
Regulation of the Statute of Limitations in the Law of Obligations: Analysis of the Latest Amendments to the Law on Obligatory Relations and Decision of the Constitutional Court of the Republic of North Macedonia

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Abstract: *The regulation of the statute of limitations in the law of obligations, also known as the time-barring period, establishes the time frame within which legal action must be initiated to enforce obligations such as debts. These regulations are critical for ensuring legal certainty, protecting defendants from outdated claims, and promoting timely resolution of disputes. Statutes of limitations vary widely between different jurisdictions and depend on the type of obligation (if the contract is written, oral or it is promissory note and open-ended account). In the current Law on Obligatory Relations of the Republic of North Macedonia, it is stipulated that all claims determined by a final court decision, by a decision of another competent authority, or by a settlement before a court, would expire in ten years, including those for which the Law otherwise provides a shorter statute of limitations. With the amendments to the Law, the aim was for this provision to be amended by shortening the limitation period to five years from the validity of the decision (corresponding to the general limitation period for claims) because there are abuses by intentionally waiting nine years and eleven months to pass and an enforcement procedure to start, so the enforcement agents and creditors can receive compensation for interest. In this paper, the aim is to analyze the effects of the new amendments to the Law on Obligatory Relations of the Republic of North Macedonia which raised many debates but also an initiative of the Constitutional Court of the Republic of North Macedonia to assess the constitutionality of these amendments.*

Key Words: *Law of Obligations; Statute of Limitations; Debts; Enforcement; Retroactivity; Legal Certainty; North Macedonia.*

Introduction

The law of obligations implies a general theory of obligations in much the same way as a law of contract implies a general theory of contract. Rules about differing limitation periods might seem to have less rationality once one thinks in terms of a generalized obligation. A general theory of obligations, in other words, can have important practical implications simply because the general theory exists as a conceptual notion. Thus, rules attaching to particular legal remedies or legal categories for example statute of limitations might become more generalized once these specific categories are seen within the general theory of obligations.¹ This concept will be examined through a detailed analysis of the statute of limitations in the Republic of North Macedonia. The statute of limitations refers to the maximum period one can wait before filing a lawsuit, depending on the type of case or claim. In the context of the law of obligations, this means that a debt or obligation cannot be enforced through the court system after a certain period has passed. The specific time limits can vary significantly based on jurisdiction and the nature of the obligation. The main purpose of time barring is to ensure legal certainty and finality. It prevents the indefinite threat of legal action and encourages the timely resolution of disputes. Time limits are typically established by statutes, which specify the duration within which claims must be initiated. These periods vary by jurisdiction and type of obligation (e.g., contract debts, tort claims, etc.). The period usually begins from the date the cause of action accrues, which is when the obligation or debt becomes due. In some cases, the clock starts ticking when the claimant discovers or should have discovered the cause of action. There can be circumstances where the limitation period can be extended or suspended. For instance, if the debtor acknowledges the debt or if there is fraud or concealment. Once the limitation period expires, the debtor can raise the defense of the statute of limitations, effectively barring the creditor from successfully claiming the debt in court. The statute of limitations can vary from country to country therefore there are different examples by jurisdiction: In the USA, the statute of limitations for contract debts typically ranges from 3 to 10 years, depending on the state. In the United Kingdom, under the Limitation Act 1980, the time limit for simple contract debts is generally six years from the date the debt becomes due. In the European Union, the periods can vary widely across member states, but

¹ See SAMUEL, G. *Law of Obligations and Legal Remedies*. 2nd ed. London: Cavendish, 2001, pp. 34-35. ISBN 1-85941-566-0.

the European Union directives also impact certain cross-border obligations and claims. Understanding the specific rules and timelines within a given jurisdiction is crucial for both creditors and debtors to manage their legal risks and rights effectively. This article will concentrate on the recognition and enforcement of judgments in general civil and commercial matters. That is because when it comes to judgments relating to other civil matters (such as the status of a person, family issues, marriage, divorce, the well-being of a child, succession, inheritance, consumer transactions, and employment) numerous factors come into play, so that a state may have legitimate reasons for refusing to recognize or enforce such types of civil judgments.²

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Time as a legal fact can lead to the occurrence of civil subjective rights and their termination. In this sense, after a longer period has passed, a person who considers himself/herself as the owner of a single item may also become a legal title holder of that item by maintenance, and another person would lose the same right because he/she did not exercise (perform) his/her right of ownership. Most often, time as a legal fact plays an important role in the debtor-creditor (obligatory) relations, when a certain legal deadline has passed the obligation becomes obsolete (time-barred) i.e. the creditor loses the right to legal protection.³ Hence, the term statute of limitations refers to the loss of a right due to non-performance or failure to assert it within a prescribed time.⁴

The statute of limitations may differ from country to country and depends on the type of the claim and on the date when the claimant became aware of the damage and the liable party. The absolute limit may vary from 5 to 20 years from the date of the incident.⁵ In the European Union,

² See REYES, A. ed. *Recognition and Enforcement of Judgments in Civil and Commercial Matters* [online]. 1st ed. Oxford, UK: Hart Publishing, 2019, pp. 1-5 [cit. 2025-02-07]. Studies in Private International Law, vol. 1. ISBN 978-1-5099-2428-8. Available at: <https://doi.org/10.5040/9781509924288>.

³ ZHIVKOVSKA, R. *General Part of Civil Law*. 1st ed. Skopje: Europe 92, 2011. 294 p. [in the Macedonian original ЖИВКОВСКА, Р. *Општ дел на граѓанското право*. 1е изд. Скопје: Европа 92, 2011. 294 с.].

⁴ DOCHSHANOVA, A. S. *Civil Law of the Republic of Kazakhstan: General Part: Educational Manual*. 1st ed. Almaty: Qazaq University, 2016. 155 p. ISBN 978-601-04-2064-9.

⁵ See CANNY, M. *Limitation of Actions in England and Wales*. 1st ed. Haywards Heath, West Sussex: Bloomsbury Professional, 2013. 389 p. ISBN 978-1-78043-335-6. It includes an

the statute of limitations is generally governed by national laws, as well as European Union directives in certain contexts.⁶

In the Republic of North Macedonia, the statute of limitations for contractual claims is regulated by the Law of Obligatory Relations and is 10 years. For the tort claims the statute of limitations is 3 years after the damaged person learned about the damage and the absolute statute of limitations is 5 years which means that the limitation period expires after 5 years no matter when the damaged person discovered the damage.^{7, 8}

analysis of the recent decisions of the Supreme Court in the area, including decisions on the date of knowledge provisions (*Case of Ministry of Defence v. AB and Others* [2012-03-14]. Judgement of the Supreme Court of the United Kingdom, 2012, [2012] UKSC 9), claims for refunds of overpaid taxes (*Case of Test Claimants in the Franked Investment Income Group Litigation v. Inland Revenue* [2012-05-23]. Judgement of the Supreme Court of the United Kingdom, 2012, [2012] UKSC 19), competition law time limits (*Case of BCL Old Co Ltd and Others v. BASF plc and Others* [2012-10-24]. Judgement of the Supreme Court of the United Kingdom, 2012, [2012] UKSC 45), and employment law claims (*Case of Birmingham City Council v. Abdulla and Others* [2012-10-24]. Judgement of the Supreme Court of the United Kingdom, 2012, [2012] UKSC 47). It also considers the important decisions of the Court of Appeal in *Case of Central Bank of Nigeria v. Williams* [2012-04-03]. Judgement of the Court of Appeal of England and Wales, 2012, [2012] EWCA Civ 415 (dishonest assistance), *Case of Page and Another v. Hewetts Solicitors and Another* [2012-06-15]. Judgement of the Court of Appeal of England and Wales, 2012, [2012] EWCA Civ 805 (mislead court form), *Case of Green v. Eadie and Others* [2011-11-18]. Judgement of the High Court of England and Wales, 2011, [2011] EWHC B24 (Ch) (solicitor's negligence concerning a conveyance), *Case of Peakstone Ltd v. Joddrell* [2012-07-26]. Judgement of the Court of Appeal of England and Wales, 2012, [2012] EWCA Civ 1035 (effect of restoration of a company under the Companies Act 2006), *Case of Parshall v. Hackney* [2013-03-26]. Judgement of the Court of Appeal of England and Wales, 2013, [2013] EWCA Civ 240 (effect of erroneous registration by the Land Registry), and *Case of Sayers v. Lord Chelwood (Deceased Executors of)* [2012-12-19]. Judgement of the Court of Appeal of England and Wales, 2012, [2012] EWCA Civ 1715 (personal injuries and the Section 33 discretion) as well as decisions of the High Court. See also *Bürgerliches Gesetzbuch* [German Civil Code] [2002-01-02]. BGBl. I S. 42, 2909; 2003 I S. 738, last amended by Article 1 of the Act of 10 August 2021 (BGBl. I S. 3515); and *Code civil* [French Civil Code].

⁶ See THOMAS, B. and F. AUBIN. Chapter 7. Limitation Period. In: R. AMARO, ed. *Private Enforcement of Competition Law in Europe: Directive 2014/104/EU and beyond*. 1st ed. Bruxelles: Bruylant, 2021, pp. 147-184. ISBN 978-2-8027-6687-2.

⁷ Articles 360 – 368 of *Law on Obligatory Relations*. Official Gazette of the Republic of North Macedonia, No. 18/2001, 4/2002, 5/2003, 84/2008, 161/2009, 123/2013, 215/2021 and 154/2023.

⁸ CHAVDAR, K. and K. CHAVDAR. *Law on Obligatory Relations: Comments, Explanations, Practice, and Subject Register*. 3rd ed. Skopje: Akademik, 2012. 1190 p. ISBN 978-9989-833-81-6 [in the Macedonian original ЧАВДАР, К. и К. ЧАВДАР. *Закон за облигационите односи: Коментари, објаснувања, практика и предметен регистар*. 3^е изд. Скопје: Академик, 2012. 1190 с. ISBN 978-9989-833-81-6].

On July 18, 2023, the Assembly of the Republic of North Macedonia passed and adopted the Law on Amendments and Supplements to the Law on Obligatory Relations and the Law on Amendments and Supplements to the Law on Enforcement (Official Gazette of the Republic of North Macedonia No. 154/2023 of July 20, 2023) according to which the enforcement procedure can be carried out within 10 years from the date of submission of the Request for Enforcement, after which absolute obsolescence occurs. Before these changes were made, within those 10 years the executors could take various actions, but there was no deadline when the collection could be made, so it could be made even after several decades. This has led to excessive interest on debts. One-third of the total number of petitions submitted to the Ombudsman in North Macedonia refers precisely to the procedures with the executors.

With the adopted amendments and supplements to the Law on Obligatory Relations, Article 266-a is supplemented with a new paragraph 8, which stipulates the following: “When the amount of the due and penal interest reaches the amount of the principal, the interest stops flowing.”

This legal solution is translated into the Law on Amendments and Supplements to the Law on Enforcement, where it is provided that in Article 18 paragraph, point (1) the words are added: “that is, until the moment when the unpaid interest reaches the amount of the principal debt.” This legal solution foresees the upper threshold for the collection of interest on the amount of due and unpaid principal, whereby the legislator provided that the amount of unpaid penal interest stops flowing when it reaches the amount of the principal.

In addition to the mentioned amendment, Article 2 of the Law on Amendments and Supplements to the Law on Obligatory Relations also foresees an amendment to Article 368 of the Law on Obligatory Relations regarding the statute of limitations of claims. The newly amended article 368 reads as follows: (1) All claims that are determined by a final court decision or by a decision of another competent authority or by a settlement before a court or before another competent authority, shall become statute-barred after five years, from the moment of their enforcement, as well as claims for which a shorter statute-barred period is provided for in accordance with the law.

(2) All temporary claims that arise from decisions or settlements provided for in paragraph (1) of this Article and fall due in the future, shall become statute-barred within the period provided for the statute-

barred period for temporary claims. (3) The statute of limitations on a final court decision or a decision of another competent authority, or a settlement before a court or before another competent authority shall be terminated by filing a request for enforcement before a competent enforcement agent, whereby the statute of limitations shall begin to run anew, which in the enforcement procedure lasts ten years from the moment of the filed request for enforcement. According to the contested Article 4 of the Law, “The initiated procedures for the collection of claims provided for in Article 2 of this Law shall be completed under this Law.”⁹

The greatest controversy and contradiction of this legal solution is Article 4 of the adopted Law on Amendments and Supplements to the Law on Obligatory Relations, where it is stipulated that “Initiated procedures for the collection of claims provided for in Article 2 of this Law shall be completed under this Law.”¹⁰ Such legal solutions provided for in the Law on Amendments and Supplements to the Law on Obligatory Relations and the Law on Amendments and Supplements to the Law on Enforcement are inconsistent and detrimental to the interests of creditors, as they limit the amount of penal interest that creditors can claim and collect, shortens the limitation period for initiating enforcement procedures by the creditors themselves, as well as limits the period in which enforcement can be carried out, thus providing protection and a privileged position to debtors.

Comparative legal solutions in other legislations indicate that the statute of limitations for enforcement procedures is 20 or even 30 years, and hence it is unclear why the legislator envisaged shortening the statute of limitations for the enforcement procedure from 10 years from the moment of the submitted request for enforcement.

The abovementioned legal solutions are in direct or indirect contradiction with a few articles from the Constitution of the Republic of North Macedonia, more precisely with the basics of economic relations regulated in Article 55 which guarantees the freedom of the market and entrepreneurship and foresees that the Republic provides an equal legal position to all entities in the market, while the freedom of the market and entrepreneurship can be limited by law solely for the defense of the Repub-

⁹ *Law on Amendments and Supplements to the Law on Obligatory Relations*. Official Gazette of the Republic of North Macedonia, No. 154/2023.

¹⁰ *Law on Amendments and Supplements to the Law on Obligatory Relations*. Official Gazette of the Republic of North Macedonia, No. 154/2023.

lic, the preservation of nature, the environment or the health of people.¹¹ Also, the amendments to some degree violate the following articles: Article 8, paragraph 1, lines 3 and 6 of the Constitution of the Republic of North Macedonia states that “the rule of law and the legal protection of property are fundamental values of the constitutional order of the Republic of North Macedonia.” Article 9, paragraph 2 of the Constitution guarantees the equality of citizens before the Constitution and the laws. Article 30, paragraph 1 of the Constitution guarantees the right to property and the right to inheritance, and according to Article 30, paragraph 3 of the same article, no one may be deprived of or restricted from property and the rights arising from it, except when it is a matter of public interest determined by law. According to Article 51 of the Constitution, in the Republic of North Macedonia, laws must be under the Constitution, and all other regulations with the Constitution and the law. Everyone is obliged to respect the Constitution and the laws. According to Article 52, paragraph 4 of the Constitution, laws and other regulations cannot have retroactive effect, except by exception, in cases when it is more favorable for citizens.¹²

With the amendments to the laws, the equal position between debtors and creditors is violated, and especially creditors are put in a much worse position if it is taken into account that the retroactive effect of the adopted Law on Enforcement is foreseen, and it is determined that it will also be applied to already started procedures for the collection of claims. In general, the retroactive effect of laws is recommended only in cases when all affected citizens have benefited from the newly adopted provisions. With these amendments that’s not the case and therefore it can be noted that the retroactivity of the amendments increases the level of legal uncertainty in the legal system of the country.

Such changes will mean a violation of the principle of equality of citizens before the law, some will be privileged over others who have already paid the debt according to the regulations that were in force at the time. Some institutions were absolutely against the proposed amendments to the Law on Obligatory Relations and supported the views and arguments against these amendments given by the other creditors and

¹¹ Article 55 of *Constitution of the Republic of North Macedonia*. Official Gazette of the Republic of North Macedonia, No. 1/92, 31/98, 91/01, 84/03, 107/05, 3/09, 49/11, 6/19 and 36/19.

¹² *Constitution of the Republic of North Macedonia*. Official Gazette of the Republic of North Macedonia, No. 1/92, 31/98, 91/01, 84/03, 107/05, 3/09, 49/11, 6/19 and 36/19.

pointed out that if the proposed Law has a retroactive effect, in that case, a large part of the objects of the public companies will remain unpaid and unexecuted considering that until now the Law provides for a statute of limitations after the validity of the decisions of 10 years. Some legal experts argue that the reason given by the proponents of the amendments to the Law that the creditors deliberately wait 9 years and 11 months to start the enforcement procedure to accumulate more interest is inaccurate.

2 Court Analysis of the Amendments to the Law on Obligatory Relations and Decisions of the Constitutional Court of the Republic of North Macedonia

After the adoption of the Amendments to the Law on Obligatory Relations, some citizens, attorneys, chambers, institutions, initiated proceedings to the Constitutional Court of North Macedonia on the amendments and supplements of the Law on Obligatory Relations. The reason for the initiatives was that the Amendments to the Law on Obligatory Relations violate the Constitution of the Republic of North Macedonia and an inconsistency was already noted in some court decisions.

Before we address the issues in practice, it is necessary to explain how the participants in the enforcement procedure reached the decisions of the basic and appellate courts in the country. Namely, a request or proposal to stop enforcement due to the statute of limitations was usually submitted to the executor by a person who is being treated as a debtor in an enforcement procedure. In most cases, the executor rejects such a proposal with a conclusion, after which the debtor submits an objection within 3 days from the day of learning about such a conclusion.¹³

With this, the procedure is referred to the competent basic court in the territory of the executor and here we are faced with a variety of decisions. In one part, the basic courts decided in such a way that they rejected the debtor's objection, and some of the competent basic courts accepted such an objection. The practice is not uniform even among the appellate courts, that is, they partly accept and partly reject the objection by

¹³ CHAVDAR, K. and K. CHAVDAR. *Enforcement Law: With Case Law, Examples of Submissions and Subject Register*. 1st ed. Skopje: Akademik, 2016. 660 p. ISBN 978-9989-833-94-6 [in the Macedonian original ЧАВДАР, К. и К. ЧАВДАР. *Закон за извршување: Со судска практика, примери на поднесоци и предметен регистар*. 1е изд. Скопје: Академик, 2016. 660 с. ISBN 978-9989-833-94-6].

the debtor if there is an appeal before the second instance court against the decision of the first instance court. For this purpose, analysis of judgments was made of the Courts of Appeal and the basic courts throughout the Republic of Macedonia exclusively on the issue of applying the provision according to which the statute of limitations of a final court decision or by a decision of another competent authority, or by settlement before a court or before another competent authority, terminates by submitting a request for enforcement before a competent executor, whereby the statute of limitations, which in the enforcement procedure lasts ten years from the moment of the submitted request for enforcement, begins to run again.¹⁴

In the following court decisions since the date of adoption of the amendments concerning the statute of limitations for enforcement, we may see some of the differences in the court decisions for the debtors who have decided to initiate a procedure with which they seek to determine that enforcement cannot be carried out against them because the enforcement procedure against them has been conducted for more than 10 years. For example, the Decision No. 32/24 of the Appellate Court in Gostivar, North Macedonia rejects the appeal by the enforcement agent and the creditor because the bailiff issued an enforcement order after the expiration of more than 10 years from the date of submission of the request for enforcement by the creditor to the bailiff. The first-instance court concluded that the case was time-barred for enforcement, under Article 2 of the Law on Amendments of the Law on Obligatory Relations (Official Gazette of the Republic of North Macedonia No. 154/2023 of 20. 7. 2023). Therefore, the debtor's objection against the Enforcement Order was accepted. According to the creditor's complaint, the amendments to the Enforcement Act that provide for a statute of limitations on enforcement, as well as the provisions of the Enforcement Act and the Enforcement Procedure Act, do not provide for how enforcement proceedings that last longer than 10 years from the moment of filing the enforcement request will be completed. It is not provided for by what act the enforcement agent will establish the statute of limitations, and what legal effect the adopted act will have. The statute of limitations is not provided for as a legal reason for stopping enforcement.¹⁵

¹⁴ Court of Appeal of the Republic of North Macedonia and Basic Court of the Republic of North Macedonia.

¹⁵ *Decision of the Appellate Court in Gostivar, North Macedonia No. 32/24 [2024-01-24].*

In another case, the appeal for payment of a reward for preparing a reorganization plan and supervising the implementation of the plan was rejected by the Court and one of the reasons was concerning the limitation period, hence the second instance court stated that the general limitation period applies, i.e. the provision of Article 360 of the Law on Obligatory Relations, according to which claims become statute-barred after five years unless another limitation period is determined by law.¹⁶

Regarding the content of the decisions, it can be noted that almost all courts that make a positive or negative decision rely on the same legal reasoning and terminology. Thus, those judgments that are negative for the debtors, that is, rejecting the objection against the execution of the debtor, basically refer to the fact that:

- ✚ “The objection has not been filed and does not refer to executive action taken by the executor because the last executive action taken was the execution order [...] Therefore, the submission of the objection must be preceded by an action or omission of the executor”;
- ✚ “There are no clear legal provisions regarding the authority to decide on a material-legal objection for limitation in an executive procedure that started before the adoption of the legal amendments”;
- ✚ “The Law on Enforcement prescribes strict legal conditions under which the started enforcement that is in progress can be stopped, while the Law on Civil Procedure, the provisions of which are accordingly applied during enforcement, under Art. 10 paragraph 1 of the Enforcement Law, the institution of suspension of the procedure is not foreseen at all”;
- ✚ “The provision of Article 368 of the Law on Obligatory Relations (Official Gazette of the Republic of North Macedonia No. 154/2023 of 20. 7. 2023) does not mean that after it enters into force, the initiated execution can be re-evaluated promptly and assess whether the execution which was conducted on time according to the regulations that were valid and were in force at the time of submission of the enforcement request, due to the legal amendments that were adopted later it was obsolete”;
- ✚ “retroactivity of laws and their validity according to the Constitution”.¹⁷

¹⁶ *Decision of the Appellate Court in Skopje, North Macedonia No. 1493/22 [2023-12-14].*

¹⁷ See Decisions of the Appellate Court in Skopje. In: *Judicial Portal of the Republic of North Macedonia* [online]. 2025 [cit. 2025-02-07]. Available at: <http://sud.mk/wps/portal/asskopje/sud>; and Decisions of the Basic Civil Court in Skopje. In: *Judicial Portal of the Re-*

On the other hand, in those decisions where the courts accept the debtor's objection, they justify that in the opinion of this court, by the fact that the executor executes the debt, he is obliged to decide with a meritorious decision whether or not there is a legal basis for stopping the execution in question, and not to reject the proposal and declare himself incompetent for stopping the execution.¹⁸

The Constitutional Court of the Republic of North Macedonia, related to initiatives to abrogate Article 93 of the Amendments on the Law on Enforcement, adopted a Decision for rejection of the initiative to assess the constitutionality of Article 93 of the Law on Enforcement (Official Gazette of the Republic of Macedonia No. 72/2016, 142/2016, 178/2017, 26/2018, 233/2018 and Official Gazette of the Republic of North Macedonia No. 14/2020, 86/2020, 136/2020 and 154/2023).¹⁹ Concerning the allegations of the initiator that the contested Article 93 of the Law on Enforcement as a "special law" does not provide for the statute of limitations of claims, contrary to Article 368 of the Law on Obligatory Relations which as a "system law" regulates the statute of limitations, which is why they are inconsistent with each other, which is contrary to the principle of legal certainty according to which in the legal order of the state there should be mutually harmonized laws, as one of the main components of the rule of law as a fundamental value of the legal order guaranteed by Article 8, paragraph 3 of the Constitution, the Court found these allegations to be unfounded, given that according to Article 110, paragraph 1 of the Constitution, the Constitutional Court is competent to decide on the compliance of laws with the Constitution, and not to decide on the mutual compliance of laws. Given the above, the Court considers that the conditions of Article 28, paragraph 1 of the Rules of Procedure for rejecting the initiative due to the lack of jurisdiction of the Court have been met.²⁰

public of North Macedonia [online]. 2025 [cit. 2025-02-07]. Available at: <http://www.sud.mk/wps/portal/osskopje2/sud>.

¹⁸ CHAVDAR, K. and K. CHAVDAR. *Law on Civil Procedure: With Comments, Case Law, Examples of Practical Application and Subject Register*. 3rd ed. Skopje: Akademik, 2016. 1106 p. ISBN 978-9989-833-92-2 [in the Macedonian original ЧАВДАР, К. и К. ЧАВДАР. *Закон за парничната постапка: Со коментари, судска практика, примери за практична примена и предметен регистар*. 3^e изд. Скопје: Академик, 2016. 1106 с. ISBN 978-9989-833-92-2].

¹⁹ *Decision of the Constitutional Court of the Republic of North Macedonia No. 198/2023* [2024-04-17].

²⁰ Explanatory note of *Decision of the Constitutional Court of the Republic of North Macedonia No. 198/2023* [2024-04-17].

Before this no procedure is being initiated to assess the constitutionality of the Law on Amendments to the Law on Obligatory Relations (Official Gazette of the Republic of North Macedonia No. 154/2023) in its entirety and particular Articles 1, 2, 3, 4 and 5 and Article 1 of the Law on Amendments to the Law on Enforcement (Official Gazette of the Republic of North Macedonia No. 154/2023) although there were 15 separate requests by citizens.²¹ Namely, according to the Court's finding, the basic task of the legislator is to determine the manner and rules by which the debtor's monetary obligations are fulfilled and at the same time the debtor's monetary obligation is protected to achieve a balance in relations. The rule on the prohibition *ultra alterum tantum* has the consequence that at the moment when the amount of the penalty interest reaches the principal debt, it loses the function that the institution of penalty interest has. The abolition of the prohibition *ultra alterum tantum* on the course of penalty interest does not affect the acquired rights, nor does it violate the principle of legitimate expectations, which is why the Court assessed that the contested legal solution is following Article 8 paragraph 1 line 6 and Article 30 of the Constitution. Regarding the allegations in the initiatives that the contested article of the Law creates inequality, i.e. the participants in the procedure are placed in an unequal position so that the debtors are in a more privileged position than the creditors, the Court found them unfounded. This is because the contested article 1 of the Law on Amendments and Supplements to the Law on Obligatory Relations and the Law on Amendments and Supplements to the Law on Enforcement, applies to all market entities, without exception, i.e. regardless of the fact in what capacity they are in everyday legal obligations – whether in the role of a creditor or a debtor. Hence, according to the Court, the claim in the initiatives that the contested article 1 of the two contested laws places the debtor in a more privileged position than the creditor is unacceptable. Namely, according to the content of the contested article, it does not define to whom it applies, but on the contrary, the provision is clear, decisive, and precise, from which it follows that it applies to all market entities, equally, thus ensuring equal legal status for the Republic, under Article 55 of the Constitution of the Republic of North Macedonia. The position of the European Court of Justice expressed in

²¹ Decision of the Constitutional Court of the Republic of North Macedonia No. 114/2023, No. 115/2023, No. 117/2023, No. 118/2023, No. 123/2023, No. 126/2023, No. 127/2023, No. 130/2023, No. 133/2023, No. 134/2023, No. 137/2023, No. 141/2023, No. 160/2023, No. 188/2023 and No. 194/2023 [2024-01-10].

the case C-256/15 of 15 December 2016, Drago Nemec v. the Republic of Slovenia, (Court of Justice of the European Union, 2016, para. 35) is also in line with the prohibition of *ultra alterum tantum*. Namely, in this judgment, the European Court found that the rule of prohibition *ultra alterum tantum* does not have the effect of limiting the amount of penalty interest in a way that would nullify the essence of the creditor's right to claim payment of interest in the event of default, nor does it deprive penalty interest of any function with the debtor.²²

Because several initiatives were submitted by several institutions, associations of citizens, and individuals, some of the initiatives noted that the amendments conflict with Article 14 of the European Convention for the Protection of Human Rights, Article 1 of Protocol 1 to the European Convention on Human Rights and Article 17 of the Universal Declaration of Human Rights. Namely, "The enjoyment of the rights and freedoms outlined in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."²³ and "Everyone has the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his property."²⁴

After several changes in the composition of the Constitutional Court, in June 2024, the Constitutional Court initiated a procedure to assess the constitutionality of Article 2 and Article 4 of the Law on Amendments to the Law on Obligatory Relations,²⁵ after failing to initiate a procedure under this Law in January 2024. The Constitutional Court took advantage of the procedural opportunity and constitutional-judicial practice to once again engage in a debate on the issue of the constitutionality of the same legal provisions, based on the fact that a more in-depth analysis had been conducted and more arguments had been presented, as well as on the fact that this time the Court was deciding in full composition.

²² Explanatory note of *Decision of the Constitutional Court of the Republic of North Macedonia No. 114/2023, No. 115/2023, No. 117/2023, No. 118/2023, No. 123/2023, No. 126/2023, No. 127/2023, No. 130/2023, No. 133/2023, No. 134/2023, No. 137/2023, No. 141/2023, No. 160/2023, No. 188/2023 and No. 194/2023* [2024-01-10].

²³ Article 14 of *Convention for the Protection of Human Rights and Fundamental Freedoms* [European Convention on Human Rights] [1950-11-04].

²⁴ Article 17 of *Universal Declaration of Human Rights* [1948-12-10].

²⁵ See more in *Law on Amendments to the Law on Obligatory Relations*. Official Gazette of the Republic of North Macedonia, No. 154/2023.

The aftermath of these amendments was that the Constitutional Court of the Republic of North Macedonia decided that Article 2 and Article 4 of the Law on Amendments and Supplements to the Law on Obligatory Relations (Official Gazette of the Republic of North Macedonia No. 154/2023) are repealed, and decided that the decision to stop the execution of individual acts or actions taken based on Article 2 and Article 4 of the Law on Amendments to the Law on Obligatory Relations (Official Gazette of the Republic of North Macedonia No. 154/2023) is void.²⁶ According to the Decision, the old Law on Obligatory Relations will apply, i.e. the statute of limitations for creditors' claims will remain ten years.²⁷

Before the amendments to the Law entered into force, Article 368 Paragraph 1 of the Law on Obligatory Relations stipulated that claims established by a final court decision or by a decision of another competent authority or by a settlement before a court or before another competent authority shall be subject to a statute of limitations of ten years. This legal solution gives the creditor the right, within the period of ten years, to be able to forcibly collect his claim. According to the newly conceived legal solution regulated by the contested Article 2 of the amendments to the Law, the previously established period of ten years is shortened to five years, and the statute of limitations begins to run from the moment of the enforceability of the above-mentioned acts.

Statute of limitations as a legal institute is a type of sanction for an unscrupulous creditor who has missed the opportunity to submit a request for enforcement within the legally prescribed period, thus losing the right to forcibly collect the claim. The creditor may, even after the expiration of the limitation period, file an enforcement request (the limitation period is not taken into account ex officio by the court/bailiff, only

²⁶ *Decision of the Constitutional Court of the Republic of North Macedonia No. 98/2024 and 139/2024 [2024-06-20].*

²⁷ *Decision of the Constitutional Court of the Republic of North Macedonia No. 98/2024 and 139/2024 [2024-06-20].* The Constitutional Court of the Republic of North Macedonia, based on Article 110 and Article 112 of the Constitution of the Republic of North Macedonia, Article 72 and Article 82 of *Act of the Constitutional Court of the Republic of North Macedonia*. Official Gazette of the Republic of North Macedonia, No. 115/2024, at the session held on September 25, 2024, adopted the following Decision: 1. Article 2 and Article 4 of the Law on Amendments and Supplements to the Law on Obligatory Relations (Official Gazette of the Republic of North Macedonia No. 154/2023) are repealed. 2. The decision to stop the execution of individual acts or actions taken on the basis of Article 2 and Article 4 of the Law on Amendments to the Law on Obligatory Relations (Official Gazette of the Republic of North Macedonia No. 154/2023) is hereby void.

the debtor can invoke the limitation period), but if the debtor objects to the limitation period, the claim cannot be forcibly collected. The objection to the limitation period is at the disposal of the debtor and the debtor has the right to use it freely, and therefore, depending on his will, he may or may not use it. With the onset of the limitation period, the claim is converted into a so-called natural obligation that cannot be forcibly collected, but which still exists and which the debtor can pay voluntarily if he does not invoke the limitation period. Whether the creditor will file a request for enforcement before the expiration of the limitation period of the claim depends solely on the will of the creditor, who is aware of the fact that he will not be able to forcibly collect his claim if he does not file the request for enforcement within the prescribed period, but afterward, as well as aware of the risk of the possibility that the debtor will object to the limitation period of the claim in such a case. However, the creditor's decision to file an enforcement request is determined by the deadline for filing such a request, which is established by law. Specifically, his right to request forced collection is linked to the legally established deadline, on which the certainty of the realization of the forced collection depends.²⁸

It is indisputable that the risk and consequences of missing the legal deadline are borne exclusively by the creditor since this is a certain situation that he was aware of and which he caused and could not have a legitimate expectation that his claim could be forcibly collected after the expiration of the deadline. However, the right and obligation defined in this way, according to the Court, are applicable only if the creditor is aware of the limitation periods for the claim, established by law. Otherwise, if the legislator prescribes a new, shorter period for the realization of the right to the forced collection, which was neither certain nor foreseeable for the creditor, he is faced with legal uncertainty, which in turn has the consequence of depriving the constitutionally guaranteed right of citizens – the property right. The creditor, like any citizen of the state, according to the Court, cannot be held liable and suffer the consequences of the legal situation that has arisen (in this case, the statute of limitations) that he did not cause. In this context, the question arises of what impact the shortening of the limitation period from ten to five years has, i.e. what consequences creditors may face with the legal shortening of the limitation period from ten to five years, and who, until the entry into force of the legal amendments, did not file an enforcement request, nor were they given

²⁸ Explanatory note of *Decision of the Constitutional Court of the Republic of North Macedonia No. 98/2024 and 139/2024* [2024-06-20].

the legal opportunity to do so by the amendments within a certain period to adapt to the new legal solution. According to the Court, the ten years for the entire period of its validity (until the entry into force of the legal amendments) represented a legally established and predictable framework based on which legal entities could confidently expect that their claim would be realized by force by submitting a request for enforcement within the prescribed ten-year period. However, with the legal shortening of the limitation period, all claims become time-barred if, upon the entry into force of the new legal solution, five years have passed since the enforceability of the legally binding act in which the claim was established, which has the consequence that creditors cannot settle their claim by force, although the previous arrangement of the ten years gave them a legitimate right to expect the realization of their right within that period. The creditors could in no way have foreseen, nor did they know or were obliged to know, that the legislator would establish a new, shorter deadline for submitting their requests for forced collection and that such a provision would also apply to their existing, ongoing legal relationships in the field of private law.²⁹

The essence of enforcement by force is to realize a specific right established by a final court or other decision of a competent authority, however, the legislator, using its right to regulate legal relations by law, not only shortens the period to five years, but also engages in regulating relations that it has previously regulated (ten years), and derogates the legal certainty of citizens that the existing, positive legal norms will indeed be applied to their case, without offering a transitional solution, with which the subjects of law could adapt to the newly created situation.

From all of the above, it follows that the legislator did not respect what it initially guaranteed and established new conditions and deadlines under which previously established legal relations will also take place.

The existence of the undoubted retroactive effect of the norm established by the amendments to the Law on Obligatory Relations is also supported by an analysis of the provision of the same amendments, which does not establish a transitional legal solution in order to protect the legal certainty of citizens and their legitimate expectations that they had before the entry into force of the new legal solutions. Thus, a sepa-

²⁹ Explanatory note of *Decision of the Constitutional Court of the Republic of North Macedonia No. 98/2024 and 139/2024* [2024-06-20].

rate norm in the legal amendments is the contested Article 4, according to which “The initiated procedures for the collection of claims provided for in Article 2 of this Law shall be completed in accordance with this Law.”³⁰

From the content of the contested Article 4 of the amendments to the Law on Obligatory Relations, it is indisputable that this separate norm refers precisely to the executions initiated before the entry into force of the amendments to the Law, and which should be completed in a manner prescribed by the contested Article 2 of the law in question, i.e. within a period that did not exist at all and was not legally prescribed when they began. The legislator, not taking into account the acquired rights of creditors, prescribed their forfeiture, i.e. creditors who have not initiated enforcement, but have acquired an enforcement document more than 5, 6, 7, 8 or 9 years from the entry into force of the law in question, have their claims time-barred, thus practically losing the right to forcible enforcement of their claims.

From this, according to the Court, it follows that the contested Article 4 of the subject law creates a retroactive effect of the new legal solution from Article 368 of the Law, on previously established legal relations with an unfavorable effect, contrary to the constitutional prohibition from Article 52 paragraph 4 of the Constitution that laws and other regulations cannot have a retroactive effect, except by exception, in cases where it is more favorable for the citizens.³¹ It is unnecessary to further explain that in this case the exception determined in Article 52 paragraph 4 of the Constitution cannot be applied because the creditors are equal citizens of the state of the Republic of North Macedonia, as are the debtors, and hence, according to the Court, the favorable effect for one automatically causes an unfavorable, i.e. discriminatory effect for the other citizens as two parties to the legal relationship. This, in turn, leads to unequal treatment of citizens before the Constitution and the laws. In this regard, the creditors have undoubtedly not contributed to the consequences and risks of this situation, since they were guided by and considered the ten years as the period within which claims were determined by a final court decision or by a decision of another competent authority

³⁰ Explanatory note of *Decision of the Constitutional Court of the Republic of North Macedonia No. 98/2024 and 139/2024* [2024-06-20].

³¹ Article 52 of *Constitution of the Republic of North Macedonia*. Official Gazette of the Republic of North Macedonia, No. 1/92, 31/98, 91/01, 84/03, 107/05, 3/09, 49/11, 6/19 and 36/19.

or by a settlement before a court or before another competent authority become statute-barred.

The Constitution, in Article 30 paragraph 1, guarantees the right to property, which is exercised, among other things, by the right of citizens to initiate court and other proceedings in which they will be able to prove and protect their right to property.³² However, all of this remains in the sphere of declaratory protection if the claim determined by a final and enforceable act becomes statute-barred, which is an obstacle to the actual realization of the claim, and this leads to a reduction in the property, not due to the fault of the creditor who has a legitimate right to expect that the claim will become statute-barred within the period determined by the legislator. A claim established by a final court decision or by a decision of another competent authority or by a settlement before a court or before another competent authority constitutes the property of the creditor, so the fact that that claim becomes statute-barred, thereby reducing the property of the creditors in favor of the debtor, according to the Court, indisputably means a threat to the constitutionally guaranteed right to property under Article 30, paragraph 1 of the Constitution. Concerning such a normative move, the legislator, under its constitutional powers, has the right to enact laws, amend and supplement them, determine the beginning of their application, determine the cessation of their validity, etc., and in that regard, to establish deadlines according to which citizens should be guided in the exercise of their rights, including amending them. However, according to the Court, the legislator also must regulate the transition from the old to the new regime (transitional regime) in a way that will allow for a certain period for citizens to adapt their behavior to the new regime, in order not to call into question the exercise of their rights and their legitimate expectations that they had under the previous norms of the same law, which in this specific case has not been done.

Namely, the Law on Amendments to the Law on Obligatory Relations (Official Gazette of the Republic of North Macedonia No. 154/2023) in Article 5 establishes that “This law shall enter into force on the day of its publication in the “Official Gazette of the Republic of North Macedonia,” which means that its application shall begin immediately upon its publi-

³² Article 30 of *Constitution of the Republic of North Macedonia*. Official Gazette of the Republic of North Macedonia, No. 1/92, 31/98, 91/01, 84/03, 107/05, 3/09, 49/11, 6/19 and 36/19.

cation, without *vacatio legis*, the meaning of which consists of the need for citizens to be familiar with the content of the law before it enters into force. At the same time, although these are substantial legal amendments, it is obvious that the legislator did not intend to delay the application of the disputed provisions of the law in question, to provide citizens with the opportunity to adapt their behavior to the new legal regime.

On the other hand, the Constitution in Article 52, paragraph 3 stipulates that “Laws shall enter into force no earlier than the eighth day from the day of their publication, and by way of exception, determined by the Assembly, on the day of their publication.” It follows from the content of this constitutional provision that the legislator may use the exception, but of course, this requires an explanation and presentation of the reasons for such urgency with which to argue the need to use the exception instead of the general rule. In the specific case, the Assembly, in its explanation of the legal amendments and the need for their adoption, does not refer to the reasons for shortening the constitutionally established *vacatio legis*, which, according to the Court, also calls into question the observance of Article 52, paragraph 3 of the Constitution, although this is not stated in the initiative.³³

Furthermore, with the contested Article 2 of the legislative amendments, Article 368 of the Law, receives a new paragraph 3 with the following content: “The statute of limitations on a legally binding court decision or a decision of another competent authority, or a settlement before a court or another competent authority shall be interrupted by the submission of a request for enforcement before a competent enforcement agent, whereby the statute of limitations begins to run anew, which in the enforcement procedure lasts ten years from the moment of the submitted request for enforcement.” The term “statute of limitations on a legally binding court decision” is probably a mistake, since one cannot speak of the statute of limitations on a legally binding act, but of the statute of limitations on a claim established by a legally binding act. At the same time, the above-mentioned provision uses the terminology “execution procedure”. However, the enforcement agent, following positive law, does not conduct an enforcement procedure, but rather carries out enforcement and undertakes enforcement actions. From the content of Article 368 paragraph 3 of the Law, it follows that it introduces a new type

³³ Explanatory note of *Decision of the Constitutional Court of the Republic of North Macedonia No. 98/2024 and 139/2024* [2024-06-20].

of limitation of claims due to the passage of time of ten years from the moment of the submitted request for enforcement.³⁴

Taking into account the regulation of the contested Article 4 of the law in question according to which the initiated procedures for the collection of claims provided for in Article 2 of this law will be completed per it, it follows that this contested article of the Law regulates the issue of already initiated enforcements that are in progress and have not been carried out. The analysis of this provision inevitably leads to the conclusion that the enforcement that the creditors conscientiously and properly initiated before the entry into force of the legal amendment, and have not yet settled the claim established by the enforcement document, will not be able to be settled after the expiration of ten years from the moment of the submitted request for enforcement – a period that has never been previously prescribed in the Macedonian legislation.

According to the Court, this legal situation leads to unequal treatment of creditors who are in the same legal position, since both parties duly initiated the enforcement of their claim and had the same legitimate expectations that they would thereby succeed in settling their claim by force, but due to the newly established ten-year statute of limitations for claims from the moment the enforcement request was submitted, the claim of some will become statute-barred, while that of others will not, which is not in accordance with the constitutional principle of equality of citizens before the Constitution and the laws, established in Article 9, paragraph 2 of the Constitution. It is also important to emphasize that the introduction of the institute of “statute of limitations for claims within ten years from the moment the enforcement request was submitted” introduces a time limit on the duration of enforcement, a legal solution that has not existed in our legal order so far and is unknown in the countries of the region. At the same time, if we take into account the fact that one debtor may have multiple creditors, under the prescribed rules for the priority right to settle claims, i.e. the rules of the order of their settlement, it becomes indisputable that such a legal solution may cause a real impossibility of carrying out the enforcement to the extent necessary for the settlement of the claim.

According to the Court, such a legal solution does not guarantee the legal certainty of the creditors that the initiated enforcement will not be

³⁴ Explanatory note of *Decision of the Constitutional Court of the Republic of North Macedonia No. 98/2024 and 139/2024* [2024-06-20].

in vain. This calls into question the expediency of initiating a court procedure itself, as well as the legal certainty of the citizens that final and enforceable court judgments will ever be enforced at all. Explained even more specifically, such a legal norm, for the first time in our legal system, introduces the so-called “statute of limitations of a final court judgment”, which is a legal absurdity in itself. The essence of enforcement by force is to realize the specific right established by a final court or other decision of a competent authority, i.e. to achieve full realization of the claim, and with the newly introduced time limitation on enforcement, this is prevented.³⁵

According to the Court, the inability to realize the claim in full, due to the time limitation on enforcement, means a reduction in the creditor’s property, in favor of the debtor, even though he conscientiously filed an enforcement request and did not manifest in any way that he waived the claim established by the enforcement document, which implies a violation of the constitutionally guaranteed right to property. At the same time, the time limitation on enforcement, according to the Court, also causes unequal treatment of creditors in terms of the possibility of full realization of the claim, contrary to the constitutional principle of equality of citizens before the Constitution and the laws, established in Article 9 paragraph 2 of the Constitution.

Considering that this is a novelty in our legal order, according to the Court, the legal solution from paragraph 3 of Article 368 of the Law not only implies negative consequences for creditors but also creates ambiguities and a series of dilemmas and open questions in its implementation for which no answer can be found in the existing regulations in this area. Namely, it is unclear before which authority the debtor will invoke this type of limitation, i.e. who will establish the limitation, whether the court or the enforcement agent, and with what act, who will bear all the costs that were incurred on the occasion of and during the enforcement which, according to the new legal solution, will have to stop, without the creditor settling the claim, it is simply unclear how the new legal solution from Article 368 paragraph 3 of the Law will be acted upon. Such uncertainties caused by the additionally regulated paragraph 3 of Article 368 of the Law, indisputably create a basis for arbitrariness in the action and implementation of the new legal solution by the competent authorities,

³⁵ Explanatory note of *Decision of the Constitutional Court of the Republic of North Macedonia No. 98/2024 and 139/2024* [2024-06-20].

which additionally calls into question the constitutional principle of the rule of law.³⁶

Based on the above, the Court found that Article 2 and Article 4 of the Law on Amendments to the Law on Obligatory Relations (Official Gazette of the Republic of North Macedonia No. 154/2023), are not under the provisions of Article 8, paragraph 1, lines 3 and 6, Article 9, paragraph 2, Article 30, paragraph 1 and Article 52, paragraph 4 of the Constitution.

Conclusions

With the Law on Amendments and Supplements to the Law on Obligatory Relations in the Republic of North Macedonia published in 2023, in addition to the other amendments, one significant amendment related to the statute of limitations of enforcement entered into force. This new type of statute of limitations, which until now was not known in the Macedonian law, stipulated that after a certain period, the execution procedure stops. Namely, according to the amendment, there is a statute of limitations or a limitation of the duration of the enforcement procedure after submitting the enforcement request.³⁷

The aftermath of these amendments was that the Constitutional Court issued a decision repealing Articles 2 and 4 of the Law on Amendments to the Law on Obligatory Relations. According to the decision, these amendments were abolished and the old Law on Obligatory Relations will apply. It was pointed out by the judges of the Constitutional Court that the decision is based on the reasons that the Parliament did not pay attention to the prohibition of retroactive application of laws, as well as the constitutional obligation to provide a transitional period for citizens to adapt to the new legal regime (*vacatio legis*), which refers to the publication of the amendments in the Official Gazette. According to the Constitution, an exception to the aforementioned rule for publication in the Official Gazette is permitted, but the Parliament did not provide a response to the Constitutional Court, nor did it address the reasons and objectives for making such an exception in the explanation of the draft

³⁶ Explanatory note of *Decision of the Constitutional Court of the Republic of North Macedonia No. 98/2024 and 139/2024* [2024-06-20].

³⁷ Article 368 of *Law on Obligatory Relations*. Official Gazette of the Republic of North Macedonia, No. 18/2001, 4/2002, 5/2003, 84/2008, 161/2009, 123/2013, 215/2021 and 154/2023.

amendments, which makes the Court suspect that the legitimate expectations of citizens as well as their legal certainty have been violated.

In summary, for North Macedonia, as we have noted previously, the limitation period is 10 years for general contractual claims. The limitation period is 3 years from the date the claimant became aware of the damage and the liable party, with an absolute limit of 5 years from the date of the incident.³⁸ These limitation periods do not differ significantly from the other countries. The main issue was not the limitation period but the possibility of the enforcement bailiffs collecting debts after a longer period and the amount being above the total debt of the debtor after the calculation of the interest rates. According to the brief analysis of the court decisions in this paper, it can be concluded that there is no single practice of the competent courts in North Macedonia. For this reason, the Supreme Court of the State must without delay perceive such differences both in the basic and in the appellate courts and pass a legal opinion that will create a unique practice concerning the application of the disputable legal provisions.

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³⁸ *Law on Obligatory Relations*. Official Gazette of the Republic of North Macedonia, No. 18/2001, 4/2002, 5/2003, 84/2008, 161/2009, 123/2013, 215/2021 and 154/2023.

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