



The Forfeiture of Rights

Andrada Mihaela TRUȘCĂ

Faculty of Juridical and Administrative Sciences, Private Law Department, “Dimitrie Cantemir” Christian University, Romania,
E-mail: andradatrusca@yahoo.com

Abstract *The forfeiture is the time period set by law or the parties, within a subjective right must be exercised or an unilateral act must be carried out. Forfeiture did not have a general regulation in the previous legislation, only specific applications. The new Civil Code devote forfeiture Title II of Book VI, „About statute of limitation, forfeiture and limitation periods”.*

Key words:

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1. Introduction

Pursuant to Art. 2545 of the Civil Code “By law or parties’ will limitation periods may be assigned for the exercise of a right or carry out unilateral acts. Subjective right non-exercise within the period set causes its loss, and in case of unilateral acts, the prevention, under the law, of their committing”.

As shown in the quoted text, the forfeiture is the time period set by law or the parties, within a subjective right must be exercised or an unilateral act (Specialized literature states that by unilateral acts we should understand not only unilateral legal acts but also materials acts) must be carried out (Boroi, Anghelescu, 2011). The consequence of the subjective right non-exercise within the limitation period, as agreed by the parties or required by law, is the loss of the subjective right in its essence or, in case of unilateral acts, the prevention of their committing. Therefore, whether it relates to bilateral/plurilateral or individual acts, forfeiture results in the loss of the subjective right or at least the prevention of a unilateral act carrying out.

2. Limitation Periods’ Classification

Depending on their origin, limitation periods may be set by law or parties’ agreement.

According to the procedure, we may distinguish between public limitation periods (set up for the protection of general interests) and private limitation periods (set up for the protection of private interests). In this respect Art. 2549, Para. (2) of the Civil Code provides that parties may not amend the public limitation periods, decreasing or increasing them, as appropriate.

Per a contrario, a private limitation period may be amended by parties’ agreement (Boroi, Anghelescu, 2011).

a) *Limitation periods set by law*

Pursuant to Art. 2547 of the Civil Code, “*If out of the law or parties’ agreement does not result in an unmistakable way that a certain period is for limitation, the statute of limitations is applicable*”. According to this legal text statutory limitation periods may be formal or tacit, their nature arising from the law or parties’ will, in an unmistakable way.

As examples of statutory periods for whose excess forfeiture are formally prescribed, we hereby mention:

– 5 years period to apply for land book rectification against the third party beneficiary of good faith of a right in rem by donation or legacy, counted from the application request registration in the land book of acquired right in rem [Art. 909 Para. (2) and (4) of the Civil Code];

– 3 year period applicable in the action for the recovery of the lost or stolen personal property from the owner of good faith, counted from the date on which the owner lost material ownership over the property [Art. 937 Para. (2) of the Civil Code];

– 1 year period applicable to the seller’s action for the extra price and to the buyer’s action to reduce the price or terminate the agreement calculated from the execution date of the sale agreement; if the parties have set a date for measuring the property, 1 year limitation period will be calculated from that date (Art. 1744 of the Civil Code);

– 6 months period applicable to the right in the action of prejudice repair in case of hotel deposit [Art. 2134 Para. (1) Letter b) of the Civil Code] etc.

As examples of tacit statutory periods, there are legal texts which unmistakably show that the period completion entails the loss of subjective right or prevention of a unilateral act carrying out, such as:

– 1 year period for the exercise of the successorial option right, calculated as of the succession opening [Art. 1103 Para. (1) of the Civil Code];

– 2 days period from the date on which the swarm of bees passed on another's land, unless the swarm's owner does not pursue it or ceases to pursue it during this time [Art. 576 Para. (2) of the Civil Code] (Piperea, 2011) etc.

b) Accepted periods

The parties are free to amend the statutory limitation periods (decreasing or increasing them), except those which are public [Art. 2549 Para. (2) of the Civil Code], or to set themselves such periods, which cannot be set so that would make it excessively difficult the exercise of rights or the accomplishment of the act by the interested party, the clause whereby such a period would be set being simple void (Art. 2546 of the Civil Code).

3. Limitation Periods' Legal Regime

According to Art. 2547 of the Civil Code, whereby is established a legal and relative presumption, if out of the law or parties' agreement does not result in an unmistakable way that a certain period is for limitation, otherwise the period is considered for limitation. This provision justifies that forfeiture has a more serious consequence than limitation, namely the loss of the subjective right in its essence, as compared to the limitation, that only cuts the material right off to action (Ungureanu, 2012).

Art. 2548 Para. (1) of the Civil Code establishes the rule whereby „*Limitation periods are not subject to suspension and interruption, unless the law provides otherwise*”.

There are two exceptions to this rule, set by the Civil Code, in Art. 2548 Para. (2) and (3), thus:

– in all cases *force majeure* prevents time running, and if the period began to run, it is suspended, pursuant to the same conditions as the extinctive limitation period [the provisions of Art. 2534 Para. (1) of the Civil Code are applicable]. Limitation period is not considered reached not till after 5 days from the date the suspension has ceased;

– when the exercise of the right involves *bringing an action before the court*, the period is interrupted on the date the application for summons or arbitration or putting in default is submitted, as appropriate, and are

applicable the rules from the extinctive limitation period interruption.

4. Forfeiture's Consequences

Forfeiture's consequence consists in the loss of the subjective civil right in its essence non-exercised within the period or, as appropriate, in the prevention of an unilateral act carrying out after the period completion.

Forfeiture may be claimed by the interested party only in the first instance, by statement of defense or at the latest at the first hearing here at the parties are legally summoned [Art. 2550 Para. (1) of the Civil Code, in conjunction with Art. 2513 of the Civil Code] (Georgescu-Banc, 2011).

As opposed to the limitation, when the Civil Code's provisions prohibit the competent jurisdiction body the ex officio application of limitation [Art. 2512 Para. (2) of the Civil Code], in case of the forfeiture „*the jurisdiction body must invoke and apply the limitation period ex officio, whether the one interested brings it up or not, unless it concerns a right of which the parties may freely dispose*” [Art. 2550 Para. (2) of the Civil Code]. In this case, the legislator considers therein only limitation periods imposed by mandatory legal provisions (public). In private relations, according to Art. 2549 Para. (1), when limitation period was set by contract or established by a legal provision that protects a private interest, the one in which favour was stipulated or established may give up, after the period completion, at the forfeiture's benefit. In order to produce legal effects, remission must be expressed after the period completion, otherwise (when the remission would intervene before the period completion) will be covered by the limitation interruption by the recognition of the right.

The parties of a legal act may not give up, neither anticipated nor after the start of their progress, at the public limitation periods and neither may amend them, decreasing or increasing them, as appropriate [Art. 2549 Para. (2) of the Civil Code].

5. Conclusions

Both statute of limitation and forfeiture are sanctions with extinctive effect and suppose time limits, but statute of limitation eliminates the material right to action, while forfeiture eliminates the subjective civil right itself. Unlike prescription, the competent court shall be obliged to invoke and apply of its own motion the term of decay. The periods of limitation are legal for the statute of limitation, while for the forfeiture can be both legal and conventional.

Forfeiture, as a penalty of material law is not to be confused with the forfeiture as a penalty of civil procedural law; the latter interfered in event of failure of

the procedural document in mandatory procedural time-limits laid down by the law.

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