



What is the Difference Between Warranties and Guarantees in Practice?

This article is one of a three-part series that seeks to answer frequently asked questions about warranties and guarantees. This article examines how warranties and guarantees differ from a practical perspective. The second article in the series discusses the impact of alteration works on guarantees. The third article addresses what happens to warranty and guarantee rights when a property is sold.

1. The issue

- [1] The difference between warranties and guarantees is often the subject of misunderstandings. While the purpose of these two legal concepts is similar, since both address the consequences of defective performance, there are significant differences in the way they are regulated, and those differences have major practical implications.
- [2] The most significant practical difference between the two legal concepts lies in the distribution of the burden of proof, which can be a decisive factor in the outcome of a legal dispute, especially when the cause of a defect is difficult or impossible to determine after the fact.
- [3] This article uses judicial practice to demonstrate how the difference between warranties and guarantees can determine the outcome of a given legal dispute.



2. The burden of proof

- [4] Under Section 6:171(1) of the Hungarian Civil Code, whoever guarantees that a product or service is defect-free or undertakes a guarantee obligation imposed by law will only be relieved from liability during the term of the guarantee if they are able to prove that the cause of the defect arose after the supply was completed. It follows from this rule that in the case of a guarantee, the burden of proof is on the obligor (the contractor): it is the contractor that has to prove that it performed without defects.
- [5] By contrast, under Section 6:159 of the Hungarian Civil Code, in the case of a warranty, the burden of proof falls on the obligee (the client). Thus, the client must prove that the cause of the defect already existed at the time when the supply was completed and did not arise as a result of subsequent use or other circumstances. This difference may seem technical at first glance; however, it fundamentally determines the course of the proceedings and the possible litigation strategies of the parties.
- [6] This is particularly so because the party bearing the burden of proof must not only establish the symptoms of the defect, but must also successfully prove the cause of the defect. For example, in the case of water infiltration at a completed facility, a client relying on a warranty must prove that the water infiltration is attributable exclusively to faulty construction, whereas in the case of a guarantee, the contractor must prove what specific circumstance, other than its own performance, caused the water infiltration.
- [7] The distribution of the burden of proof and the facts to be proven are well summarised by decision BDT2016. 3492: "During the term of the guarantee, professional uncertainties related to the cause, origin and emergence of the defect are borne by the obligor, unlike in the case of statutory warranties, because the obligor must prove what the cause of the defect was, and also that it arose after the supply was completed, due to a cause beyond the obligor's control; a non-exhaustive list of possible defects is not sufficient for exemption either. (...) In the case of defective performance, the distinction between a warranty and a guarantee acquires its significance precisely with respect to the burden of proof: in the case of a warranty, the burden of proving the emergence and timing of the cause of the defect falls on the obligee, whereas in the case of a guarantee, it is borne by the obligor."



3. Dealing with uncertainties

- [8] The difference in the burden of proof becomes particularly relevant in practice when the cause of a defect cannot be clearly determined. In such cases, the legal system resolves the uncertainty by applying the burden of proof – or, in the terminology of the Code of Civil Procedure, the interest in proving a fact: the adverse consequence is borne by the party that had an interest in proving the alleged fact. For example, if it cannot be determined what exactly caused the water infiltration, this must be assessed to the detriment of the contractor in the case of a guarantee, but to the detriment of the client in the case of a warranty. In the former case, the contractor must fulfil its guarantee obligation; in the latter case, the client's warranty claim must be dismissed.
- [9] The above-referenced decision BDT2016. 3492 also held that, in order to be relieved from a guarantee obligation, a non-exhaustive list of possible causes of the defect is not sufficient; the contractor must clearly prove the specific cause of the defect. In the case of a warranty claim, this principle applies in reverse: in order to establish the contractor's defective performance, the client must prove a cause of the defect that is exclusively attributable to the contractor's performance. If the client is unable to do so, or the contractor proves an alternative cause of the defect that cannot be ruled out and that may have led to the defect independently of the contractor's performance, then the client's claim may be dismissed.
- [10] The above decision also established that the obligor under a guarantee will not be relieved from liability even if "the circumstance that caused the defect was not recognisable or discoverable given the current state of technical and professional knowledge." This finding underlines the strictness of the evidentiary proceedings: the court may not disregard the burden of proof applicable to the party bearing such burden even in the case of defects that are unrecognisable by science. On this basis, the obligor cannot be relieved from its guarantee obligation.
- [11] Decision BDT2002. 566 illustrates similar uncertainties in a specific case: "The technical assessment of the cause of the defect differed across the available expert opinions. What both expert opinions had in common was that neither was able to clearly identify, determine or ascertain the cause of the defect after the fact. As a result, the experts took stock of all theoretically possible sources of the defect, whereas the expert opinion prepared by Budapest University of Technology and Economics primarily examined the defect itself, assessed probable causes in relation thereto, and did not examine the origins of the causes of the defect in detail. Even within the expert opinions, the experts differed from each other as to the weight of probability assigned to the possible sources of the defect."

[12] The decision made the following key finding: "It is in such professionally indeterminate and uncertain situations that the law applies the legal concept of the burden of proof, which, more specifically, means who must prove a fact, and in connection therewith, who bears the risk of unsuccessful proof."

4. Recommendations

[13] The most important lesson that can be drawn from the above is that the difference between a guarantee and a warranty does not only have theoretical significance; it also has practical implications that fundamentally determine the parties' ability to assert their claims and mount their defence. The parties are well advised to always keep this in mind and to consciously adjust their strategies accordingly.

[14] In the case of a warranty, the contractor's defence may also be successful if it demonstrates what alternative causes, other than its own performance, may have given rise to the symptoms of the defect. If the role played by such alternative causes of the defect in the occurrence of the malfunction cannot be ruled out, the contractor may be relieved from its warranty obligation.

[15] In the case of a guarantee, however, this tactic would not be effective, because the contractor cannot be relieved from liability merely by presenting alternative causes of the defect. In order to mount a successful defence, the contractor must either prove that its supply was defect-free at the time of performance, or that the symptoms of the defect were caused exclusively by a cause that arose after the performance and was beyond the contractor's control.

[16] For clients, extending the guarantee period and the material scope of the guarantee ensures that the burden of proof remains in place for as long and as broadly as possible. Contractors, in turn, are well advised to define the terms of the guarantee precisely, specifying the exact technical content and duration that the guarantee covers, as well as the circumstances under which they may be relieved from liability. In addition, it is in the interest of both parties to maintain proper documentation: recording the condition of the works at the time of the supply and keeping precise construction logs can serve as strong evidence at a later stage.

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