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The statute of limitations for revocation actions in French Law: case law remains divided

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Article 124, III of the so-called "PACTE" Law enshrines the disappearance of the statute of limitations for revocation actions concerning industrial property titles. It was intended to put an end to the previous case law, which was thus disproved, applying the five-year limitation period of Article 2224 of the Civil Code to these actions, notably with the retroactive effect conferred by its transitional law rule (*see M. Dhenne, "De la rétroactivité de l'imprescriptibilité des actions en annulation des titres nationaux de propriété industrielle", Propriété industrielle No. 12, December 2019, étude 27 or here*).

However, some jurisdictions continue to apply the said limitation to actions introduced before the entry into force of the "PACTE" Law. Thus, the case law is now divided on the interpretation of the expression "*titles in force on the day of publication of this Law*" used in the new text.

Thus, in a judgment rendered by the Paris High Court (Tribunal Judiciaire de Paris) on September 7, 2021, it is recalled that "*these measures* [of the "PACTE" law] *are intended to put an end to the case law applying a five-year statute of limitations to actions of this type and must necessarily be interpreted, in view of the legislator's will to do away with all void titles, as applying to all invalidity actions relating to patents, including those that would have been prescribed under the old Law, except for the titles which were overturned by a decision that has become res judicata*" (*RG n° 15-06549*).

On the other hand, some decisions set out an allegedly literal reading of the text, according to which the Law provides only for the future (Art. 2 of the French Civil Code), in the absence of an express provision to the contrary, Article 124, III of the "PACTE" Law would be inapplicable to actions brought before its entry into force: "*It follows from these provisions* [of "PACTE" law] *that when the legislator extends the limitation period, it has no effect on the statute of limitations that has already expired, unless a contrary intention is expressly affirmed in the said Law.*" (*Paris High Court, March 11, 2021, RG n° 18-13651. In this sense also. Bordeaux Court of Appeal, October 25, 2022, RG No. 21-04294*).

Nonetheless, the text is clear. Article 124, III provides precisely this: "*The 2°, 4°, 5°, 7° and 8° of I of this Article shall apply to titles in force on the day of publication of this Law. They shall have no effect on decisions having the force of res judicata*".

The wording "*titles in force on the day of publication*" is admittedly awkward. Only rights and

actions are subject to statute of limitations, not titles. And this clumsiness undoubtedly stems from a double confusion: between title and right, on the one hand, and between right and action, on the other. In other words, the legislator was in fact aiming at invalidity actions relating to titles. This is confirmed by the reference in Article 124, III, to paragraphs 2, 4, 5, 7 and 8 of Article 124, I, which refer to actions.

Is this simply a reminder of the immediate effect of Law? No, since the legislator's objective was to eliminate all void titles, so that the text is intended to apply to all actions likely to involve titles in force at the time of the Law's publication. The only limitation is "*res judicata decisions*". The legislator's will was clear: "*The current situation is a source of great legal insecurity, as the courts have divergent assessments of the starting point of the five-year limitation period. This solution prevents, beyond a short period of time, the calling into question of a title affected by an intrinsic defect, abusively blocking a market for new entrants (for example, the holder of a patent devoid of inventive step could prevent his competitors from using a process which should be in the public domain).* […] *The absence of a statute of limitations on invalidity actions will thus make it possible to clean up competition by eliminating invalid titles*" (Amendment no. 896 tabled in first reading in the Senate on 29 January 2019).

Yet, at the end of the day, as the first part of the above-mentioned case law points out, it is the legislative intention that is at issue. Thus, as we concluded in the past: "*In the end, only one interpretation of the transitional rule of law commented on is necessary. It consists, without difficulty, in reading it as follows: "III. 2°, 4°, 5°, 7° and 8° of I of the present article apply even retroactively to actions of nullity relating to titles in force on the day of publication of the present Law. They shall have no effect on decisions which have the force of res judicata. Any other interpretation would violate the clearly expressed intention of the legislator: to eliminate the great legal uncertainty caused by the inadmissible effects of the disproved case law*" (*M. Dhenne, "De la rétroactivité de l'imprescriptibilité des actions en annulation des titres nationaux de propriété industrielle", art. cit.*).

The fact remains that the allegedly literal reading adopted in some of the decisions has arisen in the Courts. This refusal to apply the new provision to all titles in force, which is ultimately based on a truncated reasoning of what a transitional law rule is, violates the legislative will to disprove previous case law. Let us therefore hope that the Court of Cassation will be seized as soon as possible, in order to put an end to the anachronistic legal insecurity resulting from the unjustified and unjustifiable division of the current case law.

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