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PECULIARITIES OF THE COMMENCEMENT OF PRESCRIPTION PERIOD IN OBLIGATORY RELATIONS: INTERNATIONAL STANDARDS AND THE ARMENIAN LEGISLATION

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Abstract

This article presents issues concerning the commencement of prescription periods relating to obligatory relations. The discussion begins with some general concepts and then focuses on international standards as well as an analysis of relevant Armenian legislation (pertaining to obligations) in that context. The aim of this article is to discuss the nature of prescription periods and determine how best to interpret regulations addressing prescription periods in obligatory relations or, if necessary, how they should be amended.

Keywords: obligations, creditor, debtor, prescription period, violation, due claim, timeline.

The proper determination of the commencement and end of prescription periods is of great practical significance. The availability of judicial protection of individual rights depends on whether the right-holder submitted an action to the court within this term or after its expiry, meaning the expiry of a prescription period is a sufficient ground for dismissal of a submitted claim, regardless of its validity.

The aim of this article is not to concentrate on all the conditions giving rise to the commencement of prescription periods in general but to focus on special provisions regarding obligatory relations. However, the discussion will begin with

some general ideas of particular importance for further presentation of the subject matter.

The legal regulations concerning prescription periods are closely related to the right to trial. The right to trial has two limbs: the procedural limb of the mentioned right is about one's legal opportunity to plead before the court, while the material one has to do with obtaining satisfaction of the claim submitted to the court against the defendant. The expiry of the prescription period results in the loss of the right to obtain any satisfaction of a legitimate claim and makes the right in question no longer actionable. Accordingly, the introduction of prescription periods is nothing more than a restriction of the right to trial.

In the *Stubbings and others v the United Kingdom* case, the European Court of Human Rights ruled that the provisions of the Limitation Act of 1960, requiring actions for damages for trespass against the person to be started within three years of the alleged injury or the victim's eighteenth birthday, were not a disproportionate restriction on the right to access to court (1996). Limitation periods were held to pursue the legitimate aim of ensuring legal certainty and finality, while still allowing litigants some opportunity to come to court (Rainey et al., 2021, p. 289).

This leads to the conclusion that a prescription period is the term during which a person (victim) can exercise the right to judicial protection of his/her rights (i.e., obtain satisfaction of the claim submitted, which would further be binding and secured by state enforcement). This makes evident that, regardless of any other relevant conditions, a prescription period can commence only after some individual rights violation has taken place, as there is no legitimate expectation to obtain satisfaction of any claim if there is no violation of a right.

The abovementioned is, we believe, the background behind the current definition of "prescription period" given in Article 331-1 of the Civil Code of the Republic of Armenia (hereinafter referred to as the Code), which states as follows: "*Statute of limitations shall be the time period for the protection of rights on*

the claim of the person whose rights have been violated." One can easily extract from this provision that any prescription period (statute of limitations) introduced for the judicial protection of violated rights cannot commence if there is no violation.

In its many judgments, the European Court of Human Rights has stated that a restriction of the right to access to court can be legitimate as long as it pursues a legitimate aim and is not so wide-ranging as to destroy the very essence of the right (Rainey et al., 2021, p. 288). If somehow the prescription period for any claim (i.e., term for seeking judicial protection for violated rights) commenced before the violation itself took place, it would result in a restriction of the right to trial, destroying the very essence of this right. Of course, this does not mean that the court should, in every particular case, establish the fact of the relevant violation having actually taken place before the application of the statute of limitations; instead, (based on the analysis of applicable material law) it should figure out at what moment the alleged violation could objectively have happened.

In obligatory relations, the creditor's subjective right is violated when the debtor does not fulfil the act it is committed to (e.g., through default), fulfils it improperly (e.g., supplies defective goods), or commits certain types of actions despite its commitment to abstain from them (e.g. disclose information despite its commitment under a non-disclosure agreement) (Baibak et al., 2018).

In the Republic of Armenia, issues relating to the commencement of prescription periods are regulated by Article 337 of the Code, which states as follows:

"*1. Running of term for statute of limitations shall start on the day when the person has become aware or should have become aware of the violation of his or her right. Exceptions to that rule shall be prescribed by this Code and other laws.*

2. For obligations, for the fulfilment of which a certain term has been determined, the running of the statute of limitations shall start upon the termination of that term.

3. For obligations, the term for the fulfilment whereof is not determined or is determined on demand, running of the statute of limitations shall start from the moment when the right of the creditor to claim the fulfilment of obligations arises, while in the case when the debtor has been allotted a grace period for the fulfilment of the requirement, the calculation of the statute of limitations shall start after the termination of that term.

4. Running of the statute of limitations for regress obligations shall start upon the fulfilment of the principal obligation."

In the event of an improper fulfilment of a positive obligation to act or a breach of a negative obligation to abstain from a certain type of action, the prescription period commences the day after the creditor became or should have become aware of the improper fulfilment of a positive obligation or the fact that the debtor performed a certain type of action it was obligated to abstain from. This assessment stems from the general rule stipulated in Article 337-1 of the Code. In turn, Articles 337-2 and 337-3 of the Code address the commencement of limitation periods in the event of non-fulfilment of obligations. The remainder of this article will be dedicated to the issues of the commencement of limitation periods for the non-fulfilment of obligations in light of current international standards concerning the subject matter.

Before a thorough examination of Articles 337-2 and 337-3 of the Code, it is of significant importance to present some international standards dealing with the subject, which, we believe, will greatly contribute to a proper understanding and interpretation of the Armenian legislation or, if necessary, to the introduction of new statutory solutions.

Article III.-7:203 (1) of Principles, Definitions and Model Rules of European Private Law: draft common frame of references (DCFR) states as follows: "*The general period of prescription begins to run from the time when the debtor has to affect the performance or, in the case of a right to damages, from the time of the act which gives rise to the right*." According to an

additional comment on this provision, "*as a rule, the period of prescription should run only against a creditor who has the possibility of enforcing the right in court, or of starting arbitration proceedings. For it is in the course of these proceedings that the merits of the case will be investigated. (...) A right can, however, only be pursued in court, or before an arbitration tribunal, when it has become due - that is, when the debtor has to effect performance. The concept of the time when a party has to effect performance is widely known and relevant in many other situations*." (Prepared by the Study Group on a European Civil Code and the Research Group on the Existing EC Private Law (Acquis Group) p. 523)

As such, the prescription period begins only when a debtor has to affect performance and thus the creditor can sue the former. At the very moment when a debtor has to immediately effect the performance but refrains from it, there is a breach of obligation and a creditor's rights violation takes place. Until the moment when the right has become due, the creditor cannot demand any fulfilment and thus cannot sue the debtor for the debtor's inaction (such a claim cannot be satisfied). If the creditor cannot expect any satisfaction of a potential claim until after the right becomes due (and given the fact of non-fulfilment, violated) the prescription period (time period for submitting a claim to the court) should start only from the moment when the creditor's right becomes due, and starting from that point, the creditor should fully enjoy the time period provided for initiating any action. At the moment the right of the creditor becomes due but there is no fulfilment, the creditor becomes or should become aware of a violation of its rights and take appropriate steps.

Article 10.2 (1) of Unidroit Principles 2010 states as follows: "*(1) The general limitation period is three years beginning on the day after the day the obligee knows or ought to know the facts as a result of which the obligee's right can be exercised. (2) In any event, the maximum limitation period is ten years beginning on the day after the day the right can be exercised.*" According to

the additional comments concerning this provision, "*3. (...) An obligee should have a reasonable chance to pursue its right, and should therefore not be prevented from pursuing its right by the lapse of time before the right becomes due and can be enforced. Furthermore, the obligee should know or at least have a chance to know its right and the identity of the obligator. (...) 5. The obligee has a real possibility to exercise its right only if it has become due and can be enforced. Paragraph (2) therefore provides that the maximum limitation period starts only at such date.*" (Published by the International Institute for The Unification of Private Law, pp. 346-348)

Thus, the Unidroit Principles also state that the right can be exercised only when it becomes due and enforceable and that the creditor should not be prevented from pursuing its right by the lapse of time before the right becomes due. Indeed, one can submit a lawsuit only when, despite the fact of the right becoming due, the debtor does not fulfil its commitments under a given obligation, so the prescription period cannot start until after such a breach happens.

Article 9 (1) of the 1974 UN Convention on the Limitation Period in the International Sale of Goods states as follows: "*Subject to the provisions of articles 10, 11 and 12 the limitation period shall commence on the date [on] which the claim accrues*." According to Article 10 (1) of the same convention, "*a claim arising from a breach of contract shall accrue on the date on which such breach occurs*."

Again, the emphasis is placed on the fact of a breach in obligatory relations. At the very moment a contractual obligation is not fulfilled, the creditor becomes or should become aware of the breach and can institute judicial proceedings in order to protect its rights.

It is of relevance to present also the corresponding legal positions of the Court of Cassation of the Republic of Armenia, which is the court of highest instance in accordance with the

Armenian Constitution, ensuring, in particular, the uniform application of law and other regulatory legal acts.

Referring to Articles 337-1, 337-2, and 337-3 of the Code (among other provisions of the Code) in its decision in the case of *Community of Yerevan v. Shavarsh Gevorgyan* (ԵԴ/21264/02/18, Cass. Ct. Jan. 14, 2022), the Court of Cassation stated that “*(...) Based on the above legal norms and legal positions, the Court of Cassation notes that, in the context of obligatory relations between civil subjects, each party is obligated to properly fulfil its obligation in accordance with the conditions of obligation, law, and requirements of other legal acts, and in case of absence of such conditions and requirements – in compliance with customary business practices or other generally set requirements, while in the event of non-fulfilment or improper fulfilment (with default, with defects of goods and services or with a violation of other conditions determined by the content of the obligation), legal liability may be imposed. The Court of Cassation notes that, as a result of the debtor’s failure to fulfil an obligation or inappropriate (with default) fulfilment of an obligation, the creditor’s right to take actions aimed at protecting the creditor’s violated rights, including filing a lawsuit in court in accordance with the established procedure, arises. Moreover, the exercise of that right must be done during the prescription period, because the expiry of statute of limitations, for the application of which the party to the dispute has requested, serves as a ground for the court to deliver a judgment on the dismissal of the claim.”*

Referring to the issues relating to filing a lawsuit in civil proceedings in its decision concerning the case of *Karo Mikayelyan v. “GeoProMining Gold”* LLC (ԵԴ/30480/02/19, Cass. Ct. Apr. 8, 2022), the Court of Cassation stated the following: “*(...) In addition, the mentioned violations include violations of the active or passive legitimacy of the litigants, when the lawsuit was filed by an improper plaintiff or against an improper defendant. The latter case refers to the legal regulation defined in Article 332 of the Civil Code of the Republic of*

Armenia, according to which the statute of limitations is considered to be the time period for the protection of rights on the claim of the person whose rights have been violated. Therefore, when the plaintiff is not endowed with active legitimacy, then he also lacks a violated right within the framework of the given claim, which is the only thing that can serve as the basis for the running of the statute of limitations."

These assessments lead to similar conclusions as are presented above. The creditor's right to take actions aimed at protecting its rights emerges when some violation of the latter takes place. The right to institute judicial proceedings aiming to protect violated rights should be exercised during the prescription period and that term cannot start sooner than when the mentioned right itself arises. Only a violation of the creditor's rights can be the basis for the commencement of the prescription period.

Now, bearing the above-mentioned in mind, we can further concentrate on an analysis and interpretation of Articles 337-2 and 337-3 of the Code.

One can easily find that the primary factor distinguishing two situations regulated by the mentioned provisions is that Article 337-2 deals with obligations, for the fulfilment of which a certain term has been determined, while Article 337-3 refers to obligations, the term for the fulfilment whereof is not determined or is determined on demand. Article 337-2 of the Code is fairly similar to all other provisions presented above, as it provides that a prescription period starts to run when the determined term of the fulfilment expires. The creditor becomes or should become aware of the violation of its right after the mentioned term expires, making evident that an obligation has been violated. In the case of obligations with no determined term of fulfilment (or one to be determined on demand), this scheme is inapplicable, as no certain point of time determining the end of the term of fulfilment can be identified, which is why Article 337-3 of the Code provides a different type of regulation.

According to Article 337-3 of the Code, the prescription period starts when the right of the creditor to claim the fulfilment of an obligation arises, while in the case in which the debtor has been allotted a grace period for the fulfilment of the requirement, the calculation of the statute of limitations shall start after the termination of that term. The question is at what exact moment the creditor's right to claim the fulfilment of the obligation arises.

Articles 352-2 and 352-3 of the Code state as follows:

2. In the cases when an obligation does not envisage a term for fulfilment and does not contain conditions for determining a term, it shall be fulfilled within reasonable terms after the arising of the obligation.

3. The debtor shall be obliged to fulfil the obligation not fulfilled within a reasonable terms, as well as the obligation, the term for the fulfilment whereof is determined by the moment of submission of the claim, within a period of seven days following the day of submission by the creditor of a claim thereon, unless another term for the fulfilment of the obligation follows from law, other legal acts, conditions of the obligation, customary business practices or the essence of the obligation.

According to the mentioned provisions, as a general rule, any obligation with no envisaged term should be fulfilled within a reasonable period of time, and, in the event the obligation is not fulfilled even after the expiry of such a reasonable period, it should be fulfilled within seven days (unless the applicable regulation provides any other specific term) following the day of submission by the creditor of a claim thereon. Besides that, if the term of fulfilment is initially determined by the moment of submission of the claim, the debtor shall fulfill the obligation within a period of seven days following the day of submission, unless another term follows from applicable regulations.

It stems from these regulations that any right emerging from obligations with no strict term of fulfilment becomes due only after a reasonable period of time, as prescribed in Article 352-2 of the Code. Moreover, if according to the applicable rule, the

obligation should be fulfilled within a grace period (which starts after the day of submission of the creditor's claim), the creditor's right becomes due only after the expiry of such a grace period. During the period of time between the arising of the obligation and expiry of the reasonable term for its fulfilment, the creditor cannot have any legitimate expectation of obtaining satisfaction upon demand, regardless of any claim of immediate fulfilment it could submit, and such a claim cannot encumber the debtor, who may ignore it, having full autonomy to pick the exact moment (within the reasonable term) it chooses to comply with the obligation. The same is valid for the grace period, which is separate from the already expired reasonable term and starts after the creditor submits its claim to the debtor.

The above makes it clear that any claim under Articles 352-2 and 352-3 (also specified in Article 337-3) of the Code becomes due and enforceable only upon the expiry of the reasonable term and, if provided by law, of the grace period commencing after the submission of the claim to the debtor. It is of relevance also to mention that, according to Armenian legislation, for any obligation with no determined term which has not been fulfilled within a reasonable timeline after its arising, there is (as a general rule) a grace period of seven days following the day of submission by the creditor of a claim.

Given the above, we reach the conclusion that "*the moment when the right of the creditor to claim the fulfilment of obligations arises*" under Article 337-3 of the Code corresponds to the moment when the reasonable time period under Article 352-2 of the Code expires. The term "*moment when the right of the creditor to claim the fulfilment of obligations arises*" cannot be interpreted as the moment when the obligation arises and the creditor acquires the right to claim the corresponding fulfilment in accordance with the terms of the given obligation. After the obligation arises, the creditor's right is not yet due and enforceable and there cannot be a breach of obligation. Thus, considering the prescription period to start from that particular

moment would be contrary to the very essence of the idea of prescription periods.

In case of an obligation with no envisaged term of fulfilment, the prescription period starts when the reasonable term for it to be fulfilled expires, under the condition that there is no rule of additional grace period discussed above, and thus, the creditor can demand an immediate fulfilment at any time. In this case, after the expiry of the reasonable term provided for the fulfilment, the claim becomes due and enforceable, and there is a breach of the obligation the creditor is or should be aware of. If there is a rule of additional grace period the prescription period starts upon the expiry of that grace period, which itself begins to run after the creditor (subsequent to the expiry of a reasonable term of fulfilment) submits the claim to the debtor. Only after the expiry of this grace period can any violation take place and the claim of the creditor become due and enforceable (as within that term the debtor still has time to deal with that obligation). In addition, it is also worthy to mention that, for the obligations the term of fulfilment of which is determined on demand, the prescription period starts after the expiry of a certain grace period which begins running after the creditor submits the claim, regardless of how long after the arising of the given obligation the claim is submitted.

The presented interpretation is the one which, we believe, directly stems from Articles 337-2 and 337-3 of the Code and complies with the essence of the right to trial and the nature of the legal concept of the prescription period.

However, this scheme does not entirely ensure the objectives underlying the temporal restrictions on the exercise of the right to trial. Particularly, as the creditor is free to submit its claim to the debtor at any time (only after that the prescription period starts), there can be cases when the prescription period has not yet expired even decades after an obligation has arisen. This situation would lead to the deterioration of legal certainty and finality, as possible disputes which are supposed to be automatically settled

after the expiry of some reasonable period of time unless the alleged victim does not initiate judicial proceedings within such time period, would remain active for years, thus affecting the interests of parties to the dispute, as well as those of third parties.

In the already mentioned *Stubbings and others v. United Kingdom* (1996) case, the European Court of Human Rights stated that limitation periods "*serve several important purposes, namely to ensure legal certainty and finality, protect potential defendants from stale claims which might be difficult to counter and prevent the injustice which might arise if courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time*."

There are two possible solutions to the abovementioned issue. The first is to define a certain general period of time that is longer than the prescription period, runs after the obligation arises, and the expiry of which results in the dismissal of any action, regardless of whether the prescription period even started to run or not. The second is to introduce a legal option (aiming to preserve legal certainty) for a debtor to itself submit either (1) a formal claim demanding that the creditor accepts the fulfilment (as the creditor did not on its own submit the claim in question within a reasonable timeline) or makes it clear that it releases the debtor from the obligation or (2) a formal letter to the alleged creditor denying the fact of arising of a given obligation, which would make the debtor's position clear to the other party. The prescription period should start after the day the creditor receives the corresponding notification.

The abovementioned first solution does not comply with the nature of prescription periods, given that, in that case, a lawsuit can be dismissed on the basis of the expiry of some predetermined timeline even without a violation of rights taking place in reality.

The second solution seems more justified. When the debtor offers a proper fulfilment of the obligation with no envisaged

term, the claim becomes due and so the creditor has to accept it. Thus, the non-commencement of a prescription period after the creditor becomes aware of the debtor's intent but refrains from accepting the proper fulfilment offered by the latter results in a significant misbalance between the interests of the creditor on the one hand and the debtor on the other. Moreover, any notification by the debtor of its denial of the existence of an obligation subject to fulfilment amounts to a violation of the alleged creditor's rights.

Despite the above, the absence of statutory guarantees for debtors cannot in any case justify any interpretation of applicable rules which could potentially lead to the restriction of a plaintiff's right to trial. Such a scenario would amount to a restriction of the right to trial not provided by law, as current Armenian legislation does not contain any provision which would allow any change to the starting point of a prescription period in obligatory relations determined under Articles 337-2 and 337-3.

In this context, it is also necessary to refer to Article 337-4 of the Code. According to the mentioned provision, the statute of limitations for regress obligations shall start upon the fulfilment of the principal obligation, and such a regulation complies with the very nature of prescription periods.

The regressive obligations arise in the event a third party (obligated by the applicable rules as provided by the law, contract, etc.) provides compensation for the damage caused by another or fulfils a given obligation instead of the debtor when the debtor has violated its obligation. Appropriately, the third party gains the right to regress against the wrongdoer (or initial debtor) in the amount paid by the third party.

As the third party (creditor in regress obligation) would never be bound to pay damages or fulfil the initial obligation and bear all the constraints related whereof if there were no damage caused or the debtor delivered proper fulfilment, the former's legal interests are violated exactly at the moment it was compelled to fulfil the obligation of another person or provide compensation

for the damage caused by the other person's fault. As the interests of the creditor in regress obligations are violated by the debtor in regress obligations at the moment the former delivers a fulfilment in place of the latter, it is fair for the prescription period in regress obligations to begin running after the creditor fulfils the given obligation instead of the debtor. Yet, it is another issue to contemplate whether the moment the third party delivers a fulfillment in place of the initial debtor is the same as the moment the former's claim towards the latter becomes due. Given the above, we believe that it is not acceptable to have overlap between the term of fulfillment of a given claim and the prescription period for the protection of the same claim.

However, one should always bear in mind that, according to Article 397-1 of the Code "*Rules on the passing of creditor's rights to another person shall not apply to regress claims*." Thus, in applying Article 337-4, it is of relevance to make a proper distinction between situations when the third-party fulfilment results in the arising of a new (regressive) obligation or in the passing of creditor's rights to that third party within the framework of an already existing obligation. In the latter case, all the existing legal effects, including the one concerning the prescription period and its running, remain in force.

Conclusion

As has been illustrated, the prescription period is the timeline during which a person can exercise their right to judicial protection of their rights, and thus, the running of such a term cannot start before the right itself arises. The right to obtain the satisfaction of a given claim can only be legitimate if there took place a violation of the plaintiff's rights. Therefore, the prescription period starts only after the event of such a violation, when the right of the creditor in obligatory relations is due. Accordingly, the proper interpretation of Article 337-3 of the Code should be such that the prescription period starts after the

expiry of the grace period that begins to run after the creditor submits the claim to the debtor.

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