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LEGAL STUDIES

RIGHT TO COMPENSATION FOR DAMAGES AND PRESCRIPTION PERIODS: INTERNATIONAL STANDARDS AND ARMENIAN LAW

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Abstract

This article presents issues concerning the commencement of prescription periods relating specifically to obligatory relations arising out of causing damage, either pecuniary or non-pecuniary. The discussion begins with some general concepts and then focuses on international standards, as well as an analysis of relevant Armenian legislation in that context. The goal of this article is to discuss the issues concerning regulations specifically dealing with prescription periods in matters of obligatory relations emerging out of the implication of damage, aiming to find solutions that will, on one hand, meet the necessities lying behind the introduction of prescription periods and, on the other hand, assure the effective implementation of the right to trial, as prescription periods are one of the main instruments by which the state is authorized to limit this right.

Keywords: damage, prescription period, creditor, due claim, timeline, right to trial.

As is very well known, the availability of judicial protection of individual rights depends on whether the right-holder submitted an action to the court within the term of a prescription period 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 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.

Given the above, the correct identification of the conditions that should be met for the prescription periods to commence has a paramount significance, both theoretically and practically. This is particularly true because it would result in the imposition of the individual and excessive burden on legal persons and thus a violation of their right to trial if the prescription periods commenced before natural and legal persons could effectively (as in law as well as in practice) seek satisfaction (e.g. just compensation for incurred damage) before courts.

This article will not concentrate on all the conditions giving rise to the commencement of prescription periods in general but rather focuses on special provisions regarding obligations to compensate for damage. However, the discussion will begin with some general ideas of particular importance for further presentation of the subject matter.

The 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 of obtaining satisfaction of any claim if there is no violation of a right.

This 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) stating that “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 many of its 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 case, establish the fact of the relevant violation having 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.

The relations regarding compensation for damage caused are of an obligatory nature and thus bear all general traits borne by any obligation. Thus, when there is no special regulation, the rules dealing with prescription periods about obligatory relations apply to the relations regarding compensation for damage.

Article 337 (2) and Article 337(3) of the Code, dedicated to prescription periods in case of breaches of positive obligations, state as follows:

2. For obligations, for the fulfillment 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 fulfillment 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 fulfillment of obligations arises, while in the case when the debtor has been allotted a grace period for the fulfillment of the requirement, the calculation of the statute of limitations shall start after the termination of that term.

As can be noticed from Article 337 (2), in the case of obligations with a certain term of fulfillment, the prescription period runs after the end of that term. The claim becomes due after the term of fulfillment has expired, meaning that there is no more time left to fulfill the obligation and it should have already been carried out. Thus, the creditor unconditionally can claim immediate fulfillment, and, right after the expiry of the mentioned term (until the fulfillment is not delivered), the creditor's right is violated and hence susceptible to judicial protection. Before the right is violated (the term of fulfillment is expired) there cannot be judicial protection available, and the court cannot satisfy any claim against the debtor as the latter has not broken the obligation and cannot be forced to comply with any claim made against him. At the same time, any claim made based on a valid legal obligation the term of fulfillment of which is not expired, is subject to a dismissal. This is the premise for the fundamental principle underlying all rules concerning prescription periods; the given prescription period (subject to other conditions) cannot but commence after the individual right violation (e.g. breach of obligation) takes place.

In the case of obligations with an uncertain term of fulfillment, the mentioned regulation of Article 337 (2) of the Code is not useful, as in this case the term of fulfillment a priori cannot be a relevant factor. Article 337 (3) in its turn stresses two circumstances: the moment when the right of the creditor to claim the fulfillment of obligation arises (1) and the case when the debtor has been allotted a grace period for the fulfillment of the requirement, the expiry of that period (2). "Moment when the

right of the creditor to claim the fulfillment of obligation arises" means the moment when the claim becomes due and should be fulfilled immediately after the creditor addresses it to the debtor (the moment when a creditor is entitled to demand immediate fulfillment), "in the case when the debtor has been allotted a grace period for the fulfillment of the requirement, the calculation of the statute of limitations shall start after the termination of that term" means that if, after the submission of the claim, the debtor is granted some term for complying with the latter (according to the legislation, contract, etc.) only after its expiry can any prescription period commence. The second rule is quite like everything discussed above; only after the expiry of the allotted period can there be a breach of obligation and thus the prescription period commences next to the expiry. The first rule is problematic, though, as at first glance it focuses on the moment when the right to claim immediate fulfillment emerges and gives no attention to the moment when a breach takes place, the latter only being possible when the submitted claim is not subsequently implemented by the debtor.

For the correct determination of the applicable rule under Article 337 (3) (as Armenian legislation does not provide any specific rule concerning the term of implementation of obligations arising out of causing damage) it is necessary to look at the regulations concerning the timeframes for the fulfillment of the obligations with an uncertain term of fulfillment.

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 fulfillment 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 fulfill the obligation not fulfilled within a reasonable term, as well as the obligation, the term for the fulfillment 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 fulfillment of the obligation follows from the 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 fulfillment is initially determined by the moment of submission of the claim, the debtor shall fulfill the obligation within seven days following the day of submission, unless another term follows applicable regulations.

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 that has not been fulfilled within a reasonable timeline after it arose, there is (as a rule) a grace period of seven days following the day of submission by the creditor of a claim.

From one point of view, obligations to compensate for damage, having all the general traits of obligations, should be within the orbit of regulations about prescription periods regarding the protection of obligatory rights. From another point of view, the obligation to compensate for damage emerges as a

* For more detailed examination of Articles 337-3, 352-2, and 352-3 of the Code you may also see; Grigoryan, A. (2023). *Peculiarities of the Commencement of Prescription Period in Obligatory Relations: International Standards and the Armenian Legislation*. The Politnomos Journal of Political and Legal Studies, 1(1). 75-90.

consequence of the breach of a substantial right, and given this factor, is not an autonomous obligation and the compensation is a means of protection of the violated right. If the compensation (the obligation arising for that reason) is principally considered as a remedy for a violated civil right, then for the determination of the commencement of the prescription period the moment of a breach of the initial civil right should be considered as a relevant factor.

Given the above, it is of relevance to note that although the Code contains regulations dealing with specific heads of claims (defamation and insult, public authorities' responsibility for breaches of fundamental rights and freedoms)the fact that there is no *Lex generalis* regulating the issues of prescription periods in obligations to compensate for damage can lead to uncertainty about from which of two presented perspectives the prescription periods for compensation claims should be considered and thus on particular instances result in the unpredictability of legal regulations and the non-uniform and arbitrary application of such regulations by courts, eventually leading to the ineffectiveness of judicial protection of civil rights.

Our position on the issue is strictly formalistic, as regulations regarding prescription periods are tools limiting the fundamental right to trial and should be interpreted strictly in accordance with the letter of the law, bearing in mind that any divergence from these rules inevitably would result in limitation of a fundamental right without a legal basis. Hence, we believe that if there is no *Lex specialis* dealing with claims arising out of the causation of damage, Article 337-3 of the Code should be applied and prescription periods for compensation claims should commence following the seventh day after the creditor applied to the debtor with the corresponding claim to pay compensation, and the timeline laid between the violation of civil rights and further emergence of some damage (1) and the submission to the debtor of a claim to pay compensation (2) should not be of relevance. In this regard, it is worth mentioning also that, as our own experience shows, Armenian judges in some cases are inclined to

apply time limits and dismiss claims, rationalizing this by methods of so-called systematic interpretation and interpretation in essence, which is a very worrying tendency.

However, if for whatever reason the legislator wants to link the point of commencement of the prescription period with the initial violation of the civil right (eventually resulting in the emergence of damage justifying the compensation claim) it should introduce a *Lex specialis* with regard to Articles 352-2 and 352-3 which prescribes that the compensation claim is due immediately after the occurrence of damage and should be fulfilled right after the damage is caused, irrelevant of any claim submission. The linking of the starting point of the prescription period with the moment of the initial violation of a civil right without taking into consideration the need for the mentioned regulations will and does lead to an insurmountable collision; from one side the compensation claim can become due and thus subject to judicial protection only if it is not aptly and properly satisfied after the submission of the claim and from another side the countdown of the term for filing a lawsuit starts before the right to trial emerges.

It is appropriate also to consider relevant international documents and extract the standards dealing with the subject matter of this article.

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 exercise.*" According to the additional comments (8. Right must be exercisable) concerning this provision, "*an obligation may exist even if performance cannot as yet be required (see, e.g., Article 6.1.1. (a)). While a creditor's claim to the repayment of a loan is found on the contract and may therefore arise at the time of the conclusion of the contract or of the payment of the loan to the debtor, the*

repayment claim will usually fall due much later. Furthermore, a right may not be enforceable if the obligor has a defence." (Unidroit Principles of International Commercial Contracts, 2010, pp. 346, 349)

The mentioned provisions are fully applicable to the compensatory claims arising out of the causation of damage and, in essence, underpin the ideas presented above for the prescription period to commence, the performance (payment of the compensation) should have been already delivered but still incomplete. If the moment of the emergence of the obligation arising out of causing damage and the moment, when the compensation claim becomes due do not coincide, the start of the prescription period should not be linked with the breach of a civil right, which eventually led to the causation of damage.

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 effect the performance or, in the case of a right to damages, from the time of the act which gives rise to the right*" (Principles, Definitions, and Model Rules of European Private Law: Draft Common Frame of Reference)

Article III.-7:203 (1) in its turn introduces an opposite regulation linking the start of the prescription period with the emergence of the right to compensation for damage i.e. with the emergence of the obligation arising out of the causation of damage. This regulation, we believe, can be apt only if the right to compensation becomes due as soon as the right comes into being. Otherwise, as we have presented, the timeline for exercising the right to trial will commence prior to the very emergence of the right to trial, which both formally and substantially can have no valid legal basis.

As we dealt with the issues concerning the moment of the violation of creditor's right in obligations arising out of causing damage, which should be at the core of the determination of

prescription periods pertaining to compensation claims, now we can focus on other conditions that need to be met for prescription periods in this instance to commence. The conditions we are going to discuss further are the following: the identity of the wrongdoer and the availability of the information necessary to calculate damages.

Article 337-1 of the Code states as follows "*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*." This is the general rule applicable to every kind of potential claim submitted to the courts unless there are exceptions prescribed by the legislation. Article 337-2 and Article 337-3 of the Code, which we have discussed above, are some exceptions to Article 337-1 of the Code.

If in any case, the commencement of the prescription period is linked with the emergence of the right to compensation i.e. emergence of the obligation, such circumstances as the identification of the wrongdoer and the availability of information necessary to calculate any material damage caused should also be considered.

It is evident that in every obligation there are a creditor and a debtor, and the creditor cannot exercise its claim if he or she is unaware (ought not to be aware) of the identity of the person responsible for the damage caused. Despite other cases, when the identity of the violator is known from the start, in cases pertaining to damage causation, the latter's identity is not always revealed (e.g., an unidentified wrongdoer causing property damage, hurting the health of the victim, etc.) and as long as the wrongdoer is not identified, the creditor cannot sue him or her and is, therefore, unable to exercise the right to trial and protect his or her violated rights. This means that starting the countdown of the prescription period prior to the moment when the victim (the creditor) possessed enough information to reasonably be able to identify the wrongdoer is in contrast with the right to trial and

can result in a situation when the timeline to exercise the right to trial commences earlier than this right effectively can be exercised, hence the right to trial cannot be secured. The same is true about the availability of information necessary to calculate the damages. The monetary expression of the claim is a crucial element of the lawsuit, without the proper determination the right to trial cannot be effectively exercised. Hence, the commencement of a prescription period before this information could be available to the victim (the creditor) does not guarantee the right to trial.

These criteria have also been underlined in official commentaries of the rules of Unidroit Principles and Draft Common Frame of References (DCFR) mentioned above. In its turn, the Court of Cassation (the highest judicial instance in Armenia, except with regard to constitutional justice) has also stressed these conditions in its case law, though Armenian statutory law (the sole valid legal source meant to deal with prescription periods) is silent in this regard, concentrating only on the moment the person has become aware or should have become aware of the violation of his or her right (Article 337-1 of the Code).

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. About obligations arising out of the causation of damage, the prescription periods should start only after the breach of the obligation, and, only in the case when (by applicable regulations) the compensation claim becomes due simultaneously with the emergence of the corresponding obligation, it is possible to link the commencement of the prescription period with the initial breach of civil right, resulted in damage causation. It is equally important also to note that prescription periods for claims based on the fact of damage causation cannot but start after the creditor knows (or ought to

know) the identity of the debtor and has (or ought to have) the necessary data to calculate damages.

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