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Prescription in Iranian law
A dilemma about substantive or procedural concept

Majid Ghamami; Associate Professor, Department of Private Law, University of Tehran Tehran, Iran. mghamami@ut.ac.ir

Abstract

The concept of prescription, or limitation of time for initiating legal proceedings, was first addressed in The Statute of Limitations for Movable Properties, approved on July 2, 1929 It was later articulated in a more general language in Iran's 1939 Code of Civil Procedure (CCP). Article 731 defined prescription as a period after which courts would no longer hear claims, while Article 737 established a ten-year limitation for property-related and debt claims, unless otherwise provided by specific laws. This legal framework remained valid until 1983, when the Guardian Council—responsible for ensuring the compatibility of legislation with Islamic jurisprudence—declared the provisions on prescription contrary to Islamic law and therefore null and void. Consequently, Iranian courts ceased to recognize prescription as a defense, and the new CCP enacted in 2000 omitted any reference to it.

Despite the general invalidation of prescription under civil law, certain specific provisions in other legal codes—such as the Commercial Code, the Insurance Code, and the Islamic Criminal Code—have remained operative. Furthermore, in 1992 and 2008, the Guardian Council clarified that its 1983 decision did not apply to claims brought by foreign nationals against Iranian citizens if

the claimant's national legal system recognized prescription. In such cases, the abrogated provisions of the 1939 CCP would still apply, thus preserving the procedural nature of prescription in cross-border disputes.

Under the 1939 CCP, prescription was regarded not as a rule extinguishing substantive rights but as a procedural bar preventing the enforcement of such rights after a certain period. Accordingly, Iranian law has consistently treated prescription as governed by the lex fori—the law of the forum—rather than the lex causae, which regulates substantive issues. The 2000 CCP maintained this approach, as evidenced by judicial practice and subsequent legislation.

Article 11 of the 2014 Islamic Criminal Code further supports this interpretation by providing that its provisions on prescription apply immediately, even to offences committed before its adoption. This reflects the Iranian legal principle that only procedural, not substantive, rules have retroactive effect. Hence, prescription in Iranian law remains fundamentally procedural, influencing the admissibility and timing of actions without extinguishing underlying rights. The historical evolution and nuanced interpretation of this doctrine illustrate Iran's distinctive synthesis of civil law traditions and Islamic jurisprudence in shaping its procedural framework.

Keywords: Civil Procedure Code (CCP), Iranian Law, Procedural Law, Prescription, Statute of Limitation

The Iranian substantive law on prescription

1-1. The rules on prescription under the 1939 Code of Civil Procedure

Prescription or statute of time limitation for bringing lawsuits was previously dealt with in the Iranian Code of Civil Procedure enacted in 1939. the history of this institution refers back to The Statute of Limitations for Movable Properties, approved on July 2, 1929.

Article 731 of the 1939 CCP defined prescription as a length of time, after the expiry of which no cognizance would be taken of a claim. There were a number of articles in the 1939 CCP that addressed prescription with respect to different claims. Article 737 provided that in all claims regarding property (either movable or immovable), debts, interests and products, liability etc., the statute of limitation was ten years unless any specific law provided otherwise.

1.2. The abolition of the rules on prescription

In response to a question from the then High Judicial Council[1] about the validity of the provisions of the 1939 CCP regarding prescription, the Iranian Guardian Council[2] opined in February 1982 that "Articles 731 et seq. of the 1939 CCP, which provide that a claim shall not be heard after the expiry of a certain period of time (such as ten years, twenty years, three years etc.) are in conflict with Sharia".[3]

1.3. Exception: the rules on prescription apply against foreigners claiming against Iranian nationals

Around ten years later, the President then in office put a second question to the Guardian Council. In summary, the question was as follows: "Foreign entities which were contracting with Iranian state-owned companies have repeatedly invoked the 1982 opinion of the Guardian Council and brought old claims against Iranians before the Iranian courts. Now can we believe that the issue of non-compliance of the Statute of Limitation with Sharia is only for Iranians and that foreigners cannot benefit from this Islamic rule, like the issue of interest where the Guardian Council in a similar situation has opined that Iranians can

1 This was the body formerly responsible for administering judicial power under the Constitution, now replaced by the Chief of the Judicial Power.

2 The Iranian Guardian Council is a constitutional body established to monitor legislation in order to ensure that all laws passed by the Majlis are compatible with or do not derogate from Sharia. Individuals may not submit questions to the Guardian Council.

3 It is worth exploring the basis of the Guardian Council's opinion in the Islamic Jurisprudence. In the Islamic principles of legal interpretation there is a principle named "Istishab". The principle provides that once a legally protected right is proved to have been created at a certain time, and then there is doubt at a later time whether the right in question still exists, the existence of the right shall be the dominant assumption. It appears that the Guardian Council opined as to the existence of the right to claim regardless of elapsed time, based on the principle of Istishab.

claim interest from the foreigners?". The Guardian Council replied in August 1991 that: "The generality of the Council's opinion of February 1982 is not referring to the claims of foreign entities or individuals in whose country's legal system the Statute of Limitation has been accepted".[1]

In 2000, a new Civil Procedure Code was promulgated (the 2000 CPC), which included no provision on prescription.

In August 2005, the Guardian Council, in response to a question from the Minister of Justice then in office, reaffirmed its previous opinion of 1991.

One may conclude from the above that Articles 371 et seq. of the 1939 CCP are still in force towards foreigners[2] who bring lawsuits against Iranians before the Iranian courts, despite the fact that the 2000 CCP does not include any provisions regarding prescription.

The opinion of the Guardian Council is to be construed restrictively. Therefore, the abolished rules on prescription are only available to Iranian defendants in cases brought against them by foreign claimants. A foreign defendant may not benefit from the exception to prescription provided for by the Guardian Council.

1.4. Other exceptions to the principle of non-prescription

The current Iranian law framework also includes several explicit exceptions to the principle of non-prescription. The Legal Department of Iran Judiciary issued in that respect Opinion N° 7/1969 of 25 June 2008, highlighting that even though the general rules of prescription of the CCP have been abolished, specific statutes of limitation provided under specific laws are still in force.

The following are the most important provisions on prescription which remain in force:

Article 105 of the 2014 Islamic Criminal Code provides that criminal proceedings will be dismissed if they are not initiated within a specific period of time (depending on the offence) from the date of the offence.

Article 106 of the same law provides that with regard to offences for which the commencement of criminal proceedings is subject to a formal complaint of the victim, if the victim does not complain within one year from the date on which it was informed of the offence, its possibility to initiate criminal proceedings is extinguished.

In the Commercial Code (1933), there are specific provisions on prescrip-

1 This opinion is based on the Islamic Jurisprudence rule of “Elzam”. Pursuant to this rule, a Moslem can invoke the governing rules of Non-Moslems in a lawsuit even if the rules in question conflict with Sharia. The rule of Elzam justifies the opinions of the Guardian Council regarding the exclusion of foreigners from benefitting from the lack of prescription, as well as the possibility for Iranians to receive interest payment from foreigners.

2 Iranian law applies the real seat theory: A company has its seat in the country where the company is effectively managed and/or operated, which may not coincide with the place of its incorporation (see Article 590 of the Commercial Code and Article 1002 of the Civil Code).

tion regarding commercial notes and documents (promissory notes, drafts and checks). Article 318 of the Commercial Code provides that claims for drafts, promissory notes and cheques issued by merchants or for the purpose of commercial activities, shall be filed within five years of the date on which the protest has been served. Upon expiry of the five-year prescription period, the claims shall not be heard in a commercial lawsuit. Article 319 of the same law provides that if the bearer of a draft, promissory note or cheque has not filed the claim within the time limitation of five years, then he shall be entitled to claim the amount of such notes from the person who has been enriched unjustly before expiry of the statute of limitation of movables. These articles are still in force, and the courts apply the provisions thereof as lex specialis. (Shams, 2012, Vol.3, p.14) However, the fact is there is no statute of limitation for movables in the 2000 CCP.[1]

Iranian conflicts of laws rules: prescription is a procedural issue

Iranian law considers prescription as a procedural rule, as prescription does not extinguish a substantive right, but it merely bars the remedy by imposing a procedural limit on the institution of action to enforce a right.

Article 731 of the 1939 CCP provided that: "The Statute of Limitation defines a length of time, upon expiry thereof no cognizance will be taken of a claim". The drafters of the law and other eminent Iranian scholars have highlighted that this Article was drafted in a way to avoid the implication of possessive prescription (prescription that creates an ownership right or causes a right to cease to exist) as provided in French Civil Code. (Matin Daftari, 1939)

Several Articles in the 1939 CCP have been considered as also evidencing that prescription is of procedural character in Iranian law:[2]

Article 732 of the 1939 CCP provided that: "The court will be authorized to turn down a claim on the grounds of the Statute of Limitation when it has been pleaded expressly".

Article 735 of the 1939 CCP provided that: "Although the Statute of Limitation extinguishes the right to claim, the obligor cannot claim for restitution of what he has already performed voluntarily, based on Statute of Limitation" (Shahidi, 2012, p.25).

In his distinguished work "The general theory of obligations", the late Professor Katouzian, a famous Iranian professor, highlighted that on the basis of the above legislative texts the effects of prescription are as follows: a) the debt which is subject to the Statute of Limitation remains on the obligor as a due un-

1 Please note that the Commercial Code does not incorporate other provisions on prescription.

2 [Please note however, that such provisions are also common to national laws, such as French law, which consider prescription as substantive from a viewpoint of conflict of laws.]

dertaking which cannot however be granted by a court if the obligor pleads the Statute of Limitation; and b) the extinction of the right to claim such debt is not absolute but is dependent upon the obligor's decision whether or not to plead the Statute of Limitation (Katouzian, 2007, p. 552).

In a milestone case of 1977, the State Supreme Court revoked the judgment of a Province Court (appeal court) which had confirmed the decision of a State court setting aside an arbitral award. The appeal court had, amongst other grounds, based its judgment on the fact that the arbitrators had not taken in account, ex officio, the fact that the claim was prescribed. The Supreme Court distinguished between laws creating substantive rights, which are of mandatory nature, are binding on arbitrators and may be invoked ex officio, and procedural rules such as the rules on prescription, which may not be invoked ex officio (Yavari, 1979). According to the Supreme Court decision:

> *The other reasoning of the court that under the assumption of existence of a right for the appellant,[1] the case became subject to the statute of limitation, the arbitrator's award was issued regardless of this fact and is a contrary to the right-creating laws, is incorrect, because the statute of limitation is among the laws which invalidate the right of instituting legal proceedings, not the laws which create such right. According to the aforementioned, the appealed judgment is incorrect and is rejected unanimously.*

In the light of the procedural nature of prescription under Iranian substantive law, Iranian conflict of law rules has called for the application of the lex fori to matters of prescription.

The amendment of the CCP in 2000 may not be considered as bringing about a change in the procedural nature of prescription. The fact that prescription is still procedural in nature can be evidenced by the following:

For claims against Iranians brought by foreign nationals whose national law accepts the principle of prescription, the Iranian judge will not apply the foreign law (as the judge would do if prescription was a substantive matter, regulated by the lex causae, the foreign law applicable to the claim), but the abrogated provisions of Iranian law on prescription, the lex fori.

Article 11 of the 2014 Islamic Criminal Code, the transitional provision of that law, provides that the Articles of the law regarding prescription are of immediate effect (i.e. applying to offences committed prior to the adoption of the law).[2] Therefore, the time limitation is a procedural issue, as it is an established

1 The appeal court had principally based its decision that such right did not exist, and alternatively that the right was prescribed.

2 The Article provides as follows: "The following regulations shall immediately apply to offences committed prior to the adoption of this law…) regulation of prescription".

principle in Iranian law from the viewpoint of transitional law only procedural (but not substantive) regulations shall have a retroactive effect.

Conclusion:

Given the above brief review of the Iranian law position regarding the Statute of Limitation, the conclusion can be summarized as follows:

There is no general law providing for a Statute of Limitation for claims between Iranians in the Civil Procedure Code of 2000.

There are some specific statutes of limitation in specific but important laws.

Iranians can enjoy the protection of Articles 371 et seq. of the 1939 CCP (on prescription), in the event that foreign nationals bring against them claims in proceedings before the Iranian courts.

Prescription is a procedural issue and from the point of view of Iranian private international law is subject to the law of the forum.

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