THE CONCEPT OF TERMINATION OF RIGHT IN RECENT EUROPEAN TAX LAW JURISPRUDENCE

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Abstract: *The paper analyses the changes that have lately appeared in the legal regime of the termination of right, in the field of public law, in general, and for the tax law, in particular. We have found major mutation in this legal institution, in the sense of modifying the effects of prescription of this legal concept as a whole. It is not the first time when, solving cases that are subject to trial or answering questions raised in the preliminary procedure, the CJEU creates new legal rules, affecting principles of fundamental value that until recently have seemed untouchable. Thus, in the very recent opinion of this court, expressed in VAT matters, the right to reimbursement of the tax may also be invoked after the period of prescription has been fulfilled. The paper analyzes this jurisprudence by anticipating how it will modify the internal legal framework for institution of prescription in taxation. The prescription of material right to action is one of the institutions with a long influence in the history of legal sciences, equally marking all branches of law. The concept of prescription is analyzed in the doctrine of tax law, especially due to the particular nuances conferred by the legal nature of the tax law cases. The effects of the prescription have always been the same: the paralysis of the possibility to obtain the execution of a violated right uses the state's coercive force. Traditionally, the prescription of right was considered an absolute impediment, blocking not only court action to recover prejudice, but any other mean to obtain the enforcement of the law, except for the situation when the execution intervenes voluntarily. This regime has changed mainly on the impulse of the jurisprudence and the regulation in force is still adapting to the new status of the concept. Presently, new perspectives for research and development of tax law theory are opened at EU level and, consequently, in Member States' legislation.*
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1. INTRODUCTION

The prescription is present in all legal systems and its purpose is to provide stability and certainty to legal relations by strengthening the legal status and sanctioning the lack of diligence to act for the recognition or realization of a right within a certain period of time. Extinctive prescription limits the time when an individual or legal person can take advantage of a right by constraint or by initiating an action. (Răuschi, 1993, p. 165) Extinctive prescription is a mean of extinguishing the right to action in a material sense, by failing to exercise that right within the time-frame set by law and it determines the holder of a subjective right or the creditor who has remained inactive for a certain period of time to lose protection of the right to bring an action in the courts. At the same time, the owner loses the possibility of obtaining enforcement of its correlative obligation by force. The literature on termination of rights analyzes not only prescription periods,

but also the time at which they begin to be calculated, in order to accurately identify the moment when the prescription is effective (Stătescu&Bîrsan, 1993, p.154).

The importance of the prescription as a legal institution is revealed by reference to its functions, starting with the educative and mobilizing function, in the sense that the holders of violated or unrecognized civil rights have to address to competent jurisdiction bodies to obtain the approval of their rights. Another function is the sanctioning function, in the sense that once the prescription of the right of action by the competent judicial body is found, the holder of the the breached or unrecognized civil right loses the legal option to obtain the necessary protection, which is a sanction for the negligence (Beleiu, 2007, p.185). In the international legal literature, the role of the prescription as a public policy, used by central governments to manage the crisis of overloading courts by solving too many cases in certain time periods, has also been revealed (Posner, 1992, p.579).

2. THE REGULATION OF THE EXTINCTIVE PRESCRIPTION IN THE ROMANIAN LAW

In the current regulation of our country, the legal norms that form the institution of the extinctive prescription are contained mainly in Book VI of the Civil Code ("About extinction prescription, termination and calculation of deadlines"), Title I being entirely devoted to creating the general framework of this institution. From the point of view of its effects, the notion of prescription has two meanings, an acquisition prescription and an extinctive prescription (Beleiu, 2007, p.189). Starting from the provisions of art.2500 par.(1) of the current Civil Code, the extinctive prescription can be defined as the sanction consisting in extinguishing, under the conditions established by law, the material right of action not exercised in time. Article 2 (2) of the same article states that the right to action means the right to compel a person, by the enforcement of the public authorities, to execute a particular benefit, to comply with a particular legal situation or to bear any other civil sanction, as the case may be.

It should be noted that the law no longer regulates the extinctive prescription as a legal institution of public order, the new legal provisions conferring its character of private order. Specifically, unlike the legal framework granted to the extinctive prescription before (by Decree no.167/1958), at present, the competent jurisdiction body cannot apply the prescription ex officio, according to art.2512 par.(2) Civil Code. In fact, the norm in force, art.2512 par.(3) expressly provides that the prescription cannot be invoked ex officio even in those situations in which it would be in the interest of the State or its administrative-territorial units. Moreover, there is the possibility of waiving prescription, according to art.2507 - art.2511 from the Civil Code. Thus, according to the private order character of the prescription, art.2515 par.(3) of The Civil Code provides for the parties the full possibility to modify, by express agreement, the length of the limitation periods or the limitation period, fixing the starting point or modifying the legal grounds for suspension or interruption. We are therefore in the presence of a permissive rule of law (Popescu, 2014, p.39). With regard to the possibility of changing prescription periods by express agreement of the parties, paragraph 4 of the same article states that they may be reduced or extended, but within certain limits. Thus, in the case of legal

prescription periods of less than 10 years, the term negotiated by the parties may not be less than one year and not more than 10 years, and in the case of legal prescriptions of at least 10 years, parties may agree to terms up to 20 years.

However, according to art.2515 par.(5) of the Civil Code, no such change can be exercised in the case of the rights of action that the parties may not have, nor in the case of actions deriving from the adhesion, insurance and consumer protection laws. We consider this provision to give priority to the initial consent expressed in relation to the conclusion of the main contract, taking into account the specific nature of the initial legal relationship concluded.

Therefore, in the context of the codification (recoding) of the norms of law in our country, we also witnessed the substantive changes of the institution of the extinctive prescription, compared to the previous regulation, by changing the public character of this institution into a private law institution. The previous legal framework was governed by absolute imperative rules, which allowed no deviation from the law. According to art.1 last paragraph of Decree no.167/1958, "any clause which deviates from the legal regulation of the extinctive prescription is null." In other words negotiation by the parties and their agreement on other prescription periods than those expressly provided would have been hit by absolute nullity; identical, other causes of interruption or suspension of the limitation period than those established by law, which would determine the moment from which the prescription begins to run according to rules other than those established by the legal provisions, were of no effect whatsoever, being absolute zero.

Still, there are also legal provisions of public order, exception to the private character of the institution of extinctive prescription, as a whole. Thus, par.(2) of art.2515 of the Civil Code prohibits any clause by which either a direct or indirect action would be declared admissible, although the right is terminated under the rule of prescription, or vice versa, an action declared possible by the rule of law would be considered prescriptive. Also, par.(6) of the same article sanctions with absolute nullity any contrary convention.

There is a different regulation of the three-year, for private personas, and five-year time-limit for the prescription of the right to action, when the holder of the terminated right is the state, and it generates controversy over the violation of fiscal equity and respect for the principle of equality. The applied solution to this conflict of rules is to recognize the more favorable right (of a longer duration of five years) for the prescription of the substantive right to action in favor of all holders of rights subject to prescription, whether there are private persons or public authorities involved.

Apart from the limitation of substantive law, tax law also regulates the prescription in tax procedural law, namely the limitation of the right to demand execution of the enforceable decision issued for unpaid tax (Bugaru-Vidican, 2015, p.8). Thus, the right of the state to enforce the title of a fiscal debt owed to the state budget shall be extinguished by prescription, if it has not been exercised within the term stipulated by the law. Fulfillment of the limitation period of the tax obligation leads to the extinction of the state's right to pursue the collection of budgetary revenues. The general framework of the regulation of the extinctive prescription in the tax procedural law is found in the provisions of the Code of fiscal procedure, respectively articles 131,135.

The court of its own motion cannot invoke the prescription, but only by the one in whose favor it is flowing, without any additional condition. So prescription is no longer a concept of public order, as long as it cannot be invoked ex officio, not even in favor of the state or territorial administrative units. Therefore, in the Civil Code in force it is assessed that the extinctive prescription must start to run not from the date of the right of action, but from the date when the person concerned became aware or should, according to the circumstances of the case, be aware of the existence of this right. Of course, outside of this general rule, there are also assumptions or situations requiring the express determination of the starting point of prescription period, either to customize the general rule or to derogate from it, within certain limits, if there are any serious reasons for it. These are the so-called special rules on the beginning of the prescription, which have not only been retained in the new regulation, but have even been multiplied or, as the case may be, modified (Țăndăreanu, 2010, p.3).

The new general rule on the beginning of the extinctive prescription has a mixed character, presenting the characteristic of setting - alternatively - two moments from which prescription begins to run, namely:

- a subjective, main moment, consisting of the date when the right to action was born; and
- an objective, subsidiary time, when the circumstance should have known the birth of this right.

We appreciate this context of the transformations of the institution of prescription in domestic law as welcomed and justified in the current European and global context, when we witness changes in the regulation of the fundamental institutions of law, in accordance with the rationality and specificity of the current legal relations. Of course, for Romanian law, the transformation of an absolute, public order institution into a private institution whose effects on public relations are to be determined conventionally is a major change. But the transformation process does not stop here. Analyzing the influence of EU law on national law, we must first point to the principle of the priority of the European law rule on the domestic legal framework and to take into account the effects of the CJEU jurisprudence for all branches of law. Equally valid are those statements in the area of fiscal law, whose legitimacy and position in the branches of law is greatly influenced by the casuistry of the European court. If for civil law, common law for all legal disciplines (Hamangiu et al., 1995, p.113), the principle of the prevalence of form over the fund is absolute (Article 1247 of the Civil Code), then we must recall here that European tax law enshrined the principle of the prevalence of the substance over the form (Tofan, 2017, p.508). However, this hazy situation has not been an isolated case, the recent case law on taxation demonstrating that there are other situations in which legal relations in the European context will continue to change the fundamental institutions of law for a correct management of tax cases.

Of course, we can not overlook the views of our colleagues (Păun, 2017, p.211) which states that there is no European tax law in the actual context, when each of the Member States of the European Union benefits from the sovereign veto in relation to the adoption of taxation uniform rules. But in our view, it is time to give Caesar what is Caesar's, and to observe, argumented, that European Tax Law not only exists

autonomously from other branches of law, but it has an integrating role to be taken into account through substantive changes in traditional legal institutions and the provision of a current, identical and special character for all 28 Member States. Even reporting on the number of EU Member States makes it worth pointing out that we are able to write from the point of view of fiscal law 28, although BREXIT seems to be a certain event of the year 2019 (Hunt&Wheeler, 2018, p. 1), in question being only the procedural aspects. Equally, we can note that the European VAT split idea, still in the experimental phase and in search of a perfectly adapted legal framework for all Member States (whether regulation or directive, we will see) is, in theory, incapable to reach the UK regulatory framework. In practice, however, in March 2018, the UK government launched a public consultation on the possibility of introducing the separate payment procedure for amounts due for VAT purposes (https://www.gov.uk/government/consultations/alternative-method-of-vat-collection-split-payment), so there is a strong interest in implementing European measures that are no longer required to be implemented, particularly in the area of tax law.

3. THE LIMITATION OF THE RIGHT TO REIMBURSEMENT OF VAT IN THE RECENT JURISPRUDENCE OF THE ECJ - CASE C-533/16 VOLKSWAGEN AG

In the surprising manner of the CJEU on the interpretation of tax rules at European level, two of this court recent decisions have highlighted that value added tax could be reimbursed after expiry of the limitation period. We are referring to Case C-533/16 Volkswagen AG concerning the refusal of the right to reimbursement of VAT on the grounds that the limitation period decided by the CJEU on 21 March 2018 and Case C-8/17 Biosafe, solved on 12 April 2018, when the CJEU discussed the same tax issues, but in the context of different questions.

The facts of the two cases are slightly different.

In Case C-533/16 Volkswagen AG, Advocate General CAMPOS SÁNCHEZ-BORDONA maintains in his opinion that the Court of Justice has examined the right to deduct value added tax several times, in response to requests for preliminary rulings. In the present case, the question referred by the national court refers to the time-limit for making that deduction and the problem faced by the national court results from the fact that between 2004 and 2010 Volkswagen AG received supplies from certain parties without VAT included in the relevant bills. Both parties wrongly assumed that the transactions in question constituted financial compensation and, as such, were not subject to VAT. When, in 2010, they realized their mistake, the suppliers charged VAT to Volkswagen and then issued the relevant invoices, mentioning the amount of owed tax. They also filed an additional VAT return and paid the tax to the Treasury. Volkswagen applied for VAT deduction but the tax authority admitted the claim only for a part of the requested period, rejecting the period for which the limitation for exercising the right (five years) had already been met. Therefore, the Court of Justice of the EU decided to what extent the deduction right applies, if VAT was not levied at the time of the initial

delivery of the goods and the subsequent adjustment affects tax periods for more than five years (termination of right period).

By reference to the formal requirements for the right to deduct, the Advocate General noted that, as a matter of urgency for the proper functioning of the VAT system, the obligations of the taxable person to be liable for VAT are invoicing and filing of declarations. In the preliminary proceedings, the most important of these requirements are on the invoice, since Article 178 (a) of the VAT Directive provides that, in order to exercise the right of deduction, a taxable person must hold an invoice drawn up in accordance with Section 3 to Section 6 of Chapter 3 of Title XI of the Directive. The factual situation implies that:

- the delivery of goods to Volkswagen was carried out, as reflected later in the corresponding invoice; and
- the invoice included all the information required by Directive 2006/112.

The material and formal conditions for the creation and exercise of the right to deduct VAT are therefore satisfied and Volkswagen is, in principle, entitled to exercise its right of deduction. Proof of this is ensured by the fact that the tax authority has recognized this right, albeit only for part of the tax periods for which it was exercised.

The home state Tax Authority (Slovakia) claims that repayment cannot be granted because it was requested outside the five-year limitation period. However, the Advocate General observed that the VAT Directive does not expressly refer to a time-limit for the exercise of the right to deduct. This, of course, does not prevent national legislation from laying down a time-limit on grounds of legal certainty, and the Court of Justice has held before that a limitation period whose expiry has the effect of penalizing a taxable person who was not diligent enough, applied for deduction of tax paid, can not be regarded as incompatible with the system laid down by the Sixth Directive. The limitation period applies in the same way to analogous tax rights, based on domestic law and to those based on EU law (principle of equivalence), that it does not make it virtually impossible or excessively difficult to exercise the right of deduction (principle of effectiveness). At the same time, the Advocate General stated that the setting of the starting date of the period for calculating the limitation period can not be exclusively related to the time at which the goods were supplied irrespective of any relevant factors. Although, under Article 167 of Directive 2006/112, the right to deduct arises at the same time as the tax becomes chargeable, Article 178 of that directive provides that it may be exercised only after the taxable person has an invoice, stating that the goods have has been provided. The difference between the right to deduct and the exercise period is due to the way VAT operates:

When a taxable person obtains goods, this person pays (or at least is required to pay) the supplier of the goods in question a price including VAT for the products that will generally be used for the purposes of the taxable transactions

However, for the purposes of tax administration, the taxable person is entitled to deduct VAT already paid at a later date, when the person submits to the tax authorities the appropriate documents, which must include the corresponding invoices, a substantive evidential requirement for the deduction (or, as appropriate, of the refund).

In other words, the right to deduct is indissolubly linked to two VAT payments:

- the payment of the supply of goods, payment which is made by the taxable person to the supplier; and
- the payment made to the taxable person by the customer, when the taxable person supplies the customer with the products.

Invoices are proof of the fact that the respective transactions and payment of the price have actually taken place, which must include VAT at the corresponding rate. This VAT already belongs to the state / tax authority, which is why it becomes payable as soon as it is paid or should have been paid. The person issuing the invoice will cash VAT as an agent of the tax authority, in other words, assuming the role of VAT collector. It follows that the right to deduct arises at the same time as the taxable person must be able to prove that tax at the tax office. According to the Court, the deduction system allows intermediary links in the distribution chain to deduct from their tax base the amounts paid by each of its suppliers in respect of VAT for the corresponding transaction and thus transfer to the tax authorities the share of VAT representing the difference between the price paid of each supplier and the price at which he delivered the goods to the buyer.

This model is based on the principle of VAT neutrality, according to which taxation of all economic activities with value added tax occurs regardless of their purpose or results, provided that they are themselves subject to VAT. Under this system, the rules on deductions are intended to relieve the trader entirely of the burden of VAT due or paid. Thus, payment of the tax to the supplier by the taxable person is at the center of the right to deduct. It is not possible to separate the tax deduction: if the taxable person did not pay the tax, which generally appears in the invoice, there is no legal or financial basis to allow the exercise of the right to deduct. In Directive 2006/112, and in particular Article 167, the EU legislator refers to the normal circumstances in which the delivery of goods, the payment and the issue of the invoice indicating the value of VAT take place almost simultaneously. In such cases, it is logical that value added tax and the right to deduct occur simultaneously. On the other hand, a situation such as that at issue in the main proceedings may be regarded as exceptional or unusual in the light of VAT, since:

- when Volkswagen received the goods from the supplier, it did not pay any VAT, both parties considered that the transaction was not subject to VAT; and
- similarly, Volkswagen did not receive an invoice including VAT, which would have allowed it to exercise its right of deduction.

In those circumstances, the taxable person could not, of course, claim the right to deduct a sum of VAT which had not previously been paid. In other words, the applicant has expired from the limitation period not as a result of its own lack of diligence but as an effect of the fact that VAT was not paid once the invoices issued in the principal legal relationship had been paid. The Advocate General observed reasonably that the Slovak tax authorities apply the five-year term against Volkswagen, even though this period also works in terms of tax collection, in other words, in favor of Volkswagen, as the provision prevented the authorities from collecting the tax due if they have passed five years. If, after more than five years, the tax authority had been prepared to accept the VAT payable by Volkswagen for 2004, for example, then it should also accept that the taxable person has the right to deduct VAT paid similarly.

At the same time, Article 167 of Directive 2006/112 may be interpreted as meaning that, in circumstances such as those in the present case, a taxable person acting in good faith would not lose all the right to deduct VAT. The way in which national legislation has been interpreted by the practice of the Slovak tax authorities has led to the refusal to allow the exercise of this right, which runs counter to the principle of VAT neutrality. The Court of Justice has repeatedly stated that this principle must also prevail and that the right to deduct is part of the VAT mechanism and, as such, should not, in general, be limited. The principle of VAT neutrality imposes deduction of VAT on inputs where the substantive requirements are satisfied even if the taxable persons did not comply with formal requirements. The Court of Justice has clearly held the right to deduct as much as possible, for example, considering that Article 167, Article 178 (a), Article 179 and Article 226 (3) of the VAT national rules under which the correction of an invoice in relation to a particular item to be mentioned did not have retroactive effect, thus limiting the possibility of deduction of VAT due to the year in which it was corrected, and not the year in which the invoice was originally drawn up. If this restriction was considered to be contrary to Directive 2006/112 for the same reason, the approach taken by the Slovak authorities, which in practice renders impossible the exercise of the right to deduct in such cases, should also be considered contrary to it. It must be borne in mind that this right can only be exercised by one person after he knows that transactions are subject to VAT and not before and whether the person acted in good faith.

Moreover, the conduct at issue in the main proceedings is disproportionate. It is true that Article 273 of Directive 2006/112 allows Member States to adopt measures to ensure the correct collection of VAT and to prevent evasion. However, such measures - which, for reasons of legal certainty, include the setting of time limits for the exercise of the right of deduction - must not go beyond what is necessary to achieve those objectives and must not affect the neutrality of VAT. Having established that the taxable person acted in good faith and excluded tax evasion or tax advantage and given that adjustments had been made to the transactions, it would be disproportionate to deprive that taxpayer of the right to deduct only because he incorrectly believed that the transactions were not subject to VAT and that the period elapsed up to the time of the adjustment exceeded five years. Consequently, on the proposal of the Advocate General, the Court decided, by decision of 21 March 2018, that in circumstances where it was wrongly believed that a supply of goods was not subject to VAT and several years later an adjustment of the tax paid has been made late, the taxable person has the right to deduct (or, if appropriate, obtain a refund) the amount of VAT paid upfront paid for that transaction.

4. BIOSAFE JURISPRUDENCE: CASE C-8/17 BIOSAFE / FLEXIPISO

In Case C-8/17 Biosafe/Flexipiso, the CJEU was asked to answer preliminary questions about the following facts. Between February 2008 and May 2010, Biosafe sold Flexipiso, a company paying VAT, goods, to which Biosafe applied VAT at a reduced rate of 5%. Following the fiscal inspection in 2011, regarding fiscal years 2008-2010, the Portuguese tax authorities found that the standard VAT rate of 21% should have been

applied and imposed VAT revisions. Biosafe paid that amount and requested reimbursement from Flexipiso by sending accounting documents to that undertaking. Flexipiso refused to pay the additional VAT on the ground that it was not in a position to make a deduction because of the expiry of the four-year period laid down in the national legislation in force for operations carried out until 24 October 2008 and, because it was not responsible for the consequences of an error for which Biosafe was solely responsible.

Following that refusal, Biosafe brought an action requesting Flexipiso to reimburse the amount of VAT paid, together with the interest for late payment. This was rejected by the trial court and appellate court which found that although there is an obligation to pay VAT, the buyer of goods may be required to pay this fee only if invoices or equivalent documents were issued in time to deduct this charge. Portuguese courts have held that, regarding documents (debit notes) received by Flexipiso more than four years after the issuance of initial invoices, Biosafe could not transfer company Flexipiso VAT on these invoices, as the latter did not have the right to deduct VAT and the applicable tax rate applies to Biosafe.

Portuguese national court found that there is doubt regarding whether the Articles 63, 167, 168, 178-180, 182 and 219 of the VAT Directive and the principle of fiscal neutrality preclude national legislation which has the effect, in circumstances such as those in the main proceedings, that the period during which the purchaser may deduct additional VAT may begin to run from the date of issue of the original invoices and not from the date of issue or receipt of the corrective documents. In the view of that court, there is also a doubt whether the acquiring company may in such circumstances refuse to pay the additional VAT due to the impossibility of deducting it. Thus, the national court requested the CJEU to issue a preliminary ruling in order to clarify these issues.

In deliberation, the CJEU has held that the right to deduct VAT is subject to compliance with both the substantive requirements and the formal conditions and requirements or conditions, with reference to the judgment in Volkswagen, C 533/16, supra. As regards the material requirements or conditions, it follows from the wording of Article 168 (a) of the VAT Directive that, in order to be entitled to deduct, it is necessary

- an applicant, who is a taxable person
- the goods or services for which the right to deduct VAT is claimed are used by the taxable person in his activity
- these goods or services are provided by another taxable person

The formalities for the exercise of the right to deduct VAT provided by Article 178 (a) of the VAT Directive, say that the taxable person must hold an invoice drawn up in accordance with Article 220 (236) and Articles 238 to 240 of that directive direction. It follows that although Article 167 of the VAT Directive provides for the right to deduct VAT on the date on which the tax becomes chargeable, Article 178 of that directive makes the exercise of the right subject to the fact that, in principle, the taxable person holds an invoice. The right to deduct VAT is generally exercised during the same period as the one in which it was incurred, when the tax becomes chargeable. However, a taxable person may be authorized to make a deduction of VAT even if he has not exercised his right during the period in which the right arises, subject to compliance with

certain conditions and procedures laid down by national law (judgment of 21 March 2018, Volkswagen, C 533/16, reviewed supra).

However, the CJEU notes that the possibility of exercising the right to deduct VAT without a time limit would be contrary to the principle of legal certainty and a limitation period whose expiry would have the effect of penalizing a taxable person who was not diligent enough and did not request the deduction of VAT paid upstream by making it waive its right to deduct VAT is to be regarded as compatible with the system established by the VAT Directive. It is also the case when the limitation period applies in the same analogous rights in tax matters based on domestic law and those based on European Union law, in accordance with the effects of the principle of equivalence.

Under Article 273 of the VAT Directive, Member States may impose other obligations they consider necessary for the correct collection of VAT and the prevention of evasion. Preventing tax evasion, avoidance and abuse is a recognized objective and is encouraged by this directive. However, the measures Member States may adopt under Article 273 of that Directive must not go beyond what is necessary to achieve those objectives. They cannot therefore be used in such way as to systematically undermine the right to deduct VAT and, consequently, the neutrality of VAT. Since the denial of the right to deduct is an exception to the application of the fundamental principle constituted by that right, the competent tax authorities must establish, to a certain degree, which is legally sufficient, whether the objective evidence proves the existence of fraud or abuse. It is for the national courts to determine subsequently whether the tax authorities concerned have established the existence of such objective factors (C-332/15 Astue, 20 July 2016).

In the present case, it is apparent from the order for reference that, following a tax inspection carried out in 2011, the Portuguese tax authorities issued VAT adjusted VAT returns for supplies between February 2008 and May 2010 for which Biosafe applied incorrectly a reduced VAT rate instead of the normal rate. Therefore, Biosafe made a VAT adjustment by paying additional VAT and issuing debit notes, which, according to the referring court, constitute documents for rectifying the original invoices. The Portuguese Government considers that Biosafe and Flexipiso have systematically and consistently implemented systematic tax evasion and VAT avoidance practices for at least two and a half years. Indeed, the existence of such practices cannot be ruled out in such a situation. However, under the procedures provided for in Article 267 TFEU, which is based on a clear separation of functions between national courts and the Court of Justice, any assessment of the facts is a matter for the national courts. The Court of Justice is empowered to rule only on the interpretation or validity of European Union acts on the basis of the facts submitted by the national court (Danske Svineproducenter, Case C-491/06 and Order of 14 November 2013, Krejci Lager & Umschlagbetrieb, C 469/12). In the present case, the court states that the error in the choice of the applicable VAT rate is obviously attributable to Biosafe.

Against this background, it appears that it was objectively impossible for Flexipiso to exercise its right of deduction before the VAT adjustment made by Biosafe, since it did not have prior documents for rectifying the original invoices and did not know that it was due to additional VAT. It was only after that adjustment that the

substantive and formal conditions which led to a right to deduct VAT have been fulfilled and that Flexipiso can therefore claim the VAT exemption due or paid in accordance with the Directive VAT and the principle of fiscal neutrality. As a result, Flexipiso did not show a lack of diligence before receiving debit notes and there is no proven abuse or fraudulent understanding with Biosafe. Consequently, the CJEU notes that Articles 63, 167, 168, 178-180, 182 and 219 of the VAT Directive and the principle of fiscal neutrality must be interpreted as precluding legislation of a Member State according to which circumstances such as those at issue in the action the main right to deduct VAT following a tax adjustment has been paid for additional VAT and has been the subject of rectification of the original invoices several years after delivery of the goods in question on the ground that the period laid down by that legislation for the exercise of this right began to run from the date of issue of the original invoices and has expired. In such circumstances, a taxable person can not be denied the right to deduct additional VAT on the ground that the period laid down by national law for the exercise of that right has expired.

5. CONCLUDING REMARKS

Under current Romanian law, a taxable person may deduct VAT from the moment that this right was born for five years or until the expiry of the limitation period. There is only one exception to the law on value added tax established during tax inspections. In these cases, suppliers may issue correction invoices after the tax inspection, but only within the limitation period, as extended, considering the duration of the tax inspection. Taking into account this situation, the right to deduct the appropriate VAT subsists even if the limitation period has expired, but only within one year after the receipt of the corrected invoice (withdrawal period). Thus, the novelty of European case law in relation to Romanian law is that the right to deduct VAT may also be exercised after the expiry of the limitation period, even if it did not result from a tax inspection.

We have to point out that according to the provisions of the Civil Code in force, under Romanian law the extinctive prescription must not start from the date of the right to action, but from the moment when the interested person became aware or should, after the circumstances of the case, become aware of the existence of this right. Therefore, without damaging the effects of the CJEU case law under consideration, we must note the accuracy of the general legal framework in our country.

In conclusion, European Union law must be interpreted as precluding legislation of a Member State under which, in circumstances where value added tax (VAT) was invoiced to the taxable person and paid after several years after the delivery, the right to reimbursement of VAT is refused on the ground that the period of limitation provided by the legislation for the exercise of that right began to run on the date of delivery of the goods and would have expired before the application for reimbursement was made.

The CJEU also decided that Council Directive 2006/112 / EC of 28 November 2006 on the common system of value added tax and the principle of fiscal neutrality should be interpreted as precluding legislation of a Member State when, in circumstances which, following a tax adjustment, VAT additional has been paid to the State and it has been the

subject of rectification of the original invoices several years after delivery of the goods in question, the right to deduct is refused VAT on the ground that the period laid down by that legislation for the exercise of that right would have started to run from the date of issue of the initial invoices and it would have expired.

So, once again, we note that the European tax law acts like automotive towards other branches of law tends, and also it has integrating and pioneering legal valences in the interpretation and modification of the traditional rules, formulated and safeguarded by other branches of law.

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