

The Statute of Limitations in 21st Century: Between Public and Individual Interests in the Criminal Justice System

Extinção da Punibilidade pela Prescrição no Século 21: Entre os Interesses Públicos e Individuais no Sistema de Justiça Penal

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ABSTRACT: This article attempts to analyse the statute of limitations – a common institution in continental criminal laws – within the framework of the dynamics between public and individual interests in the criminal justice systems. With the Polish legal system as a benchmark and a comparative look at selected other jurisdictions, this article presents the discussions on justifications and legal character of the statute of limitations, trying to define its role within the criminal law and process, given its ability to extinguish criminal liability and prosecution's powers. This paper aims to present the statute of limitations as a polyphonic institution, with various motives behind its existence and different manners in which it influences the criminal proceedings, arguing that it is the search of a middle ground between the public and individual interest, as well as between failure to adjudicate and eternal prosecutions (both viewed as unjust), that shapes the statute of limitations in contemporary criminal law.

KEYWORDS: extinction of crime; statute of limitations; public interest; prosecution; individual rights.

RESUMO: *Este artigo busca analisar o instituto da prescrição – uma instituição comum aos ordenamentos jurídicos penais de tradição continental – no contexto*

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da dinâmica entre interesses públicos e individuais nos sistemas de justiça penal. Tomando o sistema jurídico polonês como parâmetro e estabelecendo um olhar comparativo sobre jurisdições selecionadas, o artigo apresenta o debate acerca das justificativas e da natureza jurídica da prescrição, procurando definir o seu papel no direito penal e processual penal, dado o seu poder de extinguir a punibilidade e o exercício da ação penal pelo Estado. O trabalho pretende apresentar a prescrição como um instituto polifônico, com diversas razões subjacentes à sua existência e múltiplas formas de influência sobre o curso do processo penal, sustentando que é justamente a busca de um ponto de equilíbrio entre o interesse público e o interesse individual, bem como entre a inércia estatal na persecução penal e a eternização dos processos (ambos considerados injustos), que conforma a prescrição no direito penal contemporâneo.

PALAVRAS-CHAVE: *extinção da punibilidade; prescrição penal; interesse público; persecução penal; direitos individuais.*

1. INTRODUCTION: PASSAGE OF TIME AND EXTINCTION OF CRIMINAL LIABILITY

“There is a time for everything”² – states one of the most influential biblical texts in Western culture. The passage of time, a phenomenon of both natural and cultural significance, touches upon all human and social activities, institutions and concepts. Criminal law is no exception, and the statute of limitations is its response to the question of the relation between the crime, its fundamental object of interest, and time as an unrelenting, all-consuming and ubiquitous force of the universe. Statute of limitations demands that “there is time” to stop prosecution of an offence, if a certain period lapses from its commission. It is therefore one of the reasons for the extinction of criminal liability, regardless of the exact terms used in a particular national legal system to classify and describe it³. Even if the

² Ecclesiastes, 3:1.

³ In Polish criminal proceedings, statute of limitations is named as procedural obstacle (*przeszkoda procesowa*); in French criminal process scholarship, it is described as reason extinguishing (*cause d'extinction*) the legal public action to prosecute (*action publique*); in Austria, it is one of the grounds

criminal justice system is able to establish the facts of the case, to detain the suspect and to fully complete its procedures, there comes a time when the court is unable to pronounce the judgement on the merits of the case. It can be observed however, paradoxically, that without proper fact-finding on the timeline of a crime, it would be impossible to decide whether the statute of limitations period has expired.

Yet the statute of limitations in criminal matters is a commonplace legal concept, at least in continental systems of law, although common law jurisdictions, while not having such a fixed concept, are no stranger to the idea that passage of time influences the courts' ability to judge certain past cases⁴. Without a doubt there is a prevalent and underlying notion that "the time for" prosecution does not (in general) extend itself into eternity, for different reasons. On the other hand, time-barred prosecutions are often perceived as failures of justice, or even the denial of justice to society or crime victims in particular. As it would be later discussed, some crimes are therefore exempt from the general rules of the statute of limitations, or there are regulations allowing the agents of prosecution or courts to gain more time, in order to decide on the guilt of the accused rather than on the time that has flown since the alleged crime happened.

The purpose of this paper is to discuss the topic of criminal law's statute of limitations in the light of complex interactions between three dimensions in which statute of limitations as a legal institution may be perceived: (1) its justification (rationale), (2) its legal character and particular regulation and (3) its role in the criminal justice system. This scheme proposes a logical chain of questions on why at all extinguish the criminal liability due to the passage of time, how to regulate statute of

for abolishment (lifting) of a penalty (*Strafaufhebungsgründe*); in Italy, it is named as reason for extinction of crime (*causa di estinzione del reato*).

⁴ E.g. in England, it is not a separate legal concept; there are several exceptions in the statutory law, but in general "time never runs against the Crown" (*nullum tempus occurit regi*); the "delay of justice" (meaning significant and unmotivated passage of time between offence and prosecution) may be invoked as a defence by the defendant – see Banasik Katarzyna, *Przedawnienie w prawie karnym w systemie kontynentalnym i anglosaskim* [Statute of limitations in criminal law of continental and common law systems], Warszawa: Wolters Kluwer, 2013, p. 689, 715.

limitations, and what roles are effectively played by this legal concept in the real enforcement of justice. First, I will explore the issue of how European scholars of criminal law justify the existence of statute of limitations, by applying chiefly the Polish legal doctrine's approach to this issue and its tradition of distinguishing four groups of motives in this regard. Next, this paper will provide a concise and comparative analysis of the legal character and regulation of statute of limitations in selected European jurisdictions. This will allow for a less strictly text-of-law-based consideration on the roles of the statute of limitations in the criminal justice system, i.e. how they are perceived in the dynamics of criminal process, given their individual, social, and even political importance. A distinction between public and individual interests in criminal procedure as competing, yet sometimes cooperating forces, will serve as a framework for analysing the roles of the statute of limitations. Finally, by means of the hermeneutical circle, I would like to return to the issue of justifications for the statute of limitations and discuss their validity and relationships with functions placed upon statute of limitations in criminal justice systems.

2. JUSTIFICATIONS OF STATUTE OF LIMITATIONS IN THE VIEWS OF EUROPEAN JURISTS

Polish doctrine's approach to the issue of justifications for the statute of limitations distinguishes between four groups of theories in this regard⁵, although it was also observed that these justifications are made *post factum*, as the existence of a statute of limitations, at least in continental legal systems, is a given⁶. Therefore, a particular justification cannot be construed as automatically determining the legal character of the statute of limitations, although a link between these two issues

⁵ First proposed by Kazimierz Marszał in his work *Przedawnienie w prawie karnym* [Statute of limitations in criminal law], Warszawa: PWN, 1972, p. 51; in recent literature, adopted also by Marek Kulik in his book *Przedawnienie karalności i przedawnienie wykonania kary w polskim prawie karnym* [Statute of limitations on punishability of an act and on execution of a sanction in Polish criminal law], Warszawa: C.H.Beck, 2014, p. 31 et seq.

⁶ Kulik Marek, *Przedawnienie karalności...* op.cit., p. 29.

cannot be disregarded⁷. In this chapter, I will purposefully not discuss *in extenso* different arguments against the statute of limitations, as well as invoke critiques of the arguments for the statute of limitations, as some of them would appear in further parts of this article.

The first group of theories consists of extra-legal justifications. They are all appealing to rationales that are not connected with specific legal regulations. It was argued that, in fact, they are not strictly extra-legal, but are rather based on highly general principles of law or criminal policy⁸. Usually, such theories state that the passage of time has healing and conciliating properties: the crime and harm resulting from it are naturally forgotten or even forgiven, so the need to prosecute a crime, stemming from the experience of injustice, may dim and eventually disappear. As Marek Kulik points out, there had been several representatives of these theories in German and Austrian legal doctrine, although he draws particular attention to the theory of Otto Lagodny, who claimed that the statute of limitations is rooted in the right to privacy as envisaged in Article 8 of the European Convention on Human Rights (“ECHR”). According to Otto Lagodny, this human right consists i.a. of a freedom from criminal prosecution – because without limitation on prosecution, certain people would remain eternally under the threat of punishment, which can unproportionally disrupt their attempts to settle down in private life⁹.

The metaphors of “healing” are also present in French doctrine – Yves Jeanclos calls the statute of limitations as “penal healing (of a wound)” (*cicatrisation pénale*), seeing the rationale behind it as to avoid the reopening of painful wounds of different kinds, that the time has “cauterised”. This author also observes that the statute of limitations is a middle ground between the truth-seeking functions of criminal process

⁷ Marszał Kazimierz, *Przedawnienie...*op.cit., p. 77-80.

⁸ Marszał Kazimierz, *Uzasadnienie przedawnienia w teorii prawa karnego* [Justification for statute of limitations in the theory of criminal law], *Państwo i Prawo*, vol. 11, 1964. p. 736.

⁹ Kulik Marek, *Przedawnienie karalności...*op.cit., p. 31-33; Lagodny Otto, „Was wäre ohne die Norm?“ – Zur Rekonstruktion selbstverständlicher Rechte, In: Wöhle Claudia, Augeneder Silvia, Urnik Sabine (ed.), *Rechtsphilosophie. Vom Grundlagenfach zur Transdisziplinarität in den Rechts – Wirtschafts – und Sozialwissenschaften*. Festschrift für Michael Fischer, Frankfurt a. M. 2010, p. 121 et seq.

and maintenance of social peace¹⁰ (implying, that after a certain time, returning to a particular criminal case may undermine this peace). Other French authors highlight that the passing of time makes it pointless to revive long-forgotten issues, as society no longer wishes for a retribution for such crimes¹¹. Such disappearance from public memory, as a foundation for statute of limitations, is even called a “major law of forgetting” (*grand loi de l’oubli*)¹² or even a right to be forgotten (*droit à l’oubli*)¹³. Accordingly, a prominent Polish scholar of criminal law in the first half of the 20th century, Juliusz Makarewicz, evoked the issues of forgetting and leniency that time brings in regard to a crime committed¹⁴. Even the Polish word for statute of limitations, *przedawnienie*, suggests its relationship with something that transpired a long time ago – its etymological root lies in the adjective *dawny*, which means “ancient, old-time”.

The second group of theories is comprised of those rooted in procedural law or procedural issues of criminal cases. These theories are mostly connected with the notion of legal action of the prosecution, as a competence (executed under obligation or at discretion – depending on whether a particular criminal justice system is based on the principle of legality or principle of opportunity¹⁵) to accuse an individual before a criminal court. The statute of limitations is therefore explained as a situation where the prosecution agent waived his right to prosecute or delayed the use of this right to the point where the legal action should be considered extinct. Such an approach is present in French doctrine (although not exclusively – multiple other justifications for statute of

¹⁰ Jeanclos Yves, *Droit pénal européen. Dimension historique*, Paris: Ed. Economica, 2009, p. 474-475.

¹¹ Pradel Jean, *Procédure pénale*, Paris: Éditions Cujas, 2019, p. 254.

¹² Guinchard Serge, Buisson Jacques, *Procédure pénale*, Paris: LexisNexis, 2019, p. 817.

¹³ Raschel Evan, Le droit à l’oubli en matière pénale: peut-on oublier une infraction?, In: Caïre Anne-Blandine, Lantero Caroline (ed.), *Dossier: “Le droit à l’oubli”, Actes du colloque de Clermont Ferrand du 25 mars 2015*, La Revue du Centre Michel de L’Hospital [éd. électronique], n° 8, 2016. (hal-01398760), p. 48.

¹⁴ Kulik Marek, *Przedawnienie karalności...* op.cit., p. 33.

¹⁵ This issue, as it will be observed, is also correlated with the statute of limitations.

limitations are presented therein), and in some views it is an approach that shaped the French jurisprudence regarding the statute of limitations the most¹⁶. Jean Pradel enumerates such reasons by saying that too late prosecutions demonstrate the criminal justice's impotence to act swiftly and without delay, which may be disturbing for society, as well as states that a certain lapse of time when prosecution remains inactive should be treated as society's loss of right to prosecute due to negligence¹⁷ - which connects the idea of the statute of limitations with an ancient maxim *vigilantibus iura scripta sunt*.

Another trend among procedural theories is the one appealing to the issues of evidence. It is based on the premise that the passing time brings the disappearance of evidence: witnesses forget the events, material evidence can be effaced or even completely lost. Criminal proceedings based on such evidence may turn out to be pointless and would possibly undermine the criminal justice system's reputation. Marek Kulik cites several representatives of such an approach among German legal scholars¹⁸. There are also Polish representatives of such a view¹⁹. In France, this argument has been recently put into question, as the reform of statute of limitations in 2017 was motivated also by the fact that with human lives becoming longer, appearance of technical developments that aid in preserving memories, as well as usage of scientific methods in evidence gathering activities of the police, the argument of "forgetting the facts" is no longer justified and loses its practical importance²⁰.

The third group of theories seeks to root the justification of the statute of limitations in substantive criminal law. These theories most often evoke the preventive functions of criminal law, applied both to the general public and individuals (especially offenders). In this first aspect (general prevention), proponents of these theories argue that with passing

¹⁶ Varinard André, La prescription de l'action publique: une institution à reformer. In: *Le droit pénal à l'aube du troisième millénaire. Mélanges offerts à Jean Pradel*, Paris: Éditions Cujas, 2006, p. 606.

¹⁷ Pradel Jean, *Procédure...*op.cit., p. 254; same arguments invoked in Guinchard Serge, Buisson Jacques, *Procédure...*op.cit., p. 817.

¹⁸ Kulik Marek, *Przedawnienie karalności...*op.cit., p. 37.

¹⁹ Gardocki Lech, *Prawo karne* [Criminal law], Warszawa: C.H.Beck, 2011, p. 212.

²⁰ Guinchard Serge, Buisson Jacques, *Procédure...*op.cit., p. 818.

time and forgetting a criminal offence, potential criminal prosecution and sentencing would not achieve their goals to educate society and deter potential offenders from committing a crime, as without memory of a criminal offence, no one would understand why the proceedings are even conducted. The performance of rituals of justice before a clueless audience is therefore irrational and serves no legitimate purpose. These theories are present in the German doctrine of criminal law, as well as in Polish literature on this subject²¹. Such substantive law's justifications are also predominant in Austrian legal doctrine²².

In the second aspect (individual prevention), authors representing this theory invoke the fact that the time not only heals, but also – changes people. Even if someone committed a criminal offence in the past, the fact that their action remained hidden or not investigated for years is usually a sign of their compliance with legal norms, and therefore – a lack of need to rehabilitate them²³. Some authors even say that the extended period in which an offender lived under the threat of prosecution might have served as a kind of penance in itself, therefore initiation of criminal proceedings would not be just, as it may be perceived as a repeated sanction for the same illegal behaviour²⁴. Again, such views are present in German²⁵, Polish²⁶ and Austrian²⁷ doctrine of criminal law, although many of these authors join both general and individual aspects of prevention in justifying the statute of limitations. Such an approach cannot be, however, surprising, as discussion on the statute of limitations in all contexts of crime prevention

²¹ Kulik Marek, *Przedawnienie karalności...* op.cit., p. 45-46.

²² Banasik Katarzyna, *Przedawnienie...* op.cit., p. 105 et seq.

²³ In some legal systems, the applicability of statute of limitations is even conditioned on offender's compliance with law during the statute of limitations period, e.g. Austria and Kazakhstan (see Kulik Marek, *Przedawnienie karalności...* op.cit., p. 720, 729).

²⁴ Pradel Jean, *Procédure...* op.cit., p. 254; Kulik Marek, *Przedawnienie karalności...* op.cit., p.47, 51.

²⁵ Kulik Marek, *Przedawnienie karalności...* op.cit., p. 47-52.

²⁶ Wróbel Włodzimierz, Zoll Andrzej, *Polskie prawo karne. Część ogólna* [Polish criminal law. General part], Kraków: Wyd. Znak, 2013, p. 578.

²⁷ Stutzenstein Sarah, *Die Verjährung im österreichischen Strafrecht Theoretische Grundlagen und Entwicklung unter besonderer Berücksichtigung von systemischem Unrecht*, Vienna: Vienna University Press, 2022, p. 19.

was present in a text that founded contemporary, humanitarian philosophy of criminal law – Cesare Beccaria's *On Crimes and Punishments*²⁸ (although Beccaria seems to be very cautious in his views on which crimes may be time-barred and which should never be “forgotten”).

The search for links between basic ideas behind a particular system of criminal law and the rationale for the statute of limitations is present in Austrian legal doctrine, where it has been observed that there always was a direct correlation between a particular author's theory of punishment and the same author's justification for the statute of limitations²⁹. “The justification for the statute of limitations is, in a sense, the mirror image of the justification for punishment”³⁰: the more retributive the theory, the less appreciative of the statute of limitations (as in the radical view, the sheer passage of time cannot efface the injustice that resulted from a crime)³¹. It is argued that the current regulation of the statute of limitations in Austrian criminal law is derived from the consideration of general prevention and individual prevention issues, with the former playing the main role³². These foundations of the statute of limitations have not, however, been extensively discussed by the Austrian doctrine in recent decades, especially in comparison to the 19th-century debates on this subject³³.

The last group of theories finds the justifications for statute of limitations in both procedural and substantive law grounds. This approach is quite often represented in the literature and indeed, the list of authors mentioned in literature in this regard (German and Polish) is the longest in comparison to previously discussed groups of theories³⁴. Such tendency – to justify the existence of the statute of limitations by different premises – is visible also in the cited French sources, where notably Jean Pradel presents rationales from almost all groups. The fact

²⁸ Beccaria Cesare, *On Crimes and Punishments and Other Writings*, Cambridge: Cambridge University Press, 1995, p. 76 et seq.

²⁹ Stutzenstein S., *Die Verjährung...*op.cit., p. 19.

³⁰ Ibidem, p. 275.

³¹ Ibidem p. 333.

³² Ibidem, p. 347-348; see also a detailed discussion p. 258-265.

³³ Ibidem, p. 276.

³⁴ Kulik Marek, *Przedawnienie karalności...*op.cit., p. 58-60.

that the representatives of many aforementioned theories, while showing preference for a certain justification, do not deny the significance of others, proves yet again that the question of why prosecution should become time-barred does not determine the answer to the question of the manner (type of legal norms) through which this goal is eventually achieved in a given legal system.

3. THE LEGAL CHARACTER OF STATUTE OF LIMITATIONS IN POLISH CRIMINAL LAW AND SELECTED EUROPEAN JURISDICTIONS

3.1. THE MIXED NATURE OF STATUTE OF LIMITATIONS IN POLISH CRIMINAL LAW

While the discussion on justifications for statute of limitations may seem as a rather philosophical exercise (yet absolutely fundamental in terms of whether such institution should exist), a discussion in this chapter – regarding the legal character (nature) of this institution – has direct, practical influence on the application of criminal law. The determination whether we deal with a procedural institution, or rather a substantive one, or maybe even one permeating both fields of criminal law, may help to answer questions regarding the effect of legislative changes regarding statute of limitations, as well as applicability of constitutional standards for the protection of individuals' rights in the scope of the criminal law system.

As the previous chapter suggests, the majority of Polish criminal law scholars see the justification for statute of limitations in different groups of premises. It does not however mean that the dominant view attributes to this institution a mixed nature, although I would argue that such a view seems most correct. Another widespread view though is that the statute of limitations is a substantive law institution (with, of course, procedural relevance)³⁵. Such opinions are well-founded in the contents

³⁵ On these two views as competing – Sakowicz Andrzej, Wprowadzenie do rozdziału XI [Introduction to chapter 11]. In: Królikowski Michał, Zawłocki Robert (ed.), *Kodeks karny. Część ogólna. Komentarz do artykułów 1-116* [Criminal Code. General Part, Commentary to Articles from 1 to 116], Warszawa: C.H.Beck, 2021.

of Polish criminal law. The statute of limitations is regulated in the Polish Criminal Code (“Polish CC”)³⁶, which can be treated as indicative of its substantive character (as this code establishes the general principles of criminal liability and sets out the types of criminal offences). The wording of relevant articles allows for a conclusion that there are, in fact, two types of statute of limitations: one (Article 101) applicable to the general ability to punish an offender (*przedawnienie karalności*) and the other (Article 103) to the ability to execute a punishment pronounced by a final and binding judgment of a court (*przedawnienie wykonania kary*). The following remarks will be dedicated mainly to the first “type” of statute of limitations, which decides whether a certain act is punishable or not and therefore is connected with the concept of extinction of criminal liability, suggesting the substantive character of this regulation. Another argument in this regard is that the Polish Criminal Code of 1932 used a different set of terms – it spoke of inadmissibility of initiating criminal proceedings (*przedawnienie ścigania*) and inadmissibility of pronouncing a judgement in ongoing proceedings (*przedawnienie wyrokowania*), if a certain period of time has lapsed since the criminal offence was committed. It prompted scholars commenting on the Criminal Code of 1932 to attribute to the statute of limitations a procedural nature³⁷. The subsequent change of terminology (first in the Criminal Code of 1969, maintained in the current Polish CC), cannot therefore, it is argued, be treated as an ignorable word-play of the legislature and should be attributed some deeper meaning and effect. Moreover, Article 101 (as well as previous regulations in this regard) stipulates a gradation of periods of the statute of limitations with respect to the types of criminal offences: the more severe (in terms of type and extent of sanction) the offence, the longer the period for statute of limitations. In this light, statute of limitations may be seen as dependent on the gravity of the offence itself³⁸, and

³⁶ Consolidated text published in Dziennik Ustaw [Journal of Laws] of 2024, item 17.

³⁷ Kulik Marek, *Przedawnienie karalności...op.cit.*, p. 78; Śliwiński Stanisław, *Polski proces karny przed sądem powszechnym. Zasady ogólne* [Polish criminal process before a common court. General principles], Warszawa: PWN, 1959, p. 110.

³⁸ Marszał Kazimierz, *Przedawnienie...op.cit.*, p. 82.

therefore strictly linked to the substantive law's determination on which human activities should be considered criminal and how severely they should be punished.

All Polish doctrine considerations regarding the substantive nature of statute of limitations do not, however, deprive it of its procedural relevance. Some authors would just point out to the fact that it has such relevance, while others would directly see procedural elements in its construction³⁹. First and foremost, the statute of limitations is invoked as one of the so-called procedural obstacles, whose existence does not allow for an initiation of the criminal proceedings or requires them to be discontinued, as envisaged in Article 17 paragraph 1 item 6 of the Polish Code of Criminal Procedure ("Polish CCP")⁴⁰. The mixed nature of the statute of limitations is mainly invoked by authors concentrated on criminal procedure rather than criminal substantive law⁴¹, although such a view is also presented by the courts, in some judgements of the Constitutional Tribunal of Poland and the Supreme Court of Poland⁴². Marek Kulik is also a representative of this view, but with a different justification. He states that, as it was highlighted above, it is, according to the Polish CC, a twofold institution, consisting of inability to punish and the inability to execute a punishment. In this first element, it has purely substantive character (as argued before), while in the second – purely procedural, because it influences only the enforcement phase of criminal proceedings⁴³. On the other hand, while the view that the statute of limitations is an entirely procedural institution is rather marginal in Poland, it was a scholar concentrated in his scientific activity on

³⁹ Kulik Marek, *Przedawnienie karalności...*op.cit., p. 81-82.

⁴⁰ Consolidated text published in Dziennik Ustaw [Journal of Laws] of 2025, item 46.

⁴¹ Bieńkowska Beata (in:) Kruszyński Piotr (ed.), *Wykład prawa karnego procesowego* [A lecture on criminal procedure], Białystok: Temida, 2012, p. 104; Janusz-Pohl Barbara, (in:) Wiliński Paweł (ed.), *Polski proces karny* [Polish criminal process], Warszawa: Wolters Kluwer, 2022, p. 427; Dudka Katarzyna, Paluszkievicz Hanna, *Postępowanie karne* [Criminal proceedings], Warszawa: Wolters Kluwer, 2024, p. 449.

⁴² Judgement of the Constitutional Tribunal of 25 May 2004, SK 44/03; judgement of the Supreme Court of 10 March 2004, II KK 338/03.

⁴³ Kulik Marek, *Przedawnienie karalności...*op.cit., p. 103, 105.

criminal substantive law who has offered several interesting arguments supporting such a view⁴⁴.

It seems that while the origins of the statute of limitations in Polish criminal law lie, at least in the current contents of the codes and views of the majority of legal scholars, in substantive law, its significance in criminal justice comes forward in procedural context. Mere finding that crimes under Polish law are, in general, subject to the statute of limitations understood as loss of ability to punish such crimes, would not explain much as to how such finding influences the legal situation of an individual. It is the procedural result of the statute of limitations that gives it a profound impact on the criminal process.

3.2. AUSTRIA – AN EXAMPLE OF THE SUBSTANTIVE NATURE OF STATUTE OF LIMITATIONS

In Austrian criminal law, the statute of limitations is defined primarily in substantive law terms. The Austrian Criminal Code – *österreichisches Strafgesetzbuch* (“öStGB”), to describe the statute of limitations, uses the notion of *Verjährung der Strafbarkeit*, which can roughly be translated as “prescription of criminal liability” (§ 57 of öStGB). It clearly indicates that when the statute of limitations period is reached, one of the fundamental premises for criminal liability is lost – and although it cannot be construed as depriving a certain act of its criminal (illegal) character *ab initio*, it renders such an act unpunishable *ex post*. Katarzyna Banasik points out that this legal institution is treated, by Austrian scholars, as a substantive law institution, although there are authors who confirm its procedural significance and therefore speak of a double nature (*Doppelnatur*) of the statute of limitations, especially in the context of treating the statute of limitations as an important element that rationalizes and economizes the principle of legality in prosecution⁴⁵.

⁴⁴ Vachev Valeri, Charakter prawny przedawnienia karalności w polskim prawie karnym [The legal nature of the statute of limitations in Polish criminal law]. *Studia Iuridica*, vol. 93, 2022, p. 248 et seq.

⁴⁵ Stutzenstein S., *Die Verjährung...* op.cit., p. 276-277.

Even so, this substantive law component remains more important⁴⁶. As the Austrian Supreme Court of Justice (*Oberster Gerichtshof*) has put it, “the question of the statute of limitations does not concern a procedural obstacle to prosecution, but rather a substantive ground for acquittal”⁴⁷.

To further explain this, a quick journey into the past may be in order. The predecessor of öStGB, the *Strafgesetz* of 1852, placed the statute of limitations among the circumstances that extinguish the crime (§ 223 – “*Das Verbrechen erlischt: (...)*”), such as death of the perpetrator, execution of the punishment or parole – all of them eliminating the substantive rationale behind criminal liability, like existence of its subject or punishment to be served. Moreover, the effect of the statute of limitations was applicable only if the perpetrator met several conditions that are linked rather with substantive law, e.g. he did not profit from the crime, he was able to compensate damages and he did not commit any other crime during the period of the statute of limitations (§ 229 of *Strafgesetz* of 1852). It has been pointed out that these features of the Austrian statute of limitations set it apart from contemporary regulations in Germany or later, after 1918, in Poland (despite mutual influences between these legal systems in this period)⁴⁸. Such a regulation also proves that in general, there had been in Austria a persistent reluctance towards this institution, and its applicability remained, until after the First World War, quite limited⁴⁹.

This historical overview and past emphasis put on the substantive aspect of statute of limitations may explain the mechanism provided by § 58 section (2) of öStGB, according to which the commission of another criminal offence during the run of the limitation period for a previous crime prolongs this limitation period until the moment when

⁴⁶ Banasik Katarzyna, *Przedawnienie...*op.cit., p. 116-118.

⁴⁷ OGH Rechtssatz no. RS0118545 and judgements cited therein, i.a. judgement of 27 January 2004, case no. 14Os129/03 and judgement of 12 June 2025, case no. 14Os32/25z.

⁴⁸ Wasik Izabela, *Instytucja przedawnienia w austriackim Kodeksie karnym z 1852 r.* [The institution of the statute of limitations in the Austrian Criminal Code of 1852], *Annales Universitatis Mariae Curie-Sklodowska*, Sectio G, vol. LXXII, 1, 2025, p. 201.

⁴⁹ Stutzenstein S., *Die Verjährung...*op.cit., p. 17.

the limitation period for the new crime also expires, under one condition: the new criminal offence is committed on the basis of the same “harmful propensity” (*Schädliche Neigung*). In light of the above-discussed § 229 of the *Strafgesetz* of 1852, such regulation cannot be surprising. § 71 of *öStGB* defines that the criminal offences are based on the same “harmful propensity” if they are committed against the same legal interest (legal goods), are based on the same reprehensible motives or the same “lack of character” (i.e. vice that manifests itself in repetitive condemnable behaviour)⁵⁰. Under such a mechanism, the statute of limitations period serves as a *sui generis* probation period for an offender; therefore, it strives (in a way) to accomplish the rehabilitation functions of criminal law.

3.3. FRANCE – AN EXAMPLE OF THE PROCEDURAL NATURE OF STATUTE OF LIMITATIONS

The French example illustrates that the statute of limitations in regard to the crime itself can be made a purely procedural issue. The whole institution is defined from the perspective of *action publique* – a legal action, executed by the prosecutor in the public interest, that initiates the criminal proceedings⁵¹. Article 6 of the French Code of the Criminal Procedure (*Code de Procédure Pénale*, “CPP”) states that the *action publique* aimed at imposing sanction extinguishes, i.e., by the expiration of the statute of limitations period (*prescription*). Several next articles, starting from Article 7, provide fixed periods of the statute of limitations for all types of criminal offences under French law (*crimes, délits, contraventions*), as well as reasons for interruption or suspension of the statute of limitations. The interruption reasons are quite important, as their character is strictly procedural – in general, they consist of different activities of the prosecutor, the police, the *partie civile* (civil party – generally the victim) or courts that aim at conducting the proceedings, gathering the evidence, establishment of the facts or finding the suspect, as well as pronouncing judgements (even not final) – save

⁵⁰ Banasik Katarzyna, *Przedawnienie...*op.cit., p. 366-367.

⁵¹ Pradel Jean, *Procédure...*op.cit., p. 248-249.

for purely administrative, technical activities⁵². It has been an issue of many judgements of the French Court of Cassation (*Cour de cassation*) for past decades, generally adopting a broad interpretation of this regulation in order to narrow down the circumstances in which inactivity of the prosecutorial authority allows a criminal offence to become time-barred⁵³. André Varinard commented on this case law, observing that while the number of procedural activities that do not interrupt the run of the statute of limitations is limited, their character indicates, somehow *a contrario*, that those which cause interruption must represent a clear intention to advance the procedure⁵⁴ (which rhymes with the justification for the statute of limitations characteristic for France – that this institution is rooted in the prosecution’s *désintéressement* in pursuit and indictment).

Every such interruptive activity effectively cancels the period of the statute of limitations that has already run and renews it for the original period. It is observed that in such cases prosecution of some criminal offences may become *de facto* never time-barred⁵⁵. As to the nature of the statute of limitations, it is regulated by a legal norm that belongs to *ordre public*, which in the French legal system stands for rules of peremptory character (*ius cogens*), that cannot be waived or changed by the will of individuals. Therefore, the offender cannot “renounce” the statute of limitations and demand a trial regardless; the court has to consider it *ex officio*, even if the parties do not invoke it; and the statute of limitations as a factor extinguishing the *action publique* can be invoked at any stage of the proceedings, even before the *Cour de cassation*⁵⁶. Another argument supporting the procedural character of the statute of limitations in French criminal law stems from the attention given by the jurisprudence to the issue of the starting point of the statute of limitations period. Even though the text of law provides clearly that it runs from the day the offence was committed, a *contra legem* case law has arisen, regarding

⁵² Pradel Jean, *Procédure...op.cit.*, p. 267.

⁵³ See numerous judgements cited by A. Varinard, *La prescription...op.cit.*, p. 607-610.

⁵⁴ *Ibidem*, p. 610.

⁵⁵ Gunchard Serge, Buisson Jacques, *Procédure...op.cit.*, p. 838.

⁵⁶ Pradel Jean, *Procédure...op.cit.*, p. 272.

the so-called *infractions clandestines*, i.e. “hidden” offences, according to which if it was impossible (especially due to the perpetrator’s activities) to detect an offence, the statute of limitations period would start when it became possible. While such an approach is hotly debated⁵⁷, there is no doubt that the reason behind it is procedural: if the prosecution was objectively not able to know that an offence might have happened, it was not able to conscientiously express its will to prosecute or lack thereof. Such observations reinforce the notion of the statute of limitations as a procedural institution in the French criminal justice system.

3.4. COMPARATIVE OBSERVATIONS

This brief overview of the nature of statute of limitations in three European legal systems shows that there is no unanimous approach to this issue in continental law systems. Even broader comparisons would prove such conclusions⁵⁸: some of the European systems perceive it as a substantive law institution, others as a procedural one, and some others as having a mixed nature. While there is some correlation between the character of justifications made for the statute of limitations in a particular legal system and the views on its legal nature, such a link is not something automatic or obligatory. Moreover, even if the emphasis is put on some types of justifications or arguments regarding the nature of the limitation period, it does not result in exclusion of other justifications or unawareness of the significance of the other aspects of this institution (especially when the statute of limitations is viewed as a substantive law issue, no one denies its procedural impact). In the light of such conclusions, one would argue that the preferences for a particular approach come from national legal traditions or differences in the manner in which statute of limitations is regulated and remain

⁵⁷ Varinard A., *La prescription...op.cit.*, p. 617 et seq.; Danet J., *La prescription de l’action publique, un enjeu de politique criminelle*, *Archives de politique criminelle* 2006/1 n° 28, p. 83-85.

⁵⁸ See notes prepared by Directorate General for Library, Research and Documentation of the Court of Justice of the European Union on limitation rules: https://curia.europa.eu/jcms/upload/docs/application/pdf/2024-04/ndr_limitation_rules_in_criminal_matters_en.pdf [access: 28.09.2025].

purely symbolic, having eventually little leverage on the real cases where the statute of limitations should be applied.

This would be however a misconception, since the treatment of the limitation period as either procedural or substantive law regulation results in different outcomes when we look at either legislative impact or jurisdictional impact on the statute of limitations period. By “legislative impact” I will understand here the situation when legislative power amends the laws regarding statute of limitations in general manner (usually by prolonging the statutory periods), while by “jurisdictional impact (prolongation, interruption, suspension)”, I will understand here the situations, generally provided by law, that influence the statute of limitations run in specific cases and result from procedural or factual activities or events occurring in or accompanying specific criminal proceedings. It is connected with one of the main differences between substantive and procedural law in criminal matters, regarding the possible retroactive application of amended laws. In general, it is prohibited to apply retroactively substantive criminal laws, while procedural criminal laws are applied immediately to pending proceedings in accordance with the *tempus regit actum* principle⁵⁹.

Looking back at the above-discussed national solutions, let us start inversely with the last one, i.e. the French procedural example. Legislative impact on the statute of limitations periods is ruled by Article 112-2 of the Criminal Code (*Code Pénal*), according to which laws regarding statute of limitations for *action publique* are immediately applicable to criminal offences committed before their entry into force, provided that the limitation period has not run yet. It is a clear manifestation of the *tempus regit actum* principle, stemming directly from the procedural nature of the statute of limitations in French criminal law⁶⁰. The same may be said about

⁵⁹ Pietrzykowski Tomasz, *Wsteczne działanie prawa i jego zakaz* [Retroactive application of law and its ban], Kraków: Zakamycze, 2004, p. 274; also see paragraph 144 of the Judgement of European Court of Human Rights of 22 June 2000 in case of Coëme and others v. Belgium, application no. 32492/96 and others.

⁶⁰ But, as far as the French example is concerned, the legislative activity of prolonging certain statute of limitations period or the way it is calculated, has met critique in legal science – as André Varinard puts it, these activities are not reasonable and are rather the result of “members of parliament acting

the jurisdictional impact – as it was previously mentioned, interruption reasons are purely procedural, and the fact that their occurrence causes the limitation period to run anew also differentiates it from substantive approach to statute of limitations, where the periods are fixed on the statutory level and cannot be so drastically changed by merely procedural activity (they rely more on the essence of the offence committed rather than the manner in which it is prosecuted). In the French example, as discussed, such activities may not only effectively prolong the limitation period, but even result in a practical lack of limitation period. The suspension is also defined in procedural terms – its reasons are those, of law or of fact, that make the *action publique* temporarily unenforceable (Article 9-3 of CPP).

The Austrian substantive example provides a quite different picture, even if in regard to legislative impact, its functioning is quite similar. Usually, a new law rules the statute of limitations period, unless it has already expired. Austrian doctrine emphasises however that e.g. if a new law mitigates sanctions for a particular offence, a shortened period of limitation resulting from such moderation can be retroactively applied to the benefit of the offender⁶¹. The discrepancy in comparison to France manifests itself when discussing the jurisdictional impact. The causes of such impact, resulting in effective prolongation or suspension of the statute of limitations, generally stem from substantive law. Examples include a situation when the offence's effect appears sometime after the perpetrator's act – the period between them is not counted for the purposes of the statute of limitations period (§ 58 section (1) of öStGB). Also, as previously discussed, the commission of a new criminal offence hampers time-barring of a previous criminal offence (§ 58 section (2) of öStGB). In case of crimes against minors, the statute of limitations is not effectively running until the victim reaches certain age (§ 58 section (3) item 3 of öStGB). Procedural issues, regarding i.a. immunities to

under the influence of emotions provoked by certain news in media” – Vari-nard André, *La prescription...*op.cit., p. 629).

⁶¹ Banasik Katarzyna, *Przedawnienie...*op.cit., p. 230-231 and Austrian literature cited therein.

prosecution or some procedural activities, have only secondary importance (§ 58 section (3) item 1 of öStGB).

In Polish criminal law, legislative impact – in general, prolongation of statute of limitations periods – is considered acceptable, provided that these periods were not reached before the new law entered into force⁶² (I will discuss this issue in detail in chapter 4), which can be contributed to the procedural aspects of the statute of limitations. The jurisdictional impact is, however, very limited and illustrates rather substantive character of this regulation. While legal obstacles to conduct criminal proceedings suspend the running of limitation period (Article 104 of Polish CC), the only reason for prolongation is the initiation of the criminal proceedings during the basic period of limitation, which adds in general 10 years to the limitation period (Article 102 § 1 of Polish CC). Polish criminal law does not recognise any reasons for interruption of the statute of limitations period. It runs only in periods provided strictly in the Polish CC regulation, which is, as discussed previously, an argument for its substantive character, linked with the evaluation of the gravity of an offence to which a certain period of limitation is assigned.

For the conclusion of this part, I would like to make an observation stemming from the comparison of the exact periods provided in the discussed national regulations (although only major, basic periods – without going into too much detail, especially the offences that are not time-barred, like war crimes or crimes against humanity). If we take into account the regulations of Articles 7-9 of CPP in France, § 57 of öStGB in Austria and Article 101 of Polish CC, it can be observed that while Polish periods of statute of limitations seem longest (even 40 years since the offence was committed), they function within a system where there are the least options to interrupt or suspend their run, so the lengthy periods compensate somehow for inability to stop them in majority of cases.

⁶² See judgement in the case no. SK 44/03 (footnote no. 42); also, Polish Supreme Court case law starting with judgement of 19 August 1999, I KZP 25/99; later also invoked in i.a. judgement of 26 October 2017, II KK 192/17.

4. ROLES OF STATUTE OF LIMITATIONS IN THE PUBLIC-INDIVIDUAL INTERESTS DYNAMICS IN CRIMINAL JUSTICE

4.1. PROPOSAL OF ANALYTICAL FRAMEWORK

Having explored the justifications and nature of the statute of limitations in several legal systems, I would like to turn now to its roles. The discussion of this topic should begin by proposing an analytical framework within which these roles may be perceived. I argue that the dynamics between public and individual interests in the criminal justice system may usefully serve as such a framework. It is an underlying issue in most discussions regarding the criminal process. Many authors define criminal process – its notion, models, principles and categories – through the lenses of public-individual interests' distinction. Even if they are not directly evoked, they echo through their analyses.

To present a few examples, let us start with Herbert Packer's influential paper on *Two Models of Criminal Process*, where the distinction between Crime Control Model and Due Process Model lies i.a. in different sets of interests protected within these models: the first one seeks to protect public order, while the other is symbolized by primacy of the individual and limitation on official power⁶³. Similar ideas are present when adversarial and inquisitorial categories, understood as “opposing interests or values within criminal process”, are discussed⁶⁴. The controversy whether criminal law belongs to the public or private law sphere is also intrinsically connected with the debate on what interests are predominantly protected by the norms of criminal law⁶⁵. The view of criminal process as a search for equilibrium between public and individual interest is deeply rooted in French legal doctrine, dating back at least to Faustin Hélie's treatise of

⁶³ Packer Herber, *Two Models of Criminal Process*, *University of Pennsylvania Law Review* 1964, vol. 113, no. 1, p. 9, 16.

⁶⁴ Langer Mximo, *The Long Shadow of the Adversarial and Inquisitorial Categories*. In: Dubber Markus D., Hörnle Tatiana (ed.), *Oxford Handbook of Criminal Law*, Oxford University Press, 2014, p. 897.

⁶⁵ Dubber Markus D., *Paradigms of Penal Law*. In: Dubber Markus D., Hörnle Tatiana (ed.), *Oxford Handbook...* op.cit., p. 1019.

1866⁶⁶. In France, it is seen as a classic observation, even trivial⁶⁷, although its implications are profound and the aim to reconcile these interests is seen as a Herculean task of the criminal process. In Polish doctrine, the tension between public and individual interests in criminal process is a common theme, e.g. in discussions regarding the adversarial principle⁶⁸ or the role of the prosecutor as representative of public interest in criminal proceedings⁶⁹. Recently in Polish doctrine, the criminal process has been redefined by Paweł Wiliński as an instrument of solving conflict caused by alleged commission of a crime, which requires an analysis of specific relationships between interests represented in criminal proceedings⁷⁰.

Therefore, if one tries to associate statute of limitations with different interests that are at play in criminal proceedings, it may lead one to the following results. From the perspective of individual interests, the statute of limitations may be seen as something generally harmonised with the interests of the defendant, while simultaneously running against the interests of a victim. From the perspective of public interest, statute of limitations may be perceived chiefly as an instrument of the state's criminal policy (i.e. the way the state chooses to deal with delinquency). Let us delve now into these very general (and possibly challengeable) statements.

4.2. INDIVIDUAL INTEREST PERSPECTIVE

4.2.1. RIGHT OF THE OFFENDER (DEFENDANT)

The observation that the statute of limitations run is beneficial for the offender is quite obvious – it eventually leaves him free from

⁶⁶ Guinchard Serge, Buisson Jacques, *Procédure...*op.cit., p. 3-4; F. Hélie, *Traité de l'instruction criminelle ou théorie du code d'instruction criminelle*, Paris: Henri Plon 1866, p. 4.

⁶⁷ Pradel Jean, *Procédure...*op.cit., p. 18.

⁶⁸ See many publications collected in the tome: Wiliński Paweł (ed.), *Kontradukcyjność w polskim procesie karnym* [Adversarial principle in Polish criminal process], Warszawa: Wolters Kluwer, 2013.

⁶⁹ Olszewski Radosław, *Role prokuratora w postępowaniu karnym* [Roles of the prosecutor in criminal proceedings], *Prokuratura i Prawo* 2014, No. 1, p. 52.

⁷⁰ Wiliński Paweł, *Zarys teorii konfliktu w prawie karnym* [An outline of the theory of conflict in criminal law], Warszawa: Wolters Kluwer 2020, p. 168 et seq.

criminal prosecution and liability. The question remains whether such a benefit is just a factual, natural result of the existence of the discussed legal institution, or rather the offender can claim that it is his right to have his potential criminal liability extinguished after a certain amount of time, therefore, the statute of limitations serves as a legal guarantee – protection from prosecution and punishment. This question arises mainly when the issue of admissibility of prolongation of periods of limitation is analysed, as perception of statute of limitations as an individual right (or at least its expectancy) would serve as an argument against such prolongations.

The discussion on these issues in Polish doctrine has been triggered mainly by several rulings of the Polish Constitutional Tribunal regarding legislative changes to the statute of limitations periods. One of these important decisions⁷¹ assessed the constitutionality of Article 15 of the Criminal Code Implementing Provisions Act⁷², according to which the offences committed before the Polish CC entered into force (in 1998) are subject to the periods of limitation provided by this code, unless the period applied under the previous code has already run. The Tribunal stated – contrary to the arguments of the complainant – that the statute of limitations is not subject to the protection of the *nullum crimen sine lege* principle enshrined in Article 42 paragraph 1 of the Polish Constitution (“Constitution”)⁷³. Until the period of the statute of limitations expires, the offender cannot claim any guarantees regarding the ban on retroactivity of criminal regulation. The statute of limitations cannot be, according to the Tribunal, viewed as an acquired right of the offender, of which the prolongation deprives him. The statute of limitations periods are viewed, by the Tribunal, as an element of criminal policy. The Tribunal also stated that the Constitution does not require the subordinate laws to introduce statute of limitations and its existence is rather a matter of legal tradition and practicality than a constitutionally relevant issue – pointing out to the fact that common law systems does not recognize such institution at all and that the statute of limitations

⁷¹ Abovementioned judgement in case no. SK 43/03.

⁷² Dziennik Ustaw [Journal of Laws] of 1997, No. 88, item 554, as amended.

⁷³ Dziennik Ustaw [Journal of Laws] of 1997, No. 78, item 483, as amended.

prolongation does not violate Article 7 of ECHR, according to European Court of Human Rights (“ECtHR”) case law⁷⁴.

This and other rulings in this regard were criticised, although by minority of authors. The majority of them, as well as established case-law of the Polish Supreme Court, agreed with these views. Marek Kulik convincingly argued against this dominant⁷⁵ set of opinions, pointing out several issues that were overlooked by the Tribunal, the courts and the doctrine. First, he criticised the view that the Constitution is practically silent on the issue of statute of limitations. Articles 43 and 44 of the Constitution are devoted only and directly to this legal institution – the first one states that liability for crimes against humanity and war crimes is not time-barred, while the second introduces a suspension of the statute of limitations for crimes committed by public officials or on their orders and not prosecuted for political reasons. Moreover, these two provisions are in the chapter of the Constitution devoted to personal rights and freedoms. These observations produce two conclusions. First, if the statute of limitations was not a “given”, a standard feature for all criminal offences, Articles 43-44 of the Constitution would be superfluous, because creation of regulations establishing exceptions would be illogical if the principle (of criminal offences becoming time-barred) did not exist. Second, since these regulations are placed among others regarding fundamental human rights, also in the context of criminal law and criminal process (the said Article 42, preceding them, enshrines not only the *nullum crimen sine lege* principle, but also presumption of innocence and defence rights), they cannot be construed out of this context. Moreover, Marek Kulik highlights the importance of Article 2 of the Constitution for this issue, wrongly deprecated by the Tribunal and other opinions on this matter. Article 2 enshrines the rule of law principle, from which many specific principles stem in the Tribunal’s case law⁷⁶, i.a. the principle of protection of citizens’ trust in public authorities. According to the cited author, the prolongation of statute of limitations period would be, in general,

⁷⁴ See abovementioned judgement in *Coëme and others v. Belgium*.

⁷⁵ Kulik Marek, *Przedawnienie karalności...* op.cit., p. 147.

⁷⁶ Garlicki Leszek, *Polskie prawo konstytucyjne* [Polish constitutional law], Warszawa: Liber, 2012, p. 61 et seq.

contrary to this principle, which creates on the part of an individual a sense of comfort and safety that their legal situation would not undergo unexpected changes. Prolongation of the statute of limitations introduces such a change, though⁷⁷. Even the wording of ECtHR's *Coeme and others v. Belgium* judgement, treated as an argument for not extending the *nullum crimen* protections to the changes of statute of limitations, may create doubts: this judgment states that the statute of limitations is a "right of an offender not to be prosecuted or tried after the lapse of a certain period of time". Such statement may be thus construed as meaning that it is eventually a right when the period has run; therefore, one may argue that it should be treated as an expectancy of right, when the limitation period is still running.

These arguments may be further supplemented by the fact that Polish doctrine often treats statute of limitations as an institution of substantive criminal law (or having a mixed nature, with substantive aspect being dominant) and as such should be subject to the same guarantees as other substantive regulations of criminal liability. Therefore, justifications for the prolongation of limitation periods, drawn from the sources which treat statute of limitations as a procedural institution (i.e. ECtHR case law), are incoherent with the views on the substantive character of this institution.

In contrast, in France, where the procedural character of the statute of limitations is not questioned, the *droit à l'oubli*, while invoked in this context, is rather in retreat. It is argued that in the case of unpunished crimes, where statute of limitations plays its role in the ability to prosecute, many regulations of French criminal procedure are aimed at postponing the moment when *action publique* becomes time-barred⁷⁸. It is convincingly observed that in modern society, with a significant role of the media, many technologies that aid human memory and (as it was previously mentioned) evidence-gathering activities of criminal justice authorities, as well as strong pro-victim movements, the "right to forget" (or to be forgotten) is no longer viable⁷⁹. Therefore, the perception of statute of limitations as a

⁷⁷ Kulik Matek, *Przedawnienie karalności...*op.cit., p. 140.

⁷⁸ Raschel Evan, *Le droit...*op.cit., p. 48, 54-58.

⁷⁹ Danet Jean, *La prescription...*op.cit., p. 86.

right of the offender cannot be maintained in the French legal system. A similar view on the obsolete nature of the “forgetting” argument in the contemporary era has been expressed in Austrian doctrine⁸⁰.

Nevertheless, the perception of the statute of limitations as an individual right may be, as it was already discussed, rooted in Article 8 of ECHR, as well as – in the Polish legal system – in Article 47 of the Constitution (also enshrining the right to privacy). Some additional, although not decisive, arguments in this regard may be drawn from these ECtHR judgments that point out to the procedural aspect of Article 8, indicating that lengthy proceedings may affect one’s private life⁸¹. It bears some resemblance to the idea, presented among justifications for statute of limitations, that remaining under threat of accusation for an unspecified time would also be detrimental to one’s privacy – both in individual and familial aspects. However, if we turn again to the Austrian (and German) literature, doubts have been expressed as to whether the perpetrators are entitled to legal certainty, i.e., whether their confidence that they will not be prosecuted long after the offence is committed is worthy of protection at all⁸². Austrian Supreme Court of Justice consistently confirms, as it was previously stated, that the statute of limitations is ruled by the law applicable at the time when the judgement is passed, unless under earlier legislation its period has already expired and the perpetrator acquired “a right to immunity from prosecution”⁸³. Therefore, the law on the statute of limitations may be changed between the time the offence was committed and the time when it is judged, and the perpetrator cannot claim that such a change deprives him of any “acquired” rights, save for the situation that the offence became time-barred before the legislative change. Such views were also upheld as constitutional and consistent with ECHR by the Austrian Constitutional Tribunal (*Verfassungsgerichtshof*)⁸⁴.

⁸⁰ Stutzenstein Sarah, *Die Verjährung...*op.cit, p. 279.

⁸¹ ECtHR Judgement of 22 April 2010 in case of *Macready v. Czech Republic*, application no. 4824/06.

⁸² Stutzenstein Sarah, *Die Verjährung...*op.cit, p. 282.

⁸³ OGH Rechtssatz no. RS0072368, OGH Rechtssatz no. RS0116876.

⁸⁴ VfGH judgement of 21 June 2021, case no. VfGH G368/2020.

One reservation must be however made regarding the perspective of the defendant's right. It is imaginable that in some cases, statute of limitations as procedural obstacle (reason extinguishing the crime) would not allow the defendant to prove their innocence. Since in all examples analysed, it serves as a reason to discontinue the proceedings, the expiry of the statute of limitations period would result in the deprivation of the defendant of a possibility (or even a right) to be declared innocent by the court based on merits. The decision to discontinue the proceedings after lapse of the statute of limitations period is based solely on the fact that regardless of the proven facts and other premises for one's criminal liability, an amount of time that has passed since the hypothetical criminal event with which one is charged, forbids ruling on the merits. Obviously, such an outcome weakens the reputational aspect of presumption of innocence for the defendant (even if in purely legal terms it remains intact), because the decision in his case is commonly viewed as impotence of justice rather than fair and unequivocal adjudication of the criminal case.

In Poland, the courts have been using the following solution to this problem – if the facts of the case and applicable laws at the moment of adjudication allow for an acquittal, the court should pronounce the defendant not guilty even if the statute of limitations period has already run⁸⁵. It is justified by the procedural importance of the presumption of innocence and its axiological impact on the social relations of the defendant. The courts argue that while statute of limitations expiry is a procedural obstacle that cannot be removed, so the proceedings should be in general deemed inadmissible in such a situation, the fact that the case has been resolved as to the merits demands a ruling on merits (although only to the benefit of the defendant). I would add to these arguments that due to the perception of statute of limitations in the Polish legal system as substantive (or of mixed nature), it can be argued that if it is proven that there had been no criminal offence, then no statute of limitations period could have been running, since this period starts with the actual commission of a crime. If the court established that such an act (meaning not only the existence of factual activity, but also its legal relevance)

⁸⁵ See e.g. judgement of the Polish Supreme Court of 27 January 2011, I KZP 27/10.

did not happen, no period of limitation has since been running and thus there is no expiry of such statute of limitations that may be treated as procedural obstacle to ruling on merits.

4.2.2. LIMITATION ON VICTIM'S INTERESTS

The perspective of individual interest, as much as one can be traditionally tempted to equate it with the situation of the offender in criminal proceedings, has its important reverse – the situation of the victim. Victims' interests in the criminal process are now widely recognised, leading to assessment that victims possess “considerable power” within criminal justice systems⁸⁶. The idea that the victim's rights and dignity must be taken into account is expressed in regulations of criminal process – e.g. in Polish CCP, Article 2 paragraph 1 item 3 states that one of the aims of the code is to take into account the victim's interests and to treat victim with dignity, while in France, the Preliminary Article of the CPP states that the judiciary shall make sure that the victim is duly informed and his rights are guaranteed during the entire course of the criminal proceedings. Similar guarantees are provided by the Austrian *Strafprozeßordnung* (§ 10). In such a context, the fact that the statute of limitations period has expired, must also be seen as a limitation of the victim's interest in criminal proceedings. While it may not influence the victim's ability to seek compensation for damages resulting from crime (because usually the civil aspect of the victim's situation resulting from crime can be brought before a civil law court), it makes it impossible to satisfy the victim's potential penal, purely retributive or preventive (i.e. when the victim seeks protection from the offender) expectations⁸⁷.

Statute of limitations has therefore two faces in regard to the individual interest – it benefits the offender, but acts to the detriment of the victim. This issue has been most strikingly observed in case of crimes

⁸⁶ Kirchengast Tyrone, *The Victim in Criminal Law and Justice*, Palgrave Macmillan 2006, p. 228.

⁸⁷ About these two aspects of the victim's situation, two purposes of their activity in criminal proceedings, see Casorla Francis, *Les victimes, de la réparation à la vengeance?*, *Revue pénitentiaire et de droit pénal* 2001, no. 1.

against minors (especially different forms of sexual harassment) and the impossibility to pursue these crimes due to the passage of time. The prosecution's or the victim's inaction in these cases usually results from the fact that such crimes are generally committed secretly, victim is too young to know how to react and frequently lives under the perpetrator's threat (the perpetrator is e.g. a member of the family or someone with power over a minor, like a teacher or priest). The experience of impotence in prosecuting and convicting such offenders led to changes in statute of limitations for such crimes in many jurisdictions, where their period is usually made related to the victim's age – to allow them, after reaching adulthood and legal autonomy, to seek justice. Article 101 paragraph 4 of the Polish CC states that the statute of limitations for i.a. grave offences against life and limb of a minor or offences against sexual freedom of a minor cannot expire before the minor turns 40. Articles 7 and 8 of the French CPP prolong the general limitations period for *crimes* and *délits* in case where they are committed against a minor and stipulate that these periods start from the date when the victim reached the age of majority (adulthood).§ 58 section 3 item 3 of öStGB states that the statute of limitations period does not run until the victim of a criminal offence against life and limb, against liberty or against sexual integrity and self-determination reaches the age of 28, if the victim was a minor at the time of the commission of the offence.

Another example, probably of lesser practical importance but of absolutely fundamental significance as to the legitimacy of criminal justice, is the non-application of the statute of limitations to war crimes and crimes against humanity. It is a matter of constitutional regulations (as discussed), as well as international law⁸⁸ – and such exception to the general rule of time-barring of criminal offences is made i.a. in the interest of the victims of these atrocious crimes. These regulations may therefore be seen as a manner in which this negative, from the victim's rights perspective, character of the statute of limitations, is dampened.

⁸⁸ See UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 1968, which is treated just as a declaration of international customary law in this regard “since times immemorial” (Kulik Marek, *Przedawnienie karalności...op.cit.*, p. 515).

4.3. PUBLIC INTEREST PERSPECTIVE – INSTRUMENT OF THE STATE'S CRIMINAL POLICY

The public interest perspective sees the statute of limitations periods as an instrument of the state's criminal policy. It can be argued that if we define the criminal policy as the sum of the state's legislative policy in the creation of criminal law, the policy of prosecution and the policy of influencing the manner in which the courts apply criminal sanctions⁸⁹, the statute of limitations periods form an important ingredient thereof. They determine how long the state authorities will take an interest and undertake activities in prosecuting and adjudicating criminal offences. Some offences will not become time-barred at all, while others will not be prosecuted after a short period of time. The distribution of these periods (or lack thereof) reflects the state's axiology behind the criminal law, hierarchy of interests, as well as utilitarian aspects of capable prosecutions. It rhymes with the previously discussed assumptions on the admissibility of prolongation of the statute of limitations period – the already cited ruling of the Polish Constitutional Tribunal in case no. SK 44/03 states that the decision in this regard, albeit not entirely discretionary, is an element of the state's criminal policy, rather unrestrained by the Constitution⁹⁰. It is, as it has been said earlier with reference to Austrian doctrine, also linked with such an important choice in shaping the criminal policy as the choice between the principle of legality and the principle of opportunity (discretion) in prosecution.

The idea that the statute of limitations is an important element of criminal policy has been expressed on the grounds of all three legal systems that are mainly discussed in this paper. It has been named “an issue” of criminal policy⁹¹ and proposed amendments are suggested as

⁸⁹ Gardocki Lech, Prawo...op.cit., p. 5.

⁹⁰ “The statute of limitations should be regarded as an instrument of criminal policy, shaped by the legislator, first and foremost, with criminal policy considerations in mind”.

⁹¹ Danet Jean, *La prescription*...op.cit., passim; for Polish doctrine see Soćko Michał, Istota i kryminalnopolityczne znaczenie przedawnienia w prawie karnym [The nature and criminal-political significance of limitation in criminal law], *Studia Iuridica Lublinensia*, 2012, 17.

reforms of “legal policy”⁹². As with all instances of state policing, it is not an issue that the state has such an instrument, it is the matter of how such an instrument is used – which aims it serves and how it interacts with people’s lives. I would like to discuss here a few different examples when the legislature’s influence on statute of limitations regulation and enforcement was a clear representation of current criminal policy; one may argue that it was just general politics (and in the first example – even political drama) invading the field of criminal policy.

In the case no. P 32/06 of the Polish Constitutional Tribunal⁹³, the Tribunal was seized to decide whether the provisions of an Act of 3 June 2005 amending the Polish CC are constitutional. The said act prolonged periods of limitation for a class of criminal offences, as well as changed from 5 to 10 years the period by which the period of limitation is extended, in case the proceedings were initiated in the basic period of limitation. New periods applied to all pending statute of limitations periods. The draft of the said amendment was proposed by a group of 20 members of the Sejm (lower chamber of the Polish Parliament), adherents of the political party *Prawo i Sprawiedliwość* (Law and Order). This political party has built its position (and was since in power twice, recently ousted from government in 2023 general elections) i.a. on the slogans of fighting common crime with severe measures, bringing to justice the officials of the communist regime in Poland and also ostracizing those democratic opposition politicians who participated in 1989 transformation reforms and allegedly – in the views of this political group – betrayed the ideals of the Solidarity movement. As the legislative motives stated, “This amendment is a response to the paresis of the Polish justice system. The statute of limitations for many crimes, including those of a serious and scandalous nature, urgently requires a prompt parliamentary response”⁹⁴.

This phrase clearly shows that the prolongation of statute of limitations was intended here as an instrument of combating protraction of proceedings (which remains to this day a major problem of the Polish

⁹² Stutzenstein Sarah, *Die Verjährung...*op.cit., p. 369-370.

⁹³ Judgement of 15 October 2008, P 32/06.

⁹⁴ See legislative motives in the Sejm’s Paper no. 3785 (Sejm of the 4th term): <https://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/3785> [access: 22.03.2025]

system of justice), i.e. a clear element of criminal policy. Regardless of reasonableness of such solution to this problem (because, as Constitutional Tribunal formidably observed, extended periods of limitation allow for slower proceedings, as they will no longer require rush on the part of prosecution and courts⁹⁵), it is the remainder of the motives that requires further discussion: “It should be stressed that the urgency of this legislation is also dictated by the need to save the so-called FOZZ affair from the threat of the statute of limitations. The court’s efforts to reach a verdict may be thwarted at the final stage of the judicial proceedings (...) It would be an unquestionable scandal encumbering anyone who did not support the proposed amendment, if the statute of limitations periods for the biggest scandal in Polish democracy were to be reached before the eyes of the whole country (...)”⁹⁶.

Some explanations may be in place before delving into this issue in the discussed context of the public interest perspective. The FOZZ affair was indeed a major scandal at the beginning of the Polish transformation in 1989-1991. FOZZ (which stands in Polish for Foreign Debt Operations Fund) was a public fund created to handle Poland’s foreign debt that arose during communist times. The money entrusted to FOZZ for its statutory tasks was subsequently embezzled by their management officers. Polish State Treasury lost – according to the indictment against the management – hundreds of millions of Polish zloty (in contemporary currency). The proceedings in this case were protracted – while the indictment act was first sent to court in 1993, in 2005 the verdict was still not pronounced. The public opinion was indeed indignant about these proceedings. No doubt therefore that this case was a failure of the Polish criminal justice system, even if eventually the main perpetrators were convicted in 2005. Does it, however, justify (or more precisely – did it justify almost 20 years ago) a prolongation of the statute of limitations? While the general argument invoked in the draft of the amendment, albeit debatable, might have had some legitimacy from the perspective of criminal policy battling

⁹⁵ See judgement in the case no. P 32/09; similar observations, in regards to the effectiveness of proceedings, has been made by Stutzenstein Sarah, *Die Verjährung...*op.cit., p. 276-277.

⁹⁶ See legislative motives – footnote no. 94.

the protraction of proceedings, the idea that general norms of law are changed for a purpose of a single case is unacceptable, as contrary to axiomatic features of law in continental tradition as a set of general (common) and abstract norms. These motives are also a clear infringement of the separation of powers and the rule of law – because it is not for the legislative power to “save” specific criminal cases adjudicated by courts from anything, as such “saving” would intrinsically mean interference with judicial power’s exclusive competence to solve specific legal disputes. Moreover, the rhetorical aspect of the argument regarding the FOZZ affair is purely populist: the members of parliament behind the draft amendment appeal to the general public and pre-emptively accuse anyone opposing their proposal as complicit in allowing the statute of limitations to be reached, and therefore in helping the perpetrators to go unpunished.

Hence, it may be surprising that the Constitutional Tribunal found said regulations constitutional, even though it recognised and criticised the abovementioned motives of the amendment as unacceptable. The Tribunal did not however find that they had influenced in any way the normative side of the regulation, which was – in its essence – admissible in the light of the previous judicial decisions of the Tribunal regarding statute of limitations. This is, in my view, not convincing: the mere fact that the said law applied generally does not change the fact that its creation was based on a single case of the criminal justice system’s dysfunction, a case which had a profound political connotation and served as a tool in political battles of that time. The Tribunal abandoned the real, substantive side and effects of the contested regulation for its formal admissibility. This case exists therefore as a dangerous precedent for such legislative interventions, which may be presented as all-encompassing, but in fact tailor-made to serve a particular purpose or particular case. And, from the specific perspective of the statute of limitations, this case shows that statute of limitations may be used as an instrument of criminal policy pursuing in fact goals of current political struggles, often unrelated to criminal law issues. This Polish example is probably not exceptional: it was previously observed (see footnote no. 60) that André Varinard viewed almost all changes made in the recent two decades in the French statute of limitations as incidental and ill-considered legislature’s responses to single cases, without any plan and reasonable idea behind them.

While this example may be treated as some extreme negative instance of public interest's impact on statute of limitations, where the public interest is purposefully confounded with a specific party's political agenda, there is a more recent example of changes in the statute of limitations, used to achieve acceptable and legitimate purposes of criminal or even general policy. This example is related to the COVID-19 pandemic which prompted the legislatures of many countries to influence the running of limitation periods in this extraordinary situation. Disruptions of the system of justice caused by lockdowns and quarantines resulted in delays or even temporary inability to conduct proceedings, with a risk of statute of limitations expiring when authorities were unable to act. Pandemic such as COVID-19 is an event that may be treated as force majeure, although the influence of force majeure on the limitation period depends on a particular jurisdiction. In the French criminal process, any factual obstacle of insurmountable character, that may be equated with force majeure, is a reason suspending the run of the limitation period (Article 9-3 of CPP). In the face of the pandemic, however, this regulation was considered insufficient. According to Articles 2 and 3 of the Ordonnance on the Changes of the Rules of Criminal Proceedings based on the State of Necessity in Face of COVID-19 Pandemic Act⁹⁷, the periods of limitation run has been suspended from 12 March 2020 until one month after the state of sanitary urgency declared on the territory of France was expired (which in practice meant 10 August 2020). *Cour de cassation* was even seized on the matter of interpretation of these provisions, when the party filing a cassation appeal argued that this suspension applied only to statute of limitations periods expiring during the suspension period and not to those that were supposed to expire afterwards. The Court rejected such an argument and stated that this suspension applied to all statute of limitations periods⁹⁸.

In Polish criminal law, there is no equivalent of Article 9-3 of CPP in relation to force majeure; therefore the suspension effect during

⁹⁷ Ordonnance n° 2020-303 du 25 mars 2020 portant adaptation de règles de procédure pénale sur le fondement de la loi n° 2020-290 du 23 mars 2020 d'urgence pour faire face à l'épidémie de covid-19.

⁹⁸ Judgement of the Court of cassation of 7 June 2023, case no. 22-86.644.

pandemic required specific legislative changes. Polish Sejm introduced Article 15zsz to the Act of 2 March 2020 on Specific Solutions Regarding Prevention, Counter-action and Combating COVID-19, Other Infectious Diseases and Crises Caused by Such Diseases⁹⁹. According to this provision, the run of deadlines defined by procedural laws or fixed by courts in criminal proceedings was suspended during a state of epidemic emergency or state of epidemic¹⁰⁰. On 16 May 2020, this provision was repealed. Then, on 22 June 2021 (i.e. almost a year after the most serious phase of the pandemic), Sejm introduced to the said Act Article 15zzr¹, according to which during the state of epidemic emergency or a state of epidemic declared due to COVID-19 and for a period of 6 months after their revocation, the statute of limitations in criminal matters shall not run. Such regulation was however subsequently declared unconstitutional by Polish Constitutional Tribunal, according to which such provision was unacceptable from the perspective of the principle of protection of trust in public authorities – it did not set in any way maximum deadline for suspension, and the mechanism envisaged in this provision was an oddity, as the very content of a criminal law regulation was decided by administrative acts of the Minister of Health, who introduces and abolishes state of epidemic or epidemic emergency. Moreover, the whole regulation was introduced over a year after the period when the courts and prosecutor's offices were in fact most influenced by lockdowns, and it was not in any way demonstrated that the pandemic had been since disturbing the criminal justice system to the extent that required such suspension of periods of limitation¹⁰¹.

These COVID-19 examples of influencing periods of limitation may be, from the perspective of public interest, seen as legitimate interventions of public authorities, justified by this truly extraordinary situation, whose global impact remains unprecedented in known human history. The necessity to allow proper functioning of the criminal justice system in these circumstances would seem appropriate and admissible.

⁹⁹ Dziennik Ustaw [Journal of Laws] of 2020, item 374, as amended.

¹⁰⁰ Both are special administrative regimes introduced by Ministry of Health during epidemics; the state of epidemic emergency is less severe in terms of restraints and limits placed upon the society.

¹⁰¹ Judgement of the Polish Constitutional Tribunal of 12 December 2023, P 12/22.

However, as the cited ruling of the Polish Constitutional Tribunal shows, such intervention in the statute of limitations regulation, has its boundaries – stemming from factual needs, proper legislation rules and requirements of *nullum crimen* principle to base criminal laws on fixed statutory regulations and not discretionary acts of executive power.

The last topic that comes to mind in the context of a public interest perspective on statute of limitations, is the issue of transitional justice, although discussing it in detail would require another paper and I would like to make only a few remarks in this regard. Defined as “self-conscious contingent construction of a distinctive conception of justice associated with periods of radical political change after past oppressive rule”¹⁰², transitional justice in the field of criminal liability is *per se* connected to the issue of the statute of limitations. Prosecution of wrongdoings of a previous regime is often possible only many years after they were committed. Periods of limitation may therefore have expired or near their end, which basically leaves perpetrators of such wrongdoings unpunished. Perception of such a situation is clear – it is an injustice, therefore the legitimacy and reputation of “transitional justice” becomes tarnished, whereas it is in the public interest to maintain these features of a new order in a particular country. It provokes, obviously, a conflict between “competing claims of justice and legality”¹⁰³, as prolongation or even reanimation of expired periods of limitation may be perceived as retroactive application of criminal law and therefore also deprive the new government of its credibility as protagonists of the rule of law. Such action is however absolutely in accordance with the previously discussed interest of the victims of offences committed by the old regime.

In this context, the Austrian struggle with the statute of limitations of Nazi crimes must be mentioned first (although the general manner of Austria’s dealing with the period of Nazi rule remains highly controversial). The regulations adopted after many debates in the 1960s, in which different values and perceptions of what is just were invoked, introduced no

¹⁰² Teitel Ruti, *Globalizing Transitional Justice. Contemporary Essays*, Oxford University Press 2014, p. xii.

¹⁰³ Posner Eric A., Vermeule Adrian, *Transitional Justice as Ordinary Justice*, *Harvard Law Review*, January 2004, vol 117, no. 3, p. 797.

statute of limitations for most serious Nazi crimes, although the cases of perpetrators involved in, as Hannah Arendt dubbed it, “bureaucracy of murder”, were not covered by these regulations. The confrontation with the Nazi past through criminal proceedings in Austria met many obstacles, although the issue of the statute of limitations was not the only problem¹⁰⁴. Poland, due to its experience of a transition from a satellite state of the USSR, ruled by the communist party, into a democracy ruled by law in 1989, also faced several issues of transitional justice. The solution was to introduce a regulation (stemming from Article 4 paragraph 1a and Article 2 of the Act on Institute of National Remembrance – Commission for the Prosecution of Crimes against Polish Nation¹⁰⁵), according to which the statute of limitations period for the so-called communist crimes (i.e. acts committed by functionaries of the communist state between 1917 and 1990, involving the use of repression or other forms of violations of human rights against individuals or groups of people or in connection with such use, constituting offences under the Polish criminal law in force at the time when they were committed) started to run anew on 1 August 1990. It is visible that while recreating the ability to prosecute the crimes after transition, these legal regulations do not criminalise acts that were not already punishable under the criminal law at force when they were committed. It may be therefore seen as an imperfect, but necessary compromise between legality and justice.

5. CONCLUSION. JUSTIFICATIONS REVISITED: A POLYPHONIC STATUTE OF LIMITATIONS?

To sum up, I will look again at the justifications for statute of limitations, because even if it is true that they are made *ex post*, they still influence the perceptions of this legal institution and the way it works and performs its roles in the criminal justice system. Starting again with extra-legal justifications, it can be now seen that this manner of justification opens the door to influencing the statute of limitations

¹⁰⁴ Stutzenstein Sarah. *Die Verjährung...*op.cit., p. 355 (a conclusion of earlier chapters devoted to this issue).

¹⁰⁵ Dziennik Ustaw (Journal of Laws) of 1998, No. 155, item 1016, as amended.

periods for extra-legal reasons that are dubious. If one agrees that the existence of statute of limitations may be attributed to healing properties of time and fading memory, others may say something totally contrary (that the memories are not so easily fading and that the lack of justice festers and poisons the victim's life). To allow extra-legal issues to decide on the existence of this institution is to allow them to influence possible prolongations – which, as it was shown, may stem from either legitimate and reasonable premises (COVID-19) or totally political, partisan and populist spectacles (the FOZZ affair prolongation). It may therefore be – in a longer perspective – tricky to seek the justification for the statute of limitations outside of the legally relevant framework. Nevertheless, the issue of memory brought up in this context seems especially important in the contemporary era – as it was stated, the role of media and memory-preserving technologies seems to diminish the significance of “forgetting” justification. There are, however, defenders of this justification and their arguments cannot be overlooked – in particular when they describe social and psychological dangers resulting from contemporary hypermnnesia and disappearance of a healthy ability to “let things go”¹⁰⁶. Leaving an offence unpunished need not always be legitimised by mercy or forgiveness, but sometimes can become an act of just freeing oneself (or a group of people) from the ghosts of the past.

Intra-legal justifications are less prone to abuse, due to their interference with the entirety of a particular legal system. The choice between substantive law or procedural law justifications seems to be more a function of tradition and other elements of a system. There is no obvious advantage of one over the other. It cannot be overlooked however that there is a correlation between the nature of the statute of limitations and a principle governing the criminal prosecution in a particular country. In France, the procedural justification (and character, for that matter) of the statute of limitations is connected with the opportunity principle (Article 40-1 of CPP) which is a procedural solution to the question of which offences are practically prosecuted. While the French prosecutor cannot pursue time-barred offences,

¹⁰⁶ Hardouin Le Goff Caroline, Défense de l'oubli, *Les Cahiers de la Justice* 2016/4 N° 4, passim.

the lack thereof is not sufficient for the exercise of *action publique*. In Poland and Austria, with the legality principle in prosecution (Article 10 of the Polish CCP and § 2 of the *Strafprozeßordnung*), the statute of limitations is, with its substantive aspect, strictly connected with the ability to engage in the prosecution of a criminal offence. It can also be observed that substantive law justifications and the character of statute of limitations is more coherent with the perception of this institution as a right of the offender. The procedural justifications and character allow more freedom for the public interest to emerge as an impactful factor on how the statute of limitations is changed and applied. Those different choices seem equally reasonable and legitimate, especially if we realise that they cannot be perceived as some separate issues, without the context of their respective legal systems.

The overview of the statute of limitations justifications, approaches to its nature and roles in the criminal justice systems paints an image of a polyphonic legal institution, with a plethora of justifications and uses. While the concept and notion that “there is time” to also stop prosecution and extinguish criminal liability seems common, it does not take one form in continental legal systems. What remains visible in all approaches to this topic is a feeling of unease that the mere passage of time may prevent justice from being achieved – that the lack of binding fact-finding in the judgement, due to said limitation, is a failure of justice. On the other hand, there are situations in which the prolongation of statute of limitations periods, so something contrary, is also viewed as unjust. It seems therefore that there is no zero-one answer to the question of whether the statute of limitations is a tool of justice and whose interests it eventually serves. While these questions must remain unanswered, the difficulty of defining the statute of limitations within their scope stems directly from its polyphonic nature, in which different voices and stances that are at play in the criminal justice system are simultaneously heard, understood and taken into account. This search for a middle ground between the public and individual interests, as well as between failure to rule on merits and eternal prosecution (both representing injustice), shapes the statute of limitations as we see it.

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