

**Ítélezési gyakorlat****Az ügy részletei**

**Nemzeti azonosító:** Kúria Kfv.II.37.507/2015/3.

**Tagállam:** Magyarország

**Közhasználatú név:** N/A

**Határozat típusa:** Legfelsőbb bírósági határozat

**A határozat napja:** 03/02/2016

**Bíróság:** Kúria

**Tárgy:**

**Felperes:** Unknown

**Alperes:** Nemzeti Fogyasztóvédelmi Hatóság (National Consumer Protection Authority)

**Kulcsszavak:** commercial guarantee, conformity with the contract, replacement

**Az irányelv cikkei**

Consumer Sales and Guarantees Directive, [Article 8, 2.](#)

**Megjegyzés**

In case the consumer returns a consumer good subject to statutory commercial guarantee within 3 working days from purchase due to malfunction, the business party must comply with the consumer's replacement claim without assessing whether there were any lack of conformity on his part at the time of performance, provided that the malfunction obstructs intended use.

**Tények**

A private individual not party to the legal proceedings purchased a mobile phone from the plaintiff, but since the phone was not charging, he returned it to the plaintiff on the same day, and demanded its replacement. However, the plaintiff informed the consumer that after examining the phone, he had found out that it is damaged, thus he may only repair, but not replace it.

The consumer filed a complaint with the local consumer protection authority, pursuant to which the local consumer protection authority required the plaintiff to comply with the consumer's replacement claim, and imposed a monetary fine on the plaintiff. The local consumer protection authority stated that pursuant to § 7. of Government Decree No. 151/2003. (IX. 22.), if the consumer returns the goods subject to statutory commercial guarantee within 3 working days from purchase due to malfunction, the business party may not examine whether the replacement claim is justified, but must immediately replace the goods.

The plaintiff appealed the decision, but the defendant upheld it. Then the plaintiff contested the decision of the defendant before court, and claimed that he is only obliged to fulfil replacement claims in the event of lack of conformity at the time of performance. However, he provided the consumer with a fully functioning device at the time of performance, but the consumer later damaged the product, which eventually led to its malfunction. Thus, the product was in conformity with the contract at the time of performance, therefore the consumer may not demand the replacement thereof.

The first instance court rejected the plaintiff's claims, stating that in the event referred to in the legal provision cited above, the plaintiff may not examine the cause of the defect, but must replace the goods immediately. The plaintiff may only examine such cause after he complied with the consumer's claims, and if it turns out that the defect did not originate from lack of conformity, and that the consumer's claims were not justified, he may claim damages from the consumer pursuant to the rules of general civil law.

The plaintiff demanded the Curia's (Supreme Court) revision of the court decision, claiming that the first instance court misinterpreted the cited legal provision. The Curia rejected the plaintiff's claims, and upheld the decision - including its reasoning - of the first instance court.

**Jogi kérdés**

In case a consumer returns a consumer good subject to statutory commercial guarantee within 3 working days from purchase due to malfunction, is the business party obliged to automatically comply with the consumer's request, or may he assess whether there were any lack of conformity at the time of performance?

**Határozat**

The Curia held that the plaintiff must comply with the consumer's replacement claim without examining whether the consumer's claim is justified. This is because in the event referred to in § 7 of Government Decree No. 151/2003. (IX. 22.), the plaintiff may not examine the cause of the defect, but must replace the goods immediately. The plaintiff may only examine such cause after he complied with the consumer's claims, and if it turns out that the defect did not originate from lack of conformity, and that the consumer's claims were not justified, he may claim damages from the consumer pursuant to the rules of general civil law.

Teljes szöveg: [Teljes szöveg](#)

**Kapcsolódó ügyek**

Nincs találat

**Jogi szakirodalom**

Nincs találat

**Eredmény**

The court rejected the plaintiff's claims and upheld the first instance court's judgement.