

On 2 June 2021, the absolute statute of limitations for individual debtors who are natural persons entered into force pursuant to the Amending Act to the Obligations and Contracts Act (OCA Amending Act) published in The State Gazette, No. 102 of 1 December 2020.

The creditors to an individual debtor are typically banking and non-banking institutions, institutions holding monopoly positions, or institutions involving the participation of the State and therefore the attention of the general public is focused on the new amendments to the legislation. The intention of the lawmaker is to put an end to the so-called “eternal debtor”.

In accordance with the new legislation, monetary claims against natural persons cannot be enforced once the ten-years limitation period expires, regardless of any suspension, unless the debt has been deferred or rescheduled. The absolute statute of limitations does not apply *ex officio* but it has to be invoked by the debtor who should raise an objection to the creditor or, in the case of enforcement proceedings, to the bailiff.

The lawmaker has set out the start date of the statute of limitations in § 2 of the Transitional and Final Provisions of the OCA Amending Act. Where the claim of the debtor is not established in a judicial or another act, the period of the statute of limitations begins on the date on which the debt became due and payable. Where the claim is established in a judicial or another act, it begins on the date when the act became enforceable. If the claimant has obtained an enforcement order and enforcement proceedings have been opened, the limitation period begins on the date of the first enforcement action undertaken by the bailiff.

There is a certain lacuna in the wording of the provisions on the non-applicability of some natural persons who engage in business activities, such as sole proprietors and partners in a general partnership established under the OCA.

The wording of § 2 of the Transitional and Final Provisions of the OCA Amending Act provides excessive protection of individual debtors because it applies to existing time limits, as well. Thus if the creditor has undertaken action to prevent the expiration of the extinctive limitation period over the last ten years, the claim will still be extinguished after the entry into force of the amendments to the OCA. In this sense, the absolute statute of limitations applies not only to debt that will occur in future but also existing outstanding debt and the time lapsed after the debt became due and payable will be treated *ex lege* in a different way.

This means that individual debtors gain an advantage which tilts the balance of their relationships with creditors who could not have been aware at that point of time that the non-collection of the debt would lead to its extinguishment.

A similar undue interference to the benefit of the debtor in the relationships between a creditor (a legal entity or a natural person) and a debtor who is a natural person, even in the cases of the debtor acting *mala fide*, has been overcome with Judgment No. 4 of 20 April 2021 in Constitutional Case No. 1/2021 (published in The State Gazette, No. 35 of 27 April 2021) in which the Constitutional Court ruled that § 2 of the Transitional and Final Provisions of the OCA Amending Act was unconstitutional.

The Constitutional Court held that the private property of the creditor/claimant and his or her right to pecuniary claim were affected. Although he or she may have undertaken the statutory remedies to protect his or her rights against the individual debtor, § 2 of the Transitional and Final Provisions of the OCA Amending Act prevents the creditor from recovery of the loss caused to his or her patrimony and that loss could increase, depending on the timing and scope of the action undertaken. The Constitutional Court emphasized that the creditor could not have predicted a possible change in the legislation that would deprive him or her of satisfaction of the claim.

As a result of the judgment of the Constitutional Court, on 2 June 2021, the period of the new absolute statute of limitations regarding claims against individual debtors became ten years, regardless of whether the debt was established/recognised with a judicial or another act or not.

The judgment of the Constitutional Court strikes the balance needed by the legal system and the general public by satisfying equally the protection of the creditor with an additional period to recover the debt and the protection of the individual debtor with the established deadline (2 June 2021) for the creditor/claimant to seek payment of the debt. The recent case law is full of inconsistencies in the cases in which enforcement proceedings are terminated because of a failure to undertake any enforcement action for two years as from the date of the last enforcement action. In most cases, it is not the claimant that has lost interest in the recovery but it is the wrongdoing of the debtor who would conceal his or her property and

thus deprive the claimant of the opportunity to seek satisfaction. In the event of concealment of property by the individual debtor, there is no enforcement action since, although the creditor is willing to act, the bailiff is not in a position to undertake action and collect the debt which has been legally established and recognised. The lawmaker needs to introduce amendments to this effect so as to better protect creditors in future.