

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.

PRACTICAL MEANINGS OF THE INCIDENCE OF THE ADMINISTRATIVE AND TAX RULES, RELATING TO THE PAYMENT OF THE ANNUAL CAR'S TAX

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Abstract

Applicability of administrative regulations, in correlation with the incidence of tax rules, gave birth to custom situations, which, in addition to the one created in the understanding and the wrong interpretation of the text of the law generated the application of the force of compulsion of the State. The *present* work is not focused only on a theoretical analysis of texts of law incidents, but especially is based on practical comments considering the action filed in the Administrative Court by a person who was considered damaged by the administrative authority.

Keywords: *administrative authority, fiscal provisions, taxes, car*

1. Introduction

Taxes are a form of sampling of a part of the revenues, of the fortune of the natural and legal persons made available to the state, for covering public expenditure. This sampling should be done in a mandatory, with irredeemable title and without any contra-performance from the state, being esteemed the principle of the tax equity. The most important sources of budgetary revenues are taxes and fees. Income tax is a required and irredeemable subscription, due, according to the law, to the state budget by natural or legal persons, for the revenue which they obtain or goods which they hold. Taxes and fees are set by the state through its authorities, depending on the skills which they hold, regardless of the fact that we make reference to central authorities or at local level¹.

The tax payer is the natural or legal person who is required by law to pay tax, being the person who supports actual payment of the indebtedness. The aim of taxable income, is represented by the revenues made by taxpayer, the wealth held by taxpayer, and in our case, the car which is chargeable. The source of the tax tells us of what is to be paid tax, of income or of fortune. Revenues, as the source of the charge, may take several forms, for example remuneration, profit, equities.

The unit of measurement in which is expressed the size of taxable material for quantification represents the unit of assessment. For exemple, for the income tax, the unit of assessment is the circulating medium, and for building tax the unit is the square meter for net area. The assessment tax is represented by the related tax of

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¹ Fiscal authorities identify and judges taxable material and determines the amount of tax due to state.

assessment unit. The tranche of assessment can be fixed (when related tax enforcement unit appears as an unchanging size, expressed in percentage or absolute sizes) expressed as relative sizes.²

Time limits by which the payment must be made, and as a rule, they are different in relation to the size and frequency of income tax. They are taxes which are takings daily, others are received at regular periods (monthly, quarterly, semestral, yearly). The car tax shall be paid annually in two equal installments, until 31 March and 30 September.

2. The car's tax

The car's tax is a contribution based on money, natural and legal persons are obliged to participate, respecting some rules, at the formation of general funds for the development of the society, which are necessary for the benefits of all the community. The car's tax is an absolute contribution, all the natural and legal persons who are the customers of actions and objectives financed from public funds, are obliged to participate to the formation of these funds. This obligation is laid down in the Constitution of Romania, in article 56, alin. 1 of chapter III, fundamental duties for citizens.

Car's tax has character non-refundable, the state is not obliged to repay to taxpayers the amounts levied under this title. Once the general funds of the society are formed, they should only be used for the financing of actions and objectives of general interest, necessary for all members of society. Such amounts are collected on the taxable object, but they return in one way or another by members of society.

Of course car taxes due under legal rules, because there are not taxes of the state which can't be perceived only in accordance with the text of the law.³ Required payment of taxes returns to natural and legal persons who have the status of tax payers. In accordance with Article 56, paragraph 1 of the Constitution, citizens have the obligation to contribute to public expenses by taxes and fees.

Car's tax is due for auto possession owned by the taxpayer. This feature is closely linked to the legality of the tax, because they are subject of taxation only those income and goods of the taxpayer which, according to the law, are taxed; „per a contrario” it's illegal the taxation of goods or incomes which are not set out in the regulatory acts which are establishing such obligations. Improper levying taxes attracts the refund to taxpayers as soon as possible, and civil servants guilty will respond, as appropriate, disciplinary, administrative or criminal law.

In accordance with Article 261, chapter 4 of Fiscal Code, any means of transport that is the property of a person shall entail payment of an annual tax, excepting the

² The imposition of proportional odds, the share is constant, and the tax increases proportionally with the increase of the taxable material. Imposing proportionate is often criticized because it maintains the same fiscal pressure on all taxpayers, barring their contributory capacity.

³ In the case of article 139, paragraph 1 of the Constitution, taxes, duties and any other revenue of the state budget and State social security budget shall be established only by law, and in accordance with article 139, al. 2 Local taxes and duties shall be established by the local or county councils, within the limits and under the conditions law.

means of transport statutoried in Article 262, alin. 1, 2 and 5 of Fiscal Code. The estimation of tax on means of transport shall be based⁴ on the engine capacity, by multiplying each group of 200 cmc or fraction thereof the amount corresponding to each group.

In the case of means of transport which is disposed of by a person in the course of a year, or shall be removed from the tax records of the division of authority of local public administration, the tax of means of transport stops being paid by that person, from the date of the first of the month following that in which the means of transport has been disposed of or removed from tax records. Any person who acquires, disposes of a means of transport or changes his or her domicile is requires to submit a tax declaration regarding the means of transport owned, at the specialized section of the local public administration authority on the domicile within 30 days, including, from the time of modification⁵.

3. Practical aspects concerning the auto tax charged by the local administrative authority

V.N., the owner of car brand ARO has tried not to pay the tax due for the property that he hold, for the year 2012, 2013 and 2014 in the first half. The argument of the owner was that the car for which he has to pay was removed from circulation and he uses it effectively just as cage for hens in the household. So, he initiated a draft resolution for the Local Council Alba Iulia, a project calling for exemption from payment of income tax, in accordance with the foregoing.

The Local Council of Alba Iulia, in public meeting of July 26, 2013 aims to reject the project, which is why the car taxable owner has filed an appeal to the Administrative Court.

In January 2014, the Tribunal decided to dismiss the action made by claimer V. N. against the Local Council of Alba Iulia. V. N. is the owner of the means of transport brand ARO, which was registered in Romania, and the motor tax is due by him in the quality of the ownership of the car in question. The proof of the quality of ownership of the claimer results from the contract of sale and purchase no.1762/30.03.1984, the declaration for the establishment of tax and insurance premiums on the car no. 2275/02.04.1984 concluded between V. N. and the Popular Council of Municipality of Alba Iulia and the Identity Card of the ARO.

In the civil action filed, the plaintiff argues that he does not due any car tax for the means of transport brand ARO which he holds in the property, because it has been removed from police records because of the advanced ageing of the vehicle. It's old (30 years old), the car was manufactured in 1984, is damaged due to missing parts, making it unsuitable for the performance of the functions for which it was created.

Concerning the sustaining of the plaintiff according which the means of transport it's old and it has missing parts being decommissioned should be considered title IX

⁴ Art. 263 of Fiscal Code.

⁵ In the case of means of transport provided in article 263, paragraph 2 of Fiscal Code with additions and subsequent amendments, the tax shall be calculated on the basis of its capacity, by multiplying each group of 200 cm³ or fraction thereof by the amount corresponding provided for legal.