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(Un)certainty in the area of the reinsurance contracts claims time-bar in Serbian law

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Abstract

Unlike insurance, whose special rules on time-bar are regulated in detail across jurisdictions, the same does not apply to reinsurance. In this paper, the issue of determining the limiting statute of limitations for reinsurance claims in positive Serbian law is discussed. Since the author is unaware of the court decision on the statute of limitations for reinsurance claims at the time of writing this paper, various lawful solutions in light of the characteristic way of functioning of reinsurance treaties as a legal relationship independent of insurance contracts are examined. The presentations in the paper are based on the positions of jurisprudence and relevant rules of law about which the author explains his views and gives the interpretation.

Key words: time-bar, insurance, reinsurance, premium, receivable, claim

1. Introduction

The justification for introducing the institute of time-bar is reflected in the protection of the public interest for legal security and legal peace (Radišić, 2016, 425; Blagojević, 1989, 1933), i.e. certainty in the exercise and enjoyment of rights (Perović, 1995, 789; Gams, 1988, 229). Demosthenes partly explained this by the need for protection from persons (sycophants – swindlers, slanderers) who abuse their legal right by initiating court proceedings, without any grounds (MacDowell, 1986, 62–66). This is, perhaps, the most essential reason why compulsory rules on time-bar have been introduced across jurisdictions. Those rules may not be altered or deviated from in the non-marine and life insurances by the will of the parties. As explained by professor Radisic, another reason stems from the alternative fiction that the expiration of the statutory period in which a right is unexercised, ceases the likelihood that the event, which would constitute the ground for the claim, occurred or that it is likely the claim was extinguished after a certain time – statute of limitations (Radišić, 2016, 425). According to English jurisprudence, the purpose and effect of the statute of

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limitations is to protect defendants. The application of this institute in English law is justified by the fact that the plaintiff should initiate a lawsuit with a reasonable degree of care and only if he has a valid ground, with a possibility that at the time of filing a lawsuit for an "old claim" (quotation marks added by the author), the defendant may no longer have the necessary evidence to defend themselves against a claim[1] and that initiating a lawsuit for old claims could cause more cruelty than bring justice (Clarke, 2006). The protection of the public interest and the interests of the debtor in connection with the statute of limitations can be seen from Art. 365 of the Obligation Relations Act[2], according to which the debtor may not waive the statute of limitations before the time set in the statute of limitations has expired. Broadly accepted position in the United States is that the statute of limitations "… was designed to protect citizens from old and annoying claims for damages and interrupted the possibility of filing a lawsuit after a reasonable period of time."[3] Although the U.S. Supreme Court has clearly confirmed that any change in statutory provisions to remove the statute of limitations is prohibited, the U.S. doctrine lists some of the common law grounds on which a lawsuit can be reopened (Chaplin, 2000, 1573).[4]

The time bar is a substantive-legal objection, because it refers to the termination of the right to demand an obligation performance. However, unlike the ordinary ways of terminating contractual duties (fulfillment, set-off, debt release, novation, merging of debts, impossibility of performance, lapse of time, cancellation and death), time-bar does not lead to termination of the obligation right – receivables, but with the onset of the statute of limitations, only the request for a claim enforcement is lost (Radišić, 2016, 425; Commercial Appelate Court, 2016, 12; Gams, 1988, 229).

Special rules of the time-bar apply to the insurance, but they are in a way exception to the protective and social function of insurance because they provide for the statute of limitations of the claim against the insurer after the lapse of the time. However, the statute of limitations does not serve to release the insurer from their duty to compensate the insured damage or pay the agreed sum upon the occurrence of the insured event, but equally protects the insurer's interest „not to be in uncertainty for a long time regarding its obligations from the insurance contract" (Bučić, 1963, as per: Šulejić, 2005, 286; Perović, 1995, 789). Furthermore, the insured may on top find himself in the position of a debtor in case of non-fulfillment of some of the obligations towards the insurer (as a rule, a debt for the insurance premium).

[1] Zakon o obligacionim odnosima, *Službeni list SFRJ*, br. 29/1978, 39/1985, 45/1989 – USJ, 57/1989, *Službeni list SRJ*, br. 31/1993, *Službeni glasnik RS*, br. 18/2020 [The Obligation Relations Act, *Official Journal of the SFRJ*, No. 29/1978, 39/1985, 45/1989 – CCJ, 57/1989, *Official Journal of the SRJ*, No. 31/1993, *Official Journal of the RS*, No. 18/2020].

[2] Guaranty Trust Co. v. United States, 304 U.S. 126, 136 (1938), as per: Chaplin, E. Michael. (2000). „Reviving Contract Claims Barred by the Statute of Limitations: An Examination of the Legal and Ethical Foundation for Revival", *Notre Dame Law Review*, 75(4), 1571–1595, at 1572.

[3] Chaplin cites a recoupment, an acknowledgment (or promise), an equitable estoppel (prohibition of invoking one's own statements and actions as a ground for a lawsuit) and an agreement to waive or extend the statute of limitations as some, but not exhaustive list of strategies for revival an action at common law.

[4] On the differences and similarities between acquisitive time-bar and ordinary time-bar in civil and commercial law, see: Blagojević and Gams in the cited sources.

Pandectists, older statutes and jurisprudence considered the acquisition of property through possession a special, acquisitive time-bar (*praescriptio acquisitiva*), while the time- bar of a claim is considered an extinctive time-bar (*praescriptio extinctiva*) (Blagojević, 1989, 1934; Gams, 1988, 230, 230)[5], which is characteristic of the obligation rights. Unlike insurance, whose rules on limitation periods are regulated in detail in most jurisdictions, the same does not apply to rights under reinsurance. In this paper, the author discusses the issue of determining the statute of limitations for claims from reinsurance in positive law. Since the author is unaware of the court decision on the statute of limitations for reinsurance claims at the time of writing this paper, various lawful solutions in light of the characteristic way of functioning of reinsurance treaties as a legal relationship independent of insurance contracts are examined.

2. Which statute of limitations applies to reinsurance claims

Assuming that both parties to the reinsurance relationship appear as creditors, the statute of limitations is the deadline by which the payment of the reinsurance premium or the reinsured loss amount can be pursued before the court. Reinsurer claims may equally relate to the adjusted premium after the expiry of the business year and determination of final premium income on the basis of which the provisional premium[6] was calculated. Claims for the more paid amount by the reinsurer in case the reinsured recourse, salvage or on the basis of the indexation of the agreed retention and cover[7] can also represent reinsurer receivable.

The statute of limiations for claims in non-marine insurance (insurance of property, liability and persons) is regulated by the rules of general contract law in the Obligation Relations Act (hereinafter: ORA). This Act regulates the statute of limitations of all obligation rights (Chapter III – Effects of obligations, Section IV – Statute of limitations), but also rules on special limitation periods relating to insurance claims (Serbian Obligation Relations Act, Art. 380). However, the terms of the Chapter XXVII – Insurance do not apply to reinsurance relations, based on the explicit provision of Art. 899(2). It should be noted that the Insurance Act (hereinafter: IA) contain a solution contrary to the ORA's mandatory provision, according to which the insurance

[5] In non-proportional reinsurance, the premium is usually calculated on the basis of 80% or 90% of the planned (estimated, expected) premium income of the insurance portfolio. Upon contract expiry, the final premium income of the insurance portfolio is determined. Depending on the manner in which the reinsurance premium is agreed, its final calculation is performed and the reinsured may be obliged to pay the reinsurance premium adjustment. The reinsured will have the obligation to pay additional (reinstatement) premium in the proportion of the amount of damage and the cover limit if the claim is collected under the reinsurance contract.

[6] Reinsurance contracts often contain an "Index clause" which regulates the method of calculating all parameters so that the reinsurer would not be "overwhelmed" by a huge amount of losses due to inflationary depreciation of reinsured retention. Numerous variants of this clause are applied in the Lloyd's market and the London insurance and reinsurance market in all types of reinsurance, such as that of the International Underwriteing Association of London: *IUA 02 031 Index Clause,* 7. 6. 2021. Available at: https://www.iua.co.uk/IUA_Member/Clauses/eLibrary/Clauses.aspx, 15. 7. 2021.

[7] Zakon o trgovačkom brodarstvu, *Službeni glasnik RS*, бр. 96/2015, 113/2017 - dr. zakon [The Merchant Shipping Act, *Official Jorunal of the Republic of Serbia*, No. 96/2015, 113/2017 – other law].

activity, among others, includes reinsurance business (Serbian Insurance Act, 2014, Art. 2). As follows, the Insurance Act of the status nature refers to the application of the provisions of the ORA. However, ORA is applicable to insurance only whereas IA embraces reinsurance within an insurance activity. It remains to be seen whether the above-mentioned compulsory provision of the ORA was thus repealed and how this dilemma will be resolved. The dilemma refers to the reinsurance relationship in general, and especially in the case of the statute of limitations for claims from reinsurance contracts. The question is whether the norm of the Insurance Act is a *lex specialis* for the contractual right from reinsurance. Secondarily, it should be resolved if it has priority in application over the norm of *lex cogens* from the ORA. Thirdly, there should be a reasonable answer whether this logic can justify the application of Art. 380 of the ORA on reinsurance claims' time-bar. In the following presentations, we will try presenting arguments for the application of another provision of the law on time-bar of claims from the reinsurance contract.

Claims from the contract on navigation insurance in inland and maritime waterways become time barred after five years. The Merchant Shipping Act 2015[8] (hereinafter: MSA) stipulates that the provisions of Part V – Contracts, Chapter III – Navigation Insurance Contract also apply to reinsurance. Precondition to this rule is that the subject of reinsurance is a hull, legal liability, various types of costs, contributions, fees, rewards, commissions, etc. in connection with the navigation or transport of goods by ship, shipbuilding and all other hazards which by their nature belong to navigation risks (Serbian Merchant Shipping Act, 2015, art. 522). This means that receivables from navigation reinsurance contracts expire in five years, but it is possible for the reinsurer and the reinsured to agree other statutes of limitations. Such conclusion can be drawn from the MSA's Art. 562 which is prescribing that certain provisions may not be altered even by the insurance policy. Yet, those rules do not refer to the statute of limitations provided for in the Art. 561 of that Act. This means the provisions on the claims time-bar from the navigation reinsurance agreements are of a dispositive nature. The MSA does not prescribe in which form a different statute of limitations can be agreed. However, it derives from the general rules on entering into contracts and special principles on concluding such insurance that the parties can achieve this in any form of consent (Slavnić, Jovanović, 2006, item 9 /a).

According to the Obligations and Fundamentals of Property-Legal Relations in Air Transport Act[9] (hereinafter: OFPLRATA, Art. 128(4)) the rules on time-bar of property and liability insurance rights of the ORA are applied accordingly on aviation insurance claims, on the calculation of the statute of limitations for an indemnity claim and all other claim grounds. Therefore, the policyholder claims from a non-life insurances expire after three years counted from the first day after expiry of the calendar year in which the claim arose. Final time-bar arises after five years if the concerned

[8] Zakon o trgovačkom brodarstvu, *Službeni glasnik RS*, бр. 96/2015, 113/2017 - dr. zakon [The Merchant Shipping Act, *Official Jorunal of the Republic of Serbia*, No. 96/2015, 113/2017 – other law].

[9] Zakon o obligacionim i osnovama svojinsko-pravnih odnosa u vazdušnom saobraćaju, *Službeni glasnik RS*, br. 87/2011, 66/2015 [Obligations and Fundamentals of Property-Legal Relations in Air Transport Act, *Official Journal of the RS*, No. 87/2011, 66/2015].

person proves he/she was unaware the insured event had occurred. All other statutes of limitations from the ORA's Art. 380 are applicable depending on the person whose claim is in question.

3. Legal theory on the reinsurance claims time-bar

Of the above three laws regulating the insurance, only the rules on the statute of limitations of navigation insurance claims clearly formulated as dispositive, apply to reinsurance. Expectedly, only the provisions of the ORA (Chapter XXVII) which regulate the insurance do not apply to the reinsurance. Since there is no case law regarding the claims time-bar from property, liability and persons reinsurance earlier legal theory asserted that the Serbian courts would be moving within the following alternative for resolving this issue (Slavnić, Jovanović, 2006 , point 8 / b). The first would be to apply the general statute of limitations of ten years from the aforementioned ORA, or more likely, special statute of limitations from that law for non-life insurance claims. This would likely be done by reference to the IA's Art. 2 providing that the insurance business consists of reinsurance in addition to insurance and co-insurance.[10] The same would apply to claims' statute of limitations from the aviation reinsurances, which would be regulated in the same way as non-life claims.

Starting from the fact the insurance and the reinsurance are two separate legal relations (Jovanović, 2004, 41) and applying special statute of limitations rules from the ORA, it would run from the first day after the expiry of the calendar year in which the claim arose. We believe such interpretation causes some confusion. It is principally recognized the insurer's obligation arises on the day of the insured event. This gives the insured the right to demand advance payment of the loss before the completion of the assessment procedure (Šulejić, 2005, 221; Mrkšić, Petrović, 2004, 133). However, several dilemmas arise. The first is whether the occurrence of the insured event simultaneously represents "reinsured event." Question is whether the reinsurer's liability arises simultaneously with the insurer's? If there are two separate legal relations, then it is difficult to maintain this is the case. One of the reasons for such conclusion is the reinsured duty to advise the reinsurer of the claim and provide necessary evidence and documents (Jovanović, 2003, 29). For the insured, the reinsurance contract is a *res inter alios acta* and he/she is usually unaware of its existence and contractual provisions. In addition, the reinsurer's duty may be conditional on the reinsurance contract. Its clauses may bind the reinsured to provide proof that all or part of the loss has actually been paid before it can claim partial or full reinsurance indemnity. Therefore, it will depend on the provisions of the reinsurance contract when the reinsurer's obligation arises. In case of large and complex damages that require a long time to assess (for example,

[10] Please note the the general statute of limitations from the Swiss Code of Obligations (Article 127) of ten years was applicable to reinsurance claims before 1 January 2022. This is a consequence of the fact that, before said date, the Swiss Insurance Contract Act (on the operation of the Article 101(1)(1)) did not apply to reinsurance. After the mentioned date, the Swiss contractual insurance law will be accordingly applied to reinsurance, so the reinsurance claims will be subject to a statute of limitations of five years (Swiss Law on Insurance Contracts, Article 46(1).

hiring experts from the medical, construction, mechanical or some other profession, performing control or laboratory analyzes, collecting bids for repairs, etc.), the insurer can calculate the provisional loss only after a few months from the date of occurrence of the insured event. The insurer may then be able to pay a cash loss to the insured and claim it from the reinsurer.[11] Therefore, the occurrence of the insured event does not mean the reinsurer has a duty to the reinsured. It is the reinsured duty to provide the proof of claim payment, but this is a rebuttable presumption of his conscientiousness and honesty in the claim handling (Jovanović, 2003, 29). Furthermore, the Department for Commercial Disputes of the Commercial Appelate Court has taken the view the merits of the time-bar objection are assessed in each specific case (Commercial Appelate Court, 2016, 7).

For example, if the insured event occurred in October of the current year, the reinsurer's liability would arise in February next year when the reinsured paid the cash loss or entire claim covered by the reinsurance. In this hypothetical example, the statute of limitations for the insured's claim against the insurer would run from the first day of the following year. On the next level, the reinsured claim staute of limitations against the reinsurer would run from the first day of the year following the year of the reinsured claim advice (for cash loss or full indemnity).

4. Dilemmas and possible solutions regarding the application of the statute of limitations for reinsurance claims

The question arises as to can the provision of Art. 380(3) of the ORA, according to which the claims of insurers from the insurance contract become time-barred in three years, be *similarly* applied. If accepted that the reinsurance contract by its nature represents a legal transaction of insurance, then the mentioned statute of limitations would apply to the reinsurer. In that case, deadlines from Art. 380(1 and 2) would apply to the reinsured. However, such application of the statute of limitations would lead to the reinsured claims' statute of limitations running from the first day after expiry of the calendar year in which the claim arose. For the reinsurer claims, it would be presumed the statute of limitations would run from the day when the creditor acquired the right to demand performance as provided for in art. 361(1) of the ORA (Šulejić, 2009, 17). The unfairness and inappropriateness of the said solution are reflected in the unequal position of the reinsurer and reinsured. Basically, losses covered by the reinsurance treaty with the renewal on 1 January, occurring at the beginning of the reinsurance cover in January, would become time-barred practically after four years instead of three, as provided for in art. 380 (Šulejić, 2009, 17).

In terms of fixing the moment from which the beginning of the statute of limitations for reinsured receivables is calculated, i.e. the moment when the right to request a

[11] Basically, the problem of a mismatch between the moments of the insured event and manifestation of the insured damage in terms of its final amount and scope for the purpose of filing a claim against the insurer before the time-bar under Art. 380(1) of the ORA (Čolović, 2006, 238–239), also leads to the problem of filing a claim against the reinsurer. However, this does not release the reinsured from the obligation to make "a precautionary claim advice" to the reinsurer.

performance arises, the specifics of reinsurance should be taken into account. If the reinsurance contract does not provide the reinsured has to prove the reinsurer's liability has arisen and that the loss has been partially or fully settled, the reinsurer's obligation does not arise with the occurrence of insured loss but when the claim is made under the insurance contract (William 2021, 148). However, the reinsurer's liability trigger will principally depend on the manner in which the reinsurance coverage was agreed, i.e. the definition of the moment when their liability arises (William, 2021, 146–149). Considering the reinsurance liability can refer merely to one insured loss or a number of losses whose amounts make up one claim, we believe it is more correct to assert the reinsurer's obligation arises when determined the claim amount has exceeded the agreed retention from the reinsurance contract (Jovanović, 2016, 209).[12]

As we saw in the preceding example, the statute of limitations for reinsured claims against the reinsurer is unrelated to the one applicable to the insured claims against the insurer, as these deadlines run separately. When it comes to a claim acceptance, the insurer's declaration accepting the insured claim does not produce consequences on the statute of limitations of the insurer claims (as reinsured) against the reinsurer (Slavnić, Jovanović, 2006, item 20/a).

In addition to the above, we believe a third solution has its ground in the positive law and the nature of the relationship between insurance and reinsurance. In the absence of the explicit statute of limitations rules for reinsurance receivables, the legal theory of insurance maintained the time-bar of five years and objective deadline of ten years would apply to the reinsured non-life claims against reinsurers (Slavnić , Jovanović, 2006, item 17/b). However, an alternative to the mentioned interpretation could be the application of the statute of limitations of three years to mutual claims from the contract on trade in goods and services, executed between the two commercial entities from Art. 374 of the ORA. This solution is justified by the fact that at least two insurance and/or reinsurance companies are parties to a reinsurance treaty, under which the reinsurer provides the service of reinsuring liabilities the reinsured has insured in its portfolio. In this sense, reinsurance is a special type of financial service provided in the form of supervised activity of the insurance companies – reinsureds.[13] Several arguments can be made in support of the previous statement. Firstly, the Insurance Act defines reinsurance as an insurance activity (ZOO, 2014, Art. 2), but also prescribes that insured, policyholders, beneficiaries of insurance compensation and third injured parties are *insurance services beneficiaries* (ZOO, 2014, Art. 15). In the same way,

[12] It is a risk share which the reinsurer does not transfer (does not cede) to the reinsurer, but keeps in its self-retention. In proportional reinsurance, it will be a certain percentage of the sum insured or the maximum possible damage, and in non-proportional reinsurance, the excess amount above the deductible from the reinsurance contract. In the international reinsurance practice the following terms are used to denote "retention": priority, deductible, line, quota.

[13] The period of three years for the statute of limitations for insurer's claim for insurance premiums was accepted in older court practice, starting from the fact that claiming a premium is a "specific type of service" (Supreme Court of Montenegro, Pž. 105/77), that property insurance represents "an economic activity by its nature" (Higher Commercial Court of Serbia, Pž. 3234/77 of 17.8.1977), that insurance represents a "particualr type of commercial services" (Supreme Court of Slovenia, Official Gazette 238/76 of 26.8.1976), as per: Šulejić, 2005, 288.

reinsurance belongs to the insurance business, which consists of providing services to compensate for excess risk above the insurance company's retention, those that insurance companies may not cover with their assets, where the reinsured has the status of a *reinsurance service user*. However, the legal position of the reinsurance service user as a contracting party is significantly different because of the non-consumer nature of the reinsurance. If this approach was accepted, the mutual claims of the contracting parties from the reinsurance contract would become time-barred for each contractual performance at different date. Numerous arguments can be put forward in support of the aforementioned solution. The reasons for protecting consumers of insurance services stem from the need to safeguard them as a contracting party whose bargaining power is weaker than insurance companies.[14] Weak or non-existent bargaining power and experience are the reasons why special protection was introduced for natural persons negotiating insurance contracts. In the legal relationship of reinsurance, the stated protection is unnecessary because the contractors are two companies, specialized in performing activities whose characteristics are well known to them. As follows, the prevailing opinion in German legal theory is that analogous application of the insurance contract rules to reinsurance is impossible because mandatory provisions are aimed at protection of the policyholder as a consumer (Jovanović, 2021, 39). Besides, the parties negotiate the reinsurance terms without automatic commitment to the terms of the economically stronger party which is characteristic of adhesion contracts and insurance contracts. This applies particularly to the pre-contractual information duty and other provisions restricting the freedom of negotiating insurance.[15] Jurisdictions where the insurance contract provisions and the duty to inform policyholders do not apply to reinsurance include Germany and Austria (German Insurance Contract Act, 2007, Art. 209; Austrian Insurance Contract Act, 1958, Art. 186). Exclusion of reinsurance from the insurance rules application and mentioned duty is also regulated in the Principles of European Insurance Contract Law (Principles of European Insurance Contract Law, 2015, Art. 1: 101(2)). Failure of the insurer to perform some duties under the reinsurance contract and errors or omissions in their performance will not produce consequences for insurer rights against the reinsurer only if so agreed. This reinsurance custom contravenes the provision of the ORA (Art. 918) that the contract terms providing the loss of the right to compensation or the sum insured are null and void if the insured fails to comply with any of the prescribed or agreed duties. Flexibility in the legal regulation of reinsurance is equally visible in the Preliminary Draft of the Civil Code of the Republic of Serbia, which provides the provisions on insurance contracts are similarly applied to reinsurance. However, the contracting parties may deviate from

[14] It should be borne in mind that the Obligation Relations Act was passed at a time when there were no regulations on the protection of natural persons as consumers. This explains why its provisions apply to both natural and legal persons in the capacity of policyholders. The Insurance Act does not differentiate consumers as natural persons concluding an insurance contract for their personal or private needs and legal entities who conclude insurance as part of their activities. Therefore, the protective provisions on the pre-contractual information duty apply equally to all, regardless of the status of the policyholder. Consequently, the protective provisions on the pre-contractual information duty apply to consumer insurance contracts and those that are not.

[15] See footnote, no. 13.

those rules (Preliminary Draft Civil Code of RS, 2019, Art. 1289(2)). Should this provision become law in the future, parties to the reinsurance contract will be able to amend, supplement or otherwise agree certain relations in the manner the rights and obligations in the insurance are regulated by mandatory and dispositive provisions of the law. Secondly, although the Insurance Act defines the insurance activity including reinsurance, classification of life and non-life insurance does not mention reinsurance, but it is regulated by special provisions of the law. Thirdly, before the adoption of the Reinsurance Directive 2005/68/EC, most EU Member States agreed with the Commission that in many areas of reinsurance supervision insurance rules could be applied as a starting point, but that these rules needed adaptation to the specifics of reinsurance (Jovanović, 2006, 37). Fourth, the insurance contract may not be converted into a fixed contract which will be automatically terminated in case of non-payment of the insurance premium by a certain date. We are led to this conclusion by the legal provisions governing the insurance contract. Those rules impose duty on the insurer to serve a registered letter notifying of the due premium to be able to invoke the legal provision on termination of the contract *ipso jure* (expiry of thirty days from the date of delivery of the notice) (ZOO, 1978, Art. 913(3)). This rule is inappropriate for the reinsurance relationship, as all details regarding the accounts and payment deadlines of reinsurance premiums are clearly regulated by the contract. Although common for a contract to provide for the due dates if the premium is payable in installments, this does not mean that reinsurance automatically represents a fixed contract. If there is no apparent provision that the payment of the reinsurance premium is a condition precedent to the reinsurer's liability, non-payment of the premium on time may be ground for the reinsurer's request for default interest due to delay. However, when the urgent entry into force of reinsurance coverage is necessary, the reinsurer may condition their liability from the contract with premium payment by a certain deadline. This means the reinsurance contract has been concluded, but it will not have an effect in terms of the reinsurer's liability if the premium remains unpaid within the agreed deadline. He may invoke to unfulfilled obligation of the reinsured and inform him that the reinsurance contract has been automatically terminated, as well as to decline liability for losses incurred until the moment of premium payment. The stated practice of reinsurance is in accordance with the solution of German insurance contract law. The German insurer is released from paying compensation only if the insured is warned of the legal consequences of non-payment of premiums by special notice in writing or by a conspicuous warning in the insurance policy (German Insurance Contract Act, Article 37(2)). The previously described principle of the German law is in accordance with the general rule that the fixed nature of the contract is not presumed (Radišić, 2016, 183). This explains the necessity to explicitly emphasize in the reinsurance contract the payment of premiums is a condition of its validity. Exceptionally, the fixed nature of reinsurance contracts may be presumed where the advance premium or payment by a certain deadline is necessary to prevent negligent and unfair conduct by both reinsurance parties. These are cases when from the nature of the business derives that the creditor possesses no interest in receiving performance after the expiration of

the term (Perović, 1995, 250; Gams, 1988, 222) or the performance would be contrary to the law. Namely, if the parties knew the risk ceased and the damage did not occur or the damage occurred before the contract conclusion, it would be contrary to the principle of uncertainty for the reinsurer liability[16] and reaching agreement in good faith. In case premium remains outstanding by the agreed deadline, the reinsurer would invoke the termination clause in the reinsurance contract and decline liability because of the premium non-payment. All the above statements were aimed at clarifying the specifics of the reinsurance, which stem from its indigenous nature and the substantial influence of business practice. Consequently, the calculation of the statute of limitations of the reinsurer's claims should be determined by the nature of the reinsurance treaty and risks reinsured, contract clauses, business practice and reasonable expectations (will) of the parties in relation to the time of liability occurrence. Unlike non-life reinsurance, Serbian navigation reinsurance law does not allow the presumption of a fixed reinsurance contract in case of the premium non-payment by the deadline. In other words, the reinsurer has the right to terminate the agreement on this ground only if explicitly agreed (ZTB, 2015, Art. 539(4)). If the reinsurer has not reserved this right, the statute of limitations for the unpaid reinsurance premium would begin running on the first day after the due date. The reinsurer has the said claim when the reinsured object ceased to be exposed to reinsured risks before concluding the agreement. This is merely possible if the reinsurer did not know about such fact when entering the reinsurance contract (ZTB, 2015, Art. 539(6)). However, this is a dispositive rule, so it is possible the contracting parties agree otherwise. We draw your attention to the fact that navigation reinsurance receivables become time-barred after five years, unless the reinsurance contract provides for another statute of limitations.

Fifth, if the reinsurance terms designate dispute settlement through an arbitration, the reinsured may make the objection that the arbitral tribunal is unbound by any national rules on the claims statute of limitations, particularly where the reinsurance is classified as a "honorable engagement" or there is another similar clause (DiUbaldo, Kohler, 2015, 1). Furthermore, in the case of an arbitration clause, the reinsurer can protect themselves either by negotiating the reinsurance claims statute of limitations (as in Serbian reinsurance navigation law) or by agreeing the applicable law under which the dispute will be resolved. In US jurisdiction, a reinsurer may also request the stay of the arbitration proceedings asserting the claim in question was impossible to realize because of a time-bar objection that could be made if the litigation was initiated (DiUbaldo, Kohler, 2015, 2).

In the case of arbitral settlement of disputes under contracts without the applicable law clause, it would turn out that reinsurance claim may not become time-barred, and the debtor is unallowed to waive the statute of limitations before its expiry. In that case, if the arbitrators do not agree on the law under which they will be deciding the dispute, the defendant party to the reinsurance contract could invoke the time-bar (for example,

[16] The fundamental principle of insurance according to which the event in respect of which the insurance is concluded (insured event) must be future, uncertain and independent of the exclusive will of the policyholder (ZOO, 1978, Art. 898(1)), also applies to reinsurance, unless the otherwise is agreed..

ZOO, Article 371[17] or relevant provision of another national law) according to the law of the place where the seat of the reinsurer (or bidder) was located at the time of receipt of the bid (Act on the Resolving Conflict of Laws with Another Countries' Laws, 1982, Art. 20(1)(13 or 20)), if impossible to invoke on shorter limitation period (for example, ZOO, art. 374[18] or agreed limitation period in navigation reinsurance).

5. Conclusion

The specifics and complexity of reinsurance relationships require a thorough analysis of rights and obligations in terms of the moment of their occurrence from which the statute of limitations begins to run. A particularly sensitive issue represents the dilemma regarding the application of a specific legal provision on the length of the statute of limitations for reinsurance claims. Since the statute of limitations for claims from reinsurance contracts is not prescribed, there is a dilemma whether the statute of limitations prescribed for insurance or general statute of limitations can be applied. On the first point, the question of the moment when the reinsurer's liability arose, would be opened to determine when the statute of limitations for claims for reinsured damages expires, and there is the question of the adequacy of the provisions on insurance claims statute of limitations to reinsurance claims. On the second point, because of the legal gap the general statute of limitations would be unacceptably long, bearing in mind that this is a typical commercial (trade) agreement which subject is provision of reinsurance services between two entities – legal entities. Trade legal relations are characterized by shorter statutes of limitations, and the characteristics of the contract parties are such that the reinsurance contract may not be treated as a consumer contract, which implies on the unsuitability of the general statute of limitations for reinsurance claims. Instead the general statute of limitations, we believe the Art. 374 of the ORA on the statute of limitations of mutual claims from trade in goods and services after three years should be applicable, but observing the specifics of the reinsurance relationship. The mentioned solution would entail adoption of a special provision on the reinsurance claims time-bar after three years in the future Civil Code or the Insurance Contracts Act.

Bearing in mind that the insurance of aviation risks (hull, liability, etc.) is conducted according to the principles of traffic law, and that navigation law is well developed, especially the one regulating the navigation insurance contract, the provisions of the navigation insurance should be applied to aviation insurance and reinsurance accordingly. The current solution according to which the provisions of non-life insurance on time-bar or general limitation periods apply to aviation insurance and reinsurance seem inappropriate for the same reasons stated for the application of the provisions on time-bar in non-life insurance to non-life reinsurance.

[17] Article 371 – General statute of limitations
Claims become statute-barred in ten years, unless another statute of limitations is determined by law.

[18] Article 374 – Mutual claims from contracts for trade in goods and services
(1) Mutual claims of legal entities from contracts on trade in goods and services, as well as claims for compensation for expenses incurred in connection with these contracts, shall become statute-barred after three years.
(2) The statute of limitations shall run separately for each delivery of goods, work performed or service.

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