

## **Commentary on the ruling of the Supreme Court - Civil Chamber of 26 January 2012 - ref. III CZP 90/11**

This is a commentary approving the ruling of the Supreme Court ref. III CZP 90/11. The author endorses the argument put forward in the resolution that “in the case of an acquisition of defective goods *in specie*, the buyer may exercise rights under implied warranty or may avoid the legal consequences of his declaration of intent made under the influence of an error”. The arguments for the adopted standpoint are the following: the autonomy of private-law entities within the context of choosing measures to protect the interests of these entities, objection to treatment of implied warranty as *lex speciali* in relation to the provisions regarding an error and different aim of both legal institutions. The question of relations between provisions regulating rights under implied warranty and provisions concerning a declaration of intent made under the influence of an error was used by the author to consider broader issues associated with the concurrence of provisions conferring rights on civil-law entities. In literature and judicature two solutions were indicated in the case of a conflict of rules relating to the error and implied warranty: apparent concurrence – intended by the legislator – resulting in the exclusion of the other regulation and real concurrence – providing the possibility to use the two legal institutions depending on the choice of the buyer. The court adopts the second solution in the ruling, which may be an indication regarding the treatment of similar situations where the entitled entity has several parallel measures to protect his rights.

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