The Reception and Development of "Forfeiture (Verwirkung) Theory" in the Civil Law: Focus on the Cases of Claims for Removal and Restitution on Real Property

Chung-Jau Wu*

Abstract

Forfeiture (Verwirkung) originates from the principle of good faith and the protection of reliance interest, and it has become a secondary type of abuse of rights. It's a system which is typically cultivated by the German judge-made law and has gone through the theoretical development of more than one hundred years. From the view of comparative law studies, it has been accepted in Taiwan's judicial practices for nearly half a century.

The legal policy of forfeiture is aimed to correct the strictness of extinctive prescription, in which the period is too long, and to be a "special remedy as a last resort". With its "exceptional character", forfeiture should be applied only in exceptional cases in order not to make the system of extinctive prescription useless. However, this regard has been ignored by Taiwan's court.

This article points out that although the objects of forfeiture include all rights in the private law, it should not be applied to the right of claim on registered real property under the interpretation of Taiwanese law. It is to avoid the erosion to the right of property, and not to destroy the binding effect of interpretations No.107 and No.164 of Justices of the Constitutional Court, which have emphasized that the rules of extinctive prescription should not be applied to the right of claim on registered real property. In the judicial practices, it is necessary to review the decisions of the Supreme Court, which have recognized the application of forfeiture to the right of claim in an excessively wide range and have resulted in the unjust loss of property owners.

* Assistant Professor, College of Law, National Taiwan University.
E-mail: wucjj2@ntu.edu.tw

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