg-Flesner, C., *op. cit.* (fn. 2), p. 421.

¹⁰⁰ Možina, D., *Pravice kupca na podlagi stvarne napake pri prodajni pogodbi*, Pravni letopis, Ljubljana, vol. 1, 2012, p. 87.

¹⁰¹ Možina, D., *Potrošniška prodajna pogodba in pogodba o dobavi digitalne vsebine in digitalnih storitev: prenos direktiv 2019/771 in 2019/770 v slovensko pravo*, Pravni letopis, Ljubljana, vol. 2, 2023 p. 13.

Directive, the novel 2022 SloCPA stipulates that the goods conform with the contract, in particular, when appropriate, in the following cases:

- they fit the description, type, quality, and quantity and possess the functionality, compatibility, interoperability, and other features as required by the sales contract;
- they are suitable for a specific purpose for which the consumer requires them and about which the consumer informed the seller no later than when concluding the sales contract and in respect of which the seller agreed;
- they are delivered with all accessories and instructions, including on installation, as stipulated in the sales contract;
- they are updated as specified in the sales contract.¹⁰²

The common denominator of all the mentioned situations is their link to the sales contract. Namely, the determination of the elements forming part of the subjective requirements of conformity depends on the content of a specific sales contract. Compared to the previous regulation, it is noteworthy that the novel 2022 SloCPA specifies that the seller's knowledge of the particular purpose for which the consumer needs the goods originates from the consumer's notification. Moreover, the seller's mere knowledge is not sufficient since his/her acceptance of such a purpose is necessary.

Regarding the objective requirements of conformity, the Slovenian legislature, transposing Art. 7, Sec. 1 of Directive (EU) 2019/771, envisages that conformity with the contract, in conjunction with meeting the subjective requirements, mandates that the goods shall meet the following criteria:

- be suitable for the purposes for which goods of the same type are normally used, taking into account, where appropriate, other regulations, technical standards, or, in the absence of such technical standards, applicable sector-specific industry codes of conduct;
- be of the quality and correspond to the description of a sample or model that the seller made available to the consumer before the conclusion of the contract, where applicable;
- be delivered together with such accessories, including packaging, installation instructions, or other instructions, as the consumer may reasonably expect to receive, where applicable;
- be of the quantity and possess the qualities and other features, including durability, functionality, compatibility, and security normal for goods of the same type, and which the consumer may reasonably expect given the

¹⁰² 2022 SloCPA, Art. 72.

nature of the goods and taking into account any public statement made by or on behalf of the seller, or other persons in previous links of the chain of transaction, including the producer, particularly in advertising or labelling.¹⁰³

As stated in the previous section on Croatian law, the objective requirements of conformity apply in each case, independent of the content of the sales contract.¹⁰⁴ The novel 2022 CPA, transposing Article 7, Section 2 of Directive (EU) 2019/771, exempts the seller from liability for public statements made by other persons in the previous link to the transaction chain. It seems that this novelty has a detrimental effect on the consumer's position because the consumer may use the available remedies solely for the seller. Thus, the burden of proof is explicitly placed on the seller. In other words, the aforementioned public statements will not be considered when assessing the objective requirements of conformity if the seller demonstrates that at least one of the following circumstances is met:

- that the seller did not know about the public statement in question and could not be reasonably expected to know it;
- that, by the time of the conclusion of the sales contract, the public statement had been corrected in the same or comparable way as it had been made;
- that the public statement could not influence the consumer's decision to purchase the goods.¹⁰⁵

Another essential novelty brought about by the transposition of Directive (EU) 2019/771 was the introduction of the IKEA clause. The Novel 2022 SloCPA envisages that any defect resulting from the incorrect installation of goods is to be considered a lack of conformity of the goods if the installation is an integral part of the sales contract and is carried out by the seller or under his/her responsibility.¹⁰⁶ Moreover, another case of non-conformity concerns the situation when the installation of the goods done or intended to be done by the consumer is incorrect due to insufficient installation instructions provided by the seller.¹⁰⁷

¹⁰³ 2022 SloCPA, Art. 73.

¹⁰⁴ De Franceschi, A., *op. cit.* (fn. 38), p. 86; Twigg-Flesner, C., *op. cit.* (fn. 38), p. 56.

¹⁰⁵ 2022 SloCPA, Art. 73, Sec. 1 (4).

¹⁰⁶ 2022 SloCPA, Art. 76, Sec. 1.

¹⁰⁷ 2022 SloCPA, Art. 76, Sec. 2.

3.2. Emergence of the Seller's Liability

Prior to the transposition of Directive (EU) 2019/771, the 1998/2002 SloCPA did not explicitly determine the seller's liability for non-conformity at the time of the delivery of goods.¹⁰⁸ However, relevant provisions can be found in the Obligations Act, which is applied subsidiarily.¹⁰⁹ Namely, the SloOA stipulates that the seller is liable for the lack of conformity of the goods when the risk was passed on to the consumer, regardless of whether it was known to the seller.¹¹⁰ Thus, the seller's knowledge of the existence of the non-conformity was irrelevant to establishing his/her liability. Moreover, the seller's liability also encompassed defects that emerged after the passing of the risk to the consumer if it was attributable to a pre-existing cause.¹¹¹ It is worth noting that the Slovenian legislature included in the 1998/2002 SloCPA provisions regarding the passing of the risk of loss or damage to the consumer. As a general rule, it occurred when the consumer, or a third party indicated by the consumer for this purpose other than the carrier, physically received the dispatched goods.¹¹² The 1998/2002 SloCPA established an exception to the general rule applicable to situations in which the consumer commissioned the carrier to transport goods that the company (seller) did not offer. In this case, the risk of loss or damage is passed on to the consumer upon delivery of the goods to the carrier without prejudice to the rights the consumer has against him/her.¹¹³ These legal solutions represented the transposition of Art. 20 of Directive 2011/83/EU.

Similarly to the CroOA prior to the 2008 amendments, the SloOA does not consider a minor/insignificant defect as non-conformity.¹¹⁴ Slovenian legal theory offered a narrow interpretation of this provision, stating that a defect affecting the use of the goods or the one estimable in money cannot be considered insignificant.¹¹⁵ However, the buyer (consumer) could not seek any remedy from the seller if the lack of conformity was minor. This legal solution differed from the one enshrined in Directive 1999/44/EC, where a minor deficiency only excluded the possibility of terminating the sales contract.

¹⁰⁸ Brus, M., *op. cit.* (fn. 94), p. 33.

¹⁰⁹ 1998/2002 SloCPA, Art. 37, Sec. 4.

¹¹⁰ SloOA, Art. 458, Sec. 1.

¹¹¹ SloOA, Art. 458, Sec. 2.

¹¹² 1998/2002 SloCPA, Art. 25c, Sec. 1.

¹¹³ 1998/2002 SloCPA, Art. 25c, Sec. 2.

¹¹⁴ SloOA, Art. 458, Sec. 3.

¹¹⁵ Možina, D., *op. cit.* (fn. 100), p. 87.

The 1998/2002 SloCPA did not contain any provision exempting the seller from liability. Thus, the rules from SloOA were also applied in this case.¹¹⁶ The fact that the defect was known to the buyer (consumer) at the time of the conclusion of the contract or could not have remained unknown exonerated the seller from liability.¹¹⁷ This legal solution presupposes that the buyer relied on the defect while concluding the contract. The seller's liability was stricter when he/she stated that the goods had no defects or possessed specific characteristics or features. In this case, he/she was liable even when the buyer (consumer) could have easily noticed the lack of conformity.¹¹⁸ The circumstance in which non-conformity originated from materials supplied by the buyer (consumer) was not specified as a reason exonerating the seller from liability in the 1998/2002 SloCPA nor SloOA.¹¹⁹

With the enactment of the novel 2022 SloCPA, situations in which the provisions of the SloOA were to be applied, although the application of this Act remained subsidiary¹²⁰, significantly diminished. The novel 2022 SloCPA explicitly states that the seller is liable for any lack of conformity at the time of delivery.¹²¹ The Slovenian legislature retained rules on the passing of the risk of loss or damage to the consumer based on Art. 20 of Directive 2011/83/EU.¹²²

The seller may be exempt from liability when the goods do not comply with the objective requirements of conformity if two conditions are met in the specific case. The first condition concerns the requirement that the seller specifically informed the consumer at the time of the conclusion of the sales contract that a particular feature of the goods diverged from the objective requirements of conformity.¹²³ It is worth underlining that the consumer's knowledge of such a deviation derives from the notice given by the seller; it is not sufficient that it was known or could not have remained unknown to the consumer at the time of the conclusion of the contract, as required in the SloOA.¹²⁴ Furthermore, the seller may be released from liability if the consumer explicitly and separately

¹¹⁶ Možina, D., *op. cit.* (fn. 100), pp. 87-88.

¹¹⁷ SloOA, Art. 460, Sec. 1.

¹¹⁸ SloOA, Art. 460, Sec. 3.

¹¹⁹ Možina, D., *op. cit.* (fn. 100), p. 88.

¹²⁰ 2022 SloCPA, Art. 3, Sec. 1.

¹²¹ 2022 SloCPA, Art. 71.

¹²² 2022 SloCPA, Art. 68.

¹²³ 2022 SloCPA, Art. 75.

¹²⁴ Možina, D., *op. cit.* (fn. 100), p. 15;

accepted such a deviation when concluding the sales contract.¹²⁵ By introducing this legal solution, the Slovenian lawmaker transposed Art. 7, Sec. 5 of Directive (EU) 2019/771.

Finally, the provision enshrined in the SloOA stating that a minor defect is not considered a lack of conformity is not applicable anymore in transactions involving a consumer. In the novel 2022 SloCPA, the lesser relevance of the lack of conformity extinguishes the possibility of terminating the sales contract.¹²⁶ However, other remedies (repair, replacement, and appropriate price reductions) remain available to consumers.¹²⁷

3.3. Deadlines and Burden of Proof

Before the enactment of the novel 2022 SloCPA, the seller was liable if a lack of conformity emerged two years after the delivery of goods.¹²⁸ The two-year deadline was preclusive.¹²⁹ The Slovenian legislature established a shorter deadline for secondhand goods. In this case, the seller was liable for lack of conformity if it appeared within one year of delivering the goods.¹³⁰ It is worth noting that such a legal solution differed from the one envisaged in Directive 1999/44/EC and, consequently, in Serbian and Croatian law. Namely, the 1998/2002 SloCPA did not condition the application of a shorter time limit on the agreement of the contractual parties.

Regarding the burden of proof in relation to the existence of the lack of conformity, the interpretation provided by the CJEU in the Faber case, which placed it on the consumer, was also applicable in Slovenian law. The Slovenian legal doctrine accentuated that the provisions of the 1998/2002 SloCPA should be interpreted in line with Directive 1999/44/EC.¹³¹ In this regard, the consumer's position was strengthened by the presumption that non-conformity existed at the time of the delivery of the goods if it appeared within six months of deliv-

¹²⁵ 2022 SloCPA, Art. 75.

¹²⁶ 2022 SloCPA, Art. 83, Sec. 7.

¹²⁷ Dudás, A., Jokanović, I., *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, Novi Sad, vol. 1, 2023, p. 218.

¹²⁸ 1998/2002 SloCPA, Art. 37b, Sec. 1.

¹²⁹ Brus, M., *op. cit.* (fn. 94), p. 35.

¹³⁰ 1998/2002 SloCPA, Art. 37b, Sec. 2.

¹³¹ Brus, M., *op. cit.*, (fn. 94), p. 30.

ery.¹³² Interestingly, the Slovenian lawmaker did not transpose the entirety of Art. 5, Sec. 3 of Directive 1999/44/EC, since it did not include the part stating that this presumption was not applicable if it was incompatible with the nature of the goods or the nature of the lack of conformity. However, the indications provided by the CJEU in the Faber case related to the consumer's obligation to demonstrate a lack of conformity and that it appeared within six months of the delivery of the goods, as well as the application of this presumption by the national court of its own motion, were also relevant in Slovenian law. This interpretation corresponds with the spirit of Directive 1999/44/EC.

The novel 2022 CPA retained the two-year deadline commencing from the moment of the delivery of the goods, naming it as an "objective" and "guarantee" period.¹³³ Thus, two conditions are required to establish the seller's liability: the existence of the lack of conformity at the moment of the delivery of the goods and its appearance within two years from that moment. It is worth underlining that reducing the mentioned two-year period in the event of second-hand goods is no longer mandatory. It became subject to the parties' autonomy of will. Namely, using the opportunity provided by Art. 10, Sec. 6 of Directive (EU) 2019/771, the Slovenian legislature permits the parties to curtail the liability (guarantee) period when second-hand goods represent the subject of the sales contract and emphasises that the duration of such a period may not be shorter than one year.¹³⁴

Transposing Art. 11, Sec. 1 of Directive (EU) 2019/771, the novel 2022 SloCPA extended the time period during which the presumption that the lack of conformity existed at the moment of delivery from six months to one year. The content of this presumption became more precise. The burden of proof that the goods were in conformity with the contract at the moment of their delivery was expressly placed on the seller. Furthermore, the novel 2022 SloCPA specifically stipulates that this presumption does not apply if it is incompatible with the nature of the goods or lacks conformity.¹³⁵ The Explanatory Memoranda to the novel 2022 SloCPA, influenced by Recital 45 of Directive (EU) 2019/771, explicitly mentions the example of goods that are rapidly perishable by nature, such as a bouquet of roses, or goods intended for a single use as incompatible with the nature of the goods or the nature of the lack of conformity.¹³⁶ As af-

¹³² 1998/2002 SloCPA, Art. 37b, Sec. 3.

¹³³ 2022 SloCPA, Art. 78, Sec. 1.

¹³⁴ 2022 SloCPA, Art. 78, Sec. 5.

¹³⁵ 2022 SloCPA, Art. 80, Sec. 1.

¹³⁶ The Explanatory Memoranda for the 2022 SloCPA, commentary to Art. 80, p. 112.

firmed in the Faber case, the consumer should solely demonstrate that there is a lack of conformity.¹³⁷

4. SERBIA

4.1. Lack of Conformity

The Serbian legislation is still based on Directive 1999/44/EC, transposed in 2010 since the latest Consumer Protection Act¹³⁸ (hereinafter referred to as: “SrCPA”) did not implement Directive (EU) 2019/771. Moreover, it should be noted that the provisions of the Obligations Act find their application when a particular issue is not governed by the SrCPA, provided that it does not reduce the level of consumer protection granted by the SrCPA.¹³⁹

The SrCPA establishes the seller’s general obligation to deliver goods conforming to the contract.¹⁴⁰ This provision represents the transposition of Art. 2, Sec. 1 of Directive 1999/44/EC. The Serbian legislature prioritised the parties’ freedom to determine specific requirements concerning goods in their contract. Consequently, discrepancies from the stipulated requirements may result in a lack of conformity. The European lawmaker regarded this legal solution, clearly influenced by Art. 35 of the United Nations Convention on Contracts for the International Sale of Goods¹⁴¹, as “common to different national legal traditions”, as stated in Recital 7 of the mentioned Directive. The spotlight is primarily on the subjective criteria expressed in consumer sales contracts.¹⁴²

¹³⁷ The Explanatory Memoranda for the 2022 SloCPA, commentary to Art. 80, p. 112.

¹³⁸ Zakon o zaštiti potrošača [Consumer Protection Act], Službeni glasnik RS [Official Gazette of the Republic of Serbia], No. 88/2021.

¹³⁹ Karanikić Mirić, M., *Usklađenost srpskog potrošačkog prava sa Direktivom 99/44/EZ o prodaju robe široke potrošnje i pratećim garancijama*, in: Mitrović, D. M. (ed.), *Perspektive implementacije evropskih standarda u pravni sistem Srbije*, Pravni fakultet Univerziteta u Beogradu, Belgrade, 2011, p. 177; Dudás, A., *Osvrt na regulativu saobraznosti i garancije u mađarskom pravu – primer transpozicije Direktive 1999/44/EZ u opšta pravila ugovornog prava*, Zbornik radova Pravnog fakulteta u Novom Sadu, Novi Sad, vol. 54, 2020, p. 1059.

¹⁴⁰ SrCPA, Art. 49, Sec. 1.

¹⁴¹ Sagasti Aurrekoetxea, J., *El régimen de garantías en la venta de bienes de consumo*, Revista Crítica de Derecho Inmobiliario, Valencia, vol. 82, 2006, p. 1014.

¹⁴² Howells, G.; Twigg-Flessner, C.; Wilhelmsson, T., *Rethinking EU Consumer Law*, Routledge, Taylor & Francis Group, London and New York, 2018, p. 179.

Moreover, the SrCPA, transposing Art. 2, Sec. 2 of Directive 1999/44/EC, introduced a presumption of conformity of the delivered goods with the contract in the following cases:

- 1) when the goods comply with the description given by the seller and possess the qualities of the goods that the seller has shown to the consumer as a sample or model;
- 2) when the goods are fit for any particular purpose the consumer requires them for, provided that it was known or must have been known to the seller at the time of the conclusion of the contract;
- 3) when the goods are fit for the purposes for which goods of the same type are normally used;
- 4) when the goods show the quality and performance that are normal in goods of the same type and that the consumer can reasonably expect, given the nature of the goods, and taking into account any public statement on the specific characteristics of the goods made about them by the seller, the producer, or their representatives, particularly in advertising or labelling.¹⁴³

It is worth highlighting that this presumption is rebuttable. Therefore, goods meeting the prescribed conditions in the given case can still be found not to conform with the sales contract.¹⁴⁴ In this regard, the burden of proof is placed on the consumer.¹⁴⁵ However, the seller can demonstrate that there is no lack of conformity of the goods even when the relevant conditions are not met.¹⁴⁶ An important indication was provided in Recital 8 of Directive 1999/44/EC. Namely, although the conditions included in the presumption of conformity of the delivered goods are cumulative, “if the circumstances of the case render any particular element manifestly inappropriate, the remaining elements of the presumption nevertheless still apply”. Thus, it is to be determined according to the circumstances of the given case which specific conditions are relevant and apply cumulatively.¹⁴⁷ This interpretation seems valid for Serbian law because it is based on the same legal solution from the mentioned Directive. For example, if the consumer did not intend any particular purpose for the goods while concluding the contract, or the seller did not show the consumer

¹⁴³ SrCPA, Art. 49, Sec. 2.

¹⁴⁴ Twigg-Flesner, C., *The Europeanisation of Contract Law*, Routledge-Cavendish, London and New York, 2008, p. 91.

¹⁴⁵ Karanikić Mirić, M., *op. cit.* (fn. 139), p. 180.

¹⁴⁶ Mariconda, V., *Conformità al contratto dei beni di consumo e onere della prova*, Corriere Giuridico, Milano, vol. 8, 2002, p. 1099.

¹⁴⁷ Afferni, G., *op. cit.* (fn. 37), p. 202.

any sample or model, these elements of the presumption will not be applicable in the given case.

The first requirement for the presumption encompasses two situations. The first one requires that the delivered goods “comply with the description given by the seller”, while the other concerns possessing “the qualities of the goods that the seller has shown to the consumer as a sample or model”. It is noteworthy that the SrCPA, the same as Directive 1999/44/EC, mentions only the description given by the seller. Thus, the interpretation that the producers’ descriptions are excluded from this requirement¹⁴⁸ may be accepted under Serbian law.

It should be noted that the second requirement regarding the particular purpose of the goods differs from Directive 1999/44/EC. The EU legislature makes the consumer obligated to inform the seller at the time of the conclusion of the contract about the particular purpose of the goods, and the seller had to accept it.¹⁴⁹ On the other hand, the SrCPA does not impose such an obligation on the consumer. It is sufficient that the particular purpose was known or must have been known to the seller when the contract was concluded, although it is not specified how it was made known to the seller. Hypothetically, the seller can discover the particular purpose for which the consumer purchases goods from different sources, that is, not just directly from the consumer.

Furthermore, the third element of the presumption of conformity concerns the fitness of the goods “for the purposes for which goods of the same type are normally used”. The SrCPA does not provide any clarification as to what “normal use” means. The interpretation applying to Directive 1999/44/EC that the term “normally used” concentrates “on the manner in which consumers use goods, even if they were not commonly supplied for such a purpose”¹⁵⁰ seems acceptable also under Serbian law.

Finally, the last situation considers the consumer’s reasonable expectations concerning “the quality and performance” of the goods, which can be influenced by the nature of the goods and public statements made by the seller, the producer, or their representatives. Concerning the nature of goods, Directive 1999/44/EC in Recital 8 explicitly states that “the quality and performance which the consumer can reasonably expect will depend, inter alia, on whether the goods are new or second-hand”. The legal doctrine emphasises the potential

¹⁴⁸ Canavan, R., *Contracts of Sale*, in: Twigg-Flesner, C. (ed.), *Research Handbook on EU Consumer and Contract Law*, Edward Elgar Publishing, Cheltenham, UK, Northampton, MA, USA, 2016, p. 274.

¹⁴⁹ Howells, G.; Twigg-Flesner, C.; Wilhelmsson, T., *op. cit.* (fn. 142), p. 181.

¹⁵⁰ *Ibid.*, p. 182.

of the consumer's reasonable expectations regarding quality from the Directive to encompass durability.¹⁵¹ The same interpretation, beneficial from the perspective of environmental protection, seems applicable to Serbian law. Moreover, producers and their representatives, who are not party to the sales contract, enshrine this requirement because consumers often decide to purchase goods under the influence of their public statements.¹⁵²

It is worth mentioning that the Serbian legislature, transposing Article 2, Sec. 4 of Directive 1999/44/EC, allows the seller to be exempt from liability for his/her own public statements and those made by the producer and his/her representative. That is, such exoneration from liability is granted to the seller in the following cases:

- If he/she did not know and could not know about the statement in question,
- if the correction of the statement is published before the conclusion of the contract.
- if the consumer's decision to complete the contract is not influenced by the statement.¹⁵³

The burden of proof is placed on the seller. It is sufficient to demonstrate the existence of at least one of the enlisted cases as exempt from liability.¹⁵⁴

4.2. The Time of the Emergence of Seller's Liability

Transposing Article 3, Sec. 1 of Directive 1999/44/EC, the Serbian legislature fixed the point in time when the seller's liability emerges, to the moment of passing of risk to the consumer, notwithstanding whether the seller knew about such a lack of conformity.¹⁵⁵ It should be emphasised that in Serbian law, the passing of risk generally occurs when the consumer gains possession of the goods, that is, at the moment of their delivery.¹⁵⁶ The seller's liability is not

¹⁵¹ *Ibid.*, p. 183.

¹⁵² Staudenmayer, D., *The Directive on the Sale of Consumer Goods and Associated Guarantees – a Milestone in the European Consumer and Private Law*, European Review of Private Law, Alphen aan den Rijn, vol. 8, no. 4, 2000, p. 552.

¹⁵³ SrCPA, Art. 50, Sec. 5.

¹⁵⁴ Jakanović, I.; Dudás, A., *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, Cluj-Napoca, vol. 11, 2022, p. 35.

¹⁵⁵ SrCPA, Art. 50, Sec. 1 (1).

¹⁵⁶ Karanikić Mirić, M., *op. cit.* (fn. 138), p. 180.

conditioned by the fact that he or she is unaware that the goods do not conform to the sales contract. Furthermore, the consumer's position is strengthened by the provision stipulating that the seller's liability also covers situations when the lack of conformity emerges after the moment of passing risk if it stems from a cause existing before delivery.¹⁵⁷

The SrCPA also establishes the seller's liability for a lack of conformity that the consumer could easily notice if he or she stated that the goods conformed to the sales contract.¹⁵⁸ The Serbian legislature did not determine the necessary form of the sellers' statements. Although the written form is the most appropriate and serves evidentiary purposes during eventual judicial proceedings, it seems that an oral statement suffices to establish stricter seller liability. Moreover, it is not specified whether the statement should be addressed directly to the consumer as a party to the sales contract or whether it can also be directed to a broader public. However, the aim of this provision, which is not enshrined in Directive 1999/44/EC, is to render the seller who acted *in mala fide* liable for a lack of conformity.¹⁵⁹

Finally, transposing Art. 2, Sec. 5 of the mentioned Directive, the Serbian legislature introduced the so-called "IKEA clause". The seller is liable for any lack of conformity caused by improper packaging, incorrect installation, or assembly performed by him/her or a person under his/her instructions. In addition, this type of seller liability arises if the incorrect installation or assembly of goods performed independently by the consumer can be attributed to a shortcoming in the instructions the seller handed over to the consumer.¹⁶⁰ It is worth noting that the seller's liability deriving from this provision of the SrCPA is broader than the one contained in Directive 1999/44/EC. Namely, although this Directive in its English version mentions only the term "incorrect installation", the legal theory interprets it extensively as including both the installation and assembly of the goods.¹⁶¹ On the other hand, the SrCPA establishes liability for the lack of conformity provoked by improper packaging, in addition to that caused by incorrect installation and assembly. Moreover, the Serbian legislature does not explicitly require an obligation to perform the aforementioned activities/services derived from the sales contract. Regarding the shortcomings of the instructions, an interpretation that considers an average consumer's capability to install and

¹⁵⁷ SrCPA, Art. 50, Sec. 1 (2).

¹⁵⁸ SrCPA, Art. 50, Sec. 1 (3).

¹⁵⁹ Jokanović, I; Dudás, A., *op. cit* (fn. 154), p. 34.

¹⁶⁰ SrCPA, Art. 50, Sec. 2.

¹⁶¹ Howells, G.; Twigg-Flessner, C.; Wilhelmsson, T., *op. cit.* (fn. 142), pp. 184-185.

assemble goods properly¹⁶² seems adequate for Serbian law. The SrCPA defines the average consumer as “a consumer who is well-informed and reasonably prudent, considering social, cultural, and linguistical peculiarities”.¹⁶³

The SrCPA exonerates the seller from liability when the consumer knew or could not have been unaware of the lack of conformity at the conclusion of the contract.¹⁶⁴ This exemption, which represents the transposition of Article 2, Sec. 3 of the Directive, presupposes that the consumer's knowledge of the non-conformity induced him/her to conclude the sales contract under the stipulated conditions, or the seller relied on that circumstance.¹⁶⁵ Since the defect is familiar to the consumer, shaping his/her decision to purchase the goods, he/she would not be allowed to use prescribed remedies against the seller. Such a legal solution may induce the seller to reveal defects to the consumer, as it is considered “an encouragement to provide information”.¹⁶⁶

The interrelation of this exemption with the abovementioned case of the seller's liability when the lack of conformity could have been easily noticed by the consumer and the seller explicitly stated that the goods conformed with the sales contract should be examined. The common point between these two provisions is the presumption that the consumer could have been aware of the defect at the moment the contract was concluded, as it was obvious to the extent of being easily noticeable. However, the most reasonable solution may be that the seller's statement that the goods comply with the sales contract excludes the application of the exemption. If exemption is prioritised, such a stipulation on the seller's liability is redundant because the circumstance in which the consumer could easily notice the defect may, in each case, meet the requirement that the consumer could not have been unaware of the lack of conformity, exonerating the seller who acted in bad faith from liability.

Another case of exempting the seller from liability concerns a situation in which the non-conformity originates from the materials provided by the consumer.¹⁶⁷ This provision represents the implementation of Article 2, Section 3,

¹⁶² *Ibid.*, p. 185.

¹⁶³ SrCPA, Art. 5, Sec. 1 (20).

¹⁶⁴ SrCPA, Art. 50, Sec. 3.

¹⁶⁵ Afferni, G., *op. cit.* (fn. 37), p. 203.

¹⁶⁶ Twigg-Flesner, C., *Information Disclosure about the Quality of Goods – Duty or Encouragement?*, in: Howells, G.; Janssen, A.; Schulze, R. (eds.), *Information Rights and Obligations – A Challenge for Party Autonomy and Transactional Fairness*, Routledge Taylor & Francis Group, London and New York, 2005, pp. 141-142.

¹⁶⁷ SrCPA, Art. 50, Sec. 3.

of Directive 1999/44/EC. This applies when goods are to be manufactured by the seller from necessary materials supplied by the consumer.¹⁶⁸ Essentially, it concerns contracts “for the delivery of goods that are the subject of manufacturing”.¹⁶⁹ It is worth noting that the burden of proof, in both cases rendering the seller’s exemption from liability possible, is placed on the seller, who must demonstrate that at least one exists.¹⁷⁰

The imperative character of the rules on the seller’s liability for lack of conformity is confirmed by the provision that it cannot be limited or excluded, contrary to SrCPA’s requirements.¹⁷¹ It should be emphasised that each contractual provision or other declaration of will that limits or denies consumer rights derived from the SrCPA is null and void.¹⁷²

4.3. Time Limits and Burden of Proof

The SrCPA envisages that the seller is liable for any lack of conformity of the goods with the contract that becomes apparent within two years of passing the risk to the consumer.¹⁷³ This provision represents the transposition of Article 5, Section 1 of Directive 1999/44/EC. It is worth noting that such a two-year time limit concerns the lack of conformity existing at the time of passing risk—that is, the delivery of goods that appeared within the previous two years.¹⁷⁴ In general, consumers demonstrate that both circumstances exist.¹⁷⁵

However, in line with Article 5, Sec. 3 of Directive 1999/44/EC, the Serbian legislature introduced an exception to the general rule, presuming that the lack of conformity existed at the time of passing of risk to the consumer if it became apparent within six months from that moment unless such a presumption was contrary to the nature of the goods and the nature of the specific lack of conformity.¹⁷⁶ Notably, the notion of the nature of goods concerns perishable goods.¹⁷⁷

¹⁶⁸ Howells, G.; Twigg-Flessner, C.; Wilhelmsson, T., *op. cit.* (fn. 142), p. 184.

¹⁶⁹ SrCPA, Art. 4, Sec. 3.

¹⁷⁰ Karanikić Mirić, M., *op. cit.* (fn. 139), p. 180.

¹⁷¹ SrCPA, Art. 50, Sec. 4.

¹⁷² SrCPA, Art. 3, Sec. 2.

¹⁷³ SrCPA, Art. 52, Sec. 1.

¹⁷⁴ Staudenmayer, D., *op. cit.* (fn. 152), p. 556.

¹⁷⁵ Mariconda, V., *op. cit.* (fn. 146), p. 1105; Afferni, G., *op. cit.* (fn. 37), p. 209.

¹⁷⁶ SrCPA, Art. 52, Sec. 2.

¹⁷⁷ Staudenmayer, D., *op. cit.* (fn. 152), p. 557.

This presumption is rebuttable, because the burden of proof that there is no lack of conformity is explicitly on the seller.¹⁷⁸ Therefore, to prevent consumers from resorting to available remedies, the seller must demonstrate that the goods conform to the sales contract at the moment of delivery.¹⁷⁹

Using the opportunity provided by Article 6, Sec. 1 (2) of Directive 1999/44/EC, the Serbian lawmaker allows contractual parties to agree on a shorter time limit for the seller's liability for lack of conformity in the event of second-hand goods.¹⁸⁰ However, it cannot be shorter than one year. This duration limitation was introduced to prevent potential abuse.¹⁸¹ The contractual stipulation specifying a shorter time limit was null and void.¹⁸² It should be emphasised that, in the case of second-hand goods, the reduction in the time limit exclusively depends on the free will of the contractual parties.

Finally, the SrCPA specifies that the mentioned time limits are suspended during the period used by the seller to eliminate the lack of conformity.¹⁸³ This provision is inspired by Recital 18 of Directive 1999/44/EC, which allows the Member States to provide for suspension or interruption of the limitation period "in the event of repair, replacement or negotiations between seller and consumer with a view to an amicable settlement".

5. CONCLUSION

Although the Croatian and Slovenian laws are based on Directive (EU) 2019/771, the Serbian law still adheres to Directive 1999/44/EC. This is the source of major differences between Croatian and Slovenian legal orders, on the one hand, and Serbia, on the other, as well as a possible reference point to the Serbian legislature for potential future amendments relating to consumer sales law.

Concerning the notion of lack of conformity, the SrCPA, evidently influenced by Directive 1999/44/EC, imposes a general obligation on the seller to deliver goods that are in conformity with the consumer sales contract and determines in which cases there is a rebuttable presumption of conformity. On the other

¹⁷⁸ SrCPA, Art. 52, Sec. 2.

¹⁷⁹ Afferni, G., *op. cit.* (fn. 37), p. 210.

¹⁸⁰ SrCPA, Art. 52, Sec. 3.

¹⁸¹ Staudenmayer, D., *op. cit.* (fn. 152), p. 561.

¹⁸² Jakanović, I; Dudás, A., *op. cit.* (fn. 154), p. 43.

¹⁸³ SrCPA, Art. 52, Sec. 4.

hand, Croatian and Slovenian laws differentiate between subjective and objective requirements for conformity, as established by Directive (EU) 2019/771. All the examined legal systems establish the seller's liability for any defect stemming from the incorrect installation of goods (IKEA clause). Compared to previous regulations in Croatia and Slovenia, the concept of defect, expressly requiring the simultaneous fulfilment of subjective and objective requirements, became clearer and more beneficial to the consumer. In this context, such an amendment could be considered necessary under Serbian law.

The existence of nonconformity at the moment of the passing of risk to the consumer, that is, at the time of delivery, as a condition of the seller's liability, is the common denominator of all examined legal frameworks. In this regard, the transposition of Directive (EU) 2019/771 in Slovenia and Croatia did not introduce radical changes.

Unlike Croatian and Slovenian laws, the SrCPA releases the seller from liability when the non-conformity originates from materials supplied by the consumer, as determined by Directive 1999/44/EC. However, it may be stated that the seller's exemption from liability connected to the consumer's awareness of the lack of conformity is more stringent and consequently more favourable to the consumer's position in Croatian and Slovenian law. Serbian law states that the consumer knew or could not have been unaware of the lack of conformity at the conclusion of the contract. Conversely, in the Croatian and Slovenian legal frameworks, consumer awareness must stem from the notification provided by the seller at the conclusion of the contract that a specific feature of the goods deviates from the objective requirements for conformity. The seller may be exempt from liability if the consumer expressly and separately accepts such a deviation during contract formation. In this sense, amendments to the SrCPA would significantly improve the consumer's position.

In addition, the seller is liable when a lack of conformity emerges within two years of delivering the goods in all scrutinised legal orders. Therefore, the transposition of Directive (EU) 2019/771 did not constitute a significant modification. However, it is worth noting that the Croatian legislature enabled parties to prolong the duration of this time limit, benefiting the consumer.

Finally, the presumption that there is a lack of conformity at the moment of delivery is more advantageous to consumers under Croatian and Slovenian law. That is, it applies if a lack of conformity appears within one year of delivery, the legal solution of which was introduced by recent amendments. However, the SrCPA retained a period of six months from Directive 1999/44/EC. This example, benefitting the consumer's position, could stimulate the Serbian legislature to amend the consumer sales law regulations by transposing Directive

(EU) 2019/771. In addition, in all examined legal regimes, parties are allowed to reduce the period in the event of second-hand goods, but not to a period shorter than one year.

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Sažetak

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NEUSKLAĐENOST I ODGOVORNOST PRODAVATELJA U HRVATSKOM, SLOVENSKOM I SRPSKOM PRAVU

Ova studija analizira i uspoređuje zakonodavstvo u području potrošačke prodaje u Hrvatskoj, Sloveniji i Srbiji, s naglaskom na pojam neusklađenosti, odgovornost prodavatelja, iznimke od odgovornosti, rokove te teret dokazivanja u pogledu postojanja nedostatka. Iako su Hrvatska i Slovenija transponirale Direktivu (EU) 2019/771, prethodna regulativa, nastala pod utjecajem Direktive 1999/44/EZ, također se razmatra radi procjene značaja izmjena u svezi s navedenim pitanjima. S obzirom na to da se Srbija i dalje pridržava Direktive 1999/44/EZ, način na koji je Direktiva (EU) 2019/771 prenesena u hrvatsko i slovensko pravo mogao bi poslužiti kao primjer ili model za srpskoga zakonodavca.

I hrvatsko i slovensko pravo razlikuju subjektivne i objektivne zahtjeve za usklađenost te zahtijevaju ispunjenje obiju skupina zahtjeva, što predstavlja pravno rješenje koje bi moglo poslužiti kao referentna točka za srpskoga zakonodavca, koji prodavatelju nameće opću obvezu isporuke robe koja je u skladu s ugovorom o potrošačkoj prodaji te propisuje pretpostavku usklađenosti. S druge strane, odgovornost prodavatelja za neusklađenost koja je postojala u trenutku isporuke i koja se pojavi u roku od dvije godine nakon toga, kao i mogućnost ugovornih strana da skrate taj rok za rabljenu robu, ostaju zajedničke značajke svih analiziranih pravnih poredaka.

Ipak, pretpostavka da je nedostatak postojao u trenutku isporuke povoljnija je za potrošača u hrvatskom i slovenskom pravu, budući da je razdoblje njezine primjene produženo na neusklađenosti koje se pojave unutar jedne godine. Nasuprot tomu, u srpskom pravu ta se pretpostavka i dalje primjenjuje samo ako se nedostatak pojavi u roku od šest mjeseci.

Ključne riječi: neusklađenost, potrošačko pravo, odgovornost prodavatelja, Hrvatska, Slovenija, Srbija

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