



Liability for Defects, Warranty under the New Civil Code

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In its provision on **purchase agreements**, the New Civil Code (NCC) lays down that a purchased item is defective unless delivered to the buyer in the agreed quantity, quality and design, if the seller sells an item different from that agreed upon, or if the documents required for using the item are not in order.

The buyer's rights arising from such defective performance are based not only on a defect that the item has upon the passing of the risk of damage (most often upon delivery) to the buyer even if the defect becomes evident later, but also on a defect arising after the passing of that risk if the defect has been caused by a breach of the seller's obligation. Unlike the existing Civil Code, the NCC no longer distinguishes between repairable and irreparable defects; the degree by which the defect breaches the agreement will newly be relevant. Hence, in the event of a material breach of the agreement, the buyer is entitled to the removal of the defect by receiving a new defect-free item, a missing item or to the repair of the item, to the adequate reduction of the purchase price or to the withdrawal from the agreement. However, if the buyer fails to notify the seller, in good time, as to which right the buyer has chosen, the buyer will only have the rights that would otherwise be granted to the buyer upon an immaterial breach of the agreement, i.e. the right to the removal of the defect or to the adequate reduction of the purchase price. Nevertheless, the remedy chosen by the buyer has to be adequate.

In addition to the rights arising from defective performance, the NCC also governs the **warranty for quality**. With such warranty, the seller undertakes that, for a certain period of time, the item will be fit for use for its usual purpose or that its usual properties will be maintained. It is sufficient if the warranty period or the useful life is specified on the packaging or even just in an advertisement promoting such a product.

Nonetheless, where the seller is an entrepreneur selling goods within the scope of the entrepreneur's business activity to consumers (private individuals), the regulation is governed not only by the aforementioned provisions but also by the provisions on selling goods in a shop, which lay down numerous derogations in favour of consumers. It is unnecessary for the consumer

to do the shopping in a 'brick and mortar' shop; these provisions will also apply to other methods of entering into agreements, such as on-line, by phone, etc.

The seller is liable to the buyer for the defect-free status of an item upon receipt; however, if the defect becomes evident during the first six months after handover, the consumer need not prove that the item was defective upon handover; the consumer only needs to prove that the item is defective. In that event, the seller can be defended by proving that the defect arose after the delivery of the item to the consumer.

At any rate, the consumer may exercise the right in respect of a defect that occurs in consumer goods within 24 months from their receipt; this period may be shortened to half only if previously used consumer goods are being bought.

The buyer may also claim the delivery of a new flawless item if this is adequate; otherwise, the buyer may withdraw from the agreement. If the defect can be removed immediately, the buyer is entitled to the removal of the defect free of charge.

The buyer is also entitled to the delivery of a new item or to the replacement of a component, or even to the withdrawal from the agreement in the event of a removable defect if the buyer cannot use the item properly because of the reoccurrence of a defect after a repair or because of a greater number of defects. However, unless the buyer resorts to the withdrawal or exercises the right to receive a new defect-free item, exercises the right to the replacement of the item's component or to the repair of the item, the buyer may claim an adequate price reduction.

These provisions, except for those on selling goods in a shop, shall also be applied, with certain derogations, for the client's rights in respect of defective performance in the event of a **works contract** irrespective of the fact whether one of the parties is or is not a consumer. The client is, however, obliged to inform other party about hidden defects without undue delay, after the client could have detected it if he acted diligently with due care, however, no later than five years after the take-over of the structure.