



PREScription IN CRIMINAL MATTERS

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Abstract: *Criminal prescription is a legal concept applied in most legal systems. This doctrine has existed since ancient times in the legislations of various states, regardless of their legal and political systems. The Algerian legal framework also recognizes this principle.*

The objective of this study is to examine the provisions of criminal prescription as regulated by Algerian law across multiple legal texts, as well as to identify aspects not explicitly addressed by the legislator. The topic of criminal prescription remains relatively unexplored, particularly in Arabic legal studies and research. Since the Algerian legislator has established provisions regarding both types of prescription (public prosecution prescription and sentence prescription), it is essential to distinguish between these two concepts. This distinction raises several legal and practical issues, particularly concerning the scope of prescription, the calculation of its time limits, the causes that interrupt or suspend it, and its legal consequences.

Keywords: *Prescription, Sentence, Public Prosecution, Time Limits, Criminal Provisions.*

INTRODUCTION:

Criminal statute of limitations is defined as that means of getting rid of the effects of crime or criminal conviction by the effect of the passage of time, and it represents the means of expiration of the right to execute the criminal judgment issued by conviction, and it is also one of the reasons for the lapse of the public right lawsuit.

The statute of limitations leads to the forfeiture of the State's right to prosecute the offender, either by the expiry of its right to be tried or by the forfeiture of its right to punish it, on the grounds that the failure of the Public Prosecution to initiate criminal proceedings for a certain period of time specified by law leads to the expiry of this case.

The passage of a certain period of time from the issuance of the sentence without taking any action to implement it and without the occurrence of anything interrupting or stopping that period makes its implementation thereafter useless, and it is no longer legally possible to implement any penalty against the convict, because the penalty falls by statute of limitations.

Other procedural legislation, including Algerian legislation, follows the statute of limitations, for many considerations relating to the general interest of society and the private interest of individuals.

Our treatment of the issue of prescription is due to its importance and impact on the conduct of the public action and the implementation of the penalty, as the inability or lack of understanding of the provisions of the statute of limitations can lead to the ruling of the statute of limitations based on the passage of time without the proper application of the law, and it may also lead to the award of a penalty for those for whose benefit the statute of limitations was decided.

The prolongation of conflicts may also result in unrest in society, which is not required by the interest of the state, so the statute of limitations was established with the aim of achieving legal stability.

This research aims to distinguish between the issue of the statute of limitations of public action and the statute of limitations of punishment within the framework of a series of legal points raised, and the problem



of the research revolves around the following: How did the Algerian legislator address the issue of criminal statute of limitations?

To answer the problem above, we followed the subject of our study on the descriptive and analytical approach, and divided the subject of our study into two main axes, dealing in the first axis with the issue of prescription of public action, and in the second axis we address the issue of prescription of punishment.

Chapter I: Prescription of Public Action

The public action shall lapse with the passage of time without any action being taken from the date of the crime, thus leading to the disposal of its effects, and it becomes impossible to determine the guilt of the accused and impose a penalty on him.

First, we will address the meaning of the statute of limitations for public action, then we will address the statute of limitations for public action, second, then we will deal with the conclusive or suspended procedures for the statute of limitations of the lawsuit, and third, and finally we will deal with the effects of the expiry of the statute of limitations for the lawsuit.

SECTION I: MEANING OF THE STATUTE OF LIMITATIONS FOR PUBLIC ACTION

The statute of limitations of the criminal case means: (the lapse of a period of time determined by law starting from the date of committing the crime without taking any of its procedures, and this statute of limitations shall result in the expiry of the criminal case)¹.

If the statute of limitations - as one of the reasons for the lapse of a public right lawsuit - is a procedural system that goes to the criminal case and terminates it, it has the necessary objective effects. The lapse of the period specified by law forfeits the right of society to prosecute and proceed with the case, which is the only way to determine the conviction and sentence the sentence².

The limitation limitation by which the public right action expires is based on multiple bases and justifications, which are summarized as follows:

- Forgetting the crime, and this forgetfulness is one of the characteristics that characterize the human being, so part of the jurisprudence justifies the statute of limitations with the so-called "law of forgetfulness La loi de l'oubli", since with the passage of a long period of time after the occurrence of the crime, the role of initiating a public right lawsuit on it, and without initiating any action in order to move it, this often leads to forgetting the crime and forgetting its effects, so it is not conceivable then that public opinion will demand that the offender be prosecuted or punished³.

- The loss of the features of the crime and the disappearance of its evidence: With the passage of time, the features of the crime tend to be lost, and its evidence disappears, which makes proof difficult, as some witnesses may disappear and others may die, and for those who remain alive, time weakens his memory, and the collection of indictment evidence again becomes very difficult, and even the evidence that still exists becomes less certain before the judiciary⁴.

- The suffering of the offender, and the fear and emotion he endured during the period between committing his crime until his matter is revealed, and this fear and anxiety may be sufficient in itself as a punishment for the offender and deterrence him, which is considered atonement for his crime.

Legal stability: It is not appropriate for the litigation to remain indefinitely, because this affects the principle of stability of the legal positions of individuals, which requires an end to this litigation if a certain time has passed with which society is supposed to have waived its right to pursue and punish the offender.

¹ Hassan Mohamed Mohamed Boudi, Criminal Statute of Limitations and its Effect on the Lawsuit and Punishment, Dar Al-Jamia Al-Jadida, Alexandria, 2015, p. 09.

² Galal Tharwat, Criminal Procedure Systems, Dar Al-Jamia Al-Jadida for Publishing, Alexandria, 1997, p. 236.

³ Pierre Bouzat, Theoretical and Practical Treatment of Penal Law, Dalloz Book, Paris, 1951, p. 1009.

⁴ G. Stefani and G. Levasseur, Penal Procedure, Nine Edition, Dalloz, Paris, 1970, p. 116.



SECTION II: LIMITATION TIME LIMITS FOR PUBLIC ACTION

In the articles of felonies, the statute of limitations shall be time-barred by the lapse of ten full years ¹and in misdemeanor articles by the lapse of three full years ²and the statute of limitations in the articles of violations shall be the lapse of two full years³.

The statute of limitations shall apply from the day of the commission of the crime if no investigation or follow-up action is taken during that period. If actions have been taken during that period, the statute of limitations shall run only from the date of the last action ⁴The statute of limitations in public proceedings relating to felonies and misdemeanours committed against a juvenile shall run from the time he reaches the age of civil majority⁵.

While the periods set forth in articles 07, 08, and 09 of the Code of Criminal Procedure are the general rule of limitation for criminal proceedings, the legislator has derogated from them for some offences, as an exception to the general rule.

Article 08 bis of the Code of Criminal Procedure stipulates the following: Public proceedings shall not expire by the statute of limitations for felonies and misdemeanors described as terrorist and subversive acts and those related to transnational organized crime, bribery or embezzlement of public funds⁶.

The limitation period shall be calculated according to the Gregorian calendar, and the calculation of time shall follow the rule that all the dates provided for in the Code of Criminal Procedure are complete dates and neither the day of their commencement nor the day of their expiry shall be counted. Holiday days are counted within the deadline. If the last day of the appointment is not one of the working days in whole or in part, the date shall extend to the first subsequent working day⁷.

In other words, the limitation periods referred to in articles 07, 08 and 09 of the Code of Criminal Procedure are considered to not include the day on which the crime was committed or the day on which the last act was taken, and holidays shall not be counted from the prescribed period if the holiday falls at the end of the limitation period.

SECTION III: PROCEEDINGS CONCLUSIVE OR SUSPENDED FOR THE STATUTE OF LIMITATIONS

The Code of Criminal Procedure mentions the expiry of public proceedings with the passage of time in articles 7, 8 and 9 thereof, and the passage of time varies according to the gravity of the crime, and may interrupt the passage of time, or may be suspended, and all of this has certain effects, and this is what we will address as follows:

A- Interruption of the passage of time

The interruption of the passage of time means that there is a reason that erases the previous period so that after the disappearance of the reason for the interruption it is necessary to start a new period, and this is unlike the suspension that leads to the non-calculation of the period for a reason that has occurred, and if it disappears, the previous period is completed by adding the new period.

¹ Article 07 of Order No. 66-155 of June 8, 1966, containing the Code of Criminal Procedure, amended and supplemented, Official Gazette, No. 48, issued on June 10, 1966.

² Article 08 of Order No. 66-155 of June 8, 1966, containing the Code of Criminal Procedure, amended and supplemented, op.cit.

³ Article 09 of Order No. 66-155 of June 8, 1966, containing the Code of Criminal Procedure, amended and supplemented.

⁴ Article 07 of Order No. 66-155 of June 8, 1966, containing the Code of Criminal Procedure, amended and supplemented, op.cit.

⁵ Article 08 bis 01 added by Law No. 04-14 of November 10, 2004, amending and supplementing Order No. 66-155 of June 8, 1966, containing the Code of Criminal Procedure, Official Gazette of the Algerian Republic, No. 71, issued on November 10, 2004.

⁶ Article 08 bis added by Law No. 04-14 of November 10, 2004, amending and supplementing Order No. 66-155 of June 8, 1966, containing the Code of Criminal Procedure.

⁷ Article 726 of Order No. 66-155 of June 8, 1966, containing the Code of Criminal Procedure, op.cit.



The reason for the interruption of the passage of time lies in the fact that the crime is still fresh in the minds of the people and that it is in the interest of the group to proceed with the case until the perpetrators receive their punishment to achieve justice and legal stability ¹Referring to article 07 of the Code of Criminal Procedure, we conclude that the statute of limitations is interrupted by the adoption of an investigation or follow-up procedure.

The interruption of the passage of time shall result in the lapse of the period that has elapsed, and the commencement of a new full period from the date of the last procedure, and nothing in the law puts an end to the recurrence of the interruption, which can be said that the criminal case extends by repeating the conclusive procedures for the passage of time indefinitely.

If there are multiple defendants, the interruption of the period for one of them entails its interruption for the rest, even if conclusive measures are not taken against them.

B. Stopping the passage of time

Suspension of the period of the passage of time means the emergence of material or legal impediments that lead to their non-calculation without prejudice to the period that has passed, and with the disappearance of these impediments, the previous period shall be completed, without requiring the start of a new period, as is the case in the interruption as previously indicated.

The suspension of the passage of time has a personal character unlike its interruption, and this character applies to the defendant for whom the impediment was established and not to other defendants².

The reasons for the suspension of the statute of limitations are due to legal and material impediments, as the legal impediments find their fault in the procedures required by the legal texts, which depend on their resolution and decision, the possibility of continuing and proceeding with the lawsuit, and one of the legal impediments that result in the suspension of the passage of time is the postponement of the criminal court to consider the case pending the resolution of a preliminary issue from the competent court, so the statute of limitations stops until the final judgment in the matter is issued, or if the prosecution requires obtaining a license such as lifting the immunity of the deputy, or if there are multiple crimes Some of them were due to the jurisdiction of an exceptional judiciary, such as the military judiciary, and the defendant was referred before him, so that the passage of time depends on the offence that is adjudicated by the ordinary judiciary, or in the event that the defendant suffers from a mental disability after committing the crime.

As for the material impediments, they relate to compelling cases that prevent prosecution or investigation, such as cases of wars that lead to the occupation of a part of the country that makes it impossible for the state to exercise its powers, or the movement of individuals from the area under occupation, or cases of internal revolutions or natural disasters that make communication impossible between the different regions, which results in the disruption of public life in the country³.

The Algerian legislature has dealt with the issue of suspension of statutes of limitations except in the exceptional case provided for in article 06, second paragraph, of the Code of Criminal Procedure⁴.

¹ Ali Muhammad Jaafar, *Explanation of the Code of Criminal Procedure*, First Edition, University Foundation for Studies, Publishing and Distribution, Beirut, 2004, p. 104.

² Ali Muhammad Jaafar, *op.cit.*, p. 108.

³ Ali Muhammad Jaafar, *Ibid*, p. 109.

⁴ The second paragraph of Article 06 of the Code of Criminal Procedure states the following: (... However, if procedures arise that lead to conviction and reveal that the judgment that ruled the expiration of the public lawsuit was based on forgery or the use of a forged document, then it is permissible to resume the proceedings, and then the statute of limitations must be considered suspended from the day on which the judgment or decision became final until the day of conviction of the perpetrator of the forgery or the use of a forged document), *op.cit.*



SECTION IV: EFFECTS OF THE EXPIRY OF THE STATUTE OF LIMITATIONS

If the statute of limitations provided for by law is completed without interruption or suspension, or if it is completed after the interruption or after the disappearance of the impediment that led to its suspension, it shall result in the expiry of the public action, i.e. the expiration of the means resorted to by society to require its right to punishment.

The statute of limitations does not affect the criminal liability that remains, but the expiration of the lawsuit by prescription closes the procedural avenue for determining this, which prevents the order of legal consequences of responsibility for the crime¹.

The plea of prescription of the lawsuit is of public order, and it may be invoked by the litigants at any stage of the lawsuit, which is what the Supreme Court went to in its decisions by saying that the prescription of the public action is considered a matter of public order and can be invoked at any stage of the lawsuit ²It has an impact on all contributors to the crime.

It may also be invoked even for the first time before the Court of Cassation, and the judge must rule on the expiry of the case if it is proven to him that the statute of limitations has been completed, even if none of the litigants insists on that, the judge shall rule even on his own. If one of the litigants challenges before the court that the lawsuit has expired by prescription, it shall respond to this plea, and if it does not address it in its judgment, its judgment shall be null and void³.

Chapter II: Prescription of Punishment

The penalty is a penalty determined by the legislator and imposed by the judge on those proven responsible for committing a crime, and it is represented in inflicting the offender by reducing some of his rights, such as the right to life and the right to freedom, and the money may be affected and take the form of a fine or be combined, and that penalty shall be implemented within a period of time determined by law, otherwise it shall lapse by statute of limitations.

The Algerian legislature regulates the statute of limitations in the Code of Criminal Procedure, in chapter IV thereof, entitled "Statute of limitations", in accordance with the provisions of articles 612 to 617 of the same Code.

Through our extrapolation of the texts of these articles, we find that the legislator did not address the definition of the statute of limitations, but left the space for jurisprudence to define it as follows: "The expiration of the obligation of the convicted person to execute the penalty in the event that a period of time determined by law has elapsed and commences from the date of issuance of the final judgment of the penalty without taking action to implement the sentence adjudicated." ⁴.

Algerian law distinguishes the period of limitation of the penalty according to the description of the offence and not according to the penalty issued, whether it is a felony, misdemeanour or violation, taking into account the crimes that the legislator has excluded from the effect of the statute of limitations or has made it a period different from the general principle, taking into account the symptoms of the statute of limitations of the penalty, such as interruption and suspension and their consequences.

To address these issues, we deal first, with the scope of the statute of limitations, second, with the limitation of punishment, second, with the symptoms of the statute of limitations, and fourth, with the effects of the statute of limitations.

¹ Muhammad Saeed Nammour, op.cit. , p309.

² See the decision issued on December 27, 1983, file No. 27404, the Judicial Journal of the Supreme Court, No. 02, for the year 1992, p. 287. See also the decision issued on April 30, 1981, the Second Criminal Chamber, Collection of Criminal Chamber Decisions, referred by Djilali Baghdadi, Judicial Precedents in Criminal Matters, Part One, First Edition, National Office of Educational Works, Algeria, 2002, p. 92.

³ Hassan Al-Jawkhdar, Explanation of the Code of Criminal Procedure, Dar Al-Thaqafah, Amman, 1997, p. 136.

⁴ Sami Abdel Karim Mahmoud, Criminal Punishment, Al-Halabi Legal Publications, Lebanon, 2010, p. 373.



Section I: Scope of limitation of punishment

The general principle and principle is that all penalties expire by prescription, on the basis that the measures for their implementation have not been taken within the specified period, including the original and complementary penalties.

The original penalties are the penalties sufficient in themselves to achieve the meaning of the penalty, and are imposed individually without the judgment being pending on the sentence of another penalty, which is specified in Article 05 of the Penal Code as follows:

"The original penalties in the article of felonies are: 1. Death, 2. Life imprisonment, 3. Temporary imprisonment for a period ranging from five (5) years to twenty (20) years, except in cases where other maximum limits are established by law. The original penalties in the misdemeanours are: 1- Imprisonment for a period exceeding two months to five years, except in cases where the law establishes other limits, 2- A fine exceeding twenty thousand 20.000 Algerian dinars. The original penalties in the article of violations are: 1- Imprisonment from at least one day to two months at most, 2- A fine from two thousand 2000 to twenty thousand 20.000 Algerian dinars."

Just as the Algerian legislator has defined original penalties for a natural person, it has also defined original penalties related to the legal person provided for in Chapter I bis of articles 18 bis to 18 bis 3 of the Penal Code. Such penalties are time-barred by the passage of a period of time determined by law without any action being taken to carry out the sentence imposed.¹

As for the complementary penalties, they are complementary penalties to or related to the original penalties, and they are stipulated in Article 09 of the Penal Code and enumerated in thirteen penalties for a natural person ²as well as stipulated in Article 18 bis, paragraph 2 of the Penal Code, and enumerated them in seven penalties for a legal person.

Complementary penalties are imposed only if pronounced by the judge in his ruling, i.e. they are permissible in origin, but the legislator provided for cases in which some complementary penalties are mandatory³.

While the original penalties are subject as a general statute of limitations to the criminal statute, the penalties imposed in the articles of felonies and misdemeanours described as terrorist and subversive acts, as well as transnational organized crimes and bribery offences, remain subject to the criminal statute of limitations because of their special criminal nature⁴.

Among the offences that have also been excluded from the statute of limitations are the smuggling offences defined by Ordinance 05-06 on combating smuggling, article 34 of which states: "The same rules of procedure applicable to organized crime shall apply to the offences established in articles 10, 11, 12, 13, 14 and 15 of the above-mentioned Ordinance"⁵. Thus, the legislator has made the offences set forth in articles 10, 11, 12, 13, 14 and 15 of Ordinance No. 05-06 subject to the same procedural rules as in the area of organized crime, and therefore not subject to statute of limitations.

¹ Articles 18 bis to 18 bis03 added by Law No. 04-15 dated November 10, 2004, amended by Law No. 06-23 dated December 20, 2006, amending and supplementing Order No. 66-156 dated June 8, 1966, including the Penal Code, Official Gazette of the Algerian Republic, No. 84, issued on December 24, 2006.

² Article 09 of Order No. 66-156 dated June 8, 1966, including the Penal Code, amended and supplemented by Law No. 24-06 dated April 28, 2024.

³ Articles 09 bis, 09 bis 01 and 15 bis 1 added by Law No. 06-23 of December 20, 2006, amending and supplementing Decree No. 66-156 of June 8, 1966, containing the Penal Code, amended and supplemented by Law No. 24-06 of April 28, 2024, Official Gazette of the Algerian Republic, No. 30, issued on April 30, 2024.

⁴ Article 612 bis added by Law No. 04-14 of November 10, 2004, amending and supplementing Decree No. 66-155 of June 8, 1966, containing the Code of Criminal Procedure, states the following: "Penalties imposed in felonies and misdemeanors described as terrorist and subversive acts and those related to the crime shall not be time-barred. Transnational Organization and Bribery". Official Gazette of the Algerian Republic, Issue 71, issued on November 10, 2004.

⁵ Articles 10, 11, 12, 13, 14, 15 of Order No. 05-06 dated August 23, 2005, relating to combating smuggling, Official Gazette of the Algerian Republic, Issue 59, issued on August 28, 2005.



As for the complementary penalties, they are originally not subject to the criminal statute of limitations, since these penalties are implemented immediately after the issuance of the criminal judgment, such as the penalty of confiscation in kind of seized items ¹as well as the penalty of deprivation from exercising national, civil and family rights, they are not subject to the statute of limitations and do not fall on the convict, as mentioned above, except by a comprehensive pardon or rehabilitation because such rights are related to the capacity of the convicted person and the capacity does not lapse by statute of limitations unless the law provides otherwise ²Also, the penalty of residence ban shall not be dropped until five years after the date of the original penalty lapse³.

However, there are some complementary penalties that are subject to the criminal statute of limitations, including, for example, the legal quarantine penalty, which is represented in depriving the convict of exercising his financial rights during the execution of the original penalty ⁴so its implementation, existence and absence are linked to the judgment of a criminal penalty, and thus the statute of limitations of the criminal penalty leads him to become irrelevant⁵.

Section II: Limitation time limits

Algerian law distinguishes the period of limitation of the penalty according to the description of the crime, not according to the penalty that was issued, whether it is a felony, misdemeanor or violation, so the penalty in the articles of felonies shall be time-barred by the lapse of twenty (20) years, effective from the date on which the judgment possesses the force of *res judicata*, in accordance with the provisions of Article 613 of the Code of Criminal Procedure.

In misdemeanor articles, the penalty shall be time-barred by the lapse of five (05) full years, effective from the date on which the decision under which the penalty was issued is final, in accordance with the provisions of Article 614/1 of the Code of Criminal Procedure, where this statute of limitations applies to all misdemeanors, but if the penalty period exceeds five years, the limitation period shall be equal to the period adjudicated, in accordance with the provisions of Article 614/2 of the Code of Criminal Procedure.

The penalty in the articles of violations shall be time-barred by the lapse of two (2) full years, effective from the date on which the decision under which the penalty was issued is final, in accordance with the provisions of Article 615 of the Code of Criminal Procedure, and therefore the right of execution, if not exercised within the aforementioned legal periods, shall be subject to the statute of limitations.

Articles 613, 614 and 615 of the Code of Criminal Procedure set the beginning of the statute of limitations in a uniform manner for all penalties, whether they are a felony, misdemeanour or mere offences.

If we are dealing with a judgment or decision in *absentia*, it must be notified (whether personally, at home or by suspension) and the appeal period expires until the calculation of the statute of limitations of the penalty begins, but before notification, the statute of limitations of the public action applies.

Section III: Symptoms of prescription

As soon as the judgment or decision becomes final, the statute of limitations of the penalty shall take effect, in the absence of any enforcement action, and therefore the non-implementation of judicial rulings or

¹ Harizi Rabia, Reasons for the expiration of the sentence and its impact on the victim's compensation, Journal of Professor and Researcher for Legal and Political Studies, Issue 06, Faculty of Law, University of Hadj Lakhdar, Batna, 2017, p. 185.

² Article 612/02 of Order No. 66-155, including the Code of Criminal Procedure, amended and supplemented, previous reference.

³ Article 613/03 of Order No. 66-155, including the Code of Criminal Procedure, amended and supplemented.

⁴ Article 09 bis added by Law No. 06-23 dated December 20, 2006, amending and supplementing Order No. 66-156, dated June 8, 1966, including the Penal Code, Official Gazette of the Algerian Republic, No. 84, issued on December 24, 2006.

⁵ Mahmoud Najib Hassani, op.cit, p. 1205.



decisions leads to the prescription of its penalty according to the periods prescribed by law, whether in felonies, misdemeanors or violations, in accordance with the provisions of Articles 613, 614 and 615 of the Code of Criminal Procedure.

However, this rule is not absolute, as the penalty may not be implemented, except that the statute of limitations of the penalty does not apply to it, and this is due to the existence of a legal or material impediment that prevents implementation, which results in the suspension of the validity of the limitation period as long as the impediment is still achieved¹, and the statute of limitations may be hindered by a reason that leads to the removal or erasure of the previous period for that reason so that a new full period begins without adding to it what has passed before it, and this is what we will address as Next:

A- Interruption of the statute of limitations of the penalty

The interruption of the statute of limitations means the occurrence of a reason that would remove the period that has passed so that after the disappearance of the reason for the interruption a new period must begin without adding to it the period that passed before², that is, the previous period is erased and a completely new period of limitation begins to be calculated, and among the reasons for the interruption of the statute of limitations we mention, for example:

- Surrender the convict to himself If the period preceding the delivery of the convict to himself is insufficient for the lapse of the penalty by prescription, once the convict delivers himself, the limitation period is interrupted, but if the penalty is a fine, the unanimous opinion that the statute of limitations is interrupted as soon as the fine is paid and the warning to pay cannot be considered a reason for the interruption of the statute of limitations, and the Public Prosecution's request to arrest the convict with a fine is not considered a reason for cutting the statute of limitations³.

Any action taken by the authority for execution if the penalties are deprivation of liberty, it is not enough to interrupt the statute of limitations, send notifications to the convicted person, place advertisements in newspapers asking the convicted person to surrender himself, search his house or write reports of an inspection of him, but he must be arrested within the time limits specified in the law without the need to send him to the penal institution, because his arrest is considered the first act of execution of the penal sentence.

Thus, in the case of the arrest of the convict, it automatically leads to the interruption of the statute of limitations and the previous period becomes as if it were not, and this is in the case of sentencing the accused to imprisonment and the non-expiry of the sentence imposed, as for the death sentence, jurisprudence agrees that it is not enough to arrest the person sentenced to death or not to execute the death sentence against him to interrupt the statute of limitations, because if the convict remains in detention for the duration of the statute of limitations stipulated in the law and the death sentence is not carried out, he benefits of prescription and the penalty shall lapse.

- The period of lapse of the penalty shall be interrupted if the convicted person commits, during the limitation period, a crime of the type of crime for which he was sentenced, or similar to it.

The convicted person commits a crime of the type of crime in which the convicted person commits that the similarity between the two crimes is real in the sense of committing a punishable theft offence and before

¹ Mahmoud Naguib Hosni, *Explanation of the Criminal Procedure Code*, Second Edition, Dar Al Nahda Al Arabiya, Cairo, 1988, p. 1210.

² Mahmoud Naguib Hosni, *op. cit.*, p. 864.

³ Pierre Emile Toubia, *The Specialized Criminal Encyclopedia, The Lapse of Criminal Time*, Part Nine, First Edition, Modern Book Foundation, Tripoli, 2003, p. 529.



the penalty is extinguished, he commits another crime of theft, interrupting the statute of limitations to start a new period from the date of the second crime¹.

The second is not required to be a felony like the first, but the first can be a felony of theft under duress, and the second is ordinary.

Nor is it sufficient to commit an offence to interrupt the statute of limitations because of the simplicity of these crimes, and because they do not reveal a serious criminal gravity.

It is not a condition for the interruption of the statute of limitations that the second crime be spent during the statute of limitations, as it is sufficient to commit the crime, as revealed by the futility of reforming the convict, and its constant danger to society².

B- Suspension of the statute of limitations of the penalty

It means the occurrence of an impediment or reason that prevents the validity of the period or its suspension and once this obstacle is removed, the calculation of the statute of limitations³ shall be completed. The suspension differs from the interruption in terms of the period preceding the suspension, as it is included in the calculation of the statute of limitations, to which the rest of the limitation period is added after the disappearance of the suspension excuse, while we find that the interruption cancels the period preceding the definitive procedure of limitation, and then a new period must begin after taking the definitive action of the statute of limitations from the day following the date of interruption.

The suspension is personal, meaning that it appears only to those in respect of whom the suspension has been investigated, while the interruption is of a specific nature, meaning that it applies to all its shareholders.

The statute of limitations shall cease whenever there is an impediment to the execution of the penalty, and this impediment is legal or material, as the legal impediment refers to any reason based on a legal rule that prohibits the public authorities in charge of execution from executing the penalty or allows them to refrain from executing it. It requires that this legal impediment not arise from the will of the convict.

Article 16⁴ of the Algerian legislature stipulates these legal impediments in the Act on the Organization of Prisons and the Social Reintegration of Detainees (6 February 2005).

- If the convicted person suffers from a serious illness incompatible with his presence in detention, if the sentenced woman is pregnant, if the period of imprisonment sentenced is less than or equal to 06 months, and a request for pardon has been submitted for her, if the convicted person is the subject of physical coercion proceedings in order not to serve a fine penalty, for which a request for pardon has been filed. A member of the convict's family, who is seriously ill or permanently disabled, or proves that he is the caretaker of the family, or proves that he participated in an examination important for his future, or the postponement is necessary to enable the convicted person to complete agricultural, industrial or handicraft works, and proves that no member of his family or employees can complete these works and that the cessation of these works results in great harm to him and his family, or his spouse is also imprisoned and His imprisonment would also cause serious harm to the children.

In all these cases, the legislator has authorized the convicted person to benefit definitively from the temporary postponement of the execution of custodial sentences. However, the legislator has set restrictions

¹ Abdel Hakim Fouda, *The Expiration of the Criminal Case and the Expiration of Its Punishment*, Mansha'at Al Maaref, Alexandria, 2005, p. 315.

² Abdel Hakim Fouda, *Ibid.*, p. 316.

³ Nabil Saqr, *The Limitation of Limitations in Algerian Legislation*, Dar Al Hoda, Algeria, 2012, p. 165.

⁴ Article 16 of Order 05-04 of February 6, 2005, containing the Law on the Organization of Prisons and the Social Reintegration of Prisoners, Official Gazette of the Algerian Republic, No. 12, issued on February 13, 2005, supplemented by Law No. 18-01 of January 30, 2018, Official Gazette of the Algerian Republic, No. 5, issued on January 30, 2018.



on such cases, which are set forth in article 17 of the same Act¹, and has limited the period of postponement of execution to no more than 06 months, and therefore the expiry of the statute of limitations continues to take effect again. Material impediment refers to material conditions that make it in fact impossible for public authorities to take measures to execute the sentence, for example, if a convicted person is captured in war, floods or occupies the area in which he resides, which is beyond the control of the convicted person.

Section IV: Effects of the statute of limitations of punishment

If the period of limitation of the penalty stipulated by the Algerian legislator in articles 613, 614 and 615 of the Code of Criminal Procedure passes without interruption or suspension or completion of that period after the interruption or after the disappearance of the legal or material impediment, according to the case that led to its suspension, or after the lapse of the period expressly prescribed by the legislator in the law for suspension, the enforcement authority, represented by the Public Prosecution, is prohibited from executing the penal judgment or decision because the lapse of the penalty due to the statute of limitations from the public order and the ruling authority must raise it automatically from itself, and this is what the Supreme Court ruled in its decision dated 16/12/1980², because the lapse of the period since the sentence issued in it is a presumption of forgetting it, in addition to urging the competent authorities to initiate the implementation of judicial rulings and follow up the convicted without procrastination.

Consequently, the prescription of the penalty shall result in the expiry of the obligation to execute the penalty and the convicted person may not apply in absentia if his sentence is time-barred for retrial³. A convicted person whose sentence has been time-barred by force of law for the duration of his life shall be subject to a prohibition of residence within the territory of the jurisdiction of the victim of the offence or his immediate heirs. A person sentenced to a life penalty if his sentence is time-barred by force of law shall also be subject to a residence ban for a period of five years from the date of completion of the limitation period⁴.

As for civil penalties issued under penal provisions and have acquired the force of *res judicata* definitively, they are time-barred in accordance with the rules of civil statute of limitations⁵, and the civil obligation shall be time-barred by the expiration of fifteen years, except in cases where a special provision is made in the law.

CONCLUSION:

We have tried, as much as possible, through this study, to address the penal statute of limitations, and the various issues related to it in a practical way, and the problems that the criminal judge may encounter, especially the provisions that are not stipulated by the Algerian legislator and need some detail and clarity. The Algerian legislature has provided for prescription as one of the reasons for the expiry of public proceedings, as stated in article 06 of the Code of Criminal Procedure, and has detailed its provisions in the provisions of articles 07, 08 and 09 of the same Code. It made exceptions to the principle of prescription of public proceedings by removing certain types of offences from the statute of limitations because of their seriousness and gravity, and stipulated them in various laws, some of which were included in article 08 bis of the Code of Criminal Procedure.

The legislator also subjected the penalty to the statute of limitations, making the latter one of the reasons for the expiry of penalties, and detailed its provisions in articles 612 to 617 of the Code of Criminal

¹ Article 17 of Order 05-04 of February 6, 2005, containing the Law on the Organization of Prisons and the Social Reintegration of Prisoners, *op. cit.*

² See the decision issued on 12/16/1980 by the Criminal Chamber in Appeal No. 844, referred to by Abdullah Suleiman, *op.cit.*, pp. 519-520.

³ See Article 616 of Order No. 66-155 dated June 8, 1966, including the Code of Criminal Procedure, as amended and supplemented, *op.cit.*

⁴ See the second and third paragraphs of the text of Article 613 of Order No. 66-155, including the Code of Criminal Procedure, amended by Order No. 75-46 dated June 17, 1975, Official Gazette, No. 53, issued on July 4, 1975.

⁵ Article 617 of Order No. 66-155 dated June 8, 1966, including the Code of Criminal Procedure, amended and supplemented.



Procedure, and has excluded some penalties from the effect of the statute of limitations stipulated in various laws, including article 612 bis of the Code of Criminal Procedure.

It is noted that there is a deficiency on the part of the Algerian legislator in stipulating the statute of limitations of the public action for some crimes without being met with the statute of limitations of the penalty, for example, the non-prescription of the public action in crimes committed against the juvenile except when he reaches the age of majority, while the statute of limitations for the penalty committed against the juvenile was not stipulated, as it was better for him to regulate this principle, especially in light of the violations to which juveniles are exposed, and the developments in the crimes committed against juveniles, such as kidnapping, indecent assault and exploitation. Which is considered among the serious crimes that threaten the entity, security and continuity of society. We also see that there are penalties that the legislator must address and not tolerate the perpetrators, and for this he must remove them from the statute of limitations, and this is through amendments and expansion of the circle of penalties to which the statute of limitations does not apply, and the penalties that should not be subject to the statute of limitations are:

First: The punishment for abduction and abuse of children, which has become widespread recently, so the legislator must put an end to this phenomenon by making its punishment not subject to statute of limitations.

Second: Punishment of crimes committed against assets to ensure family bonding, preserve values, and preserve society from division.

Third: Penalties for blood crimes This is because of the spread of the crime of murder and the replacement of lives in a way that calls for fear, whoever kills can do so several times, and therefore we believe that the legislator must not subject these crimes to the statute of limitations.

Fourth: Drug punishment Drug traffickers should not benefit from the statute of limitations because they destroy society in silence, which is the most important reason for the spread of crimes. In conclusion, we say that in view of the importance and place occupied by the criminal statute of limitations, the Algerian legislator had to reconsider the statute of limitations for certain crimes, penalties and criminals who benefit from the statute of limitations.

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