

The deadlines of Statutory Limitation of Criminal Prosecution according to the Criminal Code of Kosovo

NASER SOPJANI

PhDc. of Law

European University of Tirana, Tiranë, Albania

Lawyer in Kosovo

Abstract

The statutory limitation of the criminal prosecution is the term that in the legal language means the obsolescence, the passing of the term. The eligibility of criminal prosecution has to do with the fact that any action to be taken in terms of criminal prosecution, after the expiration of the due legal deadline is prohibited, is unlawful. Why these deadlines have been set and why they are important in the criminal procedure is that law enforcement must be vigilant and should not be delayed by undertaking the appropriate legal action. This brief paper aims to present the way in which the issue of filing criminal prosecution, the deadlines that have been set, as well as the issue related to the statute of limitation set out in the Criminal Code of Kosovo. These are: beginning, termination and end of statutory limitation on criminal prosecution. For this reason, the use of literature and other resources is limited in this paper because the author's purpose is the introduction of this institute under the Criminal Code of Kosovo, and its work as a whole is an interpretation of legal provisions. In this way, I am aware that much remains to be presented in this paper, but I believe it will be complemented by others in continuity, and this work will be used in the work of others.

Key words: Limitation, Obsolescence, Deadline, Prosecution, Criminal Code of Kosovo.

I. INTRODUCTION

Statutory limitation on criminal prosecution means the obsolescence of the possibility of prosecution or the execution of the punishment imposed. In these cases, some legal deadlines have been set up which, in turn, create new circumstances.

Those circumstances are such that for the bodies and the parties to the proceedings cause the conclusion, the impossibility of further undertaking any procedural action. Obsolescence is due to the expiration of the allotted time defined by law.

As our prosecutor prof. dr. Ismet Salihu, with the passage of time neither the prosecution nor the execution will achieve its effect, neither in terms of individual or general preventive, the situation under the pressure of the person is quite a big punishment.¹

The legal deadlines pertaining to these institutes, statutory limitation on criminal prosecution and statutory limitation on criminal prosecution of the execution of the punishment are set forth in the Criminal Code of Kosovo.

Lawmakers have determined that no prosecution or any execution of the sentence may be enforced. This has to do precisely with the offenses defined in sub-section 111 of the CCK, for which there is no statute of limitation.

Article 111 of the CCK has determined decisively that we do not have a legal limitation on prosecution when it comes to criminal offenses pertaining to genocide, war crimes and crimes against humanity. This is the first category of offenses that are not prescribed.

The second category for non-prescription is also those offenses that are defined by international law as offenses that are not prescribed.

¹ Salihu, Ismet, Criminal Law, General Part, 2003, Prishtinë, p.559.

The third has to do with the offense of serious murder, which is also not legal limitation on prosecution.²

II. Statutory limitation on criminal prosecution according of Criminal Code of Kosovo

The institute of legal limitation on prosecution is defined in Article 106 of the CCK.

This article lays down certain deadlines related to the statutory limitation, for which deadlines, with the passage of criminal prosecution, can not be taken:

“1.1. thirty (30) years from the commission of a criminal offense punishable by lifelong imprisonment;

1.2. twenty (20) years from the commission of a criminal offense punishable by imprisonment of more than ten (10) years;

1.3. ten (10) years from the commission of a criminal offense punishable by imprisonment of more than five (5) years;

1.4. five (5) years from the commission of a criminal offense punishable by imprisonment of more than three (3) years.

1.5. three (3) years from the commission of a criminal offense punishable by imprisonment of more than one (1) year; and

1.6. two (2) years from the commission of a criminal offense punishable by imprisonment up to one (1) year or punishment of a fine..”³

The lawmaker has determined the manner of calculating the statutory limitation period for cases when the criminal offense is committed for which the offense is foreseen for more than one punishment. In these cases, the statutory limitation period is

² Albania's criminal code does not specify the serious murder as an offense that is not prescribed. Nor do you know the circumstance of double the limit of the statutory limitation, or as some "absolute prescription". Then, if we compare the limits of prescription, Kosovo has the longer deadlines for reaching the statutory limitation period, both prosecution and execution. In more detail: Criminal Code of the Republic of Albania, approved by law no. 7895, dated 27.1.1995, published December 2014, articles 66, 67 and 68)

³ CCK, 2013, n.106, p.1.

determined according to the most severe punishment imposed for that offense.

2.1. The beginning, termination and passing of double the statutory limitation period of criminal prosecution

Given that statute-limitation is a very important institution, which directly affects and binds the parties in undertaking or terminating certain actions, it is important to analyze some specific aspects.

It is about the moment when the statutory limitation begins or is over. It is about the moment when the statutory limitation period expires and that period does not count towards the statutory limitation period.

And it is at present what happens if the double limit of the statutory limit set in the provisions of the Criminal Code of Kosovo.

In the following we will talk about each circumstance separately.

2.1.1. The beginning of the limitation of criminal prosecution

When the calculation of the statutory limitation period of the prosecution begins, it is defined in Article 107 par. 1 and 2 of the CCK.

Three cases have been defined which deal with the accuracy of the starting point of calculating the statutory limitation period.

First, it is determined that the statutory limitation period begins to be counted from the day the offense was committed. So, from the moment when the offense was committed.

Second, it is when it comes to the consequences that arise later, after the moment of action, and those consequences are constituent elements of the offense.

In cases where the consequences occur later, the statutory limitation period shall be calculated from the time of the occurrence of the consequence.

Third, it is when we are dealing with criminal offenses committed against persons under the age of eighteen (18) years. These are special cases, and the period of statutory limitation begins to count from the day the victim reaches eighteen (18) years of age.

Since the offense can be committed even when it remains attempted, it remains unfulfilled. Even in these offenses, prescription will be achieved in the same way as would have been prescribed even if the offense had been committed. Here the statutory limitation periods are the same as for the criminal offense committed.⁴

Special cases are also some other criminal cases, which may in the first instance misrepresent the timing of the commencement of the statutory limitation. It is about the criminal offense of usurpation of immovable property, where the statutory limitation period stems from the day of release or release of property, not the day when the property is occupied.

Then, since we are dealing with criminal offenses which are considered as continuing criminal offenses, then in these cases the statutory limitation will be divided in such a way that *“the court by a verdict will decide on the rejection of the charge for the criminal offense for which the statutory limitation has been reached, while for the rest it will decide on merit”*⁵.

2.1.2. Termination of statutory limitation on criminal prosecution

The lawmaker has determined that the statutory limitation period does not come from the moment when the criminal

⁴ Elezi, Ismet; Kaçup, Skender; Haxhia, R. Maxim, Commentary of the Criminal Code of the Republic of Albania, Tirana, 2006, p. 285.

⁵ Kosovo Judicial Institute, Criminal Proceedings Manual, Pristina, 2015, p. 166.

offense is committed or when the above mentioned circumstances exist, as described above.

The provisions of Article 107 have laid down certain circumstances which are not necessarily the only circumstances which interrupt the passing of the statutory limitation period. These circumstances are listed this way, but as the lawmaker says:

- “3.1. when the perpetrator is outside of the Republic of Kosovo and this causes a delay of proceedings;
- 3.2. when the perpetrator is wanted by arrest warrant;
- 3.3. when the Chief State Prosecutor, in accordance with the Code of Criminal Procedure, seeks to obtain evidence from outside of the Republic of Kosovo; or
- 3.4. during the guilty plea procedure..”⁶

Based on these circumstances it is understood that the statute of limitations is terminated if the perpetrator is not in the Republic of Kosovo and the same is inaccessible to the organs.

The statute of limitation does not go in the cases when a warrant was issued for the perpetrator and the same is being searched.

Also, the statutory limitation period does not go even then there are ongoing investigations by the Prosecutor's Office and the case is underway to provide evidence through international legal assistance from outside the Republic of Kosovo.

As a listed circumstance is also determined the time during which the perpetrator is in the process of pleading guilty for the criminal offense and these negotiations do not stop the statute of limitation.

The statutory limitation period shall also be terminated by undertaking any action in respect of the criminal offense committed.

⁶ CCK, 2013, n.107, p.3.

Such action may be the taking of statements, the application of covert measures, certain powers given to the police for concrete or general actions, requests for legal aid, requests for examinations, etc.

Such a case that the statutory limitation is interrupted is the questioning of the criminal charges itself, even if it has not yet initiated formal investigation.⁷

Another special circumstance that interrupts the statutory limitation period is the commission of the new offense by the perpetrator. That is, if the perpetrator commits a criminal offense while the statute of limitation is being calculated, it is terminated.

In these cases it is a condition that the offense committed must be of the same or more serious weight than the offense for which the statute of limitation is being calculated.

These are the circumstances that stop the statutory limitation period, and these actions are resumed from the beginning of the statute of limitation.

These circumstances that are listed, the lawmaker has again left open options and other cases that stop the statutory limitation, which are determined depending on the particular case.

2.1.3. Passing double the prescription deadline for prosecution

Since the legislator has the main purpose of preventing the perpetrator from escaping without being punished, he has determined the circumstances of the termination of statutory limitation of the criminal prosecution.

The follower is favoured in relation to the defendant, which in reality thus also acts against the principle of the presumption of innocence.

⁷ Decision of the Kosovo Court of Appeal PAKR 442/13 dated 02.04.2014, page 9.

This has to do with whether the prosecution carries out any action which has no procedural value or probative value, in which case the act ceases to be statutory.

Such a case may be the repetition of the general authorizations given to the police, without any specific guidance. This in practice occurs only in order to stop the the statutory limitation of criminal prosecution.

Still, the lawmaker has determined that in the infinity can not be expected the undertaking of various actions which would evaluate that the term of the statute of limitation ceases. In this way, if double the deadline for prescription of criminal prosecution is exceeded, prosecution is automatically stopped.⁸

In practice, the duplication of this deadline for prosecution is also called absolute statutory limitation of prosecution.

Although legally such a qualification is unnecessary, because the statute of limitation is statute-limitation and has nothing to do with the relative or the absolute, the term "absolute" is used by the court, the prosecution and the other parties.

Table 1: Tabular presentation of deadlines for the statutory limitation of criminal prosecution.

Penalty for criminal offense under the CCK	Deadline Limitations
Eternal imprisonment	30 years
Imprisonment over 10 years	20 years
Imprisonment over 5 years	10 years
Imprisonment over 3 years	5 years
Imprisonment over 1 year	3 years
Imprisonment up to 1 year	2 years
Fine imprisonment	2 years

⁸ CCK, 2013, n.107, p.8.

III. CONCLUSIONS

Regarding the Institute of Statutory Limitation and issues arising from this institute, some of the main findings related to the work object are presented below:

- ✚ The statutory limitation is the obsolescence of the possibility of prosecution.
- ✚ We have no statutory limitation for offenses related to genocide, war crimes, crimes against humanity, offenses that are defined under international law as such, and serious crime killing 111 of the CCK.
 - CRIMINAL TRIAL MUST BE STOPPED IF:
 - Two (2) years from the commission of a criminal offense punishable by up to one (1) year of imprisonment or fine, as the shortest term.
 - thirty (30) years from the commission of a criminal offense punishable by life imprisonment as the longer term.
- ✚ The statutory limitation begins:
 - from the day when the offense was committed.
 - when it comes to the consequences that arise later, after the moment of action, from the time of the occurrence of the consequence.
 - when dealing with criminal offenses committed against persons under eighteen (18) years from the day the victim reaches the age of eighteen (18).
- ✚ The statute of limitations is terminated:
 - When the perpetrator is not in the Republic of Kosovo and the same is inaccessible to the organs.
 - When a warrant has been issued against the perpetrator.
 - When investigations are underway by the Prosecutor's Office and the case is underway to

provide evidence through international legal assistance from outside the Republic of Kosovo.

- When the perpetrator is in the process of pleading guilty to the criminal offense.
- When the perpetrator commits a new criminal offense which by weight is the same or more severe.
- When passing twice the limitation period of prosecution.

REFERENCES:

1. Salihu, Ismet, *Criminal Law, General Part*, 2003, Prishtinë, p.559.
2. *Criminal Code of the Republic of Albania*, Tirana, 2014.
3. *Criminal Code of Kosovo*, Pristina, 2013.
4. Elezi, Ismet; Kaçup, Skender; Haxhia, R. Maxim, *Commentary of the Criminal Code of the Republic of Albania*, Tirana, 2006.
5. Kosovo Judicial Institute, *Criminal Proceedings Manual*, Pristina, 2015.
6. Decision of the Kosovo Court of Appeal PAKR 442/13 dated 02.04.2014.