

## PROVISIONS ON CIVIL LAW PRESCRIPTION: A COMPARATIVE STUDY

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### Abstract

We see two trends in prescription periods over the past 100 years: (i) a trend toward shorter prescription times, and (ii) a trend toward uniform prescription intervals. While the majority of rights in more and more nations are subject to a prescription period of two to six years, modern European legal systems still recognize a wide range of periods, ranging from six months to thirty years. Three years is the time frame stipulated in a significant piece of EU law, and it seems to be becoming more and more regarded as the industry standard. On the other hand, Arab civil codes set a general long prescription period; fifteen-year prescription period. In addition, Arab civil codes numerate several cases where the prescription period can be either two or five years, depending on the categories of individuals concerned. This article will proceed in two sections. Section One provides EU member states' general provisions for prescription; duration, commencement, and reasons for suspension. Section Two examines similar areas in specific Arab countries' legislation. *Keywords: Civil code, Liberative prescription, Acquisitive prescription, Suspension - Commencement*

### Introduction

The idea of prescription dates back to the early Roman Empire, when there was a need for a mechanism whereby provincial land, not gained by usucapio (constant possession over a period of two years), could nonetheless be "owned" after possession over a longer term, ranging from 10 to 20 years. Long-term prescription once just provided the possessor with a legal shield against claims regarding the land. Later, when it started to acquire, only good faith and title were needed (even if acquired from a nonowner).

The French Revolution advocates' assertion that the source of law is the current generation was refuted by Edmund Burke by referring to prescription as the foundation of law<sup>1</sup>. In compliance with Burke, Sanhuri considers that obligations are to law what the backbone is to the human body.<sup>2</sup>

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<sup>1</sup> Britannica, the Editors of Encyclopaedia. "prescription". Encyclopedia Britannica, 7 Mar. 2023, <https://www.britannica.com/topic/prescription-property-law>. Accessed 19 March 2023.

<sup>2</sup> See Abdel-Razzaq Al-Sanhuri, *The Concise Interpretation of the Civil Code*, Vol. I, 38 [1966] (عبد الرزاق السنهوري- الوجيز في شرح القانون المدني , الجزء الأول: نظرية الالتزام بوجه عام )

Initially, people are not bound by any obligations. Contracts, torts, unjustified enrichment, and the law are all sources of obligations.<sup>3</sup> The debtor is returned to his initial state of freedom from obligation once he completes his duty. However, there are some circumstances in which a duty can be discharged. This might be the case due to novation, release, subrogation, compensation, confusion, or prescription. The phrase "prescription" in the Articles refers to the legal impact of time passing on a right. The time frame at which a prescription expires is referred to as the "period of prescription." Prescription has traditionally been split into two categories: liberative or negative prescription, which is a way to resist a claim by the claimant's inaction over a predetermined period of time, and acquisitive or positive prescription, which is a way to acquire ownership through possession for a period of time.<sup>4</sup> A third type of prescription, called a prescription for nonuse, might exist.<sup>5</sup>

Civil law jurisdictions generally regard liberative prescription as a substantive issue. On the other hand, the common law view is that liberative prescription is a procedural issue because it affects solely the nature of the remedy to be afforded. Lipstein has noted that prescription in all modern European legal systems contains elements both of substantive and procedural law.<sup>6</sup> In Arab civil codes generally, it may also be considered to have both aspects, except in Sudan, which is influenced by common law.<sup>7</sup>

## **1. General provisions for prescription in the national European laws**

### **1.1. Periods of prescription and commencement**

The efforts to create a single civil code for Europe focus on comparative studies that contrast the civil laws already in use across the continent. Although this may appear to be a workable method of codifying a code, it would still be difficult to converge the major civil laws in Europe, which have numerous distinct, occasionally incompatible rules on civil concerns. Here, we are outlining the various national civil laws on a single civil matter, which is prescription.

Many European legal systems have complex regimes because they combine long general periods with numerous shorter ones for unique circumstances. Although the Greek Civil Code's overall prescription duration is twenty years,<sup>8</sup> the code stipulates substantially shorter periods for numerous significant rights.<sup>9</sup> This can be illustrated in another example:

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<sup>3</sup> See Hossam El-Ehwany & Nader M. Ibrahim, *Introduction to Law* 331 (2004).

<sup>4</sup> See George N. SFEIR, *Modernization of The Law in Arab States: An Investigation into Current Civil Criminal and Constitutional Law in The Arab World* 101-113 (1998).

<sup>5</sup> See Symeon SYMEONIDES, 'One Hundred Footnotes to the New Law of Possession and Acquisitive Prescription', 44 *Louisiana Law Review* 69, 116 (1983).

<sup>6</sup> Bar, C. V., Clive, E., & Schulte-Nölke, H. (2009, April 27). *Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference* (hereinafter: DCFR). P.1166

<sup>7</sup> Zaki Mustafa, *The Common Law in The Sudan: An Account of the Justice, Equity, And Good Conscience Provision* 168 (1971).

<sup>8</sup> See Art. 249.

<sup>9</sup> See Arts. 250, 554, 937.

The new prescription law in France has a 5-year duration,<sup>10</sup> and it also establishes a 20-year stop time. The typical 5-year delay begins on the day the right holder knew or should have known the facts that allow the right to be exercised, whereas this long stop period begins on the day the right arises<sup>11</sup>. Belgium now has a five-year duration and a ten-year deadline for any extra contractual responsibility damages claims.<sup>12</sup>The English limitation<sup>13</sup> recognizes a six-year time limit for tort or "simple contract" proceedings, For personal injury claims, the time limit is generally three years from the date of the injury or the date on which the claimant became aware of the injury. In cases of latent damage, such as damage to property caused by a defective product, the time limit is generally either six years from the date of the damage or three years from the date on which the claimant became aware of the damage, whichever is later.<sup>14</sup>

Since the law of obligations was changed in 2002, the German CC has established a general prescription time of three years, beginning at the end of the year in which the right arises and the creditor knows or ought to know the circumstances giving rise to the right. This general prescription period is limited to a maximum of ten or thirty years. Furthermore, there are special prescription periods of six months, two, five, ten, and thirty years.<sup>15</sup>

In terms of the period of prescription, three types are distinguished by Estonian legislation. First off, there is a three-year general prescription period for rights resulting from transactions. Second, for legal rights such as those resulting from tortious harm or unjust enrichment, prescription periods typically last three years, with a ten-year maximum. The time of prescription for other legal rights to performance is ten years as of the date on which the right ceases to exist.<sup>16</sup> For rights set up by a court ruling, the third type is made up of different prescription periods (for rights to performance under the law of obligations) of six months, a year, five years, ten years, or thirty years, which are often paired with specific rules about when the term starts.<sup>17</sup> Unless otherwise specified by law, the Hungarian prescription of the right to performance is five years. All dependent collateral rights likewise lapse when the primary right does. Even though the parties can agree on a shorter time limit. The parties may prolong the time of limitation by a written agreement, as well.

If an excused reason prevents the creditor from enforcing a right, the right remains enforceable within one year of the moment the excuse is removed, or, in the case of a prescription period of one year or less, after three months.<sup>18</sup>

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<sup>10</sup> (Ccom art. 189)

<sup>11</sup> In some situations, enunciated by CC art. 2232 al. 1, this long.

<sup>12</sup> (art.2262 bis § 1; for criticism of this differentiation between rights arising from contractual and extra-contractual liability see, however, Claeys, 1998-99 R.W. 391 ff.

<sup>13</sup> Limitation is the used terminology for prescription in common law countries.

<sup>14</sup> Limitation Act 1980 ss. 2, 5, 4A, 11, 11A, 12, 14A.

<sup>15</sup> See CC §§199, 548, 438, 634a, 196, 197.

<sup>16</sup> GPCCA §§ 146(1), 149, 150(1), 151(1).

<sup>17</sup> E.g. LOA §§ 338(1), 395 (1) -(2), 771, 690, 802(1), 475(2) and GPCCA §§ 146(2) -(3) -(4) -(5), 149, 157 (3),157(1).

<sup>18</sup> HCC § 6:22 (3).

A judicial enforcement of the right, adjustment of the right by agreement (including composition), and debtor recognition of a debt all suspend the statute of limitations. Following a suspension or the non-appealable conclusion of a suspension proceeding, the prescription period resumes.<sup>19</sup>

## 1.2. Commencement of prescription

In general, the time of prescription should only begin to run against a creditor who has a chance of having the right enforced in court or by initiating arbitration. An examination of the case's merits will take place throughout this proceeding. As long as the proceedings continue, the period will not start to run.<sup>20</sup> However, a right may only be asserted in court or before an arbitration panel when it has become due, or when the debtor is required to carry out performance. The idea of the time by which a party must affect performance is well-known and applicable in numerous other circumstances. *Damage* is frequently one of them, and it sometimes doesn't happen until years after the act that gave birth to responsibility. There is, however, one circumstance that demands special attention. A right to compensation for harm inflicted by another is typically due as soon as the right arises. Since the creditor's right is due even before the debtor has violated the duty, the due date cannot be the proper time. Only when the debtor's obligation is ongoing, such as in the case of a continued duty to refrain from doing anything, can prescription issues occur. In this case, it would seem fair for the time of prescription to start not just with the first act of disobedience but with each subsequent act as well.

For an illustration, the following situation should be here examined

*A sometimes creates CDs of well-known pianists at his studio. On October 10th, he intends to release a CD including Schubert performed by Alfred Brendel. In the month of October, B, A's neighbor, is busy working on a noisy addition to his home. A gets B's promise to halt these construction activities on October 10th. B nonetheless travels that day with them. In this case, there are no distinct prescription issues. A period of prescription cannot begin before October 10; once it does, compliance is no longer conceivable, and A can only pursue damages. The usual prescription laws apply to the right to damages.*

*In this case, the decision appears to be between the date of the judgment and the day on which it becomes final (i.e., the day on which an appeal is barred or becomes impossible). The second of these options is the one that is more frequently found in current legislation.<sup>21</sup>*

As a general rule, the period of prescription is frequently started at the time the right becomes enforceable.<sup>22</sup>

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<sup>19</sup> Under CC § 324(1) -(2), 325(2),326(2), and, 327(1) -(2)

<sup>20</sup> See DCFR III. -7:302

<sup>21</sup> Von Bar, Christian, Eric M. Clive, and Hans Schulte-Nölke, eds. *Principles, definitions and model rules of European private law: Draft Common Frame of Reference (DCFR)*. Vol. 3. Sellier, 2009. p. 1179-1180

<sup>22</sup> for Austria, CC § 1478 second sentence; for Italy, CC art. 2935.

### 1.3. Extension of period

#### *1.3.1. Suspension in cases of ignorance*

Traditional distinctions between "interruption" and "suspension" of a prescription time exist in civil legal systems. In the event that the term of prescription is cut short, the time that passed before the interrupting occurrence is not taken into consideration; the period of prescription starts over. Contrarily, when the cause of the suspension ends, the old prescription period continues to run its course because the period during which the period of prescription is suspended is not taken into account when calculating the period of prescription (unless the period of prescription had not even started to run, in which case it only starts to run after the cause of the suspension has ended).

#### *1.3.2. Suspension in judicial and other proceedings*

In this case, there are three options: It can be decided whether the period of prescription stops running, is "interrupted" or "renewed," in which case it begins again, or whether it is "suspended" while legal action is ongoing.

Moving on to the way of implementation, special consideration must be given to the claimant whose action is denied for procedural reasons when there is hardly any time remaining in the previous term of prescription. Maybe it's here that it is thought to be appropriate to set a minimum amount of time that the claimant should have to act after the suspension has ended. This would be accomplished by granting the creditor a minimum of six months after the conclusion of the proceedings without rendering a ruling on the merits<sup>23</sup>.

The same rules that apply to judicial processes also apply to other proceedings, provided that they seek to obtain a binding judgment regarding or pertaining to the subject right, like arbitration proceedings, mediation proceedings, and all kinds of alternative dispute resolution, even those that do not fit into any of the stated categories, as they have the goal of getting a decision about the subject right.

#### *1.3.3. Suspension in case of an impediment beyond the creditor's control*

It would appear contradictory to protect a creditor who is unaware of the right but not one who is unable to initiate legal action to enforce it. However, if the obstacle blocking the initiation of an action has vanished well before the expiration of the prescription period, there is no compelling reason to prolong the term of prescription. Thus, it would typically seem to be sufficient to prolong the period of prescription by the length of time the creditor was precluded from filing a claim within the final six months of the prescription period.

In that regard, only the last part of the period is relevant. Therefore, prescription is only suspended for as long as the creditor is prevented from pursuing the claim as a result

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<sup>23</sup> Von BAR, Christian, Eric M. CLIVE, and Hans SCHULTE-NÖLKE: *Principles, definitions and model rules...* p. 1193

of "vis major" within the last six months of the prescription period. Thus, the maximum period for which suspension may be suspended is six months.<sup>24</sup> Whereas Portugal has a period of three months,<sup>25</sup> the UNCITRAL Convention extends the limitation period "so as not to expire before the expiration of one year from the date on which the relevant circumstance ceased to exist".<sup>26</sup> In Polish legislation, there is no time limit on the suspension; it continues as long as the creditor is unable to exercise the right.

#### *1.3.4. Postponement of expiry in case of negotiations*

It is important to support efforts by the parties to negotiate a settlement outside of court. They shouldn't have to be completed under the stress of the claim's impending prescription. It is sufficient to delay the term of the prescription's expiration rather than suspend it in order to minimize the impact of negotiations on it.

*To illustrate the different ways in this context, I bring up some examples:*

*If A has a right to €20,000 against B and the right falls due on October 10, 2004*

*Between*

*Between 10 October 2004 and 10 March 2005, negotiations are pending between A and B about*

*whether the right exists. Prescription occurs on October 10, 2007; the period is not extended as a result of the negotiations.*

*Considering the facts as above, while the negotiations take place between December 20, 2006, and May 5, 2007, The period of prescription was only completed on May 5, 2008 (one year after the end of negotiations).*

*Again, the facts are as above, but the negotiations take place between September 1, 2007 and September 1, 2008.*

*May 15, 2008 Prescription occurs on May 15, 2009 (one year after the end of negotiations).<sup>27</sup>*

The German Commercial Code's reform of the law of obligations expanded the former norm to become a general rule: the running of the prescription period is suspended while negotiations between the parties are ongoing regarding the claim or the facts giving rise to the claim.<sup>28</sup> Three months after the suspension ended before the claim became time-barred. Under Estonian law, the prescription term is suspended similarly, with the overall effect that the period for prescription shall not expire before two months after the suspension has ended<sup>29</sup>.

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<sup>24</sup> According to German, Estonian and Greek law.

<sup>25</sup> CC art.321

<sup>26</sup> For comment, see (1979) 10 UNCITRAL Yearbook 164.

<sup>27</sup> Von Bar, Clive, Schulte-Nölke: *Principles, definitions and model rules...* p.1202

<sup>28</sup> Constituting the claim. The claim cannot become time-barred until three months after the end of the suspension have expired (see: Zimmerman, (2002): Law of defaults. In: Koller/Roth/Zimmermann, Law of Obligations Modernization Act, Publication series Legal Study Society Regensburg, Issue 25. [Schuldrechtsmodernisierungsgesetz 2002, Heft 25 der Schriften der Juristischen Studiengesellschaft Regensburg, C.H. Beck, 2002, pp.33f.] HABSCHIED, Walther J.: Die Begrenzung privater Rechte durch Verjährungs-, Verwirkungs- und Fatafristen. " (1978): 108..

<sup>29</sup> GPCCA § 167(1), 168(2).

Contrarily, the French CC's reform of the law of prescription excludes negotiations among the various causes of suspension, whereas mediation and conciliation do so. As a result, prescription generally begins again for a period of time that cannot be less than six months after the conclusion of the mediation or conciliation<sup>30</sup>The possibility of uncertainty is one reason against a rule that suspends medication in the event of negotiations.

### *1.3.5. How long is the suspension in effect for?*

A formal criterion has occasionally been put up to address this objection: the suspension period starts when one party requests negotiations in writing and ends when the other party declines to continue conversations in writing.

This recommendation was not implemented in the German Civil Code's amendment of the obligations statute. The French lawmaker has refrained from acknowledging that negotiations might lead to a suspension.<sup>31</sup>

## **2. Prescription in Arab Civil Codes**

### **2.1. The Legal Policy Underlying the Prescription**

The prescription rules of the civil codes of Arab countries are founded on several considerations of public policy. For the sake of the general peace and to prevent dishonest actions, the law provides that after a certain length of time, obligations shall not be enforceable if the objection is taken that the right has been prescribed.<sup>32</sup> Documents may be lost, witnesses may be dead, and the recollection of events long past may have become dim. It is for these reasons that the law comes to the debtor's aid by creating a presumption of payment.

Under Arab civil codes, there is a general fifteen-year period of prescription, known as long prescription.<sup>33</sup>

### **2.2. Commencement of the Prescription Period**

The period of prescription runs from the beginning of the first complete day after the day on which possession has been acquired in the case of acquisitive prescription or after the day on which the obligation has matured in the case of liberative prescription. The period of prescription is calculated in days.<sup>34</sup>

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<sup>30</sup> CC art. 2238.

<sup>31</sup> (See Preston & Newsom 146)- (see Peters & Zimmermann 320 f.)- GERMAN CC § 203).

<sup>32</sup> See Reinhard Zimmermann, *Comparative Foundations of the Law on Set- Off and Prescription* 76 (2002). See also H S Shaaban, 'Commercial Transactions in the Middle East: What Law Governs?' 31 *Law & Policy in International Business* 157, 164-165 (1999).

<sup>33</sup> See Egyptian Civil Code, art. 374; Iraqi Civil Code, art. 429; Jordanian Civil Code, art. 449; Kuwaiti Civil Code, art. 438; Moroccan Civil Code, Art. 387; Syrian Civil Code, art. 372; and United Arab Emirates Civil Code, art. 473.

<sup>34</sup> See Egyptian Civil Code, art. 380; Jordanian Civil Code, art. 456; Syrian Civil Code, art. 377; and United Arab Emirates Civil Code, art. 480.

Arab civil codes do not address the case where the law is changed after the prescription begins to run. The change in law may cause the suit to be barred.<sup>35</sup> However, in order to avoid this scenario, courts could use parts of the time that elapsed under the old and new laws. In other words, the amount of time the plaintiff has in which to sue is determined by adding a part of the new time to the old and multiplying that fraction by the amount of time remaining under the old prescriptive period at the actual date of the new period.

The formula advanced above applies equally well to laws that lengthen or shorten the prescriptive period. Arab civil codes do not indulge in the discussion of whether the creditor has knowledge or not of his rights.

The start of the prescription period is not tied to discoverability by the creditor.

### 2.3. Suspension of Prescription

According to Arab civil codes, the presence of lawful excuses suspends the running of prescriptions.<sup>36</sup> More specifically, Arab civil codes enumerate several cases of suspension: absence of creditor; incapacity such as minority; force majeure; and relationships between spouses, parents, and their children. However, the Jordanian civil code is the only Arab civil code that does not list the cases of suspension.<sup>37</sup> Thus, the Jordanian civil code adopts a flexible approach by requiring the presence of a "lawful excuse" without further elaboration. Absence of creditor means that he is away, but still alive, from his country or place of residence.<sup>38</sup> Minority refers to a person not attaining the age of majority, or legal age, generally set at eighteen.

Minority status is considered a valid excuse for suspending prescriptions, provided that a representative for the minority has not been appointed.<sup>39</sup> However, the minor does not appear to be sufficiently protected in cases where the representative fails to pursue his claim before the period of prescription has elapsed. Arab civil codes should provide for an extension by way of postponement of the expiry of the period of prescription not only with regard to claims held by or against a minor who is without a representative but also with regard to claims between a minor and his representative. Force majeure denotes the occurrence of an unexpected event beyond the creditor's control that the creditor could not avoid or prevent. Examples of force majeure include earthquakes, volcanoes, floods, and storms. These three cases of suspension are fact-based. Courts in Arab countries will determine on a case-by-case basis whether these cases meet the 'lawful excuse' bar on a case-by-case basis.

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<sup>35</sup> For example, if the law reduces the applicable prescriptive term from two years to one year one year after the plaintiff's cause of action arises, it could be argued that the plaintiff's action has been prescribed.

<sup>36</sup> See Egyptian Civil Code, art. 382; Jordanian Civil Code, art. 457; Kuwaiti Civil Code, art. 446; Moroccan Civil Code art. 379; and Yemeni Civil Code, art. 450.

<sup>37</sup> See Jordanian Civil Code, art. 457. See also Court of Cassation, Case No. 933/1990, *Journal of Jordanian Bar Association* 1945 (1991) (the Jordanian civil code stated 'lawful excuse' in an open manner so as to include any excuse that suspends prescription).

<sup>38</sup> See Egyptian Civil Code, art. 382; Kuwaiti Civil Code, art. 446; and Moroccan Civil Code, art. 380.

<sup>39</sup> See Egyptian Civil Code, art. 382; Kuwaiti Civil Code, art. 446; and Moroccan Civil Code, art. 379; and Yemeni Civil Code, art. 450.

Arab civil codes suspend prescription as between spouses during marriage; parents and children during minority; tutors and minors during tutorship; and curators and interdictees during interdiction.<sup>40</sup> The suspension is necessary as a matter of fairness and to maintain stability. As between spouses and as between parents and their children, the provision encourages harmony between the members of these special relationships. The period of prescription remains suspended as long as there is an absence of creditor, minority, or force majeure. Once the lawful excuse ceases to exist, the period of prescription begins to run again by adding the previous period to the new one.<sup>41</sup>

#### 2.4. Interruption of Prescription

While some situations result in the suspension of prescriptions, other situations cause the prescription period to be interrupted.<sup>42</sup> The running of the prescription period is stopped by both the debtor's admission of debt and the creditor's launch of legal action. When calculating the prescription period, suspension and interruption of a prescription differ from one another. The period of prescription in cases of suspension starts to run again by adding the previous period to the new one once the legitimate reason for suspension ceases to exist. When calculating time after an interruption, the prior period of prescription will not be considered.<sup>43</sup> Instead, the prescription period will be extended as if the prior period didn't exist. According to Arab civil codes, the prescription period is interrupted when the debtor expressly or implicitly acknowledges the creditor's rights.<sup>44</sup> The texts of the Arab civil codes did not tie the admission of a debt to the occurrence of a specific circumstance or the passage of time. On the other hand, the creditor's rights were explicitly acknowledged. Therefore, the debtor has the option to admit the debt at any point and throughout all phases of the legal proceeding. Once the debtor concedes the creditor's right, he cannot take that concession back. The period of prescription is terminated by acknowledgment of the debt, and a new period will start. Any mode of admission of the

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<sup>40</sup> See Egyptian Civil Code, art. 382; Iraqi Civil Code, art. 435; Kuwait Civil Code, art. 336; Moroccan Civil Code, art. 378; and Yemeni Civil Code, art. 452. See also Court of Cassation, Case No. 934/1990, *Journal of Jordanian Bar Association* 1974 (1991).

<sup>41</sup> See Jordanian Civil Code, art. 457 (2).

<sup>42</sup> The Book of Rules of Justice, known in Arabic as *Majalla*, influenced the drafting of Arab civil codes. Chapter 2 of the Book of Rules of Justice deals with the causes for interruption of the period of limitation. For example, if a court action is brought, the period is interrupted. See *Law in the Middle East: Origin and Development of Islamic Law* 292-296, 305-305 (Majid Khadduri & Herbert J. Liebesny eds., 1955) (The Book of Rules of Justice was a product of the Ottoman reform movement and was based on the Hanafi school of law. It codified the Islamic principles which served as the civil law of the Ottoman Empire and then the Arab countries). See Court of Cassation, Case No. 325/1972, *Journal of Jordanian Bar Association* 1527 (1972) (According to articles 1660, 1663, and 1666 of the *Majalla*, causes of suspension of prescription are: minority, insanity, absence, negligence, and force majeure. On the other hand, causes of interruption are: admission of the debt and commencing of legal proceedings). See also Court of Cassation, Case No. 340/1972, *Journal of Jordanian Bar Association* 1549 (1972).

<sup>43</sup> See Jordanian Court of Cassation Case No. 2365/2005, Adaleh Center Publications (April 2, 2006).

<sup>44</sup> See Egyptian Civil Code, art. 384; Iraqi Civil Code, art. 438; Jordanian Civil Code, art. 459; Kuwaiti Civil Code, art. 449; Moroccan Civil Code, art. 382; Syrian Civil Code, art. 381; United Arab Emirates Civil Code, art. 483; and Yemeni Civil Code, art. 453.

creditor's right may be made, whether explicitly or implicitly. Depending on the specifics of the case, the court will decide whether there is an explicit or implicit admission of debt. For instance, courts have determined that a debtor may acknowledge a debt in writing, orally, by presenting a surety or mortgage, paying off part of the debt, or by invoking a set-off.<sup>45</sup> Although the prescription has been interrupted, court cases have not yet addressed whether a settlement offer is sufficient to acknowledge a debt. Arab civil codes stipulate that, in addition to the debtor's admission of liability, the commencement of any "judicial action" or "judicial measure" results in the interruption of the prescription period.<sup>46</sup> When a creditor files a lawsuit against a debtor in court, the prescription is halted. In accordance with Arab civil codes, the only action that prevents prescription is judicial. Outside of court, claims do not count as interruptions.<sup>47</sup> Any "judicial measure" may include service of process, despite the term being undefinable. Prescription is interrupted only in relation to a defendant served by process within the prescriptive period, for instance, if an action is started in an incompetent court or in an inappropriate venue. Regarding the length of the interruption of prescription while a court action is pending, the position of Arab civil codes needs to be clarified. The interruption of prescription brought about by filing a lawsuit in court ought to be stated in Arab civil codes as continuing so long as the lawsuit is ongoing. The filing serves as a continuous interruption up until the suit is dismissed when a lawsuit filed within the prescriptive period is dismissed for reasons other than lack of jurisdiction. A new prescriptive period starts to run after dismissal. However, when a plaintiff gives up, voluntarily drops, or decides not to pursue the case at trial, a different circumstance arises. Any of these situations should be treated as if they never occurred. There is no definition of "abandonment" or "failure" in any code or case law.

## 2.5. Miscellaneous provisions

### 2.5.1. *Prescription May Be Pleaded at Any Stage of the Proceedings*

Arab civil codes contain an article that declares that the plea of prescription may be set up at any stage of the judicial proceedings and may even be pleaded for the first time in the court of appeal.<sup>48</sup> Prescription is a peremptory exception that can be made at any stage of

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<sup>45</sup> For examples on the jurisprudence of Jordanian courts see Court of Cassation, Case No. 236/82, Journal of Jordanian Bar Association 996 (1982), Court of Cassation, Case No. 811/90, Journal of Jordanian Bar Association 896 (1992), Court of Cassation, Case No. 1730/1994, Journal of Jordanian Bar Association 2776 (1996), Jordanian Court of Cassation Case No. 273/2000, Adaleh Center Publications (October 26, 2000), and Jordanian Court of Cassation Case No. 3058/2006, Adaleh Center Publications (February 2, 2007).

<sup>46</sup> See Egyptian Civil Code, art. 383; Iraqi Civil Code, art. 437; Jordanian Civil Code, art. 460; Kuwaiti Civil Code, art. 448; Moroccan Civil Code, art. 381; Syrian Civil Code, art. 380; United Arab Emirates Civil Code, art. 484; and Yemeni Civil Code, art. 453.

<sup>47</sup> However, the Moroccan civil code is the only code that allows claims to be made out of court. See Moroccan Civil Code, art. 381. Thus, according to the Moroccan civil code, an act of mediation through a third party interrupts prescription.

<sup>48</sup> See Egyptian Civil Code, art. 387; Iraqi Civil Code, art. 442; Jordanian Civil Code, art. 464; Kuwaiti Civil Code, art. 452; Moroccan Civil Code, art. 372; Syrian Civil Code, art. 384; United Arab Emirates Civil Code, art. 488; and Yemeni Civil Code, art. 455. The Court of Cassation in Jordan declared that prescription cannot

the proceedings, so this rule can be justified based on the fact that it is, by its very nature, permissible. However, a party will not be permitted to argue for liberal prescription if the evidence amply demonstrates that he has renounced that argument.<sup>49</sup>

### *2.5.2. The Court cannot ex officio give effect to the prescription*

Given that the rules of prescription are based on public order, it might seem at first glance that courts should be able to determine that a right had been lost by the passing of the applicable time period, even though the party who would benefit from the prescription did not assert this. However, a closer look reveals that such a conclusion would be incredibly unjust. Despite having a valid defense, the debtor may not want to avoid paying his debt, and the law rightly respects this scrupulousness. According to Arab civil codes, courts cannot ex officio give prescriptions effect. The obligation is terminated by liberative prescription if it is used by the debtor or another interested party. The prescription may be pleaded by, for instance, a surety or a co-debtor. These individuals, each of whom has a proper right of their own separate from the right of the principal debtor or the co-debtor, respectively, benefit from prescription.

## 2.6. Renunciation of Prescription

According to Arab civil codes, no one may give up their right to make a claim by prescription or anticipation. However, In some Arab countries and after acquiring a right to claim by prescription, a person may renounce that right.<sup>50</sup> The laws may also allow the waiver of a right acquired through acquisitive prescription if the waiver is made in favor of a public interest. The principles of prescription are founded on public policy considerations, as was previously stated. It is in the public interest to set a deadline for actions to be filed and state that all rights will be definitively established if no action is taken within the deadline. If people were permitted to unilaterally deny themselves the right to benefit from prescriptions, the goal of the law would be defeated. Creditors would frequently include clauses stating that their rights of action should not be prescribed at all. Either explicitly or tacitly, prescription is renounced.<sup>51</sup> According to general principles, since the law does not specify how renunciation must be made, it may be assumed that any action taken by the person who is entitled to claim a prescription clearly indicates that he intends to renounce the benefit of the prescription that has been acquired in his favor.<sup>52</sup> The

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be pleaded before the Court for the first time. Prescription must be pleaded first before the Court of First Instance or the Court of Appeal, and only then it can be pleaded before the Court of Cassation. See Court of Cassation, Case No. 456/1994, Journal of Jordanian Bar Association 1948 (1995).

<sup>49</sup> See Egyptian Civil Code, art. 387; Iraqi Civil Code, art. 442; Jordanian Civil Code, art. 464; Kuwaiti Civil Code, art. 452; Moroccan Civil Code, art. 372; Syrian Civil Code, art. 384; United Arab Emirates Civil Code, art. 488; and Yemeni Civil Code, art. 455.

<sup>50</sup> See Egyptian Civil Code, art. 388; Iraqi Civil Code, art. 443; Jordanian Civil Code, art. 463; Kuwaiti Civil Code, art. 453; Moroccan Civil Code, art. 373; Syrian Civil Code, art. 385; United Arab Emirates Civil Code, art. 487; and Yemeni Civil Code, art. 456.

<sup>51</sup> See Jordanian Civil Code, art. 464; and United Arab Emirates Civil Code, art. 488.

<sup>52</sup> See Jordanian Civil Code, art. 463.

court will not be allowed to conclude that there has been a tacit renunciation unless this is the only reasonable inference that can be made from the proved facts because there is always a presumption of fact against a man willfully giving up a right. He should be given the benefit of the doubt if, despite the fact that his behavior suggests renunciation, it is still conceivable that there may be another explanation for it. It is impossible to establish general guidelines for what constitutes tacit renunciation. The answer will vary depending on the specifics of each case. The action's pleadings will be one of the facts taken into account, but as was previously mentioned, the plea of prescription need not be established at the outset. Likewise, the fact that the defendant first asserts other defenses, such as the nonexistence of the debt, does not automatically amount to a tacit waiver of the right to assert prescription at a later time. The debtor might not have been aware that he was entitled to the defense of prescription, or he might have had moral qualms about relying on a legal technicality while still hoping to prevail on other grounds. In any case, the facts relied upon must have occurred after the date the prescription was obtained in order to be valid. They might be considered a renunciation of the prescription period, which had already passed, but not any further. A person cannot renounce a right unless they are aware that it exists. Renunciation is the voluntary abandonment of a right. It does not follow from this, though, that a debtor who has paid a debt against which he might have pleaded prescription can get his money back by demonstrating that he was not aware of his ability to do so. The creditor was legally entitled to the money that was paid to him, but the debtor made a voluntary payment to discharge the debt. By the end of the prescriptive period, the debt was not extinguished *ipso jure*; it might have been extinguished if the debtor had used prescription, but since he did not, there was still a debt due—a civil debt rather than a natural one—and the payment was therefore not a case of paying something that was not due or fulfilling a natural obligation in error. Therefore, there is no such thing as a right to repetition. Prescription renunciation is a unilateral action that can be effective without acceptance. Because of this idea, it follows that giving up a claim does not result in alienation. The renunciation is a risky act, even though it is not strictly speaking an alienation. If it does not make the person poorer, it keeps him from getting richer, which is what would have happened if he had exercised his right to obtain the prescription. As a result, only those who have the ability to alienate are granted the right to renounce. Therefore, under Arab law, interdicted individuals, minors, and tutors acting alone cannot renounce a prescription. If the renunciation of liberative prescription has been made with the intent to harm the rights of the creditors of a person bound by an obligation, then it has no effect against those creditors. Concerning the rights of creditors, there is a possible issue. Do creditors have to show that their debtor violated their rights by renouncing? Or does it suffice to show that the announcement was unfavorable to them? The renunciation of prescription is a unique type of right abandonment for which the creditors must establish both the prejudice against them and the fraud on their rights. Creditors have no recourse if the debtor renounces the benefit in good faith and honesty. However, under Arab law, creditors must demonstrate that the renunciation caused harm rather than fraud. They will typically have an easier time demonstrating bias than fraud.

### **3. Conclusions**

For instance, the European legislations' prescription provisions share the same public policy underpinnings with the civil codes of Arab countries. Also, a longer time of prescription may be agreed upon by the parties, but not a shorter one in most of the Arab and European legislations. Although there are some similarities between the latter's governing the common use of prescription, there are also some significant variances.

1. Prescription period length: European and Arab laws differ greatly in the prescription period's duration. The prescription duration, which can range from one to thirty years in some European countries for specific claims, is often shorter in Arab countries and can range from one to fifteen years depending on the type of claim.

2. Application to criminal and administrative matters: In European law, the prescription period often only applies to civil disputes, however in Arab law, it may also be applicable to both criminal and administrative disputes.