

Non-Applicability of Statutory Limitations – The Antidote of the Prescription of Criminal Liability

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ABSTRACT: Prescription of criminal liability represents forfeit the right to action if not exercised within the limitation period. Consequently, this institution represents the time factor that constitutes the basis of criminal liability. The New Penal Code provides for a series of offenses for which the criminal statute of limitations does not apply. Such are the prescriptible crimes of genocide, against humanity and war, crime of murder, qualified murder, as well as intentional crimes followed by the death of the victim. In the case of complex offenses that absorb any of the aforementioned offenses (e.g., contempt), the statute of limitations operates even if the offense remained in the stage of an attempt to consume it.

KEYWORDS: prescription, deadlines, non-applicability of statutory limitations, convention

General notions regarding the prescription of criminal liability

The prescription of criminal liability is a fundamental institution provided for in art. 148 of Law no. 286/2009 regarding the Criminal Code. The penalty of criminal liability is real, and it benefits all participants in the commission of the offense, operating from the office at the time of fulfilling the term of penalty. The effectiveness of the investigation and prevention is closely related to the promptness of the specialized organs of the state that intervene and bring to criminal responsibility the perpetrators of the crime. As the establishment of criminal liability and the imposition of punishment is closer to the moment of committing the offense, so the purpose of the criminal law is realized more efficiently. Social reality also envisages situations in which criminal liability cannot be established promptly, even if the deed is not solved or the perpetrator manages to escape from the criminal prosecution, so it can take a long time for the crime to be committed. (<https://legeaz.net/27.05.2022>). In order not to leave such situations unsolved, taking into account the highlighted aspects regarding the effectiveness of preventing and combating crimes that are carried out only within a certain period, the Criminal Code provided for the institution of prescription, as a possibility of release from criminal liability for situations in which since the consummation of the fraterity, it has lasted for a certain period of time. In the legal literature it is emphasized that the justification of the prescription is closely related to the rationale of criminal repression, and therefore, after a long time has passed since the commission of the crime, the application becomes ineffective in relation to the purpose of the criminal punishment (Mitrache and Mitrache 2014, 52). The general prevention is no longer realized, as the social resonance of the fact is sensible, and the perpetrator, on whom he plans all the time the punishment, is divided.

It is also shown that due to the passage of time, in which the legal authorities did not act, the evidence of guilt or innocence is lost or distorted both in their materiality and in the memory of the witnesses. This circumstance makes prosecution difficult or even impossible. Therefore, the statute of limitations is a legal instrument that removes criminal liability and brings to justice those criminals who are not discovered within a reasonable time (Ghigheci 2014, 79).

The statute of limitations for criminal liability

Prescription of criminal liability can intervene only within a certain period of time, namely after the expiration of the term provided by law, thus resulting in the removal of criminal liability through the effect of the statute of limitations. The institution of the prescription presents particularities regarding the terms in which it can operate, these being staggered on a

scale that takes into account the seriousness of the crimes committed. In accordance with the updated regulations of the Criminal Code, the limitation periods for criminal liability are:

- a) 15 years, when the law provides for the offense committed by life imprisonment or a prison sentence of more than 20 years;
- b) 10 years, when the law provides for a prison sentence of more than 10 years, but which does not exceed 20 years;
- c) 8 years, when the law provides for a prison sentence of more than 5 years, but which does not exceed 10 years;
- d) 5 years, when the law provides for a prison sentence of more than one year, but which does not exceed 5 years;
- e) 3 years, when the law provides for the committed infraction a prison sentence that does not exceed one year or a fine. (Ghigheci 2014, 114)

Legal persons are subject to the same provisions as mentioned above.

The statute of limitations for criminal liability is regulated by the current Penal Code in accordance with the old code, with some additions regarding the date from which the statute of limitations for criminal liability runs for habitual and progressive crimes. Thus, the date from which the statute of limitations for criminal liability runs in the case of progressive offenses is the date of the criminal activity, and in the case of minor offenses, it is as usual. For continuous crimes, the term begins to run from the date of termination of the criminal action or inaction, and for continued crimes, the term is calculated from the date of the last criminal action or inaction. In the case of those who, at the time of the commission of the crime, were minors, the limitation periods for criminal liability are reduced by half. When calculating the statute of limitations for minors, the duration of the punishments provided by law for the crimes committed must be taken into account, and not the way in which the criminal liability of the offender will be materialized by applying a punishment, taking an educational measure or by replacing the criminal liability (Udroiu 2018, 394).

Special prescription

Considering the interruptive effect of the prescription - the deletion of the started prescription and the start of a new prescription of the same kind, as well as the fact that it could intervene countless times, it would practically end up that the limitation period would never be fulfilled again and that the prescription not to operate at all, in fact, which is clearly inadmissible. In order to avoid such situations, the legislator provided that the prescription will stop anyway, any interruptions would intervene, although the term of prescription provided for is divided from here. This is the so-called special prediction, it can interfere with the same ordinary prediction, when the source was interrupted or suspended, as the case may be, and, of course, regardless of the attitude of the perpetrator or his conduct during the settlement of the trial.

Non-Applicability of Statutory Limitations

The declaration of the non-applicability of statutory limitations of some crimes that have not yet been prescribed concerns, facts that, due to their gravity, demand a firm reaction from the community in which they take place, a need for justice that does not disappear simply by the passage of time from the date of their commission. The memory of the horrors that shook continents or nations does not fade with the passage of time included in the usual length of a statute of limitations, and the reaction to such facts constitutes, equally, a duty of conscience and honor, but also a proof of respect towards the fate suffered by the victims. This was and is the case with war crimes, crimes against humanity, crimes of genocide and murder. The end of the Second World War, started by Germany, but also the discovery by the Allies of the atrocities committed during the war by the Nazi leadership of Germany, led the victorious countries to establish, through the London Agreement of May 8, 1945, an international legal framework, designed to ensure the trial and punishment of war criminals. As an integral part

of the Agreement, in the annex, the Statute of the International Military Tribunal at Nuremberg was adopted, which, among other things, defined crimes against peace, war crimes and crimes against humanity (Grosescu 2022). At the same time, by the Statute adopted on August 8, 1945, they are defined and punishable for previous acts committed during the war (1939-1945).

Thus, after the creation, in 1945, of the necessary legal framework, a series of criminal trials were launched to judge and punish war criminals. However, as the years passed, it became more and more obvious that it would not be possible to catch and prosecute the people responsible for the horrors committed during the war, as they were fleeing justice, and the statute of limitations was approaching. On the other hand, the crimes defined by the Statute of the International Military Tribunal at Nuremberg had not been declared and imprescriptible, and this impediment allowed us to foresee a catastrophic outcome for civilized nations: the impossibility of judging and punishing people suspected of committing the horrors that stunned the whole world. In such circumstances, on November 26, 1968, the General Assembly of the United Nations adopted the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity in which, for the first time, it was expressly and explicitly stipulated that the legal provisions which declared war crimes and crimes against humanity to be non-applicability of statutory limitations would apply to acts committed before the adoption of the Convention. Basically, this was also the main reason that led to the adoption of this international document.

In this vein, in the Preamble of the Convention it is emphasized that for war crimes and crimes against humanity no limitation periods have been provided, and “the application of the rules of domestic law regarding the limitation for crimes under common law deeply worries the world public opinion, since prevents the prosecution and punishment of the persons responsible for these crimes, so it is necessary and appropriate to affirm in international law, through this convention, the principle of non-applicability of statutory limitations to of war crimes and crimes against humanity and to ensure its universal application”.

By Decree no. 547 of July 29, 1969, Romania ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity adopted by the United Nations General Assembly on 26 November 1968. It provides a clear framework whereby any contracting state undertakes to take the necessary measures to make the statute of limitations inapplicable to the prosecution of crimes against humanity and war crimes and the execution of sentences for such crimes.

Criminal law, depending on the different categories of crime, sets deadlines, upon the expiration of which any public action can no longer be carried out, and criminal prosecution becomes impossible. National legislation inspired by Romanian law regulates the statute of limitations for certain crimes, the statute of limitations being regulated between three and fifteen years depending on the seriousness of the crimes. Non-applicability of statutory limitations applies to crimes the examination of which is very difficult. This refers in particular to war crimes and crimes against humanity for which it is necessary for a war situation to end or for a country's political authorities to change for prosecution to be practically possible. Non-applicability of statutory limitations allows to avoid the situation when the most serious crimes go unpunished (Plopeanu 2022).

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity adopted by the United Nations General Assembly on November 26, 1968 created a general framework for prosecuting those guilty of such crimes.

Thus, in art. 1 of the Convention establishes:

“Regardless of the date on which they were committed, the following crimes are barred by statute of limitations: (...)” (Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 1969).

Therefore, this Convention defines legislatively, at the level of international law, the principle of non-applicability of statutory limitations of war crimes and crimes against humanity, but also the fact that the principle of non-applicability of statutory limitations, right from the moment of its birth, concerned, first of all, criminal acts committed before the consecration its legislative. In line with the same concerns, the Council of Europe adopts, on January 25, 1974, in Strasbourg, The European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes And this time the Preamble of the document contains explicit references to the concern of the member states, which “finding crimes against humanity and the most serious violations of the laws and customs of war as a serious attack against human dignity”, are “concerned to avoid, consequently, that the punishment of these crimes is not hindered by the prescription of the prosecution and execution of the punishments”.

Pursuing this objective, in art. 2 point 2 of the European Convention provides:

(...) 2. This Convention shall also apply to offenses committed on that date. (European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes, 1974).

And on this occasion, the principle of non-applicability of statutory limitations of crimes against humanity and war crimes is reaffirmed, in legislative terms, with the express emphasis on the application of legal provisions and on crimes committed before their adoption. This time, however, the principle is subject to a condition: if the statute of limitations for the crimes in question, which are in progress, had not yet expired by the time the new provisions declaring them non-applicability of statutory limitation came into force.

The crime against humanity represents a notion used in jurisprudence as an alternative to the use of the term genocide. The reason is supported by the facilitation of the fulfillment of some probation requirements, when there are overlaps of the two offenses.

By Law no. 186/01.07.2021, Law no. 286/2009 concerning the Criminal Code, and at this moment in the Romanian territory, in addition to the crime of genocide, against humanity and war, the following crimes are declared time-limiting:

Art. 188 - Murder; Art. 189 - Aggravated murder; Art. 209 Slavery; Art. 210 Trafficking in human beings; Art. 211-Trafficking in underage persons; Art. 213 - Pandering; Art. 218 - Rape; Art. 219 - Sexual assault; Art. 220 - Sexual intercourse with a juvenile; Art. 282 - Torture; Art. 374 - Child pornography.

Conclusions

Prescription of criminal liability is a cause that removes criminal liability. The institution of the prescription of criminal liability does not represent a creation of the criminal law, its origin being found in the civil law that regulates the exhaustive prescription.

Doctrinally, there are many divergent discussions in the case of the prescription of criminal liability, this raises the question: is this lever really useful? Does it help to reduce the level of crime or is it a tool that encourages the commission of anti-social acts? This is where the Antidote comes in - non-applicability of statutory limitations or no happiness until old age. Why Antidote?

We can think for a moment how an act of qualified murder can be prescribed, after a term of 15 years. Will the perpetrator in those 15 years regret and change or will he continue to kill knowing that after the time has passed, he will not be held criminally responsible? This is where non-applicability of statutory limitations comes into play. If the perpetrator is not caught committing the crime, the committed deed will follow him everywhere throughout his life both from a moral and criminal point of view.

As a means of achieving the legal order through coercion, criminal liability must intervene as soon as possible after the commission of the crime, since the immediate and firm sanctioning of the criminal increases the effectiveness of coercion, strengthens the authority of the criminal law and its preventive function.

For now, only the statute of limitations can create a balance in a society where time has the ability to remove criminal liability. In a society shrouded in the rise of the criminal trend, are we more protected by the incidence of prescription or by the incidence of prescription for certain categories of crime?

References

- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, adopted by the General Assembly of the United Nations on November 26, 1968, published in Official Bulletin no. 83 of July 30, 1969.
- European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes of January 25, 1974, adopted in Strasbourg, published in the Official Gazette no. 425 of August 31, 1999.
- Ghigheci, Cristinel. 2014. *Cauzele care înlătură răspunderea penală (The causes that remove criminal liability)*. Bucharest: Universul Juridic Publishing House.
- Grosescu, Raluca. 2022. *Crime împotriva umanității (Crimes against humanity)*. Available at <https://www.academia.edu>, 27.05.2022.
- Mitrache, Constantin, and Cristian Mitrache. 2014. *Drept penal român. Partea generală (Romanian Criminal Law. General Part)*. Bucharest: Universul Juridic Publishing House.
- Plopeanu, Florin. *Prescripția răspunderii în dreptul penal sau cum o eroare a creat un mit (Prescription of liability in criminal law or how an error created a myth)*. Available at <https://www.juridice.ro> 25.06.2022.
- Udroiu, Mihail. 2018. *Fișe de drept penal, parte generală (Criminal Law File, General Part)*. 5th Edition. Bucharest: Universul Juridic Publishing House.