

The recent Supreme Court ruling of January 20, 2020 confirmed that on October 7, 2020, personal actions born between October 7, 2005 and October 7, 2015 will prescribe, in accordance with the amendment of article 1964 of the Civil Code introduced by Law 42/2015.

On October 7, 2015, Law 42/2015, of October 5, entered into force, which amended Article 1964 of the Civil Code and reduced the general term of prescription established for personal actions in the above-mentioned article: from fifteen years to five years.

This amendment was applicable to all personal actions that could be brought before the corresponding Courts after the entry into force of said Law.

However, the relevant issue was to determine the prescription of personal actions that were born prior to the entry into force of said Law (that is, before October 7, 2015). In this sense, the fifth transitory provision of the Law 42/2015 establishes that *“the prescription period of personal actions that do not have a special prescription term, born before the date of entry into force of this Law, shall be governed by the provisions of article 1939 of the Civil Code”*.

According to article 1939 of the Civil Code *“Prescription that begun prior to the publication of the present Code shall be governed by the laws prior hereto; but if the whole period required herein for prescription should expire after the present Code enters into force, such prescription shall be effective, even if such prior laws should require a longer lapse of time”*.

In accordance with the aforementioned article, the prescription for actions born before October 7, 2015 is fifteen years, however, if after that date, the five-year period established in the current Article 1964 of the Civil Code elapses, the action will be considered prescribed. That is, the prescription term initiated prior to October 7, 2015 ends on October 7, 2020, unless the fifteen-year period from its inception had concluded earlier.

Thus, for example, the creditor whose debt became due and payable on March 10, 2011 (and that, therefore, before the Law 42/2015 had a period of 15 years to claim said debt by exercising the relevant personal action, that is, until March 10, 2026), as of October 7, 2015 (the date in which the Law 42/2015 entered into force), would only have 5 years (that is, until October 7, 2020).

The Supreme Court has confirmed the above conclusion in its recent judgment no. 29/2020 dated January 20, 2020, which indicates the following possible scenarios in light of the fifth transitory provision of Law 42/2015:

- (i) *“Legal relationships born before October 7, 2000: they would be prescribed upon the entry into force of the new Law.*
- (ii) *Legal relationships born between October 7, 2000 and October 7, 2005: the period of 15 years provided in the original wording of art. 1964 CC would be applicable.*
- (iii) *Legal relationships born between October 7, 2005 and October 7, 2015: in application of art. 1939 of the Civil Code, they would not prescribe until October 7, 2020.*
- (iv) *Legal relationships born after October 7, 2015: the new five-year term applies, in accordance with the current wording of art. 1964 of the Civil Code. ”*

Consequently, all personal actions (not subject to a special prescription period) that were born between October 7, 2005 and October 7, 2015 will prescribe on October 7, 2020.

Cases&Lacambra remains at your disposal to advise you on the appropriate measures to be taken to safeguard the exercise of the aforementioned actions and to avoid their possible prescription.

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