

Teresa Mróz

University of Białystok

ENTREPRENEUR'S LIABILITY IN FRONT OF THE CONSUMER AS A SPECIFIC KIND OF CONTRACT LIABILITY

1. General remarks on civil liability and its functions

The liability is always being placed in the central position of every part of legal system being in effect. Legal liability is a general category that has an interdisciplinary character. That is why it is distinguished as, i.e.: criminal, civil, constitutional or labor liability.

The liability has also a deep meaning in the context of moral aspects. Even though in a common language it is understood in different ways, it is always pieced together with negative consequences.

The classical definition of legal liability says that legal liability means "(...) bearing by subject, stipulated by the law, negative consequences that come out of the events and states being put under negative normative qualification which are legally addressed to the specific subject in the concrete legal order".¹ That general definition allows accepting that the civil liability consists in bearing by the subjects of civil relations negative consequences stipulated by the civil law on the basis of the facts negatively judged within the legal order and signed by the civil law to that concrete subject. The civil law doctrine makes a visual comparison where the role of the civil liability is exactly the same as a role of a lever, which within the help of the justice dimension puts the whole burden of the risen damage from the injured to another person, usually the party responsible for damage.² Within the civil law doctrine, the party responsible for damage does not always bear the liability for the caused damage.

¹ W. Lang, *Struktura odpowiedzialności prawnej*, "Acta Universitatis Nicolai Copernici, Prawo" 8 (1968).

² W. Warkało, *Odpowiedzialność odszkodowawcza. Funkcje, rodzaje, granice*, Warszawa 1962, p. 7 and next.

The most significant role among civil law sanctions plays, in practice, a damage sanction and connected with it liability for damages. It means that its scope of the subject is narrower than the one in the general definition of civil liability. Moreover, that liability has a tangible property character and plays above all compensatory function. In spite of the compensatory function, there are also other like: repressive, preventive and educational function.

The major meaning has, of course, the compensatory function, which is particularly visible in the range of liability for damages.

The point of the liability for damages consists in the possibility of the fulfillment of the creditor's claim risen as a result of the damage borne by him, on the way of the execution from the person's (to whom that damage was credited by the legal norms) property.³ Thus, these are the legal relations with the character of the obligation. The injured is a creditor, and the person obliged to the compensative service is a debtor. The service is a behavior of the debtor meaning by a remedy of the creditor's loss, which appeared after the encroachment of his goods and interests protected by the law.

The provisions regulating compensative relations (law of the compensation)⁴ can be found in different legal acts. They are divided into two categories: general regulations and specific regulations in general.⁵

There are different ways of legal solutions that regulate the matter of liability for damages in the Polish legal system. In most cases the interested person has a variety of choices out of the rights determined by the different converged legal provisions.⁶ As a general rule there is no possibility of using general regulation if the specific provisions exist in the concrete legal sphere (*lex specialis derogat legi generali*). Taking into consideration goals and functions of the liability for damages mentioned above, it is needed to admit that the use of specific provisions cannot exclude the use of general regulation, when this is the only way to achieve the complete result of the remedy of the damage. The only condition is that there are no constraints within the legal acts regulating a scope of the remedy of the damage.

The general provisions are placed in the Civil Code (especially within the 3rd book of the Civil Code – Obligation), where the major position belongs to provisions about principles and manners of remedy of the damage,

³ T. Dybowski, (in:) Z. Radwański (editor), *System prawa cywilnego...*, p. 167 and the bibliography risen there.

⁴ Much more on that: W. Warkało, *Odpowiedzialność odszkodowawcza...*, p. 7.

⁵ P. Dzienis, *Odpowiedzialność cywilna władzy publicznej*, Warszawa 2006, p. 12 and next.

⁶ Z. Radwański, *Prawo cywilne – część ogólna*, 2nd ed., Warszawa 1994, p. 70.

the results of non-performance or improper performance of the obligation. The regulation including exchange of goods and services within the legal turnover with the consumers' participation (mixed, unilaterally professional)⁷ does not usually exclude the possibility of realization of claims on the general basis.

2. The entrepreneur and the consumer

The entrepreneur is every natural person, legal person and organizational entity that is not a legal person, to whom the legal act admits a legal status and who is engaged on his own behalf in the business or professional activity – the article 43¹ of the Civil Code. The code definition of the entrepreneur has a priority meaning and is legally binding within the sphere of the civil relations including the relations with the consumers.

The article 22¹ of the Civil Code states that the consumer is every natural person who makes a legal transaction which is not directly connected with his business or professional activity.⁸ The most important issue which is subject scope of the consumer law is defined by the Civil Code,⁹ but most of the consumer law provisions that protect a consumer – the weaker party in the legal relation, are regulated outside the Code in other legal acts. Moreover, the part of those provisions belongs not only to the private law but also to the public law system.¹⁰

It is necessary to admit that the article 76 of the Constitution of the Republic of Poland puts the obligation of consumers' protection on public authority that protect them from actions which threaten their health, privacy, security, but especially, unfair market practices. The provision does not give the right for the consumer to claim with the constitutional complaint. Thus, it is essential to place the constitutional rule in the common legislation (article 81 of the Constitution). Article 76 of the Constitution does not have any direct effect in practice from the consumer's point of

⁷ A. Doliwa, (in:) T. Mróz, M. Stec (editors), *Prawo gospodarcze prywatne*, Warszawa 2005, p. 6.

⁸ More on that: J. Pisuliński, (in:) J. Rajski (editor), *Prawo zobowiązań – część szczególna. System prawa prywatnego*, vol. VII, Warszawa 2004, p. 165.

⁹ There are also other rules talking about mixed turnover that protect consumer in the Civil Code. As examples, see articles: 74§2, 384–385³, 4491–4491¹, 535¹, 558, 605¹, 627¹, 770¹ of the Civil Code.

¹⁰ As an example see: Ustawa z dnia 16 lutego 2007 r. o ochronie konkurencji i konsumentów [Legal act of 16 February, 2007 on competition and consumer protection], *Dziennik Ustaw* [Journal of Laws], No. 50, item 331.

view. It is true that the sphere of consumer's business has been raised to the constitutional rank, but at the same time, the rule of direct use of the Constitution that cannot be in force in that concrete matter has been placed too.¹¹ Creating lots of new legal regulations on consumer protection in Poland is a symptom of adopting the European standards, where the tendency of consumer protection is very strong.¹²

3. The characteristic of the consumer protection legal rules

As mentioned above, creating lots of new legal regulations on consumer protection in Poland is a symptom of adopting the European standards, where the tendency of consumer protection is very strong.¹³ Consumer protection in the European Union law is treated as a political and legal problem. Since the Maastricht Treaty, the issues of consumer protection have been treated as a task of the European Union.¹⁴ Thus, consumer protection stays as a part of the sphere of Community authorities' activities.

The shape of the Polish legal provisions on consumer protection is nowadays influenced mainly by the European Union law, especially by the consumer directives. It is not possible to specify all the European directives on consumer protection law, so just as examples, the ones can be shown:

- Directive 1999/44/EC of the European Parliament and of the Council of 25 May, 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12–16),
- Council Directive 92/59/EEC of 29 June, 1992 on general product safety (OJ L 228, 11.8.1992, p. 24–32),
- Council Directive 85/374/EEC of 25 July, 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29),
- Directive 97/7/EC of the European Parliament and of the Council of 20 May, 1997 on the protection of consumers in respect of distance contracts (OJ L 144, 4.6.1997, p. 19–27),

¹¹ More in the matter on relations of constitutional and legislative regulations in the sphere of private law, see: M. Pyziak-Szafnicka, *Prawo podmiotowe, Studia Prawa Prywatnego*, 2006, z. 1, p. 53 and next.

¹² E. Łętowska, *Europejskie prawo umów konsumenckich*, Warszawa 2004, p. 49, 279.

¹³ Ibidem, p. 49, 279.

¹⁴ Ibidem, p. 6–7.

Entrepreneur's liability in front of the consumer as a specific kind...

- Council Directive 87/102/EEC of 22 December, 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48),
- Council Directive 90/314/EEC of 13 June, 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59–64).

The most important value for the consumer in his everyday life has the legal act of 27 July, 2002 on certain aspects of the sale of consumer goods and on the change of the Civil Code,¹⁵ and the legal act of 2 March, 2000 on protection of some consumer's rights and the liability for the damage caused by the dangerous product,¹⁶ moreover, the legal act of 20 July, 2001 on consumer credit,¹⁷ and finally, the legal act of 29 August, 1997 on package travel.¹⁸

Those legal acts provide special regime in the scope of concluding, forming content of the contract, execution and liability, when the consumer is one party and the entrepreneur is the other party of the contract. They are called the consumer contracts. The characteristic feature of the regime is weakening, basic for the market economy, of the rule of the freedom of contracts and the rule *pacta sunt servanda*. The provisions out of the Code regulations defining consumer turnover are strengthened by the Civil Code, which determines illegitimate rules of the contract and the legal results, including those kinds of rules in it. They have to be treated as a protection of the weaker contractual party.¹⁹ They apply to all kinds of contracts which are signed up with the consumer as a party. The provisions of the consumer protection have a semi imperative character.²⁰ Thus, the parties of the legal relation can form it differently than it comes out from the concrete model included in the legal act, but only more favorable for the consumer. Those provisions establish the minimum border of the consumer protection and characterize unsymmetricality of the legal regime in favor of the weaker part – consumer.

¹⁵ Dziennik Ustaw [Journal of Laws], No. 141, item 1176. It is worth adding that on the basis of article 14, the rules included in that legal act can be used with: contract of delivery, contract to perform a specified task and contract of commission.

¹⁶ Dziennik Ustaw [Journal of Laws], No. 22, item 271.

¹⁷ Dziennik Ustaw [Journal of Laws], No. 100, item 1081.

¹⁸ Dziennik Ustaw [Journal of Laws], No. 55, item 578 with later amendments.

¹⁹ Article 3851 of the Civil Code. Moreover, see: Ł. Węgrzynowski, *Niedozwolone postanowienia umowne, jako środek ochrony słabszej strony umowy obligacyjnej*, Warszawa 2006, p. 39 and next.

²⁰ More on the issue of semi imperative character of the regulations see: P. Machnikowski, *Rodzaje ustawowych ograniczeń swobody kształtowania treści zobowiązania*, "Monitor Prawniczy" 2005, No. 24, p. 1244.

The seller can always offer better conditions and more rights than the legal act stipulates but never less than that. Worse conditions are always invalid because of the provisions included in the legal act (article 11 of the legal act on some special conditions of consumer sale).

It comes from the article 535¹ of the Civil Code that the provisions of the Civil Code applicable to the sale agreement are also implemented to the consumer sale within the range in which the sale is not regulated by other legal acts.

The provisions of the legal act on some special conditions of consumer sale are applicable only to the sale that is made within the range of the enterprise activity of the movable property for the natural person who owes that property for the reason not connected with one's business or professional activity.²¹ One party of the contract is then a professional, and the other is a consumer. The seller is liable for the buyer on the basis of risk, which is called strict liability, if the merchandise is not consistent to the contract in the moment of handing it out. The liability is a consequence of the improper execution of the contract. Thus it is a regime – *ex contractu* of liability.

4. The characteristic of liability prerequisites

The prerequisites of seller's liability in case of consumer sale are different than in case of liability that comes out from non-performance or improper performance of the sale contract regulated by the Civil Code. The prerequisites of liability are mentioned in the sense that without their existence the liability does not appear. They are thereby the conditions of existence of the concrete claim on the eligible side. Three prerequisites are necessary to the occurrence of the contract liability regulated by the rules:

- Firstly, the creditor has to bear the damage in the sense of the property loss. In general, the damage is both *damnum emergens* and *lucrum cessans*.
- Secondly, the damage has to be caused by non-performance or improper performance of the obligation by the debtor. The damage in the case of improper performance of the obligation determines the loss value, which

²¹ Those rules are applicable to: contract to perform a specified task, contract of delivery and contract of commission, if they are signed up within the scope of the enterprise activity and if the other party is the consumer.

comes out of the non-performance of the obligation. The damage in the case of improper performance of the obligation defines the value of an additional loss, which harms the creditor, even though the obligation has been executed within the content of the obligation.²²

- Thirdly, the normal causality has to exist between non-performance and improper performance of the obligation. The article 417 of the Civil Code states, moreover, that non-performance or improper performance of the obligation has to be the consequence of the circumstances which the debtor is not responsible for. There is nothing like an automatic liability for damages. The crucial are the reasons because of which came to an insult of creditor's business.²³

Discussing the consumer sale, it is worth describing the fact that every seller – natural or legal person who accomplishes a sale within the scope of his enterprise, is liable for the incompatibility with the sales contract in the period of two years since handing the good out for the buyer. The term starts running again from the very beginning in the case of exchanging the good. If the subject of sale is a second hand thing, the term can be shortened by the seller but no less than to a year, and only when the buyer agrees to that. In the case of detecting the incompatibility, before the six month term passed since the release of good, it is assumed that the incompatibility existed in the moment of releasing the good. It means that the seller's liability is abstract from the fault (the evidence of lack of guilt does not release from liability), independent from the fact whether the seller knew about the existence of incompatibility with the contract or not.

It is universally known that the basic prerequisite of the liability is the fact of existence of good's incompatibility with the sale contract, so there is no need to prove the damage and other prerequisites which are legally binding to the liability for damages. The closer analysis of the issue can lead to different remarks. If we assume that the damage is a loss within the legally protected goods and interests arisen without the consent of the injured party, then, without any doubts, the existence of good's incompatibility with the sale contract is a loss within the good legally protected. The loss is meant as a difference between the state of good that could be generated in the normal state of affairs and the state that arisen as a consequence of the accident that made the change (the legislator called that the occurrence

²² W. Czachórski, A. Brzozowski, M. Safjan, E. Skowrońska-Bocian, *Zobowiązania. Zarys wykładu*, Warszawa 2003, p. 318.

²³ *Ibidem*.

of the liability for damages in the literature).²⁴ Referring the problem to the issue of consumer sale, the loss has a property character.

There is a discussion in the literature whether the prerequisite of incompatibility with the sale contract should be understood the same as a physical defect in the case of liability of warranty, or it is a wider term than the defect (as understood in the article 556 § 1 of the Civil Code). More rational and convincing are the arguments of those who state that the good's incompatibility with the sale contract is a wider term than the physical defect of the thing.²⁵

The consumer good's incompatibility with the sale contract includes:

- defects in the Civil Code of warranty and guarantee terms;
- the incompatibility with the assurances of the people who market goods within the scope of their enterprise activity;
- the incompatibility with the assurances of the people who placed themselves as producers by placing on the goods their name, trademark or other distinguishing marks;
- incorrectness of installation and initialization of goods if the activities have been done within the sale by the seller or the person by whom the seller is liable for;
- incorrectness of installation and initialization of goods if the activities have been done by the buyer in accordance with the manual received in the time of sale.²⁶

It is worth analyzing that including the term of incompatibility with the sale contract in above second and third case, first of all, is aimed at counteracting unfair and misleading advertisement.

The buyer has been subjected to the obligation of seller's notification about the determination of incompatibility with the sale contract by the legislator. The notification should occur within the period of two months since the determination of incompatibility. The consequence of lack of determination is loss of rights of the concrete determined incompatibility of consumer's good with the sale contract. The seller is also exempted from the liability when the buyer knew about the good's incompatibility, or when judging reasonably, should have known about it. The buyer's claims expired within the year since the determination of the good's incompatibility. The expiration cannot finish until the end of two years since the release of the good to the buyer.

²⁴ Z. Radwański (editor), *System prawa cywilnego...*, p. 214.

²⁵ W. Czachórski, A. Brzozowski, M. Safjan, E. Skowrońska-Bocian, *Zobowiązania...*, p. 639.

²⁶ Ibidem.

Entrepreneur's liability in front of the consumer as a specific kind...

According to the article 4 of the legal act on some special conditions of consumer sale, the seller is liable in the face of the buyer if the consumer's good is not compatible with the sale contract in the moment of their release. There are some interpretational dilemmas here. The language of the above provision can entitle to the statement that the seller is liable on the basis of that legal act only in the case of improper performance of the contract. Thus, the legal act does not include the situation of the contractual non-performance, so then when the seller did not start at all to fulfill the obligations coming out of the contract, i.e.: he did not transfer the ownership or did not transfer the good. The only possibility of the buyer in that case could be use of the Civil Code provisions about the consequences of non-performance of the obligation (article 471 of the Civil Code and next).

5. Critical analysis of consumer's rights

Article 8 provisions of the analyzed legal act form rights that entitle the consumer. In the case when the consumer's good is not compatible with the sale contract, the buyer can demand that it should be restored to the condition consistent with the contract by a no payable repair or exchange the good into new one. These are two general and basic rights. If the seller received from the buyer one of the mentioned demands and he did not take any position (he did not respond to that) within the period of 14 days, then it is statutory determined that it was reasonable.

It seems that more from the practical point of view of the entrepreneurs than the provisions of article 8 of the mentioned legal act, derives the rule of the sequencing consumer's claims, which means their realization in the appropriate order: firstly – the repair of good, then – exchange, and finally other statutory provisions. This kind of interpretation harms the basic idea of the consumer protection and its axiology. The rule of the sequencing is also exposed by the part of the civil law doctrine representatives.²⁷ Implementing the rule leads to the crucial weakening of the consumer's position. It entitles to express the opinion that those provisions within the scope of executing of the consumer's rights place him in the worse situation than under the provisions of, before being in force, consumer warranty provisions regulated in the Civil Code.

²⁷ W. Czachórski, A. Brzozowski, M. Safjan, E. Skowrońska-Bocian, *Zobowiązania...*, p. 641.

The use of other consumer rights provided by the legal act depends on some conditions. Only when:

- repair or exchange of the consumer's good is not possible,
- repair or exchange of the consumer's good requires excessive costs,
- the seller is not able to repair or exchange the good in the concrete term,
- repair or exchange could expose the buyer to significant inconvenience.

The buyer can demand the relevant reduction of the price or renouncing the contract. Nevertheless, he cannot renounce the contract when the consumer's good incompatibility is irrelevant. The assessment of the relevant or irrelevant incompatibility with the sales contract has, apparently, a crucial meaning in the process of pursuing consumer claims. The kind of the incompatibility decides whether it is possible to demand effectively the price reduction, particularly whether it is possible to execute the statutory right to renounce the contract by submitting the unilateral declaration of will. The claim arisen then is about the return of the paid price and the repair of eventual property damage on the general basis.

Many court disputes arise in connection with the performance of the provisions, yet in the time when the warranty provisions (article 556 of the Civil Code and next) were applicable to the consumer sale. Unfortunately, there are fewer of them nowadays than at the time. The evaluation whether the incompatibility with the sale contract is relevant or irrelevant depends on its character, the work that can be used to repair, and especially, on the influence on the good's usefulness. Repeated repairs should be also recognized as a relevant incompatibility. Not only objective patterns of assessment, totally abstract from consumer's feelings and believes, should play an important role there. The evaluation of the product's usability, its functionality and usefulness with a view to a contractual goal, done also from the buyer's subjective point of view to the borders defined by the article 5 of the Civil Code, should be taken into consideration by the evaluation of the relevance.²⁸ The consumer's proof (the weaker party of the contract) of the relevant consumer's good incompatibility with the sale contract is onerous and difficult, more difficult than showing damage and the rest of the contract liability prerequisites.

It can happen that the consumer suffers damage which appears as a different loss than the consumer good, because of the good's incompatibility with the sale contract. The provisions of legal act on some special conditions

²⁸ T. Kierzyk, *Reklamacje wad pojazdu – wybrane zagadnienia (ochrona konsumentów)*, Rejent 2000, No. 5, p. 53.

of consumer sale do not give the legal basis to demand repairing the loss different than the one connected with the consumer's good. It is impossible to base the claim of full redressing the damage within the scope of *damnum emergens* and *lucrum cessans* on that basis.

Looking for more conductive institutions for consumer conditions, it is good to consider the possibility of using the solution included within the article 4.1 of the legal act of 27 July, 2002. The statement included in the provision notices that "(...) in the case of determination the consumer's good incompatibility with the sale contract before the end of the six months term since the release of good, it is assumed that it existed in the moment of the release. Unfortunately, the rest of the provision is dedicated to presumptions that protect the seller, not the consumer (presumption of the good's compatibility with the sale contract). The opinions within the literature state that the statement "it is assumed" should be understood not as a legal presumption, but as a statutory definition of the good's incompatibility with the sale contract.²⁹ This is the next shortcoming within the analyzed statutory provisions, unfortunately that acts to the detriment of the consumer.

The current regulation included within the legal act does not decide on the seller's liability under legal defects. It does not apply to the cases when the seller does not have the right of ownership to the good or when the right of ownership has been encumbered to the third party. The article 4 of the legal act and the scope of rights show that the idea is to physical characteristic of the good. There is no agreement in that issue within the legal literature. There are expressed views that assumed the possibility of taking up by the scope of validity of the legal act legal defect cases because the provisions of the legal act do not provide that the incompatibility with the contract could entail its physical features.³⁰ That view cannot be approved without any critique. Using the same arguments (lack of the regulation), it is possible to prove that the legal act does not apply to legal defects, moreover, that the kind of consumer's rights (article 8 of the legal act) is very characteristic of the physical features of the good.

The legal act resigned from the division of things to those specified as to kind only and to identity. That classification exists in the Civil Code and has a priority meaning in case of the seller's liability due to the warranty, and is bound with the possibility of consumer's rights differentiation. The

²⁹ M. Gajek, *Niezgodność z umową jako przesłanka odpowiedzialności sprzedaży towaru konsumpcyjnego*, "Monitor Prawniczy" 2003, No. 5, p. 206.

³⁰ J. Puzyna, *Niezgodność towaru z umową jako przesłanka odpowiedzialności sprzedawcy w ramach sprzedaży konsumenckiej*, Rejent 2006, No. 10, p. 118 and the literature risen there.

consumer's right depends on the things he has to do with. It placed the consumer in a better position than nowadays. Before the legal act on some special conditions of consumer sale came into force, a consumer within the scope of his rights due to the warranty (when the defect applied to thing specified as to kind only), could effectively demand renouncing the contract and his demand could be blocked only by the good's exchange into the new one.³¹ The effective repair of the thing specified as to identity only restricted the possibility of renouncing the contract.

Within the current legal status the main place (regardless of the thing's kind) takes the demand of supplying to the state compatible with the sale contract by repair free of charge. That kind of conclusion is made on the basis of practice's observation. Concluding – after acknowledging the general goal of the legal act that is the consumer protection, it can be assumed that that the expression included in the article 8 provision of the legal act: “(...) the seller can demand supplying (...) to the state compatible with the contract by *repair free of charge or by the good's exchange into the new one*, unless *repair or exchange* is impossible or requires excessive costs”, should give to the consumer the possibility of choice between demand of repair or exchange into new one. Both of these rights should be treated then alternatively, by giving the choice to the consumer. The same rule could be applied in the case of existence of conditions which allow demanding a reduction of the price or renouncing the contract.

The right to renouncing the contract is very limited in the Polish consumer legislation. That limitation is a little bit less restrictive in the case of concluding the contract negotiated away from business premises, so in places where we – consumers, are not prepared to conclude the contract and in the cases of the contracts that are concluded at a distance, without the presence of both contractual parties (usually – internet sale). Only in mentioned above cases we – consumers, have the right to renounce the contract within 10 days without giving the reasons for renouncing. In some cases the term can be extended up to 3 months. The issues are regulated by the legal act of 2 March, 2000 on protection of some consumer's rights and the liability for the damage caused by the dangerous product.³²

The common custom is attaching a guarantee (the accessory contract) to the good, which gives fewer rights (only repair or exchange of the good) than the consumer's good's incompatibility with the sale contract. The guarantee can concur with other institutions because of the long terms of its

³¹ T. Kierzyk, *Reklamacje...*, p. 54.

³² Dziennik Ustaw [Journal of Laws] 2000, No. 22, item 271.

validity. Granting a guarantee should occur without any additional fee (see: article 13 of the legal act). Guarantee for the sold consumer's good does not exclude, limit or suspend buyer's rights that come out of the good's incompatibility with the sale contract.

6. Conclusions and *de lege ferenda* postulates

In a consequence, it can be recognized that as a result of implementation of the legal act on some special conditions of consumer sale, consumer did not receive any more intensive measures of legal protection. In some cases they are even weakened. The current shape of the prerequisite of good's incompatibility with the sale contract is a quite unclear term, which limits consumer protection in the same way as the rule of claims sequencing.

Usually, exercising only the institutions regulated by the legal act does not lead to full redress of the loss within the goods legal protection. Thus, the legal act does not fully realize the compensative function of the contract liability according to general rules.

A quick change of consumer sale provisions should be demanded. New legal solutions should include provisions which assure protection for the consumer in the cases when concluding the contract occurs without precise designation of good's features and in the cases when the seller imposes such a good's designation that can lead to limitation or abolition of his liability. It is necessary to implement the provision which allows for the designation when the good is compatible with the contract. That kind of regulation is used by the German legislator.³³

Polish legal situation is quite peculiar because of the fact that conducting the rational interpretation of the legal regulation about proper consumer protection is only possible when disregarding the rules of the legal act described above and in accordance with the provisions of the Civil Code. The dispersion of provisions about consumer turnover should be also judged negatively.

³³ J. Puzyna, *Niezgodność towaru...*, p. 122.