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# STATUTE OF LIMITATIONS UNDER THE PENAL LAW OF BULGARIA

*Ukraine carries out intensive judicial cooperation in criminal matters with other European countries. A typical impediment to granting Ukrainian requests for such cooperation (e.g. extradition from another country, taking over Ukrainian criminal proceedings by the requested foreign country, recognition and enforcement of Ukrainian criminal judgments abroad) is the expiry of the time limitation period [lapse of time] not only under the Ukrainian law but also under the law of the foreign country that Ukraine requests for cooperation.*

*The problem is that the criminal statute of limitations of most European countries is significantly different from the Ukrainian one. In view thereof, Ukrainian criminal lawyers are interested in having some general knowledge of the statute of limitations of other European countries, esp. such as Bulgaria. On the one hand, this foreign country has always been a steady partner of Ukraine in international judicial cooperation. On the other hand, the Bulgarian statute of limitations constitutes a good example of the different type of legal framework for lapse of time that requesting Ukrainian authorities shall necessarily consider.*

*All penal laws of the contemporary Bulgarian state contained some statute of limitations. These laws are the 1896 Penal Law (repealed), the 1951 Penal Law upgraded to the 1956 Penal Code, after the full codification of this branch of law in Bulgaria (also repealed), and the existing Penal Code of 1968.*

*The criminal statute of limitations outlines periods when competent state authorities have been inactive. The expiry of these periods (the lapse of time under law) extinguishes the immediate legal consequences of crimes or the punishments imposed by the court for them.*

*In Bulgaria, the statute of limitations consists of substantive penal law provisions. This is a legislative recognition of its substantive nature. The concept that the criminal statute of limitation is a procedural legal institution has been overcome in Bulgarian theory, law and judicial practice. The statute of limitations produces procedural consequences also but they derive from its direct substantive law results as secondary effects.*

*As in most other countries, the penal law of Bulgaria prescribes two types of limitation periods. The first one runs after the commission of the offence. It is also called ‚limitation of the offence'; its expiry entails the extinction of the offender's criminal liability preventing both the imposition of punishment on him/her and his/her conviction status as well.*

*The second type of limitation period occurs after the imposition of an executable punishment. It is also called ‚limitation of the punishment'; its expiry entails the extinction of the punishment imposed only. It does not eliminate the fact that the offender has been convicted.*

*Under the Bulgarian Penal Code, each of the two types of statute of limitations includes not only general time limitations but also absolute ones as well. The former is applicable when the competent state authorities have not undertaken required activities whereas the latter applies only if the competent state authorities have failed to achieve a required result, namely: the imposition of punishment on the offender or the execution of his/her punishment.*

**Keywords:** Bulgarian; Penal Code; criminal liability; extinguishment; limitation period; punishment.

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**Термін давності відповідно до кримінального законодавства Болгарії**

*Україна здійснює інтенсивне правове співробітництво у кримінальних справах з іншими європейськими країнами. Типовою перешкодою для задоволення українських прохань про таку співпрацю (наприклад, екстрадиція з іншої країни, прийняття українського кримінального провадження в запитуваної іноземної країни, визнання і виконання українських кримінальних рішень за кордоном) є закінчення строку давності – причому не тільки відповідно до законодавства України, а й законодавства іноземної держави, яку Україна запитує про співпрацю.*

*Проблема в тому, що кримінальний режим давності більшості європейських країн істотно відрізняється від українського. У зв'язку з цим українські фахівці у кримінальних справах зацікавлені в тому, щоб мати деякі загальні знання про терміни давності інших європейських країн, особливо таких, як Болгарія. З одного боку, ця держава є серйозним партнером України в міжнародному судовому співробітництві; з іншого – болгарський режим давності є підходящим представником тих європейських правових режимів щодо закінчення терміну давності, які істотно відрізняються від українських.*

*Усі кримінальні закони сучасної болгарської держави містили певний режим давності. Цими законами є Кримінальний закон 1896 р. (скасований), Кримінальний закон 1951 р., вдосконалений до Кримінального кодексу 1956 р. після повної кодифікації в цій галузі права в Болгарії (також скасований), і чинний Кримінальний кодекс 1968 р.*

*За кримінальним законом термін давності становить період бездіяльності компетентних державних органів. Закінчення строку давності нівелює безпосередні правові наслідки злочинів або покарання, призначені за них судом.*

*У Болгарії кримінальне право регулює давність. Це є законодавчим визнанням матеріальної природи давності. Концепція про те, що кримінальна давність є процесуально-правовим інститутом, була подолана в болгарській теорії, праві і судовій практиці. Закінчення строку давності терміну також тягне за собою процесуальні наслідки, але вони випливають із його прямих матеріально-правових результатів як вторинні наслідки.*

**Ключові слова:** Болгарський Кримінальний кодекс; кримінальна відповідальність; погашення; термін давності; покарання.

## *1. Introduction*

The statute of limitations in penal law is a set of legal rules on limitation (lapse of time) periods – Articles 80-82 of the Bulgarian Penal Code [PC]. They provide terms for the extinction of the legal consequences of committed crimes. Once such a term expires, all or some of the consequences extinguish. Thus, the expiry of the

limitation period for the prosecution of the offender (actually, for the imposition of punishment on him/her) for the crime s/he has committed extinguishes all of its legal consequences – the criminal liability, the punishment and the conviction, whereas the expiry of the limitation period for the execution of the imposed punishment extinguishes only it. It is worth noting that no individual limitation period may be prolonged on a decision of the judicial or administrative authorities.

The Bulgarian penal legislation has always followed the example of the European countries belonging to the German law family. Bulgaria borrowed their national rules on the legal consequences of the expiry of the limitation periods, the moment when the periods commence running, their interruption and suspension, as well as the deriving procedural effects. Besides, in producing the national legal framework for the statutory limitations the Bulgarian penal legislation considered the popular legal theories relevant to this topic, such as the disappearance/staleness of evidence theory, the inevitable change of the offender's personality theory, the theory of the already forgotten crime.

The application of the penal law provisions on limitation periods has always been mandatory rather than optional. It is a matter of legality rather than any opportunity in Bulgarian criminal justice.

The expiry of the first type of the limitation period, the one which extinguishes the criminal liability, is a post-criminal circumstance that benefits the offender by solely exempting him/her from punishment. In general, the PC does not attribute to any of the post-criminal circumstances, incl. the expired limitation period, a retroactive legal effect, namely: to affect the already committed crime by depriving its criminality; the amnesty under Article 83 PC, in both modalities is the exception. Such circumstances bar only the imposition or the execution of the already imposed criminal punishment for the crime.

Many post-criminal circumstances exempt the offender from punishment by terminating his/her criminal liability before the conviction. However, despite their favourable effect on him/her, these circumstances do not result from any positive activity of the offender. Bulgarian law, at least, does not require him/her to perform any such activity for obtaining the expiry of the limitation period and eventually, benefiting himself/herself from the produced favourable effect: the termination of the criminal liability for the crime that s/he has committed. The limitation period's expiry is a legal event entirely. This is why the offender does not "release himself/herself from criminal liability" at all in the cases when the limitation period runs out.

It is noteworthy, though, that a positive activity of the offender is legally required for other post-criminal circumstances terminating his/her criminal liability, esp. for voluntary withdrawals. Such withdrawals are possible in cases of punishable preparation and attempt – Article 17 (3) and respectively, Article 18 (3) PC. Apart from them, voluntary withdrawals are provided for a limited number of accomplished criminal offences, such as non-provision of alimony under Article 183 (3) and autocracy under Article 323 (3) PC. This is a socially useful behaviour of the offender, contrary to his/her previous criminal activity. Penal law allows the

offender to relieve himself/herself from criminal liability when and because s/he successfully neutralizes (prevents or removes) the dangerous consequences of his/her criminal activity.

Offenders undertake voluntary withdrawals soon after they commit their criminal activity. In any case, the voluntary withdrawals are performed before the expiry of the limitation period. This is why withdrawals are the first ones to terminate the offender's criminal liability. After their completion, no such liability exists. Therefore, there is no room for the application of any statute of limitations, in particular. The provisions on limitation periods have become inapplicable.

Finally, under Bulgarian law, the statute of limitations has nothing to do with the will of the injured party, if any, either. This party has no legal authority to pardon the offender in any way. An exception exists but it is not related to the statute of limitations. The exception concerns punishments imposed for the petty offences which are prosecuted on a complaint by the injured party. If a punishment is imposed, this party may prevent its execution. Pursuant to Article 84 (3) PC, "*for such crimes the punishment shall not be enforced, provided the complainant has not so requested before the beginning of its enforcement*" [2 and 3].

### *2. The Legal Nature of the Limitation Periods under the Law of Bulgaria*

2.1. The limitation period in criminal law designates a time frame when the competent state authorities have been inactive. This period expires because of their inactivity.

The legal framework for all such limitation periods in Bulgarian penal law is a substantive law phenomenon. It directly affects the substantive legal consequences of committed criminal offences. The consequences, however, are affected in different ways depending on the type of the limitation period.

Two types of limitation periods exist. The first one concerns the time after the commission of the offence. Often called ‚limitation of the offence', it entails on expiry the extinction of the criminal liability for the offence. This result excludes the other consequences of the committed offence also. It excludes, in particular, not only the punishment as it shall not be imposed on the offender, but *a fortiori* his/her conviction as well.

The second type of limitation periods occurs after the imposition of an executable punishment. Called ‚limitation of the punishment', it entails on expiry the extinction of the punishment imposed only. The expiry of this limitation period does not affect the fact that the offender has been convicted; it is the rehabilitation that erases the offender's conviction and thus, expunges his/her criminal record.

Given their substantive law nature, the limitation periods are regulated by the PC. Articles 80-81 PC constitute the legal framework for the periods for the extinction of the criminal liability of the offender whereas Article 82 of the same Code constitutes the legal framework for the limitation periods for the extinction of the criminal punishment imposed on the offender. It is noteworthy that the texts of these Articles begin with the words: "*Criminal prosecution shall be excluded by*

*lapse of time where it has not been initiated in the course of ....*" {Article 80 (1)} and respectively, "*The punishment imposed shall not be served where the following terms have elapsed...*" {Article 82 (1)}. Nevertheless, no such lapse of time (limitation period expiry) affects directly and solely legal procedures, namely: the criminal prosecution and the criminal proceedings against the offender, in general, or respectively, the legal proceedings for the execution of the punishment imposed on him/her.

2.2. **Firstly**, when it comes to criminal prosecutions and the criminal proceedings against the offender, in general, the only period, the expiry of which may bar them is the one under Article 84 (1) PC. This Paragraph reads: "*For crimes prosecuted on the grounds of a complaint by the injured party, criminal prosecution shall not be instituted, even where the lapse of time period has not expired, if no complaint has been lodged within six months as from the date on which the injured party has come to the knowledge of the committed crime*". However, this six-monthly term is applied solely to the consequences of the limited number of petty crimes where the prosecution is not subject to any **ex officio** initiation. No such term exists for the vast majority of crimes where the prosecution shall be initiated **ex officio.** The only existing term is the first type of limitation period. But this is a term that extinguishes the criminal liability of the offender to eventually deprive the state authorities of the competence to punish him/her. As his/her criminal liability is implemented by the imposition of criminal punishment on him/her[1], it follows that the statute of limitations in the issue bars his/her conviction only. Hence, the limitation period, which on expiry extinguishes the criminal liability of the offender, is not any deadline for commencing the prosecution against him/her and does not become irrelevant after its initiation. Unlike the time period under Article 84 (1) PC which is for initiation of prosecution *per se*[2], the limitation period, the expiry of which extinguishes the criminal liability, may run also during the criminal proceedings against the offender and may even run out if s/he is not convicted. This is indisputable, nowadays[3] [1 and 5].

Conversely, if the criminal proceedings for a petty crime, mentioned *supra*, have been instituted within the six months, the term under Article 84 (1) PC can never expire as it does not count afterwards. This term becomes irrelevant as soon as the

[1] In view thereof, the more precise text of Section 78 (1) of the German PC reads: "*The imposition of a penalty and the ordering of measures (section 11 (1) no. 8) are ruled out following expiry of the limitation period...*" Similarly, Article 153 (1) of the Romanian PC stipulates that "*limitation removes criminal liability*" (the state bodies are not authorized to impose punishment on the offender and s/he is not obliged to stand the imposition of the punishment).

[2] A similar provision exists in the Bulgarian administrative-penal law. According to Article 34 (1) (ii) of the Administrative Violations and Penalties Act, "*Administrative-penal proceedings shall not be instituted if a statement of establishment of the violation has failed to be drawn up within three (3) months following the detection of the offender, or if one (1) year has elapsed since the commission of such violation...*" Apart from this, a term for the imposition of the administrative punishment exists – Articles 34 (3) and 54 (1) (vi) of the same Act. This term is comparable to the limitation period extinguishing criminal liability.

[3] Also Decision No. 28/1959 of the General Assembly of the Criminal Collegia of the Bulgarian Supreme Court of Cassation, Decision 328/1997 of the Third Detachment of the Criminal Collegia, etc.

institution of the criminal proceedings takes place. In contrast, the limitation period is expirable even if the criminal proceedings have been instituted; it may expire until the judgment with criminal punishment enters into force. Therefore, only the failure of punishing the offender within the limitation period causes the expiry of this period. Its expiry, in turn, excludes the possibility of imposing any punishment for the same crime in the future as the offender's criminal liability has extinguished.

This is why the limitation period produces a substantive law result. It is not any procedural term. This period does not set up a deadline for the institution of the criminal proceedings for the alleged crime, petty or not, and in particular, a deadline for the initiation of the prosecution against the offender. As explained, such a procedural term exists but it is only the one under the mentioned *supra* Article 84 (1) PC: for petty offences prosecutable on the initiative of injured parties.

Likewise, the second type of limitation period, the expiry of which extinguishes the criminal punishment imposed on the offender, is not a procedural term either. It does not bar solely the legal proceedings for the execution of the punishment. Actually, it is a preclusive term. The immediate result of its expiry is that this punishment ceases to exist. This result makes the limitation period in the issue different from the prescription in civil law (law of obligations). Prescription extinguishes only the action but not the substantive right of the creditor; hence, if s/he is paid per his/her right, this payment would be valid[1]. But in the case when the limitation period runs out, no state body is authorized to proceed, in any way, with the execution of the punishment even if, in theory, the convicted offender so agrees. Therefore, the expiry of the second type of limitation period not only affects the powers of the competent state bodies towards the convicted offender. The expiry of this limitation period also relieves, in full and unconditionally, the convicted offender from the main consequence of his/her conviction, the punishment imposed on him/her, because this consequence is erased *ex lege*.

Finally, it is worth mentioning that no procedural term for the commencement of the criminal execution procedures exists in Bulgarian law – six months or any other. Therefore, when it comes to the execution of an imposed criminal punishment, there is no restricting period of time either, similar in any way to the one under Article 84 (1) PC that limits the time for the initiation of the prosecution against the offender.

**Secondly**, the understanding that the statute of limitations is a procedural institution has been overcome as it does not provide procedural consequences directly. However, such consequences also occur but they derive from the immediate substantive law result of the limitation period expiry: the extinguished criminal liability of the offender or the extinguished criminal punishment imposed on him/her, respectively. Because in the case of the first type of the statute of limitations the criminal liability of the offender has ceased to exist, Article 24 (1) (iii) of the

[1] Thus, according to Article 118 of the Bulgarian Law on obligations and contracts, „*Should a debtor perform his obligation after the expiration of the limitation, he shall not be entitled to claim back what he has paid, even though at the time of payment he might not have known that the limitation had expired*".

Bulgarian Criminal Procedure Code [CPC] prescribes that „*No criminal proceedings shall be instituted or the instituted proceedings shall be discontinued, where ... the criminal liability has been extinguished by lapse of time*." Therefore, because criminal liability does not exist any more, no criminal proceedings shall be carried out. At the same time, as the statute of limitations provides a non-exculpatory ground of defence, the suspect is allowed to defend his/her good name in official criminal proceedings. According to Paragraph 2 of the same Article 24, „*the criminal proceedings shall not be discontinued if the defendant lodges a motion for its continuation*". Also, in case the offender's criminal punishment has extinguished on the ground of a limitation period expiry, the competent prosecutor responsible for the execution of criminal punishments under Article 416 (2) CPC shall order the termination of the executive proceedings. Article 9, "e" of the Prosecutorial Guidelines for the supervision on the execution of punishments and other compulsory measures (orders of the Chief Prosecutor of Bulgaria No. No. 5306/24.11.2014, РД-04-203/28.04.2016 and РД-04-71/19.02.2018) obliges him/her to make sure that the limitation period has not run out.

Furthermore, no extradition shall be granted in case of a request for trial if the limitation period for the criminal liability of the fugitive offender has expired or in case of a request for execution of criminal punishment, if the limitation period extinguishing this punishment has run out under the law of any of the two countries: the requesting and Bulgaria as the requested one – Article 7.6 of the Bulgarian Law on extradition and the European arrest warrant. The expiry of the limitation period under the law of any of the two countries constitutes a mandatory ground for refusal of the requested extradition. However, if the surrender of the person has been requested by a European arrest warrant from another EU country, the expiry of the limitation period is only an optional ground for refusal if apart from this, the offence, in respect of which the fugitive is being sought, falls within the criminal jurisdiction of the Bulgarian authorities – Article 40.2 of the same Bulgarian Law.

The incoming request for recognition and enforcement of a foreign criminal judgment shall also be rejected if the limitation period for the imposed punishment has run out under Bulgarian law. This is always a mandatory ground for refusal – Article 464, item 1 CPC. The law of the requesting country is not mentioned. The legislative presumption was that no foreign country would request Bulgaria for the recognition and enforcement of its criminal judgment if the limitation period for the imposed punishment has expired under its law.

Lastly, the statute of limitations does not apply to all criminal offences. There are some exceptions. Bulgaria has been a Party to the 1968 Convention on Non-Applicability of Statutory Limitations for War Crimes and Crimes against Humanity since 21 May 1969 {"State Gazette" 31/1969}. For the purposes of its legislative implementation, Bulgarian law does not contain a statute of limitations for such crimes. Pursuant to Article 31 (7) of the Constitution and Article 79 (2) PC, no statute of limitations exists for the crimes against peace and humanity in Chapter Fourteen of the Special Part of the PC. For all other crimes, though, the statute

of limitations exists and the interpretation and application of its rules is often a challenge.

The extinction of the offender's criminal liability on the grounds of a limitation period expiry terminates *ex lege* his/her liability. The offender's liability ceases to exist. In contrast to his/her release from criminal liability, the extinction is not a result of any constitutive decision of a judicial body: a competent prosecutor (Article 61 PC) [4, 518] or competent court (Article 78a PC[1]). The judicial bodies do not order any extinction of criminal liability; they only accept its extinction once they find the legal grounds for it. Also, again unlike the release from criminal liability, this extinction of criminal liability never involves any substitution of criminal punishment with an administrative fine or an educative measure. The extinction does not entail any unfavourable consequences at all.

**Thirdly**, the statute of limitations under the Bulgarian PC is a substantive legal institution but its application does not change any committed criminal offence or the punishment for it. They are not linked. This is why, in turn, the *nullum crimen nulla poena sine lege* [no crime, no punishment without a law] principle, referring to crimes and punishments only, is not relevant to the statute of limitations cannot affect its application, including the retroactive one.

In Bulgaria, there is no general legal prohibition of retroactivity of all new criminal provisions that are detrimental to actors. The relevant Bulgarian prohibitions concern only those detrimental provisions which pertain to crime, namely: provisions that criminalize conducts (acts or/and omissions)[2] and detrimental provisions which pertain to punishment, namely: legal provisions which prescribe harsher punishments[3].

Retroactivity exists whenever a new legal provision is applied to a circumstance that has commenced taking shape or has already occurred in full. Hence, if a new legal provision, including a detrimental one, is applied to a limitation period that has already started running (before the provision entered into force), this constitutes a retroactive application of the provision. When it comes to the statute of limitations, any new provision is detrimental if it introduces a new ground of interruption or suspension of the limitation period or extends this period.

It has always been under discussion as to whether a retroactive application of provisions extending the limitation period is allowed. On the one hand, no constitutional or any other legal rule prohibits the retroactive extension of such

[1] "*A person of full legal age shall be released from criminal liability by the court and the punishment imposed on him/her shall be a fine from 1,000 leva to 5,000 leva where the following conditions are concurrently met: a) for such a crime punishment by imprisonment for up to three years or another milder punishment is provided, if committed intentionally, or imprisonment for up to five years or another milder punishment, if committed negligently; b) the perpetrator has not been sentenced for an ex officio prosecutable crime and has not been previously released from criminal liability pursuant to this Section; and c) the damages to property, which have been caused by the crime, are restored.*"

[2] See Article 5 (3) of the Bulgarian Constitution.

[3] See Article 15 (1) (ii) of the International Covenant on Civil and Political Rights in conjunction with Article 5 (4) of the Bulgarian Constitution.

periods: not only those which have already expired but also running periods. On the other hand, there is no legal basis allowing the retroactive extension of any of them, including those which are still running[1]. Moreover, the Bulgarian penal law provides no legal basis for the retroactivity of any detrimental provision, at all. There is only a legal basis for retroactivity of favourable provisions. Under Article 2 (2) PC, „*If before the entry of the sentence into force different laws are issued, that law shall be applied which is most favourable for the actor.*" In case the sentence has already entered into force (has become final), retroactivity of new favourable laws is also possible but to this end, an explicit concluding provision is needed – see Article 14 (1) of the Bulgarian Law on Normative Acts and Article 35 (1) of the Decree No. 833 of the State Council for its implementation.

2.3. After some hesitation and debates the Constitutional Court of Bulgaria ruled in Decision No. 12 of 13 Oct. 2015 ("State Gazette" 83/2015) that, in the case it heard, the retroactivity of detrimental provisions on limitation periods is unconstitutional. The Court evaluated as unfair, violating the equality principle and undermining the legal certainty required in Articles 4 (1) and 6 of the Constitution the retroactivity of such new provisions if the limitation periods have already expired. Moreover, the Court found incompatible with the Bulgarian Constitution also other detrimental provisions, applicable to limitation periods that have not yet expired. Finally, the Court ruled that the provisions in the specific law, subject of its decision, that abolish the statute of limitations for some crimes beyond the crimes against peace and humanity are also unconstitutional.

The Constitutional Court evaluated the quality of the text of these other provisions that prolong running limitation periods and abolish such periods as too poor to guarantee that their interpretation and application would be in line with the rule of law principle. In view thereof, they were also ruled unconstitutional as not complying with Articles 4 (1) and 6 of the Constitution. It is noteworthy, though, that the Court did not reject the possibility of their retroactivity, in principle. On the contrary, this possibility was somewhat confirmed by the following considerations of the Court:

"*Given the prohibition on the retroactive effect of the criminal law under Article 15 (1) of the International Covenant on Civil and Political Rights in conjunction with Article 5 (4) of the Constitution, the question is raised whether it is possible to make use of the retroactive effect of the law... Indeed, this rule of international law binds the Bulgarian state, but it is prohibited to introduce only such provisions with a reverse effect that relate to the crime or the content of the punishment, that is to say, criminalize a deed that was not criminal at the time of its commission, or prescribe heavier legal consequences. The legal institution of the statute of limitations is beyond the scope of this prohibition*[2]."

[1] Like Article 8 (1) of the Ethiopian PC, for example: „*Upon the coming into force of this Code, periods of limitation applicable to the right to prosecute and to enforce a punishment in respect of crimes committed under repealed legislation shall be governed by this Code. However, the time which elapsed prior to the coming into force of this Code shall be taken into account.*"

[2] The text is in Bulgarian only, available at http://constcourt.bg/bg/Acts/GetHtmlContent/00e96c73-7cd2-4a 91-97e9-0fce170289e9 (translation into English by the author).

Obviously, no impediment has been found to the retroactivity of unfavourable penal provisions which do not affect criminality or punishment but concern solely issues beyond them, especially posterior rules on limitation periods for extending or abolishing them. There is no uncontentious justification for prohibiting the retroactivity of such unfavourable rules. The prohibitions under Article 15 (1) of the International Covenant on Civil and Political Rights guarantee the principles of *nullum crimen sine lege, nulla poena sine lege preavia* but they are not supportable by any potential prohibition of the retroactivity of other unfavourable rules, not affecting criminality or punishment. No such prohibition would guarantee any of these two principles or another recognized legal principle at all.

Sometimes, it is argued that the broader interpretation of Article 7.1 of the European Convention on Human Rights, substantiates the conclusion that no provision, detrimental to the offender, shall be applied retroactively {See ECHR, *Kononov* v. *Latvia,* N0. 36376/04, Grand Chamber judgment of 17 May 2010, § 185; ECHR, Del Rно *Prada V. Spain,* N0. 42750/09, Grand Chamber judgment of 21 October 2013, § 78}[1]. However, there is no serious justification of any such broader interpretation of Article 7.1 of the Convention which, like Bulgarian national law, envisages and prohibits only criminalizing provisions and provisions prescribing heavier punishments. Actually, the proposed interpretation equals this Article 7.1 to provisions that prohibit the retroactivity of all detrimental penal provisions, unexceptionally. Such a provision is Article 10 (1) (ii) of the Russian PC: "*Penal law that establishes the criminality of a deed and increases punishment or in any other way worsens the position of a person shall have no retroactive force.*" But even if this rule is the best legislative solution, it is inapplicable beyond the issuing country.

In the end, one cannot easily find any solid arguments against the retroactivity of detrimental provisions that have come into force after the imposition of the punishment to eventually, extend the limitation period for its execution, especially if it has not yet expired. Despite their detrimental nature, they affect neither the committed crime nor the punishment itself.

### *3. Limitation Period for Imposition of the Punishment*

3.1. This limitation period entails on expiry the extinction of all possible substantive penal law consequences of the committed crime. First of all, this period outlines the time when the criminal liability of the offender shall be implemented by imposing on him/her the punishment prescribed by law. Also, it is such a period of time, within which the competent judicial bodies have failed to impose punishment on the offender. On the expiry of this period of their inaction, the criminal liability of the offender extinguishes and s/he shall never be punished for his/her crime. Thus, the statute of limitations sets a deadline for imposing punishment and the limitation period designates not only a time for the prosecution against the offender but also a

[1] The opinion of the Bulgarian Helsinki Committee submitted to the Constitutional Court; this opinion is available online in the Bulgarian language at the same link.

time for achieving his/her conviction. Otherwise, if this time period runs out without convicting the offender, s/he shall not be punishable for the crime.

Finally, it must not be left unmentioned that this offender's non-punishability is not any reward to him/her for good behaviour as in the cases of voluntary withdrawals, for example. Under Bulgarian law his/her behaviour is irrelevant. Even if s/he impedes the carriage of justice, this does not prevent the expiry of the limitation period.

3.2. This first type of limitation period is for extinguishing the criminal liability of the offender for a given criminal activity. Understandably, it commences running as soon as the offender's liability comes into existence. This occurs at the moment when the specific criminal activity concludes. No special rules exist for crimes against children. Under-aged persons are not in any privileged position at all, even until the time they reach full age. Hence, it is not necessary to wait until the under-aged victim reaches full age to prosecute, try and punish the offender. The limitation period starts running in accordance with the general rules even for crimes against children.

The PC contains no general definition of the time of the commission of the crime or the time of its conclusion, in particular. This is why the time of the conclusion of the criminal offence has been specifically defined in Article 80 (3) PC to designate starting point of the limitation period, the expiry of which extinguishes the criminal liability. This Paragraph reads that the limitation period "*shall commence as from the completion of the crime, in the case of attempt and preparation – as from the day of completion of the last act, and for continuing crimes as well as for continuous crimes – as from the moment of their termination*".

Thus, the limitation period commences running when the entire legal description of the given crime has been filed out. This is why it is important to know what the legal description of the committed crime includes exactly and, most particularly, whether it contains a legal indication of the necessary detrimental consequences. Such an indication is defined as a 'criminal result'.

3.3. All crimes produce some detrimental consequences: by creating a danger to an interest of another person, at least, or more often, by harming such an interest (see Article 10 PC). Otherwise, the perpetrated activities would not be socially dangerous and shall not be considered crimes at all – Article 9 PC.

However, not all crimes have a legal description containing an indication of the detrimental consequences. There are crimes, called 'formal' or of 'simple perpetration', that produce detrimental consequences which are not mentioned, explicitly or tacitly, in their legal descriptions. It is a legislative decision to avoid their inclusion. Two are the typical reasons for not mentioning them in the legal description of the crime, namely: that their inclusion is not necessary as such consequences inevitably follow from the proscribed conduct in the given circumstances[1] and/or that their

[1] See Article 95 PC: „*A person who, for the purposes of overthrowing, undermining or weakening the state power in the Republic, takes part in the perpetration of an attempt of coup for forceful seizure of power in the centre or locally, or in rebellion or armed uprising, shall be punished by...*"

inclusion is not possible because of their significant variety and impossibility of their proper outlining[1]. This is why, when it comes to such crimes, it is the completion of the criminal conduct that determines the beginning of the limitation period, the expiry of which extinguishes the criminal liability of the offender. The detrimental consequences produced, regardless of their nature and significance, are irrelevant because they are not mentioned in the legal description of the crime.

3.4. Most of the crimes, however, have a legal description containing an indication of the detrimental consequences also. Such crimes are called 'material' or 'result' crimes. If their detrimental consequences occur to complete the crime description in full, this moment determines the beginning of the limitation period. Criminal conduct does not count. The time between the end of the criminal conduct and the occurrence of the consequences is not relevant either. On the other hand, if the negative effect of these consequences lasts longer, e.g. a broken leg, it is not necessary to wait for their expiry, e.g. the leg recovers in full. Solely their occurrence is sufficient to trigger the limitation period.

It must be borne in mind that the criminal result might be complicated. It may include more than one kind of detrimental consequences. This is a peculiarity of the so-called result crimes. They cause some additional result, e. g. arson causing also the death of a person – Article 330 (3) PC. The legal description of arson under Paragraph 3 contains a main criminal result – the burning of the property, and also an additional one - the death of another person. If the two results occur at different times, the limitation period commences running after the occurrence of the second one. Otherwise, the statute of limitations would be only for the reduced crime with the first criminal result.

Further on, if the crime is not accomplished, the limitation period for criminal liability shall start running on the day of the last act – the quoted *supra* Article 80 (3) PC. This is understandable when it comes to the attempt because, according to its definition in Article 18 (1) PC, it does not produce any desired consequences and solely the last act indicates its completion. However, this is not valid for the punishable preparation as its definition always requires consequences. Under Article 17 (1) PC[2], the preparation is completed and becomes punishable only if some condition for the perpetration of the intended crime has been successfully created, e.g. an accomplice has been found (agreed to participate, not just received a proposal); a device for the commission of the planned offence has been obtained (not just sought). In view thereof, the former kind of preparation, the intellectual one may become punishable not on the day when the actor invites another person to join him in the commission of the future offence but later only, on the day when this other person gives a positive response. Respectively, the latter kind of preparation, the physical one may become punishable not on the day when the actor orders the

[1] See Article 135 (5) PC: *„A person suffering from venereal disease, who refuses to be treated or evades regular obligatory treatment, shall be punished by...“*

[2] "*Preparation shall be the getting ready of the means, the finding of accomplices and the creating of conditions in general for the perpetration of intended crime, before the commencement of its perpetration.*"

device, e.g. a knife to commit a murder, but only later, on the day when he receives it if he does not provide any assistance; for example, because the provider has access to the place where the knife should be left.

The problem is that, under the general rule in Article 80 (3) PC, the limitation period commences on the day of the occurrence of the consequences, if required for the completion, as in the particular case of preparation also, rather than the day of the last act. Should the decision relating to preparation comply with the general rule to be consistent with the solutions for all other cases, the limitation period in case of preparation must also commence on the day when the condition for the intended crime occurs. Otherwise, the period would run before the completion of the preparation.

Because the penal law relevance of the accessory participants (inciters and assistants) depends on the perpetration of the crime by the main participant, their liabilities start to exist and are, therefore, subject to extinguishing when the crime is perpetrated. This is why the limitation periods for the accessory participants shall commence running once the perpetration of the crime is over, namely: when the crime is completed by the perpetrator or, in cases of attempt, when its last act is committed by the perpetrator[1]. Therefore, the limitation periods for all participants shall commence running, simultaneously.

3.5. The principle that the limitation period starts running once the crime is accomplished apply to complicated criminal activities as well. Two of them are mentioned in Article 80 (3) PC. They are the continued crime and the continuing (permanent/uninterrupted) crime. The limitation period commences when their last act is committed. Certainly, if the act causes negative consequences legally required for its completion, their occurrence determines the start of the limitation period.

A. The continued crime [Lat.: *delictum continuatum*] is defined in Article 26 (1) PC as a series of two or more similar acts, which, taken separately, are also criminal, such as theft, embezzlement, fraud. The acts are committed within short periods of time (up to a year), in similar conditions, and with the same form of a guilty mind (either intent or negligence only). In this complicated criminal activity, the subsequent acts appear as a continuation of the preceding ones. Although the whole activity may last for years, it is punished as though were committed by a single act/omission. It is a single crime with only one limitation period for the criminal liability of the offender.

However, this complicated crime might be broken into pieces. Article 26 (6) PC excludes the continued crime when the constituting acts are committed against the personality of different victims[2]. Besides, Paragraph 6 removes from the continued crime all offences committed after the submission of the indictment in court, and the offences committed before the submission of the indictment, which have not, however, been therein included. In such cases, the excluded acts are regarded as

[1] See also Section 34 (2) (ii) of the Czech Criminal Code.

[2] All these criminal offences against the person are proscribed in Chapter II of the Special Part of the PC. The continued offence is not broken up only if the acts are against the same victim.

separate offences with their own punishments and limitation periods for each of them.

B. The continuing (permanent) crime also lasts longer, usually. It uninterruptedly fulfils its legal description for a certain period of time. Such crimes are the illegal possession of firearms or narcotics and the hiding of stolen items, for example. The continuing crime may include a multiplicity of combined acts and omissions, e.g. aircraft hijacking – Article 341b PC, but it may be a simple omission only, e.g. non-prevention of a subordinate's crime – Article 285 PC. There is no definition of this complicated crime in Bulgarian law. No legal exceptions exist to it either. As a result, there is no exception, in particular, to the general rule that the limitation period always commences running once the crime is accomplished, namely: on the day of the last action.

3.6. There are also some other complicated criminal activities that cannot be found in the text of Article 80 (3) PC. These are compound crime, double-act crime and crime of systematic perpetration. Although these three complicated criminal activities are not mentioned as a starting point of the limitation period, they cannot be excluded from the principle that this period starts running once the crime is accomplished.

A. The compound (or composite) crime consists of the two underlying criminal acts, usually. They are of different nature but connected functionally: one of them is enabling, whereas the other is an enabled act. The robbery under Article 198 (1) PC is a typical example of a compound crime. Its first, enabling act is a compulsion which, taken separately, is a crime on its own (under Article 143 PC). The other act of robbery, the enabled one, is theft which is also a crime on its own (under Article 194-196a PC). If the included criminal acts are perpetrated on different days, the limitation period commences running once the crime is accomplished in full, namely: on the day of the completion of the second act.

B. The double-acted (two-acted) crime is of similar construction as the compound crime. However, both acts, that it consists of, are never criminal simultaneously. Either only one of them is a crime on its own and the other is not (e.g. rape, where the enabling compulsion is on its own whereas the enabled one, the sexual intercourse is not – Article 152 PC), or none of them is any crime on its own, e.g. putting in danger a helpless person and failing to not come to his/her rescue – Article 137 PC[1]. The former double-acted crime is called non-typical, while the latter is named a typical double-acted crime. If the included criminal acts are perpetrated on different days, the limitation period commences running on the day of the second act.

C. Regarding the crime of systematic perpetration, it also consists of similar acts but they must be three, at least. More importantly, unlike the continued crime, the crime of systematic perpetration is not possible with all criminal offences. Only

[1] *„Who exposes a person, deprived of the possibility to defend himself because of minority, advanced old age, sickness or in general because of his helplessness, in such a way that his life may be endangered, and being aware of this does not render assistance thereto, shall be punished by...*"

several criminal offences might be perpetrated as such a complicated crime. There are two different kinds of this complicated criminal activity. The first one comprises the cases where the separate acts are not criminal on their own. These are the so-called typical crimes of systematic perpetration, e.g. three or more non-licensed financial transactions – Article 253 PC. The other kind of this complicated criminal activity comprises the cases where the separate acts are criminal on their own also; these are the so-called untypical crimes of systematic perpetration, e.g. the taking away a motor vehicle to solely make use of it. Each of the constituting acts is criminalized separately by Article 346 (1) PC, whereas their systematic perpetration carries a heavier punishment under Paragraph 2 (ii) of the same Article for the entire criminal activity. In all cases of such activity {typical or untypical}, the limitation period commences running once the criminal activity is accomplished, namely: on the day of the last act.

What must be remembered is that the consecutive acts of this complicated criminal activity are similar. This is why they may constitute in their totality a continuous offence – Article 26 PC. In such situations, the provisions on the crime of systematic perpetration are not applicable. This complicated activity is qualified only as a continuous offence with all three aforementioned exceptions to its existence under Article 26 (6) PC.

3.7. Bulgarian penal law does not stipulate any common limitation period, the expiry of which extinguishes the criminal liability of the offender, like the five-year "*lustrum*" (Lat. Purification) in Roman times. The limitation periods are differentiated by law. The differentiation is based on the maximum punishments provided by the PC for the different crimes. The periods are set out in Article 80: (a) twenty years in respect of acts punishable by life imprisonment without substitution or life imprisonment, and 35 years in respect of the murder of two or more persons; (b) fifteen years with respect to acts punishable by imprisonment for more than ten years; (c) ten years with respect to acts punishable by imprisonment for more than three years; (d) five years in respect of acts punishable by imprisonment for more than one year, and (e) there years in respect of all remaining cases. The periods for crimes committed by underage persons shall be determined after taking into consideration the reduced punishments for them by the virtue of Article 63 PC.

In cases of positive post-criminal behaviour which entails the reduction of the punishments provided for in the PC[1], the length of the limitation period shall be calculated based on its reduction. Besides, according to Item 2 the Interpretative Decision No. 26/1960 of the General Assembly of the Criminal Collegia of the Bulgarian Supreme Court, this period shall commence running on the day when

[1] E.g. according to Article 197 PC, "*If prior to the conclusion of the judicial inquiry in the first instance court the stolen item is returned or replaced, the punishment shall be: 1. in the cases of Article 194 (1) – imprisonment for up to five years; 2. in the cases of Article 194 (3), and Article 195 (4) – probation or a fine from one hundred to three hundred leva 3. in the cases of Article 195 (1) (2-6) – imprisonment of up to eight years; 4. in the cases of Article 195 (2) in conjunction with Article 194 and Article 195 (1) (2-6) – imprisonment of up to eight years; 5. in the cases of Article 196a – imprisonment from eight to twenty years*".

the behaviour was accomplished if this would be more favourable to the offender [4, 519].

3.8. The limitation period is not just a period of running time. Essentially, it is a period of inaction by the competent judiciary bodies that shall prosecute and try the offender. *Per argumentum a contrario*, if these bodies undertake the necessary actions, no limitation period shall exist. Their actions would exclude it; they would interrupt this period.

Pursuant to Article 81 (2) PC, the limitation period is interrupted by every act of prosecution undertaken against the offender by the competent judicial bodies. The interruption affects only the person against whom the prosecution act is being directed. The interruption means that all the time that has expired so far loses legal significance; it shall not be counted any more for the extinction of the offender's criminal liability. Besides, during the time, when the act of prosecution is being performed, no limitation period may run. Only after the completion of this act, which interrupts the limitation period, a new period shall commence running, as though the crime were committed on the last day of the prosecution act.

Such acts not only target a specific offender but aim at punishing him/her, e.g. the constitution of the suspected offender as an accused person, service of summons on him/her in this capacity, his/her official interrogation, confrontation with other accused or/and witnesses, presentation of the investigation materials to him/her, submission of indictment against the accused to court, etc [6][1]. There is no indicative list of these grounds, let alone an exhaustive one in Bulgarian law. This is why it is, sometimes, a matter of interpretation to decide whether some act constitutes prosecution of the offender and therefore, shall interrupt the limitation period.

The interruption must be distinguished from the other impediment to the limitation period, namely: the suspension of this period. Whereas its interruption invalidates the time which has run so far, the suspension preserves it: therefore, this suspension "freezes" the limitation period that has run so far. Thus, the time of suspension shall not be counted into the period of limitation[2] but once the suspension ground is over, this period shall continiue to run.

Under Article 81 (1) PC, the suspension of the limitation period for criminal liability takes place whenever the initiation or the continuation of the prosecution depends upon the solution of some preliminary issue with some judicial decision that cannot be produced in criminal proceedings, e.g. some civil law dispute. For instance, if the person suspected of theft claims to be the owner of the allegedly stolen item and therefore, s/he cannot steal it. Such a legal dispute is solvable outside the criminal proceedings, by a civil court only. Until proven by a court decision that the suspect is not the owner, the limitation period stays "frozen" and may restart only after the delivery of the court decision. Suspension should also take place even when the crime and the offender's responsibility have been

[1] See Decision No. 28/1959 of the General Assembly of the Criminal Collegia of the Bulgarian Supreme Court of Cassation.

[2] E.g. Section 34 (1) of the Czech Criminal Code.

proven if the implementation of his/her criminal liability is not feasible until some circumstance occurs, esp. one producible by a court. For instance, the liability for the accomplished compulsory marriage under Article 177 (1) PC is entirely blocked until the marriage is proclaimed null and void by the court on the grounds of the compulsion exercised. In such cases, the limitation period should start running only after the court decision.

It is noteworthy that necessary administrative decisions, e.g. permission for the prosecution of an offender with a specific status, though also producible beyond criminal proceedings, do not suspend the limitation period. Such non-judicial decisions triggered its suspension under Article 73 of the first Bulgarian Penal Law (1896) but this rule was not reproduced later in the following Penal Codes (1951-6 and 1968).

The *rationale* behind any such suspension of the limitation period is the legal impossibility of proceeding with the criminal case if a necessary court decision is missing. Its absence constitutes a judicial obstacle (Fr.: *obstacle de droit*) creating a judicial impossibility to prosecute the offender (Fr.: *impossibilite de droit*). Bulgarian law has never recognized the factual impossibility to prosecute the offender (Fr.: *impossibilite de fait*) as any suspending factor, e.g. because of war, earthquake or nuclear disaster, and has never upgraded any such difficulty to a ground of suspension. Hence, no factual difficulties have been turned into grounds of suspension to make any of them a factual obstacle (Fr.: *obstacle de fait*) to the limitation period.

Finally, as pointed out *supra*, the prosecution act against the offender, interrupting the limitation period under Article 81 (2) CC, constitutes also a ground for suspension. The period cannot run when the prosecution act is underway. This act not only invalidates all the time which had run out so far from the end of the criminal activity but also prohibits the next limitation period from running. As far as the entire prosecution is a legal activity based on decisions, each of its acts might be qualified as a judicial obstacle similar to the decisions under Article 81 (1) PC.

3.9. The Bulgarian criminal law provides for the so-called absolute limitation period for imposition of punishments. According to Article 81 (3) PC, notwithstanding interruptions or/and suspensions, the offender‘s criminal liability extinguishes when a time, which exceeds by one half the period, provided by the quoted Article 80 PC for the general limitation period, expires if no punishment has been imposed. Thus, the absolute limitation period is not simply a time of inaction by the competent judicial bodies. It is a time when they have failed to achieve the required result, namely: the conviction of the offender. Otherwise, if even his/her conviction is not the missing negative element, the period of time under Article 81 (3) PC would not constitute any limitation period at all. What actually makes this period of time a limitation one is the non-conviction of the offender. The lack of such a conviction allows the absolute limitation period to expire.

*Per argumentum a contrario*, if the offender is convicted, even the absolute limitation period under Article 81 (3) PC cannot run out. It follows that this

limitation period is inevitably interruptible by the conviction of the offender: a condemning criminal judgment imposing a punishment on him/her. Once this conviction occurs, no statute of limitations is relevant, including the absolute one. Yet, if exceptionally, the judgment is overturned by some of the extraordinary remedies for its review, then, obviously, a new limitation period of both general and absolute period shall restart as nothing impedes its running[1].

The issue of impeding the absolute limitation period is not regulated in the Bulgarian PC. However, it is important that the PC expressly recognizes the judgment in force as a ground of suspension of the absolute limitation period. Besides, it must be decided in the PC whether the executed part of the already imposed punishment, if any, should be deducted from the maximum punishment by law to reduce the new period, accordingly, given the possible maximum of the new punishment[2].

### *4. Limitation Period for Execution of the Punishment*

4.1. This limitation period entails on expiry the extinction of only one of the possible substantive penal law consequences of the committed crime: the imposed punishment, its second consequence. On the one hand, the limitation period in the issue expires when the first consequence of the crime, the criminal liability has already been implemented through the condemning judgment on the offender whereby s/he was punished. On the other hand, this limitation period does not affect the third consequence of the crime, the offender's conviction. This consequence is erasable by the rehabilitation of the offender (Articles 85-88a PC) or some amnesty of his/her committed crime (Article 83 PC).

This second type of limitation period is a time when the punishment imposed on the offender shall be executed. But it is also such a period of time when the competent state bodies have failed to execute the punishment. On the expiry of this period of their inaction, the punishment imposed on the offender extinguishes[3] and s/he shall never serve it. Therefore, this limitation period provides the deadline to the competent state bodies for the execution of the punishment. It is a time not only for the institution on paper of the legal proceedings for the execution of the imposed punishment but it is also a time for achieving this execution. Otherwise, if this time period runs out and the sentenced offender has not started serving his/her punishment, s/he shall be unconditionally and irreversibly free from it. As

[1] Article 66 (5) [Amended on 29 June 2005 – By Article 8 of the Law no. 5377] of the Turkish Penal Code, dealing with this issue, reads as follows: "*In the case of a retrial for the same act, the limitation period for that particular act starts again from the date the court accepts the application for the retrial*". See also Articles 311-323 of the Criminal Procedure Code of Turkey on this extraordinary legal remedy.

[2] E.g. 4 years imprisonment were imposed for a crime carrying by law up to five years of this punishment with a limitation period for criminal liability of ten years – Article 80 (1) (iii) PC. Before overturning the judgment the offender served 3 years; after their deduction, 2 years of maximum imprisonment are left, they reduce the limitation period to five years – Article 80 (1) (iv) PC.

[3] In Poland, the 'expunction' of the punishment occurs as "*the sentence is considered non-existent*" anymore – Article 106 of the Polish PC.

in the case of the first type of limitation period, the behaviour of the convict is irrelevant under Bulgarian law. The favourable result is not any reward to him/her for good behaviour, contrary to the situation with the rehabilitation by law where its favourable result of erasing the conviction may occur only if the sentenced offender does not commit crimes during the rehabilitation period – see Article 86 PC.

The result of the expiry of this limitation period not only prevents the punishment from being executed. The non-executability of the punishment imposed on the convict opens the way to his/her rehabilitation by law as well. In view thereof, the General Assembly of the Criminal Collegia of the Bulgarian Supreme Court of Cassation ruled that rehabilitation by law may also take place if the punishment imposed has extinguished because of the expiry of the limitation period – Item 1 of the Interpretative Decision No. 2/2018 of the General Assembly[1].

It is worth noting that rehabilitation by law after the expiry of the limitation period has not been expressly provided for in Bulgarian law. According to Article 86 (1) (i) PC, if the punishment has not been served, rehabilitation by law may occur after the expiry of a probation period (Articles 66 and 69 PC) if the convict has not committed new crimes. However, this is not the only such situation where the punishment becomes inexecutable without being served by the convict. Obviously, as in the case discussed, if the punishment has been extinguished by an expired limitation period, this punishment is also inexecutable without being served.

The conclusion that rehabilitation by law may take place also in cases of expired limitation periods, comes from the application by statutory analogy [*analogia legis*] of the aforementioned Article 86 (1) (i) PC. All conditions for such an analogy are met. First, there is a gap (*lacuna*) in law because the relations between the limitation period extinguishing the punishment and the rehabilitation by law should be legally regulated in some way but they are not. Second, there is a provision applicable to a similar situation: this is Article 86 (1) (i) PC which also envisages a case of punishment that has become inexecutable without being served by the convict. Third, the application of Article 86 (1) (i) PC by analogy brings a favourable result to the person concerned. This is the convict who would benefit from having the opportunity to be rehabilitated once Article 86 (1) (i) PC applies.

Undoubtedly, the text of Article 86 (1) (i) PC needs some further improvement. It should codify all situations of non-executability of the punishment imposed on the convict to prescribe that they all open the way to his/her rehabilitation. If these grounds for the start of the rehabilitation period are codified in a general text, no one of them would be missed.

4.2. Once this second type of limitation period expires the punishment imposed on the offender would extinguish as a result of the competent state bodies' inaction. This necessarily means that the limitation period makes sense if and when the state bodies shall act to achieve the execution of the punishment. It follows that the limitation period in the issue cannot start running before the state bodies get obliged

[1] The text is in the Bulgarian language only, available at http://www.vks.bg/talkuvatelni-dela-osnk/vks-osnk-tdelo-2017-2-reshenie.pdf (translation by the author).

to proceed with the execution of the punishment. According to Article 82 (2) PC, "*the limitation period extinguishing the punishment shall commence as from the day the sentence has entered into force, and with regard to punishment with a suspended sentence, according to Article 66 - as from the entry into force of the sentence or the court ruling under Article 68*".

Therefore, if the sentence is not suspended, the limitation period starts running on the day when the judgment becomes effective – Article 412 (2) CPC. As soon as the judgment becomes effective, the punishment imposed is executable and the competent state bodies shall take steps for its execution.

However, if the sentence has been suspended as per Article 66 PC, then the judgment, though effective, does not produce an executable punishment. The punishment imposed on the convicted offender may become executable only after the conditions under Article 68 PC are met and eventually, the competent court activates it. Once the punishment is executable based on the court decision, the competent state bodies shall take steps to secure its execution. Only then the limitation period would be running. In view thereof, in the situation of suspended sentences, the period shall start on the day when the postponed punishment is activated by the competent court.

If an early release has been granted to a prisoner, the starting day would, likewise, be the one when the unserved part of his/her punishment is executable. This remaining part of the partially served punishment may become executable only after the conditions under Article 70 (7) PC are met and the court activates it. After the court decision, the competent state bodies shall take steps to secure its execution. Then the limitation period would be running. In view thereof, in the situation of early release, the limitation period shall start on the day when the remaining part of the punishment is activated by the competent court.

The executability of some punishments might be a problem in cases of cumulative sentences, containing two or more punishments of different nature – Article 57 (2) PC, if the execution of one of them shall be carried out first and prevent the simultaneous service of the other(s). Such other punishment(s) are neither servable before the "priority" punishment nor can be executed during its execution. Most often, the imprisonment punishment in a cumulative sentence is executable first to eventually exclude the simultaneous service of probation, also a criminal punishment under Bulgarian law – Articles 42a and 42b PC. This is why, until the execution of the former punishment is over, the latter one is inexecutable. Taking this into consideration the non-executability of the probation punishment at the time when the "priority" imprisonment punishment shall be served or is being served by the convict, the General Assembly of the Criminal Collegia of the Bulgarian Supreme Court of Cassation ruled that in such situations no limitation period shall run for the probation punishment - Item 1 of the Interpretative Decision No. 3/2017 of the General Assembly[1]. The running of this period is suspended.

[1] The text is in Bulgarian language only, available at http://www.vks.bg/talkuvatelni-dela-osnk/vks-osnk-tdelo-2017-3-reshenie.pdf (translation by the author).

4.3. As in the case with the limitation periods, the expiry of which extinguishes the criminal liability, there is no general time limit for this second type of limitation periods either. However, the periods are also differentiated but based on the individual punishments imposed rather than the punishments prescribed by the PC. The specific limitation periods are set out in Article 82 PC: (a) twenty years if the punishment was life imprisonment without substitution or life imprisonment; (b) fifteen years if the punishment was imprisonment for more than ten years; (c) ten years if the punishment was imprisonment from three to ten years; (d) five years if the punishment was imprisonment for less than three years, and (e) two years for all remaining cases.

4.4. Under Article 82 (3) PC, the limitation period, on the expiry of which the punishment extinguishes, shall be interrupted if the competent state bodies take action for the execution of the punishment. Acts for its execution are sending the judgment by the court to the prosecutor for execution, issuing an order by the prosecutor to the prison or another competent authority to begin the execution, summoning of the convicted person to appear, etc. After the conclusion of any such act whereby the limitation period has been interrupted, a new period shall commence running, as though the punishment were executable on the day when the act was performed.

No ground of the suspension of the limitation period for the execution of the punishment exists in Bulgarian law. Hence, even if a judicial or another decision concerning the status of the convict is indispensable for the execution of the punishment imposed on him/her, the necessity of such a decision may not produce the legal effect of suspension. As explained with regard to the probation punishment, the suspension of this limitation period is also possible. The possibility of its suspension has been recognized also in the text of Article 82 (4) PC, *infra*. However, this is not achievable without a legal provision. In particular, the application by statutory analogy [*analogia legis*] of Article 81 (1) PC, which prescribes the suspension of the limitation period for criminal liability, is not feasible. No such analogy shall be resorted to in this case because the application Article 81 (1) PC would be detrimental to the convict: it would prolong the time of the extinction of his/her punishment. It is well-known that no analogy is allowed if the result would not be favourable to the persons concerned. Apart from this, such an analogy would violate Article 46 (2) (1) of the Bulgaria Law on the Normative Acts as it would be contrary to the rules of social ethics, at least.

Grounds of suspension of the limitation period for execution of the punishment should necessarily be provided for in the PC. In any case, they should be essentially similar to those under 81 (1) PC outlining the suspension of the limitation period for the imposition of the punishment (the criminal liability). These grounds for the suspension of the limitation period for execution of the punishment should also be based only on legal impossibility. No factual impossibility should be upgraded to a ground of suspension[1].

[1] The Serbian PC, for example, contains such a rule. This is Article 107 (3): "*Limitation shall not run during the period when enforcement of penalty may not be undertaken by law.*"

4.5. There is an absolute limitation period for the execution of imposed punishments as well. According to Article 82 (4) PC, irrespective of any interruptions or/and suspensions, the imposed punishment gets extinct and, therefore, shall never be executed if a time which exceeds by one half the period, provided by the quoted Article 82 PC for the general limitation period, expired and no execution of the punishment took place.

As in the situation with the absolute limitation period for criminal liability, the legal framework for this type of absolute limitation period is underdeveloped. It consists of two paragraphs only: Paragraph 4 and 5 of Article 82 PC. They give no answers to important questions. Thus, since this is also some limitation period, what might be the state bodies' activity/results which if not undertaken/achieved would allow the running of this period and even its expiry? Obviously, the actual execution of the punishment, at least, shall interrupt this limitation period; preceding acts of the court, the prosecutor, the prison or other competent administration, however, shall not.

Besides, if part of the punishment has been executed or pardoned and the convict is not serving it at the moment, what shall be the length of the limitation period for the remaining part of the punishment: shall it be calculated on the basis of the imposed punishment or only the unserved remaining part shall be taken into consideration? If the remaining part is incomparably smaller than the imposed punishment, the preservation of the initial limitation period can be hardly justified.

The issues of interruption and suspension of this absolute limitation period should not be overlooked either. If the execution of the punishment is underway, it makes sense to accept that no limitation period may run. It is interrupted and may commence running only if the execution stops before the entire punishment has been served. In the meantime, while the execution is ongoing, this activity of the competent state bodies should exclude the running of any limitation period. Obviously, no period shall run during the execution of the punishment, let alone expire in full. The execution should suspend it whenever an executable part of the punishment remains unserved. Therefore, the execution in the issue not only invalidates all the time which has run out from its start but also prohibits any new limitation period from running.

A legislative attempt to regulate - in part, at least, - the interruption and suspension of the absolute limitation period was made. In 1982, a new Paragraph 5 was inserted in Article 82 PC. It was designed to exclude the absolute limitation period under the preceding Paragraph 4 of the Article. The new Paragraph 5 reads: "*The provision of the preceding Paragraph shall not apply to a fine, where enforcement proceedings have been started for its collection.*" This means that the institution of legal proceedings for the execution of this punishment (Article 47 PC) is sufficient for the interruption of the absolute limitation period and its suspension as well. Hence, it is not necessary that any actual collection of the imposed fine has begun.

The institution of enforcement proceedings for the collection of the fine, however, is an act of the competent state body for the execution of the punishment.

As any other such act, it interrupts and suspends the general limitation period. In addition, in the particular case with fines, the act in the issue entails under the new Paragraph 5 also the interruption and suspension of the absolute limitation period. The problem is that such acts concern legal proceedings and modify only general limitation periods when it comes to other punishments. To avoid discrepancies with their absolute limitation periods, it would be recommendable to turn into a ground for interruption and suspension only the actual collection of the imposed fine.

Besides, it seems that the interruption and suspensions of the absolute limitation period for the imposed fine last forever, even when the enforcement proceedings are discontinued. However, if the proceedings are discontinued and some amount of the imposed fine is still subject to collection, it hardly makes any sense to have no absolute limitation period for the uncollected fine. If no such proceedings are in existence, nothing should impede the running of this period. By the way, this view was accepted by the Bulgarian Supreme Court of Cassation [*supra*, Interpretative Decision No. 2/2018 of the General Assembly of the Criminal Collegia – Item 4 (ii); see footnote 23] but must be legislatively implemented in the PC as a clear legal provision.

At the same time, the absolute limitation period shall be legally regulated for all criminal punishments rather than only for the fine under Article 47 PC. This issue needs proper codification.

### *5. Conclusions*

A strange inversion exists in Bulgarian law. The CPC [Article 24 (1) (iii), in particular] expresses and confirms the concept that the expiry of the limitation period produces a substantive law effect, namely: the termination of the criminal liability of the offender. This provision bars criminal proceedings if "*the criminal liability has been extinguished by the expiry of the limitation period*". At the same time, the Bulgarian PC resorts to the traditional (actually, outdated) terminology indicating only procedural effects. Article 80 (1) of this Code read that if the above-mentioned limitation period expires, "*criminal prosecution shall be excluded...*"

The Bulgarian judicial practice, though, has overcome this understanding that the statute of limitations is a procedural institution by accepting that the expiry of the limitation period impedes primarily the imposition of the punishment on the offender rather than his/her prosecution only. Thus, substantive law consequences are produced: the imposition of punishment by the competent state authorities has been excluded. From the offender's point of view, this means the extinction of his/her criminal liability for the committed criminal offence. Hence, this type of limitation period is not only a time frame within which criminal proceedings must be instituted. It is, most of all, a deadline for the conviction of the offender. Obviously, the respective texts of the Bulgarian PC should be improved to embed the substantive law nature and effect of this statute of limitations.

The substantive law nature and effect of the limitation period for the execution of punishment should not cast any doubts either. Otherwise, this period would not

be distinguished from the prescription in civil law which produces solely a procedural effect: extinguishes the action, but not the substantive right of the creditor. Besides, the legal framework for this second type of limitation period should be supplemented by a rule on the grounds for its suspension. Presently, a gap on this issue exists.

The Bulgarian legal framework for the absolute limitation period [Article 81 (3) and Article 82 (4 and 5) PC] is underdeveloped. These Articles clarify what does not interrupt and suspend the limitation period but contain no indication as to what may interrupt or suspend it. The only exception is Article 82 (5) PC. It concerns the execution of the fine. Undoubtedly, this only provision on the interruption or the suspension of the absolute limitation period is far from sufficient. Apart from its insufficiency, it needs some additional rules to specify what happens with the absolute limitation period after the conclusion of the ground of its interruption and suspension, namely: the fine collection, if the whole fine has not been collected yet.

Lastly, as international judicial cooperation constantly intensifies, the significance of time limitations/ lapse of time as its impediment will grow for all European countries, including Bulgaria and Ukraine. See Article 10 of the European Convention on Extradition, Article 10, letter "C" and Article 11, letters "F" and "G" of the European Convention on the Transfer of Proceedings in Criminal Matters, Article 6, letter "L" of the European Convention on the International Validity of Criminal Judgments, etc.

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**Срок давности в соответствии с уголовным законодательством Болгарии**

*Украина осуществляет интенсивное правовое сотрудничество по уголовным делам с другими европейскими странами. Типичным препятствием для удовлетворения украинских просьб о таком сотрудничестве (например, экстрадиция из другой страны, принятие украинского уголовного производства в запрашиваемой стране, признание и приведение в исполнение украинских уголовных решений за рубежом) является истечение срока давности – при том не только в соответствии с законодательством Украины, но и в соответствии с законодательством иностранного государства, которое Украина запрашивает о сотрудничестве.*

*Проблема в том, что уголовный режим давности большинства европейских стран существенно отличается от украинского. В связи с этим украинские специалисты по уголовным делам заинтересованы в том, чтобы иметь некоторые общие знания о сроках давности в других европейских странах, особенно таких, как Болгария. С одной стороны, это государство является серьезным партнером Украины в международном судебном сотрудничестве; с другой – болгарский режим давности является подходящим представителем тех европейских правовых режимов для истечения срока давности, которые существенно отличаются от украинских.*

*Все уголовные законы современного болгарского государства содержали определенный режим давности. Этими законами являются Уголовный закон 1896 года (отменен), Уголовный закон 1951 года, усовершенствованный до Уголовного кодекса 1956 года, после полной кодификации этой отрасли права в Болгарии (также отменен), и существующий Уголовный кодекс 1968 года.*

*По уголовному закону срок давности составляет период бездействия компетентных государственных органов. Истечение давности гасит непосредственные правовые последствия преступлений или наказания, назначенные за них судом.*

*В Болгарии уголовное право регулирует давность. Это является законодательным признанием материальной природы давности. Концепция о том, что уголовная давность является процессуально-правовым институтом, была преодолена в болгарской теории, праве и судебной практике. Истечение срока давности также влечет за собой процессуальные последствия, но они вытекают из его прямых материально-правовых результатов в качестве вторичных последствий.*

**Ключевые слова:** Болгарский Уголовный кодекс; уголовная ответственность; погашение; срок давности; наказание.

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