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Statutory expiration of receivables should only apply to recession-era debts

The Finnish parliament is currently working on a proposed amendment to the Enforcement Act whereby all receivables would expire at the end of the 15th year following the date on which the related judgment ordering payment became enforceable. Guarantors, whether natural persons or companies, would also be released of liability along with the debtor. No statutory time limit exists on the liability of debtors anywhere else within Europe or in the world.

The rationale offered for the proposed legislative amendment is that Finland is still estimated to have at least 20,000 recession-era debtors who have not accepted the voluntary debt restructuring settlements offered by their creditors or filed for financial reorganisation. The amount of recession-era liabilities in the debt enforcement system totals EUR 1,608 million, which represents some 35 per cent of the current aggregate debt enforcement volume. These old debts generate EUR 35 million in annual remittances to creditors, which is probably the key reason why debtors with the ability to pay have not wanted to voluntarily restructure their debts.

However, under an amendment to the Enforcement Act that went into effect in the spring of 2004, enforcement will end with respect to some EUR 1,500 million of recession-era debt on 1 March 2008, and the remainder will also become unenforceable within the following couple of years. These limits on enforceability effectively ensure a chance for recession-era debtors to regain their human dignity and put a stop to life-long financial liability and related social and societal problems.

The statutory expiration of receivables constitutes more drastic interference with constitutional property rights since it limits more than just enforcement. The Constitutional Committee of the Parliament has deemed it possible to redefine the property rights of creditors in connection with the Debt Restructuring Act on acceptable grounds and provided that such regulation is required by compelling social needs. However, the position of creditors may not become unreasonable even on an individual basis.

What is the compelling social need on the basis of which receivables whose enforceability period has run out have to be declared expired? According to the government bill the financial situation of a debtor should be as clear as possible to prevent uncertainty in relation to the possible unwinding of asset transfers through a recovery action brought against the debtor's estate after his death.

In other words, the opposing interests are in reality the creditor's right to recover the credit extended and the hopeful anticipation of the debtor's heirs with respect to a potential inheritance.

Only one MP remembered the words of Georg Malmsten's song in the course of the preliminary debate according to which "one always has to repay what one borrows in this world". No one addressed the protection of property rights guaranteed under the constitution. The statements made reflected guilty consciences about poor recession-era management. By legislating the expiration of even crime-related liabilities based on the simple passage of time as a permanent part of our legal system, politicians are washing their hands of the matter and forgetting about the losses suffered by creditors.

One would hope that at least the Constitutional Committee would include members who would calmly weight all constitutional rights on the same basis. Recession-era debts could very well be forgiven through specific legislation. The expiration of receivables should, in any event, allow for the two years following the end of the enforceability period during which the creditor is able to petition a court of law for extended enforceability on the grounds that the debtor has materially through his or her actions hindered the creditor's ability to collect.

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