

The statutory limitation of crimes in the Greek legal order La prescrizione nell' ordinamento giuridico greco

di Athina Sachoulidou, PhD* e Christos Lampakis, PhD**

Abstract: This article presents the key features of the statute of limitations in Greek criminal law – with a focus on the legal nature of the institution and the specific rules that govern the limitation period, including its commencement and suspension. On this basis, it also addresses the question of whether recent choices of the Greek legislator related, whether directly or indirectly, to the statute of limitations or similar institutions coupled with the Greek reality manage to strike a balance between the interests of the State, the victim and the offender.

Keywords: Greek criminal law, statute of limitations, limitation period, suspension of the limitation period

3765

1. Introduction

The statutory limitation of crimes is widely perceived as an integral part of national criminal law both within and beyond the European Union (hereinafter EU). It finds a clear manifestation in the case-law of the European Court of Human Rights (hereinafter ECtHR), which refers to 'the statutory right of an offender not to be prosecuted or tried *after the lapse of a certain period of time since the offence was committed*' (emphasis added).¹ That short statement might serve as a starting point for examining the limitation rules in criminal matters at domestic level, but should not, nor does, imply that those rules are shaped and enforced identically or even similarly across different legal orders. Even when limiting the scope of the analysis to countries following the same legal tradition, and particularly those complying with continental standards, the

* Athina Sachoulidou is responsible for Section 1, 4 and 5. She also edited the text as a whole and translated it into English.

** Christos Lampakis is responsible for Section 2, 3 and 5.

¹ ECtHR Judgments of 22 October 1996 'Stubbings and Others v. UK', CE: ECHR:1995:0222REP002208393, § 51, and 22 June 2000 'Coëme and Others v. Belgium', CE:ECHR:2000:0622JUD003249296, § 146, cited by Directorate-General for Library, Research and Documentation, *Research Note. Limitation rules in criminal matters*, May 2017, § 1.

statute of limitations remains a rather complex institution, the legal nature of which is controversial and the regulation of which differs considerably from one State to another.² And that, coupled with the specificities of each legal order, inevitably impacts on the *modus operandi* within the national courtrooms and beyond, namely at the crossroads of criminal law and politics.

Against this backdrop, this article is designed as part of a Special Issue that seeks to approach the statute of limitations in the light of various criminal legislations by adopting a comparative point of view. In this context, it specifically looks at the *Greek legal order* and the rules the latter provides for regarding the so-called ‘limitation on the offence’ (following the terminology adopted by the Greek legislator), i.e., the time limit after which a prosecution may not be brought.³ In doing so, it also revisits the decisions recently reached by the Greek legislator in this specific field of regulation *lato sensu*, with a twofold aim: to identify successes and shortcomings and to ‘expose’ those decisions to an assessment beyond national boundaries. In this sense, it is aligned with the targets set by the Special Issue which suggests such an assessment in terms of a ‘good practice when faced with an impasse’.

The main analysis is divided into three parts: The first part is devoted to the presentation of the key features of limitation in criminal matters in the Greek legal order (Section 2). In this context, the focus lies on the definition and the justification, the historical background, and most importantly the legal nature and the structure of the institution in Greek criminal law. In the second part, the spotlight is turned on the specific rules governing the limitation time frame, the starting point and the suspension of the limitation period as well as the exceptions to those rules (Section 3). The third part of the analysis sets the goal of examining critically recent legislative choices related, whether directly or indirectly, to the limitation in criminal matters or similar (but autonomous) institutions that – when coupled with the Greek (judicial) reality – seem to impact on the balance (ideally) inherent in the regulation of limitation; that is, the balance between the interest of the State to protect the citizens’ legal interests and that of individuals, whether as offenders or victims, to enjoy the protection they are entitled to (Section 4). That last part of the analysis also looks at the legal position of suspects and accused persons – with an emphasis on the criminal procedural rights as enshrined in binding supranational rules, which have been transposed into domestic law.

Before proceeding with the main analysis as outlined above, it is worthy to briefly shape its context, as Greece has recently experienced an

² See Directorate-General for Library, Research and Documentation, *op cit.*, § 3.

³ That said, the Greek rules setting a time limit for the enforcement of a sentence fall out of this article’s scope.

overall reform in the field of criminal law⁴ – with both the Criminal Code and the Code of Criminal Procedure being radically amended. The new Codes (Act 4619/2019⁵ and Act 4620/2019⁶ respectively) entered into force on 1 July 2019 with the aim of rationalising criminal repression, improving the efficiency of the criminal justice system and enhancing the protection of fundamental rights in the same area.

In the case of the Greek Criminal Code (hereinafter GrCC), that reform included, *inter alia*, the modernisation of the system of penalties (through, for instance, the introduction of the new penalty of community service and the calculation of financial penalties in daily units)⁷ and the adoption of a more rational (and lenient) criminal policy reflected in ‘courageous’ decriminalisations (for instance, through the abolition of the whole category of the so-called petty offences) and the conversion of crimes formerly codified as felonies into misdemeanours. This kind of re-assessment and re-categorisation of criminal offences and, particularly, the respective amendments undertaken in the realm of property offences have been criticised in certain cases due to the considerable systematicity and internal coherence related problems they have caused.⁸ As will be shown in what follows, there have been no ground-breaking changes in the design of the limitation regime *per se* compared to that introduced by the previous GrCC – at least as far as most of the respective provisions entailed in the General Part are concerned. However, the interventions undertaken, *inter alia*, in the GrCC’s Special Part may impact (and have already done so) on the ongoing criminal prosecution of crimes, which were turned into misdemeanours and, thus, became time-barred within a shorter period of time. Besides, the 2019 GrCC has already been subject to various amendments – with the most recent one taking place in November 2021 through the Act 4855/2021. As will be shown, the latter provides for new rules as regards the suspension of the limitation period in the case of misdemeanours and felonies committed against minors.

Shifting the focus on the Greek Code of Criminal Procedure (hereinafter GrCCP), one of the major goals set in the context of its reform⁹ has been to complement the traditional adjudication model with

⁴ See the overview provided by A. Psarouda-Benaki, *Criminal justice related problems in Greece and the new Criminal Codes (Προβλήματα της Ποινικής Δικαιοσύνης στην Ελλάδα και οι νέοι Ποινικοί Κώδικες)*, in *Poinika Chronika* (2020), 3 ff.

⁵ As amended by: Act 4623/2019; Act 4637/2019; 4777/2021; and, most recently, by Act 4855/2021.

⁶ As amended by: Act 4637/2019; Act 4745/2020; and, most recently, by Act 4855/2021.

⁷ See, for instance, E. Symeonidou-Kastanidou, *The system of penalties in the Greek criminal law (Το σύστημα ποινών στο ελληνικό ποινικό δίκαιο)*, in *Poinika Chronika* (2020), 81 ff.

⁸ See M. Kaiafa-Gbandi, *Basic rule-of-law principles, the new Criminal Code and its amendments (Βασικές αρχές του κράτους δικαίου, ο νέος Ποινικός Κώδικας και οι τροποποιήσεις του)*, in *Poinika Chronika* (2020), 170 ff.

⁹ See, for instance, Ch. Karampelis, *The main changes brought about by the adoption of the new Criminal Code and the new Code of Criminal Procedure since 1.7.2019 (Οι*

alternative mechanisms, such as the institutions of plea bargaining and criminal conciliation, in order to unload criminal justice authorities and increase their operational efficiency. Additionally, seeking to align the national law with the ECtHR case-law and the EU Directives adopted in the context of the EU Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (issued by the Council on 30 November 2009)¹⁰, the new GrCCP improves the legal position and particularly the rights of suspects and defendants. Against this background, the following analysis will seek to address, among other things, the question of how limitation rules and procedural rights coexist and interact with each other in the Greek judicial reality and beyond in respect of cases that first reach mass media and later the competent authorities.

In this context, the subsequent analysis also takes into consideration the trend of over-frequent legislative changes in Greece. The latter becomes relevant inasmuch as those changes, which are not always undertaken in the context of the organised amendment of criminal legislation, may have an indirect impact on the limitation of crimes.

2. Key features of limitation rules in Greek criminal law

a. How to define and to justify the ‘statute of limitations’

The statutory limitation of crimes refers to the expiration of the State’s claim to punish an indictable act after the lapse of a certain period of time.¹¹ That institution serves multiple purposes – using the self-evident fact of

βασικότερες αλλαγές που επέρχονται διά της ψήφισης νέου Ποινικού Κώδικα και νέου Κώδικα Ποινικής Δικονομίας στην Ελλάδα από 1.7.2019), in *Poiniki Dikaiosyni* (2019), 787 ff.

¹⁰ In this context, the EU has adopted, *inter alia*, six Directives providing for the rights to interpretation and translation (Directive 2010/64/EU), the right to information (Directive 2012/13/EU), the right to access to a lawyer (Directive 2013/48/EU), the right to legal aid (Directive 2016/1919/EU), the presumption of innocence (Directive 2016/343/EU), and procedural safeguards for children suspected or accused in criminal proceedings (Directive 2016/800/EU). See C. Riehle/A. Clozel, *10 years after the roadmap: procedural rights in criminal proceedings in the EU today*, in 20 *Era Forum* (2020), 321 ff.

¹¹ Ch. Lampakis, in N. Androulakis, L. Margaritis, I. Farsedakis (Eds), *Dictionary of Legal Terminology, Criminal Law & Criminology* (Λεξικό Νομικής Ορολογίας, Ποινικό Δίκαιο & Εγκληματολογία), Vol. 3, Athens, 2018, 475; N. Androulakis, *Criminal Law. General Part, III. Concurrent offences – Statute of Limitations* (Ποινικό Δίκαιο. Γενικό Μέρος, III. Συμροή – Παραγραφή), Athens, 2008, 89 f.; M. Kaiafa-Gbandi, in M. Kaiafa-Gbandi, N. Bitzilekis, E. Symeonidou-Kastanidou (Eds), *Law of Criminal Sanctions* (Δίκαιο των Ποινικών Κυρώσεων), 3rd ed, Athens, 2020, 239; L. Margaritis, in L. Margaritis, N. Paraskevopoulos, G. Nouskalis (Eds), *Penology* (Ποινολογία), 8th ed, Athens, 2020, 137; Ch. Mylonopoulos, *Criminal Law. General Part* (Ποινικό Δίκαιο. Γενικό Μέρος), 2nd ed, Athens, 2020, 1017.

‘alteration’ associated with the passage of time¹² as a starting point and codifying the latter with regard to the relation ‘legal interest – crime – sanction’. In this way, it introduces a phenomenon already existing in the physical world into statutory law.¹³ The statute of limitations also enhances and serves – among the purposes of criminal punishment – the special prevention inasmuch as it prevents the potentially ‘violent’ (due to the passage of a long period of time) separation of the alleged offender from the social web at a point, when his/her social and personal conditions and, thus, his/her personal identity¹⁴ will have already been changed. *A contrario*, the lack of limitation rules or equivalent institutions would be a representative example of a retributive penal system, where the sentence constitutes a ‘cold-blooded’ violation against the offender.¹⁵

Besides this, the deteriorating effect of time brings about significant ‘alterations’ concerning the evidence material. This might give rise to a risk of issuing court decisions based on wrongful judgments – with the result that the trial as a whole might lose its functional purpose, regardless of whether the alteration of the evidence is in favour of or against the interests of the accused person.¹⁶ Finally, the statute of limitations is justified implicitly, given that, after the lapse of a certain period of time, the State’s ability to arrest and to punish offenders is put into question.

In other words, the codification of limitation rules reflects the ‘distillation’ of a balancing exercise between conflict interests – ultimately leading to a self-preservation of the State power by setting temporal limits to criminal repression.

b. A brief historical overview

The statute of limitations was adopted by almost all criminal laws of the Modern Greek State. The respective provisions appeared for the first time in 1829 under the government of Ioannis Kapodistrias. More specifically, the so-called Criminal Procedure (*Egklimatiki Diadikasia*)¹⁷, which followed the 19th Resolution¹⁸ that officially established the principle of leniency as

¹² See I. Manoledakis, *Criminal Law. General Theory* (Ποινικό Δίκαιο. Γενική Θεωρία), Athens-Thessaloniki, 2004, 994.

¹³ Ch. Lampakis, *Statute of limitations in substantive criminal law* (Η παραγραφή των εγκλημάτων στο ουσιαστικό ποινικό δίκαιο), PhD thesis, Thessaloniki, 2021, 151.

¹⁴ See N. Androulakis, *op cit.*, 92; N. Androulakis, *Schuldbemessung und personale Identität*, in ZStW (1970), 515 ff.

¹⁵ I. Manoledakis, *Criminal Law op cit.*, 994 ff.; 1006 ff.; N. Androulakis, *op cit.*, 91; Ch. Lampakis, *Statute of limitations op cit.*, 151.

¹⁶ See I. Manoledakis, *Criminal Law op cit.*, 1007; M. Kaiafa-Gbandi, in *Law of Criminal Sanctions op cit.*, 264 f.; L. Margaritis, in *Penology op cit.*, 210 f.

¹⁷ 1st Resolution No. 11924/6.5.1829. Cf. T. Filippidis, *Criminal Legislation during the National Revolt* (Η Ποινική Νομοθεσία κατά την Εθνεγερσία), Thessaloniki, 1974, 57 f.

¹⁸ 19th Resolution No. 8268/15.9.1828 regarding Court’s Organisation (‘Περί Διοργανισμού των Δικαστηρίων’).

the foundation of criminal justice administration (Art. 38 [2]),¹⁹ codified a 5-year limitation period for serious offences and a 2-year one for all other offences. That said, the prevalence of the statute of limitations in the Modern Greek State coincides with the transition to the phase of leniency in the historical development of criminal punishment.

Subsequently, limitation rules were included in Art. 119–122 of the so-called Criminal Law (*Poinikos Nomos*; hereinafter CL), which was in force from 1834 to 1950 and was based on the Bavarian Criminal Code of 1813 and its subsequent drafts of 1822, 1827 and 1832.²⁰ The Greek legislator of that time paid particular attention to the moral improvement of the offender.²¹ This is why, according to Art. 119 CL, the statute of limitations would only apply, if the offender had not been found guilty of having committed a new felony or misdemeanour. Art. 120 CL determined the limitation time frame using two criteria: 1) whether the crime concerned was a felony, a misdemeanour or a petty offence; and 2) whether the crime concerned was to be prosecuted upon complaint or *ex officio*.²² After having been amended in 1910, the same article provided for: 1) a 2-year limitation period in the case of felonies prosecuted upon complaint and a 7-year one for all other felonies; and 2) a 1-year limitation period for misdemeanours prosecuted upon complaint and a 3-year one for the rest. According to Art. 121 CL, the limitation period began to run from the moment the crime has been committed onwards.

Limitation rules were subsequently included in Art. 111–113 of the Criminal Code of 1950 (hereinafter 1950 GrCC) that remained in force until 30 June 2019. The new GrCC entails provisions with *almost* identical content. Those will be analysed in turn (see particularly Section 3).

c. The legal nature of limitation rules

Following the prevailing opinion in the Greek case-law²³ and criminal law theory, the statute of limitations is to be classified – as far as its legal nature is concerned – as a ground upon which punishability can be eliminated, and, thus, as an institution of substantive criminal law

¹⁹ Cf. T. Filippidis, *op cit.*, 58 f.

²⁰ I. Zisiadis, *The limitation in criminal matters (Η ποινική παραγραφή)*, Athens-Thessaloniki, 1954, 44.

²¹ I. Zisiadis, *op cit.*, 44; T. Iliopoulos, *The system of the Greek Criminal Law (Σύστημα του Ελληνικού Ποινικού Δικαίου)*, Vol. 1, Athens, 1927, 469.

²² See T. Iliopoulos, *op cit.*, 469; K. Kostis, *Interpretation of the Greek Criminal Law (Ερμηνεία του εν Ελλάδι ισχύοντος Ποινικού Νόμου)*, 4th ed, Athens, 1926, 478.

²³ See, for instance, Greek Supreme Court ‘Areios Pagos’ (hereinafter AP), sitting in plenary session (hereinafter PS), 11/2001, in *Poinika Chronika* (2001), 792; PS of AP 2/2013, in *Poiniki Dikaïosyni* (2013), 483; AP 353/2006, in *Poinika Chronika* (2006), 887; AP 51/2011, in *Poiniki Dikaïosyni* (2011), 823; AP 416/2012, in *Poiniki Dikaïosyni* (2012), 224.

(similarly, in Spain, Italy, Latvia, Romania and Sweden)²⁴. In this sense, it is no coincidence that the respective provisions have been included in the General Part of the GrCC. Against this backdrop, the principal effect of limitation in criminal matters is to render the act concerned non-punishable, while the suspension of the criminal prosecution only constitutes a secondary effect of procedural nature.

The main consequence of that choice is the application of the principles pertaining to the fundamental tenet ‘nullum crimen nulla poena sine lege’ and, particularly, the principle of non-retroactivity of the more severe criminal law as well as of the principle enshrined in Art. 2 GrCC regarding the retroactivity of the more lenient criminal law in the field of limitation rules.²⁵ Those fundamental principles are applicable to the whole spectrum of the limitation period, i.e., the time framework as such, the commencement and the suspension of the limitation period.

Should different laws entailing limitation rules be issued in the period between the commission of a crime and the trial, the rules most favourable to the concrete offender shall be applied; that is, the rules: 1) providing for a shorter limitation period,²⁶ 2) placing the commencement of the limitation period²⁷ or the time of the commission of the crime at an earlier stage, 3) not providing for²⁸ or revoking an existing possibility of suspending the limitation period,²⁹ but also those providing for a shorter period of suspension³⁰ or placing the commencement of the latter at a later stage or the end of it at an earlier one,³¹ and 4) although not directly related to limitation as such, indirectly leading to one of the results mentioned above, such as a rule converting, for instance, a criminal offence from a felony to a misdemeanour, fact that automatically results in the shortening of the limitation period.

²⁴ Directorate-General for Library, Research and Documentation, *op. cit.*, § 16.

²⁵ See, for instance, N. Chorafas, *Criminal Law (Ποινικόν Δίκαιον)* edited by K. Stamatis, 9th ed, Athens, 1978, 68; N. Androulakis, *op. cit.*, 93 ff.; M. Kaiafa-Gbandi, in *Law of Criminal Sanctions op cit.*, 268 f.; L. Kotsalis, *Criminal Law. General Part (Ποινικό Δίκαιο. Γενικό Μέρος)*, 2nd ed, Athens, 2013, 57; A. Kostaras, *Notions and Institutions of Criminal Law (Έννοιες και Θεσμοί του Ποινικού Δικαίου)*, Athens, 2016, 519; L. Margaritis, in *Penology op cit.*, 196; I. Manoledakis, *Criminal Law op cit.*, 1014 f.; Ch. Mylonopoulos, *op cit.*, 71; N. Paraskevopoulos, *The Foundations of Criminal Law. General Part: The Crime (Τα θεμέλια του ποινικού δικαίου. Γενικό Μέρος: Το έγκλημα)*, Thessaloniki, 2008, 65; A. Charalampakis, *Synopsis of Criminal Law. General Part I. The Crime (Σύνοψη Ποινικού Δικαίου. Γενικό Μέρος I. Το έγκλημα)*, Athens, 2010, 171.

²⁶ See, for instance, AP 398/1952, in *Poinika Chronika* (1952), 506; AP 1083/2011.

²⁷ Cf., for instance, AP Council 1926/2004, in *Poinikos Logos* (2004), 2327; AP Council 1327/2003, in *Poinikos Logos* (2003), 1503; AP 1443/2013.

²⁸ See, for instance, Misdemeanour Court Council 1621/1995, in *Poinika Chronika* (1996), 934; PS of AP 759/1988, in *Poinika Chronika* (1988), 876.

²⁹ PS of AP 2/2013, in *Poinika Chronika* (2013), 483.

³⁰ *A contrario* AP 1079/1990, in *Yperaspisi* (1991), 616.

³¹ AP 128/1952, in *Poinika Chronika* (1952), 235.

d. The structure of the limitation rules in the Greek Criminal Code and Special Criminal Laws

The limitation rules are included in Art. 111–113 GrCC. Art. 111 GrCC entails the provisions on the limitation period, Art. 112 GrCC provides for the commencement of the limitation period, and Art. 113 GrCC regulates its suspension. Exceptions to those rules can be found either in the Special Part of the GrCC or in the so-called Special Criminal Laws.

Attempting to systematically map those rules, it becomes apparent that those directly depend, in terms of structure, on other provisions pertaining to criminal law or other branches of law. For instance, to determine the limitation period and, more importantly, the commencement or the suspension of it, one has to rely upon a *group of provisions* rather than a single central provision, since the latter will usually refer to another/other provision(s). The provisions referred to might not regulate the limitation period as such, but they remain closely linked to it. They define it (together with the central provision) – creating in that way a *compact set of rules*, the absence of any of which leads to a legislative vacuum. Therefore, the normative content of the provisions referred to becomes – through explicit or implicit references in terms of a law-making method³² – the content of those directly related to the limitation period.³³ For instance, according to Art. 112 GrCC, the limitation period begins on the day the crime has been committed. To determine the latter, it is necessary to refer to Art. 17 GrCC, which codifies the time of commission of a criminal offence. In this sense, the provisions of Art. 112 and 17 GrCC create a group of provisions inextricably linked to the determination of the point from which on the limitation period begins to run.

That remark is of central importance when addressing issues related to the effect of the *nullum crimen nulla poena sine lege* principle, and particularly those related to the determination of the scope of the prohibition on retroactivity of the more severe law and the retroactive application of the more lenient one.

3. The main body of the Greek statutory limitation rules in criminal matters

a. The limitation period

³² M. Kypraios, *Law-making through reference* (*Η νομοθέτησις κατά παραπομπήν*), in *Nomiko Vima* (1959), 648

³³ Cf. Th. Papakyriakou, *Tax Criminal Law* (*Φορολογικό Ποινικό Δίκαιο*), Athens-Thessaloniki, 2005, 288.

aa. The rule of Art. 111 GrCC

Art. 111 GrCC regulates the limitation period in accordance with the gravity of the criminal offence at stake. The felonies, for which life sentence is threatened in law, become time-barred after twenty years (Art. 111 [2a] GrCC), while the limitation period shall expire in respect of other felonies after fifteen years (Art. 111 [2b] GrCC). Misdemeanours become time-barred after five years (Art. 111 [3] GrCC).

In doing so, Art. 111 GrCC adopts the distinction between felonies and misdemeanours, introduced by Art. 18 GrCC³⁴ and based on the penalty threatened in law. Before the amendment of Art. 18 GrCC, i.e., before the abolition of petty offences as a category of crimes by Art. 478 GrCC, Art. 111 GrCC was designed on the basis of the tripartite distinction of crimes (felonies; misdemeanours; petty offences). Both the former and the current design of Art. 111 GrCC make clear that the gravity of the offence is the only criterion for determining the limitation period.³⁵ In respect of felonies, there is, though, an additional ‘internal differentiation’ of the limitation period depending on the penalty threatened in law.

As far as the duration of the limitation period is concerned, the new GrCC follows the paradigm of the 1950 GrCC. During the preparatory proceedings of the Law-Making Committee, the possibility of extending the limitation period in respect of particularly serious misdemeanours (for which a term of imprisonment of at least three years is threatened in law) was examined, but rejected considering the fact that ‘in many other European countries, the limitation period for misdemeanours is considerably shorter’.³⁶ Besides this, neither the draft GrCC prepared by the *Manoledakis* Commission (Art. 83) nor the one prepared by the *Markis* Commission, namely the preceding drafts, upon which the new GrCC was based, entailed a different provision. That implies that the limitation period has never been actively renegotiated – despite the occasional objections expressed in the scholarship with regard to the adequacy of the duration of the limitation period.³⁷ Nevertheless, the current GrCC provides for broader limitation periods compared to both the CL (see Section 2b) and the 1924 Draft GrCC (Art. 94 of which provided for a 20-year limitation for felonies punishable with the capital penalty or life imprisonment and a

³⁴ ‘Criminal offences are divided into felonies and misdemeanours. Every act, for which life imprisonment or long-term imprisonment is provided, is a felony. Every act, for which imprisonment or juvenile detention or just financial or community service penalty is provided, is a misdemeanour’ (unofficial translation).

³⁵ M. Kaiafa-Gbandi, in *Law of Criminal Sanctions op cit.*, 269.

³⁶ *Explanatory Memorandum of Draft 2019 GrCC*, Art. 111, 27.

³⁷ See, for instance, N. Androulakis, *op cit.*, 96; Ch. Giotis, *International crimes and the statute of limitations* (*Τα διεθνή εγκλήματα και ο θεσμός της παραγραφής*), in *Armenopoulos* (1967), 465 ff.; 473.

10-year-one for the rest of felonies). Those were adapted to the then new trends in the European criminal legislation of 1920s–1930s, namely when the drafting of the 1950 GrCC also begun. The latter provided for a similar time framework.

Re-shifting the focus on the current version of Art. 111 GrCC, in the case of sentences of different gravity disjunctively threatened in respect of the same crime, the limitation period shall be determined on the basis of the more severe penalty (Art. 111 [5] GrCC). Finally, the criminal offences committed by minors that can be held accountable, namely those being fifteen to eighteen years old, are always considered misdemeanours in Greek criminal law (Art. 54; 126 [2]; 127 GrCC)³⁸ – irrespective of whether they would be classified as misdemeanours or felonies, if committed by an adult. Therefore, they become time-barred in five years after they have been committed.³⁹

bb. Exceptions

Exceptions to the limitation period related rules can be found, as mentioned above, either in the Special Part of the GrCC or in Special Criminal laws. They prevail over the general rule – in accordance with the general principle enshrined in Art. 12 GrCC dictating that the application of the General Part of the GrCC to Special Criminal Laws is in principle subsidiary, unless those do not expressly provide otherwise.⁴⁰ Those exceptions pertain to two opposing trends – depending on whether they shorten or lengthen the limitation period provided for in Art. 111 GrCC.⁴¹

The *first category* of exceptions (corresponding to the trend of shortening the limitation period) includes today only Art. 4 Act 265/1976 on the Liability of the President of the Greek Republic (hereinafter PGrR). Other exceptions of this kind were abolished, when the new GrCC entered into force

More specifically, the GrCC *no longer* provides for a 6-month limitation period in the case of insults against the honour of the head of a foreign State (cf. Art. 153 [3] 1950 GrCC) or the assault (felony) against the PGrR or the insult against the honour (misdemeanour) of him/her (cf. Art. 168 [3] 1950 GrCC) – a limitation period that was considerably shorter compared to the one provided for in Art. 111 GrCC in respect of crimes of equal gravity. That exception was justified upon the need to

³⁸ See E. Symeonidou-Kastanidou, in M. Kaiafa-Gbandi, N. Bitzilekis, E. Symeonidou-Kastanidou (Eds), *Law of Criminal Sanctions (Δίκαιο των Ποινικών Κυρώσεων)*, 3rd ed, Athens, 2020, 41.

³⁹ M. Kaiafa-Gbandi, in *Law of Criminal Sanctions op cit.*, 248.

⁴⁰ See K. Stamatis, Art. 12, in N. Androulakis, D. Spinellis (Eds), *Systematic Interpretation of Criminal Code (Συστηματική Ερμηνεία ΠΚ)*, Athens, 2005, 103 (par. 2).

⁴¹ Ch. Lampakis, *Statute of limitations op cit.*, 276.

clarify the violations against the head of the Greek State⁴² or those against the honour of the head of a foreign State as soon as possible for the sake of international relations.⁴³

Art. 32 Act 441/2016 has also abolished the 18-month limitation period for press offences provided for in Art. 47 (1) Emergency Act 1092/1938, which had been in force for decades.⁴⁴ However, that has been a regulation highlighting the transitory and ephemeral character of the crimes committed through the press⁴⁵ and serving the need for safeguarding the legal interest of ‘informing the public through the press’, the members of which shall be able to carry out their tasks unhindered.⁴⁶

Similarly, according to Art. 3 (2) Act 3126/2003, the punishability of ministerial offences shall be eliminated at the end of the second regular session of the parliamentary term, provided that the Parliament has not decided to prosecute the minister concerned until that moment. The legal nature of that peremptory time limit has been the subject of an energetic debate – with different scholars classifying it as a special kind of amnesty⁴⁷, a special form of limitation⁴⁸ or a constitutional institution *sui generis*⁴⁹. Although Art. 3 (2) Act 3126/2003 has not been abolished expressly, the key amendment of Art. 86 Greek Constitution (hereinafter GrConst)⁵⁰ seems to render it invalid, as being unconstitutional.⁵¹

All those provisions, whether they are still in force or have been repealed (or become invalid), have or have had – to a greater or lesser degree – a political background. Political reasons are (or have been) dictating the speedy resolution of the respective cases.

The *second category* of exceptions (corresponding to the trend of lengthening the limitation period) includes: 1) the 20-year limitation period

⁴² See I. Manoledakis, *Offences against the State authority* (Προσβολές κατά της πολιτειακής εξουσίας), 2nd ed, Thessaloniki, 1994, 330.

⁴³ *Explanatory Memorandum of 1933 Draft GrCC*, 245.

⁴⁴ See AP 1535/2008, in Armenopoulos (2008), 1230, including remarks of A. Zachariades.

⁴⁵ Cf. N. Androulakis, *op cit.*, 96 (press crimes are ‘easily forgotten’); *General Introduction to Act. 2243/1994* (‘[...] justified by the operating conditions of the press’).

⁴⁶ M. Kaiafa-Gbandi, in *Law of Criminal Sanctions op cit.*, 279.

⁴⁷ I. Morozinis, *The elimination of the punishability of embezzlement under Art. 3 (2) Act 3126/2003 and Art. 86 (3) first subparagraph Greek Constitution* (Η εξάλειψη του αξιοποίνου της απιστίας κατά τα άρθρα 3 παρ. 2 Ν. 3126/2003 και 86 παρ. 3 εδ. α’ Συντ.), in *Nomiko Vima* (2009), 1622 ff.

⁴⁸ Ch. Lampakis, *Statute of limitations op cit.*, 303 ff.; L. Margaritis, *Ministers and Deputy Ministers: passive bribery and money laundering* (Υπουργοί και υφυπουργοί: παθητική δωροδοκία και νομιμοποίηση εσόδων από εγκληματική δραστηριότητα), in *Poiniki Dikaiosyni* (2011), 493 ff.

⁴⁹ I. Anagnostopoulos, *Issues related to criminal prosecution of ministers and participants* (Ζητήματα της ποινικής δίωξης υπουργών και συμμετόχων), in *Poinika Chronika* (2011), 573 f.

⁵⁰ 9th Revisionary Parliament, *Resolution of 25.11.2019*, in *Government Gazette* 187/28.11.2019.

⁵¹ Ch. Lampakis, *Statute of limitations op cit.*, 309 ff.; cf. M. Kaiafa-Gbandi, in *Law of Criminal Sanctions op cit.*, 209, who considers the provision to be implicitly repealed.

in respect of crimes against the property of the State, legal persons governed by public law or local authorities and 2) the lack of any limitation period in the case of genocide, crimes against humanity and war crimes (Art. 3 Act 3948/2011 combined with Art. 29 Act 3003/2000 on the Ratification of the International Criminal Court [ICC] Statute). Besides, Art. 187A (1) lit. i second subparagraph 1950 GrCC provided for a 30-year-limitation period in respect of terrorism offences punishable with life sentence. However, that provision was repealed, when the new GrCC entered into force.

As far as the *valid exceptions*, whether of the first or the second category, are concerned, the following remarks are deemed necessary:

The short limitation period applying to the PGrR: Both the crime of high treason and that of intentional violation of the Constitution are not defined in the GrConst, but codified by the regular legislator in Art. 2 Act 265/1976. The PGrR commits the crime of high treason, when, using his/her capacity and powers, (s)he overthrows or alters or attempts to overthrow or alter the State authority by force (Art. 2 [2] Act 265/1976). That crime is punished, *inter alia*, with life or long-term imprisonment and, thus, constitutes a felony. Despite this, by way of exception to Art. 111 (2a) GrCC, it becomes time-barred after two years (Art. 4 [1] Act 265/1976). In the same context, the PGrR is to be held accountable under Art. 2 (3) Act 265/1976, if, in his/her capacity as such, (s)he intentionally issues an act or acts or omits in violation of an imperative constitutional provision among those referring to the powers exercised by the PGrR individually and without discretionary power, when that conduct disrupts seriously the functioning of the Constitution. That crime shall be punished with removal from office and deprivation of civil rights for a period of two to ten years (Art. 3 [2] Act 265/1976) and becomes time-barred within a year after it has been committed (Art. 4 [1] Act 265/1976).

The compatibility of Art. 4 Act 265/1976 with the constitutional principle of equality has been criticized even just marginally in the Greek scholarship.⁵² Despite this, the particularly short limitation period provided for in respect of the offences committed by the PGrR has been the outcome of an agreement reached by a broader parliamentary majority (government – opposition),⁵³ and serves the need for a speedy settlement of the respective cases due to their high political importance. Additionally, it seemingly induces immediate actions to reverse the state of usurpation or unconstitutional operation. The immediate prosecution of such offences on behalf of the Parliament constitutes such a (re)action.

⁵² See the speech of I. Ilios, in *Minutes of the Plenary Session of the Parliament*, Volume 3, Session 69-208 (4 February 1976 – 17 March 1976), 1976, 2368.

⁵³ See the speech of Ath. Dervenagas, in *Minutes of the Plenary Session of the Parliament*, Volume 3, Session 69-208 (4 February 1976 – 17 March 1976), 1976, 2357.

The 20-year limitation period in respect of crimes against the property of the State, legal persons governed by public law or local authorities: The abolition of Act 1608/1905 ‘on embezzlers of public money’ has been one of the most important breakthroughs associated with the entry into force of the new GrCC (Art. 462).⁵⁴ To replace it,⁵⁵ aggravated crimes against the State property have been introduced into the GrCC. Those are characterised by a rational penal framework⁵⁶ inasmuch as the possibility of imposing the life sentence has been abolished.⁵⁷ More specifically, the crimes of forgery (Art. 216 [4] GrCC), false certification (Art. 242 [5] GrCC), aggravated theft (Art. 374 [2] GrCC), misappropriation (Art. 375 [3] GrCC), fraud (Art. 386 [2] GrCC), computer fraud (Art. 386A [3] GrCC) and embezzlement (Art. 390 [2] GrCC) are punished – if they target the property of State, legal persons governed by public law or local authorities and the value of their object exceeds the amount of € 120 000, with imprisonment of at least ten years and a financial penalty of up to 1000 daily units. That is a penalty framework considerably stricter compared to the one threatened when the aforementioned crimes target private property (imprisonment of up to ten years and a financial penalty up to 36 daily units pursuant to Art. 57 [2] third subparagraph GrCC).

⁵⁴ Abolishing that obsolete and doctrinally problematic legislation has been constantly demanded by the scholarship; see, for instance, I. Anagnostopoulos, *The Greek Public and the embezzlers of it – Remarks on Act 1608/1950 (Το ελληνικό Δημόσιον και οι καταχραστές του – Παρατηρήσεις στον Ν. 1608/1950)*, in *Poinika Chronika* (1995), 892; id., *Issues related to embezzlement (Ζητήματα απιστίας)*, Athens, 2003, 120 f.; A. Kazanas, *Fraud against public property (Απάτη σε βάρος της δημόσιας περιουσίας)*, in M. Kaiafa-Gbandi (Ed), *Financial crime & corruption in the public sector (Οικονομικό έγκλημα & διαφθορά στο δημόσιο τομέα)*, Volume 1, Thessaloniki, 2014, 371; L. Margaritis, *The Act 1608/1950 and the embezzlers of public and (para)bank money (Ο Ν. 1608/1950 και οι καταχραστές δημοσίου και (παρα)τραπεζικού χρήματος)*, Thessaloniki, 2000, 146 ff.; St. Pavlou, ‘Public property’ as a privileged target of financial crime: determination of its (conceptual) scope and (the need for?) its distinctive protection (Η «δημόσια περιουσία» ως προνομιακός στόχος του οικονομικού εγκλήματος: καθορισμός του (εννοιολογικού) εύρους της και (ανάγκη;) διακρίνουσας προστασίας της), in *Poinika Chronika* (2011), 412 ff.; 418.

⁵⁵ See *Explanatory Memorandum of 2019 Draft GrCC*, 7; G. Dimitrainas, *The codification of the crime of embezzlement in GrCC (Η τυποποίηση του εγκλήματος της απιστίας στον ΠΚ)*, in 8 *novacriminalia* (2020), 6 ff.; A. Charalampakis, *The new Criminal Code (Ο Νέος Ποινικός Κώδικας)*, 2nd ed, Athens, 2020, 189 f.

⁵⁶ See G. Dimitrainas, *op cit.*, 7; A. Psarouda-Benaki, *op cit.*, 5.

⁵⁷ The previous *status quo* has been criticized as contrary to the principle of proportionality of the penalty to the gravity of the crime by, for instance: I. Anagnostopoulos, *op cit.*, in *Poinika Chronika* (1995), 888 f.; A. Kazanas, *op cit.*, 360; L. Margaritis, *The Act 1608/1950 op cit.*, 26; 143 f.; id., *op cit.*, in *Poiniki Dikaiosyni* (2007), 1186; St. Pavlou, *op cit.*, in *Poinika Chronika* (2011), 414.

The choice to grant greater protection to State property (a trend observed almost since the establishment of the Greek State)⁵⁸ indicates that the latter is not treated as a purely individual – proprietary legal interest in the Greek legal order, but rather as a *sui generis* individual legal interest presenting a strong social function and importance inasmuch as it exists (at least theoretically) for the benefit of the society as a whole.⁵⁹ However, despite the increased penalty framework, the major protection of public property in the new GrCC is argued to be also reflected in the statute of limitations,⁶⁰ given that, by way of exception to Art. 111 (2) GrCC, the aggravated variants of the aforementioned crimes become time-barred within twenty (instead of fifteen) years. That leads to the key question of whether that legislative choice is compatible with fundamental tenets of criminal law, such as the principle of proportionality and the principle of equality, as well as with the systemic coherence of criminal law as a whole. That is indeed a regulation that can be considered ‘problematic in constitutional terms’.⁶¹ It constitutes a *de facto* balancing mechanism vis-à-vis the ‘courageous’ decision to repeal the Act 1608/1950 and, as such, exclusively serves the purpose of avoiding the limitation of those crimes. Otherwise, the latter would inevitably result from the application of the *lex mitior* principle, given the transition from life sentence (Act 1608/1950) to long-term imprisonment (new GrCC).⁶²

No limitation period provided for the crime of genocide, the crimes against humanity and the war crimes: The ratification of the ICC Statute through the Act 3003/2002⁶³ as well as the subsequent Act 3948/2011 concerning the adaptation of Greek law to the provisions of the ICC Statute mark a turn in respect of the (until that point) indiscriminate application of the statute of limitations in criminal matters. The aforementioned laws, albeit exclusively concerning the narrow scope of their application, introduced for the very first time a general rule, according to which certain crimes shall not be subject to any statute of limitations due to their gravity.⁶⁴

More specifically, Art. 29 Act 3003/2002 states that ‘the crimes that fall into the jurisdiction of the [International Criminal] Court are not subject to any statute of limitations’, while Art. 3 Act 3948/2011 states

⁵⁸ See Th. Papakyriakou, *The systematisation of the provisions for the protection of the property of the Greek State and the rest of the legal persons governed by public law* (Συστηματική των διατάξεων για την προστασία της περιουσίας του ελληνικού δημοσίου και λοιπών ΝΠΔΔ), in M. Kaiafa-Gbandi (Ed), *Financial crime & corruption in the public sector (Οικονομικό έγκλημα & διαφθορά στο δημόσιο τομέα)*, Volume 1, Thessaloniki, 2014, 1.

⁵⁹ A. Kazanas, *op cit.*, 345; St. Pavlou, *op cit.*, in *Poinika Chronika* (2011), 413 f.

⁶⁰ See *Explanatory Memorandum of 2019 Draft GrCC*, 72.

⁶¹ L. Margaritis, in *Penology op cit.*, 143.

⁶² Ch. Lampakis, *Statute of limitations op cit.*, 316.

⁶³ *Government Gazette A’* 75/8.4.2002.

⁶⁴ See *Explanatory Memorandum of Act 3948/2011*.

that ‘the felonies of Art. 7 to 13 as well as the penalties irreversibly imposed for those are not subject to any statute of limitations’. The crimes concerned, all of which are felonies and codified in Act 3948/2011, are the following ones: genocide (Art. 7), crimes against humanity (Art. 8), war crimes against individuals (Art. 9), war crimes against property and other rights (Art. 10), war crimes against humanitarian missions and emblems (Art. 11), war crimes committed using prohibited methods of warfare (Art. 12) or prohibited means of warfare (Art. 13).

b. The starting point of the limitation period

aa. The rule of Art. 112 GrCC

According to Art. 112 GrCC, ‘[t]he limitation period begins to run on the day, on which the criminal offence has been committed, unless otherwise provided. In the case of participation [in crime], the limitation period begins to run from the time the crime has been committed by the [direct] perpetrator’. That said, the starting point of the limitation period coincides, in principle, with the time of the crime commission, unless otherwise provided in law. This was also the case under the 1950 GrCC.⁶⁵ Therefore, as mentioned above, Art. 112 GrCC is necessarily complemented by Art. 17 GrCC. The latter defines the time of the crime commission as the time ‘during which the person responsible acted or ought to have acted’, while expressly stating that the time of the occurrence of the criminal effect is not relevant.

The interdependence of Art. 17 and Art. 112 GrCC gives rise to considerable problems related to the determination of the starting point of the limitation period in the case of crimes aggravated by result.⁶⁶ A typical example used in the scholarship to stress the doctrinal issues associated with the empirical reality is the careless installation of a water heater by a plumber, who violates the respective safety rules, leading to an explosion and the death of the landlord after seven years. Given that, first, the homicide by negligence (Art. 302 GrCC) is a misdemeanour and, as such, becomes time-barred within five years, and, second, according to Art. 17 GrCC, the time of the crime commission is the time of the negligent installation of the water heater, one shall reach the following – rather

⁶⁵ See PS of AP 293/1967, in *Poinika Chronika* (1967), 485; AP 258/1959, in *Poinika Chronika* (1960), 22, par. 5; AP 466/1967, in *Poinika Chronika* (1968), 20; AP 95/1970, in *Poinika Chronika* (1970), 282; AP 110/1970, in *Poinika Chronika* (1970), 289; AP 641/1971, in *Poinika Chronika* (1972), 197; AP 819/1979, in *Poinika Chronika* (1980), 45.

⁶⁶ N. Androulakis, *op cit.*, 247; Symeonidou-Kastanidou, in M. Kaiafa-Gbandi/E. Symeonidou-Kastanidou (Eds), *Criminal Law: Art. 1-19 GrCC. Compendium of the General Part* (Ποινικό δίκαιο: άρθρα 1-49 ΠΚ. Επιτομή Γενικού Μέρους), 7th ed, Athens-Thessaloniki, 2005, 263, par. 431; N. Chorafas, *op cit.*, 422.

absurd – conclusion: The crime concerned has already become time-barred, when the death occurs. In other words, the legal practitioner faces a seeming paradox of a crime becoming time-barred before becoming indictable. With this regard, there are three theories supported in the Greek scholarship, leading to three different solutions:

1) The ‘theory of conduct’ adheres to the wording of Art. 112 and Art. 17 GrCC and places the starting point of the limitation period at the act or omission of the offender; the codified result remains irrelevant.⁶⁷ 2) According to the diametrically opposed ‘theory of result’, the limitation period begins to run from the moment when the result of the crime concerned occurs.⁶⁸ However, that solution has been massively criticised as a *contra legem* approach to the issue at hand and has never been applied before Greek criminal courts. 3) The so-called ‘theory of extended conduct’⁶⁹ is an intermediate solution. It is based on the assumption that the offender’s negligent behaviour constitutes a prior dangerous act that gives rise to a special legal obligation to remove the state of danger. Hence, the negligent act is followed by a continuous omission on behalf of the offender. In this sense, the limitation period should begin to run from the moment when the offender ceases to be able to act in terms of preventing that specific result, namely from the moment when the offender stops failing to act. However, that theory is not free from shortcomings, particularly considering the uncertainty it causes as to when the aforementioned omission ceases to exist and, thus, as to when the limitation period begins to run. Besides this, it may lead to an impermissible extension of the limitation period.⁷⁰

bb. Exceptions

Exceptions to Art. 112 GrCC can be found both in the Special Part of the GrCC and in Special Criminal Laws (like those to Art. 111 GrCC). Such exceptions are particularly prescribed in the case of the crime of torture (Art. 137A [8] GrCC), kidnapping (Art. 322 [6] GrCC) and the violation of construction rules (Art. 286 [3] GrCC) as well as in the case of tax evasion crimes (Art. 55A Act 4174/2013 as amended by Act 4764/2020). Of particular importance is also the derogation from the rule of Art. 112

⁶⁷ Bill of the Judicial Council of the Court of Appeal Thessaloniki 296/1996 alongside remarks of M. Kaiafa-Gbandi, in *Yperaspisi* (1996), 554 ff.

⁶⁸ N. Livos, *Regarding the limitation period of crimes committed by negligence* (Επί της παραγραφής του εξ αμελείας εγκλήματος), in *Poinika Chronika* (1995), 862.

⁶⁹ N. Androulakis, *op cit.*, 101; M. Kaiafa-Gbandi, *Remarks on the Bill of the Judicial Council of the Court of Appeal Thessaloniki 296/1996*, in *Yperaspisi* (1996), 556 ff.; Ch. Mylonopoulos, *op cit.*, 120 f.; Three-member Court of Appeal Athens 911/2002, in *Poinika Chronika* (2002), 726.

⁷⁰ I. Manoledakis, *Regarding the limitation period of the crime codified in Art. 286 GrCC* (Επί της παραγραφής του εγκλήματος του άρθρου 286 ΠΚ), in *Poinika Chronika* (2002), 960.

GrCC in the case of the crime of high treason (Art. 134 GrCC) – an exception provided for in Art. 120 (3) GrConst.

cc. A limitation period beginning to run from the re-establishment of the legitimate power (Art. 120 [3] GrConst, Art. 137A [8] and 322 [6] GrCC)

In the Greek legal order, the crime of high treason (Art. 134 GrCC) is the only crime for which the limitation rules are provided in the Constitution (and not in the GrCC). Art. 120 (3) GrConst states that ‘the usurpation, whatever form it takes, of popular sovereignty and the powers arising therefrom is prosecuted as soon as the legitimate power is re-established, from which point on the limitation period [for this crime] also begins to run’. That exception to the rule of coincidence of the time of crime commission and the starting point of the limitation period and the transfer of the latter to the re-establishment of the legitimate power are inextricably linked to the goal of protecting democracy (through the protection of institutions that are fundamental to its existence).

Art. 120 (3) GrConst addresses the fact that, as long as the usurpation of popular sovereignty lasts, the act of high treason is not prosecuted, particularly due to the enforcement exercised by the coup plotters. That might result, however, in the limitation of crimes and, particularly, those committed by persons who, after having overthrown the democratic regime and exercised State power illegally for a certain period of time, were subsequently removed from the power for some reason.⁷¹ Additionally, that provision performs a general preventive function inasmuch as the shift of the starting point of the limitation period to the re-establishment of the legitimate power in terms of a deterrent to crime strengthens the penalty threatened in law in respect of high treason.⁷² Considering the historical experience of the 1969–1974 dictatorship, Art. 120 (3) GrConst also serves a pedagogical purpose while encapsulating the respective experience of the Greek constitutional legislator.⁷³

The implementation of the special provisions entailed in Art. 120 (3) GrConst presupposes that there has been an actual usurpation of popular

⁷¹ E. Symeonidou-Kastanidou, *Violations against the political system (Προσβολές του πολιτεύματος)*, Thessaloniki, 1988, 248.

⁷² Cf. Greek Parliament, *Minutes of the Plenary Session of the Greek Parliament regarding the debates on the 1975 Constitution*, Athens, 1975, 69 (Statement of I. Skoularikis); D. Spinellis, *The high treason between the past and the future (Η εσχάτη προδοσία ανάμεσα στο παρελθόν και στο μέλλον)*, Athens, 1979, 59.

⁷³ See Greek Parliament, *Minutes of the Plenary Session of the Greek Parliament regarding the debates on the 1975 Constitution*, Athens, 1975, 84 (Statement of A. Kanellopoulos) and 89 (Statement of G. Mavros). Cf. E. Venizelos, *The limits of the amendment of 1975 Constitution (Τα όρια της αναθεώρησης του Συντάγματος 1975)*, Thessaloniki, 1984, 154.

sovereignty, whatever form the latter might have taken. If this is not the case, the limitation period begins to run from the time when the criminal offence concerned has been committed; that is, the rule of Art. 112 GrCC is activated.⁷⁴

In accordance with Art. 120 (3) GrCC, Art. 137A (8) GrCC (as well as Art. 137D (3) 1950 GrCC) introduces a similar derogation from the rule of Art. 112 GrCC in respect of the crime of torture by placing the starting point of the limitation period at the moment when ‘the legitimate power is re-established’. In the case of an attempted treason or in the case that a treason is completed without the democratic regime being overturned, the limitation period begins to run from the time when the torture has taken place.

The *ratio* of Art. 137A (8) GrCC is ‘to encompass any torture taking place during the arbitrary regime, and that particularly considering that, under similar regimes, the tendency of State organs to question human dignity is generally encouraged’.⁷⁵ Therefore, that provision can be perceived as a functional and conceptual continuation of Art. 120 (3) GrConst, as both of them aim at avoiding impunity in the case that the mechanism of criminal justice becomes deactivated.⁷⁶ And, despite the fact that, today, it is widely accepted that torture violates primarily individual legal interests,⁷⁷ the exception to Art. 112 GrCC the crime of torture and that of usurpation of popular sovereignty have in common indicates a – under certain circumstances – deeper connection with democracy.⁷⁸

Art. 322 (6) second subparagraph GrCC pertains to the same context in terms of placing the beginning of the limitation period of the acts codified in par. 2–4 (incorporating the crime of forced disappearance, added by Act 4268/2014 and previously codified separately in Art. 322A and Art.

⁷⁴ Ch. Lampakis, *Statute of limitations op cit.*, 370.

⁷⁵ K. Konstantinidis, *Criminal Law and human dignity (Ποινικό Δίκαιο και ανθρώπινη αξιοπρέπεια)*, Athens, 1987, 178.

⁷⁶ Cf. Explanatory Memorandum of Act 1500/1984, through which the provisions related to torture (incl. those of Art. 137D 1950 GrCC) were introduced to 1950 GrCC.

⁷⁷ See E. Symeonidou-Kastanidou, The notion of torture and other violations against human dignity in the Criminal Code (*Η έννοια των βασανιστηρίων και των άλλων προσβολών της ανθρώπινης αξιοπρέπειας στον Ποινικό Κώδικα*), in E. Symeonidou-Kastanidou (Ed), Power abuse & human rights (*Κατάχρηση εξουσίας & ανθρώπινα δικαιώματα*), Athens, 2013, 61, Footnote 14.

⁷⁸ See Greek Parliament, *Minutes*, 17th Period, 4th Session, 6.6.2019, 7752 (*Statement of N. Paraskevopoulos*): ‘[...] a man who is tortured is no longer able to have a self-determined opinion, judgment and will. [...] Although he does not want so, a man, who cannot define himself, unfortunately, cannot be a cell of democracy, because democracy presupposes voting and voting presupposes self-determination. Therefore, torture is an affront to the foundations of democracy. And it undermines the foundations of our Constitution, because it affects not only democracy, but also the rule of law. [The latter] presupposes individual responsibility, individual guilt, [which also] presupposes self-determination, the ability to take the first or the second option [– an ability] abolished by unbearable pain. [...]’ Cf. A. Charalampakis, The Greek legal provisions governing torture (*Το ελληνικό νομικό πλαίσιο που αφορά τα βασανιστήρια*), in *Yperaspisi* (1995), 669 f.

322B 1950 GrCC), which constitute the crime of kidnapping of public officials or persons acting under the ‘authority of the State’,⁷⁹ at the time when ‘the legitimate power is re-established’.⁸⁰ This presupposes that the aforementioned crimes are committed ‘under the auspices of usurpation of the democratic regime’ – similarly to the case of Art. 137A (8) GrCC.

dd. The special case of the breach of construction rules

In the case of the crime of breach of construction rules (Art. 286 [1] second and third subparagraph GrCC), committed by anyone acting against the widely recognised technical rules during the execution of a construction project, the limitation period does not begin to run from the time when those rules have been violated, but from the time when the result of the serious bodily harm or death has occurred (Art. 286 [3] GrCC). There is, though, an additional safety valve: The limitation period may not exceed a maximum of thirty years from the commission of the act concerned. That ensures a minimum link between the limitation as such and the time of the crime commission.

ee. The special case of tax evasion crimes

As far as the tax evasion crimes are concerned, exceptions to the rules governing the starting point of the limitation period can be identified diachronically, when one looks at past legislation. The commencement of the limitation period has generally been linked to the exercise of certain control activities on the side of the tax authorities and the finalisation of the tax liability. In accordance with the rules in force (Art. 55A Act 4174/2013 as amended by Act 4745/2020 and – within 47 days⁸¹ – by Act 4764/2020), the limitation period begins to run from the end of the period of time, within which the tax authorities may issue an administrative act of tax determination, whether estimated or corrective. In this case, the limitation period begins to run from the time when the aforementioned act has been issued. As will be shown (Section 4.a), the over-frequent

⁷⁹ Cf. *Explanatory Memorandum of Act 4298/2014*, 1a.

⁸⁰ Cf. *Explanatory Memorandum of Act 4298/2014*, 1c.

⁸¹ See Ch. Lampakis, *Remarks on the Ruling 1493/2020 of the one-member Misdemeanours Court of Serres* (Παρατηρήσεις στη με αριθμό 1493/2020 απόφαση του Μονομελούς Πλημμελειοδικείου Σερρών), in *Armenopoulos* (2021), 495; G. Dimitrainas, *Issues of intertemporal law in tax evasion crimes. A contribution to the application of Article 2(1) of the Criminal Code* (Ζητήματα διαχρονικού δικαίου στα εγκλήματα φοροδιαφυγής. Συμβολή στην εφαρμογή του άρθρου 2§1 Ποινικού κώδικα), in *Poinika Chronika* (2021), 4; P. Papandreou, *An interpretive approach to the provisions governing criminal prosecution and limitation of tax crimes after Act 4745/2020 and Act 4764/2020* (Ερμηνευτική προσέγγιση των διατάξεων περί κίνησης της ποινικής δίωξης και παραγραφής των φορολογικών εγκλημάτων μετά τους Ν. 4745/2020 και Ν. 4764/2020), in *Poiniki Dikaosyni* (2021), 323 ff. and 346.

amendments of the respective provisions have puzzled both Greek scholars and judges as to which law may be considered as the more lenient one regarding the starting point of the limitation period.⁸²

c. Suspension of the limitation period

aa. The notion and the kinds of suspension according to Art. 113 GrCC

The suspension of the limitation period serves as a counterbalance for the limitation in criminal matters, as the respective rules provide for those cases in which the limitation period codified in Art. 111 GrCC stops running. Unlike the so-called interruption of the limitation period (that has the effect of stopping the limitation period running, erasing the period already lapsed prior to the act interrupting the limitation period and restarting a new limitation period of equal length to the limitation period provided by law), the suspension of the limitation period has the effect of stopping the limitation period running temporarily *without erasing the period of time already lapsed*; that is, the limitation period begins to run again from the point at which it had stopped, after the suspension period is over.⁸³

Art. 121 1834 CL (in force until 1950) provided for the interruption of the limitation period. According to that provision, the limitation period was interrupted by any investigative measure taken in the context of criminal proceedings or when the individual concerned was found guilty of having committed a new offence, whether felony or misdemeanour.⁸⁴ Today, the GrCC does not lay down any rules on the interruption of the limitation period. It only provides for the suspension of the limitation period in Art. 113 GrCC. The latter provides for three kinds of suspension of the limitation period: 1) due to legal obstacles related to the

⁸² The opinion that, after the amendments introduced by Act 4745/2020, the time of the commission of the crime should be considered the starting point of the limitation period in the case of tax offences was adopted by: Three-Member Court of Appeal of Crete 3/2021; One-Member Misdemeanours Court of Serres 1493/2020 in *Poinika Chronika* (2020), 751 = *Armenopoulos* (2021), 489 ff.; One-Member Misdemeanours Court of Thessaloniki 12438/2020, in *Poiniki Dikaiosyni* (2021), 578; Prosecutor's Order Misdemeanours Court of Kavala (V. Adampas) 123/2021, in *Poinika Chronika* (2021), 308; G. Dimitrainas, *op cit*, in *Poinika Chronika* (2021), 4 ff.; Ch. Lampakis, *op cit*, in *Armenopoulos* (2021), 492 ff.; P. Pantazis, *The commencement of the limitation [period] in the case of tax crimes. Reflections on the Act 4745/2020 (Έναρξη παραγραφής των φορολογικών αδικημάτων. Σκέψεις επί του Ν. 4745/2020)*, in *Novacriminalia* (February 2021), 7 ff. On the contrary, the opinion that the finalisation of the tax entry should be considered as the starting point of the limitation period in application of the transitional provisions of Art. 96 Act 4745/2020 has been supported by: Three-Member Court of Appeal of Crete 13/2021; AP 594/2021.

⁸³ See Directorate-General for Library, Research and Documentation, *op cit.*, §§ 30 ff.

⁸⁴ See I. Zisiadis, *op cit.*, 113.

commencement or the continuation of criminal prosecution (Art. 113 [1] first subparagraph GrCC), 2) due to trial pendency (Art. 113 [1] second subparagraph GrCC), and 3) in respect of crimes committed against minors (Art. 113 [4] GrCC).

bb. Suspension of the limitation period due to legal obstacles related to the commencement or the continuation of criminal prosecution

The limitation period shall be suspended for as long as the criminal prosecution cannot begin or be continued either in accordance with law or according to a decision of a judiciary organ, provided that there is an express legal provision providing for the mandatory adjournment or suspension of criminal proceedings.⁸⁵ In this way, the legal order does not get ‘trapped’ and intra-systemic consistency is safeguarded by preserving the possibility of prosecuting and imposing a penalty in cases, in which the law itself reflects an abstract assessment in terms of stating that a temporary impediment to prosecution shall exist on certain occasions.⁸⁶ The most important of those cases are the following:

First, *the parliamentary immunity and the immunity of the PGrR*: According to Art. 62 GrConst combined with Art. 113 (1) first subparagraph GrCC, the limitation period is suspended in respect of crimes committed during the parliamentary term, from the acquisition of and until the loss of the parliamentary status, whatever form the latter might take, or until the Parliament grants the respective permission. The crime of defamation and the felonies prosecuted pursuant to an expedited procedure are exempt. In the same context, Art. 49 (1) GrConst provides for the immunity of the PGrR in respect of acts that are not related to the exercise of his/her duties. That provision, combined with Art. 113 (1) first subparagraph GrCC, implies that the limitation period stops running until the end of the presidential term.

Second, *suspension of the limitation period in the case of interlocutory issues*: Of particular importance are the provisions entailed in Art. 59 (1) GrCCP that regulates the adjournment or the suspension of a trial due to an interlocutory issue. More specifically, should the judgment in a criminal trial depend on the adjudication of another criminal case, in respect of which the criminal prosecution has already been initiated, the adjudication shall be adjourned until a final judgment has been reached in the context of the other (already ongoing) trial. In the same context, the criminal prosecution shall be suspended, when the law requires a civil court ruling on civil matters arising during the criminal trial (Art. 60 [2] GrCPC).

⁸⁵ See M. Kaiafa-Gbandi, in *Law of Criminal Sanctions op cit.*, 278 f.

⁸⁶ See Ch. Lampakis, *Statute of limitations op cit.*, 423; similarly, L. Margaritis, in L. Margaritis, N. Paraskevopoulos (Eds), *Penology (Ποινολογία)*, 7th ed, Athens, 2005, 212.

Similarly, the criminal trial can be suspended, when a civil trial is pending on a matter that may fall in the jurisdiction of civil courts, but is also related to the criminal trial (Art. 61 GrCPC).

The suspension, whether of the first or the second kind, cannot last longer than three years in the case of misdemeanours and five years in the case of felonies (Art. 113 [2] first subparagraph GrCC). That time limit does not apply, however, in certain cases, such as those regulated in Art. 59 and 61 GrCCP (Art. 113 [2] second subparagraph).

cc. Suspension of the limitation period due to trial pendency

The limitation period shall be deferred during the period in which the criminal proceedings are ongoing and until the judgment convicting the accused person becomes final (Art. 113 [1] second subparagraph GrCC). Herewith, the Greek legislator aims to avoid that a crime becomes time-barred while the adjudication of the respective case is still pending.⁸⁷ In this context, the limitation period is not ‘simply’ suspended by any lawful investigative measure (e.g., the order to witness issued by the Investigative Judge⁸⁸, the indictment issued by the Public Prosecutor or the order to appear in court addressed to the defendant⁸⁹), which was the case under the CL (in force until 1950) that did not provide for the suspension, but only for the interruption of the limitation period (Art. 121 CL). On the contrary, the drafters of the new GrCC (as well as of the 1950 GrCC) rejected the idea of suspending the limitation period solely on the ground of any investigative measure, the duration of which is rather uncertain. The commencement of the suspension of the limitation period is placed instead at a later and more concrete stage, namely the stage of trial pendency.⁹⁰ Therefore, the Greek legislator ruled out expressly the performance of ‘formal’ procedural acts as a way of stopping the limitation period from running in criminal matters.⁹¹

The suspension of the limitation period begins when the accused is *validly*⁹² and *irrevocably* summoned to appear before the *competent* court to be tried, and lasts, as mentioned above, until the conviction becomes final. ‘Irrevocably’ means that there should be no legal remedy to be exercised against the referral, whether by summons (when a bill of indictment is required) or by writ of summons, or the legal remedy, which was exercised, has already been dismissed. Whether the referral court needs to be competent in terms of having jurisdiction upon the specific case, is a matter

⁸⁷ *Explanatory memorandum of 1933 GrCC*, reprinted by Zacharopoulos editing house, 1950, 125.

⁸⁸ AP 224/1916, in 27 *Themis*, 581.

⁸⁹ See AP 86/1883.

⁹⁰ Ch. Lampakis, *Statute of limitations op cit.*, 491 f.

⁹¹ L. Margaritis, *Penology op cit.*, 234.

⁹² See M. Kaiafa-Gbandi, in *Law of Criminal Sanctions op cit.*, 293.

of dispute between theory and jurisprudence. According to the prevailing opinion in the case-law, the lack of jurisdiction of the referral court does not reverse the suspension's effect.⁹³ On the contrary, it is argued in the Greek scholarship that the suspension of the limitation period requires referral to a competent court.⁹⁴ Irrespective of this, the referral of the accused person to court to be tried is a non-disputable prerequisite inasmuch as it is *then* considered that the competent State organs undertake significant action. This signals that the State has paid particular attention to that specific case, so that the continuation and perhaps even the completion of the limitation period is deemed, from that point onwards, inappropriate.⁹⁵

The length of the suspension due to trial pendency cannot exceed three years in the case of misdemeanours and five years in the case of felonies (Art. 113 [2] first subparagraph GrCC). That time limit, which also applies, as shown above, in the case of the suspension of the limitation period due to legal obstacles related to the commencement or the continuation of the criminal prosecution, remains valid irrespective of the number (and the kind) of the grounds upon which the limitation period may be suspended.

dd. Suspension of the limitation period in respect of crimes committed against minors

3787

The provisions, where the suspension of the limitation period in the case of crimes committed against minors is regulated, have recently been amended by Art. 26 Act 4855/2021 that entered into force on 12 November 2021.

Before this amendment, the 2019 GrCC entailed a general rule dictating that, in the case of *felonies* committed against minors, the limitation period would be deferred until the victim had reached the age of majority (Art. 113 (4) GrCC prior to its latest amendment). That rule had its origins in Art. 113 (6) 1950 GrCC, which, however, only referred to specific crimes (misdemeanours and felonies) against sexual self-determination and crimes of economic exploitation of sexual life committed against minors. Art. 113 (6) 1950 GrCC (initially added by Act 3625/2007) was, as expressly admitted by the Greek legislator, the outcome of the harmonisation of national law⁹⁶ with Art. 8 (1a) and (3) Optional Protocol to the Convention on the Rights of the Child on the involvement of

⁹³ See, for instance, PS of AP 2/1997, in *Nomiko Vima* (1997), 833; AP 566/2013; AP 512/2016, in *Poinika Chronika* (2017), 673.

⁹⁴ See, for instance, N. Androulakis, *op cit.*, 104; M. Kaiafa-Gbandi, in *Law of Criminal Sanctions op cit.*, 294; Ch. Lampakis, *Statute of limitations op cit.*, 504 ff.

⁹⁵ See N. Androulakis, *op cit.*, 103; id., *Regarding the criminal liability of Ministers (Γύρω από την ποινική ευθύνη των Υπουργών)*, Athens, 1989, 33.

⁹⁶ See *Explanatory Memorandum of Act 3625/2007*, 3.

children in armed conflict and on the sale of children, child prostitution and child pornography (UN General Assembly, March 16, 2001) as well as with Art. 8 (6) Council Framework Decision 2004/68/JHA of 22 December 2003 on combatting the sexual exploitation of children and child pornography. The latter particularly stated that ‘[e]ach Member State shall take the necessary measures to enable prosecution, in accordance with national law, of at least the most serious of the offences referred to in Article 2 *after the victim has reached the age of majority*’ (emphasis added). Subsequently, Art. 113 (6) 1950 GrCC was amended by Art. 5 Act 4267/2014 to enable the transposition of ‘the provision of Art. 15 (2) of the [Directive 2011/93/EU on combatting the sexual abuse and sexual exploitation of children and child pornography]⁹⁷’ that takes into account the respective International Conventions [...].⁹⁸

Under the regime of 2019 GrCC prior to its amendment by Act 4855/2021, misdemeanours, such as that typified in Art. 339 (3) GrCC (witnessing sexual activities) that is the outcome of the harmonisation of national law with the Directive 2011/93/EU (see Art. 3 [2]) and, as such, subject to Art. 15 (2) (entailing the Member States’ obligation to prosecute those crimes after the victim reaches the age of majority), were remaining, however, out of the scope of Art. 113 (4) GrCC. In this sense, the latter did not fully comply with the EU requirements.

Inconsistencies of this kind have recently been addressed by means of amending Art. 113 (4) GrCC (see Section 4.c on the background of this amendment). Besides the general rule mentioned above, the latter now entails a twofold exception with regard to the crime of trafficking in human beings (Art. 323A GrCC), the crime of kidnapping minors (Art. 323A GrCC) and the crimes included in the 19th Chapter of the GrCC’s Special Part, namely the crimes against sexual freedom and the crimes of economic exploitation of sexual life when committed against minors. In the case of *misdemeanours*, the limitation period shall begin *one year* after the victim has reached the age of majority, while in the case of *felonies*, the victim is granted *two more years* (that is, the limitation period shall begin *three years* after (s)he has reached the age of majority).

4. Striking a balance between competing interests: protection of legal interests by means of criminal law vs. (?) protection of the rights of suspected and accused persons

‘[...] time is the greater healer, [...] after a more or less extensive period there always comes a point when, in the relationships of society, the past can no longer be called in question and even if it was wrongful, it is better

⁹⁷ This was identical to Art. 8 (6) Framework Decision 2004/68/JHA in terms of content.

⁹⁸ See *Explanatory Memorandum of Act 4267/2014*, 2

to wipe the slate clean.’⁹⁹ That short statement, belonging to the Advocate General Joseph Gand, comprises the essence of the statute of limitations in terms of a set of rules seeking to balance a matrix of (seemingly) conflict interests: the public interest to re-establish the ‘peace’ after a crime has been committed, the interest of the offender to have his/her case investigated and adjudicated within a reasonable time and (sometimes only marginally) the interest of the victim to have the person, who violated or endangered his/her legal interests, tried and potentially condemned.

As shown above (Section 2–3), the Greek legislator has adopted that philosophy, when he first introduced and later amended the rules governing the limitation in criminal matters. It is, however, questionable to what extent the subsequent *modus operandi* – within the context of the legislative procedure as well as before the criminal courts and beyond – may impact adversely on the weighing of the interests listed above. To address that question, this part of the analysis looks at three distinct phenomena: 1) the often over-frequent amendment of rules *directly related to the limitation in criminal matters* (particularly taking place outside the GrCC’s context) that may cause legal uncertainty and impact on fundamental rights; 2) the usually efficiency- and speed-driven amendment of rules *related to the autonomous but neighbouring institution of conditional limitation* that has an indirect impact on the matrix of State-offender-victim interests; and 3) the appearance of ‘crime in the news’ *close to the end of the limitation period or even after the wrongful act concerned has become time-barred* as a phenomenon challenging fundamental rights, such as the right to be presumed innocent, at a stage not necessarily covered by their protective scope as well as a trigger for amendments in the field.

a. Limitation rules and over-frequent revisions of dubious quality

In that *first case*, the focus lies on the example of tax evasion crimes and the recent ‘experimentations’ in the field of their limitation period, and particularly the starting point of it. As indicated above (see Section 3.b.ee), the respective rules have diachronically been subject to various amendments: Between 17 October 2015 and 23 December 2020, the limitation rules, provided for in the Greek Code of Tax Procedure (Act 4174/2013), were amended three times by Act 4337/2015, Act 4745/2020 and Act 4764/2020. The last two amendments took place *within a period of less than two months* – giving rise to substantial problems related to the definition of the applicable law in general and regarding the respective

⁹⁹ Opinion of Advocate General Gand in *ACF Chemiefarma NV v. Commission of the European Communities*, *Buchler & Co. v. Commission of the European Communities* and *Boehringer Mannheim GmbH v. Commission of the European Communities* (41/69, 44/69 and 45/69, EU:C:1970:51).

transition periods in particular. In this context, one can distinguish between three different approaches to the starting point of the limitation period reflected in the formulations of Art. 55A Act 4174/2013:¹⁰⁰ 1) the finality of the decision on the appeal lodged or (should no appeal be lodged) the finalisation of the tax entry due to the lapse of the time limit for lodging an appeal (cf. Art. 3 [5] Act 4337/2015), namely the finalisation of the tax liability; 2) the commission of the respective crime (cf. Art. 32 [2] and Art. 92 Act 4745/2020) according to the general rule provided for in Art. 112 GrCC (see Section 3.b); and 3) the issuance of the administrative act of tax determination, whether estimated or corrective, or if no such act has been issued, the lapse of the time period within which the tax authorities may issue the latter (cf. Art. 163 Act 4764/2020).

While this article does not seek to discuss exhaustively the intertemporal legal issues related to the transition from the former to the current *status quo*,¹⁰¹ two remarks are deemed necessary:

The *first one* refers to the self-explanatory implications for legal certainty associated with the over-frequent and often contradictory revisions that do not necessarily fulfil the standards for good legislation. This has been the case with the combination of Art. 32 (2) and Art. 92 Act 4745/2020 that leads to a regulation of historical uniqueness in terms of being ‘in force’ and ‘out of force’ at the same time for all those accused of having committed a crime according to Art. 55A (3) and Art. 68 (2), respectively, Act 4174/2013 until 6 November 2020.¹⁰²

That example is also related to the *second remark* referring to the (questionable) compliance of such regulations with fundamental tenets of criminal law, such as the retroactive application of the more lenient law (see Art. 2 [1] GrCC), and the protection of fundamental rights of the concerned individuals. The matrix of those regulations led to the formulation of vexed (even just rhetoric as far as the scholarship is concerned) questions, such as, in the case of Act 4745/2020: ‘Could the application of the recent, more lenient law be excluded and the starting point of the limitation period be regulated in respect of the corresponding criminal acts on the basis of the old, stricter and expressly repealed [but equally expressly retained in force for the crimes committed before the amendment became valid] provision?’ or ‘Could the legislator use provisions of temporary effect to circumvent the protection afforded by

¹⁰⁰ See G. Dimitrainas, *op cit*, in *Poinika Chronika* (2021), 4 ff.; Ch. Lampakis, *op cit*, in *Armenopoulos* (2021), 492 ff.; Th. Papakyriakou, *Topical issues of Tax Criminal Law after the adoption of Acts 4745 and 4764/2020* (Επίκαιρα Ζητήματα Φορολογικού Ποινικού Δικαίου μετά και την ψήφιση των νόμων 4745 και 4764/2020), 27 January 2021, available at: <https://www.law.auth.gr/el/anti-corruption/13200> (accessed on December 7, 2021). Cf. P. Pantazis, *op cit*, in *Novacriminalia* (February 2021), 7 ff.

¹⁰¹ See the comprehensive overview provided by Th. Papakyriakou, *Topical issues of Tax Criminal Law op cit.*, Sl. 11 ff.

¹⁰² G. Dimitrainas, *op cit*, in *Poinika Chronika* (2021), 4; Ch. Lampakis, *op cit*, in *Armenopoulos* (2021), 493 f.

Art. 2 (1) GrCC, namely the *lex mitior* principle?’¹⁰³ Or in the case of the most recent Act 4764/2020 (cf. particularly Art. 163 [2]): ‘How should the legal practitioner deal with a provision that is partly more lenient (compared to the *status quo* before 6 November 2020) and partly stricter (compared to the *status quo* after 6 November and until 23 December 2020)?’¹⁰⁴

The attempt to address those questions boils down to the (need for) respect for the *lex mitior* principle (Art. 2 [1] GrCC) that goes through substantive criminal law and, thus, remains applicable in respect of the limitation rules (see Section 2.c).¹⁰⁵ The latter might not be expressly or directly enshrined in the GrConst, but directly results from supranational provisions that bind the national legislator (see Art. 15 [1] International Covenant on Civil and Political Rights [hereinafter ICCPR]; Art. 7 [1] European Convention on Human Rights [hereinafter ECHR]; Art. 49 [1c] EU Charter of Fundamental Rights [hereinafter CFR]). Besides this, it is recognised in the case-law of the Greek Supreme Court explicitly.¹⁰⁶ As recently restated, any criminal punishment on such grounds, i.e. under the previous *stricter* law, would imply that the State addresses contradictory and, thus, invalid rules to the citizens.¹⁰⁷ Additionally, a scenario of punishment on the basis of semi-valid/semi-invalid rules, namely a scenario of relying upon provisions introducing a kind of crypto-retroactivity, cannot be tolerated not only in the light of the aforementioned supranational provisions, but also considering the principle of legality (Art. 7 [1] GrConst) and the principle of equality (Art. 4 GrConst).¹⁰⁸

b. Conditional limitation in criminal matters: an autonomous but neighbouring institution and a regular phenomenon in the Greek legal order

In this *second case*, the focus shifts onto the conditional limitation in criminal matters as an institution, which – despite being autonomous – ultimately results in the elimination of punishability and, thus, has an impact on the matrix of State-offender-victim interests. Compared to the statutory limitation in criminal matters outlined above, the goals the Greek legislator seeks to achieve through conditional limitation are

¹⁰³ See G. Dimitrainas, *op cit*, in *Poinika Chronika* (2021), 6 ff.; Ch. Lampakis, *op cit*, in *Armenopoulos* (2021), 494.

¹⁰⁴ See G. Dimitrainas, *op cit*, in *Poinika Chronika* (2021), 7.

¹⁰⁵ See G. Dimitrainas, *op cit*, in *Poinika Chronika* (2021), 8.; Th. Papakyriakou, *Topical issues of Tax Criminal Law op cit.*, Sl. 16 f.

¹⁰⁶ See PS of AP 1/2015; AP 559/2020.

¹⁰⁷ G. Dimitrainas, *op cit*, in *Poinika Chronika* (2021), 8.

¹⁰⁸ See Ch. Mylonopoulos, *op cit.*, 110 f.

considerably different – with the combat against congestion in the criminal courts in terms of a threat to effective justice administration being usually the principal goal.

Seeking for a recent example of that practice, one may refer to Act 4689/2020. Its title, which contains a long list of EU Directives to be transposed into domestic legislation (revealing the diachronically considerable delays in the transposition procedure), makes the reference to its provisions in a study devoted to limitation in criminal matters seem (at least at first sight) superfluous. However, following a common practice usually aiming to unload criminal courts (see, for instance, Art. 4 Act 4043/2012, Art. 8 Act 4198/2013, Art. 8 Act 4411/2016), the Greek legislator provides, in the very same Act, for limitation rules to be applied to crimes already typified in the GrCC.

In the first Chapter of the eighth Part of Act 4689/2020 titled ‘Provisions on the functioning and the administration of justice’, one may find Art. 63 and 64 that expressly regulate issues related to the limitation period of certain misdemeanours, the suspension of criminal prosecution, and the conditional non-execution of penalties already imposed – with the aim of facilitating the administration of justice, particularly in the aftermath of the Covid-19 crisis, namely once the Greek criminal courts return to their fully functional status.¹⁰⁹ More specifically, the punishment becomes time-barred and the criminal prosecution is suspended in respect of misdemeanours committed until 30 April 2020, for which a sentence of imprisonment of up to one year or a financial penalty or community service is threatened in law, whether individually or cumulatively (Art. 63 [1] first subparagraph Act 4689/2020). That provision shall not apply in the case of misdemeanours for which a fine or community service is provided for in conjunction with a sentence of imprisonment of more than one year (Art. 63 [1] second subparagraph Act 4689/2020). Irrespective of this, should the perpetrator of the misdemeanours referred to in Art. 63 (1) Act 4689/2020 intentionally commit in the following two years of the Act’s publication a new crime, whether a felony or a misdemeanour, and be irrevocably sentenced at any time to an imprisonment term of more than six months, his/her criminal prosecution shall be continued and the time lapsed from the termination of the prosecution until the final conviction for the new act shall not be calculated in the limitation period for the first offence (Art. 63 [2] Act 4689/2020).

Those rules are the outcome of a balancing exercise that ultimately impacts on the State’s interest to protect the citizens’ legal interests in the best possible way, the victim’s interest to see the offender condemned

¹⁰⁹ See FairTrialsAdmin, *Short Update: Greece enacts new law to relieve congestion in the criminal courts upon the lifting of their temporary closure*, 27 May 2020, available at: <https://www.fairtrials.org/news/short-update-greece-enacts-new-law-relieve-congestion-criminal-courts-upon-lifting-their> (accessed on December 7, 2021).

before a criminal court (particularly if the victim has filed a criminal complaint) and, finally, rather positively the offender's interests. Given that impact (that indirectly resembles that of statutory limitation in criminal matters despite the different origin of those provisions), the Greek legislator provides for some *exceptions* using the gravity of the crime and, thus, special (moral) blameworthiness as his/her criterion. Considering the special circumstances associated with the ongoing health crisis, this has been, for instance, the case with the crime of issuing false medical certificates according to Art. 221 (2) first subparagraph GrCC or the violation of measures for the prevention of diseases according to Art. 285 (4a) GrCC.

The association between those provisions and the health crisis, which inevitably caused the temporary closure of the Greek criminal courts making the congestion risk more visible than ever, should not give (as already implied above) the wrong impression that this has been a strictly circumstances-related and, thus, unique regulation. On the contrary, Greek judges have to offer their services in an environment heavily affected (if not shaped) by the great caseload – fact resulting in considerable delays in the investigation and adjudication of criminal cases. That often leads to violations against the rights of suspected and accused persons and, particularly, the right to a fair hearing within a reasonable time. Such cases have already and until very recently reached the ECtHR that had to deal with those not only in the light of Art. 6 (1) ECHR, but also in the view of Art. 13 ECHR (right to an effective remedy) on account of the absence of an effective remedy by which to complain of the length of proceedings in the Greek legal order.¹¹⁰

3793

c. Crime in the news: at the crossroads of the statute of limitations and the presumption of innocence

On a rather different note, the emphasis is put, in this *third case*, on the presence of (alleged) crime in the news and, particularly, those crimes that are about to or have already become time-barred. While the association between crime and mass media is usually a topic of criminological studies,¹¹¹ that relation has recently been seen in a new light, particularly

¹¹⁰ ECtHR, *Press country profile 'Greece'*, March 2021, available at: https://www.echr.coe.int/documents/cp_greece_eng.pdf (accessed on December 7, 2021). See Sidiropoulos and Papakostas v. Greece, ECtHR, 25 January 2018; Papargyriou v. Greece, ECtHR, 21 November 2019; Firat v. Greece, ECtHR, 9 November 2017; Michelioudakis v. Greece, ECtHR, 3 April 2012.

¹¹¹ See, for instance, S. Smith, *Crime in the news*, in 24 *British Journal of Criminology* (1984), 289 ff.; J. Grosholz and Ch. Kurbin, *Crime in the News: How Crimes, Offenders and Victims are Portrayed in the Media*, in 14 *Journal of Criminal Justice and Popular Culture* (2007), 59 ff.; C. Greer, *News Media Criminology*, in E. McLaughlin/T. Newburn (Eds), *The SAGE Handbook of Criminological Theory*, 2010, 490 ff.

after the Directive 2016/343/EU ‘on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings’ has been adopted. The latter entails among other things an express prohibition on authorities’ public statements suggesting or implying a defendant’s guilt before the final judgment (Art. 4; Recital 19 Directive 2016/343/EU).¹¹² That said, the following comments should bring together the purpose of limitation rules in criminal matters and the presumption of innocence in terms of a fundamental right afforded to suspects and accused persons (Art. 6 [2] ECHR; Art. 48 [1] CFR; Art. 14 [2] ICCPR; Art. 71 GrCCP)¹¹³ – in the light of the very recent outburst of the Greek #metoo movement.

That movement refers to a great amount of publicly formulated accusations, whether anonymous or eponymous, mostly stemming from the world of sports and arts and related to incidents of sexual violence or exploitation, the victims of which have been in certain cases minors, as well as incidents of workplace abuses that in certain cases amounted to criminal offences.¹¹⁴ While nobody seriously doubts the need to eliminate such phenomena in those specific fields and in general, *inter alia*, by means of criminal law and criminal justice, the public reporting of crimes against sexual self-determination is deemed problematic inasmuch as many of those crimes could not be prosecuted due to the lapse of the limitation period or due to the lack of a criminal complaint, where the submission of such a complaint in due time is provided for in law. Focusing on the statute of limitations, of critical importance is the timing of public reporting as such, given that punishability and, thus, the State’s right to intervene might have already been eliminated.¹¹⁵

Seeking to delve into the association between limitation rules and the impact of time on criminal repression, this article neither poses the question of ‘Why now?’ (a question often posed in mass media in terms of a criticism against the alleged victims – without, however, taking into consideration the specificities of sexual crimes) nor investigates the motivation, whether altruistic or dishonest, behind the allegations. On the contrary, it revisits the choices of the Greek legislator as particularly regards the suspension of the limitation period in the case of crimes committed against minors, as in several reported cases the victim was not an adult. More specifically, according to the law in force, when the Greek

¹¹² See European Agency for Fundamental Rights, *Presumption of Innocence and Related Rights – Professional Perspectives*, 2021, 10, available at: <https://fra.europa.eu/en/publication/2021/presumption-of-innocence> (accessed on December 7, 2021).

¹¹³ See A. Karras, *Code of Criminal Procedure (Κώδικας ποινικής δικονομίας)*, 3rd ed, Athens, 2016, 28.

¹¹⁴ See A. Tzannetis, *Guilty on the grounds of failing to prove otherwise? – Between #metoo and #himtoo (Ένοχος λόγω αδυναμίας αποδείξεως του εναντίου; – Ανάμεσα στο #metoo και #himtoo)*, in 12 *novacriminalia* (2021), 2.

¹¹⁵ See A. Tzannetis, *op cit.*, 2.

#metoo movement broke out, the limitation period would be suspended only in the case of *felonies* committed against minors *until the latter have reached the age of majority* (Art. 113 [4] GrCC prior to its recent amendment; see Section 3.d.cc). That legislative choice was criticized massively for underestimating the pressure the young victim of a sexual assault might experience and the fact that (s)he might still be dependent on the perpetrator until that age.¹¹⁶ That said and before briefly presenting the reaction of the Greek legislator to that criticism, the matrix of interests outlined in the beginning of this Section should also be revisited by focusing on the alleged victim and the alleged offender, given the State's inability to intervene under the circumstances explained above:

The victim is entitled in the first place to accuse publicly the perpetrator exercising his/her freedom of expression by choosing the timing, the content and the channel of the complaint.¹¹⁷ As a private person, (s)he is not bound by the limits posed by the presumption of innocence, which dictates, *among other things*, that the 'members of a court should not start with the preconceived idea that the accused has committed the offence charged'¹¹⁸, shall refrain from judicial pronouncements of guilt prior to a court finding of guilt and must treat defendants respectfully.¹¹⁹ Despite this, in the light of the adoption of the Directive 2016/343/EU, the European Agency for Fundamental Rights has recently issued the opinion that, besides law enforcement agents and lawyers, other participants in criminal proceedings, *such as witnesses and victims*, 'should be subject to strict rules prohibiting information leaks about ongoing investigations'.¹²⁰ Even the materialisation of that recommendation presupposes, though, the commencement of a criminal investigation; that is, the case of (alleged) criminal offences that have already become time-barred falls outside its scope.

Shifting the focus onto the (alleged) offender in such a scenario (public reporting in the aftermath of the expiration of the limitation period), (s)he is not able to comment on the accusations within the organised context of a criminal trial, namely within a context shaped by procedural guarantees. (S)he may still be able to file a criminal complaint

¹¹⁶ Foreign legislators have already taken into account those parameters. For instance, the German Criminal Code (Art. 78b [1.1.]) provides for the suspension of the limitation period in the case of such crimes until the victim becomes thirty years old. See Kr. Kühl, in K. Lackner/Kr. Kühl (Eds), *Strafgesetzbuch*, 29th Ed, Munich 2018, § 78b StGB, par. 1a.

¹¹⁷ See A. Tzannetis, *op cit.*, 3.

¹¹⁸ Barbera, Messegue and Jabardo v. Spain, ECtHR, 6 December 1988, par. 77

¹¹⁹ See Commission of the European Communities, *Green Paper. The presumption of Innocence. COM (2006) 176 final*, 26 April 2006, 5, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006DC0174&from=GA> (accessed on December 7, 2021); J. Milaj and J. P. Misfud Bonnici, *Unwitting subjects of surveillance and the presumption of innocence*, in 30 *Computer Law & Security Review* (2014), 421; M. Ulväng, *Presumption of Innocence Versus a Principle of Fairness. A Response to Duff*, in 42 *Netherlands Journal of Legal Philosophy* (2013), 207.

¹²⁰ European Agency for Fundamental Rights, *Presumption of Innocence op cit.*, 10.

for defamation. There is, however, no guarantee that his/her reputation will be actually restored and, in this specific context, the presumption of innocence ultimately works in favour of the alleged victim of the sexual crime.¹²¹ Besides this, one should also take into account the temporal scope of the presumption of innocence once again with regard to the alleged offender. That principle does not apply as a procedural safeguard *stricto sensu* in the following cases: before a criminal charge is submitted; after a final acquittal judgment has been issued; and after a penalty has been finally imposed and served (cf. Art. 2 Directive 2016/343/EU). In other words, the (alleged) offender of a crime that has become time-barred in the meantime remains outside of the scope of the respective procedural safeguards.

Setting and implementing limitation rules aims at avoiding, *inter alia*, deadlocks of this kind by taking on a hard-to-solve balancing exercise that should not (even if that is still the sad reality on many occasions) be left in the hands of journalists irrespective of their maybe noble intentions and their function as ‘watchdogs’ in a democratic society.¹²² And that is a conclusion to be reached taking into consideration that, on the one hand, the respect for presumption of innocence cannot be taken for granted in the world of mass media,¹²³ and, on the other hand, there is an absolute need to protect the real victim and not demotivate him/her from reporting the incidents concerned before those responsible for assessing them, namely the law enforcement and criminal justice authorities.¹²⁴

As already implied, that conflict of interests and, particularly, the lack of sufficient safeguards in the case of minors as victims of sexual crimes reached the political level. Among the solutions suggested, one could find the amendment of the rules governing the suspension of the limitation period in the case of crimes committed against minors. This solution was actually adopted by the Greek legislator in Art. 26 Act 4855/2021 that amended Art. 113 (4) GrCC. As explained above (Section 3.c.dd.), the specificities of the crimes against sexual freedom and the crimes of economic exploitation of sexual life as well as of the crime of trafficking in human beings and kidnapping minors have been taken into account – with the amended version of Art. 113 (4) GrCC providing for that: 1) in the case of a misdemeanour of this kind, the limitation period shall begin *one year* after the victim has reached the age of majority, and 2) in the case of a felony, the limitation period shall begin *three years* after the victim has reached the age of majority.

¹²¹ See A. Tzannetis, *op cit.*, 3.

¹²² Cf. European Agency for Fundamental Rights, *Presumption of Innocence op cit.*, 26.

¹²³ Cf. A. Tzannetis, *op cit.*, 3 f. Cf. European Agency for Fundamental Rights, *Presumption of Innocence op cit.*, 10.

¹²⁴ Cf. European Agency for Fundamental Rights, *Crime, Safety, and Victims’ Rights*, 2021, 77, available at: <https://fra.europa.eu/en/publication/2021/fundamental-rights-survey-crime> (accessed on December 7, 2021).

Besides, it is worthy to point out the reaction of civil society organisations which stressed the need for reconciling two fundamental objectives: effective protection against violations of sexual self-determination, on the one hand, and respect for the rights of the suspected and accused person, on the other hand.¹²⁵ At the same time, it has been noted that tightening (once again) criminal repression by increasing, for instance, the penalties threatened in law (which was another facet of the amendments recently introduced by Act 4855/2021; see, for instance, Art. 336 (3); 339 (1); 342 GrCC) or extending the limitation period is not, nor should be perceived as, a panacea – particularly inasmuch as it jeopardizes the intra-systematicity of the new GrCC. Even on that condition, the aforementioned amendment of Art. 113 (4) GrCC was deemed necessary to increase the protection afforded to minors victimised by sexual offenders and to align the national legislation with EU law. Besides the intervention in the field of criminal law in general and with regard to limitation rules in particular, equally significant remain, though, positive actions to ensure a credible and effective framework of victim-friendly adjudication of cases related to sexual offences such as those that have recently come to the forefront. Those actions should facilitate the reporting of those crimes, support the victim throughout the criminal proceedings within specific structures and with the help of properly trained staff.¹²⁶ To achieve those goals, there is no need to ‘begin from scratch’. On the contrary, in most of the cases, the legislative framework already exists, but needs to be activated or implemented *efficiently*.

5. Conclusion

The limitation rules constitute a time-honoured integral part of Greek criminal law. Despite their complexity and multidimensionality, the Greek scholarship and the domestic jurisprudence have reached an agreement with regard to their legal nature by classifying them as rules of substantive criminal law. As a result, the application of the fundamental principle ‘*nullum crimen nulla poena sine lege*’ should be deemed self-evident in the case of the Greek limitation rules, whether related to the limitation period as such, its commencement or its suspension.

The main rules governing the limitation in criminal matters, namely those to be found in the General Part of the GrCC, have remained rather untouched by the recent overall reform of the Greek criminal legislation with a few exceptions. In parallel, as regards the new GrCC, one can also

¹²⁵ See, for instance, Hellenic League for Human Rights, *Letter to the Deputy Minister of Justice regarding crimes against sexual freedom* (Επιστολή της ΕΛΕΔΑ προς τον Υφυπουργό Δικαιοσύνης σχετικά με τα εγκλήματα κατά της γενετήσιας ελευθερίας), Athens, 6 April 2021, available at: <https://www.hlhr.gr> (accessed on December 7, 2021).

¹²⁶ See Hellenic League for Human Rights, *op cit*.

identify a clear tendency to consolidate the rules to be found in Art. 111–113 GrCC – a tendency that particularly emerged through the abolition of numerous exceptions to those central rules.

Looking beyond this context, the statutory limitation of crimes remains at the centre of various other legislative initiatives. Through those initiatives, the Greek legislator either seeks to provide for exceptions to the ‘main’ limitation rules (against the tendency mentioned above) regarding specific categories of crimes and sometimes in the light of very specific cases concerning the public discourse or to address needs of a completely different kind, such as the great caseload Greek criminal courts usually face, by deploying the autonomous but neighbouring institution of conditional limitation. In this context, one should turn the spotlight on the need to revisit the priorities and quality standards that should be applied when intervening in that specific regulatory field and in the field of criminal law in general. That presupposes among other things that the legislator will successfully strike a balance between the interests of the State, the victim and the offender not by exhausting regulation by means of criminal law, but rather by intervening, whenever necessary, through alternative positive actions.

Assistant Professor in Criminal Law, NOVA School of Law, Lisbon,
Portugal

Athina Sachoulidou, PhD
Faculdade de Direito da Universidade NOVA de Lisboa,
Campus de Campolide,
1099-032 Lisboa, Portugal
athina.sachoulidou@novalaw.unl.pt

Christos Lampakis, PhD
Attorney-at-law before the Supreme Court of Greece,
Thessaloniki Bar Association
Mitropoleos 42 & Karolou Dil, 54623
Thessaloniki, Greece
christoslambakis@gmail.com