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Consumers and limitation of the right to the recovery of unjust enrichment

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Abstract. The academic thesis analyses some interpretative problems related to the assessment of the beginning of the subjective limitation period in the case of unjust enrichment arising in the context of consumer credit relations. The author interprets the statute of limitations of the right to release of unjust enrichment in the light of the applicable de lege lata legislation, which is supplemented by the current case law. The author presents arguments indicating that the decisions of the Court of Justice of the European Union have not been properly implemented in the decision-making activity of the courts. Using case law, she provides a brief overview of the subject matter relating to unjustified enrichment in consumer law.

Keywords. consumer credit, supplier, unjust enrichment, consumer

1. Introduction

The limitation of the right to the delivery of unjust enrichment from consumer relations was, and to a large extent still is, one of the most debated issues in doctrine and court practice. The development of opinions on this issue has fluctuated.

In recent years, the courts have increasingly encountered in consumer credit relationships the 'inverted position' of the litigants – personal entities consumers, appearing on the plaintiffs' side, seeking reimbursement of part of the consideration paid on behalf of the credit providers, which are banks or non-banking companies. If a credit provider in the context of a consumer credit agreement breaches one of its statutory obligations, the legal sanction - the interest-free and charge-free nature of the credit – is imposed. **[1]** Accordingly, the consideration paid by the consumer in excess of the principal amount of the credit granted (i.e. the funds actually made available to him by the credit provider) must be regarded as unjust enrichment on the part of the credit provider.

The interest-free and charge-free nature of the credit, which arises as an ex lege consequence of a breach of specific provisions of the Consumer Credit Act, has the effect, in the case of a consumer's performance in excess of the principal amount borrowed, of creating unjust enrichment on the part of the receiving creditor. It is based on a breach of the law already during the contracting phase, which does not affect the validity of the consumer contract as it stands. The contractual relationship in such a case is based on the relevant legal title based on which the parties are obliged to perform for each other. **[2]**

The Constitutional Court in its ruling in Case No I. ÚS 51/2020 **[3]** also stated that there can be no doubt that the interest-free nature of the loan, which arises as an ex lege consequence of the breach of specific provisions of the Consumer Credit Act, has the consequence, in the case of a consumer's performance in excess of the principal amount borrowed, that unjustified enrichment arises on the part of the creditor receiving the loan. This is a specific prerequisite for the creation of unjust enrichment. It is based on a breach of the law during the contracting phase, but that breach does not affect the validity of the consumer contract as such.

This specific situation is most similar to the defectiveness of a written contract (other than a credit agreement), from which the contracting parties, believing that they are bound by it, have performed, but as a result of the defectiveness of the contract, the legal consequence is that it is void and the performance already provided is unjust enrichment. That makes it possible to generalise that the consumer's performance to the supplier in excess of the principal amount of the agreed consumer credit is unjust enrichment on the part of the supplier resulting from an invalid legal transaction. The legal fiction of the interest-free and charge-free nature of consumer credit is, in terms of the facts of unjust enrichment fixed by the Civil Code, a kind of modification of the nullity of the legal action caused by the special nature of the applied substantive provision of the Consumer Credit Act.

2. Legislation

The basis for consumer policy is based on primary European Union law but is mostly regulated in secondary law. Directive 93/13/EEC on unfair contract terms in consumer contracts can be regarded as the basis for general consumer protection legislation at the European level, and other consumer protection directives have followed it. The directive aimed to unify the Member States' legislation on unfair contract terms and, at the same time, to set a uniform minimum standard of consumer protection and thus, to some extent, to harmonise consumer protection policy across all the Member States of the European Communities. **[4]**

A consumer dispute for the recovery of unjust enrichment does not arise out of a consumer contract but is only related to it. The category of disputes relating to a consumer contract also includes proceedings in which the weaker party, the consumer, claims unjust enrichment, pre-contractual liability, non-contractual liability for damages, unfair competition or unfair commercial terms, or liability for damage caused by a defective product. Disputes concerning other contractual documents relating to a consumer contract may also be included here. Other documents include in particular general terms and conditions, general terms and conditions of contract, general insurance terms and conditions, complaints regulations, etc. On the other hand, the author considers that the phrase 'disputes relating to a consumer contract' used by the legislator is rather vague and indeterminate, since it could be assumed that any dispute in which there is even a slight hint of a connection with a consumer contract could immediately foreshadow the fact that it would involve the application of such divergent procedures under the Code of Civil Procedure, which would apply to the weaker party.

One of the legal basis for the creation of an obligation and a separate mandatory consideration is the institution of unjust enrichment. Unjust enrichment arises without a breach of duty and is not the creation of an obligation directly by operation of law, but the creation of an obligation by operation of law. **[5]**

The regulation of unjust enrichment is set out in the provisions of § 451 to § 459 of the Civil Code. The legal regulation of unjust enrichment is based on the principle that whoever is unjustly enriched at the expense of another must surrender such enrichment. The person to whom the unjust enrichment is to be paid **[6]** results from the specific legal ground based on

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which the obligation to pay the unjust enrichment arose. Unjust enrichment may be understood as a pecuniary advantage obtained by a performance without legal justification, from an invalid legal act, from a legal justification that has fallen into disuse, from dishonest sources, or by performing for another when the latter should by law have performed himself. **[7]** It is thus enrichment for which there is no legal justification, agreement or contract, or statutory provision. In the past, unjust enrichment was also referred to as unjust pecuniary advantage.

Before analysing the specific rules on the limitation of the right to the recovery of unjust enrichment, it is appropriate to refer to the theoretical definition of limitation. According to legal theory, limitation (in Latin, 'inveteratio') is one of the legal consequences of the lapse of time provided for by law without the right-holder exercising or enforcing his or her right in a court of law. By limitation, we mean the qualified expiry of the time provided for by law for the exercise of a right, which has elapsed without the right having been exercised. As a consequence of limitation, the obliged entity may counter a judicial exercise of the right with a plea of limitation, which results in the extinction of the claim belonging to the content of the subjective right, i.e. the extinction of judicial enforceability. As a result of the plea of limitation and the extinction of the claim, the right cannot be judicially recognised by the entitled party. As a consequence of limitation, although the original subjective right of the entitled subject is not extinguished, it is weakened in the component which constitutes the claim. The entitled party may seek recognition of his right and the time-barred right in a court of law and may even be successful unless the obliged party raises a limitation objection before the court. However, if the obliged party raises a claim of limitation before the court and therefore raises a limitation objection, the claim is extinguished and the court will not grant such an action. **[8]**

By limitation (as opposed to preclusion), the right itself is not extinguished, it is only weakened in the component that constitutes the claim. The subjective right continues to exist even after the application of the plea of limitation in the form of an obligation in kind, but its applicability is limited to voluntary performance by the obligor. The limitation right is provided for in the Civil Code, specifically in section 107.

3. Limitation periods

In the case of limitation of the right to the delivery of unjust enrichment, the law provides for combined limitation periods, namely a subjective two-year and an objective three-year period, and ten years in the case of intentional unjust enrichment. Their commencement, their course, and their termination are different and independent of each other. **[9]**

The running of these time-limits is therefore determined differently. The running and expiry are not interdependent. If one of them expires and an objection of limitation is raised, the time-barred right cannot be granted to the beneficiary.

The Regional Court in Banská Bystrica also stated the above in its decision, namely that the right to the release of unjust enrichment as a property right is time-barred within the statutory limitation period of three or ten years under Section 107(2) of the Civil Code, within which the two-year subjective limitation period according to Section 107(1) of the Civil Code runs. In proceedings for the recovery of unjust enrichment, the court must consider the statute of limitations objection comprehensively in the light of the provisions of Section 107 of the Civil Code and, even without the objection of a party, must also examine its own motion whether the three-year or ten-year objective limitation period applies to the matter in question. **[10]**

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3.1 Objective limitation period

The objective limitation period starts to run from the date on which the unjust enrichment occurred. However, in the case of unjust enrichment resulting from an invalid legal act, a distinction must be made as to whether the invalidity is absolute or relative. In the case of absolute nullity of a legal act, the performance provided based on the act is ipso facto unjust enrichment only from that moment onwards the objective limitation period runs (the conceptual prerequisites for the fulfilment of the subjective limitation period must be fulfilled in the same way). **[11]**

For the objective limitation period to begin to run, the decisive moment is when the unjust enrichment was actually obtained. In the case of an absolutely void legal act, the unjust enrichment derived therefrom arises from the very creation of the legal act. In the case of a relatively void legal act, unjust enrichment can only be said to have been obtained from the moment the relative nullity is successfully invoked (when the manifestation of the beneficiary reaches the other party to the legal action). If the unjustified benefit is provided in stages, the objective limitation period starts to run for each of them separately at the moment when the benefit is provided. This means that each of the partial payments made without legal justification has its own separate "legal fate", it is time-barred separately. **[12]**

According to Section 107(1) of the Civil Code **[13]**, within the three-year objective limitation period, a two-year subjective limitation period runs from the date on which the person entitled became aware of the unjust enrichment. **[13]**

A different approach to the beginning of the objective limitation period of the right to the delivery of unjust enrichment can be found in decision I. ÚS 47/2019 of 30 January 2019. **[14]**

3.2 Subjective limitation period

In assessing the start of the subjective limitation period, it is necessary to base the assessment on the beneficiary's actual, not presumed, knowledge that unjust enrichment has been obtained to his detriment and who has obtained the unjust enrichment. By this knowledge, Section 107(1) of the Civil Code does not mean knowledge of the legal qualification, but of the factual circumstances from which liability for unjust enrichment can be inferred. **[15]**

The start of the subjective limitation period can be linked to the point at which the plaintiff must have been aware that he had transferred a higher amount to the defendant's account without any existing legal reason for the transaction. **[16]**

What is relevant is not whether the beneficiary has such legal knowledge that he is subjectively capable of assessing those facts and finding that the contract under which he performed is void. It is not knowledge of the legal qualification under section 107 of the Civil Code, but knowledge of the facts from which liability for unjust enrichment can be inferred. It is not decisive that the beneficiary could have become aware of the acquisition of that unjust enrichment by exercising due diligence or even earlier. The beneficiary becomes aware of the unjust enrichment when he has the information which enables him to bring an action for the recovery of the unjust enrichment, i.e. when he has acquired knowledge of the extent of the unjust enrichment and of the person of the enriched entity. **[17]**

The Regional Court in Trenčín also stated in its decision that for the beginning of the two-year subjective limitation period, the decisive date is the day when the beneficiary in a particular case actually learns that unjustified enrichment has been obtained at his expense and who obtained it. Actual, not merely presumed, knowledge on the part of the beneficiary that unjust enrichment has been obtained at his expense and who has obtained it is required. It is not

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decisive that the beneficiary could have become aware of the acquisition of that enrichment at his expense by exercising the necessary diligence, or even earlier. According to the decision of the Supreme Court of the Slovak Republic, Case No. 1Cdo/67/2011, the beneficiary becomes aware of the occurrence of unjust enrichment when he actually (demonstrably) discovers the factual circumstances based on which he can bring an action, regardless of the fact that he could have become aware of these circumstances even earlier. **[18]**

The Supreme Court of the Slovak Republic has also stated that the actual knowledge of the consumer that he/she should not (did not) have made the repayments of the consumer credit in the amount agreed in the credit agreement is essential for determining the beginning of the subjective limitation period in the case of unjust enrichment obtained by performance under a consumer credit agreement which is interest-free and without fees. **[19]**

The entitled person becomes aware of the occurrence of unjust enrichment and of who has enriched himself at his expense when he/she actually (demonstrably) discovers the factual circumstances on the basis of which he/she can bring an action for the recovery of the unjust enrichment, i.e. when he/she becomes aware of the extent of the unjust enrichment and the person of the enriched entity, irrespective of the fact that he/she could have become aware of these facts earlier.

The actual knowledge of the consumer that he/she has not (should not) have made the consumer loan repayments in the amount agreed in the consumer contract must be regarded as the factual circumstance essential for the consumer to acquire knowledge of the unjust enrichment and of the person who has been unjustly enriched to his detriment, which is necessary for the subjective limitation period to start running. Without such knowledge, the consumer is under the impression that he/she was obliged to fulfil the contractually agreed obligation and to repay the debt by instalments in the amount agreed in the contract, the draft of which was duly and lawfully drawn up by the supplier offering his product following the consumer's trust and confidence. It is therefore not sufficient merely to assume that the person entitled could have known, or could or should have known if he had exercised due diligence, the facts of the case. It should be emphasised that the consumer's knowledge that the amount of the repayments (or the entire final debt, including interest and charges) is incorrectly stated in the consumer credit agreement is in itself a factual circumstance, not a legal circumstance (the discovery that such a contractual arrangement is contrary to the law is only the reason for acquiring that knowledge).

The question of the consumer's actual knowledge of the unjust enrichment and of who has been unjustly enriched at his expense cannot be separated from the determination of the moment at which the consumer acquired that knowledge. The question is whether, in the case of every credit agreement and every consumer, the acquisition of actual knowledge of unjust enrichment can be automatically presumed to be based solely on the consumer's intimate knowledge of the content of the credit agreement and of the obligation to perform on behalf of the creditor, which would, in effect, imply a presumption that the consumer was aware that (some of) the provisions of the credit agreement were contrary to the law. The Supreme Court of the Slovak Republic has already stated in its decision of 21 March 2012, Case No. 6Cdo/1/2012, that the old Roman principle of "vigilantibus iura scripta sunt" (rights belong to the vigilant) in consumer matters gives way to the more important principle of protection of the consumer's rights in specific contexts (i.e. depending on the specific circumstances).

In the resolution case No. 6MCdo/9/2012 of 16.01.2013 the Supreme Court added that consumer protection is a matter of public interest and is necessary to raise the standard of living and quality of life of citizens. It pointed to the court's obligation to respect the fundamental right

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to fair judicial protection guaranteed by Article 46 (1) of the Constitution of the Slovak Republic, which is guaranteed not only to the person who asserts his or her rights but also to the person against whom the claim is asserted. The Supreme Court has also stated that respect for the principle of 'ignorantia iuris non excusat' in consumer legal relations on the part of the supplier must be required to the greatest extent possible. Its application to the detriment of the consumer will be considered only exceptionally if the specific circumstances of the case justify it. It is also the case that, in specific contexts, this principle gives way to the more important principle of consumer protection on the part of the consumer. Given the nature of consumer legal relations, the reality of practical life, and therefore common sense, is contradicted by the requirement of detailed (even detailed) knowledge of the law on the part of the consumer. Therefore, the consumer's lack of information or lack of awareness in this area cannot be to his detriment. Although the Supreme Court in the aforementioned proceedings considered the power of the enforcement court to examine the validity of the arbitration clause and the validity of the arbitration clause itself, these conclusions are also valid in the present case under review by the Court of Appeal, also with reference to Article 6 of the Basic Principles of the Civil Procedure Code (the principle of protection of the weaker party to the dispute). **[20]**

As to the beginning of the limitation period of the consumer's right to the delivery of unjust enrichment, the Supreme Court of the Slovak Republic stated that the factual circumstance essential for the acquisition of the consumer's knowledge of the occurrence of unjust enrichment and the fact that, who has been unjustly enriched at his expense, necessary for the commencement of the subjective limitation period, is to be regarded as the consumer's actual knowledge that he does not (should not) have to make the consumer credit repayments in the amount agreed in the credit agreement. Without that knowledge, the consumer is under the impression that he/she was obliged to fulfil the contractually agreed obligation and to repay the debt in instalments in the amount agreed in the contract. The Court of Appeal emphasises that the consumer's knowledge that the amount of the repayments is incorrectly stated in the consumer credit agreement (i.e. that the loan is interest-free and charge-free) is in itself a factual circumstance, not a legal circumstance (the finding that such a contractual arrangement is contrary to the law is only the reason for acquiring that knowledge). **[21]** The Supreme Court of the Slovak Republic also referred here to the ruling of the Constitutional Court of the Slovak Republic, Case No. I. ÚS 51/2020, where it stated that such unjust enrichment has very specific factual circumstances and raised the question of whether the debtor would likely pay the creditor a performance if he knew that the performance did not belong to him (similarly in II. ÚS 502/2020, detto 7Cdo/79/2021 and 5Cdo/29/2021).

3.3 Limitation period for unjust enrichment obtained intentionally

Within the limitation period of ten years, the right to the delivery of unjust enrichment is time-barred under Section 107(2) of the Civil Code if the unjust enrichment was obtained intentionally. The intention, whether direct or indirect, must be directed towards the unjust enrichment and must already exist at the time the unjust enrichment was obtained. It is therefore not sufficient if the debtor acquired the unjust enrichment unintentionally and then intentionally retained it. If the conditions for a limitation period of ten years are not met, the three-year objective limitation period applies, even if the person liable did not cause the unjust enrichment to be obtained in the first place, since liability for unjust enrichment is an objective liability. Although the Civil Code defines intentional unjust enrichment in its provisions, it does not define the essence of intentional conduct; therefore, the examination of the intention of the person acting is based on the legal regulation of fault contained in criminal law. Culpability is

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based on two components, namely knowledge and will. In the case of intentional culpability, both the knowledge and the volitional component are present. In negligence, only the knowledge component is given. **[22]**

In its judgment of 22 April 2021 in Case LH v. Profi Credit Slovakia s.r.o. (C- 485/19), the Court of Justice of the European Union stated that the essence of the first question referred for a preliminary ruling was to determine whether the principle of effectiveness must be interpreted as precluding national legislation which provides that an accusation brought by a consumer for the reimbursement of sums wrongly paid based on unfair terms within the meaning of Council Directive 93/13/EEC of 05 April 1993 on unfair terms in consumer disputes or on the basis of terms contrary to the requirements of Directive 2008/48/EC of 23 April 2008, is subject to a limitation period of three years starting from the date on which the unjustified enrichment occurred. The Court of Justice of the European Union ('the Court of Justice'), in its answer to the question referred for a preliminary ruling, interpreted the principle of effectiveness (paragraph 52 of the judgment referred to above) as meaning that: '... according to the settled case-law of the Court of Justice, in the absence of Union rules in a given field, it is for the national legal order of each Member State, on the basis of the principle of procedural autonomy, to regulate the procedural conditions relating to actions designed to secure the protection of rights conferred by Union law on persons subject to its jurisdiction, provided, however, that they are not less favourable than those governing similar situations under national law (principle of equivalence) and do not lead to the practical impossibility or undue hardship of exercising the rights conferred by European Union law (principle of effectiveness) (see to this effect the judgments of 16 July 2020, Caixabank and Banco Bilbao Vizcaya Argentaria, C -224/19 and C-259/19, EU:C:2020:578, paragraph 83, as well as La Quadrature du Net and Others, 6 October 2020, C-511/18, C-512/18 and C-520/18, EU:C:2020:791, paragraph 223)." The Court of Justice has also clarified (in paragraphs 54 and 55 of its judgment) that "the obligation on the Member States to ensure the effectiveness of the rights conferred by Union law on persons subject to the jurisdiction of the courts includes, in particular as regards the rights arising under Directive 93/13/EEC, the requirement of effective judicial protection, also enshrined in Article 47 of the Charter, which applies in particular to the procedural conditions of actions based on such rights (see, to that effect, the judgments of 17 July 2014, Sánchez Morcillo and Abril García, C-169/14, EU:C:2014:2099, paragraph 35, and of 31 May 2018, Sziber, C-483/16, EU:C:2018:367, paragraph 49). In light of these facts, it is necessary to examine whether a national limitation rule such as that set out in paragraph 51 of that judgment can be regarded as compatible with the principle of effectiveness, and that examination must concern not only the length of the period at issue in the main proceedings, but also the conditions for its application, including the legal fact chosen for its commencement (see, to that effect, the judgment of 9 July 2020, Raiffeisen Bank and BRD Groupe Société Générale, C-698/18 and C-699/18, EU:C:2020:537, paragraph 61)." As regards the commencement of the objective limitation period of three years for the recovery of unjust enrichment, the Court further states that, in the circumstances of the present case, there is a not inconsiderable risk that the consumer will not invoke his rights conferred by European Union law within the period prescribed (where limitation within the three-year limitation period within the meaning of Article 107(2) of the Civil Code occurs even if the consumer himself is unable to assess whether the contractual term is unfair or if he was unaware of the unfair nature of the contractual term). It is necessary to take into account the disadvantaged position of the consumer in terms of bargaining power, but also the level of information and the fact that consumers may not be aware of their rights. To the first question referred for a preliminary ruling, the Court then replied that: „the principle of

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effectiveness must be interpreted as precluding national legislation which provides that an action brought by a consumer for the recovery of sums unduly paid in the performance of a credit agreement based on unfair terms within the meaning of Directive 93/13/EEC or based on terms which are contrary to the requirements of Directive 2008/48/EC is subject to a limitation period of three years starting from the date on which the unjust enrichment occurred.".

It follows from the reasoning that, by requiring the consumer to bring an action within three years of the date on which the unjust enrichment occurred, which may occur during the performance of a long-term contract, the procedural conditions at issue in the main proceedings are of such a nature as to make it excessively difficult for the consumer to exercise the rights conferred by Directive 93/13 or Directive 2008/48, and are therefore in contrary to the principle of effectiveness. There is a not inconsiderable risk that the consumer concerned will not invoke the rights conferred on him by European Union law during the period prescribed (the three-year period laid down in Article 107(2) of the Civil Code begins to run from the date on which the unjust enrichment occurred, and the limitation period also applies where the consumer is unable to judge for himself whether a contractual term is unfair). The possibility of extending the limitation period on condition that the consumer proves the intention of the seller or supplier, as provided for in Article 107(2) of the Civil Code, cannot rebut the above statement. **[23]** The possibility of extending the limitation period on the condition that the consumer proves the intention of the seller or supplier, as provided for in Article 107(2) of the Civil Code, cannot rebut the above statement.

The Supreme Court of the Slovak Republic, following the judgment of the Court of Justice of the European Union C-485/19 LH v. Profi Credit Slovakia of 22 April 2021, stated that the analogous application by the courts of the Slovak Republic of the ten-year objective limitation period in the case of the consumer's right to the delivery of unjustified enrichment (§107 para. 2 of the Civil Code) obtained by performance under a consumer credit agreement, is a legal consequence of the primacy of the judgment of the Court of Justice of the European Union C - 485/19 of 22 April 2021 in the legal order of the Slovak Republic." **[24]**

In another subsequent judgment of the Court of Justice of the European Union in Joined Cases C-80/21 to C-82/21 of 08. September 2022, the Court held that Directive 93/13/EEC, read in conjunction with the principle of effectiveness, must be interpreted as precluding national case law which lays down a limitation period of ten years within which a consumer may bring an action for the recovery of sums of money wrongly paid to a seller or supplier based on an unfair term contained in a credit agreement, begins to run from the date of the individual performance by the consumer, even if the consumer could not have assessed the unfair nature of the term or was unaware of the unfair nature of the term on that date, notwithstanding the fact that the contract provided for a repayment period, in this case, thirty years, which is much longer than the statutory limitation period of ten years.

The commencement of the objective limitation period within the meaning of section 107(2) of the Civil Code must be linked to the moment of payment by the plaintiff. Since the unjust enrichment forms a single whole, it is decisive when the unjust enrichment ended. In light of the foregoing, the objective limitation period of three years began to run when the last payment was made. The subjective limitation period for the recovery of unjust enrichment begins to run from the date on which the person entitled becomes aware that unjust enrichment has been obtained and that an unjust pecuniary advantage has been obtained. The claimant stated that he became aware that the contract was contrary to the law when he contacted a consumer association in 2013, which provided him with assistance. **[25]** Although the Constitutional Court dismissed the claimant's complaint for manifest lack of merit as a matter

which is voidable, it stated in its reasoning, inter alia, that "the interpretation of the subjective time limit by the Regional Court is based on logical reasoning and a correct interpretation of the law".

Conclusion

The field of consumer law represents a relatively dynamic and developing sector of not only the EU but also our national legal order. The concept of procedural protection of the weaker party in a consumer dispute is the result of a transnational interest in the sustainable development of the internal market of the European Union, with consumer protection being a key factor in achieving that objective. The protection of the weaker party in civil litigation consists in balancing the inherently imbalanced position of a certain category of entities in legal relations, both of private law and of procedural nature, whereby those entities have a certain comparative disadvantage in the process which the court is obliged to counterbalance. It is important to add that the weaker party is to be protected only to the extent that functional procedural equality is not achieved. It cannot get to the point that the protection of the weaker party should achieve some superior position in relation to the other stronger party. The protection of the weaker party in a civil proceeding consists in conferring on it a greater number of rights to achieve equality of arms with the other, stronger party to the litigation and thus a consistent fulfilment of the principle of equality of arms.

By adopting the concept of procedural protection of weaker parties in disputes in the provisions of the Recodified Civil Litigation Code, the Slovak legislator not only exceeded the framework of minimum harmonisation standards, but also expressed a special interest in the fulfilment of international obligations and the fulfilment of the fundamental values of the Union, in particular regarding the decision of the Court of Justice of the European Union C-485/19 of 22 April 2021 in the case of LH v. Profi Credit Slovakia s.r.o.

Liability for unjust enrichment is of an objective nature and does not require an unlawful act on the part of the enriched party or his fault, the only essential element is that the state of enrichment has arisen. The fulfilment of the legal prerequisites for the creation of an obligation arising from unjust enrichment must be proved by the person who claims that unjust enrichment has been obtained at his expense.

In practice, it is not problematic to establish the beginning of the objective limitation period for the right to the delivery of a benefit from unjust enrichment, for the determination of which only the moment at which the unjust enrichment was in fact created is decisive. Any benefit provided based on an invalid legal act is, from that moment, a benefit from an invalid legal act, i.e. unjust enrichment, and the objective limitation period for its recovery begins to run from that moment as well.

The ambiguity arises from the fact of when the consumer became aware, i.e. the assessment of the moment that unjust enrichment occurred. The subjective limitation period cannot begin to run before the unjust enrichment has even occurred. The current Civil Code does not provide a coherent and comprehensive view of the issue. We conclude that it has certain shortcomings which are encountered not only in theory but also in court practice. The very institution of the subjective limitation period in consumer disputes would require a more comprehensive legal regulation. The solution could be the amendment of the unjust enrichment institute and its subsequent codification in the current law. In light of the above, the de lege ferenda proposal is that the subjective limitation period starts to run from the moment of the consumer's first consultation with a lawyer about the possibility of an action for the recovery of unjust enrichment.

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References:

[1] Act No. 129/2010 Coll. on Consumer Credit.
[2] Judgment of the Constitutional Court of the Slovak Republic, Case No. III. ÚS 43/2020 of 12 May 2020.
[3] Ruling of the Constitutional Court of the Slovak Republic, Case No I. ÚS 51/2020 of 04 February 2020.
[4] Bejček, J. Consumer protection, or also hypocritically disguised protection of the credulity? Právní rozhledy. 2013, No. 13-14, p. 477.
[5] Resolution of the Supreme Court of the Slovak Republic, Case No. 2Cdo/92/2010 of 19.01.2012.
[6] Act No. 40/1964 Coll. of 26 February 1964 Civil Code § 456
[7] Act No. 40/1964 Coll. of 26 February 1964 Civil Code § 451(2), § 454
[8] CIRÁK, J. - FICOVÁ, S. et al. Civil Law. General part. Šamorín: Heuréka, 2009, p. 323. ISBN: 978-80-89122-51-6.
[9] Judgment of the Regional Court of Banská Bystrica Case No. 11CoCsp/46/2020 of 29 October 2020.
[10] Resolution of the Regional Court of Banská Bystrica file no. 17Co/301/2011 of 04 July 2012.
[11] ŠTEVČEK et al. Civil Code I. Large commentary. 2nd edition. p. 765. ISBN 978-80-7400-770-5.
[12] Judgment of the Supreme Court of the Czech Republic, Case No. 33 Odo 52/2005 of 14 December 2006.
[13] Act No. 40/1964 Coll. of 26 February 1964 Civil Code.
[14] Decision of the Constitutional Court I. ÚS 47/2019 of 30 January 2019.
[15] Judgment of the Supreme Court of the Czech Republic Case No. 21Cdo 3433/2008 of 15 June 2010.
[16] Resolution of the Supreme Court of the Czech Republic Case No. 33Cdo 222/2012 of 29 July 2010.
[17] Judgment of the Supreme Court of the Czech Republic Case No. 30Cdo 2758/2006 of 14 August 2007.
[18] Judgment of the Regional Court in Trenčín Case No. 27 Co 159/2019 of 24 September 2019.
[19] Resolution of the Supreme Court of the Slovak Republic Case No. 5 Cdo 29/2021 of 28 September 2021.
[20] Resolution of the Supreme Court of the Slovak Republic of 28 September 2021.
[21] Resolution of the Supreme Court of the Slovak Republic of 28 September 2021, Case No. 5 Cdo 29/2021.
[22] Judgment of the Regional Court in Trenčín Case No. 27 Co 159/2019 of 24 September 2019.
[23] Judgment of the Court of Justice (First Chamber) C-485/19 of 22 April 2021 in the case of LH v Profi Credit Slovakia s.r.o.
[24] Resolution of the Supreme Court of the Slovak Republic, Case No. 7Cdo/268/2021 (R 15/2022) of 28 February 2022.

[25] Judgment of the Regional Court of Banská Bystrica Case No. 13Co/48/2016 of 10 September 2017.