

THE SITUATION OF THE AGGRIEVED PARTY
IN THE CONTEXT OF THE STATUTE OF LIMITATIONS
FOR CLAIMS BASED ON TORT IN ACCORDANCE
WITH ARTICLE 442¹ OF THE CIVIL CODE

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Summary. The issue of defining the limitation periods for claims, both the periods *a tempore facti* and *a tempore scientiae*, undoubtedly, is extremely important for the conduct of legal transactions, and, above all, for defining the legal situation of the aggrieved party and the person obliged to redress the damage. Therefore, the statement that the period cannot run endlessly should not be criticized, even in the case of the damage of the most important personal interests such as life and health. It should favour the stabilization of each participant of legal transactions. However, it is inadmissible to accept the situation in which the obligator's interests are more important than the interests of the aggrieved party, which in the case of Article 442 of KC in respect of the damage on a person took place, and it seems to be a justified statement, which may also take place in the interpretation of Article 442¹ of KC. The interests of the aggrieved party cannot be deprecated, justifying it with the need of the stable conduct of legal transactions, and with the fact that the tortfeasor is in the condition of long-term uncertainty. It should be remembered that the condition of uncertainty may occur only after the damage discovery¹, thus, the condition of uncertainty may be referred to the period *a tempore scientiae*. It should be agreed that the limitation period should have the functions that discipline and motivate the aggrieved party, which stay in close connection with the compensatory function of the liability for damages. Moreover, the lapse of time has a negative influence on the evidence possibility, both when it comes to the aggrieved party and the person obliged to redress the damage, which, however, cannot be an obstacle for the possibility of exercising subjective rights. The issue of the statute of limitations for claims resulting from the damage based on tort takes on particular meaning, also due to the fact that every year the citizens' sense of law is improving; among others, thanks to gratuitous legal advice that is developing rapidly.

Key words: limitations period, tort, minor, property damage, damage on a person, crime, harmful event, maturity of a claim

The issue of the statute of limitations based on tort was repeatedly the subject of studies, and it was also fully described in the jurisdiction. This interest resulted from a number of interpretation doubts existing on the theoretical and practical ground, connected with the application of the repealed Article 442 of

¹ A. Józefiak, „Przedawnienie roszczeń z tytułu naprawienia szkody wyrządzonej czynem niedozwolonym w świetle Konstytucji”, KPP 2006, clause 3, page 687.

the Civil Code² (hereinafter referred to as KC), and in connection with the accusations made against the regulation itself from the point of view of language, system and functional interpretation of Article 442 of KC. The criticism led to referring the case to the Constitutional Tribunal, which by the judgement of 1 September 2006³ deemed that Article 442 of KC is inconsistent with Article 2 and Article 77 paragraph 1 of the Constitution of the Republic of Poland⁴, as it deprives the aggrieved party of the right to claim compensation for the damage on a person which was discovered after the lapse of 10 years from the occurrence of the harmful event. The example of such a situation, quite frequently occurring, may be the case of causing a damage to a person based on tort, in connection with the hospitalization of the aggrieved party who was infected with hepatitis B virus during the performance of a medical surgery, and who consequently went down with hepatitis B. The negative consequences of the infection, i.e. the damage, may occur after many years after the harmful event. The aggrieved party may find out about the infection long time after the hospitalization, as carrying hepatitis B virus does not have to give the signs of sickness. Frequently, the hepatitis B caused by infection develops asymptotically, which results in hepatitis B turning into chronic disease, about which the aggrieved party does not have to know. After many years, the unobserved development of the disease may lead to serious consequences, first of all cirrhosis⁵.

Because of the need to protect the interests of the aggrieved party in connection with the damage resulting from tort, the issue of the statute of limitations takes on particular importance. Therefore, the rules applying to calculating the limitation period, especially in connection with the damage on a person, should be special⁶. The need for changes led to the amendment of the provisions of the Civil Code through repealing Article 442 of KC and introducing a new regulation defined in Article 442¹ of KC. However, it does not mean that the amendment allowed to eliminate all the interpretation doubts, because it was only fragmentary and the majority thereof concerned the issue of the statute of limitations for the damage on a person resulting from tort. Since the raised issue has an extensive range, in the context of the repealed Article 442 of KC, the analysis applies only to the issues that are the most questionable according to the Author.

² The Law of 23 April 1964 – the Civil Code, (i.e. Dz. U. 2014, No. 121 as amended).

³ The Judgement of the Constitutional Tribunal of 1 September 2006, SK 14/05, (Dz. U. No.164, item 1166), OTK-A ZU 2006 No. 8, item 97.

⁴ The Constitution of the Republic of Poland of 2 April 1997, DZ.U. 1997.78.482 as amended).

⁵ M. Majewska, „WZW B: objawy”, www.poradnikzdrowie.pl.

⁶ Cf The judgement of the Supreme Court of 21 May 2003, IV CKN 378/01, *LEX no. 84420* with approving commentaries: M. Balwicka-Szczyrba, Commentaries on the judgement of the Supreme Court of 21 May 2003, IV CKN 378/01. Thesis No. 1, „Rejent” 2005 No. 5, page 153, *LEX no. 48086/1*; T. Dybowski, Commentaries on the judgement of the Supreme Court of 21 May 2003, IV CKN 738/01. Thesis 3, „Przegląd Sądowy” 2005, No. 6, page 132, *LEX no. 47721/3*.

ARTICLE 442 OF KC AS THE EXAMPLE OF THE PROVISION DEPRIVING
THE AGGRIEVED PARTY OF LEGAL PROTECTION IN THE CASE
OF THE DAMAGE ON A PERSON WHICH OCCURRED AFTER THE LAPSE
OF 10 YEARS FROM THE OCCURRENCE OF THE HARMFUL EVENT

As it was mentioned before, the necessity to amend Article 442 of KC resulted from the need to provide the aggrieved party, who suffered from the damage on a person based on tort, with full legal protection. Since, in the cases in which the damage resulting from tort occurred after the lapse of 10 years from the occurrence of the harmful event, the aggrieved party would be subject to the situation in which the person obliged to redress the damage makes the charge of statute of limitation. Therefore, under Article 442 of KC assertion of claims for damages *de facto* would be impossible due to the existing “legal loophole”. That is why this problematic issue was being repeatedly raised by the legal community. Searching for the solution to provide the aggrieved party with the protection, some lawyers formulated the argument that in such a situation Article 120 of KC should be applied, according to which a limitation period starts running on the day on which a claim becomes mature⁷. The confirmation of the above position was found in the subsequent judgement of the Supreme Court in which it was stated that a limitation period cannot start running before the damage occurrence⁸. It has been accepted that the literal interpretation of Article 442 of KC *de facto* leads to the damaging effects, therefore the effects thereof should be mitigated by referring to the general rules on the statute of limitations, and by commencing the running of the limitation period on the due day. In the same judgement the Supreme Court allowed for the possibility of occurring so-called „new damage”, which meant that one event might lead to more than one damage at different time intervals. However, the positions presented in the judicial practice were not uniform in this issue, the proof of which may be the subsequent statement of the Supreme Court defined in the judgement of 16 March 2005, in which it was stated that regardless of the damage itself, in each case, a limitation period starts running on the day on which a damage was caused, so in accordance with the previous regulation it lasted 10 years from the occurrence of the harmful event⁹. In the opinion of the adjudicating panel, accepting a different interpretation of the provision of Article 442 of KC would lead to *contra legem* interpretation. Therefore, for jurisdictional reasons, the interpretation made by the

⁷ Cf Z. Polickiewicz-Zawadzka, „Powstanie szkody a bieg 10-letniego przedawnienia z art. 442 k.c., NP 1966, clauses 7–8, pages 929 and 932.

⁸ The judgement of the Supreme Court of 21 May 2003, IV CKN 378/01, OSNC 2004, No. 7–8, item 124 with approving commentaries: T. Dybowski, PS 2005, No. 6, page 132 and next; M. Balwicka-Szczyrba, Rejent 2005, No. 5, page 153 and next, M. Nesterowicz, OSP 2004, clause 4, item 55. page 237 and next

⁹ The judgement of the Supreme Court of 16 March 2005, II CK 538/04, Palestra 2006, clauses 1–2, page 266 with critical commentaries of M. Warciński, Palestra 2006, clauses 1–2, page 266 and next with partly critical commentaries of M.S. Tofla, PiP 2006, clause 3, page 118.

Supreme Court in the judgement of 21 May 2003 (IV CKN 378/01) was not acceptable, even after regarding the equity law and the need for special protection of the aggrieved party¹⁰. The arguments quoted by the Court in the above statement led to the situation in which the entities obliged to redress the damage made the charge of statute of limitation and avoided the liability by making their obligation not complete in nature.

The same interpretation was approved by the Supreme Court in the resolution of 17 February 2006, which at the same time accepted the literal interpretation of Article 442 of KC. According to the Court, the indicated provision did not give rise to any interpretation doubts. Therefore, it should be accepted that the statute of limitations in this particular case protected the interests of the perpetrator (the obligor), not the aggrieved party (the obligee). Since, under the interpretation accepted by the full Civil Chamber, a limitation period starts running on the day on which the harmful event occurred, regardless of the time when the damage occurred¹¹.

Despite the fact that the statement was made in the full composition, not longer than two weeks later the Supreme Court was in favour of the statement that there is a possibility of a limitation period starting running not from the date of the harmful event, but from the date on which the effect in the form of a damage occurred. In this particular case, the problem of the facts of the case concerned the infection of the patient with *Staphylococcus aureus* bacteria¹². The Supreme Court indicated in the justification that the harmful event should be distinguished from the effects thereof, which may take the form of disorder of health. The effects may take two forms depending on the nature of the damage. They may be typical for a given case, or untypical and exceptional, which cannot be predicted. Therefore, in such a case, it should be accepted that there are two different kinds of effect and, thus, two different kinds of damage, which determines the statement that limitation periods should be calculated differently. This position was approved in the said judgement of the Constitutional Tribunal of 1 September 2006, which undoubtedly was the main reason for the later amendment of Article 442 of KC. However, this amendment did not solve the problematic and controversial issue of defining the mechanism of the statute of limitations *ex delicto*, particularly with reference to a property damage.

¹⁰ Cf for example the resolution of the panel of seven Supreme Court judges of 12 February 1969, III PZP 43/68, OSNCP 1969, No. 9, item 150; the resolution of the Supreme Court of 25 October 1974, III PZP 39/74, OSNCP 1975, No. 5, item 82.

¹¹ The resolution of the full Civil Chamber of 17 February 2006, III CZP 84/05, OSNC 2006, No. 7–8, item 114 with partly critical commentaries by M.S. Tofla, PS 2006, No. 11–12, page 277.

¹² The judgement of the Supreme Court of 2 March 2006, I CSK 45/05, *LEX no. 179969*.

THE STATUTE OF LIMITATIONS FOR CLAIMS BASED ON TORT
IN ACCORDANCE WITH ARTICLE 442¹ OF KC – GENERAL COMMENTS

The statute of limitations for property claims to redress the damage is governed by the provisions of KC defined in Article 117 et seq., altered among others by Article 442¹ of KC.

The limitation periods envisaged in Article 442¹ of KC constitute the peculiar sub-category, distinguished on account of the source of claims, and different from the general terms envisaged for property claims, defined in Article 117 et seq. of KC. However, neither the repealed Article 442 nor the binding Article 442¹ of KC is the exclusive provision defining the limitation period for the claims vested in the aggrieved party, which are based on tort. Merely to illustrate the approach, Article 449⁸ of KC may be quoted, which provides for the limitation period for the claims arising in connection with the damage caused by manufacturing and putting into circulation a hazardous product, or Article 289 – the industrial ownership rights¹³ defining the limitation period for the claims resulting from the patent violation.

Due to the fact that the amendment of the Civil Code, expressed in Article 442¹ of KC, differentiated between the limitation periods for the claims concerning the property damage and the damage on a person, it is necessary to elaborate on the problems separately. In addition, it should be remembered that the amendment prolonged the limitation period for the claims resulting from an offence or a crime from ten to twenty years, calculated from the date of the crime commission. The legislator, due to the limited possibilities of asserting the claims by a minor, in § 4 Article 442¹ of KC protected the limitation period, which in this case cannot end earlier than two years after a minor becomes an adult. The model for this solution was Article 173 of KC, which provides for the stoppage of running the adverse possession period in the case of a minor owner of real estate. Taking into account the structure of the provision, each of the above problems will be discussed separately.

The issue which is very important and problematic, and which refers to the wholeness of the issues discussed, and which arose after the new regulation entered into force, is the inter-temporal aspect of the application of the provisions. Under Article 2 of the amending law¹⁴, the provision of Article 442¹ of KC shall apply to the harmful events which occurred after the provision entered into force; however, in the case of the events that occurred before 10 August 2007, it

¹³ The Law of 30 June 2000 – Industrial Property Law (i.e. Dz. U. of 2003 No. 119, item 1117 as amended).

¹⁴ On account of the problematic issues connected with the interpretation of Article 2 of the amending law, the Constitutional Tribunal in the judgement of 22 January 2013, the Case Number: P 46/09, OTK-A 2013, No. 1, item 3, stated that it is consistent with Article 2, Article 30 in connection with Article 38, as well as Article 64 paragraph 2 of the Constitution of the Republic of Poland, but is inconsistent with Article 77 paragraph 1 of the Constitution.

shall apply if they were not barred by the statute of limitations when the aggrieved party made the claim. In all other respects the provision of Article 442 of KC¹⁵ shall apply. Thus, if on 10 August 2007 the aggrieved party learned about the damage and the person obliged to redress it, but the harmful event had occurred earlier than 10 years before, the aggrieved party cannot cite Article 442¹ of KC in connection with Article 2 of the amending law, even if the 3-year time limit was met, but he did not bring an action before 10 August 2007¹⁶. Some adjudicating panels believed that only this interpretation was the outcome of balancing the interests connected with the need to protect the aggrieved party, and the interests of other persons. Accepting the above position means accepting the concept that the damage resulting from tort is barred by the statute of limitations always in the time limit of 10 years from the date of the harmful event, regardless of the time the damage occurred or was discovered, or whether all the prerequisites defining the beginning of running of the 3-year limitation period were met, if they had occurred before the said amendment entered into force. Of decisive importance is the fact that on the day when the amending law entered into force the claim of the aggrieved party was barred by the statute of limitations in the light of the existing provisions, which means that before 10 August 2007 the maximum limitation period concerning the claims based on tort had expired, which was calculated *a tempore facti*¹⁷, regardless of the damage concerned.

However, the above interpretation is not uniform in the adjudicating practice. If another position should be taken, i.e. that a limitation period starts running on the day on which the prerequisites are met, i.e. on the day on which the damage and the person obliged to redress the damage were discovered, then despite the lapse of 10 years from the date on which the harmful event occurred, it is possible to defend the position that on 10 August 2007 the claim of the aggrieved party was not barred by the statute of limitations, because the damage did not occur at that time and, thus, it is subject to the regime of the new regulation under Article 442¹ of KC, and in the case of the damage on a person – under Article 442¹ § 3 of KC, unless the damage had occurred before that date, which means that the complainant's claim became mature¹⁸. What justifies the acceptance of the second position is the fact that the lapse of the limitation period per se does not bring any legal effect. It only results in the fact that the person obliged to redress the damage may make the charge of statute of limitation. However, such a charge may be made only against the claim that is mature. Thus, as long as the damage does not occur, the aggrieved party is not entitled to

¹⁵ The Law of 16 February 2007 amending the law – the Civil Code (Dz. U. No. 80, item 538).

¹⁶ The judgement of the Supreme Court of 8 October, II CSK 745/13, *LEX no. 1544225*; the judgement of the Supreme Court of 25 April 2013, V CSK 239/12, *LEX no. 1365757*.

¹⁷ Cf the judgement of the Supreme Court of 8 October 2014, II CSK 745/13, *LEX no. 1544225*.

¹⁸ Therefore, the judgement of the Supreme Court of 8 May 2014, V CSK 322/13, *LEX no. 1491263*; the judgement of the Supreme Court of 10 July 2013, II PK 316/12, OSNP 2014, No. 3, item 40.

make the claim, and the person obliged to redress the damage cannot make a charge of statute of limitation until then¹⁹. Moreover, the statute of limitations must always have its subject, i.e. the claim existing within a given obligation relationship. So, unless the prerequisites deciding on arising the claim are met, for obvious reasons, the limitation period cannot start running²⁰. It is one of fundamental rules connected with the issues of the statute of limitations. If the obligee cannot assert his claims due to the fact that he does not know about the damage, the limitation period cannot start running²¹. Making the charge of statute of limitation by the tortfeasor in such a case should be qualified as inconsistent with the social and economic purpose of that law under Article 5 of KC²².

Organising other arguments, particular elements of the said provision should be pointed out; and, simultaneously, the following types of damage should be distinguished:

- damage resulting from property tort – Article 442¹ § 1 of KC,
- damage resulting from an offence or a crime – Article 442¹ § 2 of KC,
- damage on a person – Article 442¹ § 3 of KC,
- damage inflicted on a minor – Article 442¹ § 4 of KC.

In each of the above-mentioned cases the time when a limitation period starts running is conditional upon the occurrence of another event; and, thus, each of the events should be discussed separately.

Summarising the general stipulations, it should be stated that the repeatedly mentioned amendment of the provisions of the Civil Code of 2007²³, by force of which the limitation periods for claims based on tort were made more detailed, maintained the general rule of the statute of limitations accepted before the said amendment. Therefore, the two terms are still combined:

- the three-year limitation period calculated *a tempore scientiae*,
- the ten-year limitation period calculated *a tempore facti*.

Whereas, the statute of limitations as the effect is connected with this period, which in the circumstances of a given case shall end earlier²⁴.

¹⁹ Cf the judgement of the Supreme Court 10 July 2013, II PK 316/12, OSNP 2014, No. 3, item 40.

²⁰ The resolution of the Supreme Court of 22 November 2013, III CZP 72/13, LEX no. 1391775.

²¹ B. Kordasiewicz, in: System Prawa Prywatnego, Volume 2. Prawo cywilne – część ogólna. Problematyka dawności, editor: Z. Radwański, C.H. Beck, Warsaw 2008, page 654.

²² The judgement of the Supreme Court of 4 April 2013, II PK 236/12, LEX no. 1347863.

²³ The Law of 16 February 2007 amending the law – the Civil Code, Dz. U. 2007, No. 80, item 538.

²⁴ Cf B. Kordasiewicz, in: Z. Radwański (editor), *Prawo cywilne – część ogólna*, Volume 2. System Prawa Prywatnego, Rozdział XI. Problematyka dawności, C.H. Beck, Warsaw 2002, page 554.

THE STATUTE OF LIMITATIONS FOR CLAIMS BASED ON PROPERTY DAMAGE RESULTING FROM TORT – ARTICLE 442¹ § 1 OF KC

Due to similarities in the wording of § 1 and § 3 Article 442¹ of KC, some construction elements will be discussed jointly in this point.

Article 442¹ § 1 of KC, includes property claims for redressing the damage caused by tort, which are barred by the statute of limitations upon the lapse of three years from the day on which the aggrieved party learned about the damage and the person obliged to redress it. However, in each case this period cannot be longer than 10 years from the day on which the harmful event occurred. Taking into consideration the literal wording of this provision, in principle, the doubt may arise whether the limitation period starts running on the day on which the harmful event occurred, or on the day on which the damage occurred.

For many years it was disputable when the limitation period for the claims based on tort should start running. The problem arose in connection with Article 283 of the code of obligations²⁵. No decision but the said resolution of the Supreme Court of 17 February 2006 finally established the position of the judicature referring to this issue, presenting one of the two opposite options, assuming the functional interpretation of the provisions of the Civil Code, aiming at fast resolution of the contentious matters, considering the evidence difficulties, which arise with time passing, this provision provides for the two limitation periods running simultaneously. The three-year limitation period, which is *a tempore scientiae*, and the ten-year limitation period, which starts running *a tempore facti*, and which is the fixed period defining the maximum time when the aggrieved party may make a claim²⁶. This interpretation of the provision protects the interests of both the aggrieved party and the person obliged to redress the damage. Above all, it defines the end of the period of uncertainty as to the possibility for the aggrieved party to make a claim against the person causing a damage²⁷. Therefore, it should be accepted that, on the one hand, Article 442¹ § 1 of KC the second clause states *lex specialis* to Article 120 § 1 of KC, the first clause, in which the running of the limitation period is moveable as it is conditional upon the claim becoming mature²⁸. On the other hand, the period from Article 442¹ § 1 of KC, the second clause, is compatible with the general rules accepted in the Civil

²⁵ The Order of the President of the Republic of Poland of 27 October 1933 – the Code of Obligations, Dz. U. of 1933 No. 82, item 598 as amended).

²⁶ Cf the resolution of the panel of seven Supreme Court judges of 12 February 1969, III PZP 43/68, OSNCP 1969, No. 9, item 150; the resolution of the Supreme Court of 25 October 1974, III PZP 39/74, OSNCP 1975, No. 5, item 82.

²⁷ Cf for example the judgement of the Administrative Court in Łódź of 9 April 2013, I ACa 1348/12, *LEX no. 1313320*.

²⁸ With the binding resolution of the panel of seven Supreme Court judges of 12 February 1969, III PZP 43/68, OSNCP 1969, No. 9, item 150; the resolution of the Supreme Court of 25 October 1974, III PZP 39/74, OSNCP 1975, No. 5, item 82; the decision of the Supreme Court of 17 February 1982, III PZP 3/81, OSNC 1983, no. 1, item 8.

Code, according to which the ten-year limitation period is the longest period²⁹. The provision defining the limitation periods for claims based on torts states *lex specialis* in relation to Article 120 § 1 of KC, also when it comes to establishing the beginning of running of the limitation period.

However, it should be realised that the said provision connects the beginning of running of limitation period with the aggrieved party discovering the damage and the person obliged to redress it. This period does not refer to the scope of the damage suffered, or the permanent nature of its effects³⁰, which is particularly important in the event of seeking the satisfaction in connection with the death of the closest person as a result of tort.

The second concept is based on the assumption that the beginning of running of the limitation period is the day on which the damage occurred³¹. Conducting the language, system and functional analysis, it may be concluded that due to the nature of the claims asserted (in this case the damage is the consequence of tort), it seems legitimate to develop the statement that the peculiar situation of the aggrieved party sufficiently justifies applying the said concept. Therefore, simultaneously, the time when the damage occurred will mark the beginning of running the limitation period. Otherwise, the statement that in some cases the claim is barred by the statute of limitations before the damage occurs should be agreed with. However, according to the predominant position of the doctrine³² and judicature³³, such a state of affairs cannot take place, which in this context is contrary to the indicated resolution of the Supreme Court of 17 February 2006.

The central category of the analysed problem is the concept of damage, which, despite the lack of its legal definition, was already thoroughly discussed by the experts on the topic, and reinforced in the judicial practice. It covers both property damage (*damnum emergens and lucrum cessans*) and non-property damage, which is called harm. Here, it should be indicated that only the property damage becomes barred by the statute of limitations, which means that the claim to remove the consequences of the harm suffered by the aggrieved party does not

²⁹ Cf the resolution of the full panel of the Civil Chamber of the Supreme Court of 17 February 2006, III CZP 84/05, the Supreme Court judicature, the Civil Chamber 2006/7–8/114.

³⁰ The judgement of the Administrative Court in Gdańsk of 30 December 2014, III APa 37/14, *LEX no. 1621044*.

³¹ Cf for example T. Dybowski, commentaries on the judgement of the Supreme Court of 21 May 2003, IV CKN 378/01, PS 2005, no. 6, pages 133–134; Z. Policzkiewicz-Zawadzka, „Powstanie szkody a bieg 10-letniego przedawnienia z art. 442 k.c.”, NP 1966, clauses 7–8, page 927; M. Balwicka-Szczyrba, commentaries on the judgement of the Supreme Court of 21 May 2003, IV CKN 378/01, „Rejent” 2005, clause 5, page 157; M. Niedośpiał, commentaries on the judgement of the Administrative Court in Warsaw of 21 June 2000, I ACa 208/00, OSA 2002, clause 2, page 75; M. Warciński, commentaries on the judgement of the Supreme Court of 16 March 2005, II CK 538/04, *Palestra* 2006, clause 1–2, page 266 et seq.

³² M. Saffjan, in: *the Civil Code. Commentary*, v. I, editor: K. Pietrzykowski, Warsaw 2005, page 1265.

³³ Cf for example the Judgement of the Supreme Court of 21 May 2003, IV CKN 378/01, OSNC 2004, Numbers 7–8, item 124.

become barred by the statute of limitations. However, the statement that since the satisfaction for the harm suffered is directly connected with the damage on a person, it automatically means that it does not become barred by the statute of limitations cannot be accepted as true. Simultaneously, the satisfaction constitutes a given monetary value, whose amount is defined *in casu*. Due to the fact that it constitutes the value that can be expressed in monetary terms, it is a cash performance, and in this respect it has a legal status that is separate from the harm, subject to the statute of limitations for the property claims.

In the legal status binding until 10 August 2008, the limitation period for claims, which were based on the wording of Article 442 § 1 of KC, became barred by the statute of limitations upon the lapse of three years from the day on which the aggrieved party learned about the damage and the person obliged to redress it. In each case within 10 years from the day on which the harmful event occurred. The amendment introduced by Article 442¹ § 1 of KC was, in this respect, of only cosmetic nature, through the change that the limitation period cannot be longer than ten years from the day on which the harmful event occurred.

Defining the statute of limitations in typical cases of the property damage, in the majority of the harmful events, does not give rise to any doubts or more serious problems in practice. Generally, it is possible to define the time when the property damage occurred. Moreover, in many cases it is connected with the harmful event. It is obvious that the damage is of dynamic nature and that is why it changes, also in the case of the property damage, which, in the given facts of a case, may lead to the difficulties to define the beginning of running of the limitation period. However, it might be assumed that in practice it is much easier to define the limitation period in the case of the property damage than in the case of the damage on a person. For example, the dynamic nature of the property damage may appear in the situation in which as a result of very intensive construction works in the real estate adjacent to the aggrieved party's real estate, his residential building is damaged as a consequence of ground vibration. It should be assumed that the owner of real estate reported the fact that the damage was caused, and after the explanatory proceedings were conducted, whose result was beneficial for the aggrieved party, the damage was redressed by the investor who paid a relevant compensation. In the said case, undoubtedly, the damage was the consequence of tort, which results in the fact that the limitation period for the indicated claims should be assessed from the angle of Article 442¹ § 1 of KC. However, it may turn out that the consequence of tort, despite the fact that the compensatory proceedings were completed, will be further deterioration of the building, for example colloquially so-called „settlement”, which occurs after many months from the date of the harmful event. In such a case, it should be considered whether the consequences connected with the tort should be treated as one damage, i.e. there is the identity of many types of damage, or whether it should be treated as a separate damage according to which the limitation period will start running regardless of the original damage. If the first from the above-

mentioned contradictory positions is accepted, the aggrieved party must make a claim within the three-year limitation period from the day on which he learned about the damage and the person obliged to redress it, calculating the limitation period that is relevant for the original damage and in the fixed time limit, i.e. the ten-year period that starts running on the day of the harmful event. Both periods may run simultaneously. Such a solution is not beneficial for the aggrieved party, because if more than 3 years have passed since the day on which the original damage occurred, the person obliged to redress the damage may efficiently make a charge of statute of limitation, provided more than ten years have passed since the day of the harmful event. Obviously, if the case was referred to court, the aggrieved party could make a charge of abusing the law by the person obliged to redress the damage under Article 5 of KC. However, in each case the assessment of rightness of such a charge is made by the court, and the resolution beneficial for the person making a charge should be treated rather as an exception to the rule, not the rule. Whereas, if the second position is accepted, obviously assuming that the aggrieved party proved the existence of the adequate causal relationship between the further deterioration of the building and the original harmful event, the damage resulting from the original damage will be treated separately from the original damage; and, thereby, the limitation period will start running on the day on which the aggrieved party learned about a new damage and the person obliged to redress it, evaluated from the angle of the original damage and the event that caused it. In this case, however, there will be a problem connected with the appropriate categorization of the damage. If we assume that the indicated „settlement” of the building is a new harmful event, then both the period *a tempore scientiae*, and the period *a tempore facti* apply. On the other hand, if the „settlement” of the building is treated as the damage caused by the original harmful event, then there is a fear of the lapse of the period *a tempore facti*, that is the fixed 10-year period, even if the three-year period calculated from the day on which the damage and the person obliged to redress it were discovered did not end. Needless to say, citing the above example, the Author meant the occurrence of so-called „continuous damage”, typical for mining damage, in which it is assumed that the limitation period cannot start running before the completion of mining exploitation, which causes the damage in the real estate³⁴.

As can be seen from the above, the currently binding legal regulation did not resolve the practical discrepancies concerning the beginning of running the limitation period for the property damage based on tort, and the adjudicating line is not uniform.

The next concept crucial for further analysis is „maturity of a claim”. The doctrine and judicature repeatedly addressed the remarks to this issue. However, also in this field, no joined position was worked out³⁵, which would explicitly

³⁴ Cf the judgement of the Administrative Court in Katowice of 26 June 2014, I ACa 272/14, *LEX no. 1496412*.

³⁵ Cf J. Jastrzębski, A. Koniewicz, *Wymagalność roszczeń PPH 2006*, no. 5, page 35 et seq.

define the start date of maturity of a claim. However, there is no doubt that the maturity of a claim for the obligee (the entitled person) means the possibility of making a claim against the obliged person. Thereby, it means the possibility of demanding that the obligor perform his obligations.

Without going into details of the analysis of the concept of maturity of a claim, as it is not the subject of this publication, it should be remembered that the maturity of a claim influences its statute of limitation. In general, the moment of the maturity of a claim simultaneously defines the beginning of running of the limitation period. In the light of the rules relied upon, it should be concluded that the limitation period starts running the day after the date on which the person was obliged to perform the obligation, subject to Article 120 § 1 and 2 of KC.

The end of the limitation period causes that the obligation evolves into natural (not complete) obligation, which means that it loses its basic feature, i.e. suability. In each case the person obliged to perform his obligation may renounce the charge of existing the natural obligation and settle his debt towards the obligee, which would cause the situation in which the performed obligation is treated as duly performed, and thereby the person performing the obligation is not able to demand the reimbursement thereof as the incomplete obligation.

The renunciation of the charge of statute of limitation is of personal nature and it is efficient toward the third party³⁶. In the situation in which the obligor by a unilateral legal action renounces his charge of statute of limitation, the incomplete obligation is replaced with the obligation using its suability feature³⁷. For order, it should be mentioned that the renunciation of the charge of statute of limitation will be efficient only after the end of the maturity of a performance. It means that the earlier renunciation of the charge of statute of limitation by the obligor is subject to the sanction of absolute nullity³⁸.

Further analysis of this provision requires the clarification of the two basic concepts, used by the legislator, i.e. the concept of „learning about the damage and the person obliged to redress it” and “the harmful event”. In order to systematize the discussed issue, it is necessary to describe them briefly, referring not only to Article 442¹ § 1 of KC, but also to Article 442¹ § 3 of KC on account of the identity of the wording of both provisions in the commented scope.

Above all, it should be noticed that the moment when the aggrieved party learns about the damage does not mean exclusively the fact that the damage occurred, but that it is the moment when the vital information on the essence of the damage was gained. In the case of the damage on a person which resulted in

³⁶ Cf for example the judgement of the Supreme Court of 26 March 1971, III CRN 556/70, OSP 1972, clause 1, item 7; the judgement of the Supreme Court of 16 May 2003, I CKN 372/01, *LEX* no. 80246.

³⁷ For example the judgement of the Supreme Court of 19 March 2002, IV CKN 917/00, *LEX* no. 54485.

³⁸ A. Wolter, Z. Policzkiwicz-Zawadzka, *Przedawnienie roszczeń według kodeksu cywilnego*, PiP 1965, clause 3, page 377.

the body injury or disorder of health, the moment when the damage was discovered is when the reliable information on the scope of the damage sustained and on their consequences for the aggrieved party is gained³⁹. Therefore, the fact of learning about the occurrence of the harmful event is not identical with learning about the damage. The aggrieved party must realise the negative consequences of the event indicating the occurrence of the damage, i.e. he must be fully aware of that fact⁴⁰. In the issue in question it is not about the real state of awareness of the aggrieved party, but about the possibility of ascribing the awareness of the harm to him, which is based on objectively verifiable circumstances⁴¹. Such an understanding of the concept of „learning about the damage” is of the utmost importance when assessing the beginning of running of the limitation period in the case of the future damage, i.e. the damage whose occurrence does not coincide with the harmful event. In this case the damage is a necessary consequence of the event that occurred, but it occurs later than the event itself⁴². As long as the aggrieved party does not know about the damage, the limitation period does not start running. However, it is enough that the aggrieved party is aware of the fact that the damage occurred, which does not mean that he has to be aware of its scope⁴³. It should be added that the limitation period will start running even if the aggrieved party is not sure of the existence of causal relationship between the damage and the event from which it resulted. Therefore, the lack of the aggrieved party’s belief about the causal relationship does not stop running of the limitations period for a claim⁴⁴. Moreover, if the aggrieved party’s knowledge about the person obliged to redress the damage is later than the moment when he learned about the damage, the limitation period starts running from the date that is later, i.e. from the date on which both prerequisites are met⁴⁵.

Summarising, the date of maturity of a claim resulting from Article 442¹ § 1 of KC is conditional upon the aggrieved party’s knowledge of the two facts

³⁹ Therefore, the judgement of the Administrative Court of 8 January 2014, I ACa 834/13, *LEX no. 1428065*; the judgement of the Supreme Court of 12 May 2011, III CSK 236/10, OSP 2012, No. 11, item 107.

⁴⁰ The judgement of the Supreme Court of 18 September 2002, III CKN 597/00, *LEX no. 1211130*; Cf the resolution of the panel of seven Supreme Court judges of 12 February 1969, III PO 6/62, OSNCP 1964, No. 5, item 87); the judgement of the Administrative Court in Warsaw of 5 July 2013, I ACa 217/13, *LEX no.1378893*; the judgement of the Administrative Court of 21 October 2011, IC CSK 46/11, *LEX no.1084557*.

⁴¹ Therefore, the judgement of the Administrative Court in Warsaw of 13 August 2013, I ACa 256/13, *LEX no. 1402963*; the judgement of the Supreme Court of 8 December 2004, I CK 166/04, *LEX no. 277853*).

⁴² Cf the resolution of the panel of seven Supreme Court judges of 17 June 1963, III CO 38/62, OSNC 1965 No. 2, item 21; the judgement of the Supreme Court of 21 October 2011, IC CSK 46/11, *LEX no. 1084557*.

⁴³ The judgement of the Administrative Court in Łódź of 15 March 2013, I ACa 1286/12, *LEX no. 1312005*.

⁴⁴ The judgement of the Supreme Court of 14 June 2011, I PK 258/10, *LEX no. 1001280*.

⁴⁵ The judgement of the Supreme Court of 27 October 2010, V CSK 107/10, *LEX no. 677913*.

which must co-occur, i.e. of the damage and the person obliged to redress it. The above fact will have a meaning only if the 10-year period stipulated in the clause 2 of the said provision has not passed.

In the event of the property damage, accepting such a solution by the legislator may in some cases, as it was shown, exclude the possibility of efficient assertion of a claim by the aggrieved party, i.e. if the fixed period *a tempore facti* ends. This solution, after the amendment of the provisions of the civil code concerning the change of the limitation periods for claims based on torts, in the light of the quoted judicature, allows for the statement that, according to the legislator, the claims resulting from the damage on a person are of the utmost importance. However, taking into consideration the assumptions and standards before the amendment, the property damage was maintained, which means that the aggrieved party must consider the possibility of the statute of limitations for the claim in the situation, in which the damage has not occurred yet, but ten years have passed since the harmful event occurred.

THE STATUTE OF LIMITATIONS FOR CLAIMS DUE TO THE DAMAGE RESULTING FROM A CRIME – ARTICLE 442¹ § 2 OF KC

The legislator extended the limitation period for the damage resulting from a crime from ten to twenty years, calculating from the date of the crime commission in order to provide better protection for the party harmed by a crime. This period applies to direct perpetrators of a damage, and to the situation in which another subject is responsible for the perpetrator's act, i.e. for other people's act that is an offence or a crime⁴⁶.

If the aggrieved party asserts his claim under Article 442¹ § 2 of KC, it should be stated that the aggrieved party is obliged to prove that the tortfeasor is simultaneously culpable for the crime. The above is consistent with the system interpretation and the interpretation of the objectives of the provisions, and it results from the statement that civil liability *ex delicto* may also concern the subjects other than the perpetrator of the act qualified as a crime⁴⁷.

In order to accept the limitation period defined in the said provision, it is only required to establish whether an offence or a crime was committed by a given person or persons. It is not required that the perpetrator of the damage be found guilty of the crime in the criminal proceedings. In this respect the civil

⁴⁶ The judgement of the Administrative Court in Łódź of 22 November 2012, III APa 25/12, *LEX no. 1289525*; the judgement of the Administrative Court in Lublin of 15 November 2012, I ACa 527/12, *LEX no. 1271909*; differently the judgement of the Supreme Court of 11 February 2003 V CKN 1664/00, OSNC 2004, No. 5, item 75.

⁴⁷ Cf the judgement of the Supreme Court of 21 November 1967, III PZP 34/67, OSN 1968, No. 6, item 94; the judgement of the Administrative Court in Krakow of 22 November 2012, I ACa 1059/12, *LEX no. 1286535*.

court is competent to issue its own decisions on establishing all elements of a crime from the angle of the criminal law⁴⁸. Only if the legally binding decision of the penal court is issued, the civil court is bound by the said decision. So, even if such a decision was not issued, the civil court may apply Article 442¹ § 2 of KC to assess the limitation period for the aggrieved party's claim.

The expression „damage resulting from an offence” means that the damage is not required to be the statutory element of a crime to accept the liability under 442¹ § 2 of KC. The interpretation of the provision allows to state that it is enough that the damage is in causal relationship with the crime⁴⁹.

However, if there is a situation where, undoubtedly, the damage results from a crime, but in the course of the proceedings the perpetrator of a damage was not established, then the limitation period starts running under Article 442¹ § 2 of KC⁵⁰, which is in connection with Article 98 § 1 points 1 and 2 in connection with Article 109a of the Act of 22 May 2003 on Compulsory Insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau⁵¹.

In general, the amendment introduced by the legislator may be assessed positively. However, it should be mentioned that in some cases it may be necessary to define whether in the given fact of the case said provision shall apply, or it shall be Article 442¹ § 3 of KC which influences the situation of the aggrieved party in the context of the statute of limitations. The report on both provisions is provided in the next point.

THE STATUTE OF LIMITATIONS FOR CLAIMS BASED ON THE DAMAGE ON A PERSON RESULTING FROM TORT – ARTICLE 442¹ § 3 OF KC

Generally, as it was mentioned, the discrepancy between the positions, doctrine and judicature ended after the resolution of the full panel of the Civil Chamber of the Supreme Court of 17 February 2006 was issued, in which the Court explicitly stated that „a claim for redressing the damage caused by tort is barred by the statute of limitations ten years after the day on which the harmful event occurred (Article 442 § 1 clause two of KC), regardless of the moment when damage occurred or was discovered”⁵². However, in the judgement of the Supreme Court of 2 March 2006, (I CSK 45/05), in the justification it was stated

⁴⁸ The judgement of the Administrative Court in Szczecin of 8 November 2012, I ACa 414/12, *LEX no. 1246845*; the judgement of the Administrative Court of 17 August 2012, I ACa 427/12, *LEX no. 1237849*.

⁴⁹ The judgement of the Supreme Court of 26 July 2012, I PK 18/12, *LEX no. 1430432*.

⁵⁰ Cf the resolution of the panel of seven Supreme Court judges of 29 October 2013 Supreme Court of 29 October 2013, III CZP 50/13, OSNC 2014, No. 4, item 35.

⁵¹ The Act of 22 May 2003 on Compulsory Insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau (i.e. Dz.U. of 2013, item 392 as amended).

⁵² The resolution of the full panel of the Civil Chamber of the Supreme Court of 17 February 2006, III CZP 84/05, the Supreme Court judicature, the Civil Chamber 2006/7–8/114.

that „life experience teaches and finds confirmation in the Supreme Court judicature that the harmful event and the effects thereof in the form of disorder of health are two different things. The effects usually occur after some time, and they may be typical and predictable, or untypical and even exceptional; they may also be different in a way that allows to distinguish them as to their kind and time of occurrence. That is why we can talk about several effects and different kinds of damage. From such a perspective, it cannot be excluded that maturity of claims connected with some kinds of damage falls earlier, and with some other kinds of damage – later. Therefore, the limitation periods should be calculated differently under Article 442 § 1 of KC”⁵³.

The current regulation, defined in § 3 Article 442¹ of KC, provides for the three-year limitation period calculated from the date on which the aggrieved party learned about the damage and the person obliged to redress it. The wording of this provision and the provisions from the previous legal status still cause interpretation problems, which brings other implications of both theoretical and practical nature. That is why the concept of „damage and learning about damage” and „person obliged to redress it” should be defined separately. The basic analysis was conducted in the point regarding Article 442¹ § 1 of KC. In this place it should be only added that in the case of the damage on a person the three-year period will start running only if the aggrieved party is aware of all the constitutive prerequisites of his claim, i.e. he knows the perpetrator and he is aware of the causal relationship between the tortfeasor’s conduct and the damage. Moreover, further changes in the damage, as the consequences of tort, do not influence running of the limitation period⁵⁴.

The present regulation, beneficial for the aggrieved party, does not limit the time when the damage on a person cannot occur. Therefore, claims may be asserted even after many years from the harmful event, because the provision does not exclude the possibility of assertion of claims connected with the future damage⁵⁵. With the years passing it is more difficult to take the evidence beyond reasonable doubt by the aggrieved party in connection with the damage that may occur in future. Therefore, in the judicial practice, there is a clear position according to which the aggrieved party is relieved from the obligation of taking the evidence as to the existence of all the elements of the perpetrator’s liability⁵⁶.

Moreover, if after many years from the harmful event, a new damage is discovered, which is in causal relationship with the harmful event, then the aggrieved

⁵³ The judgement of the Supreme Court of 2 March 2006, I CSK 45/05, *LEX no. 179969*.

⁵⁴ The judgement of the Administrative Court of 16 March 2005, II CK 538/04, *LEX no. 402286*; the judgement of the Administrative Court in Szczecin of 13 March 2013 I ACa 836/12, *LEX no. 1344225*.

⁵⁵ Cf the resolution of the Supreme Court of 24 February 2009, III CZP 2/09, OSNC 2009, No. 12, item 168; the judgement of the Supreme Court of 8 August 2012, I CSK 40/12, *LEX no. 1228579*.

⁵⁶ The judgement of the Administrative Court in Krakow of 5 February 2013, I ACa 1369/12, *LEX no. 1362749*.

party, using the limitation period for claims envisaged in Article 442¹ § 3 of KC, will be able to exercise the right⁵⁷.

Accepting this construction of calculating the limitation period for the damage on a person guarantees that the aggrieved party will be able to make a claim regardless of the time that passed from the harmful event. In practice, it may be the period longer than ten years, which, due to the character of the interest infringed, is justifiable even for the charge of the lack of the stability in the legal order, and uncertainty in the legal sector of the person obliged to redress the damage⁵⁸. The issue of the statute of limitations is of particular importance in the case of the damage connected with hospital infection (HIV virus, hepatitis B virus) or other events, whose effects are deferred in time, for example radiation therapy. Thus, in such cases it is accepted that the awareness of the aggrieved party decides about the beginning of running of the limitation period in the context of the prerequisite of „learning about damage”. However, it should be added that each case should be assessed *in casu*, due to the character and content of the information passed, and the perceptive capabilities of the aggrieved party. Obligation that lies with medical staff to give exhaustive information about the disease that constitutes the damage on a person for the aggrieved party also results from the provisions of the law, i.e. for example Article 31 of the Act of 5 December 1996 on Professions of Doctor and Dentist⁵⁹.

According to the Author, the issue that needs to be discussed in this point is the mutual relation of Article 442¹ § 2 and 442¹ § 3 of KC. According to A. Śmieja, Article 442¹ § 3 of KC does not refer to the way of calculating the beginning of running of the limitation period that is different from the one defined in § 2, which would limit the possibility of efficient assertion of claims only to the three-year period *a tempore scientiae*, as he indicates and admits that it is against *strictly* grammatical interpretation⁶⁰. A different assumption would lead to wrong conclusions that the limitation period for claims to redress the property damage resulting from a crime could be *in casu* much longer than the limitation period in connection with the damage on a person (also resulting from a crime), as within axiology taken in the legal system the damage on a person is protected particularly intensively⁶¹. The language interpretation and the interpretation of the objectives of the provision, as well as regard for its location give the grounds to state that it is about blocking the running of the limitation period for

⁵⁷ The judgement of the Administrative Court in Białystok of 14 May 2008, I ACa 192/08, OSAB 2008, No. 2–3, item 3.

⁵⁸ Cf for example the judgement of the Supreme Court of 13 January 2004, V CK 172/03, *LEX* no.182118.

⁵⁹ The Act of 5 December 1996 on Professions of Doctor and Dentist, (i.e. Dz.U. of 2015, No. 464 as amended)

⁶⁰ A. Śmieja, (in:) A. Olejniczak (editor), *Prawo zobowiązań – część ogólna*, v. 6, *System Prawa Prywatnego*, Rozdział III, Czyny niedozwolone, C.H. Beck, Warsaw 2009, pages 673–674.

⁶¹ Cf the judgement of the Constitutional Tribunal of 1 September 2006 (SK 14/05, OTK-A 2006, no. 8, item 97).

compensation claims if the aggrieved party did not know about the damage or the person obliged to redress it within the periods resulting from Article 442¹ § 1 or § 2 of KC. So, it is the construction that is similar to the one from Article 122 § 1 of KC, as well as from Article 442¹ § 4 of KC⁶². It should be noticed that in the case of the limitation periods there is a risk that not in each case of the damage on a person the period *a tempore scientiae* shall apply. If the damage on a person results from a crime, there is a question whether the limitation period should be calculated according to § 2 or § 3 of Article 442¹ of KC. If the wording of § 2 is treated as accurate, then the period *a tempore facti* shall apply. In the case of the present regulation expressed in § 2 of this Article, the aggrieved party would be obliged to assert his claims within twenty years from the date of the crime commission. Therefore, this is the period *a tempore facti*. However, due to the necessity to protect the aggrieved party, in the judicature there is a position that Article 442¹ § 3 of KC is of autonomous nature with reference to others, and is applied to all cases of the damage on a person, regardless of its origin. In consideration of the above, Article 442¹ § 2 of KC corrects the limitation period with the benefits for the aggrieved party, which does not mean that it limits the rule defined in Article 442¹ § 3 of KC, if the damage occurred after the lapse of twenty years from the crime commission⁶³. Therefore, even if the aggrieved party learned about the damage resulting from a crime and the person obliged to redress it, finally, the limitation period is 20 years from the date of the crime commission, and is not limited by the three-year period defined in Article 442¹ § 3 of KC. If the damage on a person resulting from a crime is discovered after twenty years from its commission, then Article 442¹ § 3 of KC shall apply. Therefore, the relationship between the two provisions is the relationship based on the principle *lex specialis derogat legi generali*, which means that Article 442¹ § 3 of KC also applies to the damage on a person caused by a crime and, thereby, excludes the final period defined in Article 442¹ § 2 of KC⁶⁴.

Summarising, the introduced amendments should be assessed positively, because they eliminate the situation in which the limitation period ends before the damage occurs, which provides the aggrieved party that sustained the damage on a person with the highest degree of legal protection.

⁶² W. Dubis, in: E. Gniewek (editor) *the Civil Code Commentary*, Księga trzecia. Zobowiązania, Tytuł VI, Czynы niedozwolone, art. 422–443, edition 2, C.H. Beck, Warsaw 2006, page 744–746; sf Z. Radwański, *Przedawnienie roszczeń z czynów niedozwolonych w świetle znowelizowanego art. 442 KC*, Monitor Prawniczy, 2007, no.11, page 594.

⁶³ The judgement of the Administrative Court in Poznań of 3 April 2013, I ACa 197/13, *LEX* no. 1369363.

⁶⁴ The judgement of the Supreme Court of 8 May 2014, V CSK 322/13, *LEX* no.1491263.

THE STATUTE OF LIMITATIONS FOR CLAIMS DUE TO THE DAMAGE
INFLECTED ON A MINOR – ARTICLE 442¹ § 4 OF KC

The last change resulting from the said amendment is the regulation according to which the statute of limitations for claims of a minor to redress the damage on a person cannot end earlier than two years after a minor becomes an adult.

In the case of the said provision, there is a question whether the deferred time of the beginning of running of the limitation period shall also apply in the situation in which a minor had statutory representatives who could make a claim on his behalf and for his benefit before he became an adult. In particular, it concerns establishing the relationship of Article 442¹ § 4 of KC and Article 122 of KC. Performing the interpretation of the objectives of the provision, it should be stated that this period starts running when the aggrieved party becomes an adult, even if he had a statutory representative that did not make a claim on behalf of a minor. Therefore, it should be stated that this solution is different from the one defined in Article 122 of KC⁶⁵. Thus, the new regulation protects the aggrieved party against the negative consequences connected with the lack of the proper representation of his interests before he becomes an adult. However, Article 122 of KC relates only to such cases in which the limitation period is suspended due to the lack of the statutory representative or legal guardian of a minor⁶⁶. *A contrario* in the situation in which a minor could be represented by the above-mentioned entities, the limitations period is not suspended.

However, if a contentious issue relates to the limitation period for a claim that was mature before 2007, when the amending law entered into force, then the application of Article 442¹ § 4 of KC should be evaluated from the angle of inter-temporal rules. Therefore, if the aggrieved party's claim of 1 August 2007 was barred by the statute of limitations, and the aggrieved party did not have full capacity to enter into legal transactions then, and simultaneously the aggrieved party had a statutory representative who could efficiently make a claim on behalf of him before that date, then it should be assessed whether the limitation period ended under Article 442 of KC (presently repealed). However, if a minor did not have a statutory representative or a legal guardian, taking into consideration Article 122 of KC, the suspension of the limitation period should be evaluated, and it should be defined when it should start running, after the suspension, or after the aggrieved party becomes an adult. Thus, for this reason, it may turn out that the aggrieved party's claim was not barred by the statute of limitations on 1 August 2007, and a minor may refer to Article 442¹ § 4 of KC.

⁶⁵ Cf the judgement of the Supreme Court of 26 July 2012, II CK 759/11, *LEX no. 1218166*; the judgement of the Administrative Court in Poznań of 20 March 2014 I ACa 63/14, *LEX no. 1344225LEX 1451748*.

⁶⁶ Cf the judgement of the Administrative Court of 8 January 2013, I ACa 993/12, *LEX no. 1289621*; the judgement of the Administrative Court in Warsaw of 22 December 2014, I ACa 986/14, *LEX no. 1651982*.

Summarising, previously binding regulation created a situation which was unfavourable for a minor, and in which he could be deprived of his interests' protection, if his statutory representative or legal guardian did not make a claim on behalf of the aggrieved party in due time. Such a conclusion finds its grounds in the cited judicature, from which it results that the claim of a minor who became an adult should not be treated as a separate claim, for which the limitation period is envisaged in Article 442¹ § 4 of KC⁶⁷.

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The issue of the statute of limitations, whose source is causing a damage based on tort, is extremely important for both parties to the harmful event. In general, each party considers the issue from their point of view, taking into account the solution that is the most beneficial for them. The aggrieved party is interested in the longest limitation period possible, the person obliged to redress the damage, for obvious reasons, in the shortest. The legislator is liable to find "the golden mean", which would balance the interests of both parties by means of an appropriate legal regulation.

It appears that, as long as the amendment of the Civil Code, i.e. repealing Article 442 of KC and introducing Article 442¹ of KC, resulted in the relative balance of the interests in the case of the damage on a person; unfortunately, the same effect was not achieved in the case of the property damage. The interpretation doubts which existed under repealed Article 442 of KC are present also today. For this reason, it is legitimate to call for the amendment of the provision, or at least to develop the uniform jurisprudence in this respect, which would favour the stable conduct of legal transactions, and, above all, would provide the parties with "legal security".

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⁶⁷ Cf for example the judgement of the Administrative Court in Poznań of 20 March 2014, I ACa 63/14, LEX no. 1451748.

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SYTUACJA POSZKODOWANEGO W KONTEKŚCIE PRZEDAWNIE ROSZCZEŃ Z TYTUŁU CZYNÓW NIEDOZWOLONYCH WEDŁUG ART. 442¹ KODEKSU CYWILNEGO

Streszczenie. Problematyka ustalenia terminów przedawnienia roszczeń tak terminów *a tempore facti*, jak i *a tempore scientiae* ma niewątpliwie ogromne znaczenie dla obrotu prawnego, a przede wszystkim dla ustalenia sytuacji prawnej uprawnionego i zobowiązanego do naprawienia szkody. Zatem nie może spotkać się z krytyką stwierdzenie, że termin ten nie może być w nieskończoność, nawet przy szkodach dotyczących najwyższe dobra osobiste człowieka, jakimi jest życie i zdrowie. Sprzyja to stabilizacji wszystkich uczestników obrotu. Nie można jednak zaakceptować sytuacji, w której interesy dłużnika stawiane są ponad interesami poszkodowanego, co w przypadku art. 442 KC w zakresie szkody na osobie miało miejsce i wydaje się zasadnym stwierdzenie, że może mieć miejsce również na tle wykładni art. 442¹ KC. Nie można deprecjonować interesu poszkodowanego, uzasadniając to potrzebami stabilizacji obrotu i stanem długotrwałej niepewności sprawcy czynu niedozwolonego. Należy mieć na uwadze, że stan niepewności może pojawić się dopiero po ujawnieniu się szkody⁶⁸, a zatem stan niepewności odnieść można tylko do terminu *a tempore scientiae*. Zgodzić się natomiast należy, że termin przedawnienia ma spełnić funkcje dyscyplinujące i mobilizujące poszkodowanego, która pozostaje w ścisłym związku z kompensacyjną funkcją odpowiedzialności odszkodowawczej. Ponadto upływ czasu wpływa niekorzystnie na możliwości dowodowe, zarówno jeśli chodzi o poszkodowanego, jak i zobowiązanego do naprawienia szkody, co jednak nie może stanowić przeszkody w możliwości realizacji praw podmiotowych. Zagadnienie przedawnienia roszczeń powstałych jako następstwo szkody wyrządzonej czynem niedozwolonym nabiera szczególnego znaczenia również ze względu na okoliczność, że z roku na rok wzrasta świadomość prawną obywateli, również dzięki rozwijanemu dynamicznie bezpłatnemu poradnictwu prawnemu.

Słowa kluczowe: termin przedawnienia, czyn niedozwolony, małoletni, szkoda na mieniu, szkoda na osobie, przestępstwo, zdarzenie wyrządzające szkodę, wymagalność roszczenia

⁶⁸ A. Józefiak, Przedawnienie roszczeń z tytułu naprawienia szkody wyrządzonej czynem niedozwolonym w świetle Konstytucji, KPP 2006, z. 3, s. 687.