The weakening of the statute of limitations in French criminal law

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Abstract: After having been thoroughly reformed by Law n°2017-242 of 27 February 2017 and then revisited by Laws n°2018-703 of 3 August 2018 and n°2021-478 of 21 April 2021, French law relating to the statute of limitations testifies, more than ever, to a hostility towards the very idea of an extinction of the right to act in order to punish offenders. The present study intends to highlight the two vectors by which such hostility is manifested: first, the paralysis of public action which allows the process of criminal punishment to be initiated is weakened to the point of being fictitious; second, the statute of limitations on the sentence finally pronounced is governed by rules which are intended to sanction only serious deficiencies on the part of the enforcement authority.

Introductory comments

According to its legal definition, statute of limitations is a "*method of acquiring or extinguishing a right after the lapse of a certain period of time, and under the conditions determined by law*"[1]. The effect of certain legal rules is to give the passage of time the ability to either generate or extinguish a given right, which a person previously holds. The concept of statute of limitations is used in criminal law in its extinctive form, typically to end the right to compel the perpetrator of an offence in order to attain his rights and freedoms[2]. Criminal law is indeed the legal field in which the effectiveness of the rule of law is as common as it is necessary. The primary objective of such a concept is to restore social order, which has been disrupted by the perpetration of an offence. This can only be achieved by initiating legal proceedings though which the penalty shall be rendered and implemented. Any offence indeed creates a disturbance to a pre-established order, which adversely affects the general societal interest. Order can then be restored by initiating legal ac-

[1] G. Cornu, *Vocabulaire juridique*, Association H. Capitant, PUF, 2018.

[2] The trial, which extends from the discovery of an offence to the full execution of the punishment imposed as a result of its commission, is based on the principle of the necessary and proportionate use of state coercion.

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tion by means of a representative of the law. This action is public (as it belongs to the community), and, in France, it is initiated and exercised by magistrates of the State Counsel's Office[3], essentially. In addition, if the offence is associated with a victim (either a natural person or a legal entity), whose loss is similar to that caused to society[4], this victim also has a civil action, allowing him/her to bring charges before the criminal courts[5]. The public prosecutor and the victim thus represent the entities able to react by law to the perpetration of an offence. Their failure to do so over an extended period of time would however result in depriving them the right to act, according to the concept of statute of limitations.

As a means of terminating the right to compel the person(s) responsible for an offence[6], limitation periods primarily act upstream of the prosecution to, irreversibly, prevent the action by which the effective implementation of substantive criminal laws can be obtained. When this type of statute of limitations is acquired in a given legal situation, the perpetrator shall not be tried before a criminal court to establish individual criminal responsibility. The limitation period is provided by law for any classification of offences[7], affecting serious crimes, major and minor offences[8]. The statute of limitations then applies downstream of the prosecution, to extinguish the right to enforce one or more penalties attached to a criminal conviction, which has become final under the conditions provided for by the law. Such conditions are in the event of exhaustion or abandonment of the remedies that were available[9]. However, this statute of limitations, which is of substantive nature, does not erase the conviction itself, as this effect would only results from the rehabilitation of the convicted[10] or from amnesty[11]. The effects of the substantive statute of limitations are thus similar to those of a

[3] Article 1, paragraph 1 of the C.C.P. (Code of Criminal Procedure) provides that "Public action for the enforcement of sentences is initiated and exercised by the magistrates or civil servants to whom it is entrusted by law".
[4] The victim must suffer harm that is certain (not purely hypothetical), personal (similar or close to that suffered by the company at the same time) and directly caused by a criminal offence (art. 2 C.C.P.).
[5] Exercised before the criminal court, this action available to the victim can lead to the initiation of a public prosecution of which he or she is not the owner (art. 1, para. 2 C.C.P.).
[6] These are precisely the perpetrators, co-perpetrators or accomplices of an offence according to the imputation laws which attribute these different qualities (Articles 121-1 seq. of the Penal Code).
[7] Article 111-1 P.C.
[8] Articles 7 to 9 C.C.P.
[9] Articles 133-2 seq. P.C.
[10] Article 133-1 par. 3 P.C. The erasure of the conviction by the legal or judicial discharge is only valid for the future. It removes the conviction from the beneficiary's criminal record without, however, being excluded from the justification of a state of legal recidivism.
[11] Article 133-9 P.C. Unlike legal or judicial discharge, amnesty erases the criminal nature of the act. If the offence has been judged, any conviction that may have been handed down is erased.

presidential pardon, since they are both obstacles to the enforcement of the sentence, but do not erase the conviction itself[12]. The reason for attributing a presidential pardon is nonetheless bound by the discretion of the President of the Republic, but not to the passage of time[13].

While they arise from the same fact, criminal offences have now different limitation periods, when they concern either criminal proceedings, public or civil actions[14]. On the one hand, the civil action, whose purpose is to make good the individual damage caused by the offence, shall take place within its own limitation period, and before the civil court[15], although the public action has been extinguished through the statutes of limitation. On the other hand, in the context of criminal law, the statutes of limitations that apply to the criminal law aligns with those of the civil action. The acquisition of the latter prevents that of the sentence from coming into play, since no legal action could give rise to the referral of the case before the court of competent jurisdiction. This particular link is a problem in the case of a conviction in absentia[16] or when a conviction served both parties[17]. In these two cases, the limitation period does not in any event start to run until the decision is duly served[18]. Notification must then be made within the period of limitation of prosecution, because, in this specific case, the last action, which might interrupt the course of this limitation, is the final judgment or ruling by which the conviction was pronounced. The time limit for prosecution is otherwise acquired, and the time limitation of the sentence can no longer succeed it[19]. When the judgment will have been given in adversarial proceedings, if no appeal is issued, the time limitation of the sentence will begin to run after 20 days of the period that has been provided by the General Prosecutor attached to the Court of Appeal to seek such a remedy.

[12] A presidential pardon only entails exemption from serving the sentence (Article 133-7 P.C.). Thus, the exemption is either total or partial (in this case referred to as "remission"). The exemption may be granted by substituting a less severe sentence for the one to be executed (in this case, it is called "commutation of sentence").
[13] According to Article 17 of the Constitution of 4 October 1958 "The President of the Republic has the right to grant pardons".
[14] Since the promulgation of law n°80-1041 of 23 December 1980.
[15] Articles 2224 to 2227 of the Civil Code (C.C.).
[16] Hypothesis in which the defendant was not aware of the date of the hearing and was therefore neither present nor represented. He is completely unaware of the decision that has been handed down against him.
[17] The judgment is qualified as contradictory to be served when the accused, duly summoned, does not appear or is not represented at the hearing by a lawyer (Article 498 C.C.P.).
[18] Notification can be defined as a service made by a court bailiff and consisting in handing over a copy of a procedural document, in this case the judgment carrying a criminal conviction, to its addressee. The purpose or effect of this service is to inform the accused of his conviction, to start the time limits for appeals, to substitute the prescription of the sentence for the prescription of the public action, and to allow the execution of the sentence pronounced.
[19] Criminal division of the Court of cassation (Crim.), 21 February 2012, n°11-87163.

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In criminal law, a number of arguments are traditionally raised to try to justify the use of these two types of statute of limitations. The first argument lies on social peace, and is seen as healing the wounds over time. The official reaction thus cannot reopen the wounds, in contrast to the facts that caused them. Social peace intends to help forgetting the idea of sanctioning the inability of the authorities to act in a timely manner. In turn, during the limitation period, the perpetrator lived, in fear of being prosecuted, will necessarily have kept a low profile, and will have not reoffended. The second argument, which is more pragmatic, is to make it impossible for people who could, in a relatively comfortable period, take legal action to see applied all penalties provided for by the law. However, this approach can only be appropriate if the holders of the right to act have precise awareness of the offence committed against them[20], or against the interests of the procuring entity they are supposed to protect. While these two arguments are the same for both types of statute of limitations in criminal law, a justification remains exclusive to the time-limit for prosecution. It is indeed possible to see this form of limitation period as a preventing tool for miscarriages of justice. The time period from and after the offence compromises the integrity of the evidence, and ultimately destroys them. Although progress in forensic science is pushing back the boundaries limit[21], they do not provide a solution in every situation[22]. Furthermore, from the perspective of the right to a fair trial, and when the requirements are placed in the context of the statute of limitations for prosecution, there is a clear tendency for the difficulty, which are experienced by a defendant with regards to the administration of old evidence for a defendant, to result in a violation of Article 6§1 of the European Convention of Human Rights (ECHR). The Strasbourg Court had the

[20] In cases of unintentional injury resulting in a total incapacity to work of more than three months (Article 222-19 P.C.), the statute of limitations for prosecution begins on the date on which it was established that the incapacity had lasted more than three months (Crim., 22 October 1979, Bull. crim., n°291)

[21] While crime scene DNA deteriorates with ultraviolet light and humidity, the scientific techniques deployed around its use allow profiling from deteriorated DNA. In addition, to avoid the problem of contamination linked to the manual stages of DNA collection and conservation, new tools are appearing in police practice. This is the case at the Institute of Criminal Research from the national police force (IRCGN), where the GendSag device is used. It allows for instant DNA analysis as soon as the sample is taken, according to the "Sample and Go" concept.

[22] For example, it remains very difficult to provide scientific proof of the absence of consent to an act of a sexual nature when biological traces, material evidence of violence, the existence of exchanges between the victim and her attacker, the presence of psychoactive substances in the blood (GHB, Stillnox, etc.), have disappeared over time. Nevertheless, the criminal law requires proof of a sexual attack committed with "violence, constraint, threat or surprise" to qualify a sexual contact as an "assault" (art. 222-22 al. 1 P.C.).

opportunity to rule that such a violation could be the result of an infringement of the principle of legal certainty, through the absence of a limitation period[23].

The statute of limitations are regularly criticised, because they avoid the criterion of the dangerousness of the perpetrator, essentially[24]. The perpetrator can indeed represent a continuous, or a new, threat, which can sometimes serve to build feelings of impunity and omnipotence resulting from the application of the statute of limitations. Outside the French legal systems, such as in United Kingdom, the statute of limitations do not always apply to public action[25]. Similarly, when the penalty is time-limited, it would discredit the judgment since it effects are frozen by the application of the statute of limitations, although the criminal conviction would not erased[26].

According to the highest court in the french juridic system, the statute of limitations for prosecution is not a fundamental principle recognised by the laws of the Republic, and it does not follow from Articles 7 and 8 of the Universal Declaration of Human Rights of 26 August 1789, as well as any provision, rule or principle of constitutional values[27]. The legislator and, in turns, the criminal court can exercise a certain control on the statute of limitations for prosecution on its various conditions and the implementation of its legal regime, respectively. Nevertheless, in accordance with the necessity principle of penalties and the guarantee of rights, in criminal matters, it is up to the legislator, to set the rules, which are clearly appropriate to the nature or seriousness of the offences, on the limitation for prosecution, in order to account for the consequences of the passage of time. In this regard, the Constitutional Council is responsible for its own review of the unsuitability of the legal rules on limitation (as interpreted), and agrees to censor any flagrant inappropriateness[28]. Regarding the regime of the state of limitation, case law considers that the time-limit for prosecution constitutes a peremptory exception on grounds of public policy. Time-limitations must therefore be pronounced *ex officio* by trial judges[29], provided that they have allowed all parties to discuss it, in order to respect the adversarial process[30].

[23] European Court of Human Rights (ECHR), *OleksandrVolkov v. Ukraine*, 9 January 2013, n°21722/11, par. 140.
[24] J.F. Renucci, *Infractions d'affaires et prescription de l'action publique*, Recueil Dalloz, 1997, p. 23.
[25] The principle that time does not stop the Crown prevails in common law, so that, in theory at least, criminal proceedings can be brought indefinitely. This imprescriptibility in fact applies only to indictable offences and not to summary offences (Article 127 « Limitation of time » in Magistrates' Court Act 1980).
[26] L. Griffon-Yarza, *Prescription de la peine*, Répertoire de droit pénal et de procédure pénale, Dalloz, 2018, n°6.
[27] Plenary assembly of the Court of cassation (Cass. ass. plén.), 20 mai 2011, n°11-90032, RSC 2011, p.611, obs. H. Matsopoulou.
[28] Constitutional Council (Cons. const.), 24 mai 2019, n°2019-785 QPC, actu. 25 juin 2019, obs. C. Fonteix.
[29] Crim., 14 févr. 1995, n°93-85640, Bull. crim., n°66.
[30] Crim., 8 janv. 2013, n°12-81045, Bull. crim., n°9.

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Similarly, it may be pronounced, for the first time, before the Court of Cassation, judge of the respect of the law, provided that it can find the elements allowing it to appreciate its value, in the first judges' findings[31].

The latest comprehensive reform of the rules on statute of limitations in criminal matters has been produced by Law n°2017-242 of 27 February 2017, which came into force on 1 March 2017. This reform appeared necessary for two reasons. On the one hand, the French law for the statute of limitations had become complex over the years, due to an increasing number of derogatory legislative arrangements[32]. Such an increase in derogatory legislative arrangements was detrimental to the coherence and readability of criminal law. On the other hand, the case law was the source of a number of uncertainties, regarding both the nature of the offences and the deferral of the start of the limitation period. The new law thus accounts for the complexity of the legal system associated with limitation periods, and primarily aims to clarify the state of the French law on this issue. The new law brings together the main provisions concerning the statute of limitations for prosecution in Articles 7 to 9-3 of the Code of Criminal Procedure, as well as that of the sentence in Articles 133-2 to 133-4-1 of the Penal Code. These articles include the derogatory time limits that were previously in various articles of the Code of Criminal Procedure and the Penal Code, which are therefore repealed. In particular, this text "*aims to ensure a better balance between the need to fight crimes and to ensure legal certainty and preservation of evidences, principally, by extending the time limits for prosecution in criminal matters and misdemeanours, while unifying these time limits with those of the limitation of sentences, and by enshrining, specifying and framing the rules of case law related to the causes of interruption and suspension of the limitation period*"[33].

Since then, the legislator has again intervened to further mitigate the risk of prosecution being extinguished in cases where the victim is a minor[34]. The latest legislative reform which affected both the statute of limitations for prosecution and that of the sentence, has given rise to prejudicial hostility in the statute of limitations. Observation of such hostility questions its real power, especially regarding beyond questioning the means used to ensure its real efficiency. Indeed, the numerous amendments to the related texts, together with case law interventions reducing the rigour of rules applying to this concept, have weakened the notion of statute of limitations. If the extinctive limitations can be paralysing to the exercise of the power to

[31] Crim., 20 oct. 1992, n°91-86924, Bull. crim., 330.
[32] Specially when the victim is a minor. On this issue : see A. Tourret and G. Fenech, *Rapport d'information*, *Assemblée Nationale*, 20 May 2015, n°2778, pp. 27 et seq.
[33] Circular « Crim. 28 February 2017 presenting the provisions of the law n°2017-242 of 27 February 2017 reforming the statute of limitations in criminal matters, BOMJ n°2017-03, 31 March 2017, p. 1.
[34] Law n°2018-703 of 3 August 2018 (It extends the limitation period for certain offences committed against minors) ; Law n°2021-478 of 21 April 2021 (It creates a new form of « rolling » statute of limitations, typically to combat sexual violence against minors).

punish, one or more penalties, its adjustments and interpretations considerably reduce its real impact.

The purpose of this study is therefore to demonstrate that the paralysis of the exercise of the power to punish, through the statute of limitations for prosecution, has become fictitious **(Part I)**. We then discuss the fact that the law now intends to sanction the inertia of the State Counsel's Office, by giving the statute of limitations on penalties a negative connotation **(Part II)**.

Part I. The fictitious paralysis of the power to punish

While the derogatory limitation periods multiplied, and are distributed within the criminal law by an accumulation of texts[35], the recent Law n°2017-242 of 27 February 2017 on the reform of the limitation period in criminal matters proposes to restructure the rules related to the limitation period for prosecution. To do this, the text combines most of its rules in Articles 7 to 9-3, in the preliminary to the legislative part of the Code of Criminal Procedure, which are dedicated to the 'general provisions' associated with public and civil proceedings. The new legal structure does not, however, conceal the intention to adjust the limitation periods again, and substantially **(§1)**. This is also increasing even more the disruption on the course of the limitation period **(§2)**.

§1) A fiction resulting from the adjustment of limitation periods

Not wishing either to abolish it objectively nor to opt for a much broader spectrum of offences that are not subject to the statute of limitations, the legislator retained extinctive period of limitation, following the movement of hostility towards it, as initiated by his predecessors and the case-law. The key idea is to balance the rules related to the limitation period in achieving two objectives. The first objective justifies maintaining the statute of limitations, except when it does not apply[36], as an instrument for legal forgiveness,

[35] Examples: Law n°89-487 of 10 July 1989; Law n°95-116 of 4 February 1995; Law n°98-468 of 17 June 1998; Law n°2003-239 of 18 March 2003; Law n°2004-204 of 9 March 2004; Law n°2006-399 of 4 April 2006.

[36] This phenomena only applies in criminal cases to the crimes against humanity incriminated in Articles 211-1 to 212-3 of the Penal Code (Article 7 al. 4 C.C.P since Law n°2017-242 of 27 February 2017 - previously the imprescriptibility of crimes against humanity was provided for in Article 213-5 P.C.), including genocide (Article 211-1 P.C.) ; direct public provocation to commit genocide, even when the provocation is not followed by action (Article 211-2 P.C.) ; certain serious personal attacks committed in execution of a concerted plan against the civilian population as part of a widespread or systematic attack (Articles 212-1 and 212-2 P.C.) ; and conspiracy to prepare, as characterized by one or more material facts, one of the above-mentioned crimes (Article 212-3 P.C.). The proposal to make war crimes imprescriptible (Articles 461-1 to 461-31 P.C.), which came out of the National Assembly's information report of 20 May 2015

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and as a tool for exerting pressure on the institutional actors of criminal trial. The second justifies the paralysis of the statute of limitations, with great flexibility, in order to further protect the interests of victims, and to account for scientific and technical developments. This development mitigates significantly the effects of time on the integrity of most evidence, which is likely to become established proof. This second objective, which is clearly preferred to the first one, is achieved by two means: **A)** extending the deadline; **B)** acting on the moment when the limitation period starts, to postpone it.

A) Extending the deadline

Law n°2017-242 of 27 February 2017 intends to account for the interests of victims, as well as new methods and techniques of investigation, collection and preservation of evidence, as essential reasons for significant extensions in limitation periods[37]. Therefore, time limits related to previous legislation are doubled, both for crimes and offences. For crimes, the statute of limitations is now 20 years[38], only, whereas, for major offences, the time-limit is 6 years[39]. The limitation period of a year, however, remains unchanged for. Less serious offences, *i.e.* the five classes of minor violations[40].

Although the limitation period applying to minor infractions is unchanged, this does not however translate an absence of hostility from the legislator's to the statute of limitations in these circumstances. The legal rules applying to minor offences differ fundamentally from those observed for serious crimes and major offences, and are specific to the French criminal law landscape for several reasons. The French Criminal Code includes relatively few minor offences[41]. The vast majority of them are found in the criminal provisions of other codes, although they are not systematically associated with inappropriate social behaviors with regard to the law. Thus, the inability to punish them, because of the acquisition of the statute of limitations certainly, does not have the same impact in terms of discrediting public authority and protecting victims. Minor offences are marginally damaging, only; They often represent awkward, and unruly behavior, with moderate seriousness, the legal pardon attached to the statute of limitations is more

(Rapport AN n°2278, proposition n°3), was not taken up in the preparatory work for the law of 27 February 2017.

[37] The Constitutional Council has recognized the legislator's freedom of choice with regard to increasing the severity of limitation periods (Cons. const., 12 April 2013, n°2013-302 QPC).

[38] Article 7 par. 1 C.C.P.

[39] Article 6 par. 1 C.C.P. It should be noted that by the law of 27 February 2017, the limitation period for customs offences was also extended to 6 years (Article 351 of the Customs Code).

[40] Article 9 C.C.P.

[41] For example, minor offences against property are incriminated in articles R631-1 to R635-8 P.C., i.e. by a total of 15 texts.

easily granted. Such a pardon, which is linked to a rather short limitation period, is nevertheless prevented by legal rules that simplify and secure the verbalisation of the offences. First, evidence, which is based on public accusation, is clearly reduced in terms of content. Indeed, while the moral element, which is subjective by nature, is at the heart of criminal responsibility, due to its highly personal dimension, and the degree of seriousness of the infraction, it is largely irrelevant in the case of a contravention[42]. Second, the Code of Criminal Procedure treats a considerable number of minor offences[43], immediately after the unlawful act has been established, and without any judgment[44]. It also possible when a case is referred to a judge that the latter is authorised to rule on the basis of the file transmitted by the public prosecutor, and this without any adversarial debate[45].

In summary even where it could find fertile ground, the statute of limitations is combated, directly and indirectly.

Under different assumptions, even before the entry into force of Law n°2017-242 of 27 February 2017, the legislator used to provide much longer limitation periods than the reference time-limit. However, because of its repetition, the rules for limitation for prosecution had been dispersed, making them considerably less readable. In particular, the new law has no other purpose than to put things in order, by listing the longer limitation periods in the reference texts. The new law also includes the two reasons for which longer periods were previously adopted, *i.e.* : the nature of the offence ; and whether the victim is under 18, or not[46].

[42] Article 121-3 par. 5 P.C. only provides that "There is no contravention in the case of frustration". It is therefore a question here of characterizing a minor offence on the basis of the material behavior observed in violation of the incriminating text, without in any way having to search for the guilty intention, except in exceptional cases.
[43] Article R48-1 C.C.P.
[44] This is the on-the-spot fine system, which consists of paying the fine either to the ticketing officer when the offence is detected, or within 45 days to the service indicated in the ticket (Article 529-1 C.C.P.). It should be noted that the law allows the offender to file a request for exoneration with the service indicated in the notice of offence (Article 529-2 al. 1 C.C.P.). This system is also set up for certain contraventions of the public land transport services (Articles 529-3 to 529-6 C.C.P.), as well as for certain contraventions of the highway code (Articles 529-7 to 529-11 C.C.P.).
[45] In this case, it is the simplified procedure applicable to any minor offence, even if committed in a state of legal recidivism (Article 524 C.C.P.). The competent police court judge rules without prior debate by means of a penal order in which he pronounces an acquittal or a conviction. When a conviction is handed down, it results in a fine (since there is no imprisonment for a contravention) and/or one or more of the additional penalties provided for the repression of the act committed (Article 525 C.C.P.). The judge hearing the case in this way may, however, consider that an adversarial debate is useful. In this case, he or she returns the file of the proceedings to the prosecuting authority for prosecution in the form of the ordinary procedure.
[46] The 2017 law abolishes the deferral of the starting point of the limitation period for prosecution for certain offences committed against vulnerable persons to the day when they "appear to the victim in conditions that allow public action to be taken". The criterion on which this deferred starting point was based appeared to the legislator to be too subjective and imprecise.

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On the one hand, Article 7 paragraph 2 C.C.P. currently covers serious crimes[47], which due to their nature, are subject to a limitation period of 30 years. Thus, the degree of seriousness of the offences, the complexity of the crime, the context in which it was committed, and the extent of the potential damage to be caused, represent sufficient reasons to admit a more comfortable period of action, and this even before the law of 27 February 2017 was adopted. As expected, article 7 paragraph 2 C.C.P. specifically refers to crimes against the human species[48], crimes of enforced disappearance[49], terrorist crimes[50], illicit drug trafficking crimes[51], war crimes[52] and crimes related to the proliferation of weapons of mass destruction[53]. Similarly, the provisions of article 8 paragraph 4 C.C.P. bring together offences for which a limitation period of 20 years is applied. The particular nature of the offences, which is identical to the crimes themselves calls for such adaptations, requiring much longer periods of time to achieve effective prosecutions. It is therefore not surprising to note references to proliferation of weapons of mass destruction[54], war crimes[55], illicit drug trafficking offences[56] and terrorist offences[57], in the associated text. There are however no references to direct provocation or public defence of terrorist acts[58].

On the other hand, legislators have, for long, chosen to protect more carefully the interests of victims, when they are minors at the time of the offence. The legislator is first setting longer limitation periods, but does not generalize them. In this area, for both crimes and offences, the legal and logical standpoint consists in isolating sexual offences, and those specifically intended to prevent the endangerment of minors, within article 706-47

[47] Some of these special time limits, which are longer than the 10-year time limit formerly provided for in article 7 C.C.P., were scattered throughout articles 215-4, 221-18, 462-10 C.P. and articles 706-25-1, 706-31 al. 1 and 706-175 C.C.P. All of these articles were repealed by the law of 27 February 2017.
[48] Articles 214-1 to 214-4 P.C.
[49] Article 221-12 P.C.
[50] Article 706-16 C.C.P.
[51] Article 706-26 C.C.P.
[52] Part IV bis P.C.
[53] Article 706-167 C.C.P.
[54] Id.
[55] Part IV bis P.C.
[56] Article 706-26 C.C.P.
[57] Article 706-16 C.C.P.
[58] Article 421-2-5 P.C. It should be noted that the fact of intentionally extracting, reproducing and transmitting data that publicly advocates terrorism or directly provokes these acts with the aim of hindering the effectiveness of procedures, either for the removal of content targeted by the administrative authority, or for the judicial arrest of an online public communication service, is also concerned (Article 421-2-5-1 P.C.). On the other hand, while an offence of habitual consultation of terrorist sites without a legitimate reason had been created by Law n°2017-258 of 28 February 2017, and spared by the extension to 20 years of the statute of limitations for public action, the incrimination has now been repealed (Constitutional Council, 15 December 2017, n°2017-682 QPC).

C.C.P.[59] This is to adapt the rules of criminal trial to challenge of protecting these victims, who are rarely in a position to protect their own interests[60]. Quite logically, public action, which is a prerequisite for obtaining a result through the implementation of these rules, is not extinguished by the reference limitation periods. Thus, serious crimes, which are referred to in article 706-47 C.C.P., are subject to a 30-year limitation period, when they are committed against a minor[61]. Meanwhile, offences mentioned in the same text ar subject to a 10-year statute of limitations[62], with the exception of those incriminated in articles 222-29-1 and 227-26 P.C. When committed against 15 years old and younger, limitation periods are even extended to 20 years, in case of deliberate violence, resulting in total incapacity to work for more than eight days[63], sexual assault[64] and aggravated sexual assault[65]. In addition, since the entry into force of the Act of 21 April 2021, the offence of

[59] The list of offences concerned has just been extended by the law of 21 April 2021 (art. 11).
[60] It is possible, for example, to sentence the perpetrator of the offences in question to a treatment order (Article 706-47-1 C.C.P.), to keep the personal data of the perpetrator or even the suspect in the automated national judicial file of perpetrators of sexual or violent offences (Articles 706-53-1 to 706-53-12 C.C.P.), or even to subject a convicted person who has served his or her full sentence to detention or security surveillance (Articles 706-53-13 to 706-53-22 C.C.P.). For their part, minor victims may benefit from a medical and psychological assessment to determine the nature and extent of the harm suffered and to establish whether this requires appropriate treatment or care (Article 706-48 C.C.P.).
[61] These are murder or assassination (Articles 221-1 to 221-4 P.C.) ; torture and acts of barbarism (Articles 222-1 to 222-6 P.C.) ; deliberate violence resulting in permanent mutilation or disability committed against a minor of 15 years of age (Article 222-10 P.C.) ; rape (Articles 222-23 to 222-26-1 P.C.) ; trafficking in human beings (Articles 225-4-2 II, 225-4-3 and 225-4-4 P.C.) ; procuring a minor under the age of 15 (Article 225-7-1 P.C.).
[62] These are sexual assaults (Articles 222-27, 222-28, 222-29, 222-30, 222-31, 222-31-2, 222-32 and 222-33 P.C.) ; trafficking in human beings (Article 225-4-1 II P.C..) ; procuring a minor of 15 years of age or more (Article 225-7 1° P.C.) ; resorting to the prostitution of minors (Articles 225-12-1 and 225-12-2 P.C.) ; corruption of minors (Article 227-22 P.C.) ; sexual proposition made by an adult to a minor of 15 years of age or more (Article 225-7 2° P.C..) ; resorting to prostitution of a minor (Articles 225-12-1 and 225-12-2 P.C.) ; corruption of a minor (Article 227-22 P.C..) ; sexual proposition made by an adult to a minor of 15 years of age or to a person posing as such by using an electronic communication medium (Article 227-22-1 P.C.) ; capturing, recording, transmitting, offering, making available, disseminating, importing or exporting, acquiring or possessing a pornographic image or representation of a minor as well as the offence of habitual consultation or in return for payment of an online public communication service making such an image or representation available (Article 227-23 P.C.) ; manufacturing, transporting, distributing or trading in violent or pornographic messages likely to be seen or perceived by a minor (Article 227-24 P.C.) ; inciting a minor to undergo sexual mutilation or to commit such mutilation (Article 227-24-1 P.C.) ; sexual molestation against minors (Articles 227-25 to 227-27-2 P.C.) and incitement to commit a serious crime ou a major offence (Article 227-28-3 P.C.).
[63] Article 222-12 P.C.
[64] Article 222-29-1 P.C.
[65] Article 227-26 P.C.

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failure to inform in relation to sexual assault or sexual molestation of a minor is prescribed by 10 years, while the same failure in relation to rape of a minor is prescribed by 20 years[66].

Beyond the desire to protect the specific interests of minor victims, extending the limitation periods is a pragmatic solution. Indeed, minor victims of sexual offences and, to a lesser extent, of endangerment by adults[67], have great difficulty in accurately representing the reality of the situation they experienced. This is especially true when they were very young at the time of the events. Awareness 5 of the prohibited and punishable nature of the act they have undergone is generally not immediate. Awareness of minor victims is often hampered, with segments of recollection, as memories of the trauma come into their mind. The extension of the limitation period is thus intended to adapt the deadline for these particular situations, in order not to penalize, by a legal impediment to legal action, the victim who could not faithfully represent the facts suffered, verbalise and denounce them[68]. At the same time, the intimate context, in which these acts occur, represents a major barrier for the State Counsel's Office, which often has no other means of reacting than to release the victims' words. Nevertheless, these reasons are sufficient to justify postponing the start of the limitation period. Recently, the law of 21 April 2021, provides that the statute of limitations for rape, sexual assault or sexual molestation of a minor may be extended if the same perpetrator rapes or sexually assaults another minor until the statute of limitations for this new offence expires. The statute of limitations may be interrupted by an act of investigation, enquiry, judgment or ruling concerning the same perpetrator. This applies to all proceedings. In the same vein, the statute of limitations for the offence of non-reporting is extended to 10 years from the victim's majority in the case of sexual assault or violation and to 20 years from the victim's majority in the case of rape.

In a completely opposite way, numerous texts incriminate inappropriate behavior for social life, apart from the Penal Code. This is particularly the case of offences committed through the press, under the Law of 29 July 1881 on press freedom and in electoral matters, to a lesser extent. It should also be noted that the offence of discrediting a judicial act or decision, which was time-barred after three months from the day the offence was committed[69], became subject to a six-year reference period, with the entry into force of the Law of 27 February 2017. In addition to following the trend towards

[66] Article 8 para. 5 C.C.P.
[67] Especially when the endangerment suffered takes the form of a perversion of the child affecting the development of his or her sexuality (corruption of a minor - Article 227-22 P.C. - ; sexual propositions made to a minor of 15 years of age - Article 227-22-1 P.C. - ; or the pornographic exploitation of the image of a minor - Article 227-23 P.C. -.).
[68] Around this question : M. Mercier, *Rapport d'information n°289*, Commission des lois, Sénat, 7 February 2018.
[69] Article 434-25 par. 4 P.C. (before the law of 2017).

the special extension or shortening of limitation periods, the derogation for this offence, which had entered into force with the Penal Code in 1994, has disappeared.

On the one hand, the law of 1881 is a reference text, highlighting the limitation on the freedom of expression in France. The entire Chapter IV of the law of 1881 is devoted to "serious crimes and major offences committed through the press or via any other means of publication". First, it is intended to prohibit certain public speeches, because: i) they promote the commission of serious crimes or major offences[70]; ii) they deny, minimise and trivialize specific crimes against humanity and war crimes[71] ; iii) they impute to others an act that is utterly contradictory to their honor or reputation[72], or insult a person or group of persons[73]. Other contents, the public dissemination or reproduction of which is perpetrated, are also covered by the ban, in order to preserve, the presumption of innocence[74], the dignity of a victim[75] or the anonymity of certain persons[76]. For all offences falling within the scope of the law of 1881, a general rule on statutes of limitation is laid down in article 65 par. 1. This general rule applies a time limit of three months to public and civil actions. The same rule applies to all actions based on an infringement of the presumption of innocence, resulting from the application of article 9-1 of the Civil Code[77], as long as this infringement is committed by a mode of expression that is likely to make it public[78]. This quarterly limitation period is traditionally justified by the ephemeral nature of a word, or the temporary nature of a writing, which could not be questioned before the rise of the Internet. Note, however, that what is on the web, *i.e.* on a virtual public space, is easily available to anyone for an undetermined period of time, even years after publication. Therefore, without taking the decision to disassociate press offences using the Internet as a communication vector, the legislator has decided to extend the limitation period for some press offences, by accounting the nature of the offence, instead of the way in which they are committed. Thus, Article 65-3 of the 1881 Law was therefore created through Law No. 2004-204 of 9 March 2004. to extend the limitation period to a year, and to be applicable to the publication of negationist statements as well as to defamation, insults or provocation to discrimination, hatred or racial or sectarian violence. This trend did not weaken, as the list of offences that

[70] Articles 23 and 24 of the law of 1881 (L. 1881).
[71] Article 24 bis L.1881.
[72] Articles 29 to 32 L.1881.
[73] Article 33 L.1881.
[74] Article 35 ter L.1881.
[75] Article 35 quater L.1881.
[76] These include, for example, a minor who is a victim of an offence or a minor who has committed suicide (Article 39 bis L. 1881).
[77] Article 65-1 L.1881.
[78] These modes of expression are identified with the article 23 L.1881.

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are covered by one year limitation periods has been extended on several occasions in the recent years[79]. In addition, press offences, which were initially covered by a quarterly statute of limitations, were then made subject to a one year limitation period statute of limitations, before being removed from the special law of the press, and, subsequently, joined the penal code (for which a six-year limitation period applies). This is particularly the case of offences of incitement to commit acts of terrorism and apology for terrorism, which are now incriminated in article 421-2-5 of the Penal Code[80].

On the other hand, the democratic life of a country is often symbolized by elections, regardless of the level of popular representation they concern. The voting process is governed by the legal rules set out in the Electoral Code to guarantee its reliability. Thus, for example, incriminations attempt to prevent individual fraud during an election[81], obstruction and disruption of the course of an election[82], or influence and pressure on voters[83]. However, such conduct cannot be covered by an overly generous limitation period, at the risk of causing more or less significant disruptions in the operation of the bodies, which would be detrimental to the general interest. This is why article L114 of this code provides for a shortened statute of limitations of six months, applicable from the day of the proclamation of the election result, only for the list of offences referred to.

Since the entry into force of Law on 9 March 2004, it has been provided that the laws relating to the limitation for prosecution (and the limitation of penalties) are immediately applicable to the punishment of offences committed before their entry into force[84]. Unlike the original text of the Penal Code, as adopted in 1992[85], the application of the new statutes of limitation does not vary according to whether the new rules are more lenient or more severe. Henceforth, these new rules apply immediately to statutes of limitation still in force at the time of their entry into force, even if the new period is longer (and therefore more severe) than the old one, when the latter has already begun its course. The rules on limitation are purely procedural in nature, affecting the administration of criminal justice, and do not give

[79] For example, incitement to hatred or violence, defamation and public insults committed against a person or a group of persons because of their gender, sexual orientation or disability (Law n°2014-56 of 27 January 2014). On this subject: J. Dechepy-Tellier, *"Is specification in criminal law on the way out? (Regard sur la loi n°2017-86 relative à l'égalité et à la citoyenneté)"*, Revue de sciences criminelles et de droit pénal comparé (RSC), 2017/4, n°4, pp. 677 to 698.
[80] This offence was initially incriminated in article 24 paragraph 6 of the 1881 law and was subject to the limitation period of article 65 of the same text. Law n°2012-1432 of 21 December 2012 had inserted it in the list of offences concerned by the annual limitation period of article 65-3 of the 1881 Law. Law n°2014-1353 of 13 November 2014 changed the basis to include it in the Penal Code in its article 421-2-5.
[81] E.g. Articles L86, L87 and L91 of the Electoral Code (E.C.).
[82] E.g. Articles L97 and L98 E.C.
[83] E.g. Articles L106 to L108 E.C.
[84] Article 112-2 4° P.C.
[85] It was scheduled to come into force on 1 March 1994.

rise to any subjective rights that may be acquired by the offender. The public action is simply extinguished by limitation if the period provided for by the law in the situation concerned has expired before the entry into force of the new law containing a new period. This choice by the legislator demonstrates, once again, the hostility harbored towards statute of limitations and makes the paralysis of the power to punish that limitation is supposed to produce a little more fictitious.

This attitude is also reflected in the deliberate extension of the starting point of the limitation periods.

B) Postponement of the starting point of limitation periods

There are many reasons for postponing the starting point of limitation periods. Some of these are related to the nature of the offence, while others are related to the way in which the offence was committed or to the minority of the victim.

First, in accordance with the provisions of Articles 7 to 9 of the C.C.P., the limitation period for prosecution runs from the day on which the offence was committed[86], this date is, in fact, precisely dependent on the nature of the offence. More precisely, the time necessary for the full material realization of the offence is a first essential criterion in determining the actual starting point of the limitation period. Indeed, there are only instantaneous offences[87], which are executed entirely in a single stroke of time, and which lead, in principle, to the start of the limitation period on the day of their commission. Moreover, if the conduct that completely consumes the offence in a very short period of time produces effects that continue over time, this has no effect on the starting point of the limitation period. This is the case, for example, of bigamy, which is entirely consummated on the day the second marriage is celebrated, while the first is not dissolved, and the limitation period begins at the very moment of the second marriage without being postponed until the day when its effects cease[88]. However, certain instantaneous offences present particularities that the case law does not hesitate to take into account in order to adapt the beginning of the limitation period. The consumption of strict-liability offences, for example, requires the appearance of the exact damage provided for by the text of the offence in order to occur. The statute of limitations then only begins to run from the day on

[86] In fact, the case law does not start the limitation period until the day after the offence was committed at zero hour (Crim., 28 June 2000 n°99-85381).
[87] This is the case of violation that cannot be prolonged in time. This is typically the case with theft, which is consummated at the very moment when the perpetrator fraudulently appropriates the thing he knows belongs to another. It is also the case of any offence resulting from a press publication, which is deemed to have been committed on the day the publication was made.
[88] Crim., 12 April 1983, bull. crim. n°97.

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which the said result appears[89]. Moreover, some offences, although instantaneous, can only be fully realized after the meeting of several components which, combined, form the material element. These are precisely complex offences (when the *actus reus* is a complex operation) for which the statute of limitations only begins to run on the day when the complex operation is formed, without this starting point being the day when the element began to be realized. Thus, in the case of fraud, the fraudulent means employed with a view to obtaining a discount to the detriment of others do not freeze the starting point of the statute of limitations in time[90].

Unlike instantaneous offences, continuing offences imply an action which continues over time and which continuously marks the criminal intent. Thus, in this case, the statute of limitations only runs from the day on which the criminal act ended "in its constituent acts and in its effects"[91]. Although this analysis extends, sometimes considerably, the period not yet covered by the statute of limitations, it is faithful to the spirit of the principle that the statute of limitations runs only from the day the offence was committed. A continuing offence is not yet committed as long as the guilty intent of its perpetrator, attached to a material unlawful act, persists. The statute of limitations has no reason to exist at this point, because it is the time of the criminal action and not the time of reaction against this action. It is therefore understandable that, in the case of receiving stolen goods, the statute of limitations does not start to run until the day on which the receiver is released from the stolen object that he has knowingly recovered, even if the theft in question is itself covered by the statute of limitations[92]. This type of offence exists when the repetition of a certain material act is necessary for the consumption of the offence. At least two identical acts must be committed, regardless of the length of time between them. The statute of limitations only starts to run from the last act that shows the perpetrator's habitual behavior[93].

In all the above-mentioned cases, the case law shows a welcome pragmatism that makes it possible to link the statute of limitations to the full consumption of the offence, without which the right to act in order to obtain effective punishment cannot arise. But the case law, far from being satisfied with this purely objective approach to the birth of the right to act, comes to link it to the awareness of the right by the holder.

[89] In the case of unintentional injuries, the starting point for the statute of limitations is the date on which it was established that the total incapacity for work had lasted more than three months (Crim., 22 October 1979, bull. crim., n°291).
[90] Where the fraudulent means used form a single criminal operation, the last remittance obtained by this means sets the date on which the limitation period begins to run (Crim., 26 September 1995).
[91] Crim., 19 February 1957, bull. crim. n°166.
[92] Crim., 16 July 1964, bull. crim. n°241.
[93] Such as the illegal practice of medicine (Article L4161-5 of the Public Health Code - P.H.C.).

In particular, judges certainly see the statute of limitations as a way of punishing those who, fully aware of their right, have not exercised it in good time. This analysis can be seen in the many decisions relating to offences which, by their very nature, involve clandestine conduct, at least initially. Consequently, and in order not to unfairly penalize those who are unaware of the existence of their rights, case law has long decided to postpone the starting point of the limitation period to the day on which the concealed offence became apparent and could be established[94]. The difficulty then lies in determining the exact moment when the clandestine offence is discovered[95]. The legislator[96] considered this case law to be perfectly suited to the fight against cunning crime and enshrined it in full in the Code of Criminal Procedure, in article 9-1 (2) and (3).

Then, some offences, although not clandestine in nature, are actually committed by an individual who carries out deliberate means to prevent the discovery of his act[97]. The opacity of the behavior, when it is characterized, is seen as a legitimate reason for postponing the starting point of the limitation period to the day on which the said behavior appeared and could be observed. Here again, the legislator, convinced of the usefulness of the approach, has also enshrined it in the Code of Criminal Procedure[98]. Seeking a balance between the pragmatic approach of case law, which sometimes postpones the starting point of limitation periods for concealed or hidden offences for a very long time, and the integrity of the extinctive limitation mechanism, the legislator has introduced 'cut-off' limitation periods in this area. The 2017 reform expresses hostility towards the de facto imprescriptibility that it intends to combat by setting time limits of 12 years in tortious matters and 30 years in criminal matters, which start to run on the day the hidden or concealed offences are committed[99]. Thus, if within this period, the conduct has not been discovered and a fortiori, no act interrupting of limitation has been carried out, the public action is extinguished.

Finally, it often takes a considerable amount of time for a minor who is a victim to report the facts. Also, based on the idea that a right to act can only be extinguished by limitation period as long as the holder is aware of its existence, the legislator has progressively sought to identify the cases in

[94] This is the case, for example, for the offences of breach of trust (Crim., 11 February 1981, n°80-92059) ; invasion of the privacy of others (Crim., 5 May 1997, n°81482) ; misleading advertising (Crim., 22 May 2002, n°01-85763) or simulation and concealment of a child (Crim., 23 June 2004, n°03-82371).
[95] The assessment of the trial judges is sovereign in this matter, which greatly facilitates the task (Crim., 7 May 2002, n°02-80638).
[96] Law n°2017-242 of 27 February 2017 mentioned above.
[97] Examples : offence of influence peddling (Crim., 19 March 2008, n°07-82124) ; offence of fraudulent participation in a prohibited cartel (Crim., 20 February 2008, n°02-82676 and n°07-82110) ; offence of illegal taking of interests (Crim., 16 December 2014, n°14-82939).
[98] Article 9-1 par. 2 and 4 C.C.P.
[99] Article 9-1 par. 2 C.C.P.

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which it is necessary to postpone the starting point of the statute of limitations until the day when the victim comes of age[100]. Since the entry into force of the law of 27 February 2017, the derogatory periods of 10 and 20 years applicable to certain major offences only run from the date of majority of the minors who are victims[101]. The same applies, a fortiori, to the thirty-year statute of limitations applicable to the serious crimes mentioned in article 706-47 C.C.P., when the acts are committed against minors[102].

§2) A fiction due to the disruption of the course of limitation period

The case-law and the legislature have together, albeit to varying degrees, expressed their hostility also to limitation periods in the course of their execution. Statute of limitations are not periods which are impervious to adjustments which have the effect of adding time in practice to the exercise of the power to punish. Obviously, the more generous the initial period, the more comfort is provided by the addition of new time, like new air vents, to the authorities responsible for carrying out the investigations necessary for the potential application of the penalties provided for the unlawful act committed. As a result, the causes of interruption have been multiplied **(A)**, while the mechanism of suspension for improper purposes **(B)**.

A) The multiplication of causes of interruption

The running of the statute of limitations may be interrupted by various types of acts which show the will of the holder of the right to act, not to leave an offence without consequences. There has always been a question of rewarding, with additional time, those who show their intention not to let their right lapse. It is even the essence of the statute of limitations that it is only a cut-off point from which it is possible to escape by carrying out one or more acts with the aim of establishing an offence, discovering it or confounding its participants. A specific act can therefore only have the effect of renewing the initial time limit in its entirety if it is directly and closely linked to an unlawful situation, which is punishable under criminal law, and if it is regular[103]. With this in mind, the legislator, through the adoption of the 2017 law, has given a list of acts interrupting a prescription in progress. These are acts of prosecution, acts of investigation and acts of inquiry aimed at finding and prosecuting the perpetrators of an offence, as well as judg-

[100] Several texts had this effect but confused the law applicable in this area before the 2017 reform (e.g. law n°89-467 of 10 July 1989 ; law n°95-116 of 4 February 1995 ; law n°98-468 of 17 June 1998 ; law n°2003-239 of 18 March 2003).
[101] Article 8 par. 2 and 3 C.C.P. (infra n°12.2).
[102] Article 7 par. 3 C.C.P. (created by law n°2018-703 of 3 August 2018).
[103] Crim., 15 June 1893, DP 1893. 1. 607.

ments and rulings, even if they are not final, which are not vitiated by nullity[104]. It is therefore irrelevant which body performed the act, provided that the purpose is the same.

First, the interruption of the statute of limitations is produced by acts that effect or request the referral of a case to a penal court, whether its function is to inform[105] or to judge[106]. These acts come from the State Counsel's Office or from the victim, who is entitled by law to initiate an action arising from the commission of an offence. However, the acts originating from the State Counsel's Office are much simpler than all the others to relate to the purpose claimed, so that the interruption is generated. The core task of the State Counsel's Office is to ensure the effective enforcement of criminal laws and its day-to-day activity is riddled with acts that are directly related to the commission of offences. It is not surprising, therefore, that the list of interruptive acts has been, by this means, largely fed by case law[107]. Nevertheless, a simple complaint by the victim is not a cause for interrupting the statute of limitations because, by definition, it does not demonstrate the will of the holder of the right to act to exercise this right in practice[108]. Before the recent reform, the case law had assimilated to acts of prosecution all final judgments and rulings or pre-legal judgments, whether or not they were rendered in contradictory fashion. This solution is taken up, in extenso, by the law of 27 February 2017.

In addition, when a preparatory investigation is opened, while it constitutes a mode of prosecution, it allows various institutional actors to carry out acts intended to shed light on the facts. The investigative acts referred to in articles 79 to 230 C.C.P. are seen as causes for interrupting the statute of limitations if they are used to seek out and prosecute the perpetrators of the offence. This concept covers a considerable number of operations such as interrogations, seizures, transport to the scene, searches, appointment of experts or the issue of a warrant. Case law also includes investigative acts carried out with the sole aim of investigating the causes of a death, when the commission of a crime or offence was only one possible explanation. Article 9-2 3° C.C.P., resulting from the 2017 reform, confirms these solutions.

[104] Article 9-2 C.C.P.
[105] Opening statement by the public prosecutor requesting the intervention of an investigating judge for specific facts (Article 80 C.C.P.) ; supplementary statement by which the public prosecutor requests the extension of the jurisdiction of an investigating judge for new facts (Article 82 C.C.P.) ; civil party application by the victim addressed to the investigating judge (Articles 87 and 88 C.C.P).
[106] All modes of referral to the Criminal Court (Article 388 C.C.P.) and the Police Court (Articles 531 and 532 C.C.P.).
[107] This is the case, for example, of the act of transmission of a procedure from prosecutor to prosecutor (Crim., 5 January 2000, n°99-81929) ; of the instructions issued by the public prosecutor to the judicial police officers (Crim., 10 December 1997, bull. crim., n°421).
[108] Crim., 11 July 2012, n°11-87583.

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In the same way, the law of 27 February 2017 finally ratifies the case law solutions that were increasingly broadening the list of causes of interruption of the statute of limitations by including acts of investigation[109]. These acts relate to the period prior to the prosecution, thanks to which the judicial police investigations take place, in order to find the offences and their perpetrators, under the control of the public prosecutor. Thus, any report by an investigator or even other officials[110] that serves this purpose interrupts the statute of limitations[111]. More recently, consultation or registration in certain police files, in connection with the search for evidence, are causes for interrupting the statute of limitations[112].

As to the scope of interruption, the last paragraph of article 9-2 C.C.P. extends it to related offences as well as to perpetrators or accomplices not covered by one of these same acts. Thus, an act, judgment or ruling relating to an offence has the same effect of interrupting the limitation period in respect of related offences. Similarly, the act, judgment or ruling interrupts the statute of limitations with respect to all the perpetrators, co-perpetrators and accomplices of the offence, even if they are not personally involved in the act or decision.

Finally, to give even greater scope to the interruption of the statute of limitations, the legislator has just created (law n°2021-478 of 21 April 2021) a contagious interruption in the event that the same individual commits sexual violence against different minor victims. The causes of interruption appearing in one of the proceedings conducted for these separate acts benefit all the proceedings in which the same individual is involved for acts of the same nature.

B) The improper purpose of the suspension

Suspension, unlike interruption, simply stops the course of a limitation period because of a specific event, making it impossible to initiate or exercise the public action. The mechanism remained for a long time a creation of the jurisprudence before the law of 27 February 2017 took up the principle and

[109] Article 9-2 2° C.C.P.
[110] Official reports drawn up by labour inspectors in the exercise of their judicial police powers and for the purpose of establishing violations of labour laws (Articles L611-1 and L611-10 of the Labour Code) ; official reports drawn up by the fraud control authorities (Crim., 16 December 1976, bull. crim., n°371).
[111] Examples : Reports drawn up ex officio by the police or gendarmerie authorities or at the request of the public prosecutor with the aim of establishing offences and gathering evidence concerning them in the context of a preliminary or flagrante delicto investigation (Crim., 7 December 1966, D. 1967. 201). The same applies to all the reports that officers of the judicial police draw up in the performance of the mission entrusted to them by article 14 C.C.P. (collection of victims' complaints, denunciations).
[112] Dissemination of a search sheet for a person likely to have been the victim of a crime or offence (Crim., 18 January 2006, No. 05-85858) ; requisition for registration in the National DNA File (Crim., 12 December 2012, No. 12-85274) ; consultation of the National Driving Licence File (Crim., 28 October 2014, No. 12-86413).

the effects in article 9-3 C.C.P.[113]. Classically, suspension is the consequence of a de jure or de facto obstacle that paralyses public action. Some texts expressly identify legal obstacles. This is the case for the extinction of the public prosecution by a forgery[114], decision support tools[115], alternative procedures to prosecution[116], the constitution of a civil party before the examining magistrate under the conditions of article 85 C.C.P. as well as the procedure carried out before an administrative authority[117]. But the case law has clearly taken hold of the notion of obstacle, whether of a legal nature or of purely factual origin, to admit an ever increasing number of hypotheses for variations in limitation periods. Thus, among the legal impossibilities to act, the case law has included the examination of a preliminary question[118], an appeal in cassation[119] or the disappearance of documents from a procedure[120]. The concept of a de facto obstacle, which is unrelated to the functioning of justice or the application of the law, had, in theory, few opportunities to be characterized. Only events that had the intrinsic capacity to insurmountably prevent the exercise of public action could constitute such obstacles[121].

While the notion of de facto obstacle could, from the outset, be synonymous with an event of force majeure[122], the Court of Cassation has adopted interpretations for its definition that are not very readable. For example, it accepted the suspension in the case of an error made by the court registry which had prevented the civil parties and the investigating judge from accessing the case file. In another case, however, it refused to make the lie of a accused person who allowed himself to be convicted instead of the real culprit a cause for suspension.

It is surprising here that a malfunction in the administration of justice can be seen as an insurmountable obstacle, whereas the convicted person's lie, itself caused in part by a failure to prove the imputability of the facts, was not. In both cases, moreover, the cause is not totally unrelated to the functioning of justice, although it is for the prosecution alone. Other solutions appear to be even more questionable, and have been so even within the chambers of the Court of Cassation. This is the case, essentially, of a case of octu-

[113] The text provides that "Any legal obstacle, provided for by law, or any insurmountable de facto obstacle comparable to force majeure, which makes it impossible to initiate or exercise public action, suspends the statute of limitations".
[114] Article 6 par. 2 C.C.P.
[115] Article 41-1 par. 2 C.C.P.
[116] This is the case for the execution of a penal composition (Article 41-2 par. 2 C.C.P.) or that of a judicial public interest agreement (Article 41-1-2 IV C.C.P.).
[117] This is the case, for example, of the referral to the regional commission for conciliation and compensation of medical accidents (Article L1142-7 P.H.C.).
[118] Crim., 3 December 2003, n°03-82966.
[119] Crim., 19 March 1956, bull. crim. n°75.
[120] Crim., 26 September 2000, n°99-86348.
[121] Invasion of the territory by the enemy, natural disaster.
[122] This assimilation is, since the 2017 reform, made by law (Article 9-3 C.C.P.).

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ple infanticide which was saved from the statute of limitations by the identification of a de facto obstacle that prevented the prosecution from taking place on eight occasions. The Plenary Assembly of the Court of Cassation[123] held that a combination of factors including "pregnancies masked by obesity", the absence of a doctor's consultation, the absence of a witness during childbirth, the failure to declare births to the civil registry and the concealment of the bodies of newborns constituted an insurmountable obstacle. This decision, which has been widely discussed, has led the legislator to resume control of the law of prescription.

Part II. The infamous paralysis of the effectiveness of sentences

The statute of limitations, for sentences, provided for penal code (Articles 133-2 to 133-4 P.C.), represents a method of extinction of a sentence pronounced by penal courts within a judicial decision that has become irrevocable. The force of *res judicata*, correlative to the impossibility of contesting this decision, gives the sentence such authority that its enforcement can be implemented by the use of public force. On the basis of this observation, it is clear that the state of French positive law on the statute of limitations on punishment, which is clearly unfavorable to the idea that such a statute of limitations can come into play in practice, endeavors to allow a very comfortable period of time for sentences to be enforced. The means used to achieve this are the same as those used to prevent the statute of limitations from running out on public action. They are based as much on the extension of limitation periods as on variations in the course of the limitation period. Consequently, if with such considerable means, which tend to make the statute of limitations a utopia, sentences are nevertheless extinguished in their effects, it is infamy that threatens the negligent authority. Thus, in order to understand why the paralysis of the effectiveness of sentences, through the operation of a statute of limitations, is infamous, it is interesting to study, first of all, the area of substantive limitation, since this constitutes the source of a positive obligation for the public prosecutor **(§1)**. In this way, it will then be possible to see in what way the means granted to enforce such an obligation avoid, as far as possible, its non-enforcement **(§2)**.

§1) The origin of infamy : the obligation to enforce sentences

It is up to the public prosecutor who has sought the effective application of the substantive criminal law, by initiating proceedings, and who has obtained it, to finalise the punishment process. However, time which is taken into account by the substantive statute of limitations, is once again a factor that the public prosecutor must not neglect if he does not want to lose the right to enforce the sentences pronounced and, above all, to bring the work

[123] A.P., 7 November 2014, n°14-83739.

of justice into disrepute through his inaction. It is therefore interesting to study the purpose of the obligation to enforce sentences in order to extract from it the hypotheses, certainly limited, in which the statute of limitations may potentially apply **(A)**. Once this object has been defined, it is also useful to appreciate the ways in which the obligation can be enforced **(B)**.

A) The object of the obligation

The statute of limitations sanctions the non-performance of the obligation to enforce a given penalty within the time limit set[124]. The statute of limitations is therefore only useful in cases where a penalty is liable to be enforced by a positive, material act of enforcement against the person of the offender or against elements of his or her assets. In the French legal system, only custodial sentences[125], fines and supplementary penalties are concerned if they can be enforced by a physical act of the competent authority[126]. This is also the case for penalties whose effect depends on notification, which is the responsibility of the enforcement authority. This is the case of the cancellation of the driving licence[127] or the ban on taking driving tests[128]. Conversely, the sentences pronounced which produce their consequences by the mere fact of conviction are, in essence, not subject to statute of limitations. It would indeed be illogical to punish inaction by this, when the obligation to act does not exist. This is the case with complementary penalties, depriving or restricting freedom or rights, which are enforced as of right[129]. There is no need for the offender or his property to be forced to act in order to enforce the punishment.

B) How the obligation is enforced

[124] Sanctions that do not have the character of a punishment, although they may be linked to a criminal decision, are excluded from the field of statute of limitations. We are thinking here, in particular, of the withdrawal of points from a driving licence (Crim., 6 July 1993) or of civil obligations subject to the rules of prescription in civil matters (Article 133-6 P.C.).
[125] These sentences can be enforced on the convicted person regardless of the way they are pronounced (imprisonment, suspended sentence, suspended sentence with probation or community service).
[126] This is the case of confiscation, which requires an act of coercion by the competent authority for its concrete execution.
[127] Crim., 26 April 2017, n°16-84539.
[128] Crim., 9 February 1994, n°92-85138.
[129] This is the case, for example, with prohibitions, disqualifications and incapacities (Articles 131-6, 131-7, 131-10, 131-11, 131-19 to 131-36 P.C. concerning major offences). This is the case, in particular, for permanent deportation from French territory (Crim., 7 January 2009, n°08-82892) or a residence ban (Crim., 29 March 1995, n°94-8388).

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The law enjoins the public prosecutor to pursue the enforcement of the sentence[130] without applying this obligation to all sentences[131]. It is therefore up to the public prosecutor to proceed specifically with the enforcement of the imprisonment. To this end, the public prosecutor transfers the sentence to the police or gendarmerie if the sentence is to be enforced in his jurisdiction. This transfer is made to the public prosecutor in whose jurisdiction the convicted person has taken up residence, if applicable. The enforcement of the sentence may take place after the person concerned has been summoned to the relevant department or to the prison. It may be carried out after measures have been taken to trace the offender[132].

However, a simplified procedure, alleviating the need for the prosecutor to continue enforcement, is provided for in the case of prison sentences not exceeding one year. The adjustment of the sentence, in particular through semi-liberty, work release, electronic surveillance or home detention[133], enables the prosecutor to be relieved, at least temporarily, of his obligation to enforce the sentence. The prosecutor is in fact required to communicate an extract of the sentencing decision to the enforcement judge so that the latter can himself specify the terms of enforcement of the sentence, during an adversarial debate in the presence of the convicted person and the prosecutor[134]. Thus it is only if the convicted person fails to appear before the enforcement judge that the prosecutor is obliged to enforce the sentence again[135]. The intensity of the obligation on the public prosecutor in terms of enforcement of sentences is, in the final analysis, clearly attenuated. This puts the prosecutor in the position of a gatekeeper, which greatly increases his or her chances of enforcing sentences within a reasonable time.

§2) The cause of infamy: failure to enforce sentences despite considerable means

The statutes of limitation, once it has expired, prevents the enforcement of the sentence. However, the sentence can't be regarded as having been enforced any more than the conviction is called into question by the effect of those statutes. It is not a question of affecting the sentence in principle but

[130] Article 707-1 par. 1 C.C.P.
[131] The recovery of fines and the execution of value confiscations are, more simply, done on behalf of the public prosecutor by the competent public accountant. If a value confiscation is executed on property that has already been seized, it is the responsibility of the AGRASC to carry it out (as is the case for all other movable and immovable confiscations) (Article 707-1 par. 2 and 3 C.C.P.).
[132] Home visit, arrest during a check linked to the circulation of an alert in the wanted persons file or the Schengen Information System.
[133] Home detention under electronic surveillance can only be used for a firm sentence of less than or equal to 6 months (Article 723-15 C.C.P.).
[134] Article 712-6 par. 2 C.C.P.
[135] The same applies if the enforcement judge has not made a decision within six months of the case being referred to him (Article 723-15-2 C.C.P.).

only of paralyzing the action taken to enforce it. As a result, all the legal consequences of the conviction remain. In particular, the sentence handed down remains on the criminal record, insofar as it may serve as the first term of a possible legal recidivism or be used as an operative criterion for the appropriateness of placing an indicted and previously convicted person in pre-trial detention before his or her possible referral for trial.

Although it has limited effects, the statute of limitations discredits the work of justice by reducing the sentence to its sole moral dimension. To avoid this weakening, the criminal law is still used to avoid the materialization of prescription. In this sense, the law grants the competent authority sufficient time to enforce sentences **(A)**, and also provides for factors that facilitate the fulfillment of the above obligation (B).

A) Sufficient time to fulfill the obligation to enforce sentences

The reform of the statutes of limitation, which came into force on 1 March 2017, concentrated the limitation periods relating to the sentence within Articles 133-2 to 133-4 P.C.[136] The central criterion used to define the quantum of the period is, as in matters of public action, the intrinsic seriousness of the offence. Thus, according to this criterion, the time limits within which sentences must be enforced, where necessary, are twenty years for serious crimes[137], six years for major offences[138] and three years for minor offences[139]. Longer periods than these are also provided for offences whose lists are identical to those identified, in criminal and misdemeanor matters, for the prescription of public action. The tendency to prevent the statute of limitations from running out is thus continued at the stage of enforcement of sentences by the choice of longer time limits over time, which are added to the longer time limits for the statute of limitations for public prosecution. The two statutes of limitations are very closely linked, which means that no statute of limitations on the penalty can be applied if the statute of limitations on the public prosecution has a prior effect.

While the statute of limitations on prosecution may, in part, be justified by the risk that evidence of the offence may be lost, such a risk disappears, by definition, as soon as a conviction is handed down. Only evidence that has been established and retained by the competent trial court can be the essential cause of a criminal conviction. It is therefore legitimate to grant the authorities responsible for enforcing sentences longer time limits than

[136] It should be noted that sentences handed down for crimes against humanity are the only ones for which there is no statute of limitations (Article 133-2 al. 3 P.C.).
[137] Article 133-2 par. 1 P.C. The 20-year period was already applicable before the 2017 reform.
[138] Article 133-3 par. 1 P.C. The applicable period, before the 2017 reform, was 5 years.
[139] Article 133-4 P.C. The 3-year period was already applicable before the 2017 reform. It is the only time limit that is not identical to the one provided for the statutes of limitation to the public action.

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those for initiating public proceedings. This approach thus justifies the fact that a period of three years, and not one year, is applicable to the limitation of penalties in respect of a minor offence. It also makes it possible to consider that the limitation period, although it paralyses one or more penalties, is linked to the nature of the offence for which the penalty is imposed. Thus, when the limitation period for public action is significantly shortened, as in the case of the written or audiovisual press, the limitation period for the penalty is not affected by this drastic reduction. The nature of the offence thus takes precedence over the nature of the penalty. As a result, for example, if the assize court decides to impose a prison sentence[140] for the commission of a serious crime punishable by life imprisonment, the limitation period for the sentence is the one provided for crimes, despite the correctional nature (for major offence) of the sentence imposed[141].

The time limits chosen by the legislator for the prescription of the sentence may appear, on the whole, to be sufficient. Although statistical data on the rate of enforcement of sentences are scarce[142], some of them emerge from a few parliamentary works and show that the statute of limitations does not constitute a major obstacle for the public prosecutor. In 2012, 68.5% of enforceable sentences were executed during the year[143]. On 1 March 2017, at the Paris Court of Appeal, the time taken to process sentences that had been upheld on appeal was estimated at "60 days on average"[144]. While these figures seem to indicate the indisputable efficiency of the enforcement mechanism, they do not intend to conceal the difficulties encountered in quickly absorbing the stock of sentences to be enforced. However, whenever causes are put forward to explain the delay in the enforcement of certain sentences, there is never any question of including prescription. The complexity of the law on the enforcement of sentences and the lack of human resources are the main reasons[145].

[140] What article 132-18 par. 2 P.C. authorizes him to do.
[141] Crim., 18 November 1998, bull. crim. n°308.
[142] Account would then be taken of the number of sentences to be enforced, which would be correlated to their nature (deprivation of liberty, fine, deprivation of property or rights, etc.), their enforceability and the context in which they were handed down (presence or absence of the offender at the hearing).
[143] P. Bas, E. Benbassa, J. Bigot, Fr. N. Buffet, C. Cukierman, J. Mézard, F. Zocchetto, Rapport d'information n°495 (2016-2017), *Cinq ans pour sauver la justice !*, Commission des lois, Sénat, 4 avril 2017.
[144] Id.
[145] According to the data provided in the criminal policy reports for 2015, the main factor in the lengthening of execution times in the correctional services and the execution of sentences is the vacancies in the registry. In addition, public prosecutors' offices have to deal with an increased workload due to the constant increase in the complexity of sentencing law and the quantitative development of important verification work. Finally, the enforcement department is largely dependent on actors over which it has little control, namely the police station, prison overcrowding and the workload of enforcement judges.

B) Variations in the course of time to ensure the fulfillment of the obligation to enforce sentences

The prescription of a sentence is based on a period of time which is far from being hermetic to the phenomena of interruption and suspension observed for the prescription of public action. Consequently, as soon as an event interrupts or suspends the course of a limitation period, time is added each time to the period fixed, abstractly, by the law. Each of the statutes of limitation applicable in criminal matters has a legal regime correlated to its object, and the statute of limitations on punishment therefore has its own causes of interruption and suspension.

Although the concept of causes of interruption was initially reduced, for sentences, to acts of enforcement in the strict sense[146], a contemporary trend has sought to broaden it. Indeed, the regulation[147] and then the law[148] have extended the hypotheses of interruption of the limitation period by including acts which tend to enforce the sentence. Article 707-1 paragraph 5 C.C.P.[149] provides that "the limitation period for a sentence is interrupted by acts or decisions of the public prosecutor, the courts responsible for enforcing sentences and, for fines or confiscation sentences falling within their jurisdiction, the Treasury or the Agency for the Management and Recovery of Seized and Confiscated Assets, which tend to enforce the sentence. The scope of interruptive acts is therefore broader for two reasons. Firstly, it includes preparatory acts that tend towards the enforcement of the sentence, such as acts of investigation intended to find the convicted person. Secondly, it includes a greater number of authorities that may produce acts interrupting the statute of limitations when they contribute to the enforcement of certain sentences[150].

However, as the legislator doesn't provide an exhaustive list of these acts, it necessarily leaves it to the case law to determine the scope of the concept. Litigation in this area already shows that the judicial interpretation adopted, gives the concept of acts aimed at enforcing sentences a certain flexibility. It includes the transmission of a decision by the public prosecutor

[146] Examples: For a custodial sentence, only the arrest of the convicted person had an interruptive effect, provided that it was followed by the execution of the sentence (transcription of the sentence in the prison register followed by the person's incarceration), Crim, 20 July 1827, Bull. crim. n°189. For a pecuniary penalty, the limitation period was only interrupted by payment under constraint, seizure of movable or immovable property or constraint by corps (which became judicial constraint). It was not interrupted by a simple order to pay (Montpellier, 23 August 1855, D. 1856. 2.127).
[147] Article D48-5 C.P.P. (created by decree n°2004-1364 of 13 December 2004).
[148] Law n°2012-409 of 27 March 2012 which entered into force on 29 March 2012.
[149] Article 133-4-1 P.C., created by the law of 27 February 2017, provides that "The limitation period for sentences is interrupted under the conditions set out in the penultimate paragraph of Article 707-1 of the Code of Criminal Procedure".
[150] Example: The acts and decisions of the Treasury represent causes of interruption of the prescription of the fine penalty without being limited, today, in their form, to payment under constraint, seizure, judicial constraint or even the order to pay.

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to the enforcement authority, all instructions given by the public prosecutor to seek out a convicted person[151], and the decisions[152] and acts[153] of the enforcement courts. There are now many more cases than before in which the statute of limitations can be interrupted.

As for the effect of the prescription, the law provides that it destroys the time that has already elapsed and starts a new period, identical to the first. This new period can, in turn, be interrupted infinitely. The multiplication of the causes of interruption can thus lead, de facto, to the imprescriptibility of a sentence[154], especially if the causes of interruption are themselves deliberately multiplied.

Unlike interruption, suspension merely stops the course of a prescription without causing its regeneration. It is linked to an absolute impossibility of acting as a result of an impediment which freezes the course of the prescription period for the duration of the obstacle encountered. In interpreting this obstacle, in the absence of legal provisions to this effect, the case law traditionally takes two forms : legal obstacles and de facto obstacles. However, it must be noted that the suspension is a consequence, drawn pragmatically from the circumstances of each situation, without giving the impression of any instrumentalisation. The legal obstacles exist above all when the enforcement of a first sentence prevents the convicted person from concurrently serving another one. It would thus be counterproductive, apart from the benefit of a confusion of sentences, to serve two prison sentences at the same time[155]. They are also linked to the suspension of the execution of prison sentences[156] or the suspension of a firm prison sentence on medical

[151] These are local searches carried out by the police or gendarmerie on the orders of the public prosecutor and intended to find a convicted person (Article 709 C.C.P.) ; the registration of a convicted person in the wanted persons file when requested by the public prosecutor and accompanied by precise instructions ; the opening of an investigation for the purpose of searching for a person who has absconded (Article 74-2 C.C.P.) ; and the issuing of a European Arrest Warrant (Article 695-16, paragraph 3 C.C.P.).

[152] The courts responsible for enforcing sentences benefit from the general principle of the adjustment of firm sentences (Article 723-15 C.C.P.), which gives rise to decisions granting or rejecting an adjustment or conversion of a firm prison sentence. Each of these decisions, because they relate to the execution of the sentence, interrupts the statute of limitations.

[153] The enforcement courts take actions which, without being of a judicial nature, are relevant to the enforcement of sentences and, by virtue of this purpose, interrupt the statute of limitations. This is the case, for example, of informing the public prosecutor's office that the convicted person is not attending the summonses to which he or she is obliged. This information allows the public prosecutor to enforce the sentence in the ordinary way (Article 723-15-2 al. 3 C.C.P.).

[154] L. Griffon, *Prescription de la peine : de la prescription sans fin à la fin de la prescription*, AJ pénal, 2012, 462.

[155] Crim., 26 August 1859, bull. crim., n°213.

[156] In the event of revocation of the suspended sentence, the revoked sentence (suspended sentence with probation) and the revoking sentence (imprisonment) are subject to the same starting point, i.e. the day on which the revocation decision became final

grounds[157]. De facto obstacles are much rarer because they are not related to the functioning of criminal justice or compliance with the rules of law. They are of natural[158], political[159] or personal[160] origin and prevent the prosecution from acting effectively.

Conclusion

French criminal law has a paradoxical relationship, to say the least, with statute of limitations. It continually seeks a balance between tradition and modernity.

On the one hand, tradition is reflected in the maintenance of statute of limitations as a cause of extinction of the right to punish, without accepting its pure and simple disappearance from the legal order. Very few offences are, by the effect of the law, not subject to this.

On the other hand, modernity is reflected in a growing hostility to the statute of limitations, because the protection of victims, developments in evidentiary techniques and the notable decline in legal forgiveness, clearly undermine the legitimacy of the extinction of public action or the right to enforce a sentence. The result of this drive towards modernity is that the vast majority of identified unlawful situations are de facto not subject to any statute of limitations. The statute of limitations on public action becomes a fiction in terms of its effectiveness, while the statute of limitations on punishment merely projects the spectre of infamy onto the public authority that might be tempted to do nothing.

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(Crim., 14 December 1901). This means that the suspended prison sentence was suspended during the suspension.

[157] Articles 720-1 and 720-1-1 C.C.P.

[158] Natural disaster.

[159] Occupation of the country by the enemy.

[160] The convict's state of insanity.

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