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Issues Related to the Statute of Limitations for Criminal Liability

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Abstract: In this article, we have endeavoured to briefly set out and analyse the issue of the prescription of criminal liability in criminal proceedings. Presenting the arguments put forward in support of the views expressed in the criminal literature on this issue and allowing us to present the view that we consider appropriate at the current stage of the process, we believe that the issue is quite important in two respects, theoretically and practically.

Keywords: *prescription of criminal liability; effects; time limits; calculation of prescription; suspension.*

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1. The criminal statute of limitations is regulated in the Criminal Code in two respects; as a cause that removes criminal liability (Article 153 of the Criminal Code) and as a cause that removes the execution of the sentence (Article 161 of the Criminal Code).

In both cases, the criminal legislator derives from the passage of time consequences in terms of criminal liability or (if the offender has been definitively convicted) execution of the sentence.

It is well known that the purpose of criminal law and punishment can be effectively achieved only if criminal prosecution is carried out in due time, i.e. as soon as possible after the crime has been committed; only, in this case, is the punishment effective, it can serve as a lesson to the convicted person and other citizens; also, the trial can be carried out in normal conditions, the traces of the crime and the evidence being fresh (Antoniu, 2015). On the contrary, if a long period has elapsed, the social resonance of the crime is lost, the crime is almost forgotten, and the social unrest and disturbance caused by a criminal act are reduced, it is also possible that the traces of the crime may disappear, leading to increasingly precarious conditions for finding the truth (art. 5 of the Criminal Procedure Code). Such situations arise, for example, when the offence cannot be discovered in time, or when the offenders cannot be identified because the necessary clues are lacking, or even if the offenders have been caught and tried in the meantime, they have disappeared and remained in hiding for a very long time.

2. In older doctrine (Helie, Pessina, etc.) the institution of prescription has been justified by the idea of achieving repression by equivalent, considering that the offender has suffered enough during the prescription period by staying hidden or wandering in other places far from home and family, this suffering is equivalent to a punishment (Antoniu et al., 2015, p. 453.).

Other authors have justified the prescription on the idea of the futility of the repression, and the lack of effectiveness of the punishment applied late (Ortolan, Gerrard, etc.); they have also invoked the lack of evidence, the fact that it has disappeared or has become unreliable (Carrara, Binding).

Modern doctrine bases prescription primarily on the purpose of repression; society must forgo punishment if it no longer corresponds to the purposes pursued by holding a person criminally liable (Dongoroz, 1939, pp. 713-715; Dongoroz, 1970, pp. 353-357).

In these circumstances, it is doubtful that a conviction or execution of the penalty would still be necessary, which is why the legislation of all states has provided for these institutions of prescription. In these cases, the remission of criminal liability and execution of the penalty appears as a wise solution that takes into account human and social-political realities as well as the fact that belated repression appears useless and without a real contribution to the achievement of the purpose of criminal law.

In light of this reality, the legislator has regulated the institution of prescription as a cause which removes the incidence of the criminal law, by extinguishing either the right to hold the offender liable and punish him or the right to claim enforcement of the sentence by the convicted person. The limitation period does not remove the criminal nature of the act or the existence of the previous conviction of the person concerned. Prescription merely creates an obstacle to the commencement or continuation of criminal proceedings or the enforcement of the sentence finally imposed.

As an institution of criminal law, it operates as of right, even when the limitation period has expired. The judicial authorities are obliged to apply these provisions ex officio. Even if the offender or convicted person does not invoke the limitation period, the effects of the limitation period start from the moment when the period expires (ex tunc) and not from the moment when the offender was arrested (ex nunc).

3. We underline that Romanian criminal law provides for two types of prescription, one referring to criminal liability and the other to the execution of the sentence, each having different effects, one removing criminal liability and the other the execution of the sentence. Although of different kinds, the prescription is a unitary institution with the same basis (similar objective situations and socio-political considerations) and responding to the same criminal policy requirements. Moreover, they both produce the same extinction effects regarding criminal liability and its consequences. However, in this article, we will only analyse the limitation of criminal liability, and in another issue of the magazine, we will also analyse the limitation of the execution of the sentence.

4. The statute of limitations for criminal liability, according to para. 1 of Art. 153 of the Criminal Code implies the removal of criminal liability as a result of the passage of time; in this way, the legal relationship of conflict arising from the commission of the offence is extinguished and the act is removed from the scope of criminal law; prescription fixes in time the possibility and legal obligation to hold criminally liable those who have

committed acts provided for by criminal law. It does not matter at what stage of the criminal proceedings the case is; as long as the criminal proceedings are pending, even in appeal or retrial after cassation, the statute of limitations operates.

From a legal point of view, the prescription of criminal liability under substantive criminal law is an extinctive cause (extinguishing) of criminal liability determined by the passage of time and by the influence that this circumstance has on the need for criminal constraint.

From a criminal procedural point of view, the intervention of the statute of limitations removes the right of the judicial authorities to hold the offender criminally liable and implicitly removes the offender's obligation to be criminally liable, since society renounces criminal prosecution after a certain period has elapsed since the offence was committed because it no longer corresponds to social and political needs and no longer contributes to the aims of punishment. From a procedural point of view, prescription appears as a cause preventing the initiation of criminal proceedings or the bringing of criminal proceedings according to para. 1, letter f of art. 16 of the Criminal Procedure Code.

As it follows from the content of Article 153 of the Criminal Code, prescription, in this form, removes criminal liability. This means that the act continues to constitute an offence but the criminal liability is removed and no longer has any consequences; the offender can no longer be prosecuted and if he has been prosecuted he can no longer be held liable and punished. In other legislations, the prescription of criminal liability is treated as a procedural-criminal institution and is called "prescription of criminal action". It is true that the removal of criminal liability, from the point of view of substantive criminal law, implicitly removes the right to bring criminal proceedings against the offender, but while maintaining the nature of this institution as an institution of substantive criminal law, it is more appropriate to treat it as part of criminal liability and as a cause of its removal.

Although the statute of limitations of criminal liability should apply to all crimes, the law stipulates in paragraph 2 of Article 153 of the Criminal Code that "the statute of limitations shall not remove criminal liability for crimes of genocide, crimes against humanity and war crimes, regardless of the date on which they were committed; crimes referred to in Articles 188 and 189 and intentional crimes followed by the death of the victim; the statute of limitations shall not remove criminal liability for crimes referred to in paragraph 2 of Article 153 of the Criminal Code". (2)(b) for which the general or special limitation period has not expired on the date of entry into force of this provision". This provision takes account of the exceptional

seriousness of the offences referred to, the resonance of which is present in the general consciousness regardless of the passage of time. This reality was then enshrined in law by the adoption by the UN General Assembly on 26 November 1968 of the Convention on the obligation of States to incorporate in their criminal laws the principle of non-applicability of statutory limitations to crimes against peace and humanity.

The limitation periods for criminal liability are provided for in Article 154, differentiated according to their duration about the penalties provided for by the criminal law, and the offence committed (Antoniu, 2003, p. 30). The scale of limitation periods is as follows:

(a) 15 years, when the law provides for a penalty of life imprisonment or more than 20 years imprisonment for the offence committed.

b) 10 years, when the penalty prescribed by law for the offence committed is imprisonment for more than 10 years but not more than 20 years.

c) 8 years, where the penalty prescribed by law for the offence committed is imprisonment for more than 5 years but not more than 10 years.

d) 5 years when the penalty prescribed by law for the offence committed is imprisonment for more than 1 year but not more than 5 years.

e) 3 years when the penalty prescribed by law for the offence committed is imprisonment for a term not exceeding one year or a fine.

The term is determined either by reference to the type of sentence (life imprisonment) or the special maximum limit laid down in the special part of the criminal code for the offence committed. Even if the statute of limitations is invoked after a specific penalty has been imposed on the offender, the statute of limitations is determined by reference to the statutory maximum for the offence and not to the specific penalty imposed.

It also takes into account the limits of the penalty for the completed offence even if the act constitutes an attempt or an instigator or accomplice.

If the law provides for alternative penalties, the limitation period is determined by reference to the special maximum of the heaviest alternative penalty.

The statute of limitations is reduced by half for those who were minors at the time of the offence (Article 131 of the Criminal Code).

To correctly calculate the limitation period, the judicial authorities must correctly classify the offences committed by the accused, taking into account all the concrete circumstances on which the correct legal classification of the offence depends.

The limitation period takes effect only if the period prescribed by law has expired from the date of the commission of the offence without the offender having been prosecuted and tried during that period. This moment from which the limitation period begins to run (a quo) is counted, according to Art. 154 para. 1, from the date of the commission of the offence, i.e. from the day on which the concrete activity took place (attempt or consummation of the offence); the day of the commission of the offence is included in the calculation of the limitation period regardless of the time when the offence was committed. It does not matter whether the offence was discovered or the offenders identified, because the day on which the offence was committed is the day on which the legal relationship under criminal law came into existence.

In the case of continuous offences, the limitation period will run from the date on which the action or inaction ceases (e.g. from the date of release of the person unlawfully deprived of liberty or from the date on which the theft of electricity ceases), i.e. from the date on which the offence ceases. If the offence is continuous, the limitation period will run from the date of the last action or inaction, which is also the date of the offence.

It is debatable in the doctrine when the statute of limitations starts to run for progressive offences. An earlier decision of the Supreme Court (Guidance Decree No 1 of 1987 C.D. p. 12) established that in this case, the limitation period runs from the date of the production of the enhanced result (as decided by a full bench of the Supreme Court in decision 1828 of 1974 C.D. p. 366). The solution is questionable.

In so far as the final judgment was delivered after the time of the exhaustion of the offence, it took as the date of the commission of the offence the time of exhaustion and, as such, the limitation period for criminal liability can only start to run from the date set by the court as the date of the act or inaction, which date relates to the time of exhaustion. The situation is different when the judgment has become final before the offence has been exhausted or if the court, even knowing the date of exhaustion, was unable to change the legal classification in the defendant's favour because there was no appeal or appeal by the prosecutor, or because the one-year time limit for an appeal for annulment in the convicted person's favour had expired; in such a case, the date of the commission of the offence will be the date of the action or inaction, from which the limitation period will also run.

It is possible that, during the limitation period, an act may have been taken to hold the offender responsible, as the social resonance of the offence has been kept alive in people's minds and the fact has been brought

to everyone's attention, thus cancelling out the effect of forgetting the offence. After the interruption in the above conditions, a new limitation period will begin to run (Article 155(2) of the Criminal Code). The interruption of the limitation period may occur either during the initial limitation period or during a subsequent period after a previous interruption of the limitation period.

According to Article 155 para. 1 constitutes a cause of interruption of the limitation period by the performance of any procedural act in the case. This presupposes that criminal proceedings have been initiated against the perpetrator as a suspect or defendant, as criminal proceedings have not been initiated against him (suspect) or have been initiated (defendant) and that in the course of the proceedings criminal prosecution or trial acts are carried out until a final judgment is handed down. Not every procedural act has the effect of interrupting the limitation period, but only those acts which, by law, must be communicated to the suspect or defendant, since only such acts show the existence and persistence of the action to hold the offender criminally liable and reveal the effective exercise of that action. The following are acts of the prosecution that must be communicated to the suspect or accused person: initiation of criminal proceedings, pre-trial arrest, presentation of the prosecution material, etc., are acts of criminal proceedings must be communicated to the accused: summonses, judgments given in the course of the trial, etc. Procedural acts carried out about the accused (questioning, confrontation) or in his presence (search, on-the-spot investigation) also have the character of such acts. The completion of each act interrupts the limitation period so that a new limitation period can only start to run from the date of the last act interrupting the limitation period. (Decision No 297/2018, Official Gazette No 518 As a result of the interruption of the limitation period, the period preceding the interruption is not taken into account when calculating the duration of the limitation period; as such, a new limitation period will start to run after the interruption. This means that the interruption of the limitation period causes the date from which the limitation period begins to run to move. In the case of participation, the interruption of the limitation period in respect of one of the participants would affect all the participants (Article 155(3)) because the act interrupting the limitation period concerns the act committed, i.e. it operates in rem.

The new limitation period which runs after the interruption will be of the same duration as the previous one because the interruption of the limitation period does not change the duration of the period, just as it does not change the nature and gravity of the offence. The starting date of the

new limitation period shall be the date of the last procedural act communicated to the suspect or accused or the date of the act interrupting the limitation period performed in the presence of the suspect or accused.

According to Article 155 para. 4, index 2, states that the time limits provided for in Article 154, if they have been exceeded by another half, shall be deemed to have been complied with, regardless of how many interruptions occur. The statute of limitations shall not apply to criminal liability, no matter how many interruptions occur. This period shall run from the date of the commission of the offence and not from the last interruption.

This regulation addresses the situation where there are multiple interruptions of the limitation period followed by the start of new limitation periods without the period being able to expire. This means that a situation that is difficult to accept is perpetuated because the "criminal conflict" remains open. To remedy such a situation, the legislator intervened by providing in Article 155(4)(2) of the Criminal Code that However, the limitation period can only be interrupted, under the conditions indicated, but also suspended. According to Article 156 of the Criminal Code, the limitation period for criminal liability is suspended for as long as a legal provision or an unforeseeable or unforeseeable circumstance prevents the initiation of criminal proceedings or the continuation of criminal proceedings. In this case, the limitation period resumes on the day on which the cause of suspension ceased (Article 156(2)).

A first ground for suspending criminal liability is the existence of a legal provision which stipulates that criminal proceedings may be instituted or pursued only under the conditions laid down in that provision, the criminal law being applicable only if that condition is met. Thus, for example, according to Article 9 para. 3 of the Criminal Code, the initiation of the action shall be made only with the prior authorization of the Prosecutor General of the Public Prosecutor's Office of the Court of Appeal in whose territorial district the first prosecution is located or, as the case may be, of the Prosecutor General of the Public Prosecutor's Office of the High Court of Cassation and Justice. This means that until this authorisation is obtained, the statute of limitations for criminal liability is suspended. Likewise, criminal proceedings or trials are suspended while the accused or defendant suffers from a serious illness that prevents him from participating in the criminal proceedings, etc.

The second cause of suspension is the existence of an unforeseeable circumstance (fortuitous event) such as an earthquake, disaster, etc. which prevents the judicial authorities from carrying out their work for a certain

period; the same applies to an unforeseeable circumstance (force majeure) such as a state of war, flood, etc. Suspending the running of the statute of limitations has the effect of stopping the running of the statute of limitations from the day on which the cause of suspension occurred until the cause of suspension has ceased. This period shall not be taken into account in calculating the duration of the limitation period and the limitation period shall resume after the suspension has ceased.

If the suspension occurs more than once, the duration of each suspension shall be taken out of the calculation and only the periods before the cause for suspension arose shall be considered as having been earned. Although the legislator does not stipulate how long the suspension may last when it depends on the will of a body (e.g. in the case of prior authorisation), we believe that the rules laid down for the hypothesis of interruption (Article 155(4)(2) of the Criminal Code) could also apply in this case.

5. The interpretation of the statute of limitations on criminal liability raises many and varied problems in practice. We believe that our attempt to clarify some of them will be followed by other analyses of the same concern, which will effectively contribute to the achievement of a unified judicial practice in the matter under consideration.

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