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Author..... *Martina Linden / Katharina Oppitz*  
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**LIMITATION OF PENSION CLAIMS**

Seriously injured people often suffer from the consequences of their injuries for the rest of their lives. Claims for damages are generally intended to put them in the same position they would have been in without the damaging event. However, the assessment of future damage poses difficulties. In contrast, the consequences of damage that have already occurred are unproblematic. For this reason, injured parties are entitled to a temporary or permanent pension for future claims under certain conditions. In this context, maximum liability limits, sums insured and limitation periods in particular can harbour the risk that full compensation will not be granted, especially in the case of serious personal injury.

**LEGAL BASIS**

According to Section 530 of the Austrian Civil Code (ABGB), pensions are periodic payments of the same amount that are made as payment for a service, but also free of charge. It is irrelevant whether they are only paid for a specific period or for life.

In principle, the legal basis for pension claims can be found in Sections 1325 and 1327 ABGB and Sections 12 and 13 EKHG. Reference is also made to the analogous application of these provisions in various special laws.

§ Section 14 (1) EKHG stipulates that compensation for the damage caused (i) by the cancellation or reduction of earning capacity, (ii) by the increase in needs and (iii) by the maintenance claims of third parties for the future is to be paid in the form of a monetary pension.

According to the case law of the Supreme Court, "future" within the meaning of § 14 para. 1 EKHG is to be understood as the point in time at which it can be objectively determined that the bodily injury or death of a person leaves behind irreparable permanent damage and for this reason the consequences of the damage have become permanent.<sup>1</sup> If, on the other hand, considerable fluctuations are still to be expected in the future and the loss cannot be compensated by a regular amount of money, this does not yet constitute a pension loss.<sup>2</sup>

**LIMITATION OF THE PENSION CLAIM WITHIN THE MEANING OF § 1480 ABGB**

According to Section 1480 ABGB, the individual recurring payments, including pensions and maintenance payments, are subject to a limitation period of three years, while the limitation period

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<sup>1</sup> Vgl OGH 20.02.2006, 2 Ob 84/04y.

<sup>2</sup> Vgl OGH 20.02.2006, 2 Ob 84/04y.

for the claim itself is 30 years. For the question of the applicability of § 1480 ABGB, it is decisive that the claims are, from the outset and by their nature, directed towards payments that are to be made recurrently at regular intervals. Regular recurrence is therefore typical for the claims in question. It is about the time, not the regularity of the amount.<sup>3</sup>

In order to counter the impending limitation of his claim for compensation for future but already foreseeable (pension) damage, the injured party must, if he has already suffered primary damage, bring an action for a declaratory judgement within the limitation period of § 1489 ABGB (Austrian Civil Code).<sup>4</sup> The filing of the declaratory action has the effect of interrupting the limitation period for all claims for damages that are not yet due at that time and therefore future claims for damages.<sup>5</sup>

Due to the interrupting effect of the action for declaratory judgement, which in principle only relates to future claims for compensation, but not to claims for compensation that are already known and have become due, there is no need to extend the request for performance during the process to amounts that have become due at a later date. In the opinion of the Supreme Court, the interruption of the limitation period only ends with the delivery of the judgement granting the request for a declaratory judgement. This also applies to all pension claims that are not yet due at the time the action is brought and therefore only arise in the future.<sup>6</sup>

If the obligation to pay compensation for pension amounts due in the future (i.e. after the declaratory judgement) is pronounced by a declaratory judgement granting the claim, these are again subject to the three-year limitation period.<sup>7</sup>

"Future" payments are not only those that only become due after the declaratory judgement has been served, but also those that become due between the filing of the declaratory action and the service of the declaratory judgement. For claims not asserted during the pending declaratory proceedings, the limitation period begins anew at the end of the interruption effect, so that claims not asserted during the pending declaratory proceedings can also be asserted within three years of service of the declaratory judgement.<sup>8</sup> It follows from this that it is also possible to extend the amount of individual pension amounts that were already claimed during the determination procedure within the limitation period that begins anew after the end of the interruption effect.<sup>9</sup>

#### **LIMITATION OF THE PENSION CLAIM WITHIN THE MEANING OF § 27 KHVG**

A special limitation period is provided for in motor vehicle liability insurance:

Pursuant to § 27 para. 1 KHVG, the injured third party's claim for compensation against the insurer shall become time-barred within the same period as the claim for compensation against the insured party liable to pay compensation. The period begins at the time at which the claim for

<sup>3</sup> RIS-Justiz RS0109640.

<sup>4</sup> RIS-Justiz RS0097976.

<sup>5</sup> RIS-Justiz RS0034771.

<sup>6</sup> RIS-Justiz RS0034771.

<sup>7</sup> RIS-Justiz RS0034202.

<sup>8</sup> Vgl OGH 25.06.2009, 2 Ob 33/09f; OGH 16.10.2002, 9 Ob 219/02z; OGH 06.11.2007, 10 Ob 88/07z.

<sup>9</sup> Vgl OGH 18.02.2015, 2 Ob 145/14h.

compensation against the insured party liable to pay compensation begins to expire. It ends at the latest ten years after the damaging event.

Of practical importance is § 27 para. 2 KHVG, according to which the limitation period for the injured third party's claim for compensation, if it has been notified to the insurer, is suspended until the insurer has received a written declaration of rejection of the claim for compensation. According to sentence 3 of this provision, the suspension or interruption of the limitation period of the claim for compensation of the damage against the insured person liable to pay compensation also results in the suspension or interruption of the ongoing limitation period of the claim for compensation of the damage against the insurer and vice versa.

The suspension provision of § 27 para. 2 KHVG is modelled on that of § 12 para. 2 VersVG. According to the case law of the Supreme Court, no quantification of the claim is required for the suspension of the limitation period pursuant to § 27 para. 2 KHVG, but only the mere notification of the claim.<sup>10</sup> According to the Supreme Court, the ten-year limitation period standardised in Section 27 (1) sentence 2 KHVG is not an absolute maximum period, but is subject to suspension in accordance with (2).<sup>11</sup>

In order to remove the suspension of the limitation period, a declaration of rejection pursuant to § 27 Para. 2 KHVG is required. This must contain a conclusive statement on the alleged obligation to pay compensation.<sup>12</sup>

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<sup>10</sup> OGH 13.02.2014, 2 Ob 179/13g.

<sup>11</sup> OGH 17.12.2018, 2 Ob 113/18h.

<sup>12</sup> OGH 13.11.2008, 2 Ob 237/08d.