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Abstract:

The aim of this article is to determine whether we deal with natural obligations only where these are specified in statutes (*numerus clausus*), or whether the parties can assume such obligations in accordance with the principle of freedom of contract. This issue is closely linked with the question of whether it is possible to conclude a so-called *pactum de non petendo* with a stronger effect, which in fact results in a contractual exclusion of suability (enforceability) of claims covered by such agreement. The article discusses diverging views presented in Polish legal literature and case law on this issue, drawing at the same time from both German and Swiss jurisprudence. According to the thesis of the paper, the solution as regards Polish legal system will vary depending on when suability has been excluded. One should consider the original creation of natural obligations (being non-suable *ab initio*), which is admissible under the principle of freedom of contract. The freedom of the parties in this respect is, however, limited in a number of ways, as a result of binding imperative provisions of law designed to grant certain claims, the prohibitions against waivers of certain claims and provisions included in Article 58 § 2 and Article 3851 § 1 of the Polish Civil Code. On the other hand, any subsequent transformation of an existing claim into a natural claim runs, *de lege lata*, counter to Article 117 and Article 119 of the Polish Civil Code, as it results in a breach or circumvention of the prohibition against shortening the periods of prescription (or, in the case of claims not covered by the statutes of limitation, as it runs counter to their non-limitation), and is thus ineffective. The asserted liberalisation of the prohibition against shortening the periods of prescription may result in watering down of this conclusion. Ultimately, the considerations presented in the paper lead to the rejection of the assumption that the principle of *numerus clausus* of natural

obligations applies in the Polish legal system; therefore it should be possible to distinguish between contractual and statutory natural obligations.