THE NEW HUNGARIAN CIVIL CODE
AND THE INTERNATIONAL LAW REGULATION
IN THE VIEWPOINT OF THE SUSPENSION OF PRESCRIPTION

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1. Introduction

In the recently passed years the dogmatic of prescription was revised in the European “common” private law and in the Hungarian recodification also. This paper is to examine what results of the developing European Private Law are considered to be built in the “structure” of the Hungarian regulation in the field of prescription, especially in the rule of suspension. The research is also extended to the field of international civil law, because the Uncitral Convention on Limitation establishes a system for prescription also.

The defects of the prescription regime in the Hungarian law particularly reveal themselves in those cases when the jurisdiction use malfunctionally its interpretational opportunity to expand more or different meaning of the dispositions from which they were framed to. These cases, which are being taken into consideration as follows, for example the prescription of the claim against the guarantor, prescription of the claim rising from the defective performance or the effect of the respite for a performance, the Hungarian prescription regime is inadequate by its simpleness.

The operative Civil Code is the act No. 4 of 1959, but a new Civil Code have been codified with the act of No. 5 of 2013, which act will become into force in 15th of March 2014, as intended. While the new CC generally did not change the prescription regime, but there are number of alterations which are to be analysed in the following.

2. Issues being treated before the suspension

2.1. The close interrelation between the specific rules of prescription

It is very dangerous to handle separately the rules of prescription regime from eachother. The features of prescription regime, as the duration of the period, its commencement, the cases of the suspension and the renewal make (or have to make) a coherent system. In the case of a relatively short period not only the date of commencement becomes more important, but also the legal conditions of the suspension.


2.2. The significance of the policy considerations of prescription

Number of the Hungarian authors deal with the policy consideration only to found the core regime (the definition and the function) of prescription. But these consideration are to being counted while building the particular rules also. These consideration were hardly changed for centuries since the law systems have had adopted the obfuscating power of the time-elapse without enforcing of a right, and they are recognized in the European legal culture widely. The are the following: 1. for the debtor it is increasingly difficult to defend a claim; 2. lapse of time suggests a certain indifference on the part of the creditor towards his claim which, in turn, engenders a reasonable reliance in the debtor that no claim will be brought against him; and 3. prescription prevents long-drawn-out litigation about claims which have become stale. Summarily: the defense of the debtor, the prevention of uncertainty and the exoneration of the courts.

2.3. The balancing interests

Beside the interest of the debtor, the creditor’s one is also taken into consideration. A relatively short period of prescription gives him not so much opportunity to enforce his right, if any impediment can inhibit him. Thus the commencement and the cases of extension are to be revised.

Generally speaking in the Hungarian prescription regime, the hardly only date when the prescription period begins to run is, the day when the claim becomes due. Moreover, the claim concerning damages is begin to prescribe from the injury, not from the date of the acquiring the knowledge (of the injury and the personality of the debtor) – which claims in the most of the European systems begin to subscribe from the date until the creditor doesn’t know or reasonably could have known his claims. If the Hungarian regime does not apply special date of commencement in these cases, the only reasonable and righteous solution is that the ‘indiscoverability’ of a claim would be counted like an impediment against claim-enforcing and would have an effect upon the running of the period. But in this letter case the Hungarian provisions for suspension are inconvenient.

The balance between interests of both parties is generally threatened by agreements (about) the period of prescription or the cases in which the period would be interrupted or suspend. In this view the issues relating to the freedom of contract and to the opportunity to change (at least) the length of the period by parties’ agreement become more significant.

2.4. The models for the regulation of suspension

The impediment beyond creditor’s control would have an effect on the running of the prescription in different ways. In Roman law the suspension means that the period of prescription extends with the period in which the impediment has existed, we would name as classical suspension. The old Hungarian civil law applied this model, which has been modified by the early Hungarian Civil Code drafts (1900–1928) under the influence of the German dogmatic. In the Codification of the new Hungarian Civil Code the tendency has

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3 For example Loránt Rudolf did only took the policy considerations of explaining the definitions of prescription. See. Rudolf Loránt: Elévülés, KJK, Budapest 1961. p. 111.
also appeared that the classical Roman model for suspension is to be applicable for simplifying the rule of suspension. But this proposal of the CC Conception has not been supported by the representative either of the legal practice or of the science. Finally the model of the operative CC remained to be applied, which is not a suspension in a proper sense, rather an alternative solution for the extension of the period. We can name it the model of elongation, but it may be better to use the expression: the delay of completion of the prescription. With this model can be found fault in numbers of cases, but surveying the international model regulations, this model seems to be the best as general model, nevertheless lots of segments are to be revised (see as follows) in particular cases. Moreover, the European law systems combine also the classical model of suspension with certain protective period (particularly when the impediment occurs close to the end of the period of prescription) with which the original period can be extended. This may be named as qualified suspension. According to the following model, the court has to take into considerations the circumstances whether they trigger this protective period or not, so this model may be named as qualified suspension depending on court deliberation.

In the most cases the differentiation between these models is merely dogmatically. But significant problems spring up from the nature of the protective period: it is a period of prescription or some preclusive term? this period can be suspended or interrupted?

3. Survey of the international law regulations

In the viewpoint of prescription, it is worth taking into consideration some international uniform law systems. What was chosen are the Draft Common Frame of Reference¹ (furthermore referred to as DCFR) and the Uncitral Convention on the Limitation Period in the International Sale of Goods² (furthermore referred to as Limitation Convention). If the DCFR ever gained some mandatory force, its provisions would have to be considered also in the European contractual relationships and these provisions would “overwrite” the Hungarian civil law regulations. To prevent the problems arising from the collision of the national and the European legal regulation, it seems important to consider the provisions of DCFR during the recodification of Hungarian Civil Code. The CISG³ Convention adopted by UNCITRAL, to which the Convention on the Limitation Period was added, already has binding force for the cross-border contracts of the Hungarian parties because Hungary is a contracting party to this Convention.

According to all the above mentioned facts, let us overview the familiar and the different provisions of the DCFR and the CISG Limitation Convention along the duration, the commencement, the cessation, the extension, and the renewal of the period.

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3.1. Differences in terminology

As it is stressed at the very beginning, there is no common terminology for the legal institutions of prescription. On the one hand, the Limitation Convention uses “period of limitation” for asserting claims, on the other hand the DCFR determines “period of prescription” for asserting the rights.

3.2. The duration and the commencement of the period

The DCFR sets the period in three years while the Limitation Convention in four. Both of these periods are shorter than the Hungarian one. Under the DCFR the general period begins to run when the debtor has to affect performance or, in the case of a right to damages, from the time of the act which gives rise to the right. According to the Limitation Convention, “the limitation period shall commence on the date of which the claim accrues” but it explains further when the claim accrues: in case of breach of contract, when breach occurs, in case of defect or other lack of conformity, the claim accrues on the date which the goods are actually handed over to, or its acceptance is refused by the buyer. The DCFR and the Limitation Convention are the same in that provisions concerning the period of limitation commences in case of performance by instalment, on the date on which the particular breach occurs, in the case of each separate instalment.

In European regimes the period of prescription is generally a short period: 3, 4 or 5 years. The legal system intends to simplify their prescription regime, and bar the particular regulations for specific claims, which provide longer periods (10, 20 30 years) or shorter in other cases. General tendency in European regime is the spread of the criterion of discoverability (knowledge), which means the period does not begin to run until the creditor is not be able to assert his claim (without his fault), because he does not know about it (or reasonably it is not expectable from him). This regulation was appeared also in the Hungarian system, relating to the claims concerning product liability. The Product Liability Directive of the European Union, on the other hand, provides that the three year period has to begin to run from the day ‘on which the plaintiff became aware, or should reasonably have become aware’, of the damage, the defect and the identity of the producer. Nevertheless neither the Limitation Convention, nor the DCFR the test of discoverability apply as date of the commencement of prescription, it is handled as a case of suspension.

The DCFR allows the parties to modify the period and the requirements for prescription. Thus, they can shorten or lengthen the period between the legal barriers provided the period may not be reduced to less than one or extended to more than 30 years.

The Limitation Convention generally excludes the modification (shortening or lengthening) of the period of limitation but it allows the debtor to lengthen the period at any time during the running of the limitation period. The new Hungarian CC cancels the

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7 DCFR Art. III-7: 203 para. (1)
8 Limitation Convention Art 9. para 1.
10 See DCFR Art. III-7: 601.
11 Limitation Convention Art. 22
barrier of the modification of the period, but forbids the waiver of the exception of prescription.

Contrary to the Hungarian Civil Code, the DCFR and the Limitation Conventions set a period of maximum length for the prescription (long-stop period). This general limit is 10 years pursuant to the Limitation Convention and to DCFR as well. DCFR sets an exception to the rights to damages for personal injuries which means 32 years for prescription.

As the Hungarian Code does not recognised the knowledge as a requirement of commencement (such a subjective criterion) thus it does not apply a long-stop period (such as a period running from an objective fact). Nevertheless it is worth to deliberate the necessity of this terminal period, because it would be useful in the cases where the period begins to run from subjective fact. During the recodification of new CC the double periods concerning claims arising from deficient performance were cancelled, moreover, the objective period for the the claim concerning product liability was changed into preclusive term. In these cases it would be a plausible solution to lay on a long-stop period.

3.3. The extension and the cessation of the duration of the period of limitation

3.3.1. Suspension in case of ignorance

Inspite of the fact that numbers of European legal system recognize the above mentioned discoverability as the subjective criterion of the commencement of the prescription, the DCFR applies this rule not for the commencement, but for the suspension of the prescription.

It is worth taking into consideration that according to the provision of DCFR, the running of the period is suspended in case of ignorance. "The running of the period of prescription is suspended as long as the creditor does not know of, and could not reasonably be expected to know of: (a) the identity of the debtor; or (b) the facts giving rise to the right including, in the case of a right to damages, the type of damage." The operative Hungarian regulation and the Limitation Convention do not regulate this case of the suspension in a separate provision. The case of ignorance is taken into account among the cases of the excusable impediments also known as preventing circumstances. The new Code sets a rule pursuant to which the period is suspended as long as the obligor is able to refuse to perform.

3.3.2. The judicial proceedings

The DCFR determines the following cases of the extension: suspension and postponement. The Limitation Convention set events which cause extension. Contrary to the Hungarian operative and new regulations, both model laws set the events in which case the period can be extended. At first sight we can perceive not only the differences in wording between DCFR, Limitation Convention and the Hungarian rules, but that DCFR regards the judicial proceedings as events affecting the running of the period of limitation in a different way from the Hungarian Civil Code. According to the DCFR the legal act as initializing the proceedings aiming to assert the claims merely suspends the passing of the period, and the

12 DCFR Art. III-7: 301.
further running of the period depends on the “success” of the judicial proceedings. If the proceedings end with a decision which has the effect of res judicata, the suspension ceases. 13 Contrary to this rule, the Limitation Convention regards the judicial proceedings as an event which ceases the limitation period. “The limitation period shall cease to run when the creditor performs any act which, under the law of the court where the proceedings are instituted, is recognized as commencing judicial proceedings against the debtor or as asserting his claim in such proceedings already instituted against the debtor, for the purpose of obtaining satisfaction or recognition of his claim.” 14

According to the DCFR the suspension of prescription does occur in the case when the judicial proceedings are started and it lasts until a decision which has the effect of res judicata. If the court cannot deliver a decision on the merits of the case and if that the period has less than six month to run, the period of prescription does not expire before six months have passed after the time when the proceedings ended.

It is worth taking into consideration here that DCFR does not express the consequences in the case if the original period of limitation has already expired before the judicial proceedings ended. Whether the limitation period can be suspended if the impediment event becomes extinct after the expiration of the original limitation period is a question to be answered by the judicial practice if the DCFR shall ever become applicable.

According to the Limitation Convention if the judicial proceedings ended without decision on the merits, “it shall be deemed to have continued to run” (it did not cease) 15 . Thus, there is a case when the suspension came from the situation of cessation: “If, at the time such legal proceedings ended, the limitation period has expired or has less than one year to run, the creditor shall be entitled to a period of one year from the date on which the legal proceedings ended.”

Comparing to the Hungarian regulation, the operative and the new provisions of Hungarian Civil Code regard the commencement of the judicial proceedings as an event which interrupts, i.e. ceases the period of limitation. A new period of limitation begins to run also in the case if the proceedings ended without decision binding on the merits. However, the new period shall begin to run only if a decision is delivered and has the effect of res judicata.

But not much before the enactment of the new Hungarian Civil Code, the mentioned provision was modified: bringing an action against the debtor interrupts the period provided that the court have brought a decision on the merits in the judicial proceedings. The only interpretation of this provision means that any of the claim asserting before court does not interrupts the prescription, only if the court brings a decision on the merits. According to this rule in all of the other cases, bringing an action neither interrupts (nor suspends) the prescription.

13 DCFR, Art. III-302. [Suspension in case of judicial and other proceedings] (1) “The running of the period of prescription is suspended from the time when judicial proceedings to assert the right are begun” (2) Suspension lasts until a decision has been made which has the effect of res judicata, or until the case has been otherwise disposed of. Where the proceedings end within the last six month of the prescription period without a decision on the merits, the period of prescription does not expire before six month have passed after the time when the proceedings ended.
14 Limitation Convention Art. 13
15 Limitation Convention Art. 17, par. 1.
3.3.3. Impediment beyond the creditor’s control and other circumstances

The Limitation Convention declares other case of the extension. “Where, as a result of a circumstance which is beyond the control of the creditor and which he could neither avoid nor overcome, the creditor has been prevented from causing the limitation period to cease to run, the limitation period shall be extended so as not to expire before the expiration of one year from the date on which the relevant circumstance ceased to exist.” In this provision it is worth examining whether the limitation period can be extended due to the relevant circumstance if the circumstance ceases to exist on the date when the period of limitation has already expired.

“When a circumstance as defined in Art. 21 occurs, the period keeps on running. However, it does not expire at the time at which it would normally expire, unless that time is more than one year after the relevant circumstance ceased to exist. The end of that year marks the earliest possible end of the period.” Thus, if, at the time the preventing circumstance ceased to exist, the limitation period had expired or had less than one year to run, the creditor is given one year from the date on which the preventing circumstance ceased to exist.” The Limitation Convention does not explain which circumstances cause the period to extend, but according to the Commentary these are the following: a state of war or the interruption of communications; the death or incapacity of the debtor where an administrator of the debtor's assets has not yet been appointed; the debtor's misstatement or concealment of his identity or address which prevents the creditor from instituting legal proceedings; fraudulent concealment by the debtor of defects in the goods.

Due to these circumstances, the DCFR determines a case for suspension of the period of prescription and a lot of cases for postponement of expiry. “The running of the period of prescription is suspended as long as the creditor is prevented from pursuing proceedings to assert the right by an impediment which is beyond the creditor’s control and which the creditor could not reasonably have been expected to avoid or overcome.” This rule is only relevant if the impediment occurs or subsists within the last six month of the period. But these circumstances do not automatically suspend the period, only in the case if, due to these impediments, it is unreasonable to expect to the creditor to take proceedings to assert the right. This suspension lasts six months after the impediment ceases to exist.

The DCFR, contrary to the Limitation Convention, does name other circumstances in particular headings for postponement: Postponement of expiry in case of negotiations, Postponement of expiry in case of incapacity, Postponement of expiry: deceased’s

16 Limitation Convention Art 21.
19 I. Commentary by Professor Kazuaki SÔNO op. cit.
20 DCFR Art. III-7: 304.
21 DCFR Art. III-7: 305.
In these cases the period of prescription does not expire before one year has passed after these circumstances come to an end.

The DCFR applies the regular forms of the suspension with and without defensive period. In the simple case of suspension the running of the period is suspended until the impediment does not cease, and then, it continues to run. In the special cases of suspension (postponement) there is a protective term also built in the original period, thus the duration of the period depends on the impediment fact, but it lasts six months or one year after the impediment ceases to exist. All these rules of the extension of prescription period is closely related to the classical suspension. But the Limitation Convention rather diverges from the classical suspension, because it is not the original period which is suspended, but the creditor has got a protective term of one year despite of that the period of prescription has already ceased to exit (or it is less than one year). In our opinion this latter regulation corresponds to the Hungarian one, and can be qualified as the delay of completion of prescription.

3.4. The renewal (cessation) of the period

Briefly we have to survey the facts which interrupt the period and the period shall begin to run again. These cases are in close relation with numbers of the suspending fact, for example the initiation judicial proceedings.

The DCFR use the term “enewal” instead of the terminology of Limitation Convention (cessation of the period), but both apply similar rules for the interrupting events. It must be noticed that both make no mention about the written notice for performance as interrupting event. The Limitation Convention, however, sets that “Where the creditor performs, in the State in which the debtor has his place of business and before the expiration of the limitation period, any act, […], which under the law of that State has the effect of recommencing a limitation period, a new limitation period of four years shall commence on the date prescribed by that law.” Thus, pursuant to this provision, the provision of the Hungarian Civil Code is applicable, and the written notice for performance interrupts the period, too.

The DCFR and the Limitation Convention regulate the acknowledgement of debtor as an event which interrupts the running the period and renews it. Pursuant the Limitation Convention: “Where the debtor, before the expiration of the limitation period, acknowledges in writing his obligation to the creditor, a new limitation period of four years shall commence to run from the date of such acknowledgement.” According to the DCFR: “If the debtor acknowledges the right, vis-à-vis the creditor, by part payment, payment of interest, giving of security, or in any other manner, a new period of prescription begins to run.” But the Limitation Convention also adds other acts by the debtor which are deemed as acknowledgement: payment of interest or partial performance of an obligation by the debtor.

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22 DCFR Art. III-7: 306.
23 Limitation Convention Art. 19
24 Limitation Convention Art. 20
25 DCFR Art. III-7: 401
Taking into consideration the similar manner of the regulation, it is proposed that these acts of acknowledgement shall be incorporated to the new Hungarian Civil Code, too.

4. Suspension of prescription in the operative CC and the new CC. De lege lata.

The new CC in section titled “Suspension of period” declares that “If the obligee is unable to enforce a claim for an excusable reason, the period of prescription is suspended. The period of prescription is also suspended as long as the obligor is entitled to refuse performance.”

The effect of the suspension does not vary or does not depend on the different circumstances. All of the impediments lead to the same suspension. According to the actual and to the new CC the suspension means: if the creditor is not able to enforce his claim against the debtor, because of an impediment, when the impediment ceases, the creditor is able to enforce his claim in one year (three month) period, in spite of that the original period of prescription would have been elapsed or the remaining time were shorter than one year or three month. Taken into consideration of the regulation of other law system, this rule can not be handled by a classical one.

The new CC does not contain the particular rule whereas “this provision shall also be applied if the obligee has granted a respite for performance after that period of performance had passed”. This change can be explain so that the postponement is also meant an excusable reason for the obligee being not able to enforce his claim, therefore the naming of this case is not necessary. But we can argue so that in the judicial practice we can hardly find law cases, when the petitioner did assign this act as the reason for “suspension” of period. Probably, respite may appear either with written notice for performance of a claim, or with the amendment of a claim by agreement (inclusive of accord), or with the acknowledgment of a debt by the obligor, which facts interrupt the prescription and renew the period, thus, these interrupting events serve more the interests of the obligee.

The new CC does not enumerate those situations which “suspend” the period of prescription neither in taxative (exhaustive) list, nor in any examples – contrary to the early drafts of Hungarian civil code (in the time of the turn of the 19th and 20th centuries and later). Thus the new CC is consistent when it does not assign the respite for performance after expiration as suspension event.

Nevertheless, the respite for performance needs further examinations. In the case when due to any other excusable reason the obligee is unable to enforce a claim, the claim shall remain enforceable within one year from the cessation of the hindrance or, in respect of a period of limitation of one year or less, within three months, even if the period of limitation has already lapsed or there is less than one year or less than three months, respectively, remaining therein. Thus this rule is relevant only in the case when this excusable hindrance appears close to the end of the period of limitation. In consideration of the respite for performance, if the period of prescription begins to run from this new deadline for performance, the general rule for “suspension” can not be applied in the case of 5 year period of limitation. Giving the correct purport of this rule is also problematic. If the period of limitation begins to run from the new deadline for performance, this is the commencement of the period, i.e. the period is simply lengthened, not “suspended”

26 New CC, Art. 6: 24, para. (1)
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(pursuant to the legal rule for suspension). Considering that the obligee gives the respite for performance after the expiration of the original deadline for performance, there is any excusable hindrance in the beginning of period of prescription, since the rule of suspension can be applied.

In Europe the suspension generally means that the running of the period is suspended, and if the circumstance did not impeded the creditor for exercising his right no longer, the period continue to run. It makes sense of this rule of suspension only when the occurrence of the concrete impediment would reason the extension of the prescription at any time during the period. But this regulation can be criticised because that all of the impediment beyond of the creditor’s control may extend the period.

But in certain cases or for certain claims there is another solution for the extension of the period beside the suspension and the postponement, this is the delay of completion of prescription. The Hungarian regulation recognizes only the delay of completion of prescription. When the impediment is ceased, and provided that there is relatively short period remaining from the prescription, the creditor gains a new period for enforcing his right. this period is not the original period of prescription. Thus we need to examine the nature this period also.

The new CC refines the legal nature of the new period (one year, three month) opened up by the cessation of the hindrance. According to the Proposal this period cannot be suspended, but it can be interrupted applying the provisions on interruption of period of limitation with the difference that the new period of limitation commenced at the time of interruption is one year or three month.

The recent judicial practice does not share this opinion. Pursuant to the opinion stated in opinion No. 1 of 2004 (on the interpretation of questions about deficient performance) adopted by Civil Law Chamber of the Supreme Court (Curia)\(^\text{27}\), and to decisions on individual cases, and decisions on principles, from the Curia’s viewpoint this new period has no prescription characteristics, therefore it cannot be interrupted or suspended. In this period the obligee must enforce his claim in court action in this period. We shall pay attention to the fact, that this period is not a preclusive term, in this way the court may not take the lapse of the period ex officio into consideration.

In our opinion the text of the new Code needs to be refined here. On the one hand, regulation should assign that the interruption refers only to that periods which begin to run after the lapsing of the original period of limitation. On the other hand only the enforcement in litigation could be applied for interrupting the period. Here we must point out the important change – which mentioned above – that the Proposal extinguished the double period (prescription and preclusive term) for enforcing warrant claims flowing from deficient performance, cancelling the preclusive term.

The judicial practice interpreting the operative provisions has ordered to apply the rule of suspension of prescription for the suspension of prescription against the guarantee. According to the uniformity decision No. 1 of 2007 the prescription against the guarantor is suspended, until the claim against the principal debtor is not proved to become irrecoverable (inexecutable), because the guarantor can bring an objection until this. Which objection is an impediment beyond creditor’s control, the ‘secondary’ debtor may reject to fulfil the performance.

\(^{27}\) The official name for Supreme Court is Curia from 1st of January 2012.
5. Conclusions

The new Civil Code brings significant amendments in the field of the prescription. A survey of the new provisions, the achievements of the judicial practice and certain model laws on prescription demonstrates that there are still questions which need to be answered before the new Civil Code comes into force.

In our opinion the regulation of the suspension of prescription in the existing and new Civil Code is in general suitable and represents a well rooted judicial practice, it is not necessary to differ from it. On the other hand we recommend the complementation of the regulation regarding suspension. It is a welcome fact, that the new code restricts the assertion of claims deadline regarding reasons suspending prescription, and excludes the suspension of this period. But it is clearly needed to be stated that this special regulation can apply for strictly the deadline open or still existing, following the expiry of the original prescription period.

The disclosed deficiencies and inflexibility of the regulation model implicates that it is not a disregardable idea to use advantageous regulations of other legislation, or their segments. Both for the postponement for fulfilment and the prescription of the liability guarantee as special questions, we suggest as de lege ferenda, special regulations named as intermission.

“6: 24. § (4) Against a third party (guarantee) who has to hold himself readiness, unless the debtor does not pay, the period of prescription does not begin to run until the resultlessness of the execution against the debtor has been stated (intermission).

(5) The period of prescription is also suspended if the party has given a postponement of fulfilment.

(6) In cases defined in point (4) and (5) where the intermission ended the original period continues to run, extended with the period of intermission, but the period of prescription cannot expiry less than one year running from the end of the intermission.”