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REPORT ON THE WORDS "OR UPON THE OCCURRENCE OF AN EVENT"
IN ARTICLE 1 (3) OF THE PRELIMINARY DRAFT: MEMORANDUM OF
DR. LUDVIK KOPAC (CZECHOSLOVAKIA)

My hesitation with respect to deleting the words "or upon the occurrence of an event" from article 1 (3) of the preliminary draft of the uniform law on prescription (limitation) may be summed up as follows:

The purpose of article 1 (3) is to put the borderline between the time-limits, which should be outside of the scope of the unified rules, and limitation, which should be covered by the uniform law.

Article 1 (3) deals with two aspects which define time-limits. Firstly, the consequences of time-limits should be the lack of acquisition or continuance of right. Secondly, the legal fact which is decisive for acquisition or continuance of a right is either "giving notice by one party", or "performance of an act other than the exercising of this right within a certain period of time".

It is necessary to take into consideration that both the conditions imposed for giving rise to time-limits and prescription and the legal consequences which follow therefrom, are, as for the particulars, regulated differently in various legal systems; and they are expressed in various forms of legal terminology.

On the basis of comparative studies the difference between time-limits and prescription may be summed up as follows:

(a) if a time-limit is involved the right becomes directly extinct or does not arise at all while in the case of prescription the only fact is that the right cannot be enforced in legal proceedings or otherwise exercised;

(b) in case of a time-limit the court of law or arbitrator is bound to take it into consideration on its own initiative, whereas prescription is taken into consideration only in the case where the obliged person raises the issue;

(c) the period of a time-limit runs uninterruptedly, whereas the period of prescription may be interrupted or suspended;

(d) prescription takes effect if an action has not been brought or the right has not been otherwise exercised within the fixed term whereas the time-limit may be based on other grounds.

In most cases a time-limit is connected with a failure to perform a legal act within a certain period, but may be invoked by other legal events. The rules of legal systems are not uniform in this respect.

Therefore, the uniform rules should define the notion of time-limits precisely so that it may be clear which municipal rules contained in individual legal systems are not being supplanted by the uniform rules.

The most appropriate solution in defining time-limits would be to use only one of the above-mentioned criteria, namely the one under (a) since a combination of them may cause gaps in the rules. In the definition of article 1 (3) this criterion and the one mentioned under (d) are combined. In order to prevent the possibility of such a gap in the uniform rules, and only as a compromise, I proposed that the definition of time-limits should cover not only "giving notice" and "an act other than the exercising of the right" but also the cases where the arising of a right is prevented or continuance of it is excluded by other legal events.

The proposed amendment "or upon the occurrence of an event" is concentrated upon the difference between time-limit and prescription only with respect to the existence of the right as stipulated under (a).

I would like to stress that article 1 (3) in its present form is not convenient in other aspects as well, and a rewording is advisable.

The terms "upon performance of an act other than exercising of this right within a certain period of time" indicate that the cases where the acquisition or continuance of a right is dependent on bringing action (which is covered by the term "the exercising of the right") should be within the scope of the uniform rules. In many countries these cases are considered to be within the sphere of time-limits, and its legal consequences (in particular the length of period) are interlinked with other related rules. The uniform law therefore should not cover such cases. There may even be a contradiction in the draft. The words "giving notice" often may also be "the exercising of a right" (e.g. giving notice of the termination of a contract in the case of its breach).

To repeat: The best solution, in my opinion, is to limit the definition of time-limit only on the criterion mentioned under (a). The proposed amendment "or occurrence of another legal event within a certain period of time" was to achieve the same purpose on the basis of wording accepted by the Working Group. If this amendment is acceptable for the Working Group it should be put at the end of the paragraph 3 of article 1.

I am sure the definition of time-limits and the related definition of prescription is one of the most difficult problems of the legislative work on the uniform law on prescription, because of the need to take into consideration differing concepts of the various legal systems.
