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THE STATUTE OF LIMITATIONS FOR THIRD-PARTY CLAIMS FOR DAMAGES AGAINST THE INSURER IN CONTRACTUAL LIABILITY INSURANCE

SCIENTIFIC PAPER

Abstract

Professor Jakov Radišić stated: "The word 'responsibility' serves as a comfort to those who feel that an injustice has been done to them, and a scarecrow to those who have committed the injustice." Following his line of thought, the term 'insurance' provides comfort to those who have committed an injustice and, above all, to those who have suffered from it. However, what if the wronged party suffers further due to the incorrect application of legal provisions? Given the increasing importance of liability insurance, the author analyzes the direct claim of the third party against the insurer and its relationship with the rules of civil liability. Through a systematic interpretation of the provisions of the Law of Contract and Torts that regulate the statute of limitations for claims for damages, the author concludes that the incorrect application of these provisions has become customary in practice. By analyzing the causes of this practice, the author asserts that adherence to the principle of legality should prevail over the potential consequences of its application.

Keywords: *liability insurance, contractual liability, statute of limitations, direct claim of third party against the insurer.*

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I Liability Insurance

1. General Overview of Liability Insurance

According to the general classification of types of insurance, liability insurance[2] is categorized under property insurance. As a result, the legal provisions related to property insurance are also applicable to liability insurance.[3] However, the subject of liability insurance is civil liability[4], which involves two primary parties – the party that caused the damage and is liable for it (tortfeasor) and the party who suffered the damage (the injured party). When the insurer is added to this relationship, we encounter the core specificity of liability insurance – it "involves three parties by its nature"[5] – the insurer, the insured, and the third-party injured party.[6] It appears that the continuous technological development, which began in the late 19th century,[7] has accelerated to the present day. Humanity is constantly faced with damages caused by new risks and increasing of existing risks that arise in everyday life and business.[8] For these damages, someone (under civil law) is held liable, and someone must provide compensation for damages. And who is better equipped to offer such compensation than the insurer, who provides financial security to third-party injured parties?[9]

[2] Liability insurance is a tool for freeing individuals from the compulsion over their property. See Nikola Nikolić, "Odgovornost i osiguranje", GRAĐANSKA ODGOVORNOST, Papers and Discussions from the Symposium held on February 11-12, 1966 in Belgrade, Belgrade, 1966, p. 125.

[3] Law of Contract and Torts – LCT, *Official Gazette of the SFRY*, No. 29/78, 39/85, 45/89 - decision of the CCY and 57/89, *Official Gazette of the FRY* /Federal Republic of Yugoslavia/, No. 31/93, *Official Gazette of SCG* /Serbia and Montenegro/, No. 1/2003. and *Official Gazette of the RS*, No. 18/2020, Part two, Chapter XXVII, Section 2.

[4] For other types of legal liability as subjects of liability insurance, See Yvonne Lambert-Faivre, Laurent Laveneur, *Droit des assurances*, Paris, 2018, p. 496.

[5] See Jérôme Bonnard, *Droit des assurances*, Paris, 2012, p.10.

[6] Although in civil law theory the term 'injured party' is used for the person who has suffered damage, from the perspective of IL, that person is considered a third party, as they are not a contractual party in the liability insurance agreement. Therefore, in IL, this person is referred to as a third-party injured party. This term will be used in this paper.

[7] See Nataša Petrović Tomić, *Pravo osiguranja – Sistem, knjiga I*, Belgrade, 2019, p.490.

[8] In addition to adapting to the negative aspects of technological development (through insurance of new risks), the IL is characterized by monitoring the positive aspects of technological development. In XXI cenury, it is primarily the possibility of concluding an insurance contract at a distance, as a consequence of the general availability of the Internet, which enables the performance of various transactions at a distance. On legal dilemmas when concluding distance insurance contracts, see: Nenad Grujić, " Pravne dileme u vezi s načinima zaključenja ugovora o osiguranju na daljinu – putem mobilne aplikacije i internet prezentacije", *Insurance Trends*, no. 1/2024, p. 105-118.

[9] See Nataša Petrović Tomić, „Liability insurance as a (social) response to the changing regulatory framework: from prohibited to compulsory", *Annals FLB – Belgrade Law Review*, No.4, Year LXVIII, 2020, p. 88.

2. Contractual Liability Insurance

In accordance with the principles of civil law, liability for damages can arise from both a violation of the general principle prohibiting harm to others[10] and a breach of contractual obligations.[11] As a result, two types of liability insurance have developed: insurance for non-contractual (or tort) liability and insurance for contractual liability, in that order. For a long time, there was resistance to insuring contractual liability for damages. This resistance was primarily based on the argument that contractual liability insurance lacks the element of aleatory risk[12] which is a key component of any insurance contract.

On the other hand, the principle that only those who cause damage and are responsible for it are obligated to compensate for it was also highlighted as an argument against contractual liability insurance.[13] The legal system has repeatedly rejected the notion that "liability entails compensation for damages, but not every form of compensation constitutes liability."[14]

However, due to the development of standards for professional care and professional liability, the contractual liability insurance began to develop in the 20th century.[15] Failure to act in accordance with statutory standards of professional care inevitably led to damages not only to the parties with whom professionals had contractual relationships but also to third parties.[16] As with non-contractual

[10] See LCT, art. 16.

[11] Although contractual liability does not only encompass responsibility for damage caused by the non-performance, improper performance, or untimely performance of a contractual obligation, but also for the non-performance, improper performance, or untimely performance of any obligation arising from an existing contractual relationship, for the purposes of this paper, we will equate contractual liability with the non-performance, improper performance, or untimely performance of a contractual obligation.

[12] For more on this topic: Marijan Ćurković, *Osiguranje od izvanugovorne i ugovorne (profesionalne) odgovornosti*, Zagreb, 2015, p. 41 et seq.

[13] The development of liability insurance for non-contractual (or tort) liability was significantly influenced by the concept of objective liability for damages. It was deemed unreasonable to expect individuals who are objectively liable for damages caused by hazardous objects, such as machinery, or dangerous activities—both of which have evolved due to technological advancements—to bear all the harmful consequences. At that time, the principle of fairness, which holds that the owner of a hazardous object or the person engaged in a dangerous activity should not be required to cover every damage caused by such objects or activities that serve societal interests, outweighed the general civil law principle that the person causing the damage must also compensate for it. For more on this topic, see Marija Karanikić Mirić, *Objektivna odgovornost za štetu*, Belgrade, 2019, p. 7.

[14] Jakov Radišić, *Obligaciono pravo – opšti deo*, IX edition, Niš, 2014, p. 200.

[15] For more on this topic: Nataša Petrović Tomić, *Liability insurance as a (social) response to the changing regulatory framework: from prohibited to compulsory*, *Annals FLB – Belgrade Law Review*, No. 4, Year LXVIII, 2020, p. 85.

[16] Although the theory and practice predominantly discuss professional liability as contractual liability, it is important to emphasize that a professional can be held liable not only for damages caused to another party within the existing contractual relationship but also to a third party for damages arising from

(tort) liability insurance, a strong societal interest in socializing liability prevailed once again,[17] and insurance was accepted as a means of socializing responsibility.[18]

2.1. Professional Liability as the Dominant Form of Contractual Liability

The development of contractual liability insurance, influenced by the predominant practical significance of professional liability[19] compared to other types of contractual liability, has led to the dominant perception of professional liability as a distinct type of liability.[20] However, this has also resulted in an incomplete understanding legal nature of contractual liability insurance.

their professional activities under the principles of non-contractual (tort) liability. For instance, errors in a project for which the designer is responsible can result in damages both to the client with whom the designer has a contractual relationship and to third parties. For more on non-contractual professional liability, see Predrag Šulejić, *Osiguranje od odgovornosti davalaca usluga, Annals FLB – Belgrade Law Review*, 6/1982, pp. 1012 and following. Loris Belanić, *Mandatory Liability Insurance Outside the Scope of Traffic and Transportation Activities in Croatian and Comparative Law, with Reference to Determining Obligations for Insurance and the Scope of Third Parties, Faculty of Law*, *University of Rijeka Poreč, Croatia,* 1/2009, pp. 551-555.

[17] On the socialization of liability in Yugoslav law, see Mihailo Konstantinović, *Osiguranje i odgovornost u jugoslovenskom pravu*, *Anali Pravnog fakulteta u Beogradu*, 7-9/58, p. 266.

[18] For more on this issue: Nataša Petrović Tomić, *Liability insurance as a (social) response to the changing regulatory framework: from prohibited to compulsory*, *Annals FLB – Belgrade Law Review*, No. 4, Year LXVIII, 2020, p. 85.

[19] Professional responsibility is a concept developed in legal practice; however, the legislator does not define this term. In legal theory, it is accepted that professional responsibility is associated with professions characterized by the existence of professional associations, codes of conduct, a high degree of autonomy, and the like. For more on this: Predrag Šulejić, *Osiguranje od odgovornosti davalaca usluga, Anali Pravnog fakulteta u Beogradu*, 6/1982, p. 1014 *et seq.;* M. Ćurković, p. 42; Silvija Petrić, "O nekim problemima profesionalne odgovornosti za štetu" *Osiguranje naknada* štete i novi Zakon o parničnom postupku (editors Zdravko Petrović and Nataša Mrvić Petrović), Zlatibor, 2012, p. 223 *et seq.* Law of Contract and Torts includes among the general principles of obligation law the principle relating to conduct in the performance of obligations and the exercise of rights. Based on this principle, a party to an obligation is required to perform their professional duties with increased care, according to professional rules and customs (the care of a good expert). Interpreting this principle, we might conclude that a professional is someone who is obliged to perform their duties with the care of a good expert. For example, according to the provisions of the Law of Contract and Torts, a carrier is liable to the passenger for any damage caused by a delay in transportation unless the delay was caused by a reason that the carrier could not prevent even with the care of an expert. However, a carrier transporting passengers cannot be considered a professional according to the aforementioned standpoint, since carriers (in the Republic of Serbia) do not have professional associations, their activity is not regulated by a code of conduct, nor do they autonomously conduct their activities in the sense of the generally accepted concept of professional responsibility. See Article 18, paragraph 2 and Article 683, paragraph 2 of the Law of Contract and Torts.

[20] Our writers recognized the importance and paid attention to different types of professional liability insurance introduced by the domestic legislator in recent years. For example, see: Slobodan Ilijić, " Pravni položaj javnog beležnika i specifičnosti osiguranja od njegove profesionalne odgovornosti", *Insurance Trands*, no. 1/2020, p. 25-35.

First and foremost, it is important to note that contractual liability insurance should not be equated with professional liability insurance. The subject of contractual liability insurance can encompass contractual liability that is not necessarily considered professional liability,[21] just as there are professionals who primarily bear non-contractual liability.[22,23]

In practice, professional liability is often regarded as a contractual liability to the extent that corresponds to the legal liability of a professional for damage caused, excluding any contractual extensions of liability.[24] General insurance conditions rarely do not recognize such exclusions of the insurer's obligation.[25] This approach by insurers aligns with the theoretically accepted limitations on the insurer's obligations,[26] although such limitations are difficult to justify from the perspective of contractual liability, which often extends beyond legal boundaries by its very nature.

Setting aside the challenges that contractual liability faces in practice, we conclude that contractual liability insurance is a type of insurance that will undoubtedly gain increasing importance in the future. Liability insurance has become

[21] For example, contractors (such as construction workers, carpenters, painters, glaziers, and similar tradespeople) can be held liable not only to the main contractor for the quality of their work but also to third parties who suffer damage due to poorly executed work. However, contractors cannot be considered professionals in this context.

[22] A great example is notaries, who unquestionably bear professional liability. Since they are required to act in accordance with their public authority and impartially, they are liable to parties for damages resulting from failure to adhere to professional standards of care under the rules of non-contractual liability. For more on the nature of notaries' liability, see: Marija Karanikić Mirić, "Odgovornost javnih beležnika u srpskom građanskom pravu", *Pravni život*, No. 10/2014, pp. 569 et seq. On peculiarity of notaries' liability insurance, see: Slobodan Jovanović, „Pravni položaj javnog beležnika i specifičnosti osiguranja od njegove profesionalne odgovornosti", *Insurance Trands*, no. 3/2020, pp. 7-18.

[23] Equating professional liability with contractual liability in insurance contract law leads to uncertainties regarding the types of liability of certain professionals. A good example is insurance brokers and the question of whether they are liable to insurers under the rules of contractual or non-contractual liability. For more on the nature of insurance brokers' liability, see Jasna Pak, Obligations, Responsibilities and Professional Liability of Insurance Intermediaries, *Insurance Trends*, No. 1/2018, p. 48.

[24] For example: WIENER STADTISCHE OSIGURANJE ADO BEOGRAD, General Terms for Professional Liability Insurance, WS.C06.1.C.11.1399_7 from 16.2.2011, p. 1. SAVA NEŽIVOTNO OSIGURANJE A.D.O. BEOGRAD, General Terms for Professional Liability Insurance, 10/2021 from 12.2.2010, p. 1. GLOBOS OSIGURANJE A.D.O. BEOGRAD, Pre-Contractual Information for the Policyholder – Professional Liability Insurance for Lawyers, *https://globos.rs/storage/files/Predugovorna_informacija_-_profesionalna_odgovornost_advokata_03-18-2022_14:24:38.pdf*, accessed on: 11.5.2024, p. 1. GLOBOS OSIGURANJE A.D.O. BEOGRAD, Pre-Contractual Information for the Policyholder – Professional Liability Insurance for Insurance Brokers, *https://globos.rs/storage/files/Predugovorna_informacija_osiguranje_profesionalne_odgovornosti_posrednika_u_osiguranju_03-18-2022_14:14:42.pdf*, accessed on: 11.5.2024, p. 1.

[25] For example: DDOR NOVI SAD, A.D.O. NOVI SAD, *Terms for Professional Liability Insurance for Lawyers*, DDOR-RS-OA-37-0315 from 12.3.2015, p. 3.

[26] Predrag Šulejić, *Osiguranje od odgovornosti davalaca usluga*, *Anali Pravnog fakulteta u Beogradu*, No. 6/1982, p. 1026. Nataša Petrović Tomić, *Osiguranje od profesionalne odgovornosti advokata*, *Pravni život*, No. 10/2011, p. 860.

a fundamental type of insurance,[27] designed to protect the injured party by facilitating and expediting compensation for the suffered damage.[28] However, how does a third party seek to claim compensation from the insurer for which the policyholder is contractually liable?

II Direct Compensation Claim by a Third-Party Injured Party Against the Insurer

Let us return to the main specificity of liability insurance: the dual function[29] provided by the insurer to parties involved in a harmful event for which civil liability exists and for which there is an obligation to compensate damages.[30] In other words, the insurer protects the insured by assuming their obligation to compensate the third party and protects the third-party injured party by guaranteeing compensation for the damage caused. Viewed from the perspective of the tortfeasor and the injured party, the insurance contract is arranged to ensure that, in addition to (or in practice, instead of) the tortfeasor (insured), the injured party has a debtor to compensate for damages. The injured party benefits from having not just the tortfeasor but also another, solvent debtor through liability insurance.[31, 32]

However, since the third party is not in a contractual relationship with the insurer, nor is it a beneficiary of the insurance[33] according to the principles of

[27] André Tunc, "Građanskopravna odgovornost i osiguranje", *Pravni život*, No. 2/1982, p. 228.

[28] Loris Belanić, p. 553.

[29] In addition to providing protection to a broader range of parties beyond the policyholder and the insured, insurance directs the obligation to compensate damages towards a solvent debtor, the insurer, thereby indirectly facilitating uninterrupted economic growth for its insureds. For more on this: **Nataša Petrović Tomić**, "Liability Insurance as a (social) response to the changing regulatory framework: from prohibited to compulsory," *Annals FLB – Belgrade Law Review*, No. 4, Year LXVIII, 2020, pp. 81-83.

[30] For more on this, see **Nataša Petrović Tomić**, "Liability Insurance as a (social) response to the changing regulatory framework: from prohibited to compulsory", *Annals FLB – Belgrade Law Review*, No. 4, Year LXVIII, 2020, p. 81.

[31] N. Petrović Tomić (2019), p. 493. Zvonimir Matić, „Pravni i društveno-ekonomski aspekti osiguranja od odgovornosti", *Zbornik Pravnog fakulteta Sveučilišta u Zagrebu*, No. 47, p. 1029.

[32] Considering that liability insurance services in practice are predominantly consumer insurances, European Union law has had a significant impact on enhancing the protection of third-party injured parties in European continental law. Consumer rights have been one of the main topics in European Union law for decades. *For more on this, see* Emilia Mišćenić, "The constant change of EU consumer law: the real deal or just an illusion?", *Annals FLB – Belgrade Law Review*, 3/2022, pp. 699-730.

[33] Although the Law on Obligations (LCT) and legal practice do not consider the third party to be the insurance beneficiary, as this term is predominantly associated with life insurance, it does not seem incorrect to say that a third party is indeed an insurance beneficiary. This is because a liability insurance contract, according to the provisions of The LCT can be considered a contract for the benefit of a third party. See Article 149, paragraph 1. LCT.

contractual insurance law,[34,35] and yet is considered the central figure in liability insurance,[36] the question arises on what grounds a third-party injured party has the right to claim compensation from the insurer. The only way to establish a contractual relationship between the third-party injured party and the insurer was to determine a legal basis[37] that allows the third-party injured party to make a direct claim[38] for compensation from the insurer.[39 40]

[34] Insurance Law – IL, *Official Gazette of RS*, No. 139/2014 and 44/2021, which, as the status law in the field of insurance law, recognizes the third-party injured party as a beneficiary of insurance services, while respecting the general stance in contractual insurance law that a third-party injured party is not considered an insurance beneficiary. See Article 15, paragraph 1 of the IL.

[35] On the need for insurance contract law in the Republic of Serbia to be regulated by a special law, see: Nataša Petrović Tomić, " O potrebi unapređenja srpskog regulatornog okvira osiguranja usvajanjem zakona o ugovoru o osiguranju", *Insurance Trands*, no. 2/2018, pp. 7-18

[36] See M. Ćurković, p. 249.

[37] In legal theory, there are dilemmas about the basis of the third-party injured party's rights against the insurer - whether the basis for the third-party injured party's rights against the insurer is the law, the contract, or the suffered damage. See Predrag Šulejić, *Osiguranje od građanske odgovornosti*, Beograd, 1967, pp. 124–127. Vladimir Marjanski, "Pravna priroda ugovora o osiguranju od odgovornosti", *Pravni život*, 10/2005, pp. 1135 et seq.

[38] In this paper, we will use the term "direct claim of the third-party injured party against the insurer," although the Law on Contracts and Torts (LCT) uses the term "direct lawsuit" where it establishes this right. First, the term "direct lawsuit" implicitly (and incorrectly) suggests that the third-party injured party can exercise their right only through court proceedings. Second, the term "direct claim of the third-party injured party against the insurer" aligns more closely with contemporary trends in out-of-court settlement of insurance disputes, which are particularly significant for liability insurance due to its high litigation potential. For similar views, see Nataša Petrović Tomić (2019), p. 525. On the other hand, the provision of the LCT that regulates the limitation period for the direct claim of the injured party uses the term "*immediate claim* of the third-party injured party," which is much more in line with the aforementioned trends.

[39] In our legal system, this right is established by the provision of Article 941, Paragraph 1 of the Law on Contracts and Torts (LCT), primarily influenced by court practice which began to establish this right for third-party injured parties in motor vehicle liability insurance even before the LCT came into force. For more on this, see Predrag Šulejić, *Pravo osiguranja*, fifth edition, Belgrade, 2005, p. 417. Article 918, Paragraph 1 of the *Draft Law on Contracts and Torts* by Professor Mihailo Konstantinović contained the same provision, but the direct claim of the third-party injured party against the insurer was conditioned on the third-party injured party not receiving compensation from the tortfeasor. See Mihailo Konstantinović, *Obligacije i ugovori – Skica za Zakonik o obligacijama i ugovorima*, Belgrade, 1996, p. 308.

[40] We highlight here that the early development of the right of the third-party injured party against the insurer occurred under the influence of French law, which has recognized the right to a direct claim of the third-party injured party against the insurer since the enactment of the law on July 13, 1930, which was adopted under the influence of court practice. See Bonnard, p. 257 *et seq*.; Lambert-Faivre, Laveneur, p. 15; Jean Bigot, Jérôme Kullmann, Luc Mayaux, *Traité de Droit des Assurances, Les Assurances de Dommages*, *Tome 5*, Paris, 2017, p. 707. However, legal systems that regulate the third-party injured party's claim against the insurer, like the Serbian and French systems, are more the exception than the rule. A large number of European legal systems recognized this right much later, primarily under the influence of European Union directives regulating the exercise of rights in the field of compulsory traffic insurance. This group includes major European legal systems such as the German, Austrian, and Italian systems. *For more on this, see* Nataša Petrović Tomić (2019), pp. 527–528; Loris Belanić, pp. 579–586. In the United

At this point, it should be noted that the scope of the rights of a third-party injured party against the insurer is narrower[41] than the scope of the third-party injured party's rights against the tortfeasor (insured) according to civil liability rules. This is due to the insurer's possibility and interest to cover the civil liability of the insured to its full extent.[42] However, the question arises as to whether the very existence of the right for the third-party injured party to make a direct claim against the insurer is equivalent to the existence of their right against the tortfeasor in accordance with the rules of civil liability. Since the existence of any right is primarily conditioned by the possibility of its enforcement, we will analyze the time frame in which the insured has the right to claim compensation for damages from the tortfeasor and the time frame in which the third-party injured party has the right to claim compensation from the insurer, i.e. when the statute of limitations on the right to compensation becomes time-barred.

III Statute of Limitations for Claiming Damages

1. General Overview of Statute of Limitations

The statute of limitations can be defined as the time limit within which a creditor can legally demand the fulfillment of an obligation from a debtor.[43] The institution of the statute of limitations primarily serves to alleviate the judiciary system and penalizes a creditor who fails to take action to recover their claims, based on the justified presumption that they are not interested in its settlement.[44]

Kingdom, the right of the third-party injured party is extremely limited from the perspective of our and French law. In accordance with the British Third Parties (Rights against Insurers) Act 2010, the third-party injured party has the right to a direct claim against the insurer when the "insured is insolvent or in some other cases." This represents an improvement in British law compared to the previous law in this area. Unlike the previously applicable law (Third Parties (Rights against Insurers) Act 1930), the insured can now submit a claim to the insurer without the insured's liability being established. However, the right cannot be exercised without establishing liability, which can be determined based on a judgment or order, a decision in arbitration proceedings, or an enforceable agreement. According to: Thomas Rhidian, "Third Party Direct Rights of Action against Insurers under UK Law and International Maritime Liability Conventions", *Regulation of Risk – Transport, Trade and Environment in Perspective* (Editors: Abhinayan Basu Bal, Trisha Rajput, Gabriela Argüello, and David Langlet, Brill Nijhoff), 2023, p. 685. The British Third Parties (Rights against Insurers) Act 2010, para. 4.

[41] There are both legal and contractual limitations on the scope of the insurer's obligation to compensate damages to the third injured party.

[42] On this topic: Predrag Šulejić, "Odnos osiguranja i građanskopravne odgovornosti", *Pravni život*, 9-10/1992, pp. 2253-2267. Marija Karanikić Mirić, "Odgovornost vlasnika motornog vozila kao preduslov obaveze osiguravača", *Pravni život*, 10/2011, pp. 687 et seq.

[43] Similarly: Nebojša Jovanović, *Ključne razlike engleskog i srpskog ugovornog prava*, 2nd edition, Belgrade, 2018, p. 136.

[44] Similarly: Jakov Radišić, p. 421. Marija Karanikić Mirić, *"Ograničenja odgovornosti za štetu u srpskom pravu"*, *Annals of the Faculty of Law in Belgrade*, 1/2012, p. 246.

Since the statute of limitations imposes a time limit on the creditor's right to demand fulfillment of the obligation, it is crucial to determine the period after which the creditor's right to seek recovery of their claim is considered forfeited. It appears that limitation periods are primarily determined based on the nature of the claim and the characteristics of both the creditor and the debtor. It can be said that this was also the legislative logic behind establishing the limitation period for claims by third-party injured parties against the tortfeasor or the insurer.

2. Duration of Limitation Periods for Claims by Third-Party Injured Parties

In order to equate the rights of a third-party injured party against both the tortfeasor and the insurer, Serbian legislator has avoided applying the general rules on the statute of limitations for insurance claims to third-party injured party's claim against insurers.[45] Instead, he has stipulated that the direct claim of a third-party injured party against the insurer is subject to the same limitation period as the claim against the tortfeasor liable for the damage.[46] Furthermore, he has prohibited the extension or shortening of limitation periods through legal transactions.[47]

Considering that there are legal systems where the statute of limitations for a third-party injured party's claim against the insurer differs from that against the tortfeasor,[48] and that the imperative nature of limitation periods is not universal in comparative law,[49] we can say that the limitation periods in Serbian law, with regard to the direct claim of a third-party injured party against the insurer, are largely oriented towards protecting the third-party injured party by maintaining certainty in legal transactions.

However, when we recall that civil liability is not monolithic, i.e. it distinguishes between contractual and non-contractual liability, which differ in several

[45] See Art. 380, para. 1 and 2 of the Law on Contracts and Torts (LCT).

[46] See Art. 380, para. 5 (LCT).

[47] See Art. 364, para. 1 (LCT).

[48] French law is a positive exception in this sense from the perspective of the third-party injured party. Although the French Court of Cassation equalized the statute of limitations for third-party claims against both the tortfeasor and the insurer in 1939, French law applies a two-year limitation period for insurance claims as established by Article 114, para. 1 of the French Insurance Code in cases where the third-party claim, according to civil law provisions, would otherwise be subject to a shorter limitation period. For example, in accordance with the French Commercial Code, a claim for damages by a third-party injured party against a carrier is subject to a one-year limitation period. However, the third-party injured party's claim against the insurer for carrier's liability insurance is subject to a two-year limitation period, applying the two-year period from the Insurance Code. See J. Bonnard, p. 271. French Insurance Code of 1989 (Code des assurances), para. L144-1. French Commercial Code of 1807 (Code de commerce), paras. 133-6.

[49] An example is German and Austrian law, which allows shortening of the limitation period. See Marija Karanikić Mirić, 'Zastarelost potraživanja naknade štete prouzrokovane krivičnim delom,' *Annals of the Faculty of Law in Belgrade*, 1/2011, p. 181. In English law, contracting parties can shorten or extend the limitation period once it has commenced. See N. Jovanović, p. 136.

aspects,[50] the question arises whether there is a difference in the limitation period for compensation between these types of liability and how this might affect the limitation period for a third-party injured party's claim against the insurer.

3. Limitation of the Right to Compensate Based on Contractual and Non-Contractual Liability

When analyzing the statute of limitations in general, it is crucial to address two key questions. First, when does the statute of limitations period for making claim compensation commence, and second, how long is needed for the statute of limitations to apply? In the case of the limitation period for claims based on contractual and non-contractual liability, the provisions of Article 376 of the Law of Contract and Torts, titled *Claim for damages*, will provide answers to both questions at first glance.

3.1. Commencement of Limitation Periods for Claims for Damages

The limitation period for claims for damages based on non-contractual liability begins to run from the moment the injured party becomes aware of the damage and the person who caused it. This is explicitly stipulated by Article 376, Paragraph 1 of the Law of Contract and Torts (LCT), which regulates the limitation period for claims arising from non-contractual liability.

On the other hand, the exact starting point for the limitation period for claims based on contractual liability we cannot directly find in Article 376, Paragraph 3 of the Law of Contract and Torts (LCT) which regulates the limitation period for claims based on contractual liability. Interpretation of the provisions of the LCT we conclude that the rules for non-contractual liability are general, whereas the rules for contractual liability are specific.[51] Article 376, Paragraph 1 establishes both the commencement and duration of the limitation period, whereas Article 376, Paragraph 3 exclusively determines the duration of the limitation period. Therefore, we can conclude that the limitation period for claims for damages based on contractual liability begins in the same manner as that for non-contractual liability, according to the rule established by Article 376, Paragraph 1 of the Law of Contract and Torts (LCT). This means that the limitation period for contractual claims starts at the same time as the statute of limitations for claims for damages under non-contractual liability.[52]

[50] For this, see Nenad Grujić, "Odnos ugovorne i vanugovorne odgovornosti za štetu", *Zbornik radova Pravnog fakulteta u Nišu*, No. 52, pp. 211–234.
[51] See also Marija Karanikić Mirić, *Objektivna odgovornost za štetu*, Second Edition, Belgrade, 2019, p. 50.
[52] See also Nenad Grujić, *Raskid ugovora zbog neispunjenja i pravna dejstva raskida*, First Edition, Belgrade, 2016, p. 500.

At this point, we conclude that the rules regarding the statute of limitations for claims for damages arising from both non-contractual and contractual liability are fully aligned—the limitation period for claims in both cases begins when the injured party becomes aware of the damage and the person responsible for it. Consequently, regardless of whether the insurance covers contractual or non-contractual liability for damages, the statute of limitations for the third-party claim against the insurer also starts when the injured party learns of the damage and the responsible party. However, we have not yet addressed the question of the duration required for the limitation period to apply to claims for damages under non-contractual versus contractual liability.

3.2. Duration of the Statute of Limitations for Claims for Damages

The statute of limitations for a claim for damages based on non-contractual liability lasts three years from the date the injured party became aware of the damage and the party responsible for it, and in any case, within five years from the date the damage occurred.[53] This is explicitly stipulated in Articles 376, paragraphs 1 and 2 of the Law of Contract and Torts (LCT), which regulate the statute of limitations for claims for damages based on non-contractual liability.

However, the general provision in Article 376, paragraph 3 of the Law of Contract and Torts (LCT) regarding claims for damages based on contractual liability explicitly regulates a different duration for the statute of limitations. It states that a claim for damages arising from a breach of a contractual obligation is subject to the limitation period applicable to the breach of that obligation. This referencing provision of LCT requires two steps before answering the question. First, it is necessary to determine which obligation was breached that caused the damage to the injured party, as the legislator has linked the statute of limitations for a claim for damages based on contractual liability to the limitation period of the breached contractual obligation.[54]

Second, it is essential to determine the duration of the statute of limitations for claims for damages based on contractual liability. Since the Law of Contract and Torts (LCT) does not specify a general limitation period for the breached contractual

[53] The Commission for Drafting the Civil Code is considering extending the objective limitation period for damage claims to ten years. See Commission for Drafting the Civil Code, Preliminary Draft. Civil Code of the Republic of Serbia. Volume Two. Obligatory Relations, Government of the Republic of Serbia, Belgrade, 2009, https://akv.org.rs/wp-content/uploads/2016/03/knjiga-2.pdf, accessed on: 6.5.2024, p. 125. The same limitation period was also prescribed by the Law on Limitation of Claims (*Official Gazette of the FNRJ*, No. 40/53 and 57/54), which was in effect until the adoption of the LCT. *According to* Marija Karanikić Mirić, "Ograničenja odgovornosti za štetu u srpskom pravu", *Annals of the Faculty of Law in Belgrade*, 1/2012, p. 256.

[54] See also N. Grujić, p. 497 *et seq.*

obligation, this issue must be resolved through a systematic interpretation of the provisions regarding the time required for the onset of limitation periods in general. Setting aside the specific periods prescribed by the Law of Contract and Torts (LCT) for individual claims,[55] we conclude that a claim for damages based on contractual liability is subject to the general limitation period, which is ten years[56] from when the limitation period begins. However, if the damage arises from a breach of a contractual obligation under a contract for the sale of goods or services concluded by legal entities, the claim for damages based on contractual liability is limited by a three-year period from when the limitation period begins.[57]

Based on this analysis, we conclude that a claim for damages by the injured party against a liable party under contractual liability does not have the same limitation period as a claim against a liable party under non-contractual liability. Considering that a third party's direct claim against the insurer is subject to the same limitation period as their claim against the insured liable party, we conclude that a third party's direct claim against the insurer for non-contractual liability is limited to three years from the time the injured party became aware of the damage and the liable party, and in any case, within five years from when the damage occurred. Conversely, a third party's direct claim against the insurer for contractual liability is limited to either three or ten years from the time the injured party became aware of the damage and the liable party. Given the significant difference in the potential limitation periods for a third party's claim against an insurer under contractual liability, the question arises as to when each of these two limitation periods will apply.

3.3. When Will the Direct Claim of a Third Party Against the Insurer Be Subject to a Three-Year or a Ten-Year Limitation Period?

We will analyze the dilemma of whether the limitation period for a third party's direct claim against the insurer is three or ten years from the moment the injured party became aware of the damage and the responsible party, from the perspective of the insured's contractual liability for the damage caused to the injured party due

[55] For example, claims for periodic payments that are due annually or at shorter specified intervals become time-barred after three years from the due date of each payment. Claims for rent are time-barred after three years. Claims for compensation for supplied electricity, heating, gas, water, chimney services, and cleanliness maintenance, when provided for household purposes, become time-barred after one year. Claims by radio and television stations for the use of radio and television receivers, claims by postal, telegraph, and telephone services for the use of telephones and postal boxes, as well as other claims collected quarterly or at shorter intervals, and subscription claims for periodic publications, are time-barred after one year from the end of the period for which the publication was ordered. See Articles 372, 375, and 378 of the Law of Contract and Torts (LCT).

[56] See Article 371 of the Law of Contract and Torts (LCT).

[57] See Article 374 of the Law of Contract and Torts (LCT).

to non-fulfillment, or improper or untimely fulfillment of contractual obligations. By general rule, a claim for damages becomes time-barred after ten years.

However, if the damage arises from a breach of contractual obligations under a contract for the sale of goods and services concluded between legal entities, the limitation period is three years. Therefore, we must answer when the third-party injured party's claim against the insured party liable for the damage will be subject to a three-year limitation period, as otherwise, it will be time-barred after ten years. By interpreting Article 374, Paragraph 1 of the Law of Contract and Torts (LCT), we conclude that the three-year limitation period applies if two cumulative conditions are met: (i) both the creditor and debtor are legal entities, and (ii) the claim is based on a contract for the sale of goods or services.

Returning to the framework of liability insurance, a third-party injured party's claim against the insurer will be time-barred after ten years, except in the following cases: (i) if both the injured party and the insured liable for the damage are legal entities, and (ii) if the insured caused the damage to the third-party injured by breaching a contract for the sale of goods and services, in which case the claim will be time-barred after three years. We will analyze both conditions, starting with the second. It seems that the condition of the damage being caused to the injured party through a breach of obligations under a contract for the sale of goods and services is the least disputed, as liability insurance primarily covers contractual liability arising from failures in providing services.[58] Assuming the second condition is met in cases of insurance for contractual liability, we will then analyze the first condition: for the three-year limitation period to apply, both the injured party and the insured must be legal entities. Given that the injured party could be various legal entities and that such an analysis exceeds the scope of this paper, we will focus further on the issue of the legal status of the insured, using the example of legal malpractice insurance.[59]

An attorney may practice law independently, within a shared law office, or as a member of a law partnership.[60] An attorney who independently operates as a sole proprietor, while a shared law office does not have the status of a legal entity.[61] This implies that if the tortfeasor is a sole practitioner or a shared law office, the obligation of the tortfeasor, as well as that of the insurer, to compensate the injured party is subject to a limitation period of ten years from the moment the injured

[58] This is especially true if we observe it from the perspective of insurance practice. It is important to remember that the alignment of professional liability insurance with contractual liability insurance occurred primarily because professional liability dominates as a subject of contractual liability insurance in practice, and professional liability most often involves responsibility for the services provided.

[59] More on legal malpractice insurance: Nataša Petrović Tomić, „Osiguranje od profesionalne odgovornosti advokata - srpska verzija novog oblika obaveznog osiguranja", *Insurance Trands*, no. 3/2012, pp. 17-40.

[60] See Zakon o advokaturi – ZA, *Official Gazette of the Republic of Serbia*, No. 31/2011 and 24/2012 – Constitutional Court Decision, Article 44.

[61] See Article 45. para 5. ZA.

party became aware of the damage and the liable party. On the other hand, if the tortfeasor is a law partnership[62] that is a legal entity,[63] the obligation of the tortfeasor, as well as that of the insurer, to compensate the injured party that is a legal entity is subject to a limitation period of three years from the moment the injured party became aware of the damage and the liable party.

However, the interpretation of the limitation periods for a direct claim by a third-party injured party against the liability insurer is not entirely consistent with the interpretations of these limitation periods in theory and practice.[64]

IV Reasons for the Non-Application of the Statutory Limitation Period for the Insurer's Liability in Contractual Liability Insurance

Regarding theoretical considerations within our jurisdiction, existing sources have not extensively analyzed the duration of limitation periods for direct claims by third-party injured parties in the context of contractual liability insurance.[65] On the other hand, our judicial practice indicates that claims by the third-party injured party against the insurer in contractual liability insurance also fall under a three-year limitation period from the time the claimant became aware of the damage and the person who caused it, and in any case, within five years from the occurrence of the damage,[66] similar to the situation in non-contractual liability insurance. However,

[62] On the regulation of free professions, including the legal profession, see Mirko Vasiljević, *Kompanijsko pravo*, ninth edition, Belgrade, 2015, p. 449 et seq.

[63] The operations and business activities of law partnerships are governed by the provisions of the law regulating the operations of partnerships. See Article 52, Paragraph 1 of the ZA. Partnership companies are commercial companies, and commercial companies are legal entities that conduct activities with the aim of making a profit. See Company Law, *Official Gazette of the Republic of Serbia*, No. 36/2011, 99/2011, 83/2014 – other law, 5/2015, 44/2018, 95/2018, 91/2019, and 109/2021, Articles 2 and 93, Paragraph 1.

[64] As for the limitation periods for direct claims by a third-party injured party against the insurer for non-contractual liability, the presented interpretation is fully consistent with the interpretations of these limitation periods in judicial practice. See Judgment of the Supreme Court of Cassation Rev 1672/2016 from 15.12.2016. Judgment of the Supreme Court of Cassation Rev 4490/2018 from 2.7.2020.

[65] Based on the data available during the writing of this paper, we concluded that, in analyzing the statute of limitations in general, the theory primarily focuses on Article 390, Paragraph 5 LCT, in addition, academic works dedicated to contractual liability insurance do not concentrate on limitation periods, which is understandable given the numerous other specificities of contractual (particularly professional) liability insurance. We encountered one study that specifically addressed the limitation periods for direct claims by third-party injured parties against insurers, with a focus particularly on contractual liability insurance. See Dionis Jurić, Loris Belanić, " Odgovornost za štetu zakonskog revizora i obveza osiguranja od odgovornosti za štetu," *Zbornik pravnog fakulteta Sveučilišta u Rijeci*, vol. 39, No. 4 2018 (Special Issue), p. 1836.

[66] See Judgment of the Basic Court in Paraćin, Court Unit in Ćuprija, P 629/22 from 21.2.2023. Judgment of the Higher Court in Niš, Gž 3547/21 from 8.2.2022. Judgment of the Third Basic Court in Belgrade, P 7770/17 from 14.6.2019.

this rule is not without exceptions, and the judicial practice does recognize a distinction between the insurer's obligations to the third-party injured party based on contractual versus non-contractual liability.[67] We believe that the judicial stance, which treats the limitation periods for direct claims by the third-party injured party against the insurer in both contractual and non-contractual liability insurance as identical, is the result of three factors.

First, as demonstrated in this paper, the Law of Contract and Torts (LCT) has more clearly defined the limitation periods for damage claims under non-contractual liability than for contractual liability.[68] No aspect of limitation periods for contractual liability (including the commencement and duration of the limitation period) is explicitly regulated by law; rather, it is derived from interpretative rules, making its application less straightforward in practice.[69] In contrast, the limitation periods for damage claims under non-contractual liability are defined through two paragraphs of a single article, leaving no room for varying interpretations in practice.

Second, it must be noted that in the insurance market of the Republic of Serbia and in judicial practice, direct claims by third parties against insurers in non-contractual liability cases overwhelmingly predominate compared to contractual liability, both in claims procedures and in court proceedings. This is primarily due to the absolute predominance of mandatory motor vehicle liability insurance for damages caused to third parties in the insurance market of the Republic of Serbia.[70] Additionally, compulsory motor vehicle liability insurance for damages caused to third parties is both compulsory and liability insurance, which gives it an exceptionally high litigious potential.[71]

[67] See Judgment of the Basic Court in Niš, P 6513/2019 from 26.3.2021.

[68] Rules on the limitation periods of claims for damages based on contractual liability are self-determined. According to: N. Grujić, p. 497.

[69] It seems that in a matter of exceptionally great practical importance, such as rules on civil liability, the legislator should have resorted to legislative technique that would make these rules more accessible to the average legal practitioner.

[70] According to data periodically submitted to the National Bank of Serbia by insurance companies, in 2022, a total of 2.810.204 policies for compulsory motor vehicle liability insurance for damages caused to third parties were issued, while insurance companies issued a total of 7.915.497 insurance policies throughout the year. This means that 35.50% of all insurance policies issued were for compulsory motor vehicle liability insurance for damages caused to third parties. Regarding insurance premiums, in 2022, the net premium for mandatory motor vehicle liability insurance amounted to 38.378.207.000 RSD, and the total net premium for all insurance was 133.925.041.000 RSD. This indicates that the share of the net premium for compuldory motor vehicle liability insurance in the total net insurance premium in 2022 was 28.65%. See National Bank of Serbia, Overview of the Number of Insurances, Number of Insured, and Premiums by Types and Tariffs of Insurance for Serbia in 2022. *https://www.nbs.rs/export/sites/NBS_site/documents/osiguranje/godisnji/god_T1_2022.pdf,* accessed on: 6.5.2024.

[71] Since compulsory insurance aims to cover the entire risk community, it is expected that there will be a relatively higher number of (direct) claims for damages in mandatory insurance compared to similar-sized risk communities where insurance is not mandated. In the Republic of Serbia, the obligation to obtain

Third, when examining the limitation periods for claims for damages based on non-contractual and contractual liability rules, we notice certain inconsistencies in the legislative technique of the Serbian Law of Contract and Torts (LCT). For the purposes of this analysis, we will consider the application of the general ten-year limitation period for contractual liability. It is important to recall that limitation periods for claims for damages, regardless of the type of liability, begin to run from the moment the injured party becomes aware of the damage and the party liable for it. However, it is undisputed that a person who has suffered damage due to a breach of a contractual obligation is at an advantage compared to a person who has suffered damage due to a violation of the general rule against causing harm to others. Damage caused by a breach of a contractual obligation can only be caused by one party in an obligatory relationship with the other party, meaning that in cases of contractual liability, the injured party will always know who caused the damage. This comparative advantage for the injured party in cases of a contractual obligation should, from a legislative perspective, be reflected in increased protection for the injured party who has suffered harm due to a breach of the general rule against causing harm to others, among other things, by stipulating a longer limitation period for claims for damages. However, in our legal system, an absurd situation has arisen where, in most cases, an injured party seeking damages for a breach of a contractual obligation has the right to claim damages for twice as long as an injured party seeking damages for a breach of non-contractual obligations.

For the past thirty years, our legal system has regulated the length of limitation periods for claims for damages in this manner. Previously, these limitation periods were consistently equal for a period of forty years, although their length varied. The general limitation period applies to claims for damages resulting from a breach of a contractual obligation, and it cannot be expected that the length of this period will be determined based on the relationship between the limitation periods for different types of damages.

V Conclusion

We conclude that a claim by a third-party injured party against the insurer in contractual liability insurance generally becomes time-barred after ten years from the date when the third-party injured party became aware of the damage and the entity liable for the damage. Exceptionally, this claim may be time-barred after three years from the date when the third-party injured party became aware of the damage and the entity liable, provided that both the tortfeasor and the injured party are legal entities.

insurance is stipulated in 54 legal and subordinate acts (potentially even more), primarily for liability insurance. See National Bank of Serbia, Mandatory Insurance in the Republic of Serbia, https://www.nbs.rs/export/sites/NBS_site/documents/osiguranje/obavezna_osiguranja.pdf, accessed on: 6.5.2024.

As demonstrated in this paper, the application of this limitation period depends on the legal status of the third-party injured party and the tortfeasor and may vary even within the same type of contractual liability. This is due to the legislator's justified interest in shortening the limitation period for claims between legal entities, thus the duration of the limitation period should be determined on a case-by-case basis.

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