

Formal notice of default by collection agency: no interruption of prescription

Since the Act of 23 May 2013, a formal notice of default by (amongst others) a lawyer can have the effect of interrupting a prescription period. By contrast, collection agencies cannot interrupt the prescription period with a formal notice of default. The appeal that was brought against this by the vzw Belgische Vereniging van Incasso-ondernemingen [the non-profit Belgian Collectors Association] was recently rejected by the Constitutional Court, in a decision of 10 December 2014.

Many summonses serve merely to block an impending prescription and thus needlessly burden the courts. In order to fix that problem, the legislature in 2013 granted prescription-interrupting effect to notices of default by lawyers, process servers or persons who, under article 728, §3 of the Judicial Code, may appear in court on behalf of the creditor (including union delegates), on condition that these formal notices of default contain a number of obligatory mentions (art. 2244, §2 of the Civil Code). Removing the pressure of the prescription without unnecessary summons costs gives a potential amicable settlement greater chances of success.

Collection agencies believe that they, as a regulated professional group (Act of 20 December 2002), should also be able to have this possibility, and they filed an appeal for annulment against the Act of 23 May 2013, on the basis of impermissible discrimination.

The Constitutional Court decided that it was rationally justified to exclude collection agencies from the application of the Act of 23 May 2013 and thus dismissed the appeal. One of the grounds of this decision was the consideration that collection agencies have little interest in amicable settlements, given that they are paid by means of commissions on the amount they are attempting to collect. The Court further notes that the regulation by the Act of 20 December 2002 was inspired by the very fact that the practices of collection agencies have given rise to numerous complaints.

The possibility of stopping the prescription period with a formal notice of default thus remains a privilege reserved to lawyers, process servers and (amongst others) union delegates.

For more information on this particular subject, you can consult Wout De Cock and Geert De Buyzer (the authors) and Gwen Bevers (head of department).

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