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ARTICLE 17: EXTENSION OF PERIOD WHERE  
FOREIGN JUDGEMENT NOT RECOGNIZED

Memorandum by Professor A.G. Guest

1. Our Chairman has asked me to write a short memorandum on a problem which was raised in the commentary (paras. 8-9) to article 17 of the draft law on prescription. The problem is as follows:

A creditor brings an action against a debtor within the limitation period in State X. He obtains judgement thereon. The creditor then seeks to execute (enforce) the judgement in State Y. But the judgement is not recognized in State Y. The creditor must therefore commence fresh legal proceedings on the original cause of action against the debtor in State Y. By this time the limitation period may nearly have expired or have expired. Should the creditor be granted an additional period in order to enable him to commence fresh legal proceedings in State Y?

2. It has been suggested that the creditor should be allowed "an additional period of one year running from the date of the first final judgement acquired for the claim in question". The effect of this would be that the creditor, having obtained a final judgement in State X, would have an additional year to commence legal proceedings on the original claim in every State (Y, Z, A, B, C etc.) in which that judgement would not be recognized for the purpose of enforcement.

3. In my view, such an extension would not be desirable. In the first place, I believe that the responsibility lies on the creditor to ascertain, before bringing an action in State X, whether that judgement in that action will be enforceable in State Y where he wishes to obtain execution. In practice, this will be one of the very first tasks of his legal adviser: to ascertain where the debtor has assets sufficient to satisfy the judgement and to ascertain whether a judgement obtained in State X will be enforceable in the country where those assets are located. If the judgement will not be recognized, he will advise his client not to institute proceedings in State X but to commence an action in the country where the assets are situated. Secondly, I believe that the extension so granted might be capable of abuse. A creditor might well commence a "ghost" action in State X (usually his own State) in order to prolong the limitation period for a considerable period. Since it may well be two or three years before he obtains judgement in State X, if such an action were commenced at the end of a limitation period of (say) three years, the creditor might well have a total of sixteen years (three years limitation in State X, two years for judgement, one year extension) before he commenced his action in State Y. This is not desirable.
4. I appreciate that my view might be thought to be out of step with the principle now embodied in article 17 (2) of the draft law. If such is this case, I would prefer to delete article 17 (2).
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