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The deadline for an action in guarantee of hidden defects

[Court of Cassation, Mixed Chamber, 21 July 2023, appeals n°21-15.809, 21-17.789, 21-19.936, 20-10.763, judgments published](#)

The action for guarantee of hidden defects obliges sellers, professionals or not, to deliver a good without defect likely to make it unfit for the use for which the buyer intends it, or which so diminishes this use that the buyer would not have acquired it, or would have paid a lower price, if they had known it (Article 1641 of the Civil Code)

This action is framed within a deadline, which has been the subject of many developments and discussions that have recently led the Court of Cassation, in a mixed Chamber, to rule on the time limit for an action in guarantee of hidden defects.

This period is **set out in Article 1648 of the French Civil Code**.

In its initial wording, Article 1648 of the Civil Code provided that the action for guarantee for hidden defects had to be "*brought by the purchaser, **within a short time**, according to the nature of the latent defects, and the use of the place where the sale was made*"

The wording of this article necessarily led the judges to interpret this notion of "short delay", leading to a very case-based and unpredictable case law.

The order of 17 February 2005 provided an important clarification, replacing the notion of "short delay" with "*within two years of the discovery of the defect*".

If this wording makes it possible to specify the duration of the period itself (2 years), it has not put an end to the questions that the judges have to resolve when, pursued by a guarantee action for hidden defects, the sellers oppose the lateness of the action.

Indeed, **case law quickly established the mechanism of the "cut-off period"** to frame the action in guarantee of hidden defects.

And for good reason, the two-year period running from the discovery of the defect, this sliding period did not allow sellers to anticipate the maximum period during which their guarantee could be put into play, leading to a feeling of legal uncertainty and sometimes heavy financial consequences (in terms of insurance in particular).

The judges therefore **set up a double deadline**. If the action in guarantee had **to be initiated within two years of the discovery of the defect, this action could not, in any event, be initiated beyond the ordinary law limitation period**, namely 30 years from the execution of the civil sale and 10 years for commercial sales.

In doing so, the judges introduced a certain balance between the interests of buyers and sellers.

The reform of the limitation period of 17 June 2008 has somewhat upset this balance:

- by replacing the ten-year and thirty-year limitation periods with a single period: ***"five years from the day on which the holder of a right knew or should have known the facts allowing them to exercise it"***;

- and by creating Article 2232 of the Civil Code: *"The postponement of the starting point, the suspension or interruption of the prescription may not have the effect of extending the period of extinctive prescription beyond **twenty years from the day of the birth of the right**"*.

The judges of the Court of Cassation then adopted two distinct positions as to the deadline for the action in guarantee of the hidden defect:

- keep the limitation period under ordinary law, i.e. 5 years from the sale (since the 2008 Reform). This was the position of the 1st Chamber and the Commercial Chamber of the Court of Cassation. This position was often considered too restrictive for buyers;

- apply article 2232 of the Civil Code, i.e. 20 years from the sale. This was the position of the 3rd Civil Chamber of the Court of Cassation.

By four judgments of 21 July 2023, the Court of Cassation wished to unify its position: a person who discovers the defect of the good that was sold to them has 2 years to initiate an action in guarantee of hidden defects, within the limit of 20 years from the sale of the good.

The stated objective of the Court of Cassation here is to "[answer] *both the questions of consumers, individuals or traders, who have discovered a manufacturing defect and must know the time they have to bring an action for compensation, and those of manufacturers on whom a guarantee obligation weighs*".

It *"thus strikes a **balance between the protection of the rights of consumers, who must not lose their right to act when they discover a latent defect late, and the imperatives of economic life, which require that the guarantee of a seller or manufacturer cannot be sought indefinitely***.
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This decision is indeed welcome in that it provides legal certainty.

However, it does not deprive the litigation of the time limits for the action in guarantee of hidden defect, since the judges retain the power to assess, in fact, the date on which the defect was discovered, making the two-year period run.

Debates are therefore not over in the courtrooms...