

THE LIMITATION OF THE BUDGETARY BONDS

PRESCRIȚIA OBLIGAȚIILOR BUGETARE

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Abstract. *The extinctive limitation represents a sanction that involves the extinction of the right of a suit, that has not been exercised within the term of the limitation that law stipulates. It is against the passivity of the one who has the subjective right and its aim is to remove the uncertainty in the juridical relations and to ensure the stability of them. The Romanian Constitution stipulates the same juridical protection for the public and the private property, that's why the legislative measures should converge to this equality in treatment. The Code of fiscal procedure stipulates a longer term of limitation of 5 years then the common one (3 years), expanding in this way the interval for the protection of the budgetary rights of the state.*

In the matter of the budgetary bonds, the Code of fiscal procedure stipulates a longer term of limitation- of 5 years- than the one from the common right (3 years), expanding in this way the period for the protection of the budgetary rights of the state.

The subjective civil rights are protected in principle through the law suit, but using this way to protect a civil right is up to some conditions and it is limited by the law.

The period of time when a natural person or a corporate body can capitalize a civil right through coercion by practicing a law suit is confined by the extinctive limitation.

Therefore, the extinction of the right to a law suit, which is not exerted in the period established by law reflects the notion of *extinctive limitation*.

The lack of protection for the right which is not exerted in the period established by the law is reflected in a sanction for the owner of that right, caused by his guilt of being passive.

The extinctive limitation is a civil sanction that contributes to the protection and the reinforcement of the legislation, having in the same time a role to punish the inactive creditor. We will see that this “negligence” is protected in a different way when we speak about the public or the private property.

The Romanian Constitution stipulates in art.44 (1) that “The right of property, as well as all the debts on the state are guaranteed” and in the second paragraph “The private property is guaranteed and protected in an equal way, no matter the holder”. Art.136 in the second paragraph says the same thing about the public property, but in the next paragraphs the protection is expanded through its “inalienable” and “inviolable” character.

Considering that we are speaking about budgetary bonds, the budget being a public one, that means that the budgetary rights are also public and protected through a extinctive term, a period of time when these can be gathered through a constrained execution.

After the year 1989 there were endorsed some normative papers, usually decisions, that established different terms of extinction than those from Decree nr.167/1958 concerning the extinctive limitation, and also different between them, terms of extinctive limitation that were longer than those from the common right.

In the Code of fiscal procedure-OG.nr.92/2003-art.128 paragraph one stipulates: “the term for the constrained execution of the fiscal bonds is banned by limitation in 5 years, starting from 1.01 in the next year after this right has been born”.

We can see that Decree nr.167/1958 established different terms of limitation: for the juridical relations between socialist association the term is of 18 months, for the juridical relations concerning the insurance, the term is of 2 years, and there are some other terms that are less than 18 months or 2 years.

If the Code of fiscal procedure stipulates a term of 5 years for the constrained execution of the budgetary bonds, we come to the conclusion that the sanction of the limitation follows the debtor a longer period of time and also allows a prolongation of “the negligence” for the authorities that control the finances.

We consider that the legislator has granted a longer term of limitation for the public property, and as a result, a better juridical protection to it.

The Code of fiscal procedure, along with the longer term of limitation for the public property, also grants more cases of suspension or interruption of the limitation, probable for the same reason.

So, the suspension of the limitation’s course can happen in other cases too, different from those stipulated by Decree nr.167/1958:

- everytime the instance orders so;
- during the period of advantageous conditions given by the law;
- if the debtor hides his goods from the constrained execution.

Concerning the effects of the extinctive limitation for the fiscal bonds, The Code of fiscal procedure stipulates in art.131 that „if the authority of execution finds that the term of extinctive limitation of the right to ask for constrained execution is completed, then it will stop all the measures of accomplishment and will deduct those from the analytic evidence held for the debtors”.

The Code of fiscal procedure does not stipulate provisions concerning a problem of the restoring in the term of extinctive limitation, when there are wellgrounded reasons to do so.

Although Decree nr.167/1958 stipulates specifically in art.22 that the bonds owed to the state are under special laws, we say that as long as the Constitution „protects and guarantees” the property in the same manner, the protection measures should be the same.

For a future reglementation there should be an unitary sistem concerning the term of extinctive limitation, considering The Constitution which is the fundamental law of the country. Only in this way there can be avoided arbitrary, confused or damaging interpretations.

CONCLUSIONS

The extinctive limitation is an important institution that helps in removing the uncertainty in juridical relations and also protects the civil rights. The terms of extinctive limitation are stipulated in Decree 167/1958 concerning the extinctive limitation, but also in other special normative papers.

The Code of fiscal procedure stipulates a longer term of extinctive limitation(5 years instead of 3) in the relation with the state, concerning the budgetary bonds, expanding the right of the state through coercion to achieve his fiscal rights. This is a violation of the Constitution that should protect both private and public property in the same way. A future reglementation should take into consideration this aspect and settle a unitary sistem for the both forms of property.

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4. Decree nr.167/1958

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