

The New Civil Code for Everyone

INTERRUPTION OF EXTINGTIVE LIMITATION (LAPSE OF TIME)

Cases of Interruption of Limitation

The limitation is interrupted:

1. by a voluntary act of execution or by the recognition, in any other way, of the right which is limited, made by the person to whom the limitation runs in favor;
2. by filing an application for a summons or a request for arbitration, by recording the debt in the debt mass ion the creditor's group within the insolvency procedure, by filing the application for intervention within the legal seizure started by other creditors or by invoking, by way of exception, the right of which the validity is limited;
3. by becoming a civil party in a lawsuit during the penal investigation or before the court of law before the judicial investigation is started; in case compensations are granted, according to the law, ex officio, the starting of the penal pursuit interrupts the course of limitation, even if the becoming a civil party has not yet taken place;
4. by any act by which the person to the benefit of whom the limitation runs is deemed in default;
5. in other cases as provide by law.

Recognition of the Right

- Recognition can be made *unilaterally* or *conventionally*;
- It can be *express* or *tacit*.
- When the recognition is tacit, it must result unequivocally from manifestations which confirm the existence of the right of the person against whom the limitation is flowing. Acts of tacit recognition are the partial payment of the debt, buying, in whole or in part, the interests or the penalties, the application for a payment deadline and so on;
- May also invoke the tacit recognition the person entitled to get a refund for a service made in enforcing a legal document which was cancelled for nullity, termination or any other cause of inefficacy, as long as the determined individual asset, received from the other party on the event of enforcement of the cancelled document, is not claimed by the latter by way of real or personal legal action.

Application for a Summons or Request for Arbitration

- In the cases of interruption provided under pt. 2 and 3, the limitation is interrupted even if the notification has been made with an incompetent jurisdiction or criminal investigation authority or even if it is null for lack of form;
- The limitation is not interrupted if the person who has filed the summons or the request for arbitration or of intervention in the insolvency proceedings or judicial execution has waived it, nor if the application has been rejected, cancelled or barred by a judicial decree remained final;
- nevertheless, if the plaintiff, within 6 months from the date when the decision in regard to the rejection or cancellation remained final, files a new application, the limitation is considered as interrupted by the precedent request for summons or arbitration, however on condition that the new application be accepted;

Project „The Codes Are Coming!”

The contents of this material does not represent an official interpretation of the New Civil Code and does not cover all the aspects concerning this subject.

- the limitation is not interrupted even if the judicial or arbitral decision has lost its enforceability by reaching the limitation period of the right to obtain the forced execution. However, in this case, if the right to obtain the obligation of the defendant is indefeasible or has not been prescribed yet, a new application for summons or arbitration can be filed, without the possibility to oppose the exception of res judicata;
- the present provisions also apply accordingly when the limitation was interrupted by the invocation, by way of exception, of the right of which the action is becoming limited.

The Notice of Default

- the notice of default to the person in the interest of whom the limitation is running interrupts the limitation only if this is followed by the summons within 6 months from the notice of default

Effects of the Interruption of Limitation

- deletes the limitation started before the cause for interruption appeared;
- after the interruption a new limitation is started;
- if the interruption of limitation took place by the recognition of the right by the person in the interest of whom it was running, a new similar type of limitation will start running;
- in case the limitation was interrupted by an application for a summons or a request for arbitration, the new limitation of the right to obtain the forced execution will not start running until the decision to admit the application remains final;
- if the interruption results from the intervention made in the insolvency proceedings or that of forced execution, the limitation will start running again from the date when the legal possibility to turn into account the uncovered debt exists again;
- in case the limitation was interrupted according to the case under pt. 3, the interruption operates until the notification of the dismissal ordinance, the ordinance for suspension of criminal prosecution or of the decision to arrest of judgment or until the final decision of the criminal court is pronounced. If the remedy of the damage is granted, by law, ex officio, the interruption operates until the date when the person against whom the limitation has started to run became acquainted or was should have become acquainted with the final decision of the criminal court by which the compensation should have been established.

Benefit of the Interruption of Limitation

- the effects of the interruption of limitation are profitable to the person from whom the interruptive document originates and can only be opposed to the one against whom such a document was directed, except for the case when the law provides otherwise;
- if the limitation was interrupted by the acknowledgment of the right by the one in the interest of whom it was running, the effects of interruption are advantageous for the one against whom it was running and can only be opposed to the author of the acknowledgment.

Extension of the Interruptive Effect

The interruption of limitation against the main debtor or against the fidejussor generates effects in regard of both.

Project „The Codes Are Coming!”

The contents of this material does not represent an official interpretation of the New Civil Code and does not cover all the aspects concerning this subject.