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The starting point of the action for liability

[Cass. Civ 1e, 28 June 2023, appeal no. 22-13.969, judgment published](#)

The action for professional liability is framed in time.

Thus, under ordinary law, a person who claims compensation for the damage they consider they are suffering as a result of a breach by a professional of their obligations, must act within five years from the day on which they knew or should have known the facts allowing them to take legal action (Article 2224 of the French Civil Code).

If the plaintiff delays taking action, they incur the "limitation period" of their action, that is to say, their action will be considered inadmissible, regardless of its merits or not.

The assessment of the limitation period is controlled by the Court of Cassation.

That is why it is regularly called upon to rule on the reasoning of the trial judges as regards the limitation period.

This was the case in a judgment of 28 June 2023 concerning an action for liability of a borrower against their bank.

In this case, an SCI (Private Limited Company for Property Purposes) had taken, in October 2005 and June 2006, two loans denominated in Swiss francs but repayable in euros.

As the Swiss franc suffered a depreciation of its value, the maturities of the loan increased the amount of maturities due by the SCI in repayment of the loan in February 2015.

Considering that the bank had failed in its "duty to inform, advise and warn about the risk that borrowing in a foreign currency could lead to the rising or depreciating of the foreign currency in which the loan was contracted, as well as the potentially significant economic consequences, such a variation, on the borrower's financial obligations ", the SCI sued the bank for civil liability in June 2015.

The Besançon Court of Appeal dismissed the action, considering the application time barred.

As a basis for its decision, it held that the damage resulting from the bank's failure to fulfil its obligation to provide information and advice could only consist of a 'loss of opportunity not to contract' the loans at issue and that that loss had necessarily manifested itself as soon as the loans were granted, when the SCI concluded the contracts.

However, noting that the SCI had only been able to note the increase in instalments from February 2015, the date of the first instalments revealing an increase, the Court of Cassation considered that the Court of Appeal had only been able to know the existence of its prejudice (that is to say the loss of opportunity not to subscribe and thus to avoid the occurrence of the damage) on that date.

The date of occurrence of the damage should therefore not be confused with the date of its disclosure to the victim.

It is from the date on which the victim knows or should have known of the damage that the limitation period starts.

This solution is not new (see in the same interpretation, for example: Cass. 1st civ., March 1, 2023, No. 21-20.260, Cass. Com, January 25, 2023 – No. 20-12.811) and in accordance with the text of Article 2224 of the Civil Code.

Recently again, in a judgment of 21 June 2023, the Court of Cassation had been able to recall that the limitation period for the action for compensation for damage resulting from the failure of a wealth management advisor to comply with his obligation to inform and advise begins to run, not on the date on which the investment takes place, but on the date of redemption of the life insurance contract (Cass. Com. 21 June 2023, 21-16.716).

It should nevertheless be noted that this same article recalls that the starting point of the limitation period is the day on which the victim has or should have known the facts allowing them to take legal action (Civ. 1e, January 5, 2022, appeal n ° 20-16350; Civ. 1e, 6 December 2017, 16-20.234).

For example, the starting point of the limitation period cannot be shifted to the day on which a lawyer gives their client a consultation, where this consultation has been established on the basis of the elements that were available to the client. The starting point is indeed the date on which the client became aware of the elements on the basis of which the lawyer's consultation is established and not the date on which the consultation is given to the client (Cass. Civ 1e, 11 September 2013, n°12-20.816).

Such an assessment is fortunate because the opposite solution would simply allow individuals to postpone the starting point of the limitation period at their convenience and thus to deprive it of any effect, thus leading to legal uncertainty for the defendants.

Hence the importance of not delaying consultation with your Council in case of doubt.