

CIVIL PROCEDURAL TOOLS FOR FILTERING LEGAL ACTIONS CONSIDERING THE CONTRADICTIONARY BEHAVIOR OF THE PARTIES

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ABSTRACT

The necessity of filtering legal actions through the introduction of a control mechanism, aimed at preventing, on one hand, the abuse of rights, and on the other hand, the overloading of courts with inadmissible claims, whether due to their informal nature or their manifestly inadmissible character, has led to the birth of a concept originating in Anglo-Saxon law, developed in the form of the estoppel theory. This theory acts as a bar to the exercise of legal actions where a party exercises a right contrary to their previous procedural conduct or in contradiction with a clause agreed upon with the opposing party.

The theory also holds significant importance in substantive law, functioning as a legal principle that prevents an individual from asserting a right that contradicts their previous actions or arguments, whether in a contractual relationship or under the law. It is intended to prevent parties in a legal relationship from being unjustly treated due to the inconsistencies in the actions of the opposing party.

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1. THE CONCEPT OF ESTOPPEL

In the jurisprudence of countries that recognize the concept, several forms of estoppel are used:

- *estoppel by conduct* – This prevents a person from denying what has resulted from their previous conduct or personal act. It stops a party from contradicting their own prior representation of reality, especially if this representation induced the other party to develop a corresponding belief. If the aspects already agreed upon are called into question, it could harm the other party. This mechanism is, by definition, defensive, as it acts as an obstacle to any claim (for nullity, restitution, etc.) aimed at challenging a situation that the defendant, based on the claimant's conduct, perceived as acquired or secured.
- *estoppel by deed* – This is invoked against someone attempting to deny what they have declared in a document, official record, or public register.
- *estoppel by record* (or *res judicata*) – This prevents the reopening of a case that has already been adjudicated. It overlaps with the concept of *res judicata*.
- *equitable estoppel* – This has two main forms: promissory estoppel and proprietary estoppel.

Promissory estoppel strengthens an informal understanding based on the principle of equity. It implies that a person cannot rely on the informal nature of a contract initiated by them to the detriment of the

other party. This is applicable when the other party, in good faith, has fulfilled the agreed obligations or established other legal relations based on the contractual relationship.

Proprietary estoppel essentially enforces the terms of a promise. It allows a person to claim a right to a property if, based on an agreement, they believed the right of ownership would eventually be transferred to them. This belief led them to make substantial improvements to the property, acting as its owner.

Another definition states that the rule of estoppel prevents a party from denying the truth of a previous statement about a factual situation made to another person, who acted to their own detriment based on that statement. Alternatively, the party making the statement secured a benefit for themselves as a result.

For example, in the United States, judicial estoppel (or estoppel by inconsistent positions) allows claims to be dismissed as inadmissible if they are incompatible with arguments previously presented by the same party before a different judge. American courts generally consider three key elements for applying judicial estoppel:

- a) The claimant's position must be clearly incompatible with the one taken before the first court;
- b) It must be possible to conclude that the claimant intended to mislead the judge;
- c) The claimant must be seeking to obtain an unfair advantage for themselves or cause harm to the opposing party through such behavior.

Therefore, judicial estoppel can only be invoked against a claimant acting in bad faith, not against one who contradicts themselves due to error or ignorance.

According to some French authors, the concept originates from canon law as a consequence of the principle "*venire contra factum proprium nulli conceditur*" (no one is allowed to act contrary to their previous conduct). This principle prohibits a person from opposing their previous conduct, which blatantly contradicts their subsequent procedural stance, to the detriment of another person.

This principle is particularly applicable in international arbitration, under the body of non-state rules known as *lex mercatoria*. This normative framework is characterized by flexibility and dynamism, distinct from national jurisdictions.

Initially, the need for flexible regulation methods was of theoretical interest. However, starting in the 1970s, this need took on a more practical interest, developing into an autonomous corpus of rules within international trade law. This evolution was closely tied to the rapid development of major international trade institutions, such as the International Chamber of Commerce in Paris and the International Court of Arbitration.

As indicated in the legal doctrine, *lex mercatoria* was framed as a flexible, informal jurisdiction with applicable rules and arbitrators operating within a private jurisdiction of international trade.

2. THE DEVELOPMENT OF THE ESTOPPEL RULE IN FRENCH LAW

An important moment in the development of the "estoppel" rule occurred following a decision by the French Court of Cassation in the case known as *Golshani v. The Islamic Republic of Iran*, which effectively recognized this principle developed in international law.

In this case, the claimant requested, in 1982, that the Iran-United States Claims Tribunal award him compensation from the Iranian state following an expropriation. However, his request was rejected by an arbitral award. The ruling subsequently became the subject of an *exequatur* procedure in France, which the claimant contested on the grounds that the arbitral tribunal had no jurisdiction, as there was no arbitration agreement underpinning the tribunal's authority to resolve the dispute.

The French Court of Cassation ruled that the claimant, having actively engaged with the arbitral tribunal for over nine months and having submitted his claim for compensation to this tribunal, could not subsequently argue — through a procedural stance inconsistent with his earlier conduct — that

the tribunal lacked jurisdiction due to the absence of an arbitration agreement. This position was justified under the estoppel rule.

By invoking this rule, the French Court of Cassation established that it is inadmissible for a party to rely on contradictory conduct by presenting a position in court that conflicts with the one previously held before the arbitrators.

French legal scholars have observed that, in the Golshani case, the institution was used in the form of *promissory estoppel*, as a method of reinforcing an informal understanding, in line with the general principle of equity.

Furthermore, the same author emphasized that, through the method of application of the rule by the French Court of Cassation, it functions as an instrument of procedural sanction. This is a response to the contradictions between the party's arguments during the proceedings and the reality outside the courtroom. As a result, an unjustified change in procedural position, contrary to the principle of good faith and to the detriment of the opposing party, must be sanctioned.

It is argued that the decision rendered by the French Court of Cassation represents a genuine application of the estoppel rule from a procedural perspective. The claimant's contradictory behavior functioned as grounds for the court to declare his action inadmissible, resulting in the dismissal of the claim. This approach, reflected in subsequent case law, operates as a method of sanctioning abusive claims and obstructing access to French justice. Such an intervention is justified by the goal of protecting the legitimate rights of the other parties involved.

Later, in 2009, through a decision of the Plenary Assembly, the French Court of Cassation decided to reserve the right, from a procedural standpoint, to review the conditions for applying the estoppel rule.

This decision was made in response to criticism within the legal community regarding the Court's inconsistency in clearly defining the criteria for determining the situations in which the rule should be adopted. The goal was to ensure predictable justice, given that the adoption of this solution results in a blockage of access to French justice.

In the *A. Sedeae Electronique* case, the French Court of Cassation established specific criteria for identifying the situations in which the estoppel rule can be applied, limiting it to a "triple identity" of procedure, parties, and subject matter. Furthermore, the assessment of the trial judges was limited to the antagonistic conduct of the party, which must be of a nature to mislead the opposing party or even the judge.

Legal scholars have opined that, through the decision pronounced by the Plenary Assembly, the French Court of Cassation suggests the existence of a procedural principle of "prohibition of self-contradiction" derived from the estoppel rule. This principle may be sanctioned according to the intended purpose: it may result in a procedural bar (*fin de non-recevoir*) when the intent is to deceive. However, if the contradictions are "legitimate" — as an expression of the right to defense arising from the course of the proceedings — the party's position must be assessed based on the specific circumstances of each case.

Another important moment in the case law development of this rule occurred in 2010, when the French Court of Cassation proposed, in the field of arbitration, a definition of estoppel as a procedural behavior of one of the parties that represents a change in legal position capable of misleading the opposing party regarding its claims.

Through this decision, the principle was unequivocally extended to the field of civil procedure. Until that point, both legal doctrine and the case law of the Court of Cassation had described the existence of estoppel primarily in the context of contract law and private international law. However, it was argued that, since there was no explicit prohibition against self-contradiction in civil procedural law, one could not yet speak of a consistent and well-established judicial solution.

The gradual development of the concept was also reflected in legislative reform. In 2011, significant changes were introduced to the French Code of Civil Procedure through Decree No. 48 of January 13, 2011. This reform included the amendment of Article 1466 of the French Code of Civil Procedure, which now provides that: *"A party who, knowingly and without legitimate reason, fails to raise an irregularity in a timely manner before the arbitral tribunal shall be deemed to have waived the right to rely on it."*

Although the term *estoppel* is not explicitly used in the amended text, the explanatory report accompanying Decree No. 48/2011 clarifies its purpose: *"Article 1466 enshrines the principle of estoppel, already recognized by case law. This concept, borrowed from Anglo-Saxon law, constitutes a procedural exception aimed at sanctioning, in the name of good faith, contradictions in a party's behavior. The party is thus bound by its previous conduct and, consequently, precluded from asserting a new claim."*

3. THE SUBSIDIARY NATURE OF EQUITY-BASED JUDGMENT

The Code of Civil Procedure, in Chapter II, dedicated to the fundamental principles of civil proceedings, establishes in Article 5, paragraph (3), the judge's obligation to resolve a case based on the general principles of law and by considering the requirements of equity. This obligation applies in situations where the law does not provide for a solution, there is no established custom, or the law cannot be applied by analogy to similar situations.

This provision establishes a hierarchy of sources of civil procedural law in the following order: the law, customs or practices, the application of the law by analogy, and, as a last resort, the general principles of law, taking into account the requirements of equity. These principles underpin the regulation of civil proceedings. It is considered that the regulation of these principles in this form, within the preliminary title of the Code, was necessary, especially since the previous Code was deficient in terms of legislative technique. The principles were previously extracted from legal provisions that referred to specific situations rather than being stated as general principles.

Furthermore, in the field of arbitration, the legislator has aligned with most legal systems that allow the parties to opt for an equity-based judgment. Article 601 of the Code of Civil Procedure explicitly provides that the arbitral tribunal may adjudicate the case in equity, but only with the prior agreement of the litigating parties.

According to the doctrine, by proceeding with an *ex aequo et bono* judgment, arbitrators have both the right and the obligation to seek a solution that meets the demands of fairness. The optional nature of this procedure has clear advantages that outweigh the existing disadvantages (such as avoiding legal uncertainty, the risk to the interests of third parties who have relied or continue to rely on the system of legislative rigors, and the cultivation of a certain degree of unpredictability in legal relationships due to a solution that differs from the one envisaged in the contractual clauses).

Like any other arbitral award, an equity-based award is subject to annulment through the filing of an annulment action. This is because the clause on equity arbitration does not exempt the arbitral tribunal from the obligation to judge in accordance with the rules of arbitration. However, concerning the substantive legal relationship, it allows the arbitrators to derogate from the rules of law, seeking a solution on the merits of the case that satisfies the interests of the parties as they existed at the time of the agreement or during the course of the contractual relationship. Clearly, such a conventional equity-based judgment is only permitted for arbitral tribunals.

Under the provisions of Article 609, paragraph (1) of the Code of Civil Procedure, the parties are not granted the right to waive the possibility of exercising an action for annulment of the arbitral award before the award is pronounced, regardless of the arbitration formula chosen. Moreover, there is no incompatibility between the grounds on which an annulment action may be filed, as established by