

**Case name (date):**  
**The “PNE case” (January 2017)**

**KEYWORDS:**

*Competence of the Legal clinic; conformity of consumer goods (Directive 1999/44/CE); sales contract*

**FACTS:**

In this case, a user bought a sofa from a reseller while specifically mentioning that they were looking for a 140 centimetres wide sofa.

The sofa was delivered three months afterward. The user then noticed several defects. The sofa was smaller than requested (132 centimetres wide instead of 140 centimetres) and the overall quality was lower than what she expected as the foam of the mattress was coming through the cover.

She asked the company for a refund, which the latter refused. Instead, they offered a spare cover.

A few months later, one of the sofa's stands broke and the company proceeded to fix it. Later on, the user noticed that the cover was starting to lose its colours around the armrests due to direct exposure to sunlight.

The user eventually asked the company again to refund the sofa, because of all the disagreements they had to face. The company refused again but offered to replace the armrests.

The user was asking the Clinic if she could legally demand a refund or have the sofa entirely replaced.

**LEGAL ANALYSIS:**

Competence of the Clinic

The Clinic is competent only for cases in which the user can be considered a consumer and the other party can be defined as a trader, in accordance with article L.010-1 of the Luxembourgish Consumer Code. At least one of the Luxembourgish Consumer Code's provisions must be applicable to the case. Lastly, the overall amount at stake should not exceed a 5.000 EUR threshold.

The user had bought a sofa for her house and was acting for personal reasons. She could be considered as a consumer as a consequence. The reseller whose business was consisting of buying and selling furniture could be considered as a trader.

Conformity of consumer goods

Chapter 2, section 1 of the Luxembourgish Consumer Code is a transposition of the EU Directive n°1999/44, on certain aspects of the sale of consumer goods and associated guarantees.

According to article L. 212-3 of the LCC, traders have to deliver goods that have the same characteristics as stated in the contract and may be held accountable for the good's defects even if he was not aware of them. Even if the reseller argued that he was not the manufacturer, the buyer could still revert to him for the issues she was facing with the sofa.

According to the article L. 212-4 a), and b) of the LCC, to be considered conforming, the goods must have the characteristics that were mutually agreed upon by the consumer and the trader, fit for the purposes for which goods of the same type are normally used.

It appeared on the purchase order that the sofa was supposed to be 140x200cm, as opposed to the delivered sofa that was only 132x200cm wide. The delivered sofa did not have the same characteristics as the ones stated in the purchase order and as a result, could not be considered conform according to article L. 212-4 of the LCC.

According to article L. 212-3 of the LCC, the reseller could be held liable even though they were not the manufacturer.

**LEGAL SOLUTION:**

Article L. 212-5 of the LCC states that the consumer may ask for a repair or a replacement if possible. If the trader is unable to do either, the consumer may ask for a refund. As modifying the sofa's characteristics to fit what the consumer initially envisioned, the latter could decide to either keep the sofa and ask for a partial refund, give the sofa back and ask for a total refund.

**SOLUTION SUGGESTED BY THE CLINIC:**

The Clinic told the consumer about these possibilities and options and told her that she could ask for a partial refund while keeping the sofa, or a total refund if she was ready to give the sofa back to the trader.

Since the Clinic cannot give legal advice to consumers, nor assist them in their communications and exchanges with the trader, or in the framework of a judiciary action, the Clinic also suggested that the consumer went to the Luxembourgish Consumer Association if she needed help in writing a letter to ask for a refund.

**SPECIFIC REMARKS:**

In order to deliver the information, the Clinic received the consumer directly on premises and a meeting with a team of clinicians was organised. A few months later, the consumer reached out to the Clinic again to inform us that she managed to be refunded after mentioning the legal arguments that the Clinic had provided her with.