

SUPERANNUATION IN THE NEW CODE OF CIVIL PROCEDURE

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(Abstract)

Superannuation appears as a penalty that reflects the whole judicial activities as determined by the lack of persistence of the parties in dispute. Settlement of disputes promptly relationship between the parties is an objective of judicial activity, the plaintiff pursuing civil action himself by exercising a speedy settlement of the civil trial. It may be concluded, therefore, that the public interest and the interests of the parties should coincide in the sense that both commercials quick resolution of contentious relations be decided. In any case, the best interests of the administration of justice is undoubtedly above the interests of the parties.

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Superannuation appears as a penalty that reflects the whole judicial activities as determined by the lack of persistence of the parties in dispute. Settlement of disputes promptly relationship between the parties is an objective of judicial activity, the plaintiff pursuing civil action himself by exercising a speedy settlement of the civil trial. It may be concluded, therefore, that the public interest and the interests of the parties should coincide in the sense that both commercials quick resolution of contentious relations be decided. In any case, the best interests of the administration of justice is undoubtedly above the interests of the parties.

If civil proceedings would be unduly prolonged, consequent to their inactivity, the work of judicial bodies would be considerably more difficult. Just this need for resolving civil disputes promptly and restore the rule of law corresponds obsolete. As usually, the lawsuit is concluded by a judgment, it is an abnormal way of completion of judicial activity. Mixed nature of the sanction and the presumption of Discontinuance of the judgment was affirmed and procedural doctrine because it can be considered that we are in presence of a tacit assumption of divestment, which can be deduced just from lack of maintenance work diligently to parties judicial concept promoted by law. Although it is sometimes said that occurs as a sanction nerenunțării judgment, it appears rather as a consequence of lack of persistence in maintaining judicial work parties. So any analogy to the waiving of judgment is questionable. As noted in the literature superannuation is always determined by the negligence penalty in procedural obligations, which is based on when the intent of abandoning the process, punishable just the fact that it did not give judgment in the form and under the conditions prescribed by law, leaving the uncertainty to hover on the case. In favor of the contrary opinion stated that such terms can not be supported with sufficient ground because giving free exercise of judgment is a procedural faculties. Unlike giving judgment, which always express superannuation stems from a lack of perseverance passive-parties in the pursuit of justice. Moreover, obsolete requires particular fault party, while giving the judgment is based not some mental attitude of the party to act. It also said that superannuation is a particular variety of decay. In particular, according to some authors, superannuation appears as a procedural sanction physiognomy being regulated as such in the legislation, and whose foundation must be sought in the lack of persistence of party activity records. It is stated that the nature and essential features of its superannuation arising even art. 416 para. (1): „Any application for summons, appeal, appeal, appeal, revision and any other application or withdrawal shall expire reform law, even against persons lacking if remained in inactivity for reasons attributable to the party for 6 months. „From the legal text follows the two essential elements in the definition of superannuation: the

case remain in inactivity and fault party. To these must be added the superannuation and punitive effects it produces on procedural activity, resulting in extinction of obsolete documents made in the court proceedings. Idea results from Art. 422 Criminal Procedure. Code, the text refers to the fact that all obsolete deprive the pleadings made in that instance, the Latin from which the-perimeters, peremptum-meaning destroy, cancel, canceled or off is significant. Superannuation therefore not reported only a procedural specifically, but the entire business proceedings and a definition of superannuation must take account of these realities.

The conditions superannuation Specifications

Conditions readily apparent superannuation of even the provisions of art. 416 paragraf(1) and(3). According to these texts *„Any request for summons, appeal, appeal, appeal, revision and any other application or withdrawal shall expire reform law, even against persons lacking if remained in inactivity for reasons attributable to the party for six months „(1); „There are causes of superannuation cases where the procedural default should be performed, as well as when, for reasons not attributable to the party, the request never reached the competent court or hearing may be fixed” (3).*

The first condition that emerges from the texts cited the object superannuation targeting only a certain category of procedural acts, namely those that generate a substantive judicial activity or task of resolving legal remedies. The second condition concerns remain the case in inactivity for 6 months. The last condition was to remain the case in fault party inactivity. Is provided which highlights the poignant character procedural penalty superannuation.

In the current regulatory proceedings, however, meet a particular form of superannuation: to remain the case in inactivity even in the absence of reasons attributable to the party. Text which govern suggests a „penalty” procedural „object” without fault, this time lapse term is 10 years.

Vesting the court with a request for an activity involving judicial settlement fund or legal remedies

With no unequivocal devotion need not set condition is emphasized particularly our entire doctrine. According to some authors, it can be inferred even though the art. 416 para. (1), considering it is evident that the law envisages the intimation of first instance, but also those that determine each trial continued into a new phase proceedings. Although it is a general requirement, the law makes an exception to this rule in the forms of enforcement. Indeed, according to art. 696 para. (1) enforcement expires if the lender allowed to go six months without fulfilling a necessary enforcement action or approach that has been requested in writing by the bailiff. The penalty will express superannuation becomes incident by law enforcement while not requiring a substantive judicial activity itself, because it comes after a judgment.

The generality of the provisions of art. 416 para. (1) make them cover any action, without distinguishing between the nature or character. Superannuation operating as in the case of real actions, civil actions, and on any other actions, even if they should be declared imprescriptible law.

There are divergent views on the scope and superannuation in labor disputes. Expressed in older doctrine talks were resumed in later literature. It was argued that superannuation operates jurisdiction before the bodies of work, regardless of the nature of these bodies. Opinion was combated, having no legal support, law consecrated no exception in this matter and the Court held such a view.

Superannuation field extends to appeals. In this regard it is noted that the law refers specifically to appeal, appeal and review in general terms and from the procedural to the appeal, and any other application for reforming or withdrawal. Law of general references to these remedies, it was considered that the law takes into account the appeal of the appeal for annulment doctrine justified solution and the fact that this remedy shall be judged by the same rules as any claim under judgment.

If superannuation is functional and if the appeal on points of law is more delicate appeal law with a different purpose from that of settling a civil dispute specifically namely to ensure consistent interpretation and application of the law throughout the country. Because of this,

judgment shall be given only in the interest of law and has no effect on the situation of the parties to those proceedings. These considerations may be sufficient to state that superannuation does not work in the appeal in the interest of law.

Staying for one case in six months inactivity 10-year term superannuation court Superannuation is based on a presumption of abandonment of judgment inferred from the remaining dispute inactivity some time. Unlike the former Code of Civil Procedure, which provided for a period of one year, the new Code establishes a period of six months for the application superannuation, such a regulation being promoted from the desire to avoid loading the courts with lawsuits in inactivity and stimulate initiative such parties in dispute.

The phrase „remaining case to inactivity” implies, according to some authors, the absence of any procedural activities within the term established by law. On the contrary, the fulfillment of every pleading makes judgment to be reactivated and superannuation penalty can not be imposed.

Unlike the previous regulation, the current code determines specifically of when time starts to run for superannuation-art. 416 paragraph (2) - ie the last pleading fulfilled by the parties or the court previously affirmed the doctrine solution repeatedly. Judicial practice has determined that the starting points of the period for superannuation: date of suspension of judgment for lack of parts, court resolution ordering the stamping action or the date on which the request arrived at the competent court.

Term superannuation is likely disruption and suspension. New Procedure Code text retained former article, still covering one case of interruption of the superannuation „superannuation is interrupted by performing a pleading made to the trial process by justifying the interest. Therefore clear formulation of the final part does not recognize documents issued by the court superannuation. The character switch to this writing, some writers have said that the law giving effect to discontinued only request made by one party and case pending default.

Because the procedural nature have switch is necessary that it be done to the trial process and the part that can justify an interest.

Once met these requirements limit will be stopped and will run for a new term of superannuation. The Supreme Court has made concrete applications of the principle enshrined in article 249 (now 417) obsolete when the process operates, for whatever reason, are pending in court and therefore justice was active; nonpostage request for reinstatement of the case does not affect the interrupted pending the pleadings as to infringement applies only stamp tax penalties. Term superannuation is likely not only to interrupt, but suspension. In the first case, the superannuation is suspended how long to suspend judgment rendered by the court in cases under art.413, and in other cases provided by law, if the suspension is not due to lack of persistence of the parties in court. Voluntary suspension of judgment, as has expressly art. 413 lasts until judgment in the cause of the suspension became final. Thus, once the decision has become final shall end and the period of superannuation resumes its natural course. Therefore, to avoid expiry of superannuation, the parties are obliged to continue in the continuation of the proceedings. The court has however the possibility, not the obligation to dispose of the case pending reinstatement once known judgment in the case which resulted in the suspension remained final.

Some difficulties may arise in relation to the second ground, the optional suspension began prosecution for an offense that would have an influence on the decision that is crucial to give, because, in such circumstances the litigation can complete without expressing a judgment. Thus, according to article 11 point 1 Criminal Procedure Code., The prosecutor at the proposal of the prosecution or of its own motion may order the prosecution to close the case when there is no blame involved, taking out criminal prosecution in cases referred to in art. 10 letter. f)-h) and j), the accused or defendant are concerned. In all cases of suspension should end when a final judgment by the prosecutor. If you filed a complaint to the higher body suspension will stand up to solve it. However, the court is bound to make reasonable efforts to be informed on the outcome of research; court is unable to restore because of the role or to find obsolete before knowing the outcome of the bodies of the Public Ministry.

There are some special situations, ultimately falling to the provisions of art.413 and the voluntary suspension of judgment takes

place. First, it should be recalled that according to Article 143 code of civil procedure., The panel hearing the claim of removal, may order, at the request of the person concerned and, if necessary, to stay the trial in the main proceedings by giving a particular security. For good reasons, the suspension may be imposed under the same conditions without summoning the parties, even before the first hearing. In any case the extent of the emergency suspension shall be notified by the court has been requested relocation. In all the time how long the suspension of judgment is suspended and the period of superannuation. Also, the suspension of judgment may be ordered if the false entry amicable. In this respect, Art.307 provides that: „if the party who submitted the document insists to use it, even though its false denunciation that was not withdrawn, the court, if indicated author or accomplice false, suspend the trial, submitting the document immediately denounced as false competent prosecution for forgery research with the minutes which will end in the end. „ Suspension of superannuation occurs in cases provided by Art.412 code of civil procedure., Governing law cases of suspension of judgment. In cases specified in that Article judgment will be resumed by reopening the application made by the appearing persons concerned will be introduced heirs, guardian, trustee etc. - After the judgment of the Court of Justice of the EU in the cases provided for in Article .412 paragraph. (1) section 7sau by other means provided by law. Stay of proceedings determines, in principle, and suspension of superannuation. Superannuation rate is suspended for one month from the date when the facts occurred that caused the suspension of judgment, if this happened in the end three months of the term of superannuation. Thus, between the suspension and the suspension of judgment superannuation are not identical in terms of their total. In fact, the reasons for imposing the suspension of judgment lead and stop period of superannuation if requirements are met faithfully the art. 418. The last case of suspension of the superannuation is settled in the art. 418 paragraph. (3). It is the situation when „the trial is prevented to persist because of duly justified reasons and in other cases provided by law.” Observe the similarity of drafting the range quoted in the article. 186 paragraph. (1), meaning that both procedural provisions relate, *in*

terminis in duly justified reasons. However, are fundamentally different effects that occur in two situations: in the case provided by art.186 part will be called later if the art settled. 418 reasons duly justified suspend the period of superannuation. In all cases provided by art. 418, after the termination of the facts that caused the suspension, the period of superannuation will continue to run from the point where it stopped, therefore, taking into account the time elapsed before the suspension.

Mediation procedure also determines the duration of the suspension of its superannuation rate, but not more than 3 months from the date of signing the mediation (Article 62 paragraph 2 of Law nr.192/2006).

Term superannuation is calculated according to the rules of the common law have established in 181 code of civil procedure. Consequently, the period of lapse of one year, ie 6 months, it will turn on the appropriate day of departure, ie the corresponding day last month. Therefore can not be calculated on days off.

Particular shape of the term „court superannuation” is 10 years, much longer than the period covered by art. 416 for obsolete application, and is justified by the fact that the sanction operates even in the absence of reasons attributable to the parties. However, since this is irrelevant fault party staying in the inactivity of the case, not covered cases of suspension or interruption of the superannuation (the latter being provided only when the application superannuation just to protect the party had negligence in allowing the inactivity of the case). Staying case in inactivity due to reasons attributable to Party The latter condition expresses the character of this institution sanction civil procedural law. One school of thought says that one can even speak of the existence of simple presumptions of guilt, which the judge inferred from the lack of persistence in court. Procedural law determines the cases in which there is no reason attributable to the party. The first, according to article 416 par. (3), „not causes of superannuation where the procedural default should be performed.” The principle thus resumed the former procedure code has seen various applications in forensic practice. Thus, the court held that the non-fixing term is not attributable to the party, since it paid the stamp duty due or if the application is exempt from such a tax. It was also held, rightly, that if the process was suspended in error because the procedure was not

satisfied, obsolete is irrelevant even if passed within one year of the suspension case. In this case, the solution is based on the fact that this time the fault belongs to the court, which ordered the postponement of the case and repeat the procedure for summoning and not party. Superannuation not to operate any civil action in the criminal proceedings pursued. In this matter officialdom operating principle, so that the party can not be attributed to any fault to remain the case in inactivity. Conversely, if a pleading was not fulfilled by the court of its own motion because no postage demand unmet summons or other legal obligations of the Party, obsolete operating since the time it is at fault. That is if the application has not been established due no postage hearing it. The other situation that cannot be considered a reason for superannuation attributable part is also included in the same paragraph. (3), Art. 416. According to this text do not constitute causes of superannuation, cases where, for reasons outside party, the request never reached the competent court or hearing can be set. Begin with the same principle confirms the first part of the paragraph, in that this time either party can not be attributed to any fault. Basically the last part of the paragraph contains two different scenarios. The first hypothesis concerns the situation when, through no fault of the party, because he came to the competent court. In practice it may happen that the procedural document will not reach court, although the Act must be met automatically. So for example, if declining jurisdiction court in which the conflict arose indebted to submit the file to the competent court to judge the conflict (134 code of civil procedure). Also, the appeal is submitted to the court whose decision is appealed, under penalty of nullity, and it is obliged to submit the case to the competent court to resolve the call (Art.471). In all cases, the file is sent automatically to the court, so that, in principle, in such circumstances can not be imputed fault party. A second hypothesis is that the application can not be steadfast hearing again without any reasons attributable to the party. This happens most often when the term voluntary suspension of superannuation. The fault can not be considered all the time it takes the cause of suspension. Very special shows how regulatory institutions introduced in the new Civil Procedure Code-obsolete court. It follows of text art. 423 New code of civil procedure that obsolete court is a procedural penalty

„objective” independent intervening fault setting in pregnancy part. So irrelevant fault inactivity party to remain the case in the core of the institution where applicable procedural stayed because inactivity time 10 years.

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