

Statutes of Limitations of the Criminal Code in Taiwan

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Abstract: There was no rule of statute of limitations in the traditional Chinese law. The government might initiate a prosecution whenever it was necessary and proper to indict. The Qing dynasty, for the first time, in 1911 adopted the idea of statute of limitation in the New Criminal Code of Great Qing. The Northern Warlord government as well as the KMT government accepted it in its criminal law. This study explores the development of the statute of limitations in the ROC Criminal Code. Without innovative changes, the 2005 amendments in statute of limitations only adopted some existing judicial opinions into the criminal law. There are statutes of limitations for prosecution, execution and enforcement in the ROC criminal justice system. However, it is not clear if Taiwan will abolish the statute of limitations for prosecution in every offense although there is currently no statute of limitations in some top serious crimes.

Keywords: statute of limitations – prosecution – execution – enforcement – Taiwan

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1. Introduction

Statutes of limitations in criminal cases create a bar to prosecution; however, they are statutes of repose in civil cases.¹ Absent such a statute a criminal act may be the basis of a prosecution at any time after its commission.² While statutes of limitations require that criminal charges be filed (prosecution “commenced”) within a specified number of years after the crime was committed, this interval between when the criminal act occurred and when prosecution must commence is the statute of limitations period for a given offense. The Statute of Limitations clock starts ticking on the date the offense was completed, and stops ticking when the limitations period is up. In general, there are usually different statutes of limitations periods for different felonies or classes of felonies.³ The statute limiting the time for initiate prosecution serves to protect the accused from defending themselves against stale charges. It also prevents the defendants from being

¹ *People v. Ross*, 325 Ill. 417, 420(1927).

² Note, *The Statute of Limitations in Criminal Law: A Penetrable Barrier to Prosecution*, in 102 *U. Pa. L. Rev.* 630, 630(1954).

³ Gerald D. Robin and Richard H. Anson, *Is Time Running Out on Criminal Statutes of Limitations?*, in 47 *No. 1 Crim. Law Bulletin ART 1*, 1(2011).

punished for acts committed in the remote past. Furthermore, the accused are therefore promised to be informed of the decision to prosecute and the general nature of the charges with sufficient promptness to allow them to prepare their defenses before evidence of their innocence is weakened by age.⁴

The United States Supreme Court once noted that statutes of limitations provide “the primary guarantee against bringing overly stale criminal charges.”⁵ As explained in *Toussie v. United States*, the Court held that: “The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature had decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity.”⁶ Therefore, statutes of limitation of substantial criminal law may be considered a symbol of due process in most non-capital offenses while murder and treason usually have no statute of limitations.

The criminal statute of limitations in civil law countries stem mainly from Roman Law which, in more than two thousand years ago, provided a twenty-year period after which criminal liability was extinguished. Modern statutes in the civil law countries look similar to those now prevailing in the United States for they generally provide the longest period of limitation for the most serious offense.⁷ As a civil law jurisdiction, Taiwan adopts statutes of limitations in its Criminal Code. This study will explore the history and related practices of statutes of limitations in Taiwan after briefly giving the background of it.

2. Background of Taiwan

Taiwan is an island, located in the Western Pacific and surrounded by the East China Sea, the Philippine Sea, the South China Sea and Taiwan Strait. It lies about 100 miles off the southeastern coast of China.⁸ Taiwan, including Penghu, Kinmen, Wuqiu, Matsu, Dongsha and Nansha islets, officially known as the Republic of China(ROC), is a democratic country founded in 1912.⁹ Generally speaking, the ROC Law originates from the

⁴ *State v. Nadler*, 151 N.H. 244(2004).

⁵ *United States v. Ewell*, 383 U.S. 116(1966).

⁶ *Toussie v. United States*, 397 U.S. 112(1970).

⁷ Note, *The Statute of Limitations in Criminal Law: A Penetrable Barrier to Prosecution*, in 102 *U. Pa. L. Rev.* 630, 630(1954).

⁸ The Executive Yuan, *The Republic of China Yearbook 2016*, Taipei, 2016, 36-42.

⁹ See the Preamble of the ROC Constitution.

modern Japanese and German legal systems.¹⁰ As a civil law country, emphases of its legal system should be put on statutes instead of cases. The ROC Constitution was adopted by the National Assembly convened in Nanking on December 25, 1946, and put into effect on December 25, 1947. The National Assembly had amended it seven times in 1991, 1992, 1994, 1997, 1999, 2000 and 2005.

There are 175 articles in the ROC Constitution, the supreme law of the country, and 12 articles in its 2005 Amendments. Any rule duly passed by the Legislative Yuan and decreed by the President is termed “law” in the ROC Constitution. Not only laws in conflict with the Constitution but ordinances contravening the Constitution or laws shall be null and void.¹¹ A popularly elected president plays the most important role in governance. The President has been directly elected for a four-year term, and may hold office for no more than two consecutive four-year terms since 1996.

Taiwan was ruled by the Dutch, the Imperial China, Japan and ROC in turn. While Taiwan was ruled by the Chinese for most of its recorded history (more than 250/300 years), Chinese legal traditions therefore influenced Taiwan’s legal developments much more than others. However, due to the Japanese governance of Taiwan, Western style legal concepts and ideas began to be imported into Taiwan as Japan adopted its legal framework mainly from Imperial Germany. Between 1895 and 1945, as a result, Taiwan experienced a different type of western-based inquisitorial criminal justice system under Japanese authority. Before resuming sovereignty over Taiwan in 1945, the ROC government established its legal system following the example of Japan by enacting German-style codes from 1928 to the beginning of Sino-Japanese War in 1937.¹² In 1928, the ROC government enacted the Chinese Criminal Code for the first time.¹³ Although nearly 100 articles had been revised since its passage, the 1935-implemented ROC Criminal Code remains the current effective version in Taiwan.

3. Statute of Limitations in the 1911 New Criminal Code of Great Qing

Before the ROC government passed its first formal criminal code which included the statute of limitations in 1928, the former regimes, both the Qing Dynasty feudal government and the Northern Warlords government, had similar legislations. The Qing Dynasty government announced its new criminal code, the New criminal Code of Great Qing, in January 1911, and

¹⁰ Hungdah Chiu and Jyh-Pin Fa, *Taiwan’s Legal System and Legal Profession*, College Park, MD, 1994, 1.

¹¹ Articles 170, 171 and 172 of the ROC Constitution.

¹² Ming-woei Chang, *The Inquisitorial History of the Criminal Practice in Taiwan*, in *3 Iustinianus Primus Law Review* 1, 2-3, 2012.

¹³ Mingxuan Gao and Bingzhi Zhao, *The Evolution of Chinese Criminal Legislation*, Beijing, 2007, 36.

scheduled to implement it in 1913; however, the government was overthrown in February 1912. It is noteworthy that there was no legal concept similar to statute of limitations in the traditional Chinese law. Therefore, the 1911 New Criminal Code of Great Qing, proposed in 1907,¹⁴ adopted a whole new legal institution of statute of limitations in Article 69. According to its legislative note, this legislation stemmed from Article 63 of the 1971 German Criminal Code.¹⁵

Pursuant to Article 69 of the 1911 New Criminal Code of Great Qing, criminal prosecution is barred by the statute of limitations, since the commission of the offense, if not exercised within fifteen years for an offense that carries the maximum punishment of death penalty. Accordingly, it is also barred by limitation if not exercised within ten years for an offense that carries the maximum punishment of imprisonment for life or imprisonment for not less than ten years; seven years for an offense that carries the maximum punishment of imprisonment for not less than five years and the maximum punishment for less than ten years; three years for an offense that carries the maximum punishment of imprisonment for not less than three years and the maximum punishment for less than five years; one year for an offense that carries the maximum punishment of imprisonment for not less than one year and the maximum punishment for less than three years; and six months for an offense that carries the maximum punishment of imprisonment for not less than one month and the maximum punishment for less than one year.¹⁶

In addition to the statute of limitations for prosecution, the 1911 Criminal Code also adopted the statute of limitations for execution and enforcement in Article 74. According to Article 74, execution is barred by the statute of limitations after the conviction becomes final if it is not carried out within thirty years in the case of death penalty. Enforcement is also barred if it is not carried out within twenty-five years in the case of imprisonment for life; twenty years in the case of imprisonment for a term of ten years and more than ten years; fifteen years in the case of imprisonment for a term of less than ten years but no less than five years; ten years in the case of imprisonment for a term of less than five years but no less than three years; five years in the case of imprisonment for a term of less than three years but no less than one year; three years in the case of imprisonment for a term of less than one year but no less than one month; and one year in the case of imprisonment for a term of less than one month

¹⁴ Mingxuan Gao and Bingzhi Zhao, *The Evolution of Chinese Criminal Legislation*, Beijing, 2007, 32.

¹⁵ The Shanghai Commercial Press, *The Great Qing New Law 1901-1911, Vol. 1*, Beijing, 2010, 515. It is noted that this book was published in Simplified Chinese, the English version of articles in the 1911 New Criminal Code of Great Qing was translated by the author.

¹⁶ The Shanghai Commercial Press, *The Great Qing New Law 1901-1911, Vol. 1*, Beijing, 2010, 515.

but no less than one day.¹⁷

4. Statute of Limitations in the 1912 Provisional New Criminal Code

Although the 1911 Civil Revolution was led by Dr. Sun, Yat-sen, and he became the first Temporary President of ROC, General Yuan, Shikai took up Dr. Sun's official post on March 10, 1912. President Yuan then announced an official President Order on Temporarily Granting to Quote the 1911 New Criminal Code of Great Qing. After the Department of Justice revised the 1911 Criminal Code by deleting some articles with feudal characteristics, the Northern Warlords government led by President Yuan issued the Provisional New Criminal Code of the Republic of China on April 30, 1912. In fact, this provisional New Criminal Code looked essentially identical to the 1911 New Criminal Code of Great Qing because the 1912 revision just deleted the chapter of crimes against royalty and some clauses of maintaining emperor's privileges. Afterwards, the Northern Warlords government passed a series of criminal law to add some new offenses, including the Law on Punishment of Morphine Crimes in April 1914, the Law on Punishment of the Bandit in November 1914, and the Law on Punishment of Corruption of Government Officials in October 1920.¹⁸

According to the 1912 revision, the statute of limitations also included the limitation for prosecution and the limitation for execution and enforcement. In fact, neither the number nor the content of the articles was changed by the 1912 revision. It is fair to say that the Northern Warlords government followed the Qing Dynasty government's path regarding issues on the statute of limitations.

5. Statute of Limitations in the 1928 Criminal Code

Before the National Party, also known as Kuomintang(KMT), united China and was recognized the ruling party of China in 1928, it continued to use the 1912 Provisional New Criminal Code. While Attorney General Wang, Chonghui was assigned to be in charge of drafting a new criminal code for the KMT-led China, he suggested to enact the new ROC Criminal Code based on the Second Amendment to Revising Criminal Code which was drafted by the Northern Warlords Government in 1918. The KMT government adopted his suggestion and passed the new Criminal Code in March 1928. This enactment has been called the Old Criminal Code by legal scholars.¹⁹

¹⁷ The Shanghai Commercial Press, *The Great Qing New Law 1901-1911, Vol. 1*, Beijing, 2010, 516.

¹⁸ Mingxuan Gao and Bingzhi Zhao, *The Evolution of Chinese Criminal Legislation*, Beijing, 2007, 33-34.

¹⁹ Mingxuan Gao and Bingzhi Zhao, *The Evolution of Chinese Criminal Legislation*, Beijing, 2007, 35-36.

The Old Criminal Code adopted the statutes of limitations also. Nonetheless, the article numbers and the contents changed a little. Article 97 of the Old Criminal Code provided the statute of limitations for prosecution. According to Article 97, criminal prosecution is subject to the statute of limitations, the limitation period goes as follows: 1. Ten years in the case of offences which are punishable by death penalty, imprisonment for life, and imprisonment of no less than ten years; 2. Ten years in the case of offences which are punishable by imprisonment of less than ten years but no less than one year; 3. Three years in the case for offenses punishable by imprisonment of less than one year, jail term and fines. The period begins with the commission of the offense, but the last day of completion in case of serial offense. In addition, Article 101 of the Old Criminal Code also provided the statute of limitations for execution and enforcement. The statute of limitations for execution and enforcement goes as follows: 1. Thirty years in the case of death penalty, imprisonment for life, and imprisonment of no less than ten years; 2. Fifteen years in the case of imprisonment of less than ten years but no less than one year; 3. Three years in the case of imprisonment of less than one year, jail term, fines, and forfeiture. The period begins when the conviction becomes final.²⁰

Comparing to its counterparts in the 1912 Provisional New Criminal Code, the 1928 version of statute of limitations became shorter and simpler. According to the 1918 Draft of the Second Amendment to Revising Criminal Code, the reason to amend these statutes by deleting items of limitations was to comply with criminal law provisions of foreign countries.²¹ While if the statute of limitation for prosecution should be suspended became questionable in practice, the Judicial Yuan²² in Yuan-Tsu Interpretation of No. 1963 held that the statute of limitations for prosecution should be suspended if the defendant be under an order for arrest by law on February 14, 1940.²³

6. Statute of Limitations in the 1935 Criminal Code

With the increasing need of state powers to suppress the Chinese Communist rebellions, as well as in response to the Japanese legal

²⁰ Bingzhi Zhao and Zhijun Chen, *The Compilation of Legislative Materials of Criminal Code in Modern China*, Beijing, 2016, 565. It is noted that this book was published in Simplified Chinese, the English version of articles in the 1928 Old Criminal Code of ROC was translated by the author.

²¹ Bingzhi Zhao and Zhijun Chen, *The Compilation of Legislative Materials of Criminal Code in Modern China*, Beijing, 2016, 410-412.

²² According to the 1931 ROC Basic Law, and the 1928 Judicial Yuan Organization Law, the Judicial Yuan was in charge of interpretation of practical legal questions. However, it was not a Constitutional Court at that time.

²³ Judicial Yuan Interpretation of No.123, translated by Dr. F. T. Liao, available at: <https://cons.judicial.gov.tw/jcc/en-us/jep03/show?expno=123>(last visited, June 27, 2021).

developments in criminal law, KMT government revised the Old Criminal Code by promulgating a new version of Criminal Code in 1934.²⁴ It took effect on July 1, 1935. More than a half of this legislation still remains valid in ROC today.

In order to fight with crimes more effectively, the 1935 Criminal Code prolonged the period of statute of limitations for prosecution. Pursuant to Article 80, criminal prosecution is barred by the statute of limitations if not exercised within twenty years for an offense that carries the maximum punishment of death or imprisonment for life or for not less than ten years. In addition, It is also barred by the statute of limitations if not initiated within ten years for an offense that carries the maximum punishment of imprisonment for not less than three years and the maximum punishment for less than ten years; five years for an offense that carries the maximum punishment of imprisonment for not less than one year but not more than three years; three years for an offense that carries the maximum punishment of imprisonment for less than a year; and one year or an offense that carries the maximum punishment of short-term imprisonment, or a fine. These periods shall commence from the day on which the offense is committed. However, if the offense is of a continuing nature, the period shall commence from the last day on which the offense is completed.²⁵

In contrast to Article 101 of the 1928 Old Criminal Code, Article 84 of the 1935 Criminal Code provided the statute of limitations for execution and enforcement in more detail. According to Article 84, execution is barred by the statute of limitations if not enforced within thirty years for an offense for which the sentence is death penalty. Besides, enforcement is barred if not carried out within thirty years for an offense for which the sentence is life imprisonment, or imprisonment for not more than ten years; fifteen years for an offense for which the pronounced sentence is imprisonment for not less than three years but not more than ten years; seven years for an offense

²⁴ Mingxuan Gao and Bingzhi Zhao, *The Evolution of Chinese Criminal Legislation*, Beijing, 2007, 37.

²⁵ Article 80 of the 1935 Criminal Code provided: "Prosecution is barred by limitation if not exercised within the following periods: 1. Twenty years for an offense that carries the maximum punishment of death or imprisonment for life or for not less than ten years; 2. Ten years for an offense that carries the maximum punishment of imprisonment for not less than three years and the maximum punishment for less than ten years; 3. Five years for an offense that carries the maximum punishment of imprisonment for not less than one year but not more than three years; 4. Three years for an offense that carries the maximum punishment of imprisonment for less than a year; and 5. One year or an offense that carries the maximum punishment of short-term imprisonment, or a fine. These periods specified in the preceding paragraph shall commence from the day on which the offense is committed; provided that the offense is of a continuing nature, when the period shall commence from the last day on which the offense is completed." Translation of the 1935 Criminal Code and its amendments would be accessed to on the website of the ROC Ministry of Justice, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001>(last visited, June 27, 2021).

for which the pronounced sentence is imprisonment for not less than one year but not more than three years; five years for an offense for which the pronounced sentence is imprisonment for less than one year; three years for an offense for which the pronounced sentence is short-term imprisonment, or a fine. The statutory periods for either execution or enforcement shall commence from the day judgment becomes final.²⁶

In practice, there emerged one question about whether the statute of limitations set for the prosecution of a crime on a suspect or the execution of punishment on a criminal, who is now under an order for arrest by law, should be suspended. The Grand Justice of Judicial Yuan,²⁷ the equivalent to the German Constitutional Court, on July 10, 1968, in its interpretation of No. 123 held that: “The statute of limitations to prosecute a defendant on trial who is under an order for arrest by law should be suspended. The J. Y. Interpretation Yuan-tsu No. 1963 has not been changed. The statute of limitations to execute punishment of a criminal, who is under an order for arrest by law, should also be suspended when the order cannot start or continue. At the same time, Article 85, Paragraph 3, of the Criminal Code should be taken into consideration.”²⁸ J. Y. Interpretation of No. 123 not

²⁶ Article 84 of the 1935 Criminal Code stated that: “Execution is barred by the statute of limitations if it is not carried out within the following statutory periods: 1. Thirty years for an offense for which the pronounced sentence is death, life imprisonment, or imprisonment for not more than ten years; 2. Fifteen years for an offense for which the pronounced sentence is imprisonment for not less than three years but not more than ten years; 3. Seven years for an offense for which the pronounced sentence is imprisonment for not less than one year but not more than three years; 4. Five years for an offense for which the pronounced sentence is imprisonment for less than one year; 5. Three years for an offense for which the pronounced sentence is short-term imprisonment, or a fine. The statutory periods provided for in the preceding paragraph shall commence from the day judgment becomes final.”

²⁷ According to Article 78 of the ROC Constitution, providing that: “The Judicial Yuan shall interpret the Constitution and shall have the power to unify the interpretation of laws and orders,” and Paragraph 2 of Article 79 of the ROC Constitution, providing that: “The Judicial Yuan shall have a number of Grand Justices to take charge of matters specified in Article 78 of this Constitution, who shall be nominated and, with the consent of the Control Yuan, appointed by the President of the Republic,” the Grand Justice is equivalent to the German Constitutional Court, Japanese supreme Court and U.S. supreme Court.

²⁸ In the reasoning, it explained that: “Except for special provisions, no trial should be completed when a defendant does not appear in court. An order for arrest can be made when a defendant goes into exile or hiding, according to Articles 281 (formerly Article 260) and 84 of the Code of Criminal Procedure. The trial procedure on a defendant, who must make a court appearance, cannot start or continue when the defendant, who is under an order for arrest by law, goes into exile or hiding. Under such circumstances, the statute of limitations to prosecute should be suspended, and Article 85, Paragraph 3, of the Criminal Code should be taken into consideration. J. Y. Interpretation Yuan-tze No. 1963 in regard to this part has not been changed. It is obviously clear that, according to Article 469 (formerly Article 473), Article 480 (formerly Article 484) and other provisions concerning the execution of a penalty of the Code of Criminal Procedure, in order to compel a criminal to appear in court and to implement a penalty, an order for arrest by law can be made. The implementation procedure on a defendant, who must make a court appearance, cannot start or continue when the defendant, who

only confirmed the J. Y. Interpretation of Yuan-tsu No. 1963, it also extended the jurisprudence behind J. Y. Interpretation of Yuan-tsu No. 1963 to cases applying the statute of limitations for execution or enforcement.

Furthermore, “whether the power to prosecute in criminal law should be subject to the statute of limitations despite the fact that the case is on trial upon the institution of public or private prosecution” became another practical question concerning the statute of limitations in 1974. The Grand Justice, on May 10, 1974, in its interpretation of No. 138 held that: “Where a public or private prosecution has already been instituted and the case is on trial, the power to prosecute is thus duly exercised, and the situation gives rise to no issue of running out of the statute of limitations.”²⁹ After the J. Y. Interpretation of No. 138 was decided, how to apply Article 80 of Criminal Code then became clearer.

7. Statute of Limitations in the 2005 Revised Criminal Code

is under an order for arrest by law, goes into exile or hiding. According to Article 85, Paragraph 1, of the Criminal Code, the statute of limitations to execute punishment on a criminal should therefore be suspended. Nevertheless, regarding the period of suspension, the application of Article 85, Paragraph 3, of the Criminal Code should be taken into consideration. If it reaches one-fourth of the period listed in Article 84, Paragraph 1, of the Criminal Code, the reason for suspension will be deemed to have ended. When there is no further implementation and no other reason for suspension, the statute of limitations of power to execute punishment shall be restored.” Judicial Yuan Interpretation of No.123, translated by Dr. F. T. Liao, available at: <https://cons.judicial.gov.tw/jcc/en-us/jep03/show?expno=123>(last visited, June 27, 2021).

²⁹ In the reasoning, it explained that: “The Criminal Code provides in Chapter XI, “Statute of Limitations”, of Article 80, Paragraph 1, that the power to prosecute is barred by the statute of limitations if not exercised within the periods therein specified. Thus, it is clear that the statutory element for the statute of limitations of the power to prosecute to run is that it is not exercised, and that insofar as the right is exercised the statute of limitations does not run out. Either the institution of public or private prosecution or an action of accusation by a public or private prosecutor during the process of trial in pursuance of the Code of Criminal Procedure constitutes a lawful exercise of the power to prosecute. In the document presented to this Court, the statement that a public or private prosecution has already been instituted and that the case is actually on trial shows that the power to prosecute is never barred by limitation and is currently being exercised. The fact that there exists no “failure to exercise” as stated above gives rise to no issue of running out of the statute of limitations. As a rule, the statute of limitations shall run as long as the power to prosecute is not exercised. However, if such right cannot be exercised because of reasons prescribed by law, the provision of Article 83 of the Criminal Code with respect to interruption of the statute of limitations applies. The provision of said article was interpreted by our Interpretation Yuan-tze No. 1963 and restated in the first paragraph of our Interpretation No. 123, both of which have so far undergone no change or modification, although the issue of whether the period of statute of limitations shall run out during the exercise of the power to prosecute was considered beyond the scope of interpretation given therein.” Judicial Yuan Interpretation of No.138, translated by Raymond T. Chu, available at: <https://cons.judicial.gov.tw/jcc/en-us/jep03/show?expno=138>(last visited, June 27, 2021).

In order to clarify the meaning and comply with Grand Justice Interpretation of Nos. 123 and 138, Congress amended Article 80 in 2005. In fact, this currently effective amendment also extends the period of statute of limitations for prosecution. Under Article 80, criminal prosecution is barred by statute of limitations if not exercised within thirty years for an offense that carries the maximum punishment of death or imprisonment for life or for not less than ten years. However, for offenses that result in death, there is no statute of limitations. Criminal prosecution will not be barred due to the lapse of time. In addition, it is barred for not initiated within twenty years for an offense that carries the maximum principal punishment of imprisonment for not less than three years and the maximum punishment for less than ten years; ten years for an offense that carries the maximum principal punishment of imprisonment for not less than one year but not more than three years; and five years for an offense that carries the maximum principal punishment of imprisonment for less than a year, short-term imprisonment, or a fine. These periods shall commence from the day on which the offense is committed.³⁰ With this amendment, there is no statute of limitations on top serious crimes. Statute of limitations for prosecution has been abandoned in the case of offences which result in death and are punishable by death penalty, imprisonment for life, and imprisonment for not less than ten years.

According to Article 82, the period of limitation of prosecution shall be determined by the principal punishment provided in specific articles, notwithstanding that such punishment shall be increased or reduced by law. Regarding issues of the statute of limitations for prosecution, the 2005-amended Article 83 adopts the J. Y. Interpretation of Nos. 123 and 138. Therefore, the period of limitation of prosecution shall be suspended with the initiation of prosecution. Besides, it shall also be suspended with suspension of investigation by law or to a case that the offender has escaped and has been put on the wanted list. However, the cause for suspension shall end with specific conditions listed in Paragraph 2 of Article 83. For example, after the court decision of dismissal becomes final for either public or private prosecution, the statute of limitation shall continue. And when the trial is legally delayed or discontinued, the statute of limitations shall also continue if the lapse of time has reached one-fourth of the period prescribed in the

³⁰ Article 80 of the Criminal Code provides that: "Prosecution is barred by limitation if not exercised within the following periods: 1. Thirty years for an offense that carries the maximum principal punishment of death or imprisonment for life or for not less than ten years, except for such offense that results in death; 2. Twenty years for an offense that carries the maximum principal punishment of imprisonment for not less than three years and the maximum punishment for less than ten years; 3. Ten years for an offense that carries the maximum principal punishment of imprisonment for not less than one year but not more than three years; and 4. Five years for an offense that carries the maximum principal punishment of imprisonment for less than a year, short-term imprisonment, or a fine. These periods specified in the preceding paragraph shall commence from the day on which the offense is committed."

various items of paragraph 1 of Article 80. In addition, the statute of limitations shall continue if the period of either suspension of investigation or the suspect be put on the wanted list reaches one-fourth of the period prescribed in the various items of paragraph 1 of Article 80.³¹

For clarifying the statute meaning and extending the period of execution and enforcement, Article 84 was amended in 2005. According to Article 84, execution is barred by the statute of limitations if not enforced within forty years for an offense for which the sentence is death penalty. Moreover, enforcement is barred if not carried out within forty years for an offense for which the sentence is life imprisonment, or imprisonment for not more than ten years; thirty years for an offense for which the pronounced sentence is imprisonment for not less than three years but not more than ten years; fifteen years for an offense for which the pronounced sentence is imprisonment for not less than one year but not more than three years; seven years for an offense for which the pronounced sentence is imprisonment for less than one year, short-term imprisonment, or a fine. The statutory periods shall commence when judgment becomes final. Nonetheless, if rehabilitative measures precede the execution of criminal punishment, the statutory period shall commence from the completion date of implementing rehabilitative measures.³²

Issues resulting from the statute of limitations for execution and enforcement are further settled by Article 85. Under Article 85, the period of limitation of execution or enforcement shall be suspended by the

³¹ Article 83 of the Criminal Code provides that: “The period of limitation of prosecution shall be terminated with the initiation of prosecution. This shall also apply to the suspension of investigation by law or to a case that the offender has escaped and has been put on the wanted list. During the termination of limitation, the cause for termination is considered to have ended if any of the following conditions appears: 1. After the court decision is determined on turning down the prosecution or on terminating private prosecution on procedural grounds. 2. When the trial proceedings cannot commence or continue according to law or because the offender was wanted and the interruption has reached one-fourth of the period prescribed in the various items of paragraph 1 of Article 80. 3. According to the second half of paragraph 1 to terminate the investigation or want the offender, the period of termination or wanting has been reached one-third of the period prescribed in the various items of paragraph 1 of Article 80. The period of the preceding paragraphs shall be counted from the day of the end of the cause for interruption together with the day prior to the interruption.”

³² Article 84 of the Criminal Code stipulates that: “Execution is barred by the statute of limitations if it is not carried out within the following statutory periods: 1. Forty years for an offense for which the pronounced sentence is death, life imprisonment, or imprisonment for not more than ten years; 2. Thirty years for an offense for which the pronounced sentence is imprisonment for not less than three years but not more than ten years; 3. Fifteen years for an offense for which the pronounced sentence is imprisonment for not less than one year but not more than three years; 4. Seven years for an offense for which the pronounced sentence is imprisonment for less than one year, short-term imprisonment, or a fine. The statutory periods provided for in the preceding paragraph shall commence from the day judgment becomes final; but if rehabilitative measures precede the execution of criminal punishment, the statutory period shall commence from the completion date of implementing rehabilitative measures.”

execution or enforcement. It shall legally discontinue when the specific conditions listed in Paragraph 1 are met. For instance, the statute of limitations shall discontinue when the execution is interrupted by law. And it will suspend when the criminal has escaped and been put on the wanted list or has escaped during the period of execution and as a result the execution cannot be continually carried on. In addition, if the criminal is deprived of freedom by law, it also discontinue. When the period of interruption has reached one-fourth of that prescribed in paragraph 1 of Article 84, the statute of limitations shall continue. The continuance of statute of limitations of Paragraph 1 shall go on when the cause of interruption vanishes and shall be counted together with the pre-interruption period.³³

It is noteworthy that the court may change the count filed by the public or private prosecutor under Article 300 of the ROC Criminal Procedure Code.³⁴ While the court employs this article to apply different criminal offense in a given case, the ROC Supreme Court in Taiwan, in a 2019 case of No. 108 Tai-Fei 80, held that only the shorter period of statute of limitations for prosecution applies.³⁵ Besides, if the result of an offense emerges later, the Supreme Court, in another 2019 case of No. 107 Tai-Sun 1283, ruled that the period of statute of limitations only commences immediately after the outcome appears.³⁶ However, since the statute of limitations for prosecution is adopted to protect the specific defendant who already suffers from interference of the state, the Supreme Court in a 2015 case of No. 104 Tai-Sun 1951 declared that the statute of limitations for prosecution should be suspended only if the suspect has been identified by either the police or the public prosecutor.³⁷ As a result, the statute of limitations for prosecution does not apply to cases where the actual defendant is not clear.

³³ Article 85 of the Criminal Code provides that: “The period of limitation of execution shall be interrupted by the execution of punishment. The same shall apply when the period is interrupted and the execution cannot be continued due to the following conditions: 1. The execution is interrupted according to law; 2. The criminal has escaped and been put on the wanted list or has escaped during the period of execution and as a result the execution cannot be continually carried on; 3. The criminal is subjected to restriction of freedom on another legal reason. When the cause for interruption continues to exist and the period of this interruption has reached one-fourth of the period prescribed in paragraph 1 of Article 84, the cause of interruption shall be considered to have vanished. The period of limitation of the first paragraph shall commence from the day when the cause of interruption vanishes and shall be counted together with the pre-interruption period.”

³⁴ Article 300 of the Criminal Procedure Code provides that: “In the judgment specified in the preceding Article, if the facts warrant, the charge brought by the public prosecutor may be changed to an appropriate article of the law.”

³⁵ This case was ruled on May 23, 2019.

³⁶ This case was ruled on February 21, 2019.

³⁷ This case was ruled on July 1, 2015.

8. Conclusion

In general, criminal statutes of limitations have long been considered as “an indispensable protection against conviction of innocent defendants through the introduction of stale evidence.”³⁸ From the point of view of criminal evidence, however, more kinds of evidence would be acceptable and admissible at trial as technology advances. It is possible to present very reliable but long-ago obtained evidence at trial without any prejudice to the defendant. The reliability of long-ago obtained evidence makes it more acceptable to abolish the statutes of limitations in most serious crimes since “statutes of limitation are measures of public policy entirely subject to the will of the legislature.”³⁹ Based upon the aforementioned idea, there is no statute of limitations on top serious crimes in Taiwan after the 2005 amendment. However, it is not clear if Taiwan will abolish the statute of limitations completely in the future.

Protection from prosecution under a statute of limitations could be considered as a vested right⁴⁰ from the point of view of the defendant. While it is necessary for the prosecutor to obtain foreign evidence to convict the defendant, 18 U.S.C. § 3292(a)(1)⁴¹ demands that the government bear the burden of establishing to the court its right to a suspension by a preponderance of the evidence.⁴² As a result, the criminal will not go free just because the criminalizing and inculcating evidence is foreign evidence. On the contrary, there is no such statute in Taiwan. If the substantial evidence exists overseas, and the prosecutor cannot obtain the foreign evidence within the period of statute of limitations, the prosecution will be barred just because the material evidence is outside the border. It seems to be injustice if the prosecutor could not legally extend the limitation period or revive an expired statute of limitation by a court order. The Congress in Taiwan should take this problem into serious consideration.

There was no criminal statutes of limitations in traditional Chinese law, only Congress would be allowed to pass “statutes limiting the time within which prosecutions for crime may be commenced”⁴³ based on public policy. In essence, criminal statutes of limitations neither define criminal

³⁸ Gerald D. Robin and Richard H. Anson, *Is Time Running Out on Criminal Statutes of Limitations?*, in 47 *No. 1 Crim. Law Bulletin ART* 1, 1(2011).

³⁹ *State v. Nunn*, 244 Kan. 207(1989).

⁴⁰ *State v. Martin*, 151 N.H. 107(2004).

⁴¹ It provides that: “Upon application of the United States, filed before return of an indictment, indicating that evidence of an offense is in a foreign country, the district court before which a grand jury is impaneled to investigate the offense shall suspend the running of the statute of limitations for the offense if the court finds by a preponderance of the evidence that an official request has been made for such evidence and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country.”

⁴² *United States v. Trainor*, 376 F.3d 1325, 1330 (11th Cir. 2004); *United States v. Little*, 667 F.3d 220, 225 (2d Cir. 2012).

⁴³ *Ackerman v. Com.*, 445 Mass. 1025(2006).

conduct, nor establish the punishment to be imposed. Since criminal statutes of limitations do not put any burden on the defendant, they are not penal in nature; they just express specific legislative grace to the defendant.⁴⁴ The ROC Criminal Code has provided the statutes of limitations since its very inception as mentioned above. From the New Criminal Code of Great Qing in 1911, as amended for several times, the concept of statutes of limitations has been imported into China for more than one century. People in both ROC (Taiwan) and PRC (mainland) are now more familiar with its purpose and function. In 2005, aiming at balancing the interests between the defendant and the victim, Congress in Taiwan abandons it in some very serious offenses. It is uncertain to what extent would criminal statutes of limitations lose their weights in criminal law as the technology of evidence improves. What changes regarding criminal statutes of limitations in Taiwan will emerge in the future deserve continuous observation.

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⁴⁴ *State v. Skakel*, 276 Conn. 633(2006).