

The Changing Landscape of Prescription Law: A Comparative Law Perspective

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Abstract

The limitation period (extinctive prescription) originates from the “obfuscating power of time”. It has long been considered as a technical provision, hence it is often overlooked in the sea of legal knowledge. However, for the past 20 years, influenced by Principles of European Contract Law (PECL), significant reforms have been made by European countries on the regulations of limitation periods. Starting from the development history and the legitimacy basis of limitation periods, this article gives deep introductions to regulations on limitation periods under PECL Chapter 14. Besides, under the above-mentioned frame, the article analyzes and introduces present amending achievements, which include the modernization of the Law of Obligations Act in Germany in 2002, the reform on limitation periods of French Civil Code in 2008, and that of Swiss Code of Obligations in 2013 and 2019. The reformatory achievements above share the following similarities: shortened prescription periods, uniformity on limitation periods, subjective criteria (discoverability criterion) to the commencement of prescription, and the recognition of agreements concerning prescription. Germany, France and Switzerland all simultaneously adopted the structure of double prescription periods, namely the combination of subjective criterion to the commencement of short prescription and that to the maximum period (“long stop”) tied to an objective criterion. In sum, the latest trend of the reform of limitation period is on one hand the “trans-contextualization” of provisions of limitation periods, and on the other hand handing the mission of “contextualizing” itself over to parties and courts, attaining the liberalization of the institution of limitation

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periods. At the last part, this article attempts to refer to international legislative experiences in order to offer crucial points on legislation policy choices, serving as the foundation of further discussions in the future.

Keywords: limitation period (extinctive prescription), commencement of limitation period, suspension of limitation, postponement of expiry of limitation period, Principles of European Contract Law, Principles of International Commercial Contract, Modernization of the Law of Obligations Act 2002, French Civil Code, Swiss Code of Obligations