

RESTITUTION CLAIMS FOR NULL AND VOID CONTRACTS

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Abstract: In Croatian law, the nullity of contracts is prescribed for the gravest and most serious breaches of the fundamental principles of social order originating from the Constitution, the mandatory laws, and the morals of the society, as well as for the most serious breaches by the parties to a contract. Null and void contracts do not produce the legal effects they produce if valid. In the cases of nullity, each contractual party is obligated to effect restitution to the other party for anything received under the void contract. The enforcement of restitution claims after null and void contracts became a topical question for legal practitioners, academics, as well as wider public after a final decision had been issued by the Croatian courts regarding a consumer collective action, declaring the contract terms containing CHF foreign currency clauses and variable interest rates in consumer credit contracts as unfair. A question that was raised was how collective actions affect the statute of limitations applied to individual restitution claims for the amounts overpaid under such unfair contract terms. On the other hand, it was a matter of dispute how the limitation period was calculated and when it started to run for individual restitution claims. The courts altered the existing opinions concerning the calculation of the limitation periods for the restitution claims after null and void contracts. This paper presents the most recent opinions by the highest Croatian courts on the pursuance of restitution claims after null and void contracts. The paper also analyses their effects on the protection of the contractual parties, as well as on legal security in general.

Keywords: *null and void contracts, restitution claims, statute of limitations, unfair contract terms*

1. INTRODUCTION

In Croatian law, the nullity of contracts is prescribed for the gravest and most serious breaches of the fundamental principles of social order originating from the Constitution, the mandatory laws, and the morals of the society, as well as for the most serious breaches by contractual parties. The concept of nullity protects the most important public interests and the interests of the parties. Null and void contracts do not produce any legal effects they normally have if valid. The right to invoke the nullity of a contract does not terminate. The courts monitor the nullity of a contract *ex officio* and it may be claimed not only by the parties to a contract, but also by any other interested party, or by the state attorney. Once the nullity of a contract has been

declared, each party is obligated to give back to the other party anything received under the null and void contract. In Croatian contract law, the consequences of nullity have been regulated for a long time. Restitution claims had already been stipulated in the former Obligations Act of 1978,¹ and the same regulatory concept was taken over in the Obligations Act which became effective on January 1, 2006 (hereinafter: OA).² These are traditional contract law rules laying down that in the cases of nullity, each party is obligated to recover, in favour of the other party, anything received under a null and void contract. For several years, the application of these rules has not been particularly problematised or addressed neither in case law nor in literature.

The effective enforcement of restitution claims after null and void contracts became a topical question for legal practitioners, academics, as well as wider public after a final decision had been rendered by the Croatian courts, regarding a consumer collective action, having declared that the contract terms, containing CHF foreign currency clauses and variable interest rates, in consumer credit contracts, had been unfair.³ The fact that those contract terms were declared unfair and the consumer contract terms were thus considered as null and void, raised some novel questions regarding the pursuance of consumer restitution claims against banks. On the one hand, a question was raised about how collective actions affected the statute of limitations for individual restitution claims for the amounts overpaid under such unfair terms. On the other hand, it remained disputed how the limitation periods were calculated and when they started to run for individual restitution claims, i.e., whether they started running from the conclusion of the contract, from the payment, or from the final judgment declaring the nullity of a particular contract. The main problem arose because, although the right to invoke nullity was not time-barred, restitution claims for the restitution of what had been paid under a null and void contract, had a relatively short limitation period of five years. Therefore, a question was raised in practice, whether it was possible to ensure effective consumer protection from unfair contractual provisions, in accordance with the standards of protection established by the European Court of Justice (hereafter: ECJ). In 2020, the Croatian courts changed their existing opinions regarding the calculation of the limitation periods for restitution claims for null and void contracts. Their opinion changed partly because of the existing public pressure, but it was mostly due to the commitment to interpreting national law in light of the EU law and the ECJ case law dealing with the interpretation of Directive

¹ Official Gazette NN 53/91, 73/91, 111/93, 3/94, 7/96, 91/96, 112/99, 88/01.

² Official Gazette NN 35/05, 41/08, 125/11, 78/15, 19/18, 126/21.

³ See the judgments of the Commercial Court in Zagreb, P-1401/2012, 4/7/2013; High Commercial Court of the Republic of Croatia, Pž-7129/13, 13/6/2014; Supreme Court of the Republic of Croatia, Revt-249/14-2, 9/4/2015; Constitutional Court of the Republic of Croatia, U-III-2521/2015 et al.; 13/12/2016; Supreme Court of the Republic of Croatia, Revt-575/16-5, 3/10/2017; High Commercial Court of the Republic of Croatia Pž-6632/2017-10, 14/6/2018; Supreme Court of the Republic of Croatia Rev 2221/2018-11, 3/9/2019. All these decisions are available at www.iusinfo.hr (Accessed: 16 January 2022). For more see (Josipović, 2020).

93/13/EEC on unfair terms in consumer contracts (hereinafter: UCTD)⁴ regarding effective consumer protection. Specific opinions on certain issues regarding the calculation of the periods of limitation for collective actions, not regulated under the statutory contract law, were accepted. These novel opinions and interpretations of the application of the statute of limitations, when dealing with restitution claims, have had serious effects on the position of the parties to null and void contracts. A significantly larger number of consumers, whose claims had been time-barred in the interim, were thus able to pursue their restitution claims. Furthermore, since this was a general opinion applicable to all null and void contracts (and not only to consumer credit contracts), the concept of calculating the limitation periods of restitution claims for all null and void contracts was changed irrespective of the grounds for the nullity, and irrespective of the identity of the contractual parties and the type of their respective contracts. The new interpretation brought about a resurgence of old restitution claims in many other cases following null and void contracts.

This paper considers and describes the new opinions and case law of the highest Croatian courts on the pursuance of restitution claims for null and void contracts. It brings an analysis of their effects on the protection of contractual parties, as well as on legal security in general. In addition, the paper considers whether judicial activism is sufficient for optimum legal security and the protection of legitimate interests of the parties to null and void contracts, or whether a legislative intervention is sometimes necessary to adjust the regulation of contracts to current socioeconomic conditions in the market.

2. THE NULLITY OF CONTRACTS AND ITS EFFECTS

2.1. General and particular grounds for the nullity of contracts

In several provisions, the OA lays down both general and particular grounds for the nullity of contracts. General grounds are provided for in Art. 322 OA. Null and void contracts are contrary to the Constitution, the mandatory laws, and the morals of the society (Art. 322 OA). They do not produce any legal effects normally produced if they are valid. The effects of the nullity of contracts set in already at the moment they are concluded (*ex tunc* effects of nullity).

A contract is null and void if it is contrary to the principles enshrined in the Constitution or in some of its provisions, or if it is contrary to the mandatory provisions of the OA, or some other Act (i.e. the Consumer Protection Act, Agricultural Land Act, *inter alia*), or if it is contrary to moral social norms.^{5,6} The Obligations Act, based on

⁴ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21/4/1993, pp. 29–34.

⁵ Contracts contrary to the Constitution, the mandatory laws or the morals of the society are null and void if the objective of the violated right does not indicate any other consequence, or if the law does not prescribe otherwise.

⁶ The nullity of a particular provision of a contract does not cause nullity of the entire contract if the contract may exist without the null provision (Art. 324 OA).

these general grounds for nullity, lays down numerous concrete grounds for the nullity of contracts. For instance, the OA specifies that a usurious/usury contract is null and void because it is contrary to the morals of society [Art. 329(1) OA].⁷ There are separate provisions of the OA laying down various other grounds for the nullity of contracts, such as impossible, inadmissible, not determined, or not determinable performances [Art. 270(2) OA], contractual/legal incapacity (Art. 276 OA), the use of force against a party when entering into a contract [Art. 279(3) OA], misunderstanding (Art. 282 OA), simulated contracts (Art. 285 OA), contracts not made in the prescribed form [Art. 290(1) OA].⁸ It is also possible to adopt separate laws on particular types of contracts to provide for the grounds of their nullity (e.g. because of the violation of the legal right to pre-emption). Because of these being the most serious breaches of the fundamental principles of social order ensuing from the Constitution, the mandatory laws, and the morals of the society, null and void contracts may not become valid even if the grounds for their nullity subsequently cease to exist (Art. 326 OA). There are only some exceptional cases, prescribed by law, when null and void contracts may subsequently become valid.⁹

2.2. Unlimited period for invoking nullity

The period for invoking nullity is unlimited (Art. 328 OA). The right to invoke nullity does not terminate regardless of the time that has elapsed from the conclusion of a null and void contract and regardless of how much time has passed from the total or partial fulfilment of the obligations under a void contract. This is a logical consequence of the rule that null and void contracts, after a certain period of time has passed, do not convalidate, i.e. they do not become valid.

The nullity of a contract may be invoked by the parties to the contract, by any other interested third party, or by the state attorney (Art. 327 OA). In addition, in court proceedings, the courts have an *ex officio* obligation to monitor the nullity of a contract [Art. 327(1) OA] regardless of whether or not the parties have invoked the nullity of the contract.

⁷ Usurious contracts are contracts where a person, exploiting the state of need, or a difficult financial situation of another person, its lack of experience, levity or dependence, agrees on a benefit for itself, or for a third party that is manifestly disproportionate to whatever it has given to, or performed for, or undertaken to give to, or performed for the other party.

⁸ For more on the grounds of the nullity of contracts see Gorenc et al., 2014, pp. 413–416, 421–423, 426–429, 434–435, 439–441, 448–449, 513–519, 528–530; Klarić et al., 2014, pp. 137–150; Gavella, 2019, pp. 293–334; Nikšić, 2014, pp. 142–147.

⁹ A banned contract is considered to be valid if the ban is of minor significance and the contract itself has been fully executed [Art. 326(2) OA].

A usurious contract will be valid if the court has accepted the aggrieved party's request to decrease its obligation to a just amount. Such a request must be filed within 5 years from the conclusion of the contract [Art. 329(3, 4) OA].

A null and void contract, because of the lack of the prescribed form, will be considered valid if the parties to the contract have fulfilled their obligations fully or partly, unless it ensues differently from the objective of the prescribed form (Art. 295 OA).

However, the effects of the nullity of a contract set in by the law itself (*ex lege*), regardless of whether an authorised person has requested the establishment of the nullity of a contract. A judicial decision on nullity is a declaratory judgment consisting only of its declaration. Likewise, the effects of nullity are set in regardless of whether the court has established it by a declaratory judgment, because the consequences of nullity set in *ipso iure* (Gorenc et al., 2014, p. 527). Therefore, the OA does not expressly condition the realisation of the protection of contractual parties to null and void contracts (e.g. the realisation of restitution claims) by the existence of a previous court declaration of nullity. In the largest number of cases, the courts decide on the nullity as on a prejudicial question on which their decision on the well-foundedness of restitution claims depends due to the nullity of a contract. However, the most recent case law on the calculation of the periods of limitation for restitution claims has opened some new questions on the connectedness between a declaratory establishment of nullity in court proceedings and restitution claims.¹⁰

3. THE CONSEQUENCES OF NULLITY

3.1. Restitution claims

The main consequence of nullity is *restitution in integrum* [Art. 323(1) OA]. Both parties to the contract have the obligation to effect restitution in favour of the other party of everything received under a null and void contract. If restitution is not possible, or the nature of what has been performed prevents restitution, the parties are bound to pay monetary compensation in accordance with the prices at the time the court decision was rendered, unless otherwise established by law. In addition, the contractual party responsible for the conclusion of a null and void contract must pay for the damages suffered by the other, *bona fide* contractual party because of the nullity of the contract (Art. 323/2 OA). Such regulation of the consequences of nullity stems from the fundamental rule according to which, already at the moment of their conclusion, null and void contracts do not produce any legal effects. Therefore, the same rules on the consequences of nullity, and the obligations of the parties to the contract because of its nullity apply to all cases of nullity, regardless of the grounds for which a contract is null and void.

Restitution claims for null and void contracts are based on the rules on unjust enrichment (Art. 1111 OA).¹¹ Regarding *ex tunc* effects of nullity (from the moment of the conclusion of a null and void contract), it is held that whatever has been paid

¹⁰ For more see 4.3.

¹¹ See the judgments of the County Court in Velika Gorica Gž-448/2021, 11/5/2021; the County Court in Varaždin, Gž-711/2019, 27/5/2021; the County Court in Varaždin, Gž-276/2021, 13/7/2021; the County Court in Varaždin, Gž-3168/15, 13/6/2016; the County Court in Varaždin Gž-1934/17, 7/6/2018; the Supreme Court of the Republic of Croatia, Rev-247/11, 22/10/2014.

On the other hand, according to older case law, restitution claims was considered as a claim for compensation for damage [Art. 230(1) OA]. See the judgment of the County Court in Varaždin Gž-620/2017, 23/11/2017. (Eraković, 2020, p. 37)

or transferred to the other contractual party under a null and void contract, is considered as a transfer of assets not based on a legal transaction, a court decision, or a decision by another competent, or legal authority. Hence, anything received under a null and void contract, including any fruits, or default interests in case of monetary claims, is subject to restitution. Default interest is repaid from the day of the submission of a restitution claim, or from the date of the receipt, if the contractual party has acted in bad faith (Art. 1115 OA).

3.2. Limitation periods for restitution claims

Despite an unlimited period for invoking the nullity of a contract, the statute of limitations applies to restitution claims. There is a general period of prescription of five years (Art. 225 OA). The limitation starts running on the first day following the day on which the creditor was entitled to seek the performance of an obligation [Art. 215(1) OA]. In the context of restitution claims for null and void contracts, it means that the limitation period starts running from the day when a contractual party, based on a null and void contract, paid to the other party a certain amount of money (i.e. a specific loan installment which has been declared void). It is a limitation period calculated objectively, by taking into account the moment when an unfounded transfer of assets took place. The prescription may be interrupted by litigation, or any other creditor's action against the debtor before a court, or another competent body, to ascertain, secure or effect a claim (Art. 241 OA).¹² Following the interruption, the limitation period starts running from scratch, but the time elapsed before the interruption is not included in the prescription stipulated by law [Art. 245(1) OA].¹³

According to previous case law, the limitation period for restitution claims, after null and void contracts, was calculated from the moment when the consequences of the nullity were first manifested.¹⁴ The calculation of the limitation period used to start running on the first day following the day on which the payment under a null and void contract was made. For example, the Constitutional Court of the Republic of Croatia, in its decision of 23 May 2017 on a constitutional complaint seeking

¹² Limitation periods are also interrupted when the debtor admits the debt (Art. 240 OA).

¹³ Under Croatian law, by the application of the statute of limitations, the right to request the fulfilment of the obligation ceases to exist [Art. 214(1) OA]. Upon the expiry of the limitation period, the obligation does not cease to exist but it becomes a natural obligation. Since it is a period regulated by substantive law because by the application of the statute of limitations, the right to a claim the limitation period ceases to exist, the courts do not take into account the limitation *ex officio*. They decide whether the claim is time-barred only upon the claim of the debtor [Art. 214(3) OA].

¹⁴ See the judgments of the Supreme Court of the Republic of Croatia Revx-183/11-2 of 16 October 2013, Rev-374/03-2 of 28 May 2003, Revx-808/11-2 of 12 September 2012; Rev-x 511/12 of 28 April 2015. Available at <http://www.iusinfo.hr> (Accessed: 16 January 2022).

restitution because of a null and void contract concluded in foreign currency, held as follows:¹⁵

*“Foreign currency loan contracts are null and void and, as the result, the defendant is obliged to return to the applicant all the previously received money. The obligation of returning the money received, based on such a contract, is due at the moment the contract was entered into because it was when the nullity set in. Since both the receipt and the return of the money took place on the same date when the contract was entered into, the limitation period, according to the Supreme Court of the Republic of Croatia, started running on the first day following the receipt and the recovery of the money. In general, a five-year time limit applies.”*¹⁶

The consequence of such an interpretation was that restitution claims for null and void contracts, upon the expiry of five years following the payment made under a null and void contract, were considered time-barred. The courts would thus admit the claim for the application of the statute of limitations and reject the restitution claims as time-barred. Even though the court declared the nullity of the contract, and more than five years had elapsed from the payment, the aggrieved party was no longer able to realise, through a court, its restitution claim for an unfounded payment. If a restitution claim was founded on property law (e.g. restitution of ownership of an immovable under a null and void contract), property law rules applied according to which actions for the protection of property rights (e.g. *rei vindicatio*) were not subject to the statute of limitations.¹⁷ All these aspects could lead to a significant imbalance in the legal position of the parties to the contract. (Eraković, 2020, p. 38) Their protection, in the case of null and void contracts, depended on the nature of their restitution claims (governed by the law of obligations or by the property law), or on how much time, at the time of filing an action for restitution, had passed from the payment under a null and void contract, regardless of whether, or when, the nullity of the contract was declared.¹⁸ When a contractual party based its restitution

¹⁵ It is possible to contract the payment in foreign currency between residents and between residents and non-residents only in the cases prescribed by law or a decision issued by the National Bank of Croatia (Art. 15 of the Foreign Exchange Act, Official Gazette NN 96/03, 140/05, 132/06, 150/08, 92/09, 153/09, 133/09, 145/10, 76/13, 52/21). This Act limits the conclusion of credit contracts in foreign currency only to credits between the banks and residents, while residents among themselves may not enter into credit contracts in foreign currencies (Art. 17). In all other cases, contracts where foreign currency payments are specified, are considered null and void by reason of being contrary to the mandatory rules laid down in Foreign Exchange Act.

¹⁶ See the Decision of the Constitutional Court of the Republic of Croatia U-III-5859/2014, 23/5/20 Available at www.iusinfo.hr (Accessed: 1 December 2021).

¹⁷ See Art. 161/2 Property Act, Official Gazette NN 91/96, 68/98, 137/98, 22/00, 73/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12, 152/14, 81/15, 94/17.

¹⁸ For example, if a null and void immovable sales contract was concluded in 1990, the transfer of ownership and the payment was made in 1991, and the contract was declared null and void only in 2021, the position of the contractual parties regarding the restitution claims is significantly different. The limitation period on the buyer's claim for the

claim on unjust enrichment, the fact that the OA prescribed an unlimited period of claiming nullity did not have any significant impact on the possibilities of success of the party's restitution claim. At all events, no matter whether and when the nullity of a contract was declared, the aggrieved party was entitled to restitution of only the payments made five years prior to the submission of its restitution claim. The restitution claims for all previous payments were considered time-barred and could no longer be enforced. Hence, the aggrieved contractual party, despite the fact that the contract had been declared null and void, could not always succeed in obtaining complete restitution of all the payments made on the basis of a null and void contract. Interestingly enough, this problem was not of any particular concern in the previous case law.¹⁹ Only in the past few years has the question of efficient protection of restitution claims become more topical and has brought about a radical change in the interpretation of the statute of limitations involving restitution claims after null and void contracts.

4. RESTITUTION CLAIMS AND THE PRINCIPLE OF EFFECTIVENESS

4.1. Practical problems in connection with restitution claims after null and void contracts

Because of a relatively short limitation period of five years, the problems connected with efficient enforcement of individual restitution claims after null and void contracts have become very apparent in practice. These problems become apparent in practice after the Croatian courts held that the contract terms on the variable interest rate, and foreign currency clause in CHF, had been unfair in the proceedings for the protection of the collective interests of consumers in consumer credit contracts denominated in CHF. The proceedings for collective protection were initiated in 2012 and they dealt with the protection of consumers against unfair contract terms in consumer credit contracts concluded from 2003 to 2008. After very long-lasting proceedings, the final decision was rendered that the contract terms on the variable interest rate and foreign currency clause were unfair, and null and void, and the sued credit institutions were banned from their further application. The decision regarding the clause on variable interest rate became final in 2014, and the one on the foreign currency clause in CHF, only in 2018.²⁰ After the finality of the

restitution of the payment took effect 5 years from the payment (1996). Although the nullity of the contract was established, the buyer was no longer entitled to a restitution claim for the payment. On the other hand, because the claim for the restitution of ownership is not time-barred, the seller is still allowed to claim the restitution of ownership of the immovable.

¹⁹ There have been arguments in literature that this opinion may, in practice, cause some problems, particularly when it comes to null and void contracts entered into for periods longer than five years. See Jug, 2016, pp 159–198.

²⁰ The proceedings for collective consumer protection in consumer credit contracts regarding unfairness of contract terms on variable interest rates were brought to an end on 13 June 2014 by a final decision of the High Commercial Court of the Republic Croatia

decisions rendered in the proceedings for the collective protection of consumers, efficient fulfilment of restitution claims for the restitution of prepaid amounts on the basis of unfair contract terms in consumer credit contracts became actualised. A large number of consumers then brought their individual actions for restitution payments made on the basis of unfair contract provisions.

The calculation of the periods of limitation to succeed in individual consumer restitution claims for the recovery of prepaid amounts on the basis of unfair contract terms, in accordance with the then established case law, would have resulted in a situation where a large number of individual restitution claims would have been considered time-barred. The consumers of about 90,000 consumer credits (mostly fully or partially repaid five years before the initiation of the injunction procedure, or prior to the finality of judgments) would thus have been brought in an extremely unfavourable position. In addition, at the time when the judgments in injunction procedures became final, 30,000 consumers had not even filed their individual restitution claims for the overpaid amounts on the basis of unfair contract terms. (Metelko, 2021) Most consumers waited for the courts to decide on their collective redress. In the meantime, a large number of consumers, on the basis of specific provisions of the Consumer Credit Act²¹ agreed with credit institutions to convert their credits denominated in CHF to credits denominated in EUR (for more see Josipović, 2019, pp. 165–168).

It has become apparent that the concept, according to which a five-year limitation period for restitution claims is calculated from each payment made under null and void contract terms, cannot ensure efficient and full protection of consumers from contractual provisions. If that were the case, the protection of consumers would not correspond to the standards defined in numerous ECJ judgments on UCTD.²² The ECJ held that unfair contract terms must be regarded as if they have never existed, without having any effect on the consumers. Therefore, it was necessary to ensure that

(Pž-7129/13). The proceedings for collective consumer protection by consumer credit contracts regarding unfairness of contract terms in the foreign currency clause in CHF were brought to an end by a final judgment of the High Commercial Court of the Republic of Croatia of 14 August 2018 (Pž-6632/17).

²¹ Official Gazette NN 75/09, 112/12, 143/13, 147/13, 9/15, 78/15, 102/15, 52/16.

²² For example, if a consumer credit contract, with unfair contract terms, was concluded in 2003 and the credit was fully paid in 2008, at the time of the finality of the injunction against the credit institution to refrain from using unfair contract term on variable interest rate (2014), individual restitution claim for the return of overpaid amounts on the basis of unfair contract term was already time-barred.

In addition, if a consumer credit contract with unfair contract terms was concluded in 2003 for a period of 20 years, and the consumer had been paying the instalments, at the time of the finality of the injunction against the credit institution to refrain from using unfair contract terms (2014), a part of the restitution claim for the return of overpaid amounts on the basis of unfair contract terms was already time-barred (the amounts paid from 2003 to 2009). At the time of the finality of the injunction, the consumer's restitution claim was not time-barred only for the overpaid amounts paid in the last five years.

the consumers were given back all the overpaid amounts under unfair contract terms. Only then could the consumer be brought into the legal and factual situation he would have been in, had the unfair contract terms not existed.²³ In other words, paying back all the overpaid amounts on the basis of unfair contract terms is the main prerequisite for the effective re-establishment of the balance between consumers and traders and, in general, effective protection of consumers against unfair contract terms.

To find an adequate solution for efficient and full protection of consumers against unfair contract terms, the Croatian courts had to answer two crucial questions. The first was the impact of the initiation of civil proceedings for collective redress on the limitation period for individual restitution claims for prepaid amounts under unfair contract terms. It was an issue not expressly provided for in the OA and its provisions on the limitation period and its interruption, and it had not existed in the previous case law. The second question was, from which point in time the limitation period for a restitution claim after a null and void contract must be calculated, or should the then valid case law be revised (according to which the limitation period started running on the day following the payment under a null and void contract). By changing their opinions on these two important questions regarding individual restitution claims, the Croatian courts have taken two important steps towards more efficient protection when dealing with restitution claims after null and void contracts, as well as any other contracts.

4.2. The first step towards more efficient protection of restitution claims

The first step towards better protection of restitution claims for null and void contracts was made in 2018 when the Supreme Court of the Republic of Croatia stated the following (hereafter: Opinion/2018):

*“The initiation of civil proceedings for the protection of collective interests of consumers results in interruption of the limitation period according to Art. 241 OA. The limitation of individual restitution claims starts to run as of the moment the judgment rendered in collective proceedings becomes final.”*²⁴ The Supreme Court invoked Art. 241 OA according to which prescription is interrupted by a lawsuit or any other action brought by the creditor against the debtor before a court, or other competent body, to ascertain, secure, or effect a claim. The Supreme Court also held that according to Art. 241 OA, “any other action before a court or other competent body”, by which prescription is interrupted, may be considered as the initiation of the proceedings for collective protection. In other words, the Supreme Court's

²³ See judgments C-154/15, C-307/15 and C-308/15, Naranjo, ECLI:EU:C:2016:980, points 61, 62.

See Guidance on the Interpretation and Application of the Council Directive 93/13/EEC of 5 April 1993 on unfair contract terms in consumer contracts, European Commission, Brussels, 22/7/2019, C(2019) 5325 final, pp. 49, 50. Available at https://ec.europa.eu/info/sites/default/files/uctd_guidance_2019_en_0.pdf (Accessed: 16 January 2022).

²⁴ See the decision of the Supreme Court of the Republic of Croatia Rev-2245/17, 20/03/2018. Available at www.iusinfo.hr (Accessed: 31 October 2021).

interpretation has been that the period of limitation for individual restitution claim payments, made on the basis of unfair terms in consumer credit contracts, is not only interrupted by filing individual actions for repayment, but also by initiating the proceedings for the protection of collective interests of consumers against unfair contract terms. The application of the statute of limitations for restitution claims is interrupted by instituting the proceedings for collective protection, although a direct objective of these proceedings is not the protection of individual interests of consumers, but the protection of their collective interests and the prohibition against using unfair contract terms in consumer credit contracts. The Supreme Court held that the proceedings of the protection of collective interests of consumers are also connected with the protection of their individual interests and that their initiation must contribute to more efficient protection of restitution claims.

The Supreme Court argued their Opinion by several very important reasons. In practice, there have been some major difficulties in the realisation of restitution claims after null and void consumer credit contracts. These claims become time-barred in a relatively short period of five years. In addition, there are no separate law provisions in the Croatian legal order specifically providing for the interruption of the limitation period for restitution claims when the proceedings for the protection of the collective interests of consumers have been initiated. The Supreme Court also held that consumers must be guaranteed efficient legal protection after the proceedings for collective protection have been completed. If this is not the case, collective protection proceedings in the described circumstances do not make sense.²⁵ This position of the Supreme Court was later confirmed by the Constitutional Court of the Republic of Croatia, by taking into account the purpose of the concept of limitation period on the one hand, and the purpose of the system of collective protection of consumers on the other. The Constitutional Court held that the Supreme Court had addressed the disputed issue of interruption of the limitation period by balancing the conflicting consumers' interests as creditors, as well as those of the applicant as the debtor. Therefore, according to the Constitutional Court, there was nothing obviously unreasonable, or arbitrary, in the legal interpretation of the Supreme Court in the disputed judgment.²⁶

By its interpretation of Article 241 OA on the interruption of the limitation period, the Supreme Court closed the loophole in the Croatian legal order that came into existence in the process of harmonisation of the Croatian law with the EU law dealing with the protection of collective interests of consumers provided for in Directive 2009/22/EC on injunctions for the protection of consumers' interests.^{27, 28} This Directive did not expressly lay down the correlation between the proceedings

²⁵ See the Decision of the Supreme Court of the Republic of Croatia Rev-2245/17, 20/03/2018.

²⁶ Decision of the Constitutional Court of the Republic of Croatia, U-III-2922/2018, 20/2/2020. Available at www.iusinfo.hr (Accessed: 16. January 2022).

²⁷ OJ L 110, 1/5/2009, pp. 30–36.

²⁸ See Arts. 106–123 of the Consumer Protection Act OG NN 110/15, 14/19.

for collective protection and the proceedings for the protection of consumers' individual claims, and as the result, the issue was not expressly regulated in Croatian law either. To provide for more efficient protection of consumers from unfair contractual terms in such circumstances, the Supreme Court interpreted the meaning of the expression "*any other action before the court or other competent body*" as the reason for the interruption of the limitation period for individual restitution claims. Initiation of collective proceedings was interpreted as "*any other action before the court*" as a reason for the interruption of the limitation period. Such an interpretation given by the Supreme Court made it possible to align the protection of consumers' individual restitution claims with EU standards. It was also in accordance with the then expressed tendencies in EU law that the protection of individual claims, for the violation of EU law, had to be connected with other judicial and administrative proceedings for the establishment of infringement of EU law, i.e. that such proceedings for collective protection should, in the end, also ensure efficient and full protection of individual claims.²⁹ Finally, the Supreme Court's Opinion/2018 was subsequently also confirmed by the new Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC.³⁰ By Article 16/2 of the new Directive (EU) 2020/1828, Member States are expressly bound to ensure that a pending representative action for a redress measure for the protection of the collective interests of consumers has the effect of suspending or interrupting applicable limitation periods in respect of the consumers concerned by that representative action. After all Member States will have transposed Article 16/2 of Directive (EU) 2020/1828³¹, the same standards of consumer protection regarding individual claims will be established following the proceedings for collective consumers' interests.

In practice, the application of the Supreme Court's Opinion/2018 has significantly enhanced the protection of consumers when it comes to individual restitution

²⁹ At the time when the Supreme Court interpreted the proceedings of collective protection and the limitation periods on individual restitution claims, the rules already existed in EU law which, for some other cases, provided that by initiating court or administrative proceedings for the violation of EU rights, interruptions or suspensions of the limitation periods occur for individual claims because of the violation of EU law. Thus, for instance, Directive 2014/104/EU on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ L 349, 5/12/2014, pp. 1–19) expressly lay down the obligation of Member States "to ensure that a limitation period is suspended or, depending on the national law, interrupted, if a competition authority takes action for the purpose of investigation or its proceedings in respect of an infringement of competition law to which the action for damages relates. The suspension ends at the earliest one year after the infringement decision has become final, or after the proceedings are otherwise terminated." [Art. 10(4) Directive 2014/104/EU]

³⁰ OJ L 409, 4/12/2020, pp. 1–27.

³¹ Member States are obliged to transpose Directive (EU) 2020/1828 by 25 December 2022 and apply the transposition measures from 25 June 2023 [Art. 24(1)].

claims for prepaid payments on the basis of unfair contractual terms in consumer credit contracts denominated in CHF. The new limitation period for individual restitution claims regarding prepaid payments based on unfair contract terms on variable interest rates started running anew from 14 June 2014. Regarding individual restitution claims for prepaid payments on the basis of unfair foreign currency contract terms in CHF, the new limitation period started running anew from 15 June 2018. When adjudicating individual restitution claims, the courts started rejecting the objection that the claims are time-barred that were not in accordance with the Opinion/2018.³² The application of the Opinion/2018 broadened the protection of consumers to include all individual restitution claims that were not time-barred at the time when the proceedings for collective protection were initiated. The protection was also extended to include the restitution claims not time-barred at the time of the initiation of the proceedings for collective protection but were time-barred in the course of the proceedings. To apply Opinion/2018, it was important that at the time of initiation of collective proceedings, an individual restitution claim existed, that was not time-barred. It was also important that an action for the restitution of prepaid payments was brought within a limitation period of five years following the finality of the decision on collective redress because that was the time when the new limitation period for individual restitution claims started running anew.

However, an unresolved problem continued to exist in practice, connected with the efficient protection of consumers, and, the full restitution of prepaid payments on the basis of unfair contract terms in consumer credit contracts denominated in CHF. The Supreme Court's Opinion/2018 on the interruption of the limitation period by initiating the proceedings for collective protection made efficient and full protection possible only for individual restitution claims which, at the time of the initiation of the proceedings for collective protection, were not time-barred. Because of the fact that collective proceedings were conducted for the reason of unfair contract terms in consumer credit contracts, entered into in the period from 2003 to 2008, a large number of individual consumer restitution claims were time-barred before the proceedings for collective protection had even begun. For such time-barred restitution claims, the problem of efficient protection could not be resolved by applying the interpretation of interruption of the limitation period by initiating the proceedings for the protection of collective interests.

4.3. The second step towards efficient protection of restitution claims

The second step towards efficient protection of restitution claims for null and void contracts was taken in 2020, when the Civil Division of the Supreme Court of the Republic of Croatia gave its legal interpretation (hereafter: Legal Interpretation/2020) stating the following: *"In the case of restitution claims according to which each party is obliged to effect restitution to the other party of everything it has*

³² See, for example, the decision by the County Court in Varaždin, Gž-1934/2017, 7/6/2018. Available at www.iusinfo.hr (Accessed: 11 January 2022).

received on the basis of a particular contract, or, in the case of a claim referred to in Art. 323, para. 1³³ of the OA/05 (Art. 104, para. 1 of the OA/91), as the consequence of the declaration of nullity of a contract, the limitation period starts to run from the day of the finality of the court decision declaring nullity, or when nullity is declared in some other way."³⁴

Different from Opinion/2018 on the periods of limitation for restitution claims,³⁵ which only deals with consumer contracts, the Legal Interpretation/2020 covers all null and void contracts, regardless of who are the parties to the contract.

The Legal Interpretation/2020 has brought a radical change compared to older case law according to which the limitation period for restitution claims was calculated from the day when the payment/transfer was effected on the basis of a null and void contract, regardless of whether and when the court declared its nullity. According to the Legal Interpretation/2020, to calculate the limitation period for a restitution claim, it is no longer decisive when the payment was made under a null and void contract. It is also not important when a null and void contract was concluded. To calculate the limitation period for a restitution claim, it is only crucial when the court declared the nullity of the contract, or when its nullity was established in some other way.

The effects of such a radical change in the interpretation of the limitation period for restitution claims for null and void contracts have had far-reaching consequences not only for efficient consumer protection against unfair contract terms in consumer credit contracts, but also for the protection of the parties to any other null and void contracts. The Legal Interpretation/2020 made it possible for the consumers to request compensation from credit institutions for all prepaid payments based on null contract terms in consumer credit contracts, including all the payments already time-barred according to previous case law. In line with the new interpretation, all consumer restitution claims, regardless of when the payments were made, become effective on the date on which the nullity was declared or from the date when the judgments in the proceedings for collective protection were rendered. As a result, for all consumers, the new limitation period of five years started running from the finality of judgments.

There is no doubt that by the Legal Interpretation/2020, the conditions were established according to which, in conformity with the case law of the ECJ, all

³³ Art. 323, para.1 OA lays down the obligation of restitution of what has been paid or transferred to the other party under a null and void contract. For more see 3.2.

³⁴ Legal interpretation of the Civil Division of the Supreme Court of the Republic of Croatia, Su-IV-47/2020-2, 30/1/2020. Available at VSRH_GO_2020_Su-IV-47-2020-2_2020-1-30_sjed01.pdf (Accessed: 16 January 2022).

Legal understanding expressed by the Supreme Court of the Republic of Croatia serves to the establishment and harmonisation of case law as an obligation for all judges of the Civil Division of the Supreme Court. By the power of authority of the highest court in the Republic of Croatia, this understanding is binding on all other civil law judges. See the Decision of the County Court in Varaždin, Gž-194/20, 16/9/2020, www.iusinfo.hr (Accessed: 11 January 2022).

³⁵ For more see 4.2.

consumers who have entered into consumer credit contracts with unfair contract terms, must be guaranteed full restitution of all prepaid amounts regardless of when the payments have been made.³⁶ The possibility that individual restitutional claims become time-barred before the court has declared the nullity of unfair contract terms has thus been removed. This approach made a full restoration to the legal and factual situation possible, as if unfair terms had not even existed. In that sense, the Legal Interpretation/2020 can be considered as being aligned with the ECJ judgments where the ECJ interpreted that “(...) a limitation period may be compatible with the principle of effectiveness only if the consumer has had the opportunity to become aware of his or her rights before that period begins to run or expires”.^{37, 38} It seems that the new way of calculating the limitation period for restitution claims is precisely based on the idea that only by a declaration of the nullity of a contract, the aggrieved party to the contract may find out for sure that its payments, on the basis of a null and void contract, have been unjustified and that the party is entitled to a restitution claim against the other party. In addition, by the adoption of the Legal Interpretation/2020, the need for the application of the Opinion/2018 actually ceased to

³⁶ Interest claims in connection with full restitution may also be a problem. If it is considered that the limitation period starts running only from the declaration of nullity, default interest for prepaid payments may become effective on the date on which nullity is declared regardless of when payments are made. This would mean that consumers would not be entitled to default interest on prepaid payments from the time when the payments are made, until the declaration of nullity. In some cases, this will be a considerable loss of profit for consumers. The judgments rendered for collective redress became final in 2014 or 2018, relate to consumer credit contracts entered into from 2003 to 2008. According to the new interpretation, regardless of the fact that the prepaid payment was made in 2003, default interest would start running only at the time of the final judgment.

³⁷ Judgment C-776/19, BNP Paribas Personal Finance, ECLI:EU:C:2021:470, point 46. It arises from the case law of the ECJ that Article 6(1) and Article 7(1) of Directive 93/13/EEZ “do not preclude national legislations which, while providing that an action for a declaration of nullity of an unfair term in a contract concluded between a seller or supplier, and a consumer, is not subject to a time limit, subjects the action to enforce the restitutory effects of that finding to a limitation period, provided that the principles of equivalence and effectiveness are observed”. See judgment C-776/19, BNP Paribas Personal Finance, ECLI:EU:C:2021:470, point 39. See judgment C-485/19, Profi Credit Slovakia, ECLI:EU:C:2021:313, points 56, 57, 58; judgments C-224/19 and C-259/19, Caixabank, ECLI:EU:C:2020:578, point 92; judgments C-698/18 and C-699/18, Raiffeisen Bank, ECLI:EU:C:2020:537, point 58.

³⁸ It arises from the case law of the ECJ that the calculation of the limitation period for restitution claims, which begins to run from the date on which the unjust enrichment occurred, may be contrary to the principle of effectiveness. Even more so, when “the limitation period applies even if the consumer is not in a position to assess for himself or herself that a contractual term is unfair or has not been made aware of the unfairness of the contractual term in question”. In that context, particularly disputable may be the circumstance that the limitation period expires prior to the termination of the contract. See judgment C-485/19, Profi Credit Slovakia, ECLI:EU:C:2021:313, points 61, 63.

exist.³⁹ Indeed, according to the new interpretation of 2020, the limitation period for restitution claims for all null and void contracts begins to run from the court's declaration of nullity, or from a declaration of nullity issued in some other way. Hence, the Legal Interpretation/2020 also covers the cases where it is declared, by a judgment regarding collective redress to protect the collective interests of consumers, that the terms in consumer contracts are unfair and that the trader is banned from their further use. Therefore, there is no longer any need for the application of the Opinion/2018 according to which the institution of the proceedings for the protection of collective consumer interests, regarding unfair contract terms, leads to an interruption of the limitation period for restitution claims. Namely, the Legal Interpretation/2020 provides more efficient and complete protection because it includes all restitution claims, regardless of whether they, at the moment of the institution of the proceedings, were time-barred or not. In practice, the Opinion/2018 may also be relevant for the cases where the consumers, on the basis of a decision rendered regarding collective redress, are entitled to some other restitution claims against traders, not based on the nullity of the contract.

Although the main motive for a new interpretation of the limitation period for restitution claims has been the efficient and full protection of consumers against unfair contract terms, the Legal Interpretation/2020 has had a significant impact on the protection of other contractual parties involved in null and void contracts because it applies to all such contracts. It has been a significant step forward to efficient protection of restitution claims of any aggrieved parties to null and void contracts, regardless of who they are (C2B, B2B, C2C), when they entered into contracts, what is the cause of nullity, or when the payments have been made. The same rule now applies to all restitution claims for null and void contracts, whereby the limitation period is calculated from the declaration of nullity. In addition, the same level of protection with regard to restitution claims is established for any contractual parties, in any null and void contracts, regardless of their capacity when concluding them. Since the limitation period is calculated from the declaration of nullity, this interpretation applies retroactively to any restitution claims arising from null and void contracts for which, from the declaration of nullity, the limitation period has not expired, regardless of when the contract is concluded and when the payments are effected. This is why even the restitution claims become effective which, according to the previous case law, were considered as time-barred because the limitation period used to be calculated from the payment/transfer under a null and void contract.

Although this is a very important change in the calculation of limitation periods for restitution claims after null and void contracts and it significantly changes the position of the parties to null and void contracts, the Supreme Court has omitted to explain such a radical shift in its earlier positions.⁴⁰ Such a crucial change requires a

³⁹ For more see 4.2.

⁴⁰ The reasons for the new interpretation of the calculation of limitation periods for restitution claims after null and void contracts can be found in the decision of the Supreme Court Rev-x 999/2021 of 10/10/2019 which preceded the adoption of the Legal Inter-

detailed explanation and argumentation. Namely, after the Court's position had been declared, numerous practical questions arose about how the limitation periods for restitution claims should be calculated in practice. There have also been many questions connected with legal security, prevention of the abuse of law, protection of the parties' legitimate interest, and retroactivity. The new opinion applies to all null and void contracts for which nullity has not been declared and it is, therefore, necessary to establish a new balance between the parties' confronting interests. To begin with, it is crucial to know how the Supreme Court explains the reasons for which the limitation period (Art. 1111 OA) starts running at the moment of declaration of nullity and no longer at the time of the payment (although unjust enrichment occurred at the moment of payment under a null and void contract). Namely, according to the Legal interpretation/2020, the restitution claim takes place only at the moment of declaration of nullity and no longer at the moment of the payment. It is true, however, that by such an approach, some problems arising in practice are "bridged" because of an unlimited period to exercise the right to invoke nullity on the one hand, and because of a short limitation period for a restitution claim on the other. We thus avoid the possibility that a restitution claim becomes time-barred even before the nullity is declared. However, precisely because of an unlimited period for invoking nullity, there is now a possibility that a party, despite the fact that a lot of time has passed from the conclusion of a null and void contract, and even despite the fact that the contractual party has been aware of the nullity from the very beginning, after a long period of time (e.g. several decades after the conclusion of the null and void contract) seeks the declaration of nullity and subsequently also restitution. Such interpretation opens a possibility for the

pretation/2020. In this decision, the Supreme Court stated that in the context of the limitation period for restitution claims, it must be taken into account that the right to invoke nullity does not cease to exist regardless of the passage of time. Hence, restitution claims are not time-barred prior to the issue of nullity of a legal transaction is solved. Otherwise, the objective of Art. 323 on restitution in integrum would not be met and the obligation of restoration of the previous situation would be negated regardless of the passage of time. Therefore, when dealing with null and void contracts, time needed for the prescription for restitution claims does not start running from the day when the party seeking recovery had given what is the subject of its claim. The application of the statute of limitations starts running only following the finality of the court decision establishing the disputed claim. The limitation period of 10 years applies (Art. 233 OA) because it is a restitution claim established by a final court decision. The Supreme Court emphasised that by such interpretation, the previous dominant legal understanding on the limitation period of restitution claims after null and void contracts changed. The new interpretation results in better equality of the parties in obligation law relations, there is more legal security in terms of the parties' duty to fulfil their obligations and the objective of the provision of Art. 323 of the OA is achieved (neutralisation of the effects of null and void legal transactions by the restoration of the previous status quo, regardless of the passage of time). See the Decision of the Supreme Court of the Republic of Croatia Rev-x 999/2021 of 10/10/2019. Available at: www.iusinfo.hr (Accessed: 16 January 2022).

contractual parties to invoke nullity and restitution on the grounds which may sometimes be considered to be an abuse of law. In every concrete case, the courts must take into account this possible circumstance. Their case law will be faced with an extremely challenging task of defining the criteria for assessing whether, in a concrete case, abuse of law is involved and if so, how to then decide on a particular restitution claim. It would have been very useful had the Supreme Court described the shift from objective to subjective calculation of the limitation period. In earlier case law, the limitation period was calculated objectively, from the time an unfounded payment was effected, regardless of whether the aggrieved contractual party already knew about the nullity of the contract, or when it actually became aware of it. In somewhat older case law, a restitution claim could be time-barred even though the fact that a party to the contract did not know, or could not know anything about the nullity of the contract. At present, although the calculation of the limitation period for restitution claims is linked with the declaration of nullity as an objective fact, it is calculated by taking into account the necessity that the aggrieved party must first be brought into a situation to find out, by a declaratory court decision on nullity, that the contract is null and void. Then, within the limitation period following the declaration, the party must file a restitution claim for all prepaid payments made under the null and void contract. However, this new approach to the calculation of the limitation period opens additional questions connected with the realisation of restitution claims. For example, a question may be raised whether, in the present situation, a declaration of nullity is a precondition for a restitution claim, whether a party to the contract, to succeed with a restitution claim, must have previously initiated court proceedings for a declaration of nullity on which the calculation of the limitation period for restitution claims depends. According to the previous case law, it was sufficient to request restitution, and it was on the court to decide on the nullity as a prejudicial question, without expressly declaring the nullity in the dispositive part of its decision. Regarding the fact that according to the new interpretation given by the Supreme Court, restitution claims become due only after the court has declared the nullity, (Eraković, 2020, p. 36) and the courts may condition their adjudication on the restitution claims by the preliminary judicial declaration of the nullity of the contract.⁴¹ Their interpretation may be that a request for the declaration of nullity is a prerequisite for a condemnatory restitution claim⁴² (Baretić et al., 2021). This will also be important for the determination of the length

⁴¹ The courts' interpretation is that a subjective right to restitution is acquired only by declaring the nullity of a contractual provision. On the other hand, the courts' explanation is that restitution claims are based on the rules of the OA on unjust enrichment (Art. 1111). See the judgment of the County Court in Varaždin, Gž-711/2019, 27/5/2021. Available at: www.iusinfo.hr (Accessed: 11 January 2022).

⁴² It is possible that the courts will find that a restitution claim, not due if the nullity has not been declared, is premature. It is an open question how the courts will interpret situations where it is held that nullity has been declared. Will it always be necessary to get a final judgment declaring nullity, or will it be enough to decide on the nullity as on a prejudicial question? (Eraković, 2020, p. 39)

of limitation periods for restitution claims. A question also arises whether Art. 225 OA on a general five-year limitation period applies, or Art. 233 OA on a ten-year limitation period for the claims established by a final court decision. In addition, the calculation of default interest on the payments made under null and void contracts also depends on an answer when a restitution claim becomes due and this calculation would also start from the declaration of nullity. (Eraković, 2020, p. 41)

5. CONCLUSION

Practical problems connected with the realisation of individual consumer restitution claims for null and void contract terms in credit contracts denominated in CHF have resulted in a radical change of case law dealing with the protection of restitution claims. It is obvious that the traditional rules regulating the consequences of nullity and the restitution claims in Croatian contract law that have been the same for almost 45 years, cannot always ensure optimal and just levels of protection of legal order, private interests of contractual parties, and a balance between the parties' confronting interests. It is also not possible to ensure the standards of protection of individual rights in accordance with the EU law. The protection of restitution claims that is based on the rule of unlimited period for invoking nullity (Art. 328 OA), a short general limitation period for restitution claims (Art. 225 OA), and the calculation of the limitation period from the moment of the payment/transfer, i.e. unjustified calculation (Art. 1111 OA), cannot always, in practice, achieve optimal effects. Serious violations of the Constitution, the mandatory laws, or the morals of the society require that the right to invoke nullity be unlimited, that null and void contracts never become valid and that legal and factual situation is established which existed before the conclusion of the contract. The interests of legal security, certainty, and justness in private law relations require that restitution claims are limited in time. Various problems arise in practice, because in the process of application of all the mentioned rules, it is necessary to reconcile various interests and objectives: from the protection of public order, the protection of private and individual interests of contractual parties, to the establishment of legal security and certainty in contractual relations. At the same time, the biggest problem is a relatively short limitation period for restitution claims and the beginning of its calculation. This seems to be one of the main reasons for which, in the past few years, case law has radically changed when it comes to restitution claims.

These new opinions and legal interpretations given by the Supreme Court of the Republic of Croatia have primarily been some kind of "fire-fighting measures", its *ad hoc* problem-solving activities because of the loopholes in the rules on the limitation periods for restitution claims, the lack of coordination of the rules on prescription with the new legal remedies for the protection of contractual parties (collective protection) and the obviously unjust effects of traditional calculation of limitation periods for restitution claims from the moment of payment (because of unjust enrichment). Such judicial activism was mostly motivated by a demand for efficient protection of consumers against unfair contract terms in accordance with

the standards of EU laws. This new concept of the protection of restitution claims after null and void contracts has been extended to include all null and void contracts regardless of the grounds for nullity and the capacity of the parties when concluding such contracts. The results of this approach immediately became noticed in practice. Many consumers were brought into a situation where they were able to fully succeed in their restitution claims based on unfair contract terms. However, it is still unknown whether such judicial activism can finally contribute to legal security and protection of all the values which must be protected by the rules on the nullity of contracts. Indeed, the opinions and legal interpretations by the Supreme Court, despite the fact that at a particular and delicate time, they provided efficient protection of restitution claims, nevertheless revealed some new questions and dilemmas regarding legal security, retroactivity, and imbalance in the protection of the parties to null and void contracts.

These new Supreme Court opinions and legal interpretations on restitution claims show that it is very urgent to initiate a discussion on the traditional concept of restitution claims for null and void contracts provided for in the Obligations Act. It would be particularly useful to analyse how to align the rule on *ex lege* and *ex tunc* existence of the legal effects of nullity⁴³ with the length and calculation of the limitation periods for the realisation of restitution claims. Relatively short limitation periods for restitution claims, particularly if they are calculated from the moment of the payment under a null and void contract, may, in practice, result in a considerable imbalance in the legal position of contractual parties and in possible abuse of the unlimited right to invoke nullity. These are all very important issues and are, after all, in the legislator's area of competence. It would be extremely useful, though, to consider the possibilities of adopting a law to lay down in detail the realisation of restitution claims for null and void contracts, a longer limitation period for such claims, and when it has started running, to take into account the fact that a party to the contract must be protected from the moment it has made the payment under a null and void contract. Special cases of interruption of a limitation period must also be specified, as well as how the circumstance, that a contractual party is aware of the reasons for nullity, has impacted the unlimited right to invoke nullity and the right to restitution. All these issues connected with restitution claims have become obvious because of widespread activations of individual restitution claims invoked by consumers due to unfair contract terms. They clearly point to a serious problem in the regulation of null and void contracts which may result in many legal, economic, social, and moral consequences. This cannot be solved by case law but only by the legislator whose task is to amend the rules on null and void contracts to ensure legal security and balanced protection of all contractual parties.

⁴³ For example, Eraković, A. (Eraković, 2020, p. 36) is of the opinion that the court has changed the concept of nullity.

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