

# Statute of limitations in Spain. Analysis and further challenges

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**Abstract:** The reasons that justify that the State will not prosecute a criminal offence after a certain time has lapsed since it was committed, is subject to ongoing discussions, ranging from those that consider it inappropriate to the position that affirms that it would be against constitutional principles no to establish time limits for starting the prosecution and even for enforcing the penalty already imposed. Beyond all these debates around the *raison d'être* of the rules on the statute of limitations, the issues related to the length of the timeframes, the interruption of the period of limitations and the actions that cause such interruption, have an undeniable relevance in practice. This chapter seeks to provide a brief overview on the rules on the statute of limitations of criminal offences and penalties in the Spanish legal system, underlying its most salient features and the problems presented in its practical implementation.

**Keywords:** criminal procedure, statute of limitations, extinction of criminal liability, time limit for prosecution, interruption period limitations

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## 1. Introduction

Along the past two hundred years, since it was regulated in the Penal Code of 1822,<sup>1</sup> this legal institution has been present in the different penal codes. There are previous references and rules on the statute of limitations to be found in the *Fuero Juzgo*<sup>2</sup> and later also in the *Siete Partidas* enacted under the King Alfonso X *el Sabio* in the 13th century.<sup>3</sup> The time limits for prosecuting crimes then ranged for example, from 30 years for incest, 20 years for falsehood, 5 years for adultery or 1 year for insults. Since the codification of the criminal law, the Code of 1822 introduced a piecemeal regulation, only for certain offences, and prohibited expressly the application of the statute of limitations once the conviction sentence had been given.<sup>4</sup>

The regulation of the statute of limitations to prosecute has not followed a logical evolution along the history in Spain;<sup>5</sup> although it was

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<sup>1</sup> For the historical background and the different legal amendments introduced in the different Spanish Penal Codes, see F. Pastor Alcoy, cit., pp. 27-69.

<sup>2</sup> See C. Viada López-Puigcerver, *La prescripción de las acciones y el perdón de los delitos*, Madrid 1950, pp. 72 ff.

<sup>3</sup> F. Pastor Alcoy, cit., pp. 25-26.

<sup>4</sup> Ibid., pp. 27-29.

<sup>5</sup> Ibid., pp. 40-41.

regulated –albeit partly– in the Code of 1822, it is absent in the following Penal Code of 1848, while this Code expressly provides for the extinction of the penalty imposed after a certain time has lapsed. The following Penal Codes –e.g. 1870, 1928, 1944– until the democratic Penal Code of 1995, all contain precise rules on the statute of limitations, both for prosecution and for enforcing the penalty imposed, including diverse provisions regarding the timeframe, the factors that cause the interruption of the periods of limitation as well as on the effects of the staying of the proceedings.<sup>6</sup> The institution of “*la prescripción*”, which has been present in the Spanish criminal law system for many centuries already, is currently regulated in Articles 131 to 135 PC.

The topic of the statute of limitations has been subject to numerous discussions and studies in Spain,<sup>7</sup> and there is a vast scholarly literature the topic. The present chapter will not revisit those discussion, as the aim is to give a brief overview on the current regulation of the statute of limitations in criminal law in Spain, addressing also some of the questions related to its legal nature and objectives.

The question regarding on what justifies prohibiting the prosecution or sanctioning of a crime after a certain time lapse, is common to any criminal justice system, and thus, it is not justified to address it from a national point of view. However, the main positions in the Spanish literature will be reflected, in so far they can help understanding the rules and the functioning of the “*prescripción*” in the Spanish legal system.

## 2. Concept, legal nature and purpose

### 2.1. Concept

The *prescripción* has been defined in different ways, as for example: as a ground for excluding to prosecute and sanction a crime; the waiver of the State to exercise the *ius puniendi* or to prosecute a criminal act; the effects of the passing of time coupled with the procedural inactivity in investigating a crime, which results in the impossibility to find a person criminally liable;<sup>8</sup>

<sup>6</sup> See F. Pastor Alcoy, cit., pp. 38-67.

<sup>7</sup> See, for example, C. Viada López-Puigcerver, *La prescripción de las acciones y el perdón de los delitos*, Madrid 1950; C. Rey González, *La prescripción de la infracción penal*, Madrid-Barcelona, 1999; A. Gili Pascual, *La prescripción en Derecho Penal*, Elcano 2001; M.I. González Tapia, *La prescripción en el derecho penal*, Dykinson, Madrid 2003; R. Ragués I Vallès, *La prescripción penal: Fundamento y aplicación*, Barcelona, 2004; M. Cerrada Moreno, *Prescripción e imprescriptibilidad de los delitos. Orígenes. Fundamentos. Naturaleza jurídica*, Barcelona 2018; and more recently see the comprehensive study of F. Pastor Alcoy, *Tratado de la prescripción penal. Aplicación en todas las reformas del Código Penal*, Barcelona 2019.

<sup>8</sup> J. Banacloche Palao, “Algunas reflexiones críticas en torno a la prescripción penal”, *Rev. Derecho Procesal* 2-1997, p. 283.

a temporal limit to the punitive claim;<sup>9</sup> the extinction of the criminal liability due to the passing of certain period of time.<sup>10</sup>

Article 130 PC regulates the statute of limitations as one of the grounds that extinguishes the criminal liability, and this definition is shared by most of the scholars. However, some scholars consider that there can't be the extinction of criminal liability, before there is criminal sentence holding a person criminally liable.<sup>11</sup> While this is true –for the cases where the statute of limitations applies to the offence, but not for the penalty already imposed–, in general most Spanish scholars accept that the legal institution of the statute of limitations is a cause for extinction of the criminal liability.<sup>12</sup>

In general, it is recognised that the elements of the legal institution of the statute of limitations are:<sup>13</sup> 1) a certain lapse of time clearly defined in the law (either substantive criminal law or procedural law), which cannot be altered, thus providing for automatic effect after it has lapsed; and 2) lack of procedural activity in the prosecution of the crime. The statute of limitations can operate before the initiation of the judicial activity, and thus will determine the ban to prosecute the crime; or once the procedural activity has been started, but has been stopped for a certain time before entering a sentence; 3) the consequence of the lapse of time will be the impossibility to prosecute or sanction the crime, thus to establish the criminal liability, which amounts to an extinction of it. This consequence will apply in a mandatory way, not being subject to a discretionary application.

## 2.2. Substantive or procedural rule? Some notes on the debate on the legal nature

Scholars have discussed at length the issue of the legal nature of the institution of the statute of limitations.<sup>14</sup> On one hand, since it is regulated in the Penal Code, as a ground for extinction of the criminal liability, it can be argued that it has substantive character; on the other hand, it can be considered as an obstacle for the exercise of the criminal action, which would make it of a procedural nature. The question is relevant to determine if the rules on the statute of limitations can be applied retroactively if they are favourable to the defendant or, on the contrary, if they are of a procedural nature the principle of *tempus regit actum* should prevent this retroactive application (and the other way round: if the *lex posterior* reduces the periods

<sup>9</sup> F.M. Pedreira González, *La prescripción de los delitos y de las faltas*, Madrid, 2004, pp. 38 y ss.

<sup>10</sup> F. Pastor Alcoy, cit., p. 71; R. Ragués I Vallès, *La prescripción penal: Fundamento y aplicación*, cit., pp. 16 ff.

<sup>11</sup> In this sense A. Gil Gil, J.M. Lacruz López; M. Melendo Pardos and J. Nuñez Fernández, *Curso de Derecho Penal. Parte General*, Madrid 2015, pp. 1022-1035.

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<sup>13</sup> See F. Pastor Alcoy, cit., pp. 71-73.

<sup>14</sup> For this discussion see already E. Gómez Orbaneja, *Comentarios a la Ley de Enjuiciamiento Criminal*, I, Barcelona, p. 38 ff.

of limitation, which timeframe should be applied, the one in force when the criminal offence was committed or the one applicable at the moment of initiating the prosecution?).

It might not be worth to continue discussing about the legal nature of this institution at this point, which the majority of Spanish scholars identify as substantive criminal law,<sup>15</sup> but could also be defined as mixed or hybrid.<sup>16</sup> The courts have put an end to this debate at least regarding the retroactivity of the rule, considering that regardless on the definition of the legal nature, the applicable law on statute of limitations will always be the one which is more favourable to the defendant.<sup>17</sup> In sum it can be affirmed that in Spain the idea that limitation by time in criminal law is a procedural matter has now been abandoned in Spain, and its substantive nature –or mixed nature by some scholars– is recognised. The Penal Code regulates the statute of limitations as an extinction of the criminal liability.

### 2.3. Purpose

There are diverse positions towards the regulation of the statute of limitations, which range from those that question the mere existence of the possibility that the lapse of time causes the extinction of the criminal responsibility –minority position, at least in Spain–;<sup>18</sup> those who support it only partially, which can be traced back to Bentham’s theory which expressed the idea that only the prosecution of negligent criminal offences where there is no intent, could be time barred;<sup>19</sup> those who differentiate between the legitimacy of the extinction of the right to prosecute and the right to enforce the penalty already imposed in a final sentence;<sup>20</sup> and finally those who affirm that eliminating the statute of limitations would be against constitutional principles.<sup>21</sup>

As to the objectives, the majority of the Spanish scholars consider that the rules on the statute of limitations are not to be traced back to one single reason,<sup>22</sup> but there are multiple grounds that justify banning the prosecution

<sup>15</sup> See F. Pastor Alcoy, cit., pp.137-140.

<sup>16</sup> See F. Pastor Alcoy, cit., p.132; J.A. Martín Pallín, “La prescripción de los delitos ¿mera política criminal o derecho fundamental?”, *La Ley*, nº 6929 (2008), p. 2.

<sup>17</sup> For example, STC 157/1990, of 18 October.

<sup>18</sup> See F. Pastor Alcoy, cit., pp. 74-75.

<sup>19</sup> J. Bentham, *Tratado de Legislación Civil y penal*, Ed. Beaume, Burdeos, 1829, p. 162, quoted by F. Pastor Alcoy, cit., p. 76.

<sup>20</sup> E.g. J. Banacloche Palao, “Algunas reflexiones críticas en torno a la prescripción penal”, cit., p. 283.

<sup>21</sup> STC 157/90, of 18 October, where the Court held that a legal system that would generally eliminate the statute of limitations for all crimes, would be constitutionally questionable.

<sup>22</sup> However, some scholars prefer to find the justification of regulating a ground for the extinction of the criminal liability in one single reason. This is the case of A. Gili Pascual, cit., p.76 (the only justification would be the aims of the penalty); or R. Ragués

and sanction after a certain time.<sup>23</sup> The reasons for this ground of extinction which are most frequently invoked are: reasons of criminal policy and social benefit, because after a lapse of time there is no interest in prosecuting and sanctioning a criminal conduct; the aim of the punishment disappears over time; the passing of time makes it difficult to find evidence to bring to justice and convict the possible perpetrator of a criminal offence; there is the need to put an end to the uncertainty, when the State after certain time has not taken action in prosecuting the crime and bringing to justice; the alleged offender cannot continue suffering forever the situation where the punitive power of the State can be activated anytime; providing a lapse of time after which the State won't be allowed to prosecute and sanction criminals, fosters the timely action of the competent authorities and promotes the efficiency of the justice system, reducing also cases of impunity, etc.<sup>24</sup>

In my view two are the main reasons that underlie the legal institution of the statute of limitations: first, the functions of the criminal law and the penalty (repressive, preventive, and rehabilitation) are not effective after a certain time has lapsed since the crime was committed; and second, there is need to provide certainty as to the punitive action of the State, so that after a certain time it cannot be exercised. Obviously, all other reasons mentioned above, also play a role in establishing rules on statute of limitations

At present the existence of the statute of limitations is not questioned in Spain, rather the contrary: not establishing times limits for the prosecution of criminal offences or enforcement of penalties would be against the constitutional principles. There are however ongoing discussions regarding different aspects of its regulation, as for example, the length of the timeframes;<sup>25</sup> the acts that should have an interrupting effect; the interplay between statute of limitations in administrative proceedings and criminal proceedings relating to tax frauds; the content of the judgment, once the ground for extinction based on the time lapse has been accepted, etc. Short reference to these debates will be mentioned below, albeit briefly.

### 3. The statute of limitations to prosecute criminal offences

#### 3.1 Limitation periods of criminal offences

Article 131.1 PC (amended by Organic Law 1/2015, in force since 1 July 2015) sets out different time periods for the limitation of the criminal prosecution. As it is usual in most legal systems, the time limits depend on

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y Vallés, cit., p.47, for whom the reason for the statute of limitations is to be found in the aims of the criminal law.

<sup>23</sup> See F. Pastor Alcoy, cit., pp. 79-80.

<sup>24</sup> For an analysis on these different explanations and objectives, see F. Pastor Alcoy, pp. 85 ff.; R. Ragués y Vallés, cit., pp.21 ff., although referring to the regulation before the amendment of 2010.

<sup>25</sup> See F. Pastor Alcoy, cit., p. 259.

the penalty that corresponds to the different criminal offences,<sup>26</sup> thus providing for simplicity and foreseeability. It can be discussed if certain timeframes should be reduced or extended, but continuous legislative reforms should be avoided, as they introduce uncertainty and confusing situations. The limitation periods for offences are:

- Criminal offences punishable with imprisonment for more than fifteen years: twenty years.
- Criminal offences punished with disqualification for more than ten years or imprisonment for more than ten years up to fifteen years: fifteen years.
- For criminal offences punishable with imprisonment or disqualification with more than five years but less than ten years: ten years.
- For the rest of the criminal offences applies a limitation period of five years, except for petty offences and the offence of insulting and defamation, which is one year.

According to Article 131.3 PC, there is no limitation period for offences against humanity, genocide, or offences against persons and interests protected in cases of armed conflict –except the offences related to the promotion of hostilities and omission of the recommendations that Spain makes in an armed conflict, which are regulated under Article 614 PC. There is neither a statute of limitation for terrorism offences causing the death of a person (Article 131.3 PC).

#### *Calculating the time period*

The limitation period for an offence will be determined in accordance with the maximum penalty provided under the law which defines the elements of the offence, irrespective of the possible mitigating circumstances, the type of participation, or the degree of incomplete execution that may lead to a reduction of the penalty. Thus, the Spanish system has opted for an approach that only takes into account the penalty provided for the criminal offence *in abstracto*, not taking into consideration the precise criminal liability or offence *in concreto*. This is the interpretation that was decided by the Supreme Court in 1997,<sup>27</sup> after diverging approaches, both at the Supreme Court as well as in lower Courts, mainly regarding the rules before the Penal Code of 1995 was adopted.

#### *Calculating the time period in case of connected crimes*

In those cases where several connected offences are investigated and tried jointly, the limitation period applicable to the most serious crime shall apply (Article 131.4 PC), so that the lesser offences will not be time-barred

<sup>26</sup> The limitations are determined by the gravity of the offences, and the gravity for this purpose is determined by the penalty provided for the crime, vid. STS 3159/2000, of 14 April.

<sup>27</sup> Supreme Court Common position (*Acuerdo no jurisdiccional*), of 29 April 1997, later confirmed again in the Supreme Court Common position of 16 December 2008. In this sense see, e.g. the Supreme Court judgments SSTs 458/1997 of 12 April; 1823/2001, of 21 May; 392/2017, of 25 April; or 764/2017, of 27 November.



until the limitation period for the most serious offence has not expired. There are numerous judgments dealing with the counting of the limitation period in case of connected crimes, which shows that this is not always easy to establish. This rule applies when there is a substantive connection between the different criminal acts, so that they make a complex criminal act (e.g. offences which are instrumental to commit the principal criminal act, as for example, falsification of documents to commit a fraud). However, a single statute of limitations shall not be applied for several connected crimes when this connection is mere procedural, thus, the different crimes are tried jointly albeit the possibility of being adjudicated separately, because there is not a single criminal unit.<sup>28</sup>

This would apply, for example in the case of multiple defendants tried together, where there is a ground for a joint procedure, but each of them has committed different acts. In such cases, it would not be fair, that the defendant who has committed an offence with a shorter statute of limitations, falls into the same category as other perpetrators who have committed more severe crimes or are subject to a longer statute of limitation.<sup>29</sup>

This was the case decided by the Constitutional Court, in its judgment 25/2018, of 5 March, where the applicant was convicted for a reckless offence of money laundering, connected to the intentional money laundering of another person, whom he sold a property. The Supreme Court considered that the two offences were intrinsically connected, and therefore applied the starting moment and the longer period also for the reckless offender, later applicant before the Constitutional Court. The Constitutional Court however, reversed this judgment, holding that the same period of limitations was not to be applied to both defendants, and acquitted the applicant, on the basis that the prosecution of the offence he had committed was time barred.

In those cases when one of the connected crimes finally cannot be proofed, or there is evidence that it has not been committed the period of limitations will be determined by the crime that was finally proofed.<sup>30</sup>

#### *Commencement*

The limitation period starts to run on the day of the commission of the offence (Article 132.1 PC). Article 7 PC states that “criminal offences are considered committed at the moment when the person commits the act which entails criminal liability or, in cases of omission offences, when the omission is done. In the case there would be doubts regarding the exact moment where the crime was committed, the general rule *in dubio pro reo* should apply.”<sup>31</sup>

*“In the case of continuous offences, the limitation period starts when the last*

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<sup>28</sup> In this sense, SSTs 1247/2002, of 3 July; 1182/2006, of 29 November; 493/2008, of 9 July or 912/2010, of 10 November; or 328/2021, of 28 January.

<sup>29</sup> STS 682/2014, of 23 October.

<sup>30</sup> STS 664/2014, of 14 October.

<sup>31</sup> STS of 5 July 1993. For the commencement of the limitation period in cases of connected offences, see 1326/2021, of 9 April.

*infringement took place; for permanent offences, it starts on the day the illegal situation ended; for offences of habit, the period starts on the day on which the criminal conduct stopped” (Article 132 PC).*

Finally, for certain offences committed against minors, special rules apply for the commencement of the limitation period. Pursuant Article 132.1 II includes a list of offences for which the limitation period will not start to run until the victim reaches full legal age; and if the minor dies before attaining majority, the limitation period shall commence the day of the death. Article 132.1.II and III PC reads:

*“For the crimes of non-consensual abortion, injuries, against freedom, torture, crimes against the moral integrity, against the privacy, against the right to one's image; against the inviolability of the home, and against family relationships, excluding the crimes contemplated in the following paragraph, when the victim is a person under eighteen years of age, the terms will be computed from the day they have reached the age of majority, and if they die before reaching it, from the date of death.*

*In the crimes of attempted homicide, of injuries of Articles 149 and 150, in the crime of sustained abuse provided for in article 173.2, in crimes against freedom, in crimes against freedom and sexual indemnity and in crimes of trafficking in human beings, when the victim is a person under eighteen years of age, the time limit will start to run from the moment the victim reaches thirty-five years of age, and if he/she dies before reaching that age, from the date of death.”<sup>32</sup>*

### 3.2 Interruption of the limitation period

The main rule is that the limitation period will be interrupted when ‘proceedings are directed against the person charged’ (Article 132.2 PC). Time that has lapsed before the proceedings began will not be counted should those proceedings be stopped. Thereafter, the full limitation period starts again. However, when it is considered that “proceedings are directed against a person”, was unclear and open to debate.

Indeed, this issue about the interruption of the limitation period for commencement of the criminal investigation was very much debated in the past leading to different interpretations among the courts, with changing caselaw and even opposing jurisprudence. Following Article 132.2 PC, before it was amended in 2010, provided that the limitation period was interrupted “when an inquiry was directed against the person charged.” This expression being very vague, left the question open whether a formal judicial inquiry was needed to apply the interruption, or if it was enough that investigative acts had been ordered against a person as suspect of committing a crime.

This difficulty to determine when the statute of limitations is interrupted by the commencement of the proceedings, is partly due to the

<sup>32</sup> For a better understanding of the Spanish legal provisions, an approximate and not a literal translation has been provided.



fact that the criminal proceedings can be started by different ways, and as a consequence of different acts. In the Spanish system, a judicial inquiry shall begin whenever there is a *notitia criminis*. The information of the commission of a possible crime can come to the authorities, through the report of a citizen (*denuncia*) of the facts that *prima facie* appear to be a criminal offence. The person reporting can be any individual who has witnessed the facts or has become known to them in another way. According to the Spanish CPC (Article 259 CPC and ff.) every person who has knowledge of a possible criminal offence is obliged to report it. The *notitia criminis* can also reach the Investigating Judge, when a citizen files a criminal complaint (*querella*) (Articles 270 CPC and ff.). The Spanish system allows for every individual to press charges and become an accusing party in criminal proceedings, as the public prosecutor does not have the monopoly regarding the criminal prosecution.<sup>33</sup>

The Supreme Court held that, as a rule, a judicial decision instituting the inquiry was needed for applying the interruption, however in those cases where investigative measures had been carried out upon a report (*denuncia*) or upon a private complaint (*querella*), such investigative measures also would have an interrupting effect, if judicial proceedings were formally initiated later.<sup>34</sup>

However, this long-established caselaw of the Supreme Court was reversed by the Constitutional Court in 2005,<sup>35</sup> stating that only the judicial decision instituting the criminal proceedings and initiating formally the judicial inquiry would have an interrupting effect on the limitation period. This divergent approach by the two courts caused tensions between the Spanish Supreme Court and the Constitutional Court, as in an almost unprecedented action, the Supreme Court refused to follow the Constitutional Court's interpretation. For the Supreme Court, the interpretation of this rule fell out of the scope of the Constitutional Court's jurisdiction, considering that it was an issue that affected only the interpretation of a legal provision, and no constitutional rights were at stake. On the other hand, the Constitutional Court confirmed its competence to decide on the issue of the statute of limitations, arguing that its role was not to determine the interpretation of a legal provision –exclusive competence of the ordinary courts–, but to set limits on the interpretation in order to fulfil the constitutional rights<sup>36</sup> kept reversing the judgments of the Supreme Court that did not follow its interpretation on the acts that had an interrupting effect on the period of limitations.

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<sup>33</sup> See L. Bachmaier, *Criminal Law in Spain*, (with A. del Moral), The Hague 2020, p. 226 ff.

<sup>34</sup> See e.g. STS 3819/1997, of 30 May.

<sup>35</sup> STC 63/2005, 14 March.

<sup>36</sup> STC 195/2009, of 28 September.

This legal controversy even reached the media regarding a very important case of fraud, with huge economic consequences, where two well known businessmen were indicted. In this high-profile case the Supreme Court convicted the two offenders, but the sentence was declared void by the Constitutional Court on grounds of statute of limitations.<sup>37</sup> This judgment gave rise to heated discussions both among practitioners and scholars for the lack of legal certainty on this relevant issue and the disturbing effects created by the legal “fight” between the Supreme Court and the Constitutional Court. The judgment was also strongly criticised by the public opinion who perceived that two fraudsters were being granted impunity by the Constitutional Court on the basis of feeble legal grounds.

The legislator finally took action and passed an amendment of Article 132.2 PC, by Organic Law 5/2010, 23 November, which put an end to those conflicting interpretations. The newly introduced rule, in general follows the position maintained by the Supreme Court,<sup>38</sup> and reduces the margin of interpretation by describing exactly what are the procedural actions that cause the interruption of the period of limitations. Current Article 132.2 PC reads:

*1. It shall be considered that the proceedings are directed against a specific person from the moment in which, upon initiating the case or later, a reasoned judicial decision is issued, attributing such person the alleged participation in an act that may constitute a crime.*

*2. Notwithstanding the foregoing, the filing of a criminal complaint or the reporting of an offence made before a judicial body, in which a certain person is pointed as presumed participant in an act that may constitute a crime, will stay the running of the statute of limitations for a maximum period of six months, counting from the day the complaint or report where presented.*

*If, within said period, any of the judicial decisions mentioned in paragraph 1 is issued against the defendant or any of the suspects, the interruption of the period of limitation will be counted, for all purposes, since the date of filing the criminal complaint or report.*

*On the contrary, the calculation of the limitation period will run again from the date of filing the complaint or reporting of the crime if, within a period of six months, there is judicial decision declaring the complaint inadmissible, or the proceedings against the suspect are discontinued. This applies also in case the investigating judge does not adopt any of these decisions within the period of six months.*

It has to be recalled that according to the Spanish Criminal Code of Procedure criminal charges can be pressed not only by the public prosecutor,

<sup>37</sup> STC 29/2008, 20 February, known as the “Los Albertos case”, following the first name of both defendants.

<sup>38</sup> See J.M. Chozas Alonso, “La interrupción de la prescripción de los delitos y faltas: el particular laberinto del Tribunal Constitucional y el nuevo artículo 132.2 del Código Penal”, in *Repercusiones sobre el Proceso Penal de la Ley Orgánica 5/2010, de Reforma del Código Penal*, Elcano, 2010, pp. 181–265.

but also by any Spanish citizen (*acusación popular*) and by the victim of the crime (*acusación particular*). This explains also the detailed regulation on the interruption of the statute of limitations under Article 132.2 PC. It has to be borne in mind that under the Spanish law the criminal procedure shall commenced when a criminal complaint has been filed by any of those who have standing to present it. Following the principle of legality or mandatory initiation of the criminal procedure when there is a *notitia criminis*, it may happen that investigative acts are ordered to check the reliability of the complaint filed by a private party (the victim or any Spanish citizen), but after a preliminary check, it may turn out that such complaint is not grounded or not sufficiently substantiated. In such case, the criminal procedure shall be discontinued, and the statute of limitations will continue to run from the moment the complaint was filed, as if it was never filed.

Once the judicial inquiry has commenced, the applicable time period is the one foreseen for the charges pressed against the defendant, even if the facts initially described as a serious criminal offence or felony are turn out later to be a petty offence.

Further, paragraph 3 of this same Article, clarifies when it can be considered that a person is under criminal investigation, and thus “criminal proceedings are directed against him or her”, in cases where a group or organization of persons are investigated, and not all members are precisely identified, or it has not been determined in which way each of them participated in the criminal proceedings. To that end, Article 132. 3 PC clarifies that the suspect does not need to be fully identified, but for the aims of interrupting the running of the period of limitations it will suffice that there are enough data that will allow to identify such person at a later stage. Article 132.3 PC states:

*“To the effect of this provision, the person against whom the proceedings are directed must be sufficiently determined in the judicial decision, either by direct identification or by any data that allow such identification to be subsequently specified within the organization or group of people to whom the act is attributed.”*

Finally, within the implementation of the European Regulation on the EPPO,<sup>39</sup> another paragraph has been added to Article 132 PC through Organic Law 9/2021, of 1 July, which reads:

*“4. In the proceedings where the criminal investigation is carried out by the European Public Prosecutor's Office, the period of limitations will be interrupted:*

*a) When the investigation is directed against a specific person, sufficiently identified, according with the previous section, and this is reflected in a reasoned decree.*

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<sup>39</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO').

*b) When a complaint or report is filed with the European Public Prosecutor's Office in which the alleged participation of such person in a criminal offence is attributed to a specific person, in accordance with paragraph 2.2 of this Article."*

### 3.3 Staying of the proceedings

Statute of limitations will apply when the proceedings are stayed for a certain lapse of time, regardless the reason for it, be it for absence of the defendant, case overload of the court system or recklessness of the parties who have to provide for the advancement of the proceedings.<sup>40</sup> In the Spanish system, differently from other legal systems, there is not an absolute maximum time provided for the finalization of a criminal procedure. In 2015, Article 324 CPC was amended to introduce a maximum timeframe for the pre-trial investigation, which established that it could not last more than 6 months, except in very complex cases, which would be of 12 months, subject to extension.<sup>41</sup>

However, it was soon seen that such strict timeframes to conclude the pre-trial investigation were not feasible, and this was causing an increase of impunity, precisely in complex cases of corruption and economic crime. This led to a further amendment of Article 324 CPC, providing that the pre-trial investigation should be carried out within 12 months, with the possibility of being extended every six months.<sup>42</sup> Thus, Spanish criminal proceedings are not subject to a maximum time limit. In case it doesn't finalise within reasonable time according to the caselaw of the European Court of Human Rights–, the PC provides for a reduction of the penalty as a form of compensation for the excessive length of the proceedings.<sup>43</sup>

The period of limitations will be interrupted when a procedural action is carried out, and from that moment, the period of limitations will start to count anew (Article 132.2 PC). This explains why the staying of the proceedings only rarely leads to the extinction of the criminal liability for time lapse, and this explains also why the courts have tried to limit the types of procedural decisions or actions that have an interruptive effect.

The vague regulation on the interruption of the running of the limitation period for staying of the proceedings, has led to frequent confusions, because it was not clear which procedural acts were sufficiently relevant to stop its running.

The Supreme Court has held that judicial decisions which have no impact upon the advancement of the investigations or the proceedings, have

<sup>40</sup> In this sense, STS 8443/1991, of 24 December.

<sup>41</sup> Reform introduced by Law 41/2015 of 5 October.

<sup>42</sup> Amendment by Law 2/2020, of 27 July.

<sup>43</sup> Article 21 PC, when regulating the mitigating circumstances, includes:

"6. The excessive and undue delay in the proceedings, provided that it is not attributable to the defendant himself and that it is not proportionate to the complexity of the case."

no material content and are not justified for reasons of the investigation, cannot have the effect of stopping the limitation time. For example, a judicial order for the search and detention of a fugitive, will not interrupt the limitation period,<sup>44</sup> while the effective localization and detention of the suspect will interrupt it.<sup>45</sup> However, any decision adequate for the investigation of the crime, regardless if such investigative orders lead to any results or not, produce the interrupting effect<sup>46</sup> The decisions of the public prosecutor, and the instructions to carry out investigative acts as a rule neither would have interrupting effect.<sup>47</sup>

#### 4. Limitation periods for enforcement of penalties

The statute of limitations of penalties applies, once a certain time lapses since the person has been convicted without the sentence having been served; and also when before being fully served the convicted person breaches the sentence (flights or infringes other penalties that do not entail imprisonment). The effect of the limitation period applicable to penalties is that once a certain time has lapsed since the conviction or since the breaking of its enforcement, the penalty becomes non enforceable. The reasons that justify that after a certain time the penalty imposed will not be enforced anymore, are the same as those that have been explained for the prosecution of the crime, although they are longer because there is already a certain person who has been found guilty of committing a crime. As to its purpose, most of the reasons applicable to the statute of limitations that bans the prosecution, could be invoked here, except the difficulties in the investigation and the gathering of the evidence. The limitation periods for penalties are regulated under Article 133 PC and are:

- 30 years for penalty of imprisonment of more than 20 years;
- 25 years for penalties from 15 up to 20 years imprisonment;
- 20 years for penalties from 10 up to 15 years imprisonment, and penalty of disqualification of more than 10 years;
- 10 years for all other serious penalties (more than 5 years imprisonment according to Article 33 PC);
- 5 years for less serious penalties (from 3 months up to 5 years imprisonment);
- 1 year for minor penalties (no imprisonment sentences, among others, deprivation of driving licence, arms licence, prohibition to approach victim, etc).

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<sup>44</sup> STS 1520/2011, of 22 November.

<sup>45</sup> STS 145/2018, of 22 March.

<sup>46</sup> STS 1317/2021, of 11 March.

<sup>47</sup> STS 671/2006, of 21 June. See precisely Instruction of the Spanish Prosecutor General 5/2005, of 15 June “*Sobre la interrupción de la prescripción*”, accessible at [https://www.boe.es/buscar/abrir\\_fiscalia.php?id=FIS-I-2005-00005.pdf](https://www.boe.es/buscar/abrir_fiscalia.php?id=FIS-I-2005-00005.pdf).

These time limits are determined upon the principal penalty effectively imposed, and not on other accessory penalties that might have been included in the sentence.

However, in case the penalty has been partially served, for calculating the limitation period of the penalty, the duration of the penalty not served will be considered.

There is no time limit for penalties imposed for offences against humanity and genocide and for other offences against persons and interests protected in cases of armed conflicts and the cases of terrorism if a person has died.

The limitation period starts on the date of the final judgment or the day of the breaching of the sentence if its execution has already begun (Article 134 PC). The limitation period for a penalty will be suspended while serving other sentences and during the suspension of the serving of the sentence (Article 134.2).

## 5. Limitation periods for security measures

Article 135 PC regulates the limitation periods applicable to security measures as follows: 10 years for security measures which restrict liberty for more than three years; and 5 years for any measure restrictive of liberty up to three years and also for other type of security measures. The limitation period starts the date the sentence imposing the measure becomes final, or in case of successive penalties, the day on which the measure was supposed to start. If the security measure is to be served after the penalty, the period will start after the extinction of the penalty. This hypothetical case hardly happens in practice due to the system established in Article 99 PC: this rule provides that the security measure must be served prior to the penalty, which may even not be enforced if it might be detrimental to the objective achieved by the security measure.<sup>48</sup>

## 6. Regulation in the Criminal Procedure Code

The statute of limitations is a ground for the extinction of the criminal liability, thus once it has been alleged and proofed, the automatic consequences will be the closing of the proceedings. Being a ground that extinguishes the right to prosecute, it can be invoked by the defendants but shall also be presented to the court by the public prosecutor, in its role of defending the legality. The CPC mentions specifically the statute of limitations when regulating the preliminary motions to dismiss the case (Article 666 CPC proceedings for serious crimes (*procedimiento ordinario*); and Article 786.2 CPC proceedings for less serious crimes, *procedimiento*

<sup>48</sup> See A. del Moral García, *Criminal Law in Spain* (with L. Bachmaier), cit., p. 382; F. Pastor Alcoy, cit., p. 388.



*abreviado*). In accordance with these provisions, parties can allege the statute of limitations at that moment, which will lead to a preliminary hearing where the parties will be able to discuss on the period of limitations and present evidence. Being a mandatory cause of extinction of the criminal liability, it can be invoked at any stage of the proceedings and can also be determined *ex officio* by the investigating judge or the trial court.

If the parties haven't introduced the issue of the statute of limitations at that initial moment, it can be invoked at any time during the trial. In such case, the court will hear both parties, and if it considers that the issue is clear, it will decide on the stopping of the hearing sessions and proceed immediately to give the acquittal sentence. Otherwise, if there is need to produce and assess evidence regarding the criminal acts which have an impact upon the calculation of the time that has lapsed since the committing of the crime, or any other elements affecting the interruption of the period of limitations, the court can decide to proceed with the hearings, and take a decision on the statute of limitations in the judgment. If the court accepts it, the Supreme Court requires that it is recognised in the sentence, stating the acquittal of the defendant because of the extinction of the criminal liability based on the passing of the maximum time to prosecute.<sup>49</sup> According to some scholars, the court should not include in the judgment any declaration or assessment regarding the culpability of the defendant/s, as such content would infringe the presumption of innocence.<sup>50</sup> It shall limit itself to declare the extinction of the criminal liability for reasons of time lapse.

## 7. Final remarks

As already advanced this chapter only sought to provide a brief overview of this very complex and much debated legal institution, which has not only produced significant academic discussions, but has a huge practical importance. Beyond all the debates around its *raison d'être*, the appropriateness of the timeframes, the procedural aspects or its consequences, it has an undeniable relevance in every criminal justice system. The way it is regulated and especially the interrupting effects upon the running of the time of limitations will impact the whole advancement of the criminal procedure: in a system where the instituting of the criminal proceedings do not have an interrupting effect, the consequences for the speedy functioning of the proceedings will clearly suffer, as the defence strategy will use (and abuse) all procedural instruments to procrastinate the proceedings and thus obtain an acquittal for the client, based on the lapse of time.

On the other side, however, as it is the case in Spain, if once the criminal proceedings have started there will be the possibility to interrupt and start counting again anew the limitation period, such situation definitely

<sup>49</sup> STS 5087/2013, of 14 October.

<sup>50</sup> J. Sánchez-Vera Gómez-Trelles, *Variaciones sobre la presunción de inocencia. Análisis funcional desde el Derecho Penal*, Madrid-Barcelona, 2012, p. 60 ff.

does not contribute to providing certainty for the defendant, while at the same time, the aims of the criminal law are fading away.

Finding the right balance between strict rules on limitation periods that ensure legal certainty and, a flexible approach to prevent abuse of process and cases of impunity, is the continuous challenge that is faced in the design of every criminal justice system that seeks to be efficient, but also comply with the aims of criminal law and fairness of the proceedings.

The Spanish system has solved some of the problems that appeared in the implementation of the rules on the statute of limitations, although there are still some aspects that need to be revised to strike the right balance between time and the aims of criminal law. Moreover, a further harmonisation at the EU level should undoubtedly be promoted for continuing building a single area of freedom, security and justice.

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