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## UNENFORCEABILITY OF CLAIMS FOR DAMAGES IN COURT PRACTICE

**ABSTRACT:** The statute of limitations is an essential element in claims for damages proceedings. If the claimant fails to seek damages in time, they may lose the right to claim restitution from the debtor. To protect injured parties, the laws regulate this matter should be interpreted carefully and uniformly. It is of crucial importance to establish legal security regarding unenforceability, especially the statute of limitations, by taking a decisive and uniform position. Different court opinions and decisions can contribute to feelings of uncertainty and vulnerability, and ultimately generate citizens' distrust in the judiciary.

**KEY WORDS:** unenforceability, statute of limitations, delay and interruption of limitation period

### 1. Introduction

This paper will discuss the legal institute of unenforceability of claims for damages due to the statute of limitations. The timing when the injured party files a damages claim is crucial, as this timing often decides when and/or whether the injured party will be awarded damage compensation. The timing is of special import since the injured party may lose the right to seek compensation because the claim was filed after the prescribed time limit. As a result of his/her failure to act, the injured party may lose the right to seek compensation from the tortfeasor.

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Modern legislation prescribes the statute of limitations for certain legal actions in order to provide legal security. Many legal systems prescribe the statute of limitations for damage claims. This applies also to the Law on Contracts and Torts of the Republic of Serbia. The statute of limitations is an essential element in claims for damages proceedings. If the claimant fails to seek damages in time, they may lose the right to claim restitution from the debtor. If the claimant is ignorant of time limits, he or she may be denied the right to be awarded damage compensation.

The first part of this paper discusses the basic concepts of damages and damage compensation, and the second part will analyse the statute of limitations in Serbian law.

## 2. The Statute of Limitations for Claiming Damages

The Law of Contracts and Torts (Art. 154, paragraph 1) states: “Whoever causes injury or loss to another shall be liable to redress it, unless he proves that the damage was caused without his fault”. Pursuant to this provision, damage compensation is a non-contractual obligation which occurs by causing damage and obliges the tort-feasor to compensate it to the injured party. In legal theory, damage is defined as a violation of one’s subjective right or interest protected by a right caused by a harmful act (Blagojević-Krulj, 1983: 513).

Injury or damage can be divided into two types: material (property) damage and non-material (non-property) damage. The Law of Contracts and Torts defines injury as a diminution of someone’s property (simple loss) and preventing its increase (profit lost), as well as inflicting on another physical or psychological pain or causing fear (non-material damage).

Material damage is a violation of one’s property which occurs as a diminution of property (simple loss) or preventing its increase (profit lost or future loss). Non-material (non-property) damage is a violation of personal rights, goods, life, health, honour or freedom. Non-mate-

rial damage may be present or future; the Law of Contracts and Torts defines it as suffering physical or psychological pain due to diminished physical functioning or disfigurement, defamation, injury of reputation, violation of rights and freedoms, as well as suffering psychological pain due to the death or severe disability of a family member (Petrović, 1996: 87).

The injured party who suffered one or more than one type of injury has the right to seek compensation from the tort-feasor. However, after a certain time limit (the statute of limitations) has expired the injured party may lose the right to seek compensation at court. The statute of limitations does not nullify the right to compensation, but it does prevent the injured party to file a claim for damages. The Law of Contract and Torts (Art. 360 (1)) states: "A right to request fulfilment of an obligation shall come to an end if time barred by statute of limitations."

However, the statute of limitations does not prevent the debtor from compensating the injured party, which means that the damage it caused can be compensated even after the prescribed statute of limitations. The debtor is thus considered to have fulfilled a natural obligation. This fulfilment depends on the will of the injuring party; therefore, the debtor who fulfils a natural obligation may not ask for a refund of the payment, even if he did not know that the obligation has expired.

Since the statute of limitations does not prevent the debtor from compensating the injured party, courts are not obligated to observe the statute of limitations. It is, in fact, the debtor's obligation to invoke the statute of limitations clause. The Law on Contracts and Torts (Art. 155 (3)) states: "The court shall not adhere to the statute of limitations, if the debtor did not refer to it". The statute of limitations complaint is in the province of material law and must be referred to by the debtor.

Before the Civil Procedure Law entered into force ("Official Gazette of the Republic of Serbia", No. 125/04), a debtor was allowed to file the statute of limitations complaint until the judgement is legally effective. However, according to the 2004 Civil Procedure Law, this complaint may be filed until the conclusion of the main hearing. According to the Civil Procedure Law (Art. 298) complaints may be filed on the grounds of procedural law; however, the statute of limitations

complaint falls within the province of material law, and therefore may not be grounds for complaint, as stated in Art. 372 (Supreme Court of Cassation, Rev 759/2017).

### 3. Time Limits for Claiming Damages

Article 360 (2) of the Law on Contracts and Torts stipulates that unenforceability due to the statute of limitations shall follow the expiration of the period specified by statute during which the creditor was entitled to request fulfilment of the obligation. According to the same law, the right to request fulfilment of an obligation shall expire after ten years if the law does not prescribe a different time limit. In legal practice and theory, the ten-year statute of limitations is called the general statute of limitations. The general statute of limitations is not applied to claiming damages for loss. Articles 376 and 377 of the Law on Contracts and Torts prescribe different statutes of limitations. Article 376 prescribes the statute of limitations during which the injured party can seek damage compensation in case of tort liability not caused by a criminal offense, whereas Article 377 in case when the damage or loss was caused by the criminal offense.

Article 376 of Law on Contracts and Torts states that a claim for damages for loss not caused by a criminal offense shall expire three years after the party sustaining injury or loss became aware of the injury and loss and of the tort-feasor (subjective statute of limitations). In any event, such claim shall expire five years after the occurrence of injury or loss (objective statute of limitations).

When damage or loss was caused by a criminal offense, the statute of limitations for claiming damages is the same as the one prescribed for criminal prosecution of the tort-feasor. Article 377 states: "Should loss be caused by a criminal offence, and a longer unenforceability time limit be prescribed for the criminal prosecution, the claim for compensation against the person liable shall expire upon the expiration of the limitation period set forth in the statute of limitations of the criminal prosecution".

In recent years, determining the statute of limitations when damage or loss was caused by a criminal offense, but the debtor is a legal person and not the tort-feasor has become a debatable issue in court practice. According to the Article 170 (1) of the Law on Contracts and Torts the enterprise at which the employee was employed at the moment of causing the loss or injury shall be liable for damage caused by an employee to a third person unless it is proved that the employee, in given circumstances, had proceeded as he should have. Article 172 states that a legal person (corporate body) shall be liable for damage caused by its members or branches to a third person in performing or in connection to performing its functions. On the other hand, according to the Article 174, the owner of a dangerous object of property shall be liable for injury or loss caused by it while for injury or loss caused by a dangerous activity the person performing it shall be liable.

It is Article 377 (1) referring to the “person liable” which has been the matter of dispute. The issue is whether the “person liable” is a natural person who has committed a criminal offense, or if the “person liable” can also be a legal person who is liable under the civil law, i.e., indirect person. The Civil Division of the Supreme Court of Serbia at the session on 10 February 2004, passed the opinion that the statute of limitations for claiming damages from the Article 377 of Law on Contracts and Torts is applied only to the tort-feasor, not the state, i.e., the legal person liable for damage instead of him, according to the provisions of Article 172 of Law on Contracts and Torts. The right for claiming damages based on the state’s liability for the damage caused by its body shall expire within the limitation period specified in the Article 376 of Law on Contracts and Torts. The opinion reads: “Claiming damages based on the state’s liability for damage caused by its body by unlawful deprivation of liberty shall expire within the time limit specified in the provisions of Article 376 of Law on Contracts and Torts” (Legal understanding of the Civil Division of the Supreme Court of Serbia, 2004).

One verdict of the Supreme Court of Serbia, in the case of claiming non-material damage for mental pain suffered due to the death of a close person injured in a car accident, reads: “...A criminal procedure was conducted against the first defendant, an employee of the second defendant, in which he was found guilty of criminal offense and was

sentenced to imprisonment. Lower courts have based the responsibility of the second defendant, a legal person, on the provisions of Articles 170 and 174 of the Law on Contracts and Torts due to the fact that the first defendant caused damage to a third party as the second defendant's employee and in connection with work. Moreover, what is important is the second defendant's responsibility according to the principle of strict liability, given that he is an owner of dangerous objects. Therefore, according to the position of those courts towards the second defendant, the statute of limitations from Article 377 of the Law on Contracts and Torts is applied, i.e., the limitation period of 20 years in this specific case. This limitation period has not expired, considering that the accident happened in 1990 and the claim for damages was submitted in 2001. Deciding the case after the revision of the second-order defendant, the Supreme Court of Serbia stated that the refuted lower-instance verdicts were rendered with wrong application of substantive law, since in that case the statute of limitations from Article 376 of LCT should be applied to the second defendant as a legal entity" (The Supreme Court of Serbia, Rev. 127/06 2006).

Prior to the opinion of the Supreme Court of Serbia from February 2004, it was a common court practice to hold that the statute of limitations from Article 377 of Law on Contracts and Torts applies to damage or loss caused by a criminal offense, regardless of whether the tort-feasor is the liable person. This was related only to the cases when the criminal offense and the liability of the person for the committed criminal offense were established within the final, enforceable judgement of the criminal court. Exceptionally, if there were some procedural obstacles due to which it was completely impossible to initiate or end the proceedings against the perpetrator, either because he died or is unavailable to the prosecuting authorities, the civil court is authorized to determine, as a preliminary question, whether the damage was caused by an action which contains elements of a criminal offense. This is because a criminal offense may exist even if the criminal procedure has not happened. At the same time, the action of the civil court is not aimed at determining criminal responsibility, since this can be determined only during criminal proceedings. In fact, it is aimed at applying special rules for expiration from Article 377 of Law on Contracts and

Torts in accordance with the principle of providing stronger protection of the injured party's right to compensate the damage caused by criminal offense. If, objectively speaking, criminal proceedings against the perpetrator or one of the co-perpetrators could or can be initiated or conducted, the stated rules for discussing the previous issue as an exception in civil proceedings could not be applied.

This opinion was expressed in the well-known legal understanding of the Civil Division of the Supreme Court of Serbia at the session on December 27, 1999. The Supreme Court of Serbia stated that the damage caused to members of the former JNA (deaths, wounds) in armed conflicts with paramilitary formations of the former republics of SFRY until the day of their international recognition by the UN General Assembly on May 22, 1992, was caused by armed rebellion under Article 124 of the Criminal Code of Yugoslavia. Therefore, its claim expires within the limitation period of 15 years for criminal prosecution for that act (Article 377 (1), the Law on Contracts and Torts). (Legal understanding of the Civil Division of the Supreme Court of Serbia, 1999, page 31)

The position that the liable person from the Article 377 of Law on Contracts and Torts can be a legal person as well was revised in 2011. The Constitutional Court of Serbia passed the opinion regarding the statute of limitations for compensating the damage caused by criminal offense, which reads: "In the case when the damage was caused by a criminal offense (Article 377 of the Law on Contracts and Torts), if a different statute of limitations is intended for criminal prosecution than the ones from Article 376 of the Law on Contracts and Torts, a request for compensation for any person liable, not only the tort-feasor, expires when the limitation period set for the statute of limitations for criminal prosecution is over, only if a final verdict establishes the existence of a criminal offense and the defendant is found guilty of a criminal offense. Termination of the statute of limitations for criminal prosecution entails the termination of the statute of limitations for claims for damages. The same statute of limitations applies if the criminal proceedings are suspended, if they could not be initiated because the defendant has died or has become mentally ill, or if there are other circumstances which exclude prosecution and liability of the defendant, such as amnesty and

pardon. The general statute of limitations for claims from Article 376 of Law on Contracts and Torts applies in all other cases” (The Constitutional Court of Serbia 400/1/3, 2011).

Despite this, in court practice there have been different decisions and verdicts, closer to the 2004 position of the Supreme Court of Serbia. Thus, in the 2017 issue of the Kragujevac Court of Appeals Bulletin, the following position is expressed: “Q: A worker of the defendant company was convicted of a criminal offense in the workplace or in connection with functioning of the defendant company, which resulted in the death of another employee from the same company. The worker’s family filed a lawsuit against the company for non-material damage. Does the claim for damages expire when the time set for the statute of limitations for criminal prosecution expires, because a longer statute of limitations is required than the ones prescribed by Article 376 of the Law on Contracts and Torts for the respondent company which is liable in terms of Article 170 of the Law on Contracts and Torts or only against the harmful employee of the defendant company for whom the final verdict established the existence of a criminal offense and found him guilty, i.e. whether the privileged to the statute of limitations stated in the Article 377 LCC also applies to the defendant company? A: When the damage was caused by a criminal offense, if a longer statute of limitations is required than the ones prescribed in Article 376 of the Law on Contracts and Torts, the claim damages against each person liable, not only the debtor, expires when the time set for the statute of limitations for criminal prosecution is over” (Ristić, 2017: 56).

In proceedings in which the perpetrator of a criminal offense appears as the liable person, the statute of limitations from Article 377 of Law on Contracts and Torts shall apply. Therefore: “When a criminal procedure has been conducted against the perpetrator of criminal offense which was concluded with a conviction, the basis for deciding on the objection of statute of limitations emphasized in civil proceedings is the provision of Article 377 of the Law on Contracts and Torts.” From the explanation: “In terms of Article 377, paragraph 1 of the Law on Contracts and Torts, the person liable is considered to be the perpetrator of the criminal offense, as well as any other person who is liable on any grounds for the damage caused by criminal offense. Therefore, the

insurance company which insured the injuring party's vehicle is included as well." (Subotica Higher Court, 219/12, 2012)

This is not the only debatable issue regarding the statute of limitations in court practice. Aside from the issue regarding "the person liable" from the Article 377, it is crucial to know from the Article 376 when a statute of limitations runs. In fact, the moment of the occurrence of damage and awareness of damage is also crucial because both the awareness of the damage and the awareness of the person liable for the damage need to exist at the same time. If this is not the case, the statute of limitations shall run from the time either of these occurred last.

Due to the nature of damage or loss, it is especially crucial to know when non-material damage had occurred and when the injured party found out about the damage. Non-material damage exists in the case of violating subjective non-property rights and personal interests. Even though these damages do not directly affect property, the subject experiences injury or loss (Vedriš-Klarić, 1983: 86). Non-material damage injures fundamental human rights and values. Therefore, it is essential to carefully determine when a statute of limitations starts to run.

In Serbian court practice, it is customary to relate the moment the injured party, who suffered physical injury became aware of it, and the end of his treatment, i.e., when the injury took its final form. However, the injured party need not be simultaneously aware of every feature of non-material damage. The statute of limitations for features of non-material damage runs from the day when a certain feature enters its final stage. The period of three years for the suffered injury starts to run from the moment when severe and moderate pain lost its durability and became occasional low-intensity pain; for the suffered fear, it runs when the fear of death ceased; for the disability since the last surgical intervention, it runs when there is a certain change in appearance; and for the mental distress due to diminished functioning, it runs from the end of a treatment. "The statute of limitations for the non-material damage starts to run from the day when certain aspects of non-material damage are in the final stage." (The Supreme Court of Cassation in Serbia, Rev.251/98). Additionally, "for physical pain, the statute of limitations starts to run from the cessation of pain; for fear, it runs from the cessa-

tion of fear, and for mental distress due to diminished functioning, the statute of limitations starts to run from the end of treatment and knowledge about the existence of reduced functioning” (The Supreme Court of Cassation in Serbia, Rev.497/97).

The Novi Sad Court of Appeals stated the following opinion: “Finding out about the damage is not bound to the day of its occurrence, but to the circumstances regarding duration and cessation of physical pain or fear, i.e., to the end of treatment and knowledge that there has been a permanent damage to health and general functioning. Claims for every feature of non-material damage have different statutes of limitations, and the same applies for material damage compensation.” (The Novi Sad Court of Appeals, Gž 4485/16)

The end of treatment is not the only basis for determining when the statute of limitations for non-material damage claims starts to run. The Belgrade Court of Appeals decision reads: “For determining the unenforceability of claims for non-material damage, it is of vital importance to determine when each indicated feature became stable. It is irrelevant whether the treatment is completed or not, as certain medical conditions may exist in their final stage, and their treatment last for the rest of a person’s life.” The rationale goes on to state: “According to Article 376 (1) of the Law on Contracts and Torts, a claim for damages for loss caused shall expire three years after the party sustaining injury or loss became aware of the injury and loss and of the tort-feasor. Consequently, it is necessary to clarify when each of the indicated features was consolidated. It is irrelevant whether the treatment is completed or not, as certain medical conditions may exist in their final stage, and their treatment last for the rest of a person’s life. For the starting point of the statute of limitations, according to the Article 361 (1) of the Law on Contracts and Torts, it is necessary to clarify when diminished functioning became a permanent state, when scarring as grounds for disfigurement claims became observable, when physical pain of severe and medium intensity ceased, when primary and secondary fear faded, and when personality changes began to manifest through reduced life activities. Therefore, the time of filing the claim is only relevant if each of the indicated features was consolidated at that time – the reason used by the appellate judgement in determining the start of a statute of lim-

itations. On the contrary, the time of filing a claim would be a legally irrelevant fact, as neither the actual nor consolidated state is fully determined on each of the indicated features for non-material damage.”

The day of causing the damage cannot be regarded as the starting point for the statute of limitations and for some aspects of material damage, such as material damage compensation on behalf of lost earnings or on behalf of other people’s care and assistance. According to the Article 195 of the Law on Contracts and Torts, one who inflicts to another bodily injury or impairs his health, shall be liable to reimburse his medical expenses, as well as other related necessary expenses, including recovery of the salary lost due to inability to work during medical treatment. Should the injured person due to total or partial disability lose his salary, or should his needs become permanently increased, or should possibilities of his further development and advancement be destroyed or reduced, the person liable shall pay to the injured one specific annuities as damages for such loss.

According to the case law, the statute of limitations for claims for such material damage does not coincide with the date of damage occurrence but runs from the day when the state body enacted the act which determined disability. “The day when the injured person was granted the right to disability pension due to total inability to work shall be considered the starting point of the statute of limitations for claims of loss of earnings.” (The Supreme Court of Serbia, Rev.236/08). For the injured party, the awareness of who the tort-feasor is irrelevant; what is important is the awareness of who the person liable is.

#### **4. Delay of the Statute of Limitations**

The Article 381 of the Law on Contracts and Torts stipulates that the period of unenforceability due to statute of limitations shall not run: (i) between spouses; (ii) between parents and children during the validity of parental right; (iii) between a ward and his guardian, and/or a guardianship organisation in the course of the guardianship relationship, and until relevant accounts are settled; (iv) between two cohabitantes during the course of such cohabitation.

Article 382 stipulates that the limitation period due to statute of limitations shall not run when a certain state or employment applies to the injured party or the tort-feasor: (i) during mobilization, in case of imminent danger of war, or war – relating to claims of persons engaged in the military; (ii) concerning claims of persons employed in another person's household, against the employer or members of his family living with him in the same household – in the course of such employment.

As it is impossible for any law to foresee all situations which may prevent the injured party from claiming damages, the Law on Contracts and Torts in Article 383 stipulates that the limitation period shall not run for the entire time of creditor's inability to institute legal proceedings demanding the fulfilment of obligation due to insurmountable obstacles.

According to the aforementioned provisions, we can conclude that the limitation period, in which the injured party may claim compensation for damage, may be put on hold or may be stopped when certain circumstances are explicitly prescribed by law. Then, a delay of statute of limitations occurs and such a delay is not counted in the limitation period. The statute of limitations does not include the time during which the injured party was legally or physically unable to claim damages from the person liable. The time before a delay of statute of limitations is counted within the prescribed limitation period, and it continues to run when the cause due to which a delay occurred ceases. If the statute of limitations could not start running due to some legal cause, it starts to run when that cause ceases.

Exceptionally, according to the Article 385 of the Law on Contracts and Torts, if a delay of statute of limitations involves minors having no representative and other unrepresented persons without business capacity, the statute of limitations shall not take place until the expiration of a two-year period from their regaining business capacity or obtaining a representative. According to the Article 386, unenforceability due to statute of limitations of a claim against a person serving his military term, or being on manoeuvres, shall not take place until the expiration of a three-month period after completing the military term or after the end of manoeuvres.

## 5. Interruption of the Statute of Limitations

A statute of limitations may be interrupted, and according to the Law on Contracts and Torts, this may occur by the debtor acknowledging the debt (Article 387) or by instituting legal proceedings and by other motion of a creditor against a debtor at court or another competent agency (Article 388). We can conclude that certain actions of the injured party as a creditor, or the tort-feasor as a debtor, can lead to the interruption of statute of limitations. In other words, the interruption of statute of limitations can even occur before the end of the statute of limitations when the legal effect prescribed by law occurs. Then such the effect causes the limitation period, which expired before the interruption, to no longer be counted in the statute of limitations (Raspor, 1982: 36).

Legal actions taken by a debtor or a creditor, and which are specified in Articles 387 and 388 of the Law on Contracts and Torts, have the consequence that the time which passed before taking these actions is not counted in the statute of limitations. After initiating these actions, the statute of limitations starts running again.

The action of the debtor interrupts the statute of limitations when he acknowledges the debt. The debt recognition can be made not only in a written or oral statement given to the creditor, but also in an indirect way, such as giving repayment, paying interest, or giving securities. The recognition of the debtor must include both the recognition of the claim and the recognition of the amount of the debt, whereas the recognition of the legal basis alone does not lead to the interruption of the statute of limitations.

The statute of limitations may be interrupted by the creditor instituting legal proceedings or by other motion of a creditor against a debtor at court or another competent agency with the aim of determining, securing, or realizing the claim. If the creditor withdraws the claim, it is considered that the interruption of the statute of limitations did not occur. Moreover, if the lawsuit filed by the plaintiff or his claim is dismissed or rejected, it would be also considered that the statute of limitations is not interrupted. However, if the lawsuit against the debtor is dismissed due to the lack of jurisdiction or another reason which does

not concern the essence of the matter, and if the creditor reinstates the action within three months from the date of the decision that the lawsuit is dismissed, it is considered that the statute of limitations had not been interrupted by the first lawsuit.

In the already existing litigation, the creditor can modify the lawsuit by also filing a claim for damages. In such cases there is a question of when the interruption of the statute of limitations occurs – when filing a lawsuit or when modifying the lawsuit. Generally, in court practice it is accepted that the interruption occurs by modifying the lawsuit, e.g.: “Unenforceability of claims, which is the subject of the second claim attached to the existing lawsuit, is interrupted by modifying the lawsuit and not by the date of the initial lawsuit” (The Commercial Appellate Court, Pž 1624/19). The rationale reads: “The Commercial Appellate Court states that in the initial act i.e., the lawsuit from July 15, 2011, the plaintiff sought the monetary compensation, as a non-contractual damage compensation, for the drainage on disputed 359 ha that caused the reduction of his property... In addition to the initial filed lawsuit, the plaintiff filed a claim for damage compensation on May 7, 2014, where he stated “damages on yields” which means that the plaintiff sued for this damage only on May 7, 2014, and not as the lower court misstated on July 15, 2011. Hence, the statute of limitations was interrupted only on May 7, 2014, which further indicates that the lower court mistakenly assessed the outstanding objection of the expiration, and which the appellant points out in the appeal. The initially filed lawsuit and the subsequent claim for compensation for damage on yields are not identical, but it is the fact that the defendant modified the lawsuit by adding a new claim to the existing lawsuit. Regarding this claim, as justified, the statute of limitations was interrupted on May 7, 2014, and the litigation in respect of the same began to proceed by submitting that claim to the defendant. Therefore, the stated reasoning of the first instance court that the statute of limitations was interrupted by filing a lawsuit on July 15, 2011, cannot be accepted.”

The mere claim of the creditor addressed to the debtor to pay the debt is not a reason to interrupt the statute of limitations, it is rather necessary to address the claim to the competent state body. “A claim for damage compensation filed in a peaceful procedure does not inter-

rupt expiring of claims for damage compensation” (Novi Sad Higher Court, Gž 1533/17). The rationale reads: “Filing a claim for a peaceful settlement of the dispute has not resulted in the interruption of a statute of limitations. For the interruption of a statute of limitations, it is not sufficient for the creditor to claim the debtor orally or in writing to fulfil an obligation in terms of the provision of the Article 391 of Law on Contracts and Torts. The statute of limitations is interrupted when the debtor acknowledges the debt, by filing a lawsuit and any other action taken by the creditor against the debtor before a court or other competent state body for the purpose of determining, securing, or realizing a claim in terms of Articles 387 and 388 of Law on Contracts and Torts. A claim for damage compensation to the responsible person, i.e., to the debtor, does not interrupt a statute of limitations before filing a lawsuit according to the Article 388 of Law on Contracts and Torts.”

Interruption of the statute of limitations for the right to damage compensation also occurs when the creditor in the criminal procedure files a property claim. This interruption of the statute of limitations is not related to the outcome of the criminal procedure if the injured party was referred to litigation in order to realize his claim and if he initiated a lawsuit for damages within three months from the finality of the criminal court judgment. (The Supreme Court of Serbia Rev. No. 1651/90). The interruption of the statute of limitations shall be deemed not to have occurred if the creditor withdraws the lawsuit.

A property claim filed in criminal proceedings does not have to be determined in terms of the amount of the claimed damage. Such a position was taken by the Supreme Court of Serbia, stating: “The statute of limitations is interrupted by filing the property claim in criminal proceedings and without determining the amount of compensation for damage.” The rationale reads: “Namely, filing the property claim in criminal proceedings (without determining the amount of compensation for damage on the criteria) is sufficient and has the effect of interrupting the statute of limitations from Article 388 of the Law on Contracts and Torts. According to Article 203, paragraph 2 of the Code of Criminal Procedure (“Official Gazette of the Republic of Serbia“ 58/04 which applies to the solution of a specific relation, bearing in mind that the actions for which there were reasonable criteria of a committed crime

in 2008), property claim may be filed no later than the end of the main trial before the lower court. The person authorized to file a proposal is obliged to specifically state his claim and to provide evidence.

The meaning of the phrase “specifically state one’s claim” cannot be understood as the obligation of an authorized person (the injured party) to determine the amount of non-material damage according to the aspects referred in Article 200 of the Law on Contracts and Torts at the time of filing. The aforementioned rule should be interpreted in connection with the Article 201, paragraph 2 of the Code of Criminal Procedure, according to which the property claim may relate to damage compensation, restitution or annulment of a particular legal transaction. Thus “for determination”, according to the Supreme Court of Cassation, is sufficient that the injured party is determined in terms of the aspects referred in the Article 201, paragraph 2 of Code of Criminal Procedure at the moment of filing the property claim. The final determination, in this case the amount of damage, can be made until the conclusion of the main trial (Article 203, paragraph 4 of the CPC), because in the initial stage the injured party usually does not have all the elements to determine the type and amount of damage (forensic evaluation is usually necessary). Determining the amount of compensation for material or non-material damage in criminal proceedings depends on the presentation of evidence – establishing the facts. Even in civil proceedings, the court is not authorized to dismiss the lawsuit due to failure to determine the amount or type of damage (unless the lawsuit is filed by a lawyer).”

## 6. Conclusion

From the above, it can be concluded that the legal institute of the statute of limitations is important in the procedure of claiming damages. If the injured party fails to act, he can lose the right to demand from the tort-feasor to compensate him for the damage. In order to protect injured parties, the interpretation of the norms that regulate this matter should be approached comprehensively and uniformly. To protect injured parties, the laws regulate this matter should be interpreted carefully and uniformly. It is of crucial importance to establish legal secu-

rity regarding unenforceability, especially the statute of limitations, by taking a decisive and uniform position. Different court opinions and decisions can contribute to feelings of uncertainty and vulnerability, and ultimately generate citizens' distrust in the judiciary.

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