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PRESCRIPTION OF THE LAWSUIT

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ABSTRACT: *The prescription of a law suit means that a right has been violated long ago and throughout this time the entity has not done the necessary actions for its protection. This relationship under the law does not allow this right to be enforced in a binding way. Thus, the passing of time during which the entity did not act to secure its protection, according to the law affects this legal relationship. The right to a law suit, as defined in the law, is the only opportunity to demand the enforcement of a mandatory civil law. The notion of the right of law suit relates to the notion of law suit. The law suit is the means by which the civil law or other rights arising out of certain legal relationships are protected and resettled by the court or other competent authority. This law suit protects not only subjective right but also objective right, because the competent body, by restoring the violated right, does not allow the violation of these norms of the law.*[1]

KEYNOTE: Lawsuit, Law, Civil Law, Right of Law

INTRODUCTION

Historical overview

The prescription of the law suit is one of the oldest institutes in the history of the law. In the world legal literature there are many works devoted to this institute, which, by examining the problems of its content, reflect the long and complicated path of its development. Historically, the first source of the prescription of the law suit, as well as most of the other civil institutes, is Roman law.

The ancient Rome legislation did not recognize the prescription but acknowledged that all law suits stemming from Jus Civil could be filed at any time. Later was also set a deadline for filing a law suit. When the law suit was filed after the expiration of this term, the defendant could perform a case called exceptio or praescriptio temporalis, which represents the embryo of this institute. In the Justinian's right the prescription of the law suit preserves, in general terms, the same construction it had from the norms put by Theodhosi the second. However, Justinian right prescription comes with a number of very important improvements.

In this period in legislative way were elaborated and sanctioned some principles that lasted for centuries and which permeate the institute of prescription also in the modern legacy of our century. The Justinian right acknowledges two reasons that interrupt the prescription: a) the recognition of the right by the person who benefits the prescription; b) the call made by the creditor to the obliged party. This appeal could be made not only through legallaw suit but also through the appeal of the judge chosen by the parties. In this system is also regulated the suspension of the prescription, which was applied whenever for girls under 12 and for boys under 14 years old, while for other juveniles it only applied to claims for which, by special provisions were set short term prescriptions.

[1]FetiGjilani "Prescription of the lawsuit according to the legislation of R.P.SH"

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On April 1, 1929, the Albanian Civil Code came into force. In articles 2009 to 2047 of this code is treated the institute of prescription. The content of article 2009 of this code clearly shows that even in the albanian civil code the winning and the extinguishing prescription have been merged into a single institute. Following the tradition of bourgeois legislation, our civil code of 1929 provided for a 30-year general statute of limitation which, in the sense of Article 2034, applied to all real and personal claims. On April 1, 1932, the Albanian trade code entered into force.

Consequently, from that date the law suits stemming from the commercial transactions began to apply the prescribed statutes. They then followed the entry into force of a decree no. 1670 dated 30/05/1953 "On Prescription". Then this institute was followed by the code of 1982, and finally with the code of 1996 with non basic changes over this direction.

The notion of law suit prescription and its elements

As a matter of fact, the term prescription of a law suit means that a right has been violated long ago and throughout this time the subject has not done the necessary actions for its protection. This relationship under the law does not allow this right to be enforced in a binding way. Thus, the passing of this time during which the subject did not act to secure its protection, according to the law affects this legal relationship.

However, when we discussed about the legal facts that are part of the category of events, it is mentioned the passing of a certain deadline which is part of this category. Precisely this transition is based on the prescriptive institute. This means that the prescription itself is a legal fact of the category of these events with the authentication of which there are consequences of a shameful nature, these consequences are associated with the subjective right to use one of the strongest means of protection of civil rights -law suit. The law by recognizing to persons of this subjective right to address the court by filing a law suit at the same time limits the exercise of this right by setting a time limit which was judged and justified by lawmakers for the exercise of this right.[2]This means that the non-exercise of this right set by lawmaker within a certain deadline causes the subject to lose the right to address the court, thus losing the right to oblige the other party to fulfill its obligation.

According to Article 112 of the Civil Code, "The right of a law suit that has not been exercised within the deadline set by law shall be extinguished and can not be accomplished by a court or other competent body". This is precisely the passing of a certain time due to which the right to a law suit is lost. With that passing of time, they lose the evidence for the existence of a certain right. In some cases it may happen that the documents are lost, witnesses may die or, as time passes, events can be forgotten and, therefore, in the case of a possible litigation dispute, this issue of evidence presents great difficulties, not only for the claimant, but also for the defendant at the same time, regarding his defense.

The right to a law suit, as defined in the law, is the only opportunity to demand the mandatory enforcement of a civil law. The notion of *right of law suit* relates to the notion of law suit. The law suit is the means by which the civil law or other rights arising out of certain legal relationships are protected and resettled by the court or other competent authority.

[2]ArdianNuni “Lectures on civil law”

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The filing of this law suit protects not only subjective right but also objective right, because the competent body, by restoring the violated right, does not allow the violation of these norms of the law.[3]

From the law formulation, we can say that the essential elements or conditions of the law suit prescription are two: the inactivity of the official (holder) of the subjective law and the passing of time within which he should have exercised this right. The first element is precisely the failure of the official to act when he can and should act, ie, when he had this right of the law suit and there was no legal impediment to the exercise of this right and, nevertheless, did not exercise it during the time set by law. The second element relates to the prescription deadline. The deadline for the prescription of the law suit is set by order of reference and not by agreement between the parties.

Analyzing the right to a law suit in the procedural and substantive sense

The notion *"right to a law suit*" is derived from the broad notion *" law suit "*. The law suit is the means by which the violated civil rights and the other rights deriving from legal, labor, family relations etc. are protected and resettled in ourt.The law suit is the means by which the violated subjective right is protected, but also the right in the objective sense, and in this way the court, arbitration or special jurisdiction removes the violation of the norms of the right which at the same time has caused the emergence of legal relationship. This means that the activity of the court and the state authority is triggered by filing the law suit for the examination and resolution of the conflict that has arisen.[4]

But in itself the notion of the law suit contains two sides, two meanings that differ between them and namely: the right to a law suit in the procedural sense; the right to a law suit in the material sense;

The division of the law suit in the procedural sense and in the material sense comes quite clearly from the content of the provisions of our civil law. In the civil code is treated the right of the law suit in the material sense when the expression *the right of the law suit* is used, it refers to the right to a law suit in the material sense, and when the expression is used with *the filing of a law suit*, as in the case of article 131 item “b”of the civil law, it refers to the right of action in a procedural sense. In the civil code it is stated that "the prescription is interrupted by filing a law suit, counterclaim or repossession, even in a court or arbitration that is not competent to consider the case". According to the interpretation given to this article, we understand that the right to a law suit in the procedural sense is nothing but the right to file a law suit. Consequently we can say that the right to a law suit in the procedural sense is called the right that the law recognizes to every person with legal capacity to address a competent jurisdiction in order to protect the legitimate rights that have been violated or opposed.[5]The right to a law suit in a procedural sense does not depend on any deadline, so a person can file a law suit at any point in the court because the law obliges the court to consider the law suit, regardless of the time of violation or rejection of the right has been relatively long. The judge is obliged to perform all the actions of accepting the claim and to send the case for review at the court hearing even if the content of the claim itself clearly shows that the prescriptiondeadline is met. Consequently

[3]FetiGjilani “Prescription of the lawsuit according to the legislation of R.P.SH”
[4] Valentina Kondili “Civil law”
[5]FetiGjilani “Prescription of the lawsuit according to the legislation of R.P.SH”

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neither the judge nor the arbitrator can refuse to accept the claim for review with the justification that it is prescribed. Such rejection means, you do not want to give and do justice.

What does the right of law suit mean in the material sense?

The notion of the right to law suit in the material sense has been the object of many important discoveries of juridical science. The right to a law suit is a rightthatbegins from the violation of the right and aims to avoid this violation. This right is of a purely material legal nature and therefore differs from the action for filing a law suit, which because of its nature enters into the field of civil procedural law. That is, we conclude that the right to a law suit in a material sense is not an independent member of subjective law, but it is a subjective right that has been violated, maintaining its ability to be committed by violence to the competent bodies of the state apparatus. Among the right oflaw suit in the material sense and that in the procedural sense the law has imposed some restrictions on the right to a law suit in the material sense. This right must be exercised within certain deadlines, otherwise it is extinguished. In this case, it is said to be prescribed because it can not be accomplished by addressing to the court and the relevant competent bodies.

The content of the prescription and the nature of the legal provisions governing it

The right of a law suit, which has not been exercised within the time-limit set by law, can be terminated and can not be accomplished, by a court or other competent body under Article 112 of the K.C. from the content of this article itself, it is understood that there are two conditions to be fulfilled for prescription: - Passing of a certain time; - Failure to comply with the right of a law suit within this time limit.[6]

These are two closely related conditions, the existence of which derives the very meaning of prescription. The first feature defines the deadlines of the law suit that will be dealt with extensively in the next chapter. The second characteristic relates to the failure for acting of the personwhose right was violated, who should have acted in the conditions in which the right of the law suit had arisen, and there was no legal obstacle to the exercise of that right, although he did not exercise this right during the deadline set by law. The prescription of the law suit does not stop the right to file a law suit at the state authorities, but it extinguishes the right to benefit from the pertinent defense of these organs. As outlined above, it is concluded that the prescription of the law suit, by its legal nature, is not a term related to a particular legal action but is a legal fact with extinguishing consequences. The prescriptive institute applies in all areas of civil law.

The legal provisions regulating the institute of prescription have a mandatory character. Pursuant to Article 116 of the K.C "any agreement of the parties to change the prescription period shall be unlawful". The importance of this rule refers to the nature of this institute. If the parties were to fix these deadlines themselves, it would not make sense to estinguish, and the constraining force of the state, which would secure these deadlines, would be unnecessary.

Likewise, the "freedom of the parties" in setting these deadlines would create confusion, because for the same legal relationship or obligations of the same kind, there would be different prescription deadlines, depending on the will of the parties. Exercising of this right will only

[6] Juliana Latifi “Civil law”

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be done when the subject has the right of the law suit and it will end it only when the right has been violated or denied without the prescription deadline being met.

CONCLUSIONS

I notice that the prescriptive institute is one of the oldest institutes in the history of law. The prescription of a law suit means that a right has been violated long ago and throughout this time the subject has not done the necessary actions for its protection. This relationship under the law does not allow this right to be enforced in a binding way. This means that with the expiration of the deadline set by law, the subject's right to file the law suit will be terminated.
The notion *"right to a law suit*" is derived from the broad notion *" law suit*". The law suit is the means by which the violated civil rights and other rights deriving from legal relations are legally protected and reinstated. But the notion of law suit itself contains two sides, two meanings that differ between them: a) the right to a law suit in the procedural sense; b) the right to a law suit in the material sense;

The right to a law suit in the procedural sense is nothing else but the right to file a law suit. Consequently we can say that the right to a law suit in the procedural sense is called the right that the law recognizes every person with legal capacity to address a competent jurisdiction in order to protect the legitimate rights that have been violated or opposed.

The right to a law suit in the material sense is not an independent right of subjective law, but it is a subjective right that is violated, which maintains its ability to be realized through the violence of the competent organs of the state apparatus.

The study of the field of application of the law suit prescription aims to find out which law suits are filedto the action of this institution and which are excluded from this action. Therefore, the discovery and definition of these boundaries gives the opportunity to simultaneously clarify the meaning and causes of non-prescription as well as the criteria that our legislation has followed in relation to the non-prescription of the law suit. Non-prescription is the opportunity to seek at any time the protection of a subjective right by the competent state bodies. The division of the prescription period from the non-prescription period can be determined by dividing the category of law suits that are prescribed and those that are not subject to this institute. Law suits that are prescribed and law suits that are not prescribed are treated with perfection and accuracy in working on this topic.

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