

**MINISTRY OF EDUCATION, RESEARCH, YOUTH
AND SPORT
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LAW DEPARTMENT**

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**THE LEGAL CONSEQUENCES OF
TIME STUDIED THROUGH THE
INSTITUTION OF EXTINGTIVE
PRESCRIPTION AND
AQUIZITIVE PRESCRIPTION**

ABSTRACT

Scientific Supervisor,

Univ. Professor Phd. ION DOGARU

Phd. Student

Jr. Lect. DANIELA ISABELA NICA

(SCARLAT by marriage)

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Regarded as a necessity of real life, *the law*, just like the life it proceeds from is in a state of perpetual motion, of continuous change, complying every moment with the economic necessities, with the moral ideals of a society; the law is developed continuously, as a product of collective experience and of tradition, conveyed from generation to generation – by heritage, by imitation, by science, literature and art, an enhanced and transformed experience by each generation of trends.

The concepts of space and time, the first ones human mind passes, as through a sieve – the idea of existence – appear as two large containers of particular existences, which contain all that exists, as two frames or two vessels filled with the existence of these things. However, “the place“ and “the time“ are also dimensions of the world, that is, they are means of organizing, locating the beings that exist in it. A certain prejudice is now commonly used in speech, stating that things have their own place and time in the world.

Time and space appear as absolute, independent realities, where all activities and transformations of things take place.

Within its chronology, time corresponds to a sequence of moments, which can be repeated by references to periods prior or subsequent to them. “The moment“ represents an essential reference point in the juridical life, in general.

For this reason in particular and for other reasons, which we’ll discuss throughout the paper, we have focused our attention on this theme and we’ve chosen it as the subject of the paper we’ve committed to work out, aiming at emphasizing the role that time elapse has in the field of law and the juridical consequences which are produced.

The paper has a complex character, planning to approach the issues of time elapse from the point of view of different branches of law which are influenced by it, a character which is easily noticeable by studying the scheme that represents the outline of this paper.

A first chapter will be the one where we will focus our attention on the philosophical categories of time and space, at the same time analyzing their juridical significance.

The law provisions express a particular view, which is not yet researched, dealing with time. It is not being mistaken for none of the various corresponding concepts it emphasizes – for example – astronomy, geology, physics or history. Without being original in all aspects, it seems that juridical time, at the same time complex, multipurpose and syncretic is individualized by several distinctive features.

Juridical time is characterized by the identity of its traits – in any of the stages taken into consideration, past, present or future – even if, at other levels, each of these stages dissociates itself by particular characteristics. We can consider time, from the law perspective, as being an isotope-like coordinate of all the phenomena it dates.

As such, it is perfectly commensurable, on two different levels. Firstly, as it is known, the law is characterized by the classic divisions: years, months, weeks, days, hours, at the same time specifying the functions fulfilled by such invariable standards and the way they must be estimated. In addition, we will discuss the fact that, for the patrimonial relations, time means money; its cost varies directly proportional to the necessary length of time for carrying out an activity. Time is materialized, on a pecuniary level, by delay penalties. Another unit which usually measures its value is “the interest”, either the legal one, or the one which is stipulated by parties in the contract.

Juridical time is also defined by continuity, with no leaps, stagnation or segmentation. However, the legal provisions can establish specific measures to draw, under certain conditions and on a determined length of time, the suspension of the elapse of certain terms. The temporary cease is mainly motivated by humanitarian reasons (for example, persons who are unable to fulfill his/her work duties).

Another characteristic of the time for law is its irreversibility. As a rule, it excludes the regressive step towards a date in the past. However, the mentioned feature is not complete, entailing quite rare exceptions, which specify that a certain period of time, although really consumed, can be considered as void. Annulling the elapsed time and restoring the parties back to their initial position, where they were at a previous moment, in addition to annihilating the effects achieved during the elapsed period of time is carried out especially as a result of retroactivity, of nullity, of cessation of the prescription or of fulfillment of the suspensive or resolutive condition. The possibility of going back in time, despite the irreversibility of time gives law a distinct specificity.

Finally, at the end of chapter one we will point out that juridical time plays the role of a universal constant, having general incidence throughout the entire law field (an aspect which is detailed in the last but one chapter of the paper, where we will indicate particular features of various branches of law).

In the second large chapter we intend to approach a basic institution of law, which mirrors one of the most important juridical effects of time elapse, *the institution of extinctive prescription*.

The starting point in understanding the concept of extinctive prescription is the subjective law. As long as subjective rights are exercised by their holders according to the law and the will of those who created them, extinctive prescription is out of the question. The circumstance which brings about this issue is this: violating the subjective law creates, on the grounds of law the possibility for the holder of the violated right to ask the state support in restoring his/her disregarded right.

It was once stated that of all institutions of civil law, prescription is the most necessary one for social order. This institution aims to eliminate the uncertainty of rights, to consolidate juridical relations and to ensure their stability.

It is without a doubt that the prospect of canceling the right to action, as a consequence of reaching the prescription term, stimulates the holders of rights to turn them to account on terms provided by the law.

The justification of the institution of extinctive prescription appears to be obvious, if we take into consideration that it represents a juridical means to ensure the achievement of certain objectives which are beyond the particular frame, having social importance; by setting up proper rules, the legislator had in view to remove the incertitude in the juridical life within a reasonable period of time.

The extinctive prescription aims at achieving a defined purpose, performs certain social functions combined with particular interests, which justify it to the full in the future too. For this reason, in one of the chapters of our paper we will try to describe the functions fulfilled by the extinctive prescription and at the same time, the juridical effects it entails.

A first juridical effect of time lapse (which results from the educative and mobilizing function) consists in removing the juridical incertitude and in consolidating certain juridical relations – by time elapse. These effects have a particular significance not only for the civil law relations, but mostly for the relations of economic circulation, entailing the speeding of the economic activity.

The time elapse also entails a sanctionative effect for the inactive creditor, which did not turned his/her rights to account in due time.

The interests which form the basis of the institution of extinctive prescription have a close connection to the political, social and economic order of the society.

We will further analyze the effects of the extinctive prescription, in an effort to answer the question: what is eliminated by time elapse and by reaching the prescription term? We will choose one opinion or another (since there are matters in dispute) trying to base the position we will take with solid arguments.

The characteristic feature of time is its implacable lapse, by which – that which is present becomes past, and that which will be becomes present. "Time's arrow" follows its course, favoring no particular moment; time is homogenous. Time has an existence in itself and elapses unvaryingly from past to future.

Although, as we previously stated, juridical time is characterized by continuity, there are however certain exceptions, when time elapse is interrupted or suspended by certain events – thus entailing certain juridical effects. We will also analyze in detail the effects caused by the interruption of the extinctive prescription and its suspension and we will try to describe in detail when and how reinstatement is performed.

During this chapter we have stressed the necessity to eliminate the gaps which exist in the present regulation, concerning the effect of the extinctive prescription, the prescriptible or imprescriptible nature of certain actions, the beginning date of the duration of prescription, the definition of certain juridical expressions, gaps which have caused numerous controversies in the juridical literature and entailed the adoption of inconsistent solutions by the judicial doctrine and practice. The extinctive prescription was subjected to a distinct regulation, influenced by the political-social relations which have marked certain periods of time, having an impact on the juridical regulation.

From our point of view, by establishing new terms to match the new social-economic reality, the extinctive prescription represents a necessary institution of the civil law which entails the certitude and the stability of the civil circuit. The rights can't be permanently in a state of incertitude from the juridical point of view, under threat of litigation concerning claims made in a distant past, while the existing relations, consolidated by the passing of time, without being contested, require protection, because most of the time, they do not comply with the right.

We consider that the complex activity of reexamining the present legislation must also include, among the components of reevaluation, the one that concerns the extinctive prescription.

In its broad sense, the concept of juridical time includes the totality of the relations of concomitance or succession – which are established either between a new law and an old law, or between one of them and the various juridical situations, or only between the latter.

In this respect, the concept reflects at the level of law various modalities of time. First of all, it includes the periods of time with social character, which are inherent to the creation and evolution of the legal juridical situations. Within the sphere of the concept, the biological time and the gestational time alike can be found.

In a limited sense, the one which matters, juridical time is only reduced to the relations between the law and the present, the past and the future, not “in abstracto”, but by considering the juridical situations it is meant to govern.

As it was stressed in the specialized literature and pointed out in the judicial practice, the extinctive prescription is represented as a complex institution, regulated by dispositions included in different branches of law. As such, the study of this institution must be carried out as part of different juridical disciplines. In the second part of this chapter we will analyze the implications of time lapse on other branches, such as: criminal law, intellectual property law, private international law, labor law or administrative law.

For the criminal law, the lapse of a certain period of time entails both the elimination of criminal liability, and the revocation of the execution of penalty, a consequence of the intervention from the institution of criminal prescription.

The effectiveness of fighting and preventing crimes is closely connected to the readiness of specialized state authorities to intervene and bring to criminal account the ones who are guilty of committing such crimes.

The prescription is a cause which removes the incidence of the criminal law, determining the criminal conflicting relation to stop, if this was not completely settled within a given time frame. The prescription represents an expression of the role that the time factor has in achieving the incidence of criminal law, to restore the legal order infringed by the committing of a crime.

In the juridical literature it was reasonably stressed that the justification of the prescription is closely related to the grounds of criminal repression and, for this reason, after the lapse of a long period of time since the committing of the criminal offence, applying or executing the punishment becomes inefficient as against the purpose of the sanctions of criminal law, the general prevention is not achieved, because the social echo of the action is considerably diminished, while the offender who was the entire time the focus of the sanction was able to reform. After the lapse of a long period of time, the criminal coercion becomes unconvincing.

Therefore, time elapse eliminates criminal liability, that is, it eliminates the state's right to establish the criminal liability and to apply the penalty or the educative measure provided by the law for the criminal offence that was committed and, at the same time the, offender's obligation to deal with the consequences of committing the criminal offence will be eliminated.

Just like the prescription of criminal liability, the prescription of the execution of penalty is justified by the annihilation of the efficiency of the applied punishment, if it was not executed within a certain period of time.

The prescription of the execution of punishment entails the elimination of the execution of a sentence after the lapse of a certain period of time, representing the reason why the convict will not execute the main punishment. If a certain period of time passed after the sentence was declared final – without the execution of the punishment – its efficiency would not be the same in the case of applying it after the elapse of a long period of time, but would lead to opposite results.

By the prescription of the execution of penalty, the lawgiver considers that not executing the punishment is in society's favor, legal order being restored by the elapse of time.

In the final part of the analysis of the issues of time elapse and of juridical consequences, in the subject matter of the criminal law it is important to mention the juridical effects caused by the elapse of time from the point of view of applying the criminal laws in time. The criminal law has a limited application in time and depends on the nature, structure and evolution of the regulated social relations.

The juridical relations of social defense are dependent on the moment of committing the offence, as well as on the criminal standard sanctioning them. The validity in time of the criminal law represents the rule of the consistency in applying it which, also through the power of law will be confuted by two exceptions; the rule of the retroactivity of criminal law or the rule of the overactivity of criminal law.

The principles governing the application of criminal law in time are meant to offer solutions to problems of interaction between time and criminal offences, that is, to induce the applicable criminal law. There is one more aspect to be mentioned here, which is defined in the French doctrine. Because social life is connected to days, from the point of view of time, juridical life has its own criteria. The law is diurnal and nights are only a void where pleadings can not be carried out.

In the field of criminal enforcement law, time elapse, correlated with the fulfillment of certain conditions entails the cease of the effects of conviction by **rehabilitation**.

It is known from the law theory that the relativity in time of the law is one of its distinctive features. Time represents a factor of evolution and stability, of the continuity of law, in general.

One of the conditions for the validity of procedural acts and pleadings is the period of time when they must be carried out. Appointing the terms in the procedural law focuses on one hand on restricting in time the procedural measures and on the other hand, on avoiding tergiversation of criminal/civil law.

The procedural swiftness is not an aim in itself; by a hypertrophy of swiftness taken to the limits of misunderstood haste, it would have negative repercussions on the quality of acts and activities which are carried out.

The efficiency, as a principle of the criminal/civil law entails a simplification of the procedural activity, as well as the efficacy of this activity.

The efficacy represents an indicator for which the quality is not considered in itself, but correlated with the effort which is carried out to achieve a certain quantitative and qualitative level.

The most important institution of procedural law which promotes the quickness of the juridical activity is the term. The institution of term appoints the duration for carrying out the procedural acts. The period of time must be established so that the trial would maintain a rapid pace, without hindrance of finding out the truth or achieving the rights of the parties.

Time elapse entails not only extinctive effects. Sometimes it can also entail acquisitive effects. Thus, the real estate rights can be acquired by usucaption. This manner of acquiring is also known as *acquisitive prescription*, to specify that, in opposition with the extinctive prescription, for usucaption, time lapse results in acquiring a right.

This is another juridical effect of time elapse which we will analyze in the following chapter of our paper. We consider that usucaption also represents an indirect sanction aimed at the former owner of the building, who carelessly left it for a long period of time in the possession of another person, allowing him/her, by his/her passivity to publicly behave as the owner or the titleholder of another real right.

The reason of usucaption consists first of all in that most of the times the possession corresponds to the ownership right; however, the proof of ownership being a difficult task, usucaption makes up for this proving difficulty. Secondly, usucaption brings clarification of certain juridical situations; it transforms a long appearance of ownership in a certain juridical relation of ownership. Thirdly, it represents a sanction against the owner who showed passivity and neglected the estate for a long period of time, leaving it in the possession of another person.

The acquiring of ownership or other real right – by uninterrupted possession of the item during the entire period appointed by law defines the institution of acquisitive prescription. Time lapse, as a concept is concerned with the fact of possession – the prerequisite for the process of acquiring the right of ownership over a building.

The certitude of juridical relations makes it necessary to acknowledge the juridical effects of a long appearance of ownership, such as the case of prolonged ownership in time.

The role of usucaption is important for our law, in contrast with other legislations, such as the German one, where the record of real shifts does not offer validity to the title, meaning it is not attributive of ownership, so that it does not protect the purchaser against unexpected claims. For our law, the long ownership alone protects the purchaser from any legal dispute and ensures the complete validity of his/her right of ownership. Usucaption is undoubtedly one of the most important ways of acquiring real rights.

The juridical role of acquisitive prescription consists in the fact that it gives the possibility of proving the right of ownership, when the possession is proved for the owner and his/her authors, over the period of time stipulated by law. Once this proof is achieved, the right of the owner is determined in an absolute manner.

However, the cases of applying the usucaption are being limited, while it unavoidably loses significance, as a consequence of the fact that – by bringing

modern systems of real publicity – the means for proving real rights are improved.

The setting up of real publicity as real estate registers, on the principle of registration, which specifies that such rights could only be acquired by the effect and starting with the moment of the registration in the real estate register has enforced a completely different way for the regulation of usucaption.

Starting from the two essential features of the system of material publicity, the one which specifies that real rights over buildings can not exist without the registration in the real estate register and, respectively the one which states that the contents of the real estate register is considered to be exact, the conclusion that is reached states that a person can not acquire a real right against the titleholder who was registered in the real estate register.

As we have noticed during this chapter, usucaption raises the delicate issue of the succession in time of several laws; thus, for Transylvania, by the Law no. 389/1943 for the application of the Civil Code in the provinces across the Carpathians, the Austrian Civil Code and the Magyar laws are no longer in force; then the Law no. 241/1947 when the Law no. 115/1938 was put into operation for the unification of the provisions concerning the real estate registers and when local regulations were no longer in force.

The creative effect of possession in the conditions of the real estate register is manifest when the issue of usucaption by the real estate register is raised.

About the role of time, within the doctrine, the main point is that, psychologically, time sometimes represents a pacifying, calming, reassuring factor, and other times, a disturbing factor.

From the technical point of view, time is a creating, conserving or destructing factor.

Time represents the frame for changes, but it alone can not change, hence – all phenomena can pass away, time itself can not be removed. Time represents a factor of evolution and stability, of continuity of the Law in general.

As for the juridical strategies of time, the law can conceive and use time as a drag or as a factor of speeding the social evolution and juridical life. It depends on the actual situation of each juridical system, if it has to adopt a dynamic strategy or a static one.

Time is a necessary representation which forms the basis of all institutions. As far as the phenomena are concerned, in general, time itself can not be left out, although phenomena can be left aside in time. Time is thus given a priori. The entire reality of phenomena can be possible only in time. These can pass away entirely, time itself (as a general condition of their possibility) can not be left out.

“The moment is the end and the beginning of time, but not of the same time, it is the end of the time which has passed and the beginning of the future time “(Aristotle). Time – duration exists as an independent elapse, so it has an existence in itself, as an entity.

The last but one chapter of the present paper approaches the interaction between time and procedural terms (civil and criminal), describing in detail on one hand – the application of the procedural standards in time and, on the other hand – it describes the role and the place time holds within procedural standards and the way it reflects itself within the frame of these standards.

The civil case, as a jurisdiction activity which contributes to the achievement of law is essentially subjected to the influence of time elapse. In this respect, time must be regarded not only as a period of time inside which action must be taken on the procedural level or, on the contrary, the achievement of certain procedural acts is discontinued, but also as a provisional succession, which can represent as many reference points.

One of the conditions of validity of the procedural acts and pleadings is the period of time during which they must be carried out. The appointing of terms in the procedural law aims, on one hand at restricting in time the procedural measures and, on the other hand – at avoiding tergiversation of the criminal proceedings.

This is how important time elapse is for the Law, for which reason we can state that our desire to pause and analyze this issue in detail in the paper we worked out is well justified, bringing a personal view on the disputed aspects that have existed throughout time.

Juridical time plays the role of universal constant, having a general incidence throughout the entire field of law, an aspect which is discussed in the final chapter of the paper we intend to work out.

Finally, in the fifth title, or *Conclusions*, we have put together the basic and significant ideas of the paper, expressing personal opinions.

The paper also includes an extensive bibliographical list, including both Romanian specialized literature, with the most well-known doctrinarians of law, and foreign literature, predominantly French. We have used governmental national and international decrees in force, we have also consulted pages in electronic format.

The paper contains 158 bibliographical references.

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