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Remission of Debts to the State: A Comparative Study of Australian and Bulgarian Law

Ganeta M. Minkova[1]

[1] Sofia University 'St. Kliment Ohridski', Sofiya, Bulgaria; Institute of the State and the Law of the Bulgarian Academy of Sciences; Sofiya, Bulgaria; former member of the Commission on Remission of Unpayable State Claims at the President of the Republic of Bulgariya (CRUSC). E-mail: ganminkov@gmail.com; ORCID iD: https://orcid.org/0000-0001-7885-0986.

Abstract
The institution of remission of public debts is regulated in the Constitution of the Republic of Bulgaria (the Constitution) as a function of the Head of State – the President, which gives this institution contemporary content and meaning. Despite this, since the adoption of the new Constitution in 1991, no doctrinal analysis has been made to examine how a debt waiver would function in a parliamentary, democratic state. The aim of this study is to suggest ways of modernising the waiver mechanism in relation to the scope of debts for collection and the persons who may initiate the procedure, or whose debts may be waived, using examples from the Australian legal system.

Keywords: Debts, Comparative Studies, Australia, Bulgaria

1. Introduction

1.1. Summary of the Key Issues

The institution of remission has its origin in the supreme mercy granted by the monarch granted, which right derives from his sovereignty and reflects his position to stand above the laws and to be able not only to change them but also to derogate from them in certain cases at his discretion. From this point of view, the waiver of public debts can be seen as an 'old-fashioned' way of interaction between the state and the people. However, from a prerogative of the monarch, the possibility of remission under modern democratic rule has been transformed into a constitutional power of the head of state (CCRB, 2012). The fact that remission is regulated at the highest constitutional level in Bulgaria gives this institution a modern content and meaning, placing it in the context of democratic principles and rights. This raises the question of the coherent interplay between past and contemporary models.

In doctrine, it is not arguable that as fundamental rights, equality (Willemart , 1999; Velaers, 2019; Pöschl, 2008) and non-discrimination (Dubout, 2009) require equal treatment where the circumstances are similar and different treatment where the circumstances are dissimilar (CPD, 53/2011; CPD, 113/2011). I do not share the view expressed in Judgment No. 6 of 2012 of the CCRB, that pardon constitutes a constitutional compromise with the

principle of equality of citizens before the law for a legitimate purpose and is therefore derived at the highest normative level. The same might concern the remission.

It is a positive feature of Bulgarian law that the principles of equality and non-discrimination are established in the normative act which has the highest legal validity (Stone, 2005). According to Article 6(2) of *the Constitution*:

> All citizens are equal before the law. No abridgement of rights nor any privileges whatsoever shall be admissible on the basis of race, nationality, ethnic identity, gender, origin, religion, education, convictions, political affiliation, personal and social status, or property.

Considering equality in taxation as allocation of the tax burden over citizens according to their income and wealth, Article 60(1) of *the Constitution* contains a similar idea, but in the area of fundamental obligations stating that:

> Citizens shall be obliged to pay taxes and fees established by a law respective of their income and property.

The constitutional provisions cited should ensure that the principles of equality and non-discrimination are implemented in practice. However, their application is being affected by the economic environment in Bulgaria, where both income and wealth disparities are significant and the designed system of taxation does not help to overcome them. On the one hand, we have the proportional personal income tax rate of 10 % and, on the other hand, there is the absence of a wealth tax and a reduction of the number of subjects liable to pay inheritance and gift taxes, which all favour the accumulation of income and wealth in the hands of a minority. For instance, inheritance tax shall not be paid by the surviving spouse and by the lineal heirs without restraint. Other persons are liable to pay tax if their share of the inheritance is greater than BGL 250,000 (approximately EUR 125,000), which is not common. In contrast to other countries where the introduction of a wealth tax has been widely discussed (Milanovic, 2016; Atkinson, 2015) legal theory in Bulgaria does not explore how such a tax might be imposed. Moreover, the budget relies exclusively on revenues derived from indirect taxes (Value Added Tax and excise duties) that burden citizens without taking into account their income and property (Lassalle, 1863). According to the State budget 2024, the receivables form VAT are BGN 18,626,102,000 (approximately EUR 9,313,051,000), form excise duties BGN 6,445,000,000 (approximately EUR 3,222,500,000), while form Corporative Income Tax (CIT) are BGN 5,816,000,000 (approximately EUR 2,908,000,000) and form Personal Income Tax (PIT) – BGN 6,905.000,000 (approximately EUR 3,452,500,000).

Legal instruments to counter economic inequality, therefore, become crucial. Such a means is the function of the President of the Republic, established in Article 98(12) of *the Constitution.*

This paper further develops the arguments I have presented in my earlier work (Minkova, 2018). It focuses on the need to improve the legal framework of remission because, as discussed below, it was established some 40 years ago under quite different social, political and economic circumstances. Since the present *Constitution* has taken effect in 1991, no efforts have been made at either theoretical or statutory level in order to address and resolve the existing problems, unlike in other countries where remission has been the subject of interest in recent studies (Singer, 2019). This situation affects the principle of rule of law, since in the taxation context it means that 'the law must be available and clear to taxpayers' (Leibler, 2023).

Furthermore, the lack of a coherent regulation, despite it being the duty of the legislature to enact one (Campbell, 1994), has served political purposes in the past. An impeachment proceeding was initiated against the President in 2012 on the grounds of the unlawful exercise of their remission power. The procedure was not completed, but some related documents are relevant to the topic discussed in this article for instance, Report of the Provisional Parliamentary Commission for the Investigation of the Facts and Circumstances Relating to Actions and Initiatives of Officials of the Bodies of the Executive Branch in and on the Occasion of Pardons, Remission of Uncollectible State Claims and Granting and Restoration of Bulgarian Citizenship and Exemption from and Deprivation of Bulgarian Citizenship in the Period January 2002 - January 2012. The Parliament adopted the report of the Parliamentary Commission established for the purposes of the proceeding by Decision of 1 Nov. 2012 (State Gazette, No. 89 of 13 Nov. 2012), which contains findings on the existing legal framework and conclusions on the lack of legal framework or insufficiently developed legal framework, the lack of rules for the work of the relevant

officials, which could lead to distortion of the submitted information in the form of opinions, characteristics, data, and reports (CCRB, 2013).

Consequently, both the enactment of a law including provisions adopted to achieve certain unwelcome objectives, or the absence of such a law, can be used to have an impact on those in the highest offices of the state, since the decline of positivist orthodoxy has immense dangers for our democratic culture (Campbell, 1994).

Therefore, from a research perspective, it is important to make de lege ferenda proposals to encourage a legislative initiative to create a new adequate modern regulation on the scope of the types of debts and the persons whose debts can be waived, as well as the persons entitled to start a debt waiver procedure. This article offers original doctrinal analysis of what such a law might regulate.

Why did I choose to compare Bulgarian law with Australian law? Since I am now concentrating on de lege ferenda proposals, the analysis of the Bulgarian legal framework in the light of the models adopted by the Australian legislator offers great opportunities, as Australian law is free from the burden of long European history and tradition and in this sense is adaptable to new ideas.

1.2. General Overview of the Legal Framework

In Bulgarian financial theory, remission is defined as a way of repaying an individual's financial debts, as opposed to amnesty (Angelov, 1970; Kuchev, 1977). At the statutory level, remission is mentioned in Article 168 of the *Tax Social Insurance Procedure Code (TSIPC)*, which provides that a public debt shall be extinguished upon remission. In turn, the procedure for remission is regulated by *Decree 2773 of 23.12.1980 on remission of uncollectible debts to the State, issued by the Chairman of the Council of State of the People's Republic of Bulgaria (*Decree 2773/1980*)* in accordance with the repealed *Constitution of the People's Republic of Bulgaria (the Constitution 1971)*. The decree is still a valid normative act, therefore the CCRB refers to its provisions in judgments (CCRB, 2012).

Article 1 of *the Decree* already indicates the bodies whose debts can be remitted. However, such subjects either no longer exist or exist under a completely different design, such as banks, the State Insurance Institute, state cooperative organisations. *The Decree* further stipulates that the main body to organise the collection of information on the income and wealth status of the person who has applied for debt waiver shall be the executive committee of the municipal people's council. There are no such bodies anymore and the existing municipal councils and municipal mayors refuse to provide information, referring to the fact that they are not mentioned anywhere as bodies which are obliged to give information for the purposes of the debt waiver mechanism. This makes the performance of the President's CRUSC extremely difficult, as it relies exclusively on the information provided by the representative of the Department of Finance, who is also a member of that commission.

Actually, there is a document that describes the waiver procedure, but this document can hardly help to solve the existing problems. In an attempt to overcome the absence of a legal framework, the President has approved by Decree No. 39 from January 2022 Guidelines for the Functioning of the Commission for the Remission of Uncollectible State Claims to the President of the Republic of Bulgaria. According to the reasonings of Decision 6/2012 of the CCRB, the President applies the same criteria to all waiver requests, but such criteria cannot be imposed on him by law adopted by the National Assembly. This would be contrary to the principle of separation of powers (Article 8 of the *Constitution*). At the same time, the Head of State is able to and should make public the manner, in which he exercises this power, and what general criteria are applied in order to ensure the equality of citizens (CCRB, 2012). I do not agree with these statements since in this sphere of public relations, the President has no competence to issue regulations under Article 2 of the *Statutory Instrument Act (SIA*). Therefore, the Guidelines are not a statutory instrument but an internal act that has effect only within the President's administration and auxiliary committees. They have been not promulgated in the State Gazette as required by Article 5(5) of the *Constitution* and Article 37 of the *SIA*. It is for this reason that local authorities ignore the requirements to provide the necessary information about the person seeking relief.

Legislation in Australia comparable to the Bulgarian remission procedure, is contained in Section 63 – Waiver of amounts or modification of payment terms of the *Public Governance, Performance and Accountability Act 2013 (PGPAA)*. The *Resource Management Guide № 401 (RMG)* explains in detail the debt waiver procedure. The power of waivers is exercised by an executive body (the Finance Minister or officers of the Department to whom the power to forgive debts has been delegated), who may authorise a debt waiver, or the modification of the terms and conditions in which an amount owing to the Commonwealth is to be paid. With regards to the alteration of the deadlines for payment of a public debt in Bulgaria, the *TSIPC* contains detailed provisions in its Chapter Twenty-two 'Deferral and Rescheduling', where the competence is exercised by the Territorial Director, or the Executive Director of the National Revenue Agency (NRA - which is the Bulgarian tax authority), or the Department of Finance. However, these bodies are not allowed to waive debts.

1.3. Judgments of the Constitutional Court of the Republic of Bulgaria

The jurisprudence of the CCRB is also not entirely accurate. In two judgments (CCRB, 2012; CCRB, 2013) related to the above-mentioned impeachment procedure, the court interprets the constitutional provisions regulating remission and pardon (Article 98(11) of the *Constitution*). The court concluded that the President's acts of remission need not be public, reasoned and appealed. On the one hand, this seems to put absolute power in the hands of the President. On the other, this power cannot be easily exercised because, for example, as stated above, some of the 265 mayors refuse to provide him with information about the income and assets of those seeking remission for their debts. However, viewed from a purely political discourse, this situation can also be regarded as a balancing of power between representatives of different interests, with tax issues often coming to the fore (Ullmann, 2005). Although the President is the Head of State and embodies the unity of the nation (Article 92(1) of the *Constitution*), he is elected by popular vote as a nomination of a political party, or parties, and the municipalities that refuse to submit information to him are usually governed by mayors nominated by other parties. As the controversy between the president and some parties intensifies, refusals to provide information by municipal authorities are increasing, which may signal a need to seek compromise on various issues. If the obligation of municipalities to provide information to the President in cases of debt waivers, and not only that, were legally established, it would deprive certain players in political life of a means of influence when searching for balance between institutions.

2. Scope of Debts that Can be Waived

In Australia, there is a clear understanding of the scope of debts that can be waived under the provisions of section 63 of the *PGPAA*. These are debts claimed by Commonwealth entities, being Departments of State, Parliamentary Departments and other entities. The list of bodies that have claims that can be forgiven is publicly available at PGPA Act Flipchart and List | Department of Finance..

Quite the opposite is the situation in Bulgaria, where the scope of debts that can be waived by the President cannot be easily determined either at central or local level, although Article 162 of the *TSIPC* lists public debts that are extinguished under the remission procedure. However, as described below, the lack of coherence between this text and Article 98(12) of the *Constitution* is a source of misinterpretation and misunderstanding in both theory and practice.

2.1. Public Debts Determined by an Administrative Act

Article 21 of the *Code of Administrative Procedure (CAP*) defines what act is an 'individual administrative act.' According to Article 21(1):

> An 'individual administrative act' shall be an express declaration of will or a declaration of will expressed by an action or omission of an administrative authority or other authority or organization empowered to do so by law, the person performing public functions, and the organisations providing public services, whereby rights or obligations are created or rights, freedoms or legitimate interests of particular individuals or organisations are affected, as well as the refusal to issue any such act.

Article 21(2) of the code states that:

> 'Individual administrative act' shall furthermore be a declaration of will whereby pre-existing rights or obligations are declared or ascertained, where the declaration of will is relevant to the recognition, exercise or extinguishment of rights or obligations.

Taxes, fees, excise duties, customs duties and compulsory social-insurance contributions are determined with individual administrative acts (Kostov, 1979) issued by state or municipal bodies under Article 21(2) of the *CAP*. It should be specified that these obligations may also be determined on the basis of a declaration submitted by the person.

2.1.1. Municipal public debt claims

In Australia, the Department of Finance cannot waive debts held by state or territory government departments. According to Article 6(2) of the *Commonwealth of Australia Constitution Act (CACA):*

> 'The States' shall mean such of the colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the northern territory of South Australia, as for the time being parts of the Commonwealth, and such colonies or territories as may be admitted into or established by the Commonwealth as States; and each of such parts of the Commonwealth shall be called 'a State.'

The executive power at the central level (Taylor, 2006; Watts, 2002) has no right to interfere with the financial affairs of the states as they are independent parts of the Commonwealth.

Because of the wording 'state claims' used in Article 98(12) of the Bulgarian *Constitution*, it seems easy to assume that municipal claims are also not included in the types of liabilities that can be remitted by the President. However, a deeper analysis, based on the characteristics of the unitary state and the historical interpretation of Article 98(12), may lead to different conclusions.

In a unitary state, relations between its territorial parts are much closer than in a federal state. In Bulgaria, which is a unitary state according to Article 2 of the *Constitution*, the financial support of the state to the municipalities, which are the main territorial subdivisions, is significant (*State Gazette*, No. 38 of 30 Apr. 2024). Every year the state budget grants subsidies to municipalities, without which they would not be able to perform their functions, as only a few of them are financially independent due to the large size of their population and the economic activity of the enterprises established in them. The unitary nature of the Bulgarian state therefore leads to a different conclusion regarding the ability of the Head of State to forgive public debts compared to the powers of the Finance Minister in a federal state such as Australia.

With regards to the historical analysis of the text of Article 98(12) of the *Constitution*, it should be pointed out that at the time of the adoption of the present *Constitution*, the *Collection of State Claims Act (CSCA)*, adopted in 1989, was in force. The new *Constitution* incorporates the term 'state claims' from this law, as the *Constitution 1971* uses the term 'debts to the state', which was also accepted in Decree 2773/1980.

According to Article 1(1) and (3) of the *CSCA* (repealed), state claims are: taxes, patents (licence taxes), excise duties, fees, customs duties, contributions to the budget and to the state social insurance, overpaid superannuation and amounts owing to the state budget; funds granted by the State budget whose repayment period has expired.

Article 2 of the *CSCA* stipulates that the law shall also apply where a law or decree provides that the debt is to be collected under the procedure for collection of public debts.

Similar texts in the current legislation are the norms of Articles 162 and 163 of the *TSIPC*. According to Article 162, state and municipal claims shall be public and private. Public state and municipal claims are: for taxes, including excise duties, as well as customs duties, compulsory social-insurance contributions and other contributions to the budget; for other contributions assessed by law in terms of grounds and amount; for stamp

duty and municipal charges assessed by law in terms of grounds; for social-insurance expenditure effected in non-conformity with the law; for recovery injunctions on unlawful state aid adopted by the European Commission; for any unduly paid and overpaid amounts, as well as for any illegally received and illegally absorbed resources under projects financed with funds from the European Union, including the related national co-financing, which arise on the basis of an administrative act, including financial corrections, overpayment of advances, percentage ratios over the project budget, line items, overruns, cross-financing.

Pursuant to Article 163(1) of the *TSIPC*, public debts shall be collected in accordance with the procedure laid down in this code, unless otherwise provided by law. Due to this provision, some private debts are recovered in accordance with the procedure laid down in the *TSIPC* and some public debts, for instance local taxes and fees, are recovered in accordance with the procedure laid down in the *Code of Civil Procedure (CCP)*.

There is a difference between the repealed rules and the current ones in the way debts are defined. *CSCA* (repealed) applies two criteria for receivables collected under its norms:

i) a substantive criterion by way of listing the types of debts that are received by the state budget, and
ii) a procedural criterion by way of the procedure for collection, in which case no exhaustive listing is possible, but reference is made to the regulation contained in another law.

The enumeration in Article 162 of the *TSIPC* is exhaustive, but the procedure for collection is not indicated as a criterion for qualifying the debt. As mentioned above, some private debts can be collected as public ones and vice versa.

Based on the historical review, it can be deducted that with regard to the substantive criterion for defining the concept of "state claims", there have been significant changes in the last decades from what the legislator understood drafting Article 1 of the *CSCA* (repealed). The wording of this norm, which has survived the adoption of the current *Constitution*, is a manifestation of the etatism of the abrogated *Constitution*. The philosophy of the *Constitution 1971* is focused on state property defined as the property of the people (CCRB, 2008), and therefore the *CSCA* (repealed) incorporates a broad understanding of the term "state claim", including any debt collected under its provisions. With the adoption of the current *Constitution (*Article 17(1) and (4)*)*, however, property is divided into state (public and private) and municipal (public and private). Accordingly, claims can also be state (public and private) or municipal (public and private), but such a distinction at the statutory level has been made years after the adoption of the current *Constitution.*

The legal situation described above leads us to the first problem in defining the scope of claims that are subject to remission by raising the question of the local public debts.

The notion of a tax or fee is built on a theoretical level through the powers of a public authority, no matter central or local (Angelov, 1970; Minkova, 2012; Kostov, 1979). The budget into which the collected funds flow is not their essential feature, but only a criterion for distinguishing one type of tax from another (state or local).

On the basis of this criterion, the constitutional legislator has differentiated taxes in Article 84(3) and in Article 141(3) and (4) of the *Constitution*. The National Assembly establishes taxes and determines the amount of state taxes and the municipal council determines the amount of local taxes under the conditions, in the order and within the limits established by law. This distinction is made in view of the vertical distribution (Mihaylova-Goleminova, Minkova, 2024) of functions in the determination of the amount of the most important public debts by different authorities, for which authorities there are separate chapters in the *Constitution*. However, as mentioned above, it is not decisive in view of the concept of ‘tax’. Therefore, certain types of debt have been included in laws governing either state or municipal claims at different times, without this leading to any fundamental differences in the assessment of the debt. Patents (licence taxes), for example, was regulated for a long time in the *Zakon za oblagane dohodite na fizicheskite litsa* (Personal Income Tax Act) (repealed), and in the *Zakon za danazite barhu dohodite na fizicheskite liza* (Personal Income Tax Act – *PITA*), and subsequently in the *Zakon za mestnite danatsi i taksi* (Local Taxes and Fees Act – *LTFA*).

With regards to the procedural criterion used in Article 2 of the *CSCA* (repealed), it should be borne in mind that until 2006, state and municipal public debts were determined and collected under the same authority - that of the tax administration, which is a structure subordinate to the Minister of Finance. It was only with the changes made to the *LTFA* in 2004, effective from 1 January 2006, that municipal revenue administrations were established, which began to collect local taxes and fees, and subsequently to assess the debts of citizens and institutions, and to secure the municipal receivables, although by agreement the local taxes continued to be collected by the tax administration in accordance with Article 9a of the *LTFA*. However, the procedure for assessing, securing and collecting local taxes and fees has always been the procedure applicable to the assessment, securing and collection of state ones. This was originally the procedure laid down in the *Tax Procedure Code* (repealed) and since 1 January 2006 in the *TSIPC*. Therefore, according to the procedural criterion, municipal public claims are in principle assessed, secured and collected in the same manner as state public claims, although some private state receivables are collected in the manner as public ones, and according to Article 4(2) of the *LTFA*, local taxes can also be collected by state or private bailiffs under *CCP*.

In addition, the text of Article 60(1) of the *Constitution*, which regulates the payment of taxes and fees as a fundamental duty of citizens, does not distinguish between state and municipal taxes and fees. Therefore, if the constitutional obligation to pay taxes and fees corresponds to the possibility for citizens to request their remission, this possibility should be exercised with respect to all types of tax and charges and in the same procedural order. The constitutional legislator introduced an implicit obligation for the public authority to ensure, through the institution of remission, the realisation of constitutional values and principles and, in this sense, the equality of citizens in the possibilities of repayment of their debts in the presence of certain preconditions (CCRB, 2012).

Bulgarian legislation does not contain a provision that regulates any other procedure for remission of uncollectible municipal public claims. If one were to accept the view that they are not included in 'state claims' within the meaning of Article 98(12) of the *Constitution*, this would lead to an inequality between persons liable for state taxes and fees, and persons liable for municipal ones. The first group of people will be able to justify applications for remission under Article 98(12) of the *Constitution*, while the second group will not, which was hardly the idea of the constitutional legislator. Treating taxpayers on an equal footing also means identifying comparable groups who are subject to taxation or who are exempt from taxation, or who benefit from tax exemptions or to whom the institution of remission can be applied. Of course, these arguments can be challenged by the argument that the issue needs to be addressed by legislation.

However, the creation of a regulation that would empower municipal councils or mayors of municipalities to remit uncollectible municipal taxes and fees raises the question of the constitutionality of such texts, given that only the President is empowered to remit public debts. Since waiver, like pardon, has its roots in the royal institution (CCRB, 2012), it is arguable that the waiver of municipal public claims should be granted by law to bodies other than the Head of State, especially since under the current *Constitution* this would be contrary to its provisions. Such norms may be adopted after the amendment of the *Constitution* by the Grand National Assembly or the National Assembly. Pursuant to Article 158(3) of the *Constitution*, the Grand National Assembly shall resolve matters concerning changes in the form of State organisation and in the form of government. Since one of the functions of the Head of the State would be affected, it can be argued that the issue is within the competence of the Grand National Assembly. In this sense is the legal opinion expressed by Prof. Daniel Valchev in connection with case 1/2024 of the CCRB, on the resent changes in the Constitution.

2.1.2. Compulsory social security contributions and illegally incurred social security expenses

The fundamental rights of citizens include the right to social security and social assistance (Article 51 of the *Constitution*), and the right to health insurance (Article 52 of the *Constitution*). To enable citizens to realise these individual rights, it is necessary to set up a system of social insurance (CCRB, 1997). The legislator has established a mechanism for collecting contributions, which are paid into centralised special-purpose funds and the revenue is spent for the benefit of those entitled to assistance.

Similar to the proportional income tax, social security contributions in Bulgaria are proportional. They are not due if income exceeds a certain monthly threshold, which in 2024 is for an income higher than BGL 3,750 (approximately EUR 1 870) gross per month. If the income is lower than this threshold, social insurance is mandatory. Employees, employers and the self-employed are subject to contributions. Combined with the personal income tax (PIT), compulsory social security contributions represent a significant financial burden on wage earners. There is therefore hardly any social or economic reason to treat the waiver of the tax and social contributions differently.

Although social security contributions are among the public debts listed in Article 162(2) of the *TSIPC*, the 'channeling of funds' as a criterion for distinguishing between public payments that flow into different centralised budgets may be an argument in favour of the view that these contributions, because they are paid into funds built on the principle of solidarity, should not fall within the constitutional concept of "state claims." Unlike taxes and fees, which are part of the revenue of the state budget, social contributions are paid into two separate budget funds. The budget of the State Social Insurance, where pension contributions are collected and the National Health Insurance Fund, where health insurance contributions are collected, are adopted by two separate laws.

The obligation to pay compulsory social security contributions, although not regulated as fundamental by the constitutional legislator, i.e. equal to the obligation to pay taxes and fees, is related to the ability of citizens to exercise their constitutional rights. At the same time, in the event of the debtor's inability to pay the compulsory social security contributions, other means of extinguishing the debt must be regulated, among which is remission.

Persons who have received undue expenditure from centralised social security funds, are liable for repayment (Article 162 of the *TSIPC*) since these sums are considered state claims. The President should therefore exercise his power to forgive these debts as well. Broadly, Australian legislation provides for a similar idea:

> When a debt is raised, the CW has a legal right and, under section 11 of the *PGPA* Rule, an obligation to pursue recovery of the amount. Recovery rights include circumstances where a person has been erroneously paid more than their legal entitlement.

2.2. Public Debts Determined by Court Acts

According to Article 162 of the *TSIPC*, public debts are also: for the monetary equivalent of terms of property, forfeited to the Exchequer, fines and pecuniary penalties, confiscation and forfeiture of cash to the Exchequer; under effective sentences, judgements and rulings of the courts for public debts in favor of the state or the municipality; fines and financial penalties under effective penalty decrees; as well as the fines and the other pecuniary sanctions provided for in Community law.

2.2.1. Monetary penalties

Fines and forfeitures are monetary penalties. Pecuniary sanctions are also payments to the budget due by entities in case of non-compliance with administrative provisions. The procedure for their collection is that of *TSIPC* and the amounts collected are paid into the state or local budgets. However, with respect to them, it may be argued that the President should exercise his power under Article 98(11), not that under Article 98(12) of the *Constitution*, whether the penalty is imposed as a consequence of criminal or administrative liability. The penalty amount in this case is determined by a sentence or a penalty decree issued in the course of jurisdictional proceedings.

The right to pardon as a procedure is regulated in Article 74 of the *Criminal Code (CC*). By its content, pardon is an act whose legal consequences lead to exemption from suffering the penalty imposed. These consequences are the direct and sole purpose of pardon. It relates to penalties implemented on the basis of final criminal convictions and is motivated by humanitarian considerations.

In the application of Article 98(11) and (12) of the *Constitution*, the question arises whether the pardon applies only to the punishment of imprisonment or to all punishments provided for in the *CC*. In its case-law (CCRB, 2012), the Constitutional Court has held that the *Constitution* does not allow the type of penalties under the *CC*

that are subject to pardon to be limited, nor does it allow one or another category of convicted persons to be excluded from its scope. The problem, therefore, lies again in defining the comparable groups so as not to discriminate against some of those who might exercise their right to pardon.

However, the *Implementation of Penal Sanctions and Detention in Custody Act (IPSDCA*) does not regulate the pardon procedure beyond the texts on serving the imprisonment sentence. Although this law contains rules on the execution of all types of punishment (imprisonment, confiscation of property, fine, deprivation of rights and public censure), the texts relating to pardon are to be found in Part Two: "Implementation of the penalty of imprisonment." It is exactly their systematic place that leads to the conclusion that the legislator regulates pardon with regard to only one type of punishment under the *CC*. At the same time, pardon is not regulated as a means of extinguishing public debts in Article 168 of the *TSIPC*. The positive legal framework, therefore, only regulates remission as a means of extinguishing monetary penalties as they are listed among public debts.

It should be noted that in Bulgarian theory it is traditionally accepted that monetary penalties are subject to remission (Kostov, 1975). In this case, however, the guiding criterion is the impossibility of repaying the debt and considerations of the offender's behaviour cannot be taken into account. The latter constitutes a weakness of the above theoretical construction, and of the positive legal framework.

2.2.2. Debts for taxes, fees and the like which have been subject to a court decision

In terms of collectability, Bulgarian legislation does not distinguish between obligations established by declaration, or by administrative or judicial act. However, even obligations established by acts which are subject to appeal are enforceable and may be waived. This legislative decision may lead to competing grounds for the repayment of the debt in whole or in part. If an application for forgiveness is made and the President forgives the debt, it is possible that the act by which the debt was determined could be repealed in the interim. Since there is no link between the information systems of the administrative courts and the presidential administration, it is possible to forgive a debt that no longer exists.

A much more appropriate solution has been adopted in Australia where the waiver power is a remedy of last resort. It will generally not be used when there is another viable remedy available to address the specific circumstances of a matter.

2.3. Private State and Municipal Claims

The distinction between public and private claims of the state and municipalities also raises a number of questions. For example, can amounts be forgiven when employees of state or municipal institutions have caused damage in the course of their duties (Kostov, 1968)? In this case, the liability for damages is civil, although a special administrative procedure is laid down in the *Public Financial Inspection Act* for their assessment.

Also, a number of entities receive budgetary funds or collect fees. These are the Bulgarian National Television, the Bulgarian National Radio, the Bulgarian Telegraph Agency, the Bulgarian Academy of Sciences, and others. Such institutions may be included in the consolidated fiscal program (Article171(1) of the *Public Finance Act - PFA*) or may be enterprises that apply the standard guidelines and chart of accounts of budgetary organisations (Article 165 of the *PFA*). In its decisions (CCRB, 2010), the Constitutional Court has dealt with the issue of state institutions and budget-subsidised establishments. State establishments are legal entities with a dual status, as they are subject to public law. They carry out non-profit activities in the interest of a wide range of persons, respectively in the national interest, but are also subject to private law when exercising subjective rights and legal obligations.

As stated above, in Australia, there is a list with variety of entities which have claims that can be waived under the procedure established in Section 63 of the *PGPAA*. In Bulgaria, it is also necessary to distinguish with regard to the entity in whose favor the claim arose and to adopt a notion of claims that also includes some private debts.

3. General Characteristics of the Procedure

3.1. Which Debts Can be Waived

Regarding the persons whose debts can be waived, the following problems need to be solved:

3.1.1. Which nationals can be subject to remission

Any individual who resides in Bulgaria for more than 183 days in any 12-month period is subject to PIT on their worldwide income (Articles 4 and 6 of the *PITA*). In this regard, the following questions arise: can debts of individuals who are nationals of other countries be waived by the President or is this an option that only applies to Bulgarian citizens. If this possibility is also relevant to persons from other countries, should the legislator distinguish between nationals of Member States of the European Union and nationals of third countries?

3.1.2. Persons to whom the procedure applies

It seems to be undisputable that natural persons are subject to the remission procedure. Although under Bulgarian law sole traders are natural persons, they should not be considered as subject to the procedure as it does not concern traders.

In his practice, the President does not forgive debts of non-profit organisations, although such requests are made. Bulgarian legislation (*Zakon za Yuridicheskite liza s Nestopanska Zel - Non-profit Organisation Act*) distinguishes between two types of non-profit organisations: those operating for public benefit, and those operating for private benefit. If it is accepted that debts of non-profit organisations can also be waived, it has to be decided whether this will apply to organisations of a certain type or to all organisations.

3.2. Who Can Start the Procedure

The idea expressed in Decree 2773/1980 is that the subject must initiate the procedure in person. An exception is provided for the legal representatives of infants, minors and persons under guardianship. However, other subjects should also be entitled to launch the procedure:

i) Lawyers are excluded from the scope of initiators of the remission procedure. The reason may lay in the fact that a person who pays the fee to a lawyer is able to pay their public debts. However, the *Legal Aid Act* (*LAA*) guarantees persons equal access to justice by means of ensuring effective legal aid in criminal, civil and administrative matters before courts (Article 1 of the *LAA*). Since the remission procedure is not a litigation procedure, it is excluded from the scope of the law. Nevertheless, amendments could be made to extend the scope of cases in which legal aid is admissible.

ii) Consideration should be given for the Ombudsman to initiate a remission procedure. According to Article 2 of the *Ombudsman Act* (OA), the Ombudsman is a public defender who promotes and protects human rights and fundamental freedoms. Although it is controversial whether remission can be considered a human right or a fundamental freedom, the issue can be debated. The important role of the Ombudsman in taxation is quite visible in Canada where there is a Tax Payers Ombudsperson dealing with tax matters.

iii) In the last decades, the number of tax clinics all over the world is increasing. For instance, some of the clinics that help people with tax matters are Curtin University Tax Clinic, Australia, University of Ireland-Galway Tax Clinic, Ireland, Low Income Taxpayers' Clinic, the USA. Unfortunately, there is no tax clinic in Bulgaria and the establishment of one should be considered.

3.3. The Remission Act

3.3.1. Technical actions of the executive authorities

The procedure is launched at the request of a person to the president, which is often handwritten. Unlike the situation in Bulgaria, where, there is no such form approved for the remission procedure and anyone applying for remission prepares it in free text, in Australia, the waiver application form is publicly available at Application process for act of grace or waiver of debt | Department of Finance. Once the request is received, the President's administration contacts the executive authorities to obtain the necessary documentation. The executive authorities have a separate role in the procedure for the issuance of a remission decree. The actions of executive officials can be figuratively divided into two groups: actions and initiatives that precede and prepare for the issuance of presidential decrees, and actions that follow their issuance. The first group of actions are in some cases not of a legal nature, but are undertaken by the administration to prepare the issuance of presidential decrees, and therefore do not by themselves directly produce legal effects. In some of the proceedings for the issuance of presidential decrees, the officials of the executive are indirect participants, since they are empowered to provide the President only with opinions, statements, information, reports and documents. In exercising the power to waive government debts, the President collects evidence of their uncollectibility from the Department of Finance or the relevant municipal council. These actions do not have the necessary characteristics of administrative acts. In the exercise of his constitutional powers, the President is independent and therefore these actions of the executive authorities do not bind him to issue a decree to a certain effect (CCRB, 2012).

3.3.2. Reasoning of the decree

Since the CCRB held that presidential decrees are authority acts (Article 102(1) of the *Constitution*.) but not administrative ones, the court expressed the view that they do not need reasoning. This corresponds with its perception that the President cannot be constrained in his decision-making by any grounds established in law. Only in one case does the *Constitution* require mandatory reasons for presidential decrees. These are the decrees (Article. 101(1) of the *Constitution*.), whereby the President returns a law to the National Assembly for reconsideration. Hence, all other decrees of the Head of State should not be accompanied by reasons. I disagree with the cited conclusions. In the first place, Article 8 of the *Decree 2773/1980*, as the law in force, provides criteria for remission. Secondly, the *Constitution* does not prohibit the establishment of criteria by the National Assembly when it comes to the reasoning of President’s decrees. I believe that the reasoning, especially when the President refuses debt forgiveness, will improve the situation of the party that initiated the waiver procedure.

3.3.3. Countersignature of the decree by the Minister of Finance

The remission decrees are not subject to the co-signature of the Minister of Finance (CCBR, 2012). The co-signing is an act of consent and of assumption of responsibility for the acts and actions of the Head of State by a representative of the executive branch, i.e. the Prime Minister or the relevant Minister (CCRB, 1996).

3.3.4. Publicity of the decree

The CCRB holds that it is more than obvious that the President has strong motives when issuing a pardon decree, but these motives do not need to be made public, even if the legislator considers that the relevant decrees should be promulgated in the Official Gazette.

However, further in its reasoning, the court assumed that a conflict arises between the interests of the person in preserving his dignity, privacy and personal data, on the one hand, and, on the other, the right of citizens to be informed about the activities of State institutions in matters of public interest, including the exercise of the powers of the Head of State. It is a matter of legislative discretion whether the decrees should be published in the Official Gazette (CCRB, 2012). I assume that the interest of the public is more important in this case and the decrees should be published.

3.3.5. Legal effect of the decree

In Australia, it is explicitly established that a waiver is a special concession that extinguishes a debt owed to the Commonwealth. The CW cannot pursue the debt at a later date if the financial circumstances of the person or organisation improve.

The decree also discharges the debt. Pursuant to the practice of the CCRB, it comes into force at the moment of its issuance. In order for it to have legal effect, a copy of it must be delivered to the person and to the executive authorities.

3.3.6. Review of the decree

The decree by which the Head of State grants remission shall not be subject to review by any other public authority, nor by the Head of State himself once that act has produced its legal effect.

Remission decrees, like all other presidential decrees, do not have the legal characteristics of administrative acts and cannot be equated with them. Therefore, they remain outside the scope of the Administrative Procedure Code (Article 2). These decrees exercise the constitutional powers of the President and their legality cannot be challenged. Only the Constitutional Court can control the acts of the President. However, since the scope of subjects that can initiate proceedings before the CC is very limited, such control has not been exercised so far. Australia's solution is much more effective because, if the claimant is not satisfied with the decision to forgive their debt, it is up to them to lodge a complaint with the Commonwealth Ombudsman, to seek judicial review, or to request reconsideration of the decision if relevant new information or a serious factual error is identified.

4. Conclusion

As a result of the study, it can be concluded that it is necessary to establish at the statutory level a new regulation of the procedure under which the President exercises his power to remit state claims under Article 98(12) of the Constitution.

In Part II of this article, I suggested that the law includes provisions on the following claims:

a) both state and municipal claims of taxes and charges;
b) compulsory social security contributions and unlawfully incurred social security expenses from the budget of the State Social Insurance and the National Health Insurance Fund;
c) debts arising from juridical acts;
d) certain private debts.

In Part III, I point out that the law should carefully design the scope of the persons whose debts may be remitted and the persons who are entitled to initiate the debt waiver procedure. It is also necessary to settle the issues linked to the legal characteristics of presidential decrees.

Some questions remain out of the content of the article – for instance, what is the structure of the Commission for the Remission of Uncollectible State Claims to the President. My future research will probe these, and other related questions.

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