Directorate-General for Library, Research and Documentation

RESEARCH NOTE

Limitation rules in criminal matters

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Subject: Analysis of the limitation rules in criminal matters in the Member States in order to determine whether they are procedural rules or substantive rules and, in the event that they are substantive rules, whether they are deemed to form an integral part of the principle of legality in criminal proceedings. Definition of the concepts of 'interruption' and 'suspension' of the limitation period (nature and effects)

[…]

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SUMMARY

I. INTRODUCTION

1. A traditionally established constituent of the criminal law of the Member States and a common feature of the legal systems of the States that are signatories to the Convention for the Protection of Human Rights and Fundamental Freedoms, [1] limitation is defined by the European Court of Human Rights [2] as '*the statutory right of an offender not to be prosecuted or tried after the lapse of a certain period of time since the offence was committed*'. [3]

2. Thus, to quote the eloquence of Advocate General Joseph GAND, the institution of limitation expresses, in legal terms, '*a common truth […], that is, that time is the great healer, that after a more or less extensive period there always comes a point when, in the relationships of society, the past can no longer be called in question and even if it was wrongful it is better to wipe the slate clean*'. [4]

3. Limitation thus defined, even though it is — admittedly — a widely known secular mechanism, in particular in the Romano-Germanic family of law, does however remain a particularly complex institution, since it has multiple foundations and purposes [5] and its legal nature is rather controversial [6] and may differ from one State to the next.

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1 The 'ECHR'.

2 The 'ECtHR'.

3 See ECtHR, judgments of 22 October 1996, *Stubbings and Others v. the United Kingdom*, CE:ECHR:1995:0222REP002208393, § 51, and of 22 June 2000, *Coëme and Others v. Belgium*, CE:ECHR:2000:0622JUD003249296, § 146.

4 Opinion of Advocate General Gand in *ACF Chemiefarma NV* v *Commission of the European Communities*, *Buchler & Co.* v *Commission of the European Communities* and *Boehringer Mannheim GmbH* v *Commission of the European Communities* (41/69, 44/69 and 45/69, EU:C:1970:51).

5 Although some of the traditional foundations of limitation, public prosecution and punishment are today being called into question in academic writing on criminal law, principles relating to the 'forgetting' of offences (**Belgium**, **France**, **Greece**, **Italy** and **Portugal**), the guarantee of legal certainty (**Latvia**, **Portugal** and **Spain**), the deterioration of evidence (**Belgium**, **France**, **Greece**, **Poland** and **Portugal**), the penalisation of a lack of action or negligence on the part of the authorities responsible for conducting a public prosecution (**France** and **Portugal**), the diminishing need to penalise certain offences and to achieve objectives relating to prevention and the education of the offender (**Germany**, **Italy**, **Poland** and **Portugal**) and the reasonable duration of the criminal trial (**Italy**) are still put forward today as foundations of the concept of limitation.

The need to ensure legal certainty by setting a deadline for actions and to prevent infringement of the rights of the defence, which might be impaired if the courts were required to rule on the basis of evidence which might be incomplete because of the passage of time are, in particular, identified in the case-law of the ECtHR as purposes of limitation. See ECtHR, judgments of 22 October 1996, *Stubbings and Others v. the United Kingdom*, CE:ECHR:1995:0222REP002208393, pp. 1502 and 1503, § 51, and of 22 June 2000, *Coëme and Others v. Belgium*, cited above, § 146.

6 See the partly dissenting opinion of Judge CABRAL BARRETO in the ECtHR judgment of 22 March 2001, *K.-H. W. v. Germany*, CE:ECHR:2001:0322JUD00372019.

4 In particular, determination of the legal nature of limitation in criminal matters, which remains the subject of quite polarised debate in some Member States, is not without consequences both in terms of the applicable legal system and the guarantees afforded to individuals. Favouring a substantive concept of limitation results, in principle, in the offence itself being erased, and the sole effect of adopting a procedural view is that public prosecution is barred. It follows, in the first scenario, that the limitation rules, which have a direct effect on the law, are assigned to the field of substantive rules and, in general, are subject to the principles of strict interpretation and non-retroactivity, meaning that — from the point at which they are enacted — they may be applied to untried offences and unenforced sentences only where they would be more favourable. In the other scenario, these rules are linked to the system of procedural rules which, unlike substantive rules, are usually immediately applicable.

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6. […] The purpose of this note is to determine, by means of a comparative law exercise, first, whether the limitation rules in criminal matters, in the legal systems of the Member States studied, [7] are procedural rules or substantive rules (Section II) and, second, if those rules are substantive rules, whether they are deemed to form an integral part of the principle of legality in criminal proceedings (Section III). In that context, assessment of the nature and the effects of the interruption and the suspension of limitation periods is particularly enlightening (Section IV).

II. ARE THE LIMITATION RULES IN CRIMINAL MATTERS IN THE MEMBER STATES PROCEDURAL RULES OR SUBSTANTIVE RULES?

7. The comparative study of the legal systems examined reveals prima facie that, despite peculiarities specific to each legal system, virtually all those systems feature the institution of limitation in criminal matters (Part A) but do not confer on it a similar legal nature (Part B).

A. LIMITATION IN CRIMINAL MATTERS: AN INSTITUTION THAT IS BROADLY KNOWN IN THE ROMANO-GERMANIC FAMILY OF LAW AND IS NOT UNKNOWN IN COMMON LAW

8. All the legal systems studied, with the exception of that of the **United Kingdom**, contain the institution of limitation in criminal matters as a general principle.

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7 This note looks at the legal rules governing limitation in criminal matters in the national laws of 12 Member States, namely Belgium, Germany, Greece, Spain, France, Italy, Latvia, Poland, Portugal, Romania, Sweden and the United Kingdom. It considers, in principle, only the provisions contained in criminal codes or codes of criminal procedure, with the exception of criminal provisions contained in other specific instruments.

9. In this context, a distinction is traditionally drawn between, on the one hand, the Romano-Germanic family of law, which inherited the institution from Roman law, and, on the other, *Common Law*, which excludes it in principle. [8]

10. That distinction must however be qualified. Although a general principle that serious offences [9] are not time-barred can be identified from an analysis of the latter system, [10] there are some exceptions to that principle. The law of the **United Kingdom** recognises limitation for less serious or summary offences. [11] As a general rule, the proceedings relating to such offences, which are tried by a *Magistrates' Court*, must be initiated within 6 months from the day on which the offence was committed or the victim came forward, failing which limitation applies. [12] Specific limitation periods are laid down in specific laws. [13]

11. In the continental systems of law studied (**Belgium**, **France**, **Germany**, **Greece**, **Italy**, **Latvia**, **Poland**, **Portugal**, **Romania, Spain** and **Sweden**), it is true that some offences are not time-barred. In certain systems, criminal legislation has identified certain crimes for which there is no limitation period given the seriousness of the acts committed. These include, as a general rule, crimes of genocide, crimes against humanity and war crimes [14] or even criminal offences which are exceptionally serious. [15] However, in principle, all offences in those legal systems are time-barred.

12. In addition, some major common features can be identified in those legal systems in relation to limitation. Thus, first of all, in formal terms, in all those systems the rules on limitation are laid down either in the criminal code or in the code of criminal

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8 See Archbold, J. F., *Criminal Pleading, Evidence and Practice*, Sweet & Maxwell, 2000, paragraphs 1 to 199, p. 83.

9 A serious offence is an offence which is not defined by law as a "summary offence". A summary offence is an offence which, if committed by an adult, can be tried by summary procedure, without a jury, in accordance with the provisions of the Magistrates' Court Act 1980 and the Criminal Justice Act 1988.

10 The principle that time does not run against the Crown (*nullum tempus occurrit regi*) prevails in Common Law and is applicable, inter alia, to the most serious offences ('indictable offences').

11 In the law of England and Wales and that of Northern Ireland, summary offences cover a very large number of offences, such as common assault, obscene publications and road traffic offences, as laid down in Section 40(1) of the Criminal Justice Act 1988, the Obscene Publications Act 1959, the Road Traffic Offenders Act 1988 and the Criminal Justice Act 1988 respectively.
In Scotland, the provisions relating to limitation periods are contained in the Criminal Procedure (Scotland) Act 1995.

12 See Section 127 of the Magistrates' Court Act 1980.

13 For example, offences relating to smuggling and drugs are subject to a twenty-year limitation period under the Customs and Excise Management Act 1979.

14 This is the case, for example, in **Spain**, in relation to crimes against humanity, genocide and crimes against people or property protected in cases of armed conflict; in **France**, in relation to the crime of genocide and crimes against humanity; in **Latvia**, in relation to crimes against humanity, crimes against peace, war crimes or acts of genocide; in **Poland**, in relation to crimes against humanity, crimes against peace and war crimes; in **Portugal**, in relation to war crimes; and, in **Romania**, in relation to crimes of genocide, crimes against humanity and war crimes.

15 This is the case in **Germany**, **Poland**, **Romania**, **Spain** and **Sweden**.

procedure. Moreover, those systems distinguish between a time limit after which a prosecution may not be brought, [16] on the one hand, and a time limit for the enforcement of a sentence, [17] on the other.

13. With regard to the limitation periods, they vary, as a general rule, according to the nature or seriousness of the offence, [18] and may be as much as thirty years [19] in the case of certain serious offences. Generally, the limitation period runs from the day on which the offence was committed, [20] although some limitation periods have a different starting point on account of the particular nature of certain offences — such as continuing, permanent, concealed [21] or tax [22] offences — or certain crimes against minors. [23]

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16 The name given to this type of limitation does, of course, vary from one Member State to the next.
The literal name used in the different national legal systems studied varies, for example, between '*Verfolgungsverjährung*' ('limitation on prosecution') in **Germany** or '*prescrição do procedimento criminal*' ('limitation on criminal proceedings) in **Portugal**, on the one hand, and 'παραγραφή των εγκλημάτων' ('limitation on the offence') in **Greece**, '*przedawnienie karalności*' ('limitation on punishability') in **Poland** or '*prescripția răspunderii penale*' ('limitation on criminal liability') in **Romania**, on the other.
Those different names reflect, in part, the nature of the institution of limitation in the various national laws. For a more detailed analysis of this issue, see below in Part B 'The legal nature of limitation rules in criminal matters'.
For reasons of clarity, however, the name used in French law [translated into English] is used in this note.

17 The name used in French law [translated into English] is used in this note.
[…]

18 This is the case, for example, in **Belgium**, **France**, **Greece**, **Latvia**, **Poland**, **Portugal**, **Spain** and **Sweden**.

19 This is the case in **France**, **Germany**, **Latvia**, **Poland** and **Sweden**.

20 For example, in **Belgium**, **France**, **Greece**, **Italy**, **Latvia**, **Portugal**, **Spain** and **Sweden**.

21 In **Spain** and **Portugal**, in cases of continuing offences, permanent offences and offences which require habitual conduct on the part of the offender, the periods are calculated from the day on which the last offence was committed or the habitual conduct ceased. In **Italy**, in the case of permanent offences, the starting point of the limitation period is fixed from the day on which the offence ceases to be permanent.
In **Greece**, there is a different starting point in cases of usurpation — whatever form it takes — of popular sovereignty and of the powers arising therefrom (which is prosecuted as soon as legitimate power is re-established, from which point the limitation period for this crime begins to run), unlawful construction, bigamy, torture and other attacks on human dignity as well as cases of tax fraud.
In **France**, the starting point for the limitation period applicable to prosecutions is deferred in the case of hidden or concealed offences.

22 This is the case in **Portugal**, for example, with tax offences by omission where the limitation period for bringing a prosecution is calculated from the day following the deadline for payment of the tax benefit.

23 In **France**, **Latvia**, **Spain** and **Sweden**.
In this regard, one specific feature of **Polish** and **Portuguese** law is the fact that there can be no limitation before the minor reaches a certain age (30 years and 23 years respectively).

14. Finally, the interruption and the suspension of the limitation period are generally enshrined in those legal systems. [24]

B. THE LEGAL NATURE OF LIMITATION RULES IN CRIMINAL MATTERS

15. Although limitation in criminal matters is an institution which is broadly recognised in the legal systems examined, [25] the answer to the question whether the related rules are procedural rules or substantive rules is not easy in certain legal systems.

16. In addition to this difficulty of principle, the comparative study of the 12 legal systems examined paints a rather diverse picture. First of all, in an initial group of legal systems (**Germany**, [26] **Belgium**, [27] **France** [28] and the **United Kingdom** [29]), the limitation rules are placed squarely within the field of procedural rules. Next, in a second group, those rules are substantive rules (**Spain**, [30] **Greece**, [31] **Italy**, [32] **Latvia**, [33] **Romania** [34] and **Sweden** [35]) and, lastly, in a third group, since limitation is

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24 In view of the peculiarities of the limitation rules and the features specific to criminal proceedings in the different national laws studied, the legal terminology has not been harmonised although we have attempted to find an equivalent in French law.

25 With the exception of the United Kingdom.

26 According to the case-law of the Bundesverfassungsgericht (Federal Constitutional Court) and the Bundesgerichtshof (Federal Court of Justice). The prevailing view in legal literature is that limitation is both a procedural rule and a substantive rule (hybrid nature).

27 In accordance with the settled case-law of the Cour de cassation (Court of Cassation).

28 The French legislature regards the limitation rules as procedural rules which are immediately applicable. Pursuant to subparagraph 4 of Article 112-2 of the code pénal (Criminal Code), as it has been in force since 10 March 2004, laws governing the limitation period for public prosecution and the limitation period for penalties are immediately applicable to the punishment of offences committed before the laws came into force, where the limitation periods have not expired.
The exception of compliance with expired limitation periods dates back to broadly established, long-standing case-law from the early 1930s.

29 Where a limitation period is specified, that period is a procedural rule. The Indictments Act 1915 and the Administration of Justice (Miscellaneous Provisions) Act 1933 specify the applicable procedure.

30 According to the case-law of the Tribunal Constitucional (Constitutional Court) and the Tribunal Supremo (Supreme Court) as well as the prevailing view in legal literature.
It is important to note, however, that, in a judgment of 2007, the Supreme Court has likewise acknowledged that limitation in criminal matters has in itself a dual legal nature, that is to say procedural and substantive. In addition to that judicial view, which has however remained isolated, there is also the fact that the related legal literature is essentially divided between proponents of the substantive or material theory and advocates of the hybrid theory.

31 In accordance with the case-law of the supreme courts and the prevailing view in legal literature.

32 According to the case-law of the Corte costituzionale (Constitutional Court) and the Corte di cassazione (Court of Cassation) as well as the prevailing view in legal literature.

33 In particular, as a result of their position within the Krimināllikums (criminal law) and the case-law of the Supreme Court on the possibility of renewing a period with a view to categorising it as material or procedural.

34 In accordance with the case-law of the Curtea Constituțională (Constitutional Court) and of the

regarded as being mixed or hybrid in nature, the case-law of the higher courts and the prevailing view in legal literature classifies them as both substantive rules and procedural rules (**Poland** [36] and **Portugal** [37]).

17. Accordingly, in the first group of legal systems, since limitation is procedural in nature, the only legal effect of limitation is that criminal prosecution is barred; the criminal nature of the acts is not affected. The offender continues to be responsible but he cannot be punished. [38] Since it affects only the procedure, it follows that, as regards the temporal application of the law, the limitation rules are immediately applicable to ongoing proceedings in which final judgment has not yet been given and which are not yet time-barred when the new law enters into force [39] (**Belgium**, **France** and **Germany**). [40] In **Germany**, the case-law of the Federal Constitutional Court further requires, in this regard, that the interests of the offender are balanced against the public interest, in particular that of the victims, in an effective criminal prosecution.

18. However, in the second group, since the limitation rules are akin to substantive rules, the main effect of limitation in criminal matters is not to cause the public prosecution to become barred — which is solely a secondary, procedural effect — but to exclude the criminal liability of the offender, which is a matter of substantive criminal law (**Spain** and **Romania**), render the act non-punishable (**Italy** and **Greece**) and, consequently, remove the penalty (**Sweden**).

19. Last, in a third group of legal systems, in **Poland** and **Portugal**, the limitation rules in criminal matters are hybrid in nature, that is to say both procedural and

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Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) as well as legal literature.

35 In particular, as a result of the position within the brottsbalk (BrB) (criminal law), by reason of the existence of a link between the seriousness of the offence and the limitation period and of the fact that limitation entails solely the loss of the possibility to impose a penalty and does not constitute a procedural obstacle which can serve as a legal basis for rejecting an indictment on the ground of inadmissibility. Limitation rules are also regarded as substantive rules in Swedish legal literature.

36 In accordance with the case-law of the *Trybunał Konstytucyjny* (Constitutional Court) and a significant proportion of legal literature.
It should be observed, however, that, in a judgment of 2002, the *Sąd Najwyższy* (Supreme Court) held that limitation is substantive in nature.

37 In accordance with the recent case-law of the Tribunal Constitucional (Constitutional Court) and the Supremo Tribunal de Justiça (Supreme Court) as well as the prevailing view in legal literature. It is, however, important to note that the rather extensive related case-law of the Supreme Court has evolved to some extent. Since the 2000s, the substantive view of that institution upon which that court relied has given way to a mixed or hybrid concept.

38 Fourmy, V., *Le désordre de la prescription de l'action publique*, Law Faculty, Paris-II University, Panthéon-Assas, Master's thesis, p. 34, available via the following link: https://docassas.u-paris2.fr/nuxeo/site/esupversions/a0606c2a-a21e-4cc0-9c3f-5154fd3b615c.

39 Merle, R. and Vitu, A., *Traité de droit criminel*, 7th edition, Cujas, 1997, No 283.

40 The ECtHR itself endorses such a classification of the nature of limitation rules and the principle of immediate application. Finding that the limitation rules do not define the offences and the penalties by which they are punished and may be regarded as laying down a basic pre-condition for the examination of the case, the court classifies them as procedural laws. That being the case, it holds that a system based on the immediate application to an offence which is not time-barred of a new law extending the limitation period does not entail an infringement of the rights guaranteed by Article 7 ECHR. See, inter alia, judgment in *Coëme and Others v. Belgium*, cited above, § 149.

substantive. In this regard, in **Poland**, a significant body of legal literature argues that, although it is an institution which is fundamentally substantive in nature, limitation is, at the same time, on a secondary basis, one of the negative conditions preventing the initiation or the continuation of criminal proceedings and which therefore also have a procedural dimension. Similarly, in **Portugal**, as a result of its hybrid nature, limitation is, on the one hand, substantive in nature because it is a ground for the impunity of the offender linked to the expiry of the limitation period, that is to say a ground for exclusion of the penalty or its enforcement, even though it is not a ground for exclusion of unlawfulness. On the other hand, with reference to its procedural nature, limitation is a ground for the extinction of the right to bring proceedings before the criminal courts or to obtain enforcement of a penalty. However, as will be seen below, [41] that classification of limitation rules as hybrid rules gives rise to diametrically opposed effects in **Poland** and **Portugal** in relation to the application of the principle of legality in criminal proceedings.

20. It follows from that comparative analysis that although, in **France**, the legislature expressly linked the limitation rules in criminal matters to the system of procedural rules in so far as it regards them as rules which are immediately applicable, [42] in other Member States it was left to the case-law of the Supreme courts and to legal literature to determine the nature of those rules. In that last group of Member States, it is clear from this analysis that, first of all, amongst the systems in which the limitation rules constitute substantive rules, in the **Latvian** and **Swedish** legal systems, it is impossible to determine the nature of those rules unequivocally on the basis of case-law alone, since that classification follows from other factors and from legal literature and, in the **Spanish** legal system, a judgment of the Supreme Court and a substantial body of legal literature acknowledge the — at least partly — procedural nature of those rules, giving the limitation rules in criminal matters a rather hybrid nature. Next, amongst the systems in which the limitation rules are procedural rules, in the case of **German** law, a section of the majority legal literature argues that limitation is both a procedural and a substantive rule. Lastly, in the **Portuguese** legal system, in which limitation is nowadays regarded by case-law as being of a mixed or hybrid nature, an evolution of the view of the courts has been observed, since — up to the early 2000s — the case-law of the Supreme Court, as well as the majority of legal literature, advocated a purely substantive concept of limitation.

III. ARE THE LIMITATION RULES IN CRIMINAL MATTERS IN THE MEMBER STATES IN WHICH THEY CONSTITUTE SUBSTANTIVE RULES AN INTEGRAL PART OF THE PRINCIPLE OF LEGALITY IN CRIMINAL PROCEEDINGS?

21. The principle of the legality of criminal offences and penalties, as expressed in the Latin adage *nullum crimen, nulla poena sine lege*, which is one of the general legal principles underlying the constitutional traditions common to the Member States and now enjoys, pursuant to Article 49 of the Charter of Fundamental Rights of the European Union, the status of a fundamental right of the European Union, requires

41 In part III ‘Are the limitation rules in criminal matters in the Member States in which they constitute substantive rules an integral part of the principle of legality in criminal proceedings?’.

42 See footnote 28.

that the law define clearly offences and the penalties by which they are punished. That requirement is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will render him criminally liable. [43]

22. That principle has as its corollaries, in addition to the obligations of precision, clarity and foreseeability, compliance with the reserved domain of the law and strict interpretation, the exclusion of analogous and extensive exegeses *in peius* and of retroactive applications.

23. Do limitation rules in criminal matters in the national legal systems in which they constitute — albeit only in part — substantive rules [44] fall within the scope of the principle of the legality of criminal offences and penalties and, in particular, the scope of the principle of the non-retroactivity of the more severe criminal law? This is the question considered in this part of the present note.

24. The answer to that question is not entirely uniform. Although, in the majority of those systems, the case-law of the Supreme courts and/or legal literature do indeed provide a clear answer in the affirmative to that question (**Greece**, **Italy**, **Latvia**, [45] **Portugal**, **Spain** and **Romania**) (section A), in two legal systems the answer is in the negative (**Poland** and **Sweden**) (section B).

A. THE LEGAL SYSTEMS IN WHICH THE LIMITATION RULES FALL WITHIN THE SCOPE OF THE RULE OF *NULLUM CRIMEN, NULLA POENA SINE LEGE*

25. In **Italy**, the legal rules governing limitation are, according to the case-law of the Constitutional Court, subject to the principle of legality in criminal matters, as enshrined in Article 25(2) of the Constitution, under which a person can be punished only pursuant to a law which entered into force before the offence is committed. It follows from that fact, accordingly, first, that those rules can be established only by criminal legislation and that they must be described in a provision in force when the offence was committed. Second, with regard to the temporal application of those rules, it follows that the principle of the retroactivity of the criminal rule that is most favourable to the *reus* applies to the rules on limitation.

26. Similarly, in **Portugal**, on account of their partly substantive nature, the limitation rules form, in accordance with the case-law of the *Tribunal Constitucional* (Constitutional Court) and of the *Supremo Tribunal de Justiça* (Supreme Court), an integral part of the principle of the legality of criminal offences and penalties.

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43 See, for example, judgment of 29 March 2011, *ThyssenKrupp Nirosta* v *Commission* (C-352/09 P, EU:C:2011:191, paragraph 80) and the Opinion of Advocate General Kokott in *Taricco and Others* (C-105/14, EU:C:2015:555, point 113). See also ECtHR judgments of 21 October 2013, *Del Río Prada v. Spain*, CE:ECHR:2013:1021JUD004275009, §§ 77 to 80, and of 20 October 2015, *Vasiliauskas v. Lithuania*, CE:ECHR:2015:1020JUD003534305, § 154 and the case-law cited.

44 As noted above, in all the national legal systems studied in which the limitation rules are procedural rules, those rules are immediately applicable as they do not fall within the scope of the principle of the legality of criminal offences and penalties. See paragraph 17 of this note.

45 It is important to note, however, that in Latvia it cannot be clearly determined on the basis of the law or of case-law alone whether the rules in question fall within the scope of the principle of legality in criminal proceedings.

According to repeated case-law, the limitation rules in criminal matters are subject to the principle of non-retroactivity *contra reum* or *malam partem*, which limits the immediate application of the new law to the conditions of retroactivity *in mitius*. In accordance with that case-law, the application of that principle to the limitation rules has the effect, firstly, that no legislation on limitation more severe than that which was in force when the acts were committed can be applied and, second, that the rules most favourable to the offender must always be applied, even retroactively. To that end, in order to determine the most favourable law, the criminal court must take account of all the rules laid down in each law and not combine the most favourable provisions contained in each law.

27. In **Romania**, the *Curtea Constituțională* (Constitutional Court) and the *Înalta Curte de Casație și Justiție* (High Court of Cassation and Justice) have also had occasion to confirm that, in accordance with its legal classification as an institution of material law, limitation in criminal matters is subject to the application of the principle of the most favourable criminal law, as enshrined in Article 15(2) of the Constitution and in Article 5 of the Criminal Code, as a direct consequence of the principle of the legality of criminal offences and penalties. In a judgment of 14 July 2014, the *Înalta Curte de Casație și Justiție* held that the application of the new criminal code to an offence committed prior to the code's entry into force and in respect of which the limitation period still running would represent an infringement of Article 15(2) of the Constitution, which prohibits the retroactive application of criminal law where that law is unfavourable to the accused. In another judgment of 6 October 2014, that court clarified that Article 5 of the Criminal Code, which enshrines the principle of the most favourable criminal law, must be interpreted, including in relation to limitation in criminal matters, as meaning that it applies to offences committed prior to the date on which that code entered into force in which final judgment has not yet been given, in accordance with an overall assessment of the most favourable criminal law, as laid down by the Constitutional Court.

B. THE LEGAL SYSTEMS WHICH DO NOT APPLY THE PRINCIPLE OF NON-RETROACTIVITY OF THE MORE SEVERE CRIMINAL LAW TO LIMITATION RULES

25. In **Sweden**, despite the fact that the limitation rules are substantive rules, they do not fall within the scope of the principle of legality in criminal proceedings, and have already been subject on three occasions to amendments with retroactive effect in relation to offences which were not time-barred when the new legislation was adopted. Whilst making clear that such retroactivity was an exception to the principle of non-retroactivity, the legislature based that exception on certain fundamental interests.

29. In **Poland**, although the *Trybunał Konstytucyjny* (Constitutional Court), in a judgment of 25 May 2004, tended more towards an interpretation that the limitation rules are of a mixed nature, in 2008 and 2009 that court held that the extension by the legislature of the limitation periods in respect of offences which were not yet time-barred did not infringe the principle of *nullum crimen, nulla poena sine lege* or of *lex severior poenali retro non agit*, enshrined in Article 42(1) and Article 2 of the Constitution respectively. Finding that the scope of Article 42(1) of the Constitution relates solely to the conditions governing criminal liability and that the only condition for the imposition of a criminal penalty is the fact that conduct is punishable at the time that conduct occurred, that court concludes that the rules on

limitation have no effect in that connection. Accordingly, the subsequent amendment of those rules cannot be contested on the ground of infringement of that constitutional provision.

IV. THE CONCEPTS OF INTERRUPTION AND SUSPENSION OF THE LIMITATION PERIOD

30. Taking the view that the passage of time should not benefit offenders where the State makes clear, through certain acts, the intention to exercise its *ius puniendi* or where there is an obstacle to the conduct of the public prosecution or to the enforcement of the penalty, virtually all the legal systems studied [46] recognise that, for reasons specifically defined in law or developed by case-law, action by the prosecutor must have the effect of stopping the limitation period running and erasing the period which has already elapsed (section A), or that an impediment to bringing proceedings must be taken into account in order to allow the limitation period to be stopped temporarily during the period of that impediment (section B).

A. INTERRUPTION OF THE LIMITATION PERIOD

31. As has been observed above, [47] since one of the foundations of limitation is the penalisation of a failure to act or negligence on the part of the State to prosecute and try offenders, the legal systems of the Romano-Germanic family generally acknowledge that, where the prosecution shows, by means of certain acts, the intention to prosecute, the limitation period must be interrupted.

32. However, **Greece**, like **Poland** and **Sweden**, derogate from that rule where the laws of those Member States do not lay down a specific provision on the interruption of the limitation period in criminal matters. **Polish** law provides rather for a mechanism to extend the limitation period, which has the sole effect of extending that period, and **Swedish** law contains a mechanism by which the limitation period is definitively terminated. [48]

33. In the legal systems examined which provide for the interruption of the limitation period, substantial differences can be observed both in terms of the actual nature of that mechanism (point 1) and its effects (point 2).

1. THE NATURE OF THE INTERRUPTION

(a) ACTS INTERRUPTING A LIMITATION PERIOD

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46 With the exception of the United Kingdom's legal system, in which there are no legislative provisions concerning the interruption or suspension of the limitation period.

47 See footnote 5.

48 For a more detailed analysis of the system of extending the limitation period in Poland and the system of terminating that period definitively in **Sweden**, see below under point 1. 'The nature of the interruption', sub-point (c) 'The particular cases of the Polish mechanism for the extension of the limitation period and the Swedish mechanism for the definitive termination of that period' and, under point 2 'The effects of the interruption', sub-point (c) 'The particular cases of the Polish mechanism for the extension of the limitation period and the Swedish mechanism for the definitive termination of that period'.

34. In three legal systems, criminal legislation draws up a list of the procedural acts capable of interrupting the limitation period for prosecution. This is the case in **German**, [49] **Italian** [50] and **Portuguese** [51] law.

35. In other legal systems, the legislature simply provides that the limitation period for criminal prosecution is interrupted by any step in the criminal proceedings or investigative measure (**Belgian** [52] and **Romanian** [53] law), since the criminal courts have been prompted to interpret that relatively broad legal definition of the concept of an act interrupting the limitation period.

36. Under **French** law, although, before the legislative reform of limitation in criminal matters of 27 February 2017, [54] acts which interrupted a limitation period were defined simply as any 'investigative measure or step in the criminal proceedings' and had had to form the subject of extensive case-law of the Court of Cassation, new Article 9-2 of the Code of Criminal Procedure now defines such measures and steps in greater detail. [55] [56]

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49 In **Germany**, the limitation period is interrupted by the procedural measures listed in Article 78c(2) of the Strafgesetzbuch (Criminal Code, 'StGB'), in particular the questioning of the accused, the bringing of a legal action and the opening of the hearing.

50 In **Italy**, Article 160 of the Criminal Code provides a list of acts which interrupt the limitation period, including the judgment or order convicting an individual, the orders implementing individual interim measures and the order setting the date for the preliminary hearing.

51 In **Portugal**, Article 121(1) of the Criminal Code provides that the limitation period for public prosecution is interrupted by the decision to indict, the service of the charges, the declaration *in absentia* and the service of the order setting the date of the hearing in the event of the defendant's absence.
Under Article 126(1) of that same code, the limitation period for penalties and preventive measures is interrupted by their enforcement and the declaration *in absentia*.

52 In **Belgium**, pursuant to Article 22 of the Preliminary Title of the Code de procédure pénale (Code of Criminal Procedure), the limitation period for public prosecution will be interrupted only by investigative measures adopted or steps in the criminal proceedings taken within the basic time limit provided by law.

53 In **Romania**, Article 155 of the Criminal Code provides that limitation periods are interrupted by any procedural act performed before a final judgment is delivered.

54 Law No 2017-242 of 27 February 2017, which entered into force on 1 March 2017.

55 This article broadly reproduces the case-law of the Court of Cassation which, in essence, defined as steps in the criminal proceedings any step intended to launch a public prosecution, such as steps to to obtain a finding that an offence has been committed, investigative measures and measures relating to the judgment given in respect of the offender, whether those measures are initiated by the public prosecutor's office (application for a judicial investigation) or the civil party (complaint suing for damages). Similarly, that court took the view that the concept of an investigative measure covered not only measures adopted by the investigating judge but also steps taken by the authorities in charge of the investigation to search for and gather evidence during the preliminary investigation.

56 With regard to the limitation period for penalties handed down, the limitation period is interrupted by acts or decisions of the public prosecutor's office or the courts determining sentences which relate to the enforcement of those sentences. See Articles 133-4-1 of the French Criminal Code and 707-1 of the Code of Criminal Procedure.

37. Under **Spanish** law, since a list of acts interrupting limitation periods has not been drawn up in criminal legislation, provision has rather been made, in essence, that the limitation period is interrupted when a reasoned judicial decision is given against the person presumed to be responsible for the criminal offence, [57] it has been left to case-law to determine the nature and content of the judicial decisions designated by criminal law as being capable of interrupting the limitation period. [58] In addition, one specific feature of Spanish law is that an application and a complaint lodged by an individual are also recognised as interrupting the limitation period if, within a six-month period, a judicial decision is handed down against the person who is the subject of the application or the complaint or against any other person involved in the offence.

38. Lastly, under **Latvian** law, the nature of the act capable of interrupting the limitation period provided for in criminal law is different. The act in question is not a procedural act, rather the interruption stems from the fact that the offender committed a new offence before the end of that period. [59]

(b) NATURE OF THE ACTS CAPABLE OF INTERRUPTING LIMITATION PERIODS

39. That brief overview of the legal systems considered which contain the mechanism for the interruption of the limitation period reveals that the acts designated in criminal legislation or by case-law that are capable of interrupting limitation periods are, as a general rule, procedural acts or judicial decisions with substantive content which advance the proceedings (**Spain**), are carried out or given exclusively by the judicial authority or the public prosecutor's office (**Belgium**, **Germany**, **Italy**, **Portugal** and **Romania**), excluding any act by an individual, such as a complaint or a report of an offence, if that act is not linked to the intervention of the public prosecutor's office (**Portugal**) or in the case of acts of a purely administrative nature (**France**).

40. **Spanish** law recognises acts by an individual, namely an application or a complaint, lodged before a court, as acts interrupting the limitation period. [60] Similarly, in **French** law, the limitation period is interrupted by a complaint suing for damages, which allows the victim to apply to the court directly to initiate an investigation.

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57 Article 132(2) of the Spanish Criminal Code, as last amended in the course of the 2015 legislative reform, means that the judicial authority may be entrusted with the responsibility for interrupting, by means of an act, the running of the limitation period.

58 Thus, according to case-law, procedural effects which have the effect of interrupting the limitation period are specifically and personally directed against the guilty party or the person charged, such as for example procedural acts or judicial investigative measures, a request to access criminal records to determine whether the individual has reoffended or whether there are aggravating circumstances, objections raised by the applicants and the introduction of appeals.

59 See Article 56(3) of the Latvian Criminal Code.
The limitation period for the enforcement of a ruling convicting an individual may also be interrupted if a new offence is committed or if the person convicted attempts to evade justice.

60 For further details in this regard, see paragraph 46 of this note.

41. In that context, the fact that, in **Latvia**, the only act capable of interrupting the limitation period is the commission of a new offence by the offender whilst the limitation period is running is a feature unique to Latvian law.

(c) THE PARTICULAR CASES OF THE POLISH MECHANISM FOR THE EXTENSION OF THE LIMITATION PERIOD AND THE SWEDISH MECHANISM FOR THE DEFINITIVE TERMINATION OF THAT PERIOD

42. In **Polish** law, the bringing of criminal proceedings against an offender has the effect of extending the limitation periods by a five-year or 10-year period in relation to serious crimes, major offences and tax offences, [61] with provision being made for the latter period in the case of most offences. Similarly, in relation to minor offences and tax infringements, the one-year period is extended up to 2 years.

43. The **Swedish** legal system also contains an unusual mechanism. In cases of pre-trial detention or where a summons to appear before the court having jurisdiction is served, the normal limitation period applicable for the offence in question ceases to run definitively. [62] However, a lengthier absolute limitation period, [63] which is provided for the same offence, must always be observed. [64]

2. THE EFFECTS OF INTERRUPTION

44. In all the legal systems examined which include this mechanism, interruption of the limitation period has the effect of stopping the period from running, erasing the period which has already elapsed prior to the act interrupting the limitation period and restarting a new limitation period of equal length to the limitation period provided by law (**Belgium**, **France**, **Germany**, **Italy**, **Latvia**, **Portugal**, **Romania** and **Spain**).

45. Where it has been interrupted, the limitation period restarts from the day of the interruption and not the following day (**Belgium**, **Germany** and **Italy**).

46. In **Spanish** law, the procedure for interrupting the limitation period in the case of an application or a complaint lodged before a court against a particular person is quite specific. In such circumstances, since the limitation period is suspended for a maximum duration of 6 months from the date on which the application or the complaint is lodged, if, during that time, a judicial decision is handed down against the person who is the subject of the application or the complaint, or against any other person involved in the offence, the interruption of the limitation period will be regarded as being retroactively fully effective as at the date on which that application or complaint was lodged.

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61 See Article 102 of the Polish Criminal Code, which applies to tax offences pursuant to Article 20(2) of the Criminal Tax Code.

62 See Article 1 of Chapter 35 of the BrB.

63 By way of example, under Article 6(2) of Chapter 35 of the BrB, the absolute period is 30 years for an offence for which a term of imprisonment of greater than 2 years is provided.

64 See Article 6 of Chapter 35 of the BrB.

47. In the **Latvian** legal system, the commission of a new criminal offence whilst the limitation period is running has the effect of terminating that period and restarting a new period. In such circumstances, the limitation period provided for in respect of the most serious of those offences begins to run once the new criminal offence has been committed. The part of the period which has already expired is annulled and disregarded.

(a) THE EXTENT OF THE EFFECTS OF THE INTERRUPTION OF THE LIMITATION PERIOD

48. Although, in **Germany** and **Portugal**, the interruption has effects solely in respect of the offender(s), since the grounds for interruption are personal and not transferable, in **Belgium**, however, it has effects even in relation to individuals who are not involved and in **Italy** it has effects vis-à-vis all those who committed the offence. Similarly, in **France**, acts which interrupt the limitation period concern the perpetrators or accomplices not explicitly referred to in those acts. In turn, in **Romania**, the interruption of the limitation period, which also has an objective nature (*in rem*) and is therefore concerned with the offence and not with the person who committed it, also has effects in relation to all those who participated in the commission of an offence, even if the act which gives rise to that interruption concerns only some of those people.

49. In the **French** legal system, acts which interrupt the limitation period for public prosecution also cover related offences. By contrast, in the **Portuguese** legal system, the view appears to be taken in the case-law that a case-by-case assessment must be made of each act capable of determining an interruption of the limitation period in order to prevent any repetition of the grounds for interruption.

(b) NATIONAL LEGISLATION PROVIDING FOR ABSOLUTE LIMITATION PERIODS

50. Whilst allowing successive interruptions of the limitation period, the **Belgian**, **German**, **Italian**, **Portuguese** and **Romanian** legal systems provide that interruption of the limitation period cannot under any circumstances result in the limitation period being increased beyond a certain maximum duration.

51. For instance, in **Germany**, prosecution of an offence is time-barred where twice the length of the statutory limitation period has elapsed or, where the limitation period is less than 3 years, a period equal to 3 years has elapsed since the completion of the offence.

52. In **Belgium**, the limitation period for public prosecution can be interrupted only by investigative measures adopted or steps in the criminal proceedings taken within the basic time limit provided by law. In the light of the fact that acts which interrupt the limitation period restart a new period of equal duration and no further interruption is possible once the basic time limit provided for by law has elapsed, the maximum limitation period may, subject to grounds for suspension, amount to twice the length of the period less 2 days.

53. Similarly, in **Italy**, interruption of the limitation period cannot in principle result in the limitation period being increased by more than one quarter of the maximum

stipulated duration of that period. Provision is made for exceptions in respect of certain offences, such as organised crime, mafia-related crime, smuggling and trafficking and terrorism.

54. In **Portugal**, public prosecution is time-barred where, from the starting point of the limitation period and excluding the period of interruption, one-and-a-half times the duration of the standard limitation period has elapsed. Where, under specific laws, the limitation period is less than 2 years, the maximum length of the limitation is twice that period. According to case-law, the purpose of that temporal limitation is to prevent offences becoming *de facto* time-barred as a result of the successive application of multiple grounds for interruption and suspension, and thus to stop the interruption of the limitation period being "dragged on interminably", which would be contrary to the foundations of the institution of limitation.

55. In **Romania**, limitation precludes criminal liability regardless of the number of interruptions to the period which occur where twice the length of the general limitation periods is exceeded from the commission of the offence.

(c) THE PARTICULAR CASES OF THE POLISH MECHANISM FOR THE EXTENSION OF THE LIMITATION PERIOD AND THE SWEDISH MECHANISM FOR THE DEFINITIVE TERMINATION OF THAT PERIOD

56. Unlike the mechanism of interruption, the extension of the limitation period under **Polish** law does not have the effect of terminating the period that is underway and restarting the limitation period, but rather has the sole effect of extending that period. Even though bringing criminal proceedings against an offender does not stop the limitation period running, it has the effect of extending the limitation period from the point at which the offender was charged.

57. Similarly, in the **Swedish** legal system, the mechanism for the definitive termination of the limitation period is distinct from the mechanism of interruption in that it does not restart a new period, but quite simply terminates the limitation period definitively. [65] In the context of that mechanism, the criminal code again provides for an absolute limitation period, which prohibits any imposition of a penalty after a certain period of time has elapsed. [66]

B. SUSPENSION OF THE LIMITATION PERIOD

58. The principle of the suspension of the limitation period, which is generally justified by the existence of legal or factual obstacles identified by the legislature or case-law which may stop the prosecution bringing proceedings, exists in all the legal systems of the Romano-Germanic family studied, with the exception of **Latvia** and **Sweden**.

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65 It should be noted that where the person in pre-trial detention is released without the summons to appear having been served on him or, even though service of that summons has been effected, where the court having jurisdiction relinquishes jurisdiction in the case or decides to remove the case from the register, the limitation period is not affected. In such cases, the possibility of imposing a penalty remains the same as would have been the case if the pre-trial detention or the service had never taken place. See Article 3 of Chapter 35 of the BrB.

66 Article 6 of Chapter 35 of the BrB.

59. Although all the other legal systems lay down specific legal provisions concerning the suspension of the limitation period, it is important to state at the outset that those provisions have their own specific features, in particular as regards the nature of this mechanism (section 1), on the one hand, and its effects (section 2), on the other.

1. THE NATURE OF THE SUSPENSION

a) ACTS THAT SUSPEND THE LIMITATION PERIOD

60. In some of the legal systems studied which contain the mechanism for the suspension of the limitation period, a list of the various grounds for suspension is drawn up in criminal legislation [67] (**Germany**, [68] **Belgium**, [69] **Greece**, [70] **Italy** [71] and **Portugal** [72]), whilst leaving it to case-law, in certain cases, to determine whether

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67 That list appears, in five legal systems, in the criminal code (**Germany**, **Greece**, **Italy** and **Portugal**) or the code of criminal procedure (**Belgium**) and, in three legal systems, such a list is supplemented by specific laws providing for other grounds for suspension of the limitation period (**Belgium**, **Italy** and **Portugal**).

68 In **Germany**, the grounds for suspension of the limitation period are listed in Article 78b of the StGB.
Article 78b(4) of the StGB provides, in essence, that the period is suspended when the main hearing is opened in cases concerning crimes punishable by custodial sentences of more than 5 years. In those cases, the duration of the suspension must not exceed 5 years.
Article 78b(5) of the StGB provides, in essence, that if the offender is in a foreign country and the competent authority sends a formal request for extradition to that country, the limitation period is suspended until the request is received.

69 In **Belgium**, Article 24 of the Preliminary Title of the Code of Criminal Procedure provides that the limitation period for public prosecution is suspended where the law so provides or where there is a legal obstacle to bringing or conducting the prosecution. In addition, that provision expressly states that the public prosecution is suspended, inter alia, whilst a plea of lack of competence, of inadmissibility or of invalidity raised before the trial court by the person charged, the civil party suing for damages or the person who is civilly liable is being dealt with; each time the proceedings cannot be settled by the judge's chambers following an application made by the person charged; and where a defendant lodges an opposition which is declared inadmissible or non-existent whilst that opposition is being dealt with.

70 In **Greece**, the limitation period may be suspended only for the reasons laid down in Article 113 of the Criminal Code. More specifically, the limitation period is deferred for as long as the criminal prosecution cannot begin or be continued in accordance with the law. The limitation period is also deferred during the period in which the proceedings are ongoing and until the judgment convicting the accused becomes final.
The length of such deferment cannot exceed 5 years in the case of serious crimes, 3 years in the case of major offences and 1 year in the case of minor offences.

71 In **Italy**, under Article 159 of the Criminal Code on the rules concerning the suspension of the limitation period, the limitation period is suspended in all cases in which provision is made for the suspension of the proceedings, the criminal trial or the period of pre-trial detention laid down in a special rule of law, and in cases where leave to prosecute is granted, where the case is transferred to another court, and where the proceedings or the criminal trial are suspended for reasons of impediment of the parties or the legal counsel, or on application by the defendant or his lawyer.

72 In **Portugal**, Article 120(1) of the Criminal Code lays down the general grounds for suspension of public prosecution and provides, in certain cases, for the maximum duration of the suspension. Specific laws may provide for other grounds for suspension of the limitation period.
Under that provision, the limitation period for public prosecution is, firstly, suspended for the length of time during which the criminal proceedings cannot be brought or continued in the event of a lack of legal permission or of a ruling of a non-criminal court or even because a reference for a preliminary ruling has been made to a non-criminal court. Next, that period is also suspended for a

there are other legal obstacles to bringing or conducting a public prosecution (**Belgium**).

61. In other legal systems, the legislature does not provide a list identifying the acts which suspend the limitation period, but prefers more general wording providing that any legal obstacle (**France**, [73] **Poland** [74] and **Romania** [75]) or any insurmountable or unforeseeable factual obstacle (**France** and **Romania**), which prevents a public prosecution from being initiated or conducted, suspends the limitation period. The criminal courts are therefore, in such circumstances, also called upon to take notice of the obstacles which may hinder the conduct of the prosecution.

62. The **Spanish** legal system contains a rather special ground for suspension of the limitation period. An application made to or complaint brought before a court which finds that a particular person was involved in an act capable of constituting an offence suspends the limitation period for a maximum duration of 6 months from the date on which that application was made or that complaint was brought. [76] If, within that six-month period, a judicial decision is handed down against the person who is the subject of the application or the complaint or against any other person involved in the offence, that period of suspension will be converted, with retroactive effect, into a period of interruption.

(b) THE NATURE OF THE ACTS CAPABLE OF SUSPENDING LIMITATION PERIODS

63. This general overview of the acts capable of suspending the limitation period in the legal systems examined containing this mechanism shows that there is a degree of similarity between the nature of those acts.

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maximum period of 3 years from the service of the indictment. Similarly, the limitation period is suspended whilst a declaration *in absentia* is valid or where the court's ruling cannot be served on the accused person in the case of a ruling given in default. In addition, the limitation period is likewise suspended for the period in which the judgment imposing a conviction, after a summons has been issued to the accused, has not become final. Finally, provision is made for one final ground for suspension where the defendant is serving a sentence or is subject to a preventive measure in another country.
Under Article 125(1) of the Criminal Code, the limitation period for penalties and preventive measures is suspended whilst: (i) the penalty handed down has not been enforced or whilst it has been impossible to proceed with it under the law; (ii) the declaration *in absentia* applies; (iii) the convicted person is serving a custodial sentence or subject to a preventive measure; or (iv) the period for the payment of a criminal fine is deferred.

73 In **France**, new Article 9-3 of the Code of Criminal Procedure provides that any legal obstacle provided by law, or any insurmountable factual obstacle which may be equated with *force majeure* and which makes it impossible to initiate or conduct a public prosecution, suspends the limitation period.

74 In **Poland**, Articles 104(1) of the Criminal Code and 44(7) of the Criminal Tax Code provide that the limitation period is suspended where the legislative provisions preclude a criminal prosecution from being brought against an individual.

75 In **Romania**, under Article 156(1) of the new Criminal Code, limitation periods are suspended for the length of time during which a legal provision or an unforeseeable or unavoidable fact prevents a public prosecution from being brought or a criminal trial from being conducted.

76 See the second subparagraph of Article 132(2) of the Spanish Criminal Code.

64. In most of those national laws, suspension of the limitation period may be triggered either by legal obstacles (**Belgium**, **France**, **Germany**, **Greece**, **Italy**, **Poland**, **Romania** and **Spain**) or, to a lesser extent, by factual obstacles which are insurmountable [77] (**France**), unforeseeable or unavoidable [78] (**Romania**). **Italy** also regards difficulties of the parties or their legal counsel or an application made by the accused or his lawyer, [79] since they constitute factual obstacles, as a ground for suspension. In **Poland**, the nature of the (legal or factual) obstacles capable of rendering prosecution impossible and, therefore, of constituting grounds for suspension of the limitation period have prompted controversy in legal literature. Although according to some writers only legal obstacles can cause the limitation period to be suspended, others are of the view that the limitation period may be suspended as a result of factual obstacles, [80] in particular situations which lead to the proceedings being suspended. [81]

65. In **Spain**, acts which suspend the limitation period, namely an application made to or a complaint lodged with a court which finds that a particular person was involved in an act capable of constituting a criminal offence, are — as has been observed above — [82] also capable, subject to certain conditions, of triggering the interruption of the limitation period.

(c) THE PARTICULAR CASE OF THE FRENCH MECHANISM OF DEFERRING THE STARTING POINT OF THE LIMITATION PERIOD

66. **French** law enshrines in Article 9-1 of the Code of Criminal Procedure the possibility of deferring the starting point of the limitation period for public prosecution [83] to the date on which the offence was discovered in relation to latent offences [84] or concealed offences[85], whilst at the same time adding a time limit. In

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77 Such as invasion of the national territory by an enemy army or natural disasters.

78 Such as an act of God, natural disasters or even *force majeure* or a state of necessity.

79 This is the case where the defendant is suffering from an irreversible illness preventing him from consciously participating in the criminal proceedings brought against him. See, in this regard, the order of 7 November 2013, *Lorrai*, C-224/13.

80 Such as, for example, where the accused has a long-term serious illness.

81 Although, in accordance with the case-law of the Polish Supreme Court, the running of the limitation period may be stopped where there are grounds for suspending the proceedings.

82 See paragraphs 37, 40 and 46 of this note.

83 The starting point is usually the date on which the offence was committed.

84 In most cases being economic or financial in nature, 'concealed' offences means offences in respect of which secrecy may be regarded as being a key component, keeping the prosecuting authorities unaware of the facts which have occurred, such as for example breach of trust, misappropriation of funds or embezzlement. The offences of deception or of the passing off of a child are also linked to this category of offences.

85 Offences that are 'covered up' are those committed deploying methods of concealing an offence with a view to preventing the discovery of its commission, such as for example the crimes of influence peddling, tax fraud or unlawful conflict of interests. Such methods may also consist in

such situations, that provision introduces a time limit, setting the period in which offences may be found to have been committed (in circumstances in which a public prosecution may be brought) at a maximum of 12 years in the case of major offences and of thirty years for serious crimes. Where a public prosecution is brought within that time limit, the limitation period applicable in ordinary law then begins to run.

67. Although the situation in which an offence is kept secret is also an obstacle to the public prosecution being barred, unlike with the suspension mechanism the deferment of the starting point of the limitation period takes the form of an *ab initio* delay in the starting point of the limitation period. It therefore occurs before the limitation period begins to run.

2. EFFECTS OF THE SUSPENSION

68. In almost all the legal systems studied containing this mechanism, suspension of the limitation period has the effect of stopping the limitation period running temporarily, without erasing the period of time that has already elapsed. The limitation period begins to run again, from the point at which it had stopped, after the period of suspension (**Belgium**, **France**, **Germany**, **Greece**, **Italy**, **Poland**, **Portugal** and **Romania**). In that context, two legal systems likewise provide, in certain cases, for a maximum period of suspension (**Greece** [86] and **Portugal** [87]). It thus follows from the foregoing that, in the event of suspension, the defendant continues to benefit from the period of limitation which has already elapsed.

69. In **Spain**, however, the effects of suspension are different from other national laws. Suspension has only conditional and temporary effects. Where an application or a complaint is declared inadmissible or a judicial decision is not given within 6 months following the proceedings, the limitation period continues to run from the initial date on which that application was made or that complaint lodged as if there had been no suspension.

70. In **Italy**, suspension of the limitation period has effects in relation to all those who committed the offence. However, in **Romania**, unlike the effects of interruption, the effects of the suspension of the limitation period operate *in personam*. Thus, where several people are involved in an offence and the limitation period is suspended solely in relation to one of them, the limitation period continues to run in relation to the other individuals involved.

V. CONCLUSIONS

71. Having reached the end of this study, it is important to note, first of all, that the question of whether the limitation rules in criminal matters are, in the legal systems examined, procedural or substantive rules is complex: this comparative legal analysis

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acts of omission which reveal unambiguously the perpetrator's intention to conceal the criminal acts.

86 See footnote 70.

87 See footnote 72.

shows that the situation is rather varied from one Member State to the next, even though it is possible to identify common features which allow those systems to be divided into three groups. In the first group the limitation rules are placed within the field of procedural rules (**Belgium**, **France**, **Germany** and **the United Kingdom**); in a second group, those rules are substantive rules (**Greece**, **Italy**, **Latvia**, **Romania**, **Spain** and **Sweden**); and, finally, in a third group, limitation is considered to be of a mixed or hybrid nature (**Poland** and **Portugal**). Indeed, it has been established that, of the 12 Member States considered, in six of them the rules on limitation are substantive rules and, in one Member State where those rules are regarded as rules of a hybrid nature, the principle of the legality of criminal offences and penalties applies to the limitation rules (**Portugal**). However, that apparent convergence between the national laws of seven Member States masks certain particular features linked to the fact that, firstly, in two legal systems, the nature of those rules cannot be clearly determined on the basis either of the law or of case-law alone (**Latvia** and **Sweden**). Second, in two other systems in which limitation is still or was traditionally classified amongst substantive rules, in the first case a judgment of a supreme court and a significant proportion of legal literature now acknowledge that those rules are at least partly procedural in nature (**Spain**) and, in another legal system in which the rules on limitation were in the past substantive rules, there has been a notable change in the view taken by the courts and expressed in legal literature towards a hybrid concept of the institution (**Portugal**).

72. In addition, it is apparent from this comparative legal study that in most of the eight legal systems in which the rules on limitation are, at least in part, substantive rules, those rules form — as in the case of **Italian** law — an integral part of the principle of the legality of criminal offences and penalties and, in particular, of the principle of the non-retroactivity of the more severe criminal law. However, two legal systems provide for exceptions to that rule. In one case, the criminal legislature decided, on three occasions, to amend, with retroactive effect, the rules on limitation relating to offences that were not yet time-barred when the new law was adopted, having based that exception on the principle of the non-retroactivity of certain fundamental interests (**Sweden**). In another legal system, the Constitutional Court takes the view that, by extending the limitation periods for offences which are not yet time-barred, the legislature did not infringe the principle of *nullum crimen, nulla poena sine lege* or of *lex severior poenali retro non agit* since those principles are concerned solely with the conditions for criminal liability, and that the only condition governing the imposition of a criminal penalty is the fact that the conduct is punishable at the time that conduct occurred. Accordingly, in that high court's view, the rules on limitation have no effect in that regard (**Poland**). In addition, it should also be pointed out that, in a third legal system, an answer in the affirmative to the question whether those rules form an integral part of the principle of legality in criminal proceedings can be determined solely on the basis of legal literature, since neither the law nor case-law expressly settles that question (**Latvia**).

73. Next, the comparative study of the nature and effects of the interruption of the limitation period in the legal systems studied allows certain major common features of that mechanism to be identified. Thus, with regard to its nature, in most of the legal systems which feature that mechanism, the acts designated in criminal legislation or by case-law as capable of interrupting limitation periods are, in general, as in **Italy**, procedural acts carried out or judicial decisions given exclusively by the judicial authority or the public prosecutor's office, excluding — in principle — any

act by an individual and acts of a purely administrative nature. Similarly, the effects of the interruption are fairly similar in the majority of the legal systems studied, even though the extent of those effects is already more varied.

74. In this context, it is important to highlight that in four legal systems (those of **Belgium**, **Germany**, **Portugal** and **Romania**), in addition to the **Italian** system, the interruption of the limitation period cannot under any circumstances result in the initial limitation period being increased beyond a certain maximum duration. However, although in the **Italian** legal system the limitation period cannot be increased by more than one quarter of the maximum stipulated duration, in three of those other legal systems the period can be increased to double the basic period. In addition, in the **Swedish** legal system, which — like **Polish** law — contains a rather unusual mechanism, an alternative to the mechanism of interruption, provision is also made for a fairly lengthy, absolute limitation period.

75. Lastly, it has been noted that the nature of the acts capable of suspending limitation periods in the legal systems examined featuring that mechanism is similar to a certain degree: in the majority of those national laws, suspension of the limitation period may be triggered either by legal obstacles or, to a lesser extent, by factual obstacles which are insurmountable, unforeseeable and unavoidable. With regard to the effects of suspension, in almost all the legal systems studied containing that mechanism suspension has the effect of stopping the limitation period running temporarily, without erasing the period that has already elapsed.

76. In short, even though the comparative study of the laws of the Member States considered points to a slightly predominant tendency to the view that the limitation rules in criminal matters are substantive rules or rules of a hybrid nature, the convergence of the national laws is not so marked when it comes to the question of whether those rules are covered by the principle of legality in criminal proceedings and, in particular, whether the principle of the non-retroactivity of the more severe law applies to the limitation rules. Indeed, in two legal systems in which the limitation rules are substantive rules or rules of a hybrid nature, the legislature or the constitutional court has expressly ruled out the application of that principle to limitation rules.

[…]