

KRS: What to Do If You Have Purchased a Defective Product?

Experience has shown that consumers frequently face difficulties when trying to assert their so-called implied warranty rights available to them in the case of non-conforming performance, warned the expert of Kovács Réti Szegheő Attorneys at Law. Dr. Loránd Kovács pointed out, however, that the new Civil Code coming into effect in March is trying to change this situation.

Consumers can firstly demand repair or replacement of the defective product; secondly, if repair or replacement is not possible for any reason, they can demand price reduction or repair the defective product themselves or by a third party at the expense of the obligated party; and finally, they can withdraw from the contract.

The above are implied warranty rights that one can assert in case of non-conforming performance, that is, for example, when the purchased product is defective, elaborated the expert of Kovács Réti Szegheő Attorneys at Law who also says that the assertion of implied warranty rights is often difficult and the new Civil Code is trying to change this situation.

Known difficulties to assert warranty rights

In addition to the regulatory environment, consumers often need to have legal knowledge and aptness to be able to assert their rights effectively in case of non-conforming performance.

It is a known practice for the handling of complaints that after quickly inspecting the defective product the merchant firmly states that the said defect must not have occurred, raises the suspicion of misuse and shifts the burden of proof to the consumer. Many people feel unprotected already at this moment and prefer to give up their claim, reminded dr. Loránd Kovács.

Another quite frequent phenomenon is the retailer's reference to the consumer's failure to meet the deadline for reporting the defect or asserting the implied warranty rights. Under the 1959 Civil Code (currently in force), consumers have a rather short time available to exercise their warranty rights and the complex and complicated deadline calculation rules are simply incomprehensible for most consumers. The new Civil Code, however, overcomes the above problem.

Who has to prove that the product was already defective when purchased?

It is important to know that the merchant may not state that the defect was caused by the consumer if the defect had been reported within 6 months from the date of purchase of the product because there is a legal presumption that the defect already existed at the time of the purchase. It is the retailer's responsibility to prove that the product was not defective when purchased.

If more than 6 months have elapsed, one should take into account the length of the manufacturer's warranty period. There might be cases where the law provides for a mandatory warranty period of even several years. So, if the manufacturer offers warranty, it will be the retailer's or the manufacturer's responsibility to prove during the warranty period that the product was not defective on the purchase date.



Taking into account the typical warranty period of consumer durables, consumers may not be obligated for an average of 1-2 years after the purchase to prove how and when the defect occurred, emphasised the expert of Kovács Réti Szegheő Attorneys at Law.

Deadline for reporting a defect

The period available for consumers to report a defect is 2 months from the date of discovery of the defect. If a defect is reported beyond the said period, the consumer may continue to assert his warranty rights but he has to bear the extra costs occurring in connection with the delay.

Warranty claims expire in 2 years from the purchase date. If, however, the defect is discovered more than 2 years after the purchase date, the consumer may continue to exercise his implied warranty rights for 3 months from the discovery of the defect because, in the case of implied warranty, the new Civil Code abolished the limitation period.

So, the regulatory environment has definitely improved in this area, however, firm action and legal knowledge are still required for success, emphasised dr. Loránd Kovács.