**Slovenian law of unjustified enrichment in a nutshell**

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The law of unjustified enrichment creates liability in cases when one person is enriched at the expense of another and there is no legal ground for retaining this enrichment. In such cases the law imposes an obligation of restitution upon the unjustly enriched recipient, which is subject to various defences. Slovenian law of unjustified enrichment is codified, as it is in many other civil law countries. Its provisions are enshrined in the Code of Obligations (Articles 190 – 198) and are based on the previous ones of the Yugoslav Act on Obligations. In contrast to the Austrian Civil Code (ABGB), which had been in force in Slovenian territory from 1815 until 1946, and as an informal source of law until 1978 (when the Yugoslav Act was adopted), the Yugoslav Act united all enrichment claims into a separate chapter on unjustified enrichment and subjected them to a general clause. Although some legal scholars opposed the idea of unifying the law of unjustified enrichment,[[2]](#footnote-2) the legislator followed the solution proposed by professor Mihailo Konstantinović in his draft of the Yugoslav Act on Obligations,[[3]](#footnote-3) which was most likely inspired by Swiss law.[[4]](#footnote-4)

Provisions on unjustified enrichment as contained in the Slovenian Code of Obligations consist of a general clause, restitutionary rules and certain types of non-performance-based enrichments. The Code adopted the unitary approach, whereby all enrichment claims are based on a single general rule. It follows from the wording of the general clause that “If a person becomes enriched to the detriment of another without a legal basis, he shall be obliged to return the benefit received if possible, or to repay the value of the benefit achieved*.*”[[5]](#footnote-5) However, the Slovenian theory follows the pluralistic approach[[6]](#footnote-6) and differs among various enrichment claims, whereas the main distinction is drawn between performance-based and non-performance-based enrichment claims, a taxonomy established by Walter Wilburg and Ernst von Caemmerer.[[7]](#footnote-7) In a comparative perspective, different views may be identified regarding the unity of the law of unjustified enrichment. While some authors believe that unjustified enrichment cases all reflect a single principle that benefits received without a legal basis must be given up,[[8]](#footnote-8) others argue that the unitary unjustified enrichment claims, especially those in the German and Swiss Civil Codes, are based on nineteenth century doctrinal assumptions which have long since been superseded.[[9]](#footnote-9) According to observations made by professor Nils Jansen that “Civilian jurists have begun to realise that the different claims that developed under the umbrella of unjustified enrichment belong to different contexts, and that the codifications’ order is no sufficient reason to integrate within a unified institute claims that are of fundamentally divergent legal nature”, it could be said that a pluralistic approach is the first step towards recognising the differences between enrichment claims that should, in my opinion, be taken into consideration also when applying the rules of restitution.

The Code of Obligations contains a set of restitutionary rules which apply to both performance-based and non-performance-based enrichment claims. The measure of restitution can be summarized as follows: the impoverished party can claim restitution in kind, if this is possible, or otherwise the monetary value of the enrichment.[[10]](#footnote-10) There is no provision on loss of enrichment (or the change of position defence, in common law terminology) apart from a special provision on disenrichment that applies to wrongfully paid compensation for personal damage.[[11]](#footnote-11) However, it could be concluded that disenrichment as a way of measuring liability is generally recognized in Slovenian law. The mala fide recipient is obliged to return the fruits and pay default interest from the day of the receipt, while this obligation is imposed on the bona fide recipient from the day the action for restitution in unjustified enrichment was filed.[[12]](#footnote-12) Both recipients are entitled to reimbursement of the necessary and beneficial expenses they had with the received object, whereas the mala fide recipient gets the beneficial expenses reimbursed only to the amount of the increase in value upon return. The recipient is further obliged to pay compensation for the unauthorized use of another’s assets.[[13]](#footnote-13)

Due to the causal tradition system in Slovenian law, the unjustified model of restitution overlaps in certain situations with the owner/possessor model of restitution.[[14]](#footnote-14) Since its rules differ to some extent from those of unjustified enrichment,[[15]](#footnote-15) the relationship between these two models is not merely an academic issue but also a matter of practical relevance. There is no consensus among the scholars as to which model should prevail in case of overlapping. Some authors argue that the rules of the owner/possessor model as a special and more recent law take precedence over those of unjustified enrichment.[[16]](#footnote-16) I don’t share this view, as the owner/possessor model is applicable only to proprietary remedies (e.g. *rei vindicatio*). This approach was also adopted by the Slovenian Supreme Court.[[17]](#footnote-17)

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2. See e.g. S. Lapajne, *Današnje kondikcije*, Juridična fakulteta, Ljubljana 1926; S. Lapajne, Reparacije civilnega prava, Juridična fakulteta, Ljubljana 1927. [↑](#footnote-ref-2)
3. M. Konstantinović, *Obligacije I ugovori: skica za zakonik o obligacijama I ugovorima*, Centar za dokumentaciju i publikacije Pravnog fakulteta, Belgrade 1969. [↑](#footnote-ref-3)
4. Z. Povh, Jugoslawien: Gesetz über Schuldverhältnisse (Obligationenverhältnisse), Jahrbuch für Ostrecht XXIX (1988), 292. [↑](#footnote-ref-4)
5. Section 190 para. 1 of the Code of Obligations. [↑](#footnote-ref-5)
6. See e.g. R. Vrenčur, Splošna razvrstitev obogatitvenih obveznosti, *Zbornik 2. Dnevov stvarnega in zemljiškoknjižnega prava* *2010*, 81-100; Z. Strajnar, Verzije – predpostavke, obseg vračanja ter razmerje med obligacijskopravnimi in stvarnopravnimi povračilnimi zahtevki, *Pravosodni bilten 33/1 (2012)*, 11-32; M. Dolenc, Pravne posledice ničnosti pogodbe (o nekaterih problemih kondikcijskih zahtevkov), *Pravni letopis 2011*, 19-32. [↑](#footnote-ref-6)
7. W. Wilburg, *Die Lehre von der ungerechtfertigten Bereicherung nach österreichischem und deutschem Recht*, Leuschner & Lubensky, Graz, 1934; E. von Caemmerer, Bereicherung und unerlaubte Handlung, *Festschrift für Ernst Rabel* (eds. H. Döllte, M. Rheinstein, K. Zweigert), Vol. 1, Mohr, Tübingen, 1954. [↑](#footnote-ref-7)
8. For instance P. Birks. [↑](#footnote-ref-8)
9. N. Jansen, Farewell to Unjustified Enrichment?, *Edinburgh Law Review, Vol. 20, Issue* 2, 123-148. [↑](#footnote-ref-9)
10. Section 190 para. 1 of the Code of Obligations. [↑](#footnote-ref-10)
11. Section 195 of the Code of Obligations. [↑](#footnote-ref-11)
12. Section 193 of the Code of Obligations. [↑](#footnote-ref-12)
13. Section 198 of the Code of Obligations. [↑](#footnote-ref-13)
14. As enshrined in Articles 95 and 96 of the Law of Property Code (Stvarnopravni zakonik, *Official Gazette of Slovenia*, No. 87/2002, 91/2013). [↑](#footnote-ref-14)
15. Especially regarding the restitution of fruits, the reimbursement of expenses and compensation for the unauthorised use of the received object. For the details see e.g. K. Lutman, Vračanje izpolnitev zaradi prenehanja pogodbe, *Razsežnosti zasebnega prava* (ed. Damjan Možina), Pravna fakulteta v Ljubljani, Litteralis, Ljubljana 2017, 179. [↑](#footnote-ref-15)
16. R. Vrenčur, Splošna razvrstitev obogatitvenih obveznosti, *Zbornik 2. Dnevov stvarnega in zemljiškoknjižnega prava* *2010,* p. 99. [↑](#footnote-ref-16)
17. Supreme Court of the Republic of Slovenia, case no. II Ips 1261/2008, dated 1. June 2009. [↑](#footnote-ref-17)