Statute of limitations in Dutch criminal law

di P.A.M. Mevis and M.C. de Rade[1]

Abstract: This contribution sets out to explore the Dutch regulatory system regarding the limitation period on both prosecution and the enforcement of imposed criminal sanctions. Given the existence of certain parallels between on the one hand the statute of limitations and on the other the right to trial within a reasonable time, the latter will also be discussed insofar as this right is important for a more holistic understanding of the former. This contribution aims to achieve these goals by describing and analysing the relevant Dutch legal framework on these topics, as well as recent changes and developments therein. In doing so, we will highlight certain typically Dutch characteristics of the regulatory system in question, and we will connect these characteristics to broader overarching developments and cultural features of the Dutch criminal law system. We find that, over the last two decades, the scope of the statute of limitations in Dutch criminal law has gradually (but quite seriously) been narrowed down. This development can be understood against the background of a more general tendency to remove 'obstacles' to criminal prosecution, as well as a Zeitgeist characterised by a fixation on the (presumed) interests of both the victim and the general public. We argue that the modality of the expiry of the right of prosecution or enforcement due to the passage of time or due to the exceedance of the reasonable time is a meaningful one, containing a certain constitutional quality which fits a system governed by the rule of law.

Keywords: The Netherlands – Prosecution – Enforcement – Reasonable time – Incidental legislation

I. Introduction

In this contribution, we explore the Dutch regulation of the extinction of the right to criminal law enforcement due to the expiry of the limitation period, and the influence of the exceedance of the reasonable time clause for prosecution. The statute of limitations concerns both the limitation period on prosecution and the limitation period on the enforcement of an imposed punishment. On the one hand, the statutory scheme exhibits characteristics that are comparable with the regulation of the statute of limitations in other legal systems, both in its historical development, the principles of the statute of limitations, and the general rules of the statutory scheme. On the other

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DPCE online
ISSN: 2037-6677

hand, certain typically Dutch aspects can be discerned. The right of a suspect to a trial within a reasonable time will be dealt with separately. The regulation of that legal institute differs in more ways from the statute of limitations than it appears at first sight.[2] We conclude the overview of the current legal situation with a more general assessment of the applicable Dutch law.

II. Statute of limitations in Dutch criminal law; from a quiet legal institute with a general scheme to more and more exceptions in incidental legislation

II.1. Principles and historical development; place in the legislative framework

Dutch criminal law is based on the civil law model. As a codification of substantive criminal law, the Criminal Code (hereinafter: CC)) was introduced in 1886, and it has remained in effect up until the present day. The CC 1886 also contains the regulation of the statute of limitations. Previously, the statute of limitations had been regulated in the outdated Code of Criminal Procedure of 1838, the modernisation of which in 1886 was not yet foreseen. The principled question of whether or not the statute of limitations, just like other parts of the right to prosecute[3], so the regulation and limitation of the execution of and the right to exercise government power under criminal law (*ius puniendi*) more in general, belongs to the substantive criminal law or to the law of criminal procedure was thus answered by the Dutch legislator on pragmatic grounds.

Despite the regulation of the statute of limitations in the code of substantive criminal law, the legal consequences of the statute of limitations are still regulated in the Code of Criminal Procedure. In the event of the expiry of a (prosecution) limitation period, then under the Dutch law of criminal procedure the Public Prosecution Service, responsible for the initiation and continuation of criminal prosecution, will be declared inadmissible in that (further) criminal prosecution by the trial judge. The criminal court has an ex-officio responsibility to determine whether or not the limitation period on criminal prosecution has expired.[4] After that, it can

[2] For a general overview of Dutch criminal law and law of criminal procedure: P.H. van Kempen, M. Krabbe and S. Brinkhoff (eds.), *The criminal justice system of the Netherlands*, Antwerp – Cambridge, 2019.

[3] Such as the exclusion of prosecution of persons who cannot be prosecuted yet because they are too young, the regulation of jurisdiction, the prohibition of double prosecution for the same offence (ne bis in idem), and the exclusion of further criminal prosecution if the suspect or the convicted person is deceased or the criminal prosecution has been transferred to another state.

[4] The highest Dutch court is of the opinion that limits have been placed on this by the system of its own appeal in cassation-regulations. Two complaints against the application of this approach that were submitted to the ECtHR have meanwhile been

be pushed to undertake such an investigation by a defence on the side of the suspect or by a nomination on the side of the Public Prosecution Service.[5] But also the actual passing of time since the committing of the criminal offence as detailed in the procedural documents can give cause for the courts to further investigate whether or not the limitation period on criminal prosecution has expired.

With respect to the legal grounds on which the statute of limitations on prosecution is founded under Dutch criminal law, very little has changed since 1886.[6] These grounds will be recognisable for criminal law lawyers from other civil law traditions and codifications. The most prominent grounds concern on the one hand the doctrine of evidentiary weakening; due to the passing of time, the scope and quality of the evidentiary material become less; the statute of limitations helps to prevent incorrect criminal law decisions and/or prevent a violation of the principle of a fair trial insofar as the defendant is no longer able to adequately defend themselves after a long period of time has passed. Traditionally, more penological and criminal-sanction theory based arguments are just as important. The special preventative effect of the punishment will go down if the defendant is only punished after a very long time. This also applies for the deterrent and norm-upholding effect of the punishment as part of general crime prevention. After the expiry of (a lot of) time, the necessity of a visible criminal law prosecution to repair the violation of legal order and the prevention of vigilantism no longer applies. The 'peace and order' in society that has returned due to the passing of time should not be disrupted once more. The need for retribution through punishment or correction of the suspect will decline. Such considerations explain why the statute of limitations is shorter for minor offences than it is for serious offences. The statute of limitations on prosecution is not about punishing the government for its passivity, nor should it be construed as a sort of loss of rights for the prosecuting body on account of such, as is the case with the reasonable time clause.

The concrete details of the regulation of the statute of limitations on prosecution and enforcement in Dutch criminal law did not undergo any significant changes from the codification of such in the CC 1886 until 1

communicated to the parties by this Court. See: ECtHR 21 April 2021, appl. no. 27231/19 (*Van der Zwan/The Netherlands*); ECtHR 21 April 2021, appl. no. 23106/19 (*De Jong/The Netherlands*).

[5] If such a defence is put forward during the investigation at the trial, the criminal court, if it is of the opinion that the limitation period has not expired, has to rule and explain this in its judgment explicitly.

[6] See for an extensive analysis: A.J.A. van Dorst, *De verjaring van het recht tot strafvordering* (diss. Tilburg), Arnhem, 1985, p. 47-82, G.J. van de Lagemaat, *Is de vervolgingsverjaring verjaard?*, in: *Ars Aequi*, vol. 62, issue 5 (2012), p. 339-347, A.J.A. van Dorst, *De tijd heelt alle wonden … maar de littekens blijven*, in: *Boom Strafblad*, vol. 2 , issue 3 (2021), p. 101-107, and G.J.M. Corstens, *De rol van de tijdsfactor in het strafrecht*, in: *Rechtsgeleerd Magazijn Themis*, vol. 105, issue 5-6 (1986), p. 438-457, especially p. 439-444. This contribution is based in particular on the contents of these publications.

DPCE online
ISSN: 2037-6677

January 2006. Since then, however, there have been a relatively large number of significant changes, albeit only concerning certain parts of the regulation and virtually all for the broadening of the exclusion of the statute of limitations.[7] The regulation of the statute of limitations was thus a quiet possession for a long time, but that has changed over the last decade. A recalibration of interests has taken place; the absolute effect of the statute of limitations, where the right to any further criminal prosecution is lost from one day to the next upon the expiry of the limitation period, is no longer unconditionally accepted in modern society and the resulting political debate on criminal law.[8] Nowadays, more value is placed on the possibility of actual criminal-law enforcement to satisfy social expectations in general and/or specifically for the benefit of the victim of a certain type of crime or their surviving relatives.[9]

II.2. The regulation of the statute of limitations (on prosecution) in Dutch criminal law in 2021

II.2.1. The applicable regulation[10]

The regulation of the statute of limitations on prosecution is included in Book 1 of the CC concerning 'General Provisions' in Articles 70 to 73 of that Criminal Code. The regulation thus applies to all criminal offences that are included in Book 2 (crimes) and Book 3 (misdemeanours) of the Criminal Code.[11] The regulation also applies to criminal offences that fall within the

[7] With respect to the transitional law in the event of a change to the statute of limitations, the following applies. Traditionally, the Dutch legislator makes sure the new regulation of the statute of limitations will not have any consequences for criminal cases where the limitation period has already expired prior to the date of entry into force of the new regulation. A legislative amendment or an extension of prescription periods therefore has the effect that any ongoing prescription periods that have not expired by the moment of entry into force will thus be extended.

[8] A significant legislative amendment in 2012 was evaluated some years later (P. Kruize, *Evaluatie wet aanpassing regeling vervolgingsverjaring 2012*, Den Haag, 2020), with an illustrative summary in English. See https://www.rijksoverheid.nl/documenten/rapporten/2021/01/15/tk-bijlage-rapport-wodc-evaluatie-wet-vervolgingsverjaring-2012. This evaluation found that in the period from 1 April 2013 to 31 December 2019, the statute of limitations was *possibly* extended for between 20 and 190 crimes because of the legislative amendment that entered into force in 2013.

[9] This idea actually arised from the somewhat older theory in international criminal law that the worst type of international crimes should be excluded from a statute of limitations on prosecution. Dutch criminal law changed in this respect for these crimes in 1971.

[10] We have limited ourselves to the regulation of adult criminal law applicable within the European part of the Kingdom of the Netherlands.

[11] Dutch criminal law divides criminal offences into two categories: the more serious crimes and the less serious misdemeanours. This division is reflected in the statute of limitations, as is apparent from the following.

scope of other laws and lower regulations (e.g. the Opium Act, the Economic Offences Act, or criminal offences that are dealt with as misdemeanours under municipal bylaws).

Articles 70-73 Dutch Criminal Code translates as follows:

Article 70:

1. *The right to prosecute expires:*

1°. after three years for all misdemeanours;

2°. after six years for crimes punishable by a fine, detention, or prison sentence of no more than three years;

3°. after twelve years for crimes punishable by a determinate prison sentence of more than three years;

4°. after twenty years for crimes punishable by a prison sentence of eight years or more.

2. *In derogation to paragraph 1, the right to prosecute shall not expire:*

1°. for crimes punishable by a prison sentence of twelve years or more;

2°. for the crimes described in Articles 240b(2), 243, 245 and 246, insofar as the offence is committed in relation to a person who has not yet reached the age of eighteen.

Article 71:

1. *The limitation period commences as of the day after that on which the offence was committed, except in the following cases:*

1°. for the crimes described in Articles 173(1) and 173b, the prescription period commences on the day after that on which the crime has come to the knowledge of the official charged with the detection of criminal offences;

2 °. (…)

3°. for the crimes described in Articles 240b(1), 247 to 250, 273f, 284 and 285c, insofar as committed against a person who has not yet reached the age of eighteen, Articles 300 to 303, insofar as the act resulted in genital mutilation of a person of the female gender who has not yet reached the age of eighteen, or the crime described in Article 302, insofar as the act constituted forced abortion or forced sterilisation of a person of the female gender who has not yet reached the age of eighteen, on the day after that on which that person reaches the age of eighteen;

4°. for the crimes described in Articles 279 and 282(1 and 2), on the day after that of the liberation or the death of the person whom the crime has directly been committed against.

5 °. (…)

Article 72:

1. *Each act of prosecution interrupts the limitation period, also in relation to others than the accused.*

2. *After the interruption, a new limitation period commences. The right to prosecute expires, however, in relation to offences after ten years, and in relation to crimes if as of the day on which the original limitation period commenced a period has elapsed that is equal to two times the limitation period applicable to the crime.*

DPCE online
ISSN: 2037-6677

Article 73:

The suspension of the criminal prosecution in connection with a dispute on an issue requiring a preliminary ruling shall suspend the limitation period.

II.2.2. The statute of limitations no longer applies to all crimes

The cited Article 70 Criminal Code makes it clear that the 'right to criminal prosecution' no longer necessarily expires in respect of all crimes. An exception is made for two categories. The first category is defined by the maximum term of the prison sentence that can be imposed for certain crimes.

Under the scheme of the CC of 1886 and since then until 2006, the statute of limitations was not excluded for any crime whatsoever, including the most serious ones under the CC. Only international crimes (dealt with outside the CC were excluded since 1971. But after in 2006 the limitation period was initially excluded for all crimes in the CC and elsewhere for which a life prison sentence could be imposed, under the actual Article 70 CC – following the legislative amendment in 2012 – it is apparent from Article 70(2)1 Criminal Code that this exclusion now applies to all crimes 'punishable by a prison sentence of twelve years or more'.[12] This means that the most serious (premeditated) crimes in Book 2 Criminal Code committed with intention, have all been excluded from the statute of limitations on prosecution under Dutch criminal law since April 1st, 2013. That represents a significant change in the legal interpretation that had applied from 1886 up until that time.

The exclusion of the statute of limitations on prosecution in Article 70(2)2 CC is first and foremost limited to a few, specific crimes. All of these exclusions relate to specific sex crimes subject to a maximum prison sentence of eight years. The exclusion in Article 70(2)2 CC is moreover subject to the condition that the offence was committed against a person who had not yet reached the age of eighteen (at the time of the offence). Nonetheless, this arrangement makes it clear that the modern legislator in particular is sensitive to the apparent need at a particular point in time, under the perceived primacy of prosecution and punishment of certain types of crimes, to make an exception to the general scheme for that specific group of crimes. It is therefore not surprising that in the initiative for a revision of

[12] Under the Dutch system, the statute of limitations is thus also excluded in respect of all those who (only) attempt to commit such a crime, prepare such a crime and/or are an accessory to such, even if in respect of these persons under the statutory regulation of the punishability of an attempt, preparation, or accessory involvement, a certain reduction of the statutory maximum sentence is prescribed. On the other hand, circumstances generally leading to an increase of the maximum punishment are disregarded. If a crime was committed by a repeat offender or as part of a multiplicity of crimes, the maximum prison sentence can actually be increased under certain circumstances. However, the calculation of the prescription period is based on the maximum punishment set for a particular crime, without taking into account these aggravating circumstances.

the regulation of sex crimes, a draft of which was published in March 2021 by the Ministry of Justice and Safety, it was proposed that even more sex crimes punishable by a prison sentence of eight years should be excluded from the statute of limitations. How long will it take, therefore, until in the opinion of politicians and the legislator other crimes than sex crimes should 'naturally' also be excluded from the statute of limitations in order to protect other legal interests? This can lead to a situation in the future where the general rule of Article 70 CC will be that the statute of limitations will be excluded for any crime punishable by a prison sentence of at least eight years (instead of the current minimum of twelve years), whereby exceptions will again be allowed in certain cases or in relation to certain 'minor' crimes (punishment up to six years), and so on; a race to the bottom.

II.2.3. The limitation period

Insofar as the right to prosecution can expire, the periods referred to in Article 70(1) Criminal Code apply. For the category of misdemeanours, a uniform prescription period applies of three years regardless of the maximum punishment. This prescription period thus applies in relation to criminal offences regulated by other legislative bodies than the parliamentary legislators, such as local councils. These criminal offences are in all cases misdemeanours. The prescription periods for crimes are derived from the maximum term of the determinate prison sentence that has been prescribed by the legislator for the relevant crime in the relevant penal provision. The current periods are (considerably) longer than the periods prescribed by the legislator in the original provision of Article 70 Criminal Code in 1886; since 2013, the relevant periods have been extended even further. The limitation period is relatively longer than the maximum prison sentence in percentage terms the more serious the crime is. If the maximum prison sentence set for a crime is no longer than three years, then the prescription period is six years and thus 'only' double the length of the maximum prison sentence. If the maximum prison sentence for a crime is eight years, the prescription period is twenty years. It is significant that the prescription period for certain common crimes, such as theft, which are subject to a maximum prison sentence of four years, but for which in practice a much lower sentence is generally applied, is triple the length of the maximum prison sentence, namely twelve years.

During the course of normal criminal prosecution, these periods do not threaten the adequate handling of criminal cases, partly because any act of criminal prosecution interrupts the prescription period; see Article 72 CC, which will be discussed in more detail in section II.2.5.

II.2.4. At what moment does the period of the statute of limitations on prosecution commence?

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ISSN: 2037-6677

Concerning the commencement of the prescription period, even in 2021, Article 71 subsection 1 CC still contains the main principle of the CC 1886: the prescription period commences as of the day after that on which the offence was committed. In the nature of that uniform, objective commencement criterion that applies to all crimes lies a part of the background of the institution of the statute of limitations. As pointed out earlier, it is about the interests of public criminal prosecution in general, and not, as in the case of the reasonable time clause, a specific right of the offender. After all, the moment of commencement of the prescription period is based on a simple fact: the day after that on which the offence was committed. That moment therefore applies regardless of any other circumstances, and in particular regardless of the criminal offence or the consequences of such for the victim or society, or whether or not the victim (could have) reported such, or whether the criminal prosecution could otherwise have started, and also regardless of whether or not the offender was responsible for the crime not coming to light, and thus in that way was able to influence and/or had influenced the expiry of the right to prosecution in a concrete criminal case. The public-law background of the statute of limitations on prosecution dominates in (virtually) all cases.

In *virtually* all cases, because the operation of the main principle of Article 71 CC has to be relativised in two different ways. The first relativisation ensues from the main rule itself. Since that main rule determines that the moment of commencement is the day after the date on which the crime was committed, the moment of commencement depends on the question of exactly when the criminal offence in question was committed. This raises particular problems with the so-called 'continuous crimes'. These are crimes whereby a prohibited situation is created, such as a deprivation of liberty (an offence by action) or the non-fulfilment of certain obligations (an offence of omission). As long as this situation continues and/or the obligation is not fulfilled, the crime is being committed. The prescription period therefore only starts on the day after the end of the period when the crime was being committed, thus on the day that the crime is no longer continuing and the continuous prohibited situation has ended. The limitation period of crimes against personal freedom only starts on the day after release from captivity or death of the captive. The limitation period for the hiding of a corpse (Article 151 CC) will commence on the day after the body is discovered; that of a breach of the Compulsory Education Act on the day after the pupil returns to school. It is moreover interesting that the continuous crime does not necessarily have to be a crime that is permanently (and actively) being committed. The continuous character of such can consist of a certain systematic succession of behaviours. The crime of stalking (Article 285b CC) consists of systematically harassing a victim with a variety of incidents. If this happens and is proven during a certain period, the prescription period does not commence as of the moment of the first

incident but only after the systematic stalking as a whole, as a series of repetitive incidents, has come to an end. The 'continuity of crime' will be decisive here; a classic concept in Dutch criminal law that is also followed in other jurisdictions.

The second relativisation of the main rule of article 71 CC in relation to the moment of commencement of the limitation period lies in the fact that already in 1886 in relation to certain special crimes an exception to this main rule is made in that Article 71 concerning the moment of commencement of the statute of limitations on prosecution. The number of exceptions has increased significantly over the years, and especially over the past decade, both in number and in practical significance. These exceptions are currently set out in article 71 subsections 1 to 5 CC. Their background lies partly in the crimes that they are typically associated with. Collectively, however, they also illustrate how the attitude towards the principles of the institution of the statute of limitations has changed in a general sense in recent times. This has led to the scope of the statute of limitations being narrowed and confined. Two exceptions in particular are significant.

The exception under subsection 1 refers to certain environmental crimes and was introduced in 1989. It ensues from the fact that in the opinion of the legislator it is undesirable that a long time can pass in particular between the dumping of polluting chemicals in the environment and the discovery of any far-reaching effects of such. Especially since the effects of such polluting chemicals only develop slowly over time and the serious consequences and/or the seriousness of the consequences only become visible after a certain amount of time.

In more recent times, and more important and significant in practical terms in the context of the changing attitude towards the statute of limitations (on prosecution), exceptions have been made in the case of certain sex crimes and crimes of violence against underage victims (Article 71 subsection 3 and subsection 4 CC) who have not yet reached the age of eighteen. This collection of exceptions for selected crimes is also relatively incidental, and has been effectuated by separate laws that have been introduced gradually since the 1990s. This includes laws against child abuse, female genital mutilation, etc. These laws are on the one hand partly due to the implementation of certain international treaties and EU framework decisions and directives[13] in relation to a particular crime as a 'phenomenon'. These changes are therefore also examples of the above-mentioned phenomenon of 'incidental legislation' whereby the 'evident' nature of the necessity to make an exception is easily accepted as logical and obvious. On the other hand, this collection of exceptions are all centred around the interests of the relevant underage victim. The legislator has decided not to

[13] Among others the EU framework decision on the combating of sexual exploitation of children and child pornography; and the Treaty of the Council of Europe on the prevention and combating of violence against women and domestic violence.

DPCE online
ISSN: 2037-6677

allow the prescription period to commence as of the moment when the crime was committed because in its opinion recollections of abuse during childhood only resurface much later and are often only vocalised much later (sex crimes), or because the reporting of the criminal offence is only possible once the underage victim has been able to extricate themselves from the family within which the crimes have occurred (incest, violence, kidnapping, female genital mutilation, forced marriage, human trafficking).

The shift in the attitude towards the principles of the statute of limitations is clearly visible in the case of the exceptions that Article 71 CC makes in relation to this category of special crimes. The interests of the (underage) victim in criminal prosecution weigh heavier than the general interests served by the statute of limitations. However, certain reservations need to be made in this case as well. Concerning these crimes, it can be said that they (first) disrupt the legal order when the perpetration of such becomes apparent, especially when there is media attention in cases involving abuse within a certain family over a period of several years. The (delayed) response to this outrage and the prevention of vigilantism are part of the objectives and principles of public, criminal-law enforcement. In the case law of the ECtHR, a certain shift is discernible whereby on the grounds of positive treaty obligations an effective and practical criminal-law enforcement is accentuated as a right of the victim of a concrete criminal offence, especially in the case of underage victims. At the same time, the exceptions of Article 71 CC also raise questions about legal unity and legal equality in respect of both the perpetrators and the victims of other crimes, in relation to which such exceptions are not made. Relevant for Dutch criminal law on this point is the determination referred to above, that the statute of limitations has been completely abolished for all (serious) crimes, namely crimes punishable by a prison sentence of twelve years or more. This means many of the exceptions of Article 71 CC discussed here have lost a lot of their practical significance; nonetheless, they still have a symbolic significance as an illustration of changing attitudes towards the statute of limitations, including the, perhaps excessive, use of 'incidental legislation'.

In summary, we can conclude the above three sections with the observation that since 2006 the legislature, in a series of legislative amendments, has abolished the statute of limitations for certain crimes, has extended the statute of limitations for other crimes, and has pushed back the moment on which the prescription period commences for certain crimes. Especially when these three changes are considered together, it is apparent just how far the Dutch legislature has limited the scope of the statute of limitations.[14] In many cases, it apparently felt there was a reason for the relativisation of the original grounds in order to allow the subsequent

[14] In addition, there is the broadening of scope that occurs because the maximum prison sentence for various crimes has been increased by the legislature, which by definition leads to a longer prescription period.

initiation of criminal prosecution in the public interests in general and in the interests of the victims in particular.[15]

II.2.5. Interruption and suspension of the limitation period

Article 71 Criminal Code thus determines when the limitation period starts and how long it lasts. In addition, in relation to the interruption of the limitation period, Article 72 CC regulates the events outside of such that influence the course and thus the length of the limitation period. The same applies for Article 73 CC in relation to the suspension of the limitation period. The difference is that in the case of interruption, the expiry of the limitation period stops and then starts again from the beginning.[16]

Analogous to Article 72 CC, in relation to the interruption of the limitation period, the further expiry of an ongoing limitation period is (repeatedly) interrupted by 'any act of prosecution'. In accordance with the first sentence of paragraph 2 of this article, therefore, each act of prosecution will lead to the inception of a new limitation period. Since 2006, it has been explicitly determined that the limitation period will also be interrupted in relation to 'others than the accused' (e.g. joint offenders), which is in accordance with the more general starting point of Article 50 of the Dutch Criminal Code, under which (exclusively) personal circumstances that exclude, reduce, or increase the punishability of the offence only need to be taken into consideration in relation to the suspect which the circumstances relate to personally. The limitation period of a crime, and thus also the interruption of such by an act of prosecution, is not such a 'personal' circumstance, and thus it can also have effect in respect of others than the

[15] It should be pointed out that under Dutch criminal law the victim has no means of initiating criminal prosecution themselves, and that the Public Prosecution Service is under no obligation to do so, even if it considers the case to be provable and the defendant to be guilty. In the case of several of the legislative amendments for the broadening of the statute of limitations, it is up to the Public Prosecution Service to decide whether or not, after the passing of an extended period, the commencement of criminal prosecution is still appropriate as a safeguard against subsequent prosecution when that is no longer appropriate. The general statutory rule of the general expiry of the right of criminal prosecution when the prescription period has expired might – in this approach as is discussed – be replaced by the possibility of balancing the interests at stake in each separate case. Under the Dutch system, however, the criminal court can only make a very limited review of the outcome of this balancing of interests by the Public Prosecution Service.

[16] In connection with this framework, it should be pointed out that the suspension of the handling of a criminal case in connection with the submission of an application for a preliminary ruling to the EU Court of Justice in Luxembourg constitutes a preliminary dispute in the sense of Article 73 CC. The prescription period is therefore suspended between the moment when the national court submits the question and the moment when a ruling is issued on such by the ECJ. The limitation period is therefore not running during that period. That is probably just as well, because sometimes it can take a long time before the ECJ is actually able to answer such questions.

DPCE online
ISSN: 2037-6677

person being prosecuted in the sense of Article 72 CC, even if that act is only carried out in respect of one of the defendants.

What exactly is meant in a general sense by 'an act of prosecution' is not defined in the Criminal Code nor in the Code on Criminal Procedure. There has to be an act of a body charged with criminal prosecution (in the Netherlands the Public Prosecution Service) in respect of a certain person (the person being prosecuted). The act has to be aimed at 'obtaining a decision of a court that is eligible for enforcement'. This can include acts of prosecution during the preliminary investigation, in particular acts as a result of which a court is involved in the criminal case, such as an application for a suspect to be held in temporary custody, or an application for some other means of coercion reserved for the investigating judge, such as a warrant to search a home in order to seize or record certain information, or the issuing of a summons to the defendant. After the trial in the first instance, the serving of a judgment in absentia to the defendant or the issuing of a summons to the defendant by the Public Prosecution Service for the hearing of an appeal are also acts of prosecution. However, because it not only includes acts that initiate the criminal prosecution, but also those which the Public Prosecution Service undertakes in order to continue a criminal prosecution that has already been initiated, it is possible to take the position that acts of the adjudicating court related to such can be qualified as acts of prosecution in the sense of Article 72 CC, since during the handling of the relevant criminal case in the relevant proceedings that court has to ensure the (adequate) progress of the handling of the case during the trial, and the progress of the criminal prosecution as a whole (see below under III in the discussion of the 'reasonable time clause'). In that sense, the notification of the president of the court about when the handling of the case will recommence after an adjournment can also be qualified as an act of prosecution. That also applies for the decision of a higher court to overturn the ruling of a lower court in a certain criminal case, and to refer the hearing of the case back to the same court or to a different court. The hearing of witnesses by the investigating judge in preparation of a trial, the issuing of a request for legal assistance for that purpose in the event a suspect is in a foreign country, or an application for extradition or the issuing of a European arrest warrant can therefore also be qualified as an act of prosecution. Anyone who has studied Dutch case law will get the impression that it is relatively easily accepted that an 'act of prosecution' has occurred. Because this has the effect that the limitation period is interrupted, this (in turn) has the effect that the prescription period will expire in fewer criminal cases, with the more than ever before, in this day and age, undesirable consequence that the right of any further criminal prosecution of the suspect will be lost altogether. Nonetheless, an act purely aimed at investigation, for example the interrogation of a suspect by the police, does not constitute an act of prosecution by itself.

Although originally it was necessary for the act of prosecution to be made known to the suspect before the legal consequence of interruption took effect, since 2006 Article 72 CC no longer includes this requirement. The idea was that every act of prosecution is an indication that there is still a reason to initiate or continue criminal prosecution and that this is possible from a substantive point of view (requirement of provability). This means the legal grounds for the statute of limitations and the continuation of the period of such have already been superseded, even if the act of prosecution has not yet been made known to the person being prosecuted.

Because each interruption of the limitation period has the effect that a new limitation period commences on each occasion, this would deprive the institute of the statute of limitations of its meaning if the legislature did not set a limit on the influence of such repeated interruptions on the total duration of the limitation period. That is why is in 2006, with Article 72 paragraph 2 Criminal Code, Dutch criminal law adopted the system that is used in other countries, such as Belgium. This sets a limit on repetitious interruptions of the limitation period. In that way, the Public Prosecution Service is prevented from undermining the grounds for the statute of limitations on prosecution by de facto extending the limitation period indefinitely, without any limitation, by repeatedly interrupting an ongoing limitation period and thus making the expiry of this limitation period impossible.

That the restriction set in Article 72 paragraph 2 CC in relation to certain crimes is linked to and set at twice the applicable limitation period differentiated in Article 70 CC for a particular crime has two advantages. Firstly, the idea that the limitation period should be longer the more serious the crime is, is expressed in the operation of Article 72 paragraph 2 CC, as is also the case with Article 70 CC. Secondly, this legislative construction makes it clear that Article 72 paragraph 2 CC, in the same way as paragraph 1 of this article, has no ramifications for those crimes in relation to which the right of prosecution cannot expire in accordance with Article 70 paragraph 2 CC. The introduction of the restriction on the indefinite continuation of a limitation period in Article 72 paragraph 2 CC in 2006 is one of the few more recent legislative amendments in relation to the statute of limitations in Dutch criminal law which reinforces the operation of the institution of a statute of limitations on the right of prosecution.[17] With Article 72 paragraph 2 CC there exists in any case a legal-normative possibility that the right of criminal prosecution will be lost in more cases than before due to the expiry of the limitation period, but this is only a theoretical possibility in light of the long periods provided for in Article 72 paragraph 2 CC.

[17] See A.J.A. van Dorst, *Is er toekomst voor de verjaring?*, in: J.W. Fokkens et al. (eds.), *Ad hunc modem. Opstellen over materieel strafrecht* (Machielse-bundel), Deventer, 2013, p. 66-67.

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II.3.The statute of limitations on enforcement

As pointed out above, the Dutch legislator originally, in 1886, regulated the statute of limitations on enforcement together with the statute of limitations on prosecution in Book 1 on the general provisions of the (substantive) Criminal Code. Nowadays, namely since 2020, the question of the statute of limitations on enforcement, just like the regulation of other aspects of the possibility or impossibility of enforcing sentences, is regulated in the Code of Criminal Procedure (hereinafter: CCP). The terminology used is no longer 'statute of limitations' but (the expiry of) the 'period of enforcement'. In this connection, Article 6:1:22 CCP stipulates the following:

1. *After the expiry of the enforcement period, the punishment or measure can no longer be carried out.*

2. *The enforcement period is one third longer than the limitation period on the right of prosecution.*

The enforcement period shall commence the day after the court decision or the Public Prosecution Service sanction order can be carried out. In general, that is the date on which the imposition of the sanction becomes irrevocable, which as a rule is when there are no longer any means of legal recourse available against such.

The regulation of the statute of limitations on enforcement does not contain a general regulation of cases where the expiry of the limitation period can be interrupted or suspended in a similar way to Article 72 and Article 73 CC. However, the law does describe a number of situations where the commencement of the enforcement period is deferred. The most prominent of these is that the period enforcement does not start during the suspension or annulment of enforcement under the law, nor during the time that the convicted person, albeit in relation to a different criminal-law decision, has been legally deprived of their freedom, nor during the time that they are absent from detention without leave.[18]

The setting of this period in Article 6:1:22 paragraph 2 CCP speaks for itself. Due to the link that is made with the period of the statute of limitations on prosecution, it simultaneously means that the expiry of the right to enforcement is excluded for those crimes for which the expiry of the right to prosecute is excluded.

In relation to the right to enforcement of a criminal sanction, in recent years the attitude has become more prevalent that there is no reason why a convicted person should be able to evade an irrevocable sanction imposed by the court merely due to the passing of time. In light of the lesser weight given to the principled legal protection of the convicted person on the basis of the statute of limitations on enforcement, the idea has even been floated

[18] In the latter case, a new enforcement period commences on the day after the date on which the absence from the prison or institution commenced and/or on the day after the revocation of the provisional release.

within Dutch political circles that the statute of limitations on enforcement should be abolished altogether.[19]

III. The right to a trial within a reasonable time

The entitlement of a defendant to a trial within a reasonable time is similar to the statute of limitations in the sense that it concerns the question of what the consequences are of the passing of a certain amount of time in a criminal case. Nonetheless, in terms of their nature and their legal basis, there are more differences than similarities between the two legal institutions. That is why the formulation of the reasonable time clause in Dutch criminal law is different than that of the limitation period.

The origin of the right of the defendant to a trial within a reasonable time lies for the Netherlands in the relevant clause in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).[20] This right – unlike the limitation period – is (still) not explicitly codified in the Dutch Criminal Code or in the Code of Criminal Procedure.[21] The nature of the treaty makes it clear that it is a right of the relevant suspect in a concrete criminal case.[22] The legal basis for the statute of limitations on prosecution, on the other hand, as we have already discussed, is not first and foremost a right to protect any interest of the individual defendant but rather a consequence of the diminished general public interest in criminal prosecution due to the passing of time. The aim of the right to a trial within a reasonable time is (conversely) to provide protection against an unreasonably long criminal prosecution, and thus aims to offer the defendant protection against unduly long inaction by the

[19] In this connection, it should be pointed out that also in the case of the statute of limitations on enforcement as a legal principle, the public need for the subsequent enforcement of a punishment after an (excessively) long time will gradually diminish. This same legal principle is a constituent of one of the grounds for the granting of a pardon. One of the grounds provided for in the Pardons Act is a situation where it has become plausible that with the enforcement of the judicial decision (or the continuation of such), no reasonable objective is being served with the application of criminal justice. On these grounds, a convicted person can ask for a pardon if the enforcement of a sanction has not commenced after the passing of a long period, even if the limitation period on enforcement has not (yet) expired, either because the statute of limitations is excluded, or because the enforcement period has not yet expired.

[20] See also Article 47 EU Charter insofar as it relates to criminal proceedings in which the application of EU law is in dispute.

[21] However, this right was included in the draft of a new Code of Criminal Procedure in July 2020.

[22] For us, it is less logical and obvious that the interest of a trial within a reasonable time should be invoked *against* the defendant (and for example an application for the hearing of witnesses to be refused) on the argument that the defendant (or society in general) also has an interest in the hearing of a criminal case within a reasonable time. The expeditious hearing of a criminal case is an integral part of democratic society and definitely does serve a public interest, but that is something different than a right of the defendant. And that interest in an expeditious hearing of criminal cases is also something different than the efficiency of criminal justice.

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government in a concrete criminal case; it forces expeditiousness in the pursuit of an initiated criminal prosecution. This legal institution therefore also differs in this sense from that of the limitation period, which is not based on an imputable act or omission of the government.

The fact that the right of a defendant to a trial within a reasonable time is part of a human rights convention comes from the stress and the uncertainty for the defendant that results from the initiated criminal prosecution. This uncertainty only exists if the defendant knows that criminal prosecution has been initiated against him. Under the Dutch law of criminal procedure, the moment of commencement of the reasonable time (the *dies a quo*) is therefore also the moment at which an act is performed in respect of the relevant person by the government, from which this person can deduce - or is reasonably able to deduce - that the Public Prosecution Service has a serious intention of initiating criminal prosecution against him. The differences with the limitation period are also clear in this area as well. For the reasonable time, the moment of commencement can differ from one criminal case to the next, while for the limitation period a fixed moment designated by law applies, normally the day after the date on which the crime was committed. The reasonable time will only start on that latter moment if it is precisely on that day that an act is performed that triggers the inception of that reasonable time, for example the arrest of the suspect in connection with a serious crime. More importantly, by nature the institution of the limitation period entails that the limitation period starts to run even if the suspect has no knowledge of the intention to initiate criminal prosecution. An act of prosecution will as we saw interrupt the limitation period (Article 72 paragraph 1 CC) and cause the period to start all over again; at the same time, the same act of prosecution can actually trigger the start of the reasonable time. This reasonable time will continue, without any interruption or suspension, until an irrevocable decision has been taken that brings the criminal prosecution to an end, and thus ends the stress and the uncertainty that the initiation of such prosecution causes for the defendant.

Furthermore, exactly what is considered to be (or is no longer considered to be) a reasonable period in a particular case will depend on the exceptional and typical circumstances of each specific case. Fixed, statutory periods apply for the statute of limitations, which are provided for under Dutch criminal law in the Article 70 CC discussed earlier. These periods moreover tend to be much longer: the reasonable time of prosecution in a concrete case can be amply exceeded, while there is absolutely no prospect of the limitation period expiring due to the actions of the Public Prosecution Service, resulting in an interruption of the limitation period. Finally: by nature, an exceedance of the reasonable time in the criminal prosecution against a certain suspect only applies in respect of him personally, whereas under Article 72 paragraph 1 CC the limitation period on criminal

prosecution also has effect in respect of others than the defendant himself (joint offenders).[23]

Nonetheless, in terms of the consequences of both institutions, and especially in the formulation of such in Dutch criminal law over the past ten to fifteen years, a parallel can be drawn that is worth taking note of. As we discussed above, the effect of the expiry of the statute of limitations is that the right of prosecution is lost. Due to the social repercussions of such, the legislator has decided to introduce numerous restrictions on the scope of the statute of limitations on prosecution, and thus to create a situation where the 'hard' legal consequences of a complete loss of the right to prosecution will occur in fewer cases and/or only after a much longer period. The highest Dutch criminal court, the Supreme Court, initially ruled that when the reasonable time for prosecution is exceeded, this should have the same legal consequences as if the statute of limitations had expired, namely the extinction of the right of criminal prosecution. However, because of the irrevocable ramifications this had for the many cases of violation of the reasonable time clause, this legal consequence was brought into question and eventually the possibility was accepted that an exceedance of the reasonable period for prosecution could be compensated for by a certain reduction of any criminal sanction that was imposed, if the nature of the sanction permitted such.[24] In a judgment of the Supreme Court in 2008, it has now entirely excluded the possibility that the exceedance of the reasonable time in a particular case can lead to a complete loss of the right of prosecution, not even in exceptional cases of an extremely long exceedance of the reasonable time.[25] If a criminal court determines that the reasonable time for prosecution has been exceeded, it can only choose between reducing the sanction imposed or simply making the observation that the reasonable period has been exceeded. This latter option cannot just be availed of if the nature of the sanction means it is not eligible for reduction, but also if the exceedance is too small to justify the compensation of such by a reduction of the sentence.

For the calculation of the sanction reduction if the reasonable period is exceeded, to some degree the Supreme Court has formulated a series of 'tariffs',[26] in particular if the exceedance of the reasonable period occurs after

[23] If multiple defendants are being prosecuted in a case, then naturally the reasonable time can be exceeded in respect of each one of them. But then that determination has to be made in respect of each defendant separately. The outcome can be different in each case because the reasonableness of the period will depend on the involvement of each defendant in the proceedings.

[24] That is not the case if a defendant is sentenced to life in prison or in the case of a measure aimed at the removal from circulation of – for example – dangerous weapons.

[25] Supreme Court 17 June 2008, *Nederlandse Jurisprudentie* 2008/358.

[26] For example: The reduction of the sentence will depend on the extent to which the reasonable time has been exceeded. The Supreme Court (17 June 2008, *Nederlandse Jurisprudentie* 2008/358) has adopted the following starting points for this.

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the trial in the first instance, because criminal cases in those phases are easier to compare and thus conducive to the calculation of such tariff-based sanction reductions when the reasonable time is exceeded. For these phases of the proceedings, the Supreme Court has also formulated starting points concerning the concrete periods that are no longer considered to be reasonable.[27]

The reasonable period moreover has to be seen from the perspective of the criminal proceedings as a whole: the expeditious handling of a criminal case on appeal can compensate for the exceedance of the reasonable period in the first instance. There would therefore no longer be any reason for a reduction of the sentence in order to compensate for the earlier exceedance of the reasonable period.[28]

The fact that according to the Supreme Court the defendant no longer has a right to claim the extinction of the right of prosecution due to an exceedance of the reasonable time, not even in cases where the period has been exceeded by an extremely long time, has led to a certain amount of criticism, partly because in doing so the Supreme Court has deprived this

A. If in the last fact-finding instance a prison sentence, a community service order and/or a fine is imposed, (the unconditional part of) that sentence is reduced:
1. by 5% if the reasonable period is exceeded by six months or less;
2. by 10% if the reasonable period is exceeded by more than six months but less than twelve months.

B. The extent of the reduction in these cases will be as follows:
- for a prison sentence, no longer than the duration of the exceedance of the reasonable period, and in any case no longer than six months;
- for a community service order, no longer than 25 hours;
- for a fine, no more than €2,500.
C. No reduction will be applied if it concerns an entirely conditional sentence, nor if it concerns a sentence of which the unconditional part lasts for less than:
- one month in the case of a prison sentence;
- one hundred hours in the case of a community service order;
- €1,000 in the case of a fine.

[27] To give an indication in this situation as well: in the appeal phase of a case, the proceedings must be concluded with a final judgment within two years after the appeal has been initiated, and within sixteen months if the defendant is being held on remand in connection with the case and/or the criminal law on young offenders is being applied. In addition, in the appeal phase the general rule is that the reasonable period will be exceeded if the procedural documents are not filed with the clerk of the court of appeal within six months after the initiation of the appeal. A similar formulation has been adopted for the appeal in cassation phase. Furthermore, in principle the starting point for the hearing of a case in the first instance is that the trial must be held within two years after the start of the reasonable time at the *dies a quo*.

[28] In terms of the sanctioning of the exceedance of the reasonable time with other legal consequences, first and foremost by the reduction of the sentence, this tendency is in line with the developments in other countries outside the Netherlands and in the case law of the EU Court of Justice in Luxembourg. In various legal systems, including in the Netherlands, there is currently discussion about whether or not it would be better to address the exceedance of the reasonable period in criminal cases and other cases in separate proceedings to determine the appropriate compensation, which proceedings and (financial or other) compensation would then be made accessible to other litigating parties.

modality of some of its effect. As a result, it happens more than on an incidental basis that the lower courts, in cases of an extreme exceedance of a reasonable time, nonetheless decide to attach to this the legal consequence that the right of prosecution has expired.[29] At the same time, the tendency to no longer follow the exceedance of the reasonable period by the loss of the right of prosecution is also in line with the developments described in respect of the statute of limitations, where the legal consequences have also gradually been constricted.

IV. Conclusion; valuation

It is evident that the scope of the statute of limitations, both the statute of limitations on prosecution and the statute of limitations on enforcement, has gradually been narrowed over the last two decades in Dutch criminal law. So much so, that the argument has been made in the Dutch literature that the statute of limitations on prosecution, which in many legal systems is based on the civil law tradition that has its origins in the 19th-century codifications of criminal law and the underlying precepts of that age, has now become obsolete itself.[30] In any case, the current statutory scheme in 2021 can, in theory, lead to the loss of the right of prosecution in a considerably lower number of cases than ever before. Herein lies a parallel with the right of a defendant to a trial within a reasonable time. With respect to this modality, which has only been developed in case law in the Netherlands, according to the latest interpretation of the Supreme Court the exceedance of this reasonable time no longer has to lead to the consequence that the right of prosecution is lost, not even in exceptional cases.[31]

[29] Furthermore, under the Dutch law of criminal procedure, the defendant has a number of possibilities to have the progress of the criminal prosecution against him assessed, and thus to compel the Public Prosecution Service to be expeditious under certain circumstances. For example, the defendant can ask the examining judge and the District Court to guard against any unnecessary delays. The District Court can also decide in chambers to terminate the criminal prosecution before the trial takes place. After such a decision, the court can only decide to continue the prosecution if new allegations (and new evidence) have been put forward against the defendant. After the start of the investigation and during the trial, the monitoring of the expeditiousness lies in the hands of the trial judge, who is urged to be expeditious in various articles of the CCP with such phrases as 'as quickly as possible', 'immediately', etc.

[30] G.J. van de Lagemaat, *Is de vervolgingsverjaring verjaard?*, in: *Ars Aequi*, vol. 62, issue 5 (2012), p. 339-347. Another idea is for the absolute legal consequence of the statute of limitations to be relativised, in the sense that despite the expiry of the prescription period, a court can still determine that prosecution in a certain case is nonetheless possible and/or desirable. See A.J.A. van Dorst, *Is er toekomst voor de verjaring?*, in: J.W. Fokkens et al. (eds.), *Ad hunc modem. Opstellen over materieel strafrecht* (Machielse-bundel), Deventer, 2013, p. 59-70; A.J.A. van Dorst, *De tijd heelt alle wonden … maar de littekens blijven*, in: *Boom Strafblad*, vol. 2 , issue 3 (2021), p. 101-107. It would be interesting to find out if such a modality already exists in other legal systems.

[31] That latter consideration also implies that the approach that is being advocated is doomed to failure, namely the abolition of the statute of limitations and/or the relativisation or replacement of such by a decision and a balancing of interests so that

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These legal developments, which are also discernible in other countries, have not happened in isolation. In a more general sense, the tendency exists for obstacles to criminal prosecution and the holding of a trial to be removed, even after a long time has passed or after earlier judicial decisions to the contrary.[32] Furthermore, as part of the current trend of populism in politics, more than in the past priority value is accorded to the interest - hypothetical or otherwise - in providing compensation to the victims through (subsequent) prosecution and the holding of a trial, even after an extended period has passed, of the person who has inflicted pain and suffering on them by committing the crime in question.[33] In terms of general public opinion, the *coute que coute* (ability) to prosecute and punish the offender has become a much bigger factor, which has partly been fuelled by media and other outrage about the expiry of the statute of limitations in certain cases. Criminal justice, in particular the loss of the ability to be able to exercise the *ius puniendi*, has become a subject of public and political concern and debate, with outrage about limitations as the substantive undertone. Accordingly, the classical, 19th-century foundations of in particular the statute of limitations on prosecution have been relativised. The mere passing of time no longer diminishes or extinguishes the general public interest in criminal prosecution; on the contrary, it has been replaced by outrage about the fact that in certain cases criminal prosecution is no longer possible purely because a certain amount of time has passed (or for some other reason). The argument of diminishing provability as a legal basis for the statute of limitations on prosecution has moreover been relativised even further by (the promise and expectation of) modern 'convincing'

prosecution can be initiated and a trial can take place after the passing of a long time in a concrete criminal case. Both a standardisation of the decision-making of the Public Prosecution Service to subsequently proceed with prosecution after a long period has passed (expediency of the prosecution) as a standardisation of the courts (in practice, the general public interest in subsequent prosecution and trial and/or the interests of the victim weigh heavier than the interests associated with the loss of the right of prosecution due to the passing of an extended period of time), which under the pressure of this development will be likely to work out to the disadvantage of those latter interests.

[32] For example, in 2013 the possibility was introduced in the Dutch CCP for a review of an irrevocable, non-convicting judgment on the grounds of – in brief – new evidence (a review to the detriment of the accused).

[33] The authority in the field of victim rights, M.S. Groenhuijsen, wrote back in 2002, in connection with the intention to abolish the limitation period in relation to certain crimes, about this argument of the interests of the victim in (subsequent) criminal prosecution: "Does the advantage of a few - coincidental? - trials after more than 20 years outweigh the permanent maintenance of false expectations for a much bigger group of surviving relatives? I would say: enough is enough". See M.S. Groenhuijsen, *Verlenging of afschaffing van verjaringstermijnen in het strafrecht*, in: *Delikt en Delinkwent*, vol. 32, issue 8 (2002), p. 813-822.

forensic evidence, in particular DNA evidence,[34] even after a long time has passed.

That the criminal legislator in the Netherlands and in other countries wants to constrict the scope of the institute of the statute of limitations due to other legal and political considerations that those that were leading during the codification in the 19th century is not actually problematical in and of itself. Numerous elements of criminal law and the law of criminal procedure currently in force are continuously being changed through legislative amendments, partly because the prevailing standards of the day, albeit only up to a certain extent, can and must be reflected in criminal legislation. This does not alter the consideration that in our opinion, even in this day and age, the institution of the statute of limitations, or more broadly, the modality of the expiry of the right of prosecution due to the passing of time or due to the exceedance of the reasonable time, is still no less relevant and meaningful. That should already be apparent for the Netherlands from the fact that various attempts to get parliament to abolish the statute of limitations on prosecution altogether have not received sufficient political support. Furthermore, the statute of limitations and the loss of the right of prosecution due to the passing of time has not been (totally) abolished in other legal systems either. In the context of international collaboration in criminal cases, the expiry of the limitation period on criminal prosecution is seen as important grounds for refusal. Another factor that plays an important role in the apparent undiminished relevance and importance given to the statute of limitations under positive law is the traditional categorical differentiation between the seriousness of crimes within this. For example, the limitation period for minor crimes is much shorter than that for serious crimes for a good reason. It is precisely with the minor crimes that the complete loss of the right to further prosecution is easier to accept as the outcome of criminal justice in a concrete case.

But we firmly believe that other factors are involved as well. Even in 'this day and age', the criminal-law theory and penological grounds that form the underlying principles of the institution of the statute of limitations on prosecution still have a certain degree of relevance and meaning, albeit with a somewhat different practical implementation than under 19th-century criminal law. The realisation is still important that in modern criminal justice, especially in relation to the more minor offences, a defendant can still become the target of active criminal prosecution by the government even after a very long time, and that it is healthy to realise and to accept that the further continuation of such criminal prosecution no longer serves any reasonable public interest. In more serious criminal cases, that consequence does not always have to arise, but the existence of the threat of such is a welcome and useful incentive to maintain sufficient

[34] A.J.A. van Dorst, *Is er toekomst voor de verjaring?*, in: J.W. Fokkens et al. (eds.), *Ad hunc modem. Opstellen over materieel strafrecht* (Machielse-bundel), Deventer, 2013, p. 68.

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expeditiousness, as is illustrated in particular by the ECHR right of a defendant to a trial within a reasonable time (Article 6 ECHR) supplemented by the adequate measures prescribed under treaty law to prevent a treaty violation (Article 13 in conjunction with Article 6 ECHR).

Anyone who views the developments in Dutch criminal law against that background (nonetheless) has to conclude that there have been a great many, relatively incidental legislative amendments that have narrowed the scope of the statute of limitations. Furthermore, the amendments that have constricted the operation of the statute of limitations also include changes relating to certain special (categories of) crimes. Such legislative amendments are more readily adopted on the assumption that it is logical and necessary to make exceptions in relation to these particular crimes. Sometimes this is driven by powerful and convincing media attention in certain cases. This excessively incidental development of criminal law loses sight of the systematic significance and regulation of the institution of the statute of limitations, which by nature is vulnerable but ultimately still has value and meaning. This same tendency has also been seen in Dutch criminal law in relation to the reasonable timeclause, whereby this theme has legal-normative significance and up until now regulation has only taken place in case law.

Both with respect to the exceedance of the reasonable time and the statute of limitations, society in a democratic state governed by the rule of law should ultimately be able to accept that the passing of an excessive amount of time diminishes the need and possibility of effective and adequate criminal justice in a substantive penological sense. The *ad infinitum* enabling of criminal prosecution and trial of defendants is the result of a certain amount of undesirable excessiveness in the public-law arena, which has replaced the more appropriate realisation and acceptance of the limitations of criminal justice. The realisation and acceptance of the importance of limitations would improve the constitutional quality of criminal law and criminal justice, and benefit an equally pragmatic and more legal-sociological 'healthy' reflection and attitude within society, which does not alter the fact that in that same criminal law, provisions can be included to ensure that such an exceptional consequence can only and will only occur in exceptional cases.