

THE CONSTITUTIONALITY OF THE DIFFERENT TREATMENT BETWEEN STATE AND CITIZENS ON THE EXEMPTION FROM BAIL

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Abstract

The right of access to justice is one of the most important fundamental rights elevated to constitutional principle, as laid down in Article 21 of the Constitution, which provides that "any person can go to court to protect the rights, freedoms and interests legitimate, no law may restrict the exercise of this right, the parties having the right to a fair trial and settlement of cases in a reasonable time". But, like any law, access to justice is subject to certain limitations, not an absolute right, and in consideration of special circumstances may be considered special rules of procedure, as well as ways to exercise procedural rights¹. Under the constitutional provisions of Article 126, the legislature may establish general rules of procedure, but may establish certain rules derogating from the common procedure. These are the general rules which set bail, but also that certain entities exempt from the payment. In this paper we try to present reasons why the legislature has resorted to such measures and considerations taken into account by the constitutional court has ruled that it is constitutional exemption from the payment of public institutions established by way of bail.

Keywords: *bailment, access to justice, limitations, constitutional control, different treatment, state, citizens.*

I. General

The legislature may establish general rules of procedure, but may establish certain rules derogating from the procedure, whereas according to the constitutional provisions of Article 126, the law courts and court procedure are provided only by law, issue and ruled on taxes and other revenue of the state budget and state social security budget, which is determined only by law, thus providing provisions art. 139 par. (1) of the Constitution. Thus, a law of general application is the Government Emergency Ordinance nr. 80/2013² recalling those established by the previous rules, Law no. 146/1997 on stamp duties³, stating that the actions and claims brought to court are subject to court fees and in cases specifically provided by law, actions and claims brought to court are exempt from court fees.

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¹ In this respect, for example, Decision of the Plenum of the Constitutional Court No. 1 of February 8, 1994, published in Official Gazette of Romania, Part I, no. 69 of 16 March 1994.

² Published in the Official Journal of Romania, Part I, no. 392 of 29 June 2013.

³ Published in the Official Journal of Romania, Part I, no. 173 of 29 July 1997.

Over time, the application of these constitutional provisions were adopted a series of laws aiming to regulate certain measures to enforce payment obligations of public institutions established by enforceable as general rules and specific rules governing the punctually, for example, organizing capitalization for State Assets.

In this regard, by way of example, the Government Ordinance No. 22 of 30 January 2002 on the payment obligations of public institutions established by enforceable⁴, Government Emergency Ordinance No. 4 of 2 February 2011 establishing measures for reorganization of the Authority for State Assets and liabilities for the performance of public institutions and authorities set out enforceable⁵, Government Emergency Ordinance no. 51/1998 regarding some state assets⁶ or Law no. 116/2011 on the establishment of temporary measures functioning of the Authority for State Assets and the National Securities Commission⁷.

The principle was established, inter alia, that, in terms of applications, regardless of their nature, made by institutions and public authorities in the enforcement procedure established by enforceable claims in their task are exempt from stamp duty, and amounts judicial stamp set by way of bail.

II. The constitutionality of the different treatment between state and citizens on exemption to pay bail. Jurisprudential aspects

II.1. Under the provisions of art. 411 of Law no. 137/2002 on the acceleration of privatization⁸, requests from the public institution involved in connection with the shareholder companies in its portfolio with the privatization process, the obligations arising from contracts the sale of shares, the enforcement of judgments and any other procedural acts performed by and for this, are exempt from court fees and legal stamp, cautions and any other fees that are, by law, come from the state budget. Of course, in some cases on the role of the courts, the exemption of public institutions involved in the process of privatization has led to the lifting of unconstitutionality, motivated by the fact that they violated the constitutional provisions of Article 41 (now Article 44) and art. 16 para. (2) of the Constitution⁹, showing that the exemption from judicial stamp duty and legal stamp of a public institution holding shares in a company subject to privatization prejudice to the principle of non-discriminatory protection of ownership regardless of ownership. It was also claimed that the protection of private ownership of the state, represented in this case by the

⁴ Published in the Official Journal of Romania, Part I, no. 81 of 1 February 2002.

⁵ Published in the Official Journal of Romania, Part I, no. 96 of 4 February 2011.

⁶ Published in the Official Journal of Romania, Part I, no. 948 of 24 December 2002.

⁷ Published in the Official Journal of Romania, Part I, no. 430 din 20 June 2011.

⁸ Published in the Official Journal of Romania, Part I, no. 215 din 28 Marche 2002.

⁹ In the same sense is the expressed opinion of the court in this case. The 1 Sector Court - Bucharest considers that the objection of unconstitutionality is founded, in showing sense that the text of the law criticized is contrary to article 41 of the Constitution because "as set for a part - a public institution - a feature on the report requests with other stakeholders in the privatization process" so "private property is equally protected, but preferentially depending on the quality of one of the parties". Moreover, the court extends the critique of unconstitutionality and in relation to art. 16 para. (1) of the Constitution.

state shares in companies being privatized, it should result in a privileged position of the state in relation to other private law subjects, including view payment fees, and surety set by law as compulsory notification courts¹⁰.

Responding to such criticism of unconstitutionality, the Constitutional Court stated that the establishment by the legislature of exceptions to the general rule of payment of court fees, that exemption from duty, not discrimination or a breach of the constitutional principle of equal rights. According to constitutional provisions, "taxes, fees and other revenue of the state budget and state social insurance budget is established only by law" is therefore up to the legislature to establish exemptions from the taxes, given the different situations without thereby undermine the principle of equality¹¹.

II.2. Government Ordinance nr. 22/2002 referring to payment obligations of public institutions established by states enforceable¹² in Article 7 "applications, regardless of their nature, made by institutions and public authorities in the enforcement procedure established claims through enforceable in their pregnancy are exempt from stamp duty, stamp judiciary and the amounts determined in respect of bail".

These provisions were repeatedly subject to constitutional review, from many perspectives, but in relation to the provisions of Article 16 of the Constitution relating to equal rights, was supported¹³ that the legal provisions challenged as unconstitutional, because the exemption amounts set by way of security for public institutions and authorities to create a discriminatory regime that favors public and gives borrowers greater protection of private property to public institutions, to the detriment of other subjects as holders of debts, liquid and payable. Also in support are also argues that the notion of "citizens" in the consecration of the legislature used Article 16 para. (1) of the Constitution, were taken into account all legal, that all persons addressing justice, be it individuals or legal entities, including public institutions and authorities. As such, it is justified that some topics receive more rights than others, such as public institutions and authorities are clearly privileged by exemption when settling bail application for suspension of enforcement in the appeal to execution.

Responding to these criticisms of unconstitutionality, the Court¹⁴ held that, as follows from the constitutional provisions of Article 16, citizens enjoy the rights provided in the Constitution and laws, being equal before them and public authorities, while the public authorities their powers are established by law, according to their

¹⁰ Motivating the objection author in the Decision No. 461 of 2 December 2003, published in Official Gazette of Romania, Part I, No. 53 of 22 January 2004.

¹¹ The meaning of the above is the Decision. 21 of 18 January 2001, published in Official Gazette of Romania, Part I, no. 109 of 5 March 2001.

¹² Published in the Official Gazette of Romania, Part I, No. 81 of 1 February 2002, approved the amendments by Law no. 288/2002, published in the Official Gazette of Romania, Part I, # 344 of 23 May 2002.

¹³ Motivating the authors retained the objection in Decision No. 332 of 25 June 2013, published in Official Gazette of Romania, Part I, nr.452 of 23 July 2013.

¹⁴ In this sense are, for example, Decision No. 10 of 17 January 2013, published in Official Gazette of Romania, Part I, No. 109 of 25 February 2013 Decizia Constitutional Court no. 253 of 21 May 2013, published in Official Gazette of Romania, Part I, no. 395 of 1 July 2013.

competence in carrying out the functions for which they are created. The principle of equal rights provided by the Constitution to citizens may not like, by extension, to get the meaning of equality between citizens and public authorities¹⁵. In this context we cannot speak about the violation of the principle of equal treatment than when applied differential treatment of equal cases, without any objective and reasonable reasoning, or, in the case provided by the Government Ordinance text no. 22/2002 on the obligations payment of public institutions established by enforceable legal persons as collective subjects of law is obviously a different situation.

Exemption institutions and public authorities in respect of the payment of bail set, the procedure for enforcement of claims set enforceable titles in their task, as debtors of certain natural or legal persons, has an objective and reasonable justification for the authorities being financed from the state budget to operate.

So, the aim of bail is to formation of a guarantee for creditor enforcement started that is turned off temporarily by issuing an enforcement appeals challenge by the debtor. However, the creditor is to guarantee that the state is viable, even if his debts may be staggered depending on budgetary resources available in a given year, meaning they are nr.22/2002 Government Ordinance providing for possibility for the debtor institution to request the court to grant, under the law, a grace period and / or setting deadlines staggered payment obligation¹⁶.

III. Conclusions

In the interpretation and application of legal rules on the right of access to justice is taken into account the constitutional provisions of Article 20 that the constitutional rights and liberties shall be interpreted and enforced in accordance with the Universal Declaration of Human Rights with the covenants and other treaties Romania is a party, and if there are inconsistencies between the covenants and treaties on fundamental human rights to which Romania is a party, and internal laws, the international regulations shall prevail, unless the Constitution or laws comprise more favorable provisions.

Given that access to justice is provided by the Basic Law, under which any person can go to court to protect the rights, freedoms and legitimate interests and that no law may restrict the exercise of this right, significance of this latter thesis is that one cannot exclude the exercise of procedural rights that you established any class or social group, but the legislature may establish, by reason of special circumstances, special rules of procedure, as well as ways exercise of procedural rights¹⁷.

Imposing legal level of requirements such as setting deadlines or payment of tax for the title or subject of law has a solid and unquestionable justification in the light of the objective pursued, consisting of time limitation of the state of uncertainty in the development of legal and restricting the possibilities of abuse of that right¹⁸. However,

¹⁵ *Idem*.

¹⁶ *Idem*.

¹⁷ See, in this regard, the Court Constitutional Decision No. 99 of 23 May 2000, published in the Official Journal, Part I, nr. 389 of 21 August 2000.

¹⁸ See, in this regard, the Constitutional Court Decision No. 40 of 29 January 2004, published in Official Gazette of Romania, Part I, 229 from March 16, 2004.

and the court in Strasbourg¹⁹, ruled in the context of the fact that the right of access to courts is not an absolute right has shown that it can be subject to legitimate restrictions such as legal limits of prescription or ordinances that require a security deposit²⁰.

Exemption institutions and public authorities to pay stamp duty, stamp judiciary and bail amounts determined in respect of the enforcement procedure established by enforceable claims in their task, as debtors of certain natural or legal persons has an objective and reasonable justification for the authorities are financed from the state budget to be able to work, and all the taxes are revenues to the state budget, so it would be absurd that the authorities concerned are required, formal) to budget pay a fee returns the same budget²¹.

In this context, we believe it is fair and non-discriminatory to such an extent that the exemption that bail by public institutions as blocking certain sums from the state budget would generate some failures in budget execution. On the wide, according to the principle of specialization budget public expenditures are summarized chapters and destinations are set in concrete limits that can make the payments, or amounts bound for bail would be impossible to predict.

¹⁹ Judgment of May 10, 2001, paragraph 93 in Case Z and Others v. the United Kingdom.

²⁰ Decision No. 273 of 22 March 2012, published in Official Gazette of Romania, Part I, nr.3 42 of 21 May 2012.

²¹ Decision. 194 of April 2, 2013, published in Official Gazette of Romania, Part I, no. 345 of 12 June 2013.