

再論侵權行為損害賠償請求權之消滅時效

—兼評 RCA 訴訟判決

A Restudy About the Period of Right to Demand

Compensation for Damages in Tort

蘇惠卿

SU HUI CHIN

中文摘要

關於侵權行為損害賠償請求權之消滅時效期間規定於民法第一九七條，分為 2 年之短時效及 10 年之長時效。2 年之短時效自請求權人知有損害及賠償義務人時起算，10 年之長時效則自有侵權行為時起算。在傳統一次性之侵權行為，往往於行為發生後即對被害人產生損害，被害人也即知賠償義務人之存在，因此於本條之適用並無問題。

但在繼續性侵權行為事件，如 RCA 事件係因混合多種毒物之繼續性侵權行為，其因果關係甚難判斷，即令被害人已因現實罹患疾病知有法益受侵害，也因未具備專業知識而不能確知身體健康所受之侵害是來自加害人之侵權行為。因此 2 年短時效之起算，應以鑑定人於法院鑑定證述之後，被害人始確知行為人之行為與被害人健康受侵害間有因果關係存在，而開始 2 年時效之起算。

關於 10 年之長時效之起算，由於在繼續性侵權行為往往須經長久時日，甚至逾 10 年後始對健康造成損害，如以加害行為發生時即起算 10 年時效，不啻使被害人之侵權行為賠償請求權形同具文，並造成損害未發生即開始起算時效，自非允當。損害之發生乃侵權行為之要件，倘健康未受有損害，即無因此所生之侵權行為損害賠償請求權存在，不生請求權可得行使之問題，其請求權消滅時效自無從開始進行。因此，起算 10 年常時效之起算點應以損害發生時為基準，而非以有侵權行為時起算。

由於現代型之繼續性侵權行為經常涉及專業知識之判斷，一般之受害人未必能及時察覺而行使賠償請求權。故此，被害人非故意或怠忽注意而不行使權利時，不應評價其為權利上睡眠之人，賠償義務人主張時效抗辯應屬權利濫用。

關鍵字：

一次性侵權行為 繼續性侵權行為 損害賠償 消滅時效 抗辯 權利濫用

SU HUI CHIN

Abstract

The claim for the injury arising from a wrongful act shall be extinguished by prescription, if not exercised within two years from the date when the injury and the person bound to make compensation became known to the injured person. The same rule shall be applied if ten years have elapsed from the date when the wrongful act was committed.

However, it is difficult to judge the causality of continuing torts. Therefore, the two-year statute of limitations should be calculated based on the fact that after the appraiser's testimony in the court. The victim can only be sure that there is a causal relationship between the perpetrator's actions and the victim's health damage, and the two-year statute of limitations begins.

The occurrence of damage is an essential element of the tort. If the health has not been damaged, there is no right to claim damages for the tort caused by this, and there is a question that the right of infertility can be exercised, and the statute of limitations of the right of claim can no longer be carried out. Therefore, the starting point of the 10-year regular limitation period should be calculated based on the time when the damage occurred, rather than when the infringement occurred.

Since continual torts often involve judgments of professional knowledge, ordinary victims may not be able to detect in time and exercise the right to claim compensation. Therefore, when the victim does not exercise his rights unintentionally or negligently, he should not be evaluated as a sleeper on the right, and the obligor of compensation claims that the defense of limitation should be an abuse of rights.

Keywords: continual tort, compensation, claim, Extinctive prescription, Defenses, abuses of rights