

Fundamental Dogmatic Issues of Limitation Period under Civil Code: Analysis Based on Several Judgments and Resolutions of Taiwan Supreme Court

Sung-Mao Huang *

Abstract

The trend driven by international contract law instruments is heading toward the extinctive prescription system while revisions being made in civil codes of different countries regarding extinctive prescription in recent years tend to be in line with the said instrument. However, before we consider the necessity of the reform of our civil code on the extinctive prescription system, it is needed to clarify the issues aroused from the practice under current regulations on the limitation period. This article selects several judgments and resolutions from the Supreme Court of Taiwan regarding fundamental issues of the limitation period, such as the commencement of limitation period, the postponement of expiry of limitation period and the effect of limitation. The examination of these judiciary decisions leads us to the understanding that the institute of extinctive prescription shall never be taken as a purely technical regulation, but its function and design rely on the dogmatic foundation. Since the regulations of the limitation period are always closely connected with other legal institutes, its application should be viewed from a systematic perspective. On the other hand, the mandatory character of the limitation period in Taiwanese civil codes not only is binding to both parties in a transaction but also the court. Foreign laws or international contract law instruments may be an essential reference for the local legislation, but it may not be appropriate to be taken as direct sources for the interpretation of the current local laws and regulations. According to the current

* Assistant Research Professor, Institutum Iurisprudentiae, Academia Sinica.

E-mail: sungmao@sinica.edu.tw

limitation period regulations, except for the claims from the injury arising from torts, the objective system has been adopted with regard to the commencement of prescription. Once the limitation period has commenced, it should not be affected unless the prescription is interrupted or suspended by any legal cause as stipulated in the law. As to the legal consequence of prescription, it does not extinguish the claim, but only provides the debtor with a right to refuse performance. The debtor's advantage of prescription, however, come into effect not only when he has brought up the right to refuse performance, but already by the completion of limitation period itself. Once the creditor's claim has been prescribed, the debtor is not responsible for his late performance. If the creditor brings an action for damages, interest, and penalty caused by breach of contract after the limitation period expired, and once the debtor raises the prescription defense, the court shall dismiss the creditor's claim for damages, interest, and penalty as mentioned above.

Keywords: limitation period (extinctive prescription), commencement of limitation period, suspension of limitation, postponement of expiry of limitation period, penalty, defense of unperformed contract, default