



**Examination of warranty claims and liability in the Hungarian Civil Code and CISG
(thesis brochure)**

Supervisor:

**Dr. Ferenc Fábíán
Associate Professor**

Written by:

dr. Diána Bergendi-Rácz

**Károli Gáspár University of the Reformed Church in Hungary
Postgraduate Doctoral School of Law and Political Sciences**

**Head of the Postgraduate Doctoral School: Prof. Dr. Éva Jakab university professor
CSc, MTA**

Budapest

2020

TABLE OF CONTENTS

1. Summary of the set research task	2
2. The method of processing the research topic and the structure of the dissertation and sources of the conducted research	3
3. A summary of the scientific results and their potential utilization.....	6
4. The list of publications in the topic of the doctoral dissertation	7

1. Summary of the set research task

A warranty right is an objective legal consequence that, in the event of a non-contractual performance, the injured party may enforce against the other party in breach of contract, regardless of its conduct. There is no detailed domestic literature and related case law on comparing the warranty law defined in the Hungarian Civil Code, the CISG and the related liability, and the interaction of these two sources of law. However, the guarantee of supply is of great importance in domestic and international trade. The basic aim of selecting the topic was to present the process of enforcing the warranty law with the CISG and the Hungarian Civil Code and liability for damages caused by the breach of contract based on theoretical and practical aspects, especially domestic and international case law. Based on her many research findings on the topic and her dissertations on the subject, she directed the issue and research to examine warranty claims and liability for the breach of contract concerning the above two sources of law.

To have a wide range of knowledge on the topic, the author also examined the domestic and international liability insurance rules governing the transport of goods as a prerequisite for the qualification of an insurance lawyer acquired in 2019. In the same year, starting in August 2019, she participated in the renowned researcher of the CISG, Dr Ulrich G. Schroeter, a professor of private law at the University of Basel, and his team as an international contributor. The research topic of the chosen topic was based on the review of the legal history of proprietary warranty law and its detailed analysis concerning Hungarian Private Law and the brief presentation of the CISG and its impact on the Hungarian Civil Code. Particular emphasis was placed on the path leading to the drafting of the Hungarian Civil Code currently in force during the legal history of the law on the warranty of supplies.

2. The method of processing the research topic and the structure of the dissertation and sources of the conducted research

The research mainly aimed to process the written literature available in Hungary and professional publications published electronically and available in digitized form. In addition to the Hungarian language sources, using the author's English language skills, the sources, comments, and studies published in English in the language of the official text of the CISG were also analyzed and presented in detail in detail in the dissertation. The author also included the abstract and interpretation of legal cases closely related to both sources of law.

Following the method chosen during the research, the author was the first to research and get to know the Hungarian language sources and the previous literature on the topic. Based on the author, it can be stated that the order of the right to warranty for supplies and the order of compensation for damages arising from breach of contract. Until the beginning of the 19th century, the Hungarian literature of the time dealt with it rarely. The breakthrough came with the Private Law Bill of 1928. The impact felt until the creation of the old Civil Code. Before the entry into force of the Hungarian Civil Code, several publications on the enforcement of warranty rights published under the old Civil Code. The primary source of these is the 1959 Civil Code, the 1977 Civil Code, the 1977 Amending Act, and the Civil Code, maintained by the Ministry of Justice and made available in paper and electronic form.

It cannot neglect when discussing the dissertation topic, so the author also covers the Hungarian Civil Code. Given that our current Hungarian Civil Code is the first uniformly structured private law code to comply with domestic and EU and international personal law trends. Before the comparative analysis, which is the central topic, the author describes the development of the CISG and its impact on the Hungarian Civil Code. It covers the system of liability for damages caused by the breach of contract regulated in the Hungarian Civil Code and the rules of exemption from this liability, as well as the regulation of hedging contracts introduced in the Hungarian Civil Code as old-new institutions. When negotiating the CISG, the author does not forget to present in detail the processing and analysis of the parts of their book entitled *Private International Law* written by Tamás Sándor and Lajos Vékás, professors of law, who are the main works of the Hungarian literature on this topic.

The examination of the right to a guarantee is going to a path. The starting point is a breach of contract. Breach of contract in compiling the structure of the doctoral dissertation, the author sought to regulate the process of enforcing the warranty claim similarly in the two legal sources, presenting the possible parts and similarities by analyzing the individual components of the process separately.

Enforcement of the warranty is essential to analyze the breach of contract as a basic concept and the basis for enforcement. Defects related to performance, which may lead to a breach of contract, are analyzed in detail in both the Hungarian Civil Code and the CISG. Numerous domestic and international literature deals with the topic, several of which the author examines in more detail, without proving to be exhaustive: the position of Mátyás Császár and Robert Koch on the fundamental breach of contract, and György Wellmann and István Kemenes on their opinions. Gyula Eörsi's statement in connection with the investigation of the disadvantages caused by the breach of contract.

The author discusses the erroneous performance, which is a particular case of breach of contract, in a separate point, emphasizing Curia's relevant 1/2004. (XII. 2.) still in force. At the same time, he draws attention to the fact that the faulty performance named in the Hungarian Civil Code is not regulated separately in the CISG but treated with the definition of the fundamental breach of contract. The fault approach from the direction of the faultless service. Methods are illustrated example, explain how the importance of determining the defect is essential to determine whether a breach of contract has occurred and, if so, how liability is shared between parties. In this regard, it even covers the relationship between aliud service and faulty performance.

In agreement with several studies and domestic and international practice, the author also emphasizes that the parties should avoid the breach of contract by using all possible means, thus presenting how to prevent possible defective performance. The offering the characteristics of the contract goods, the obligation to examine is analyzed concerning the two sources of law. Through the opinion of the CISG Advisory Council and the relevant opinion of the Hungarian Curia, the author illustrates the system of examination of goods by analyzing Sarolta Szabó's publication on this topic.

The warranty law, which serves as the central topic of the dissertation, is presented by the author on a case-by-case basis, in line with its two-step validation model. Analyze four possible cases and compare them by legal source. Several court decisions and panel opinions assist the

author, and court judgments, with which he can also demonstrate the practical significance of the enforcement of warranty rights. The author had numerous legal cases related to the erroneous performance of contracts concluded based on the CISG. He would like to illustrate the significance and realization of warranty rights and the similarities and differences in their enforcement compared to the Hungarian Civil Code. In examining the law of *ius variandi*, the author discovered quite different rules between the two sources of law, the reasons for which he substantiates with legal cases and explanations. Withdrawal will be presented as the final solution to remedy the legal consequences of unsatisfactory performance, in detail by the author, especially given that the injured party wants to get rid of the contract that no longer has a contractual interest. Preconditions and the process of its realization are not entirely the same in the two sources of law, so the author discusses some of its elements separately in the dissertation.

The last chapter of the dissertation examines the liability for damages caused by the breach of contract in connection with the enforcement of warranty rights. The author discusses the obligation to repay and the analysis of causal relationships and possible cases of indemnification. In her research on this topic, the author illustrates the issue of liability in the application of the two sources of law by studying the works of Ádám Fuglinszky and Péter Bodnár Miskolczi, among others, with the involvement of recent court decisions and domestic and international legal cases. The author necessarily discusses the system of Incoterms parities, which are closely related to the CISG and are closely associated with the application of the CISG and the risk-bearing assumed by the contracting parties.

In the final part of the dissertation, the main points of the warranty claim enforcement and the related liability system and their enforcement mechanisms regulated in the two legal sources are summarized. The author expresses her opinion on the practical implementation of these systems, proposes to parties applying two sources of law the clauses to use in case of a possible breach of contract.

3. A summary of the scientific results and their potential utilization

The author's scientific research aimed to produce an all-encompassing dissertation that:

- places the development of warranty law and claim enforcement in the legal history of Hungarian Private Law and relation to the CISG by processing the available legal literature,
- presents the way to the exercise of the right to a warranty for supplies concerning the two sources of law examined and illustrated its practical significance,
- analyzes in detail the cases of warranty law from the theoretical and practical aspects of the examined legal sources

In examining liability for damages caused by the breach of contract, it presents in detail the practice long used in the CISG and adopted in the Hungarian Civil Code and looks at the development of specific liability for Incoterms parities regularly used in the CISG.

According to the author, the doctoral dissertation achieved and achieved the above objectives.

As a result of all this, by writing the doctoral dissertation, we managed to comprehensively present and analyze the system of warranty claims and liability regulated in the Hungarian Civil Code and the CISG, which is of great practical significance in the preparation and enforcement of domestic, international trade contracts. In most cases, the parties stipulating these sources of law in the agreement seek contractual performance. Still, in the event of incorrect interpretation, the injured party is provided with protection by the warranty enforcement rules that are the subject of this dissertation. In addition to observing the principles enshrined in the two sources of law, contractual performance is declared by several acts binding on the parties. Yet, the analyzed legal cases confirm that, in unsatisfactory performance, the parties enforce damages for breach of contract. The latter enforcement rules are almost identical in the Hungarian Civil Code and the CISG. Based on the research, the author hopes that the Hungarian private law literature can expand with a work that can be suitable not only for civil law and private international law education but also for practical application.

4. The list of publications in the topic of the doctoral dissertation

- Bergendi-Rácz Diána: A Kúria közbenső ítélete a hibás teljesítésből eredő kártérítésről, *Jogesetek Magyarázata*, XI. évf. 2020/1-2. szám.
- Bergendi-Rácz Diána: "Dr. Sandra Fiser-Sobot: Az áruk megvizsgálási kötelezettsége a nemzetközi adásvételi jogban" c. tanulmány szakfordítása, *Magyar Jog*, 2019/10.
- Bergendi-Rácz Diána: A leértékelt áruk esetén érvényesítendő szavatossági igényérvényesítés szabályrendszere - különös tekintettel a kellékszavatosságra, In: Szabó, Miklós (szerk.) *Doktoranduszok Fóruma: Állam- és Jogtudományi Kar szekciókiadványa*, Miskolci Egyetem, Miskolc, 2017.
- Bergendi-Rácz Diána: A szerződészerű teljesítés követelményei a Ptk. és a Bécsi Vételi Egyezmény rendszerében, *Külgazdaság- Jogi melléklet*, 2018/3-4. szám.
- Bergendi-Rácz Diána: Az elállási jog a vállalkozások közötti szerződésekben, *Ügyvédek Lapja*, 2019/3.
- Bergendi-Rácz Diána: Breach of contract: theoretical explanations in according to CESL and CISG, *Scriptura*, 2018/2.
- Bergendi-Rácz Diána: Donald J. Smythe: Ésszerű standardok a CISG szerinti szerződések értelmezése során – I. rész, *Céghírnök*, 2019/ 3.
- Bergendi-Rácz Diána: Donald J. Smythe: Ésszerű standardok a CISG szerinti szerződések értelmezése során – II. rész, *Céghírnök*, 2019/4. szám
- Bergendi-Rácz Diána: Felelősségátzállás CISG és az Incoterms 2010 paritások tükrében, In: Miskolczi, Bodnár Péter (szerk.) *XII. Jogász Doktoranduszok Országos Szakmai Találkozója*, Budapest, Magyarország: Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, (2018)
- Bergendi-Rácz Diána: Gazdasági társaságok felelősségének vizsgálata a kellékszavatossági jog érvényesítésének esetkörében, *JOG ÉS ÁLLAM* 23: 1, XIII. Jogász Doktoranduszok Országos Szakmai Találkozója (2018)
- Bergendi-Rácz Diána: Jogalkotói zsinórmérték, avagy a felek szerződészegésének elkerülését segítő és biztosító szerződési jogi alapelvek a hatályos polgári törvénykönyvben, *GLOSSA IURIDICA*, 2018/1-2.
- Bergendi-Rácz Diána: Kitekintés a megvizsgálási kötelezettség és az árukifogásolás rendszerére a Bécsi Vételi Egyezményben és a Polgári Törvénykönyvben, *KRE-DIT: A KRE-DOK online tudományos folyóirata* 2018/1.
- Bergendi-Rácz Diána: Recenzió: Glavanits Judit-Rácz Diána: Szerződészegő magatartások a Bécsi Vételi Egyezményben és az Új Ptk-ban, *KRE-DIT: A KRE-DOK online tudományos folyóirata*, 2018/2.

- Bergendi-Rácz Diána: Recenzió: Vadász Vanda: Szemelvény a Bécsi Vételi Egyezmény alkalmazása köréből – tekintettel a magyar bíróságok legújabb esetjogára, JURA 2019/ 1.
- Bergendi-Rácz Diána: Régi ismerős új köntösben: a Bécsi Vételi Egyezmény jelentősége és hatásai a hatályos Polgári Törvénykönyvben – különös tekintettel a szerződésszegés eseteire, Jog és Állam, 24:1, XIV. Jogász Doktoranduszok Országos Szakmai Találkozója (2018-2019)
- Bergendi-Rácz Diána: Sárközy Tamás: Az új Polgári Törvénykönyv előkészítésének folyamata - újdonságai – utóélete« című tanulmányáról recenzió, Miskolci Jogi Szemle, A Miskolci Egyetem Állam-és Jogtudományi Karának folyóirata XIII. évfolyam 2018. 2. szám 1. kötet.
- Bergendi-Rácz Diána: Ulrich G. Schroeter: Globális egységes adásvételi jog - európai csavarral? a CISG EU joggal való kölcsönhatása, Európai Jog, 2019/3.
- Bergendi-Rácz Diána; Elállás, mint ultima ratio? – Kellékszavatossági igényérvényesítési rendszer a Bécsi Vételi Egyezmény tükrében, In.: Bragyova, András (szerk.): Miskolci Doktorandusz Konferencia Tanulmánykötet, Miskolc, Magyarország: Bíbor Kiadó, 2017.
- Rácz Diána: Teljességi Záradék, avagy egy angol ismerős befogadása a kontinentális jogrendszerbe, Diskurzus: Batthyány Lajos Szakkollégium tudományos folyóirata, 2013/1.

Other publications:

- Bergendi-Rácz Diána: Új korszak a társasházak életében: a társasházi tisztségviselők nyilvántartása, Jegyző és Közigazgatás, 2020/1.
- Bergendi-Rácz Diána: Zajártalmak a szomszédban – birtokvédelmi jog alkalmazása a gyakorlatban, Jegyző és Közigazgatás, 2018/6.
- Bergendi-Rácz Diána: Az ún. „helyben járás” dilemmái – munkáltatói felelősségi kérdések a közalkalmazottak téves besorolásának témaköréből, Scriptura, 2018/1.
- Bergendi-Rácz Diána: Kisajátítás pro bono publico: Közérdekű kisajátítás kötelező állami, illetve kötelező önkormányzati feladatokhoz kapcsolódó oktatási, egészségügyi, szociális létesítményelhelyezése céljából, Glossa Iuridica Jogi szakmai folyóirat, 2017/1-2.