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ABSOLUTE STATUTE OF LIMITATIONS

The Parliament adopted the absolute limitation period, which was long awaited by all debtors – individuals.

Parliament also voted on second reading Art. 112 of the Obligation and contracts Act (OCA). The provision was promulgated in Official gazette No. 102 of 2020, but will enter into force on June 2, 2021.



The statute of limitations is a period, which after its passing the law accepts the occurrence of certain legal consequences.

After the limitation period, the creditor is in inability to seek protection of his right of claim before the court.

Until now, before the adoption of the absolute limitation period, the obligations shall be considered extinguished with a total limitation period of five years, but it could be paused and interrupted. In this way, the limitation period can be extended indefinitely, which created instability for the debtors in the civil turnover.

The above stopped people in finding a new job, buying real estate, a car or other goods, getting married and this also created a number of other problems, which with adoption of absolute limitation period is aimed to be avoid.

The absolute limitation period is a ten years period, after which, regardless of its interruption, the financial obligations against the individuals shall expire, except when the obligation is postponed (there is an agreement between the creditor and the debtor to pay the obligation after a certain period) or rescheduled (there is an agreement between the creditor and the debtor the obligation to be paid in installments) - Art. 112 of the OCA.

The legislator has also defined some exceptions, which aim is not to affect the trade turnover, as well as not to violate the moral

and the principles of morality.

The exceptions are regarding financial obligations:

1. from the commercial activity of sole traders or of individuals - shareholders in a company under art. 357 of the OCA
2. for delicts;
3. for unjust enrichment;
4. for maintenance obligations;
5. for labor remuneration;
6. for benefits under the Labor Code;
7. with regard to a privatization transaction;
8. with regard to property, restituted by the order of a normative act.

Also, the legislator has explicitly stated that the postulates of Art. 115 and Art. 118 of the OCA are valid for the new ten-year statute of limitations.

The limitation period does not run:

- (a) between children and parents while the parents are exercising parental rights;
- (b) between guardians or trustees and their guardians or trustees for the duration of the guardianship or trusteeship;
- (c) between spouses;
- (d) for the receivables of persons, whose property by law or by order of the court is under management, against the manager during the management;
- (e) claims for compensation of companies against their managers while they are in office;
- (f) for the claims of minors and persons placed under guardianship for the period during which they have not appointed a legal representative or guardian, and 6 months after the appointment of such or after the termination of the incapacity;
- (g) while the claim is pending.

If the limitation period expires at a time when the creditor or the debtor is militarily mobilized, the claim may be filed until the expiration of 6 months from their demobilization.

If the debtor pays the obligation after the expiration of the statute of limitations, he has no right to claim back the payment, even though at the time of payment he/she did not know that the statute of limitations had expired (Article 118 of the OCA).

As mentioned above, the Article enters into force on 02.06.2021 and for the at the moment existing cases, §2 from the transitional and final provisions of the OCA, has been adopted, which provision regulates three different hypotheses:

1. In case there is not a legal procedure in the court or enforcement process yet - the statute of limitations under Article 112 shall begin to run from the day on which the claim is considered due.
2. In cases when the creditor has an enforceable act in his favor, but an enforcement case has not been initiated yet - the statute of limitations begins to run from the day of entry into force of the act by which the claim is recognized.
3. In case of enforcement procedure - the statute of limitations begins to run from the first enforcement action.

It should be highlighted that the statute of limitations cannot be applied ex officio, but the debtor must refer to the Court that it has expired.

Here are some situations as an example:

1. If legal proceedings have started against you, you as a defendant, should make an objection for expired limitation period.
2. In case there is an enforcement procedure: the execution act against you has been issued on the ground of decision, enforcement order or arbitration act, but the absolute period of limitation occurs during the enforcement case, you shall file a negative declaratory claim. After the case is completed and the decision enters into force, you will have a court act that releases you from the obligation for payment due to the expiration of the limitation period and no enforcement action could be taken against you.
3. If, after the expiry of the absolute limitation period, the creditor has not claimed the debt:

In this case, you do not need to take any action. However, although the expired ten-year period, the creditor still decides to collect his claim, your actions should follow the described in the first point of the present legal statement steps.

If the creditor does not take any action, in order to avoid a situation where he may decide to start legal proceedings in an inconvenient moment for you (file a claim while you are abroad, you did not change your permanent address, etc.), then the best option for you is to initiate legal proceedings and to claim nonpayment due to expiration of limitation period. (Actions described in point 2 above.)

The situations described above are exemplary.

If you have additional questions or a similar situation, you can contact us for advice and legal advice.