

# The overlap between the laws on unjust enrichment and damages and its legal consequences in exercising subjective rights



**ASSISTANT PROFESSOR MARIJA AMPOVSKA  
FACULTY OF LAW, UNIVERSITY GOCE  
DELCEV**

# General overview



- it is well recognized in the legal doctrine that the boundary between claims for unjust enrichment and claims for damages is not clearly drawn either with respect to the prerequisites for the claim or the legal consequences

# Comparison between the claim for unjust enrichment and for damages

## Common ground

- Same aims – remedial aims
- Foundation in the principle of corrective justice

## differences

- claims for unjust enrichment do not require any damage on the part of the person at whose expense the enrichment was gained
- that different prescription periods are provided for the two claims

# Competition not accumulation



**THIS MEANS THAT THE COMPENSATION IN ANY PARTICULAR CASE IS ACHIEVABLE ONLY BY ONE GROUND AND ACCUMULATION OF THE TWO CLAIMS FOR ONE CASE IS NOT ALLOWED**

# Confusion in litigation procedure



## Petition or ground of the claim

- Sets the frames of the claims being filed in the procedure
- Answers the question which prerequisites will be established by the court

## legal basis of the claim

- provisions upon which certain right of the claimant arises, having in mind the actual situation. The legal qualification of the legal basis is always determined by the court.

# Liability for damages



- The attorney as tortfeasor
- Breach of mandate contract as base for contractual liability or breach of duty as tortious
- The obligation to provide legal assistance in accordance with the required standard of care – good professional/expert in the field.
- In other words, the mere fact of doing a professional job creates an obligation, which may be considered as a general legal obligation, to carry out the work in accordance with the rules of the profession and with professional care