

THE STATUTE OF LIMITATIONS FOR CRIMINAL LIABILITY IN LAW NO. 302/2004

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Abstract: *The statute of limitations for criminal liability, first established in the second Romanian criminal code, the Carol II Criminal Code of 1937, is a traditional legal mechanism in Romanian criminal law, maintaining its relevance in the current legislation. It operates as a general cause for the removal of criminal liability, exclusively through the passage of a specified period, without imposing any conduct on the part of the subjects involved. This paper aims to provide a systematic analysis of the provisions on the interruption of the statute of limitations for criminal liability in the context of Law No. 302/2004 on international judicial cooperation in criminal matters, with reference to the general criminal law rules provided for in the current Criminal Code, highlighting any legislative shortcomings or gaps.*

Key words: *statute of limitations, criminal liability, international cooperation in criminal matters*

1. Statute of Limitations for Criminal Liability: Previous Regulation, Amendment of December 1, 2014, and Subsequent Legislative Developments

The statute of limitations for criminal liability is a cause that removes criminal liability because of the passage of a period provided for by law (Udroiu, 2016, p. 519).

The causes for the interruption of the statute of limitations for criminal liability must be expressly provided for by law. According to the provisions of the current Criminal Code, the interruption of the statute of limitations may occur at any stage of the criminal proceedings, provided that the procedural act giving rise to the interruption is performed before the expiry of the statute of limitations and is carried out by the competent judicial authority. After each act with an interruptive effect, a new statute of limitations begins to run, and the period before this interruption will only be taken into account for the calculation of the special statute of limitations, applicable in situations where the general statute of limitations provided for in Article 154 of the Criminal Code has been exceeded, except in the cases stipulated in Article 153(2)(a), (b), and (c) of the same code (Antoniou & Toader, 2025, p. 512).

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The statute of limitations for criminal liability is of particular importance in criminal law, being justified by the diminishing, over time, of the social reaction to the offense and the possibility of administering evidence. It reflects the principle of the speed of criminal proceedings, in the sense that, once the legal time limit has expired, the state's right to hold the perpetrator criminally liable, as well as the latter's obligation to answer for his actions, is extinguished (DCCR No. 650/2018, point 6, separate opinion). Consequently, the criminal legal relationship of conflict ceases, because of its non-realization within a period provided by law (DCCR No. 296/2018, point 4.2, separate opinion). Currently, the rule is that criminal liability is time-barred for all offenses, except those provided for in Article 153(2)(a), (b), and (c) of the Criminal Code. The statute of limitations is real and has effects *in rem*, targeting the act, not the perpetrator.

An analysis of the legal provisions relating to the statute of limitations for criminal liability reveals that, over time, they have undergone significant changes, mainly due to developments in legislative technique. These changes have had substantial adverse consequences. Thus, Article 122 of the old Criminal Code provided that the statute of limitations for criminal liability was interrupted by "any act which, according to the law, must be communicated to the accused or defendant during the criminal proceedings."

Subsequently, with the entry into force of the new Criminal Code on February 1, 2014, a major change was made to the previous regulation regarding the manner of regulating the interruption of the statute of limitations for criminal liability (Article 155 of the Criminal Code), while the regulation on the interruption of the statute of limitations for the enforcement of penalties (Article 163 of the Criminal Code) remained absolutely identical. Thus, about the interruption of the statute of limitations for criminal liability, the legislator opted to confer an interruptive effect on "*any procedural act performed in the case*," waiving the additional conditions provided for in the former Article 123(1) of the 1968 Criminal Code.

Following the changes brought about by the adoption of the new Criminal Code, the issue of regulating the grounds for interruption of the statute of limitations for criminal liability generated significant controversy, culminating in a referral to the Constitutional Court to verify the constitutionality of the provisions of Article 155(1) of the Criminal Code. In this context, the Court issued Decision No. 297/2018 and, subsequently, Decision No. 358/2022. By Decision No. 297/2018, the Court declared the phrase "*any procedural act in the case*" unconstitutional, considering that it does not comply with the requirements of clarity and predictability imposed by the principle of legality. Subsequently, by Decision No. 358/2022, the Court found the entire paragraph (1) of Article 155 of the Criminal Code to be unconstitutional, given the lack of intervention by the legislator to bring the text into line with the previous decision.

It should be noted that in the grounds for Constitutional Court Decision No. 358/2022, paragraph 73 states the following: *Consequently, the Court finds that, given the legal nature of Decision No. 297 of April 26, 2018, as a simple/extreme decision, in the absence of active intervention by the legislature, which is mandatory under Article 147 of the Constitution, during the period between the date of publication of that decision and the entry into force of a regulatory document clarifying the rule, by expressly regulating the*

cases capable of interrupting the statute of limitations for criminal liability, the active body of legislation does not contain any case allowing the interruption of the statute of limitations for criminal liability. Thus, in the period between the date of publication of Constitutional Court Decision No. 297 of June 26, 2018, and the entry into force of Government Emergency Ordinance No. 71 of May 30, 2022, which amended Article 155(1) of the Criminal Code, criminal law no longer contained any valid legal provision allowing the interruption of the statute of limitations for criminal liability.

The legislative vacuum that arose following Constitutional Court Decisions No. 297/2018 and No. 358/2022, which declared unconstitutional provisions relating to the interruption of the statute of limitations for criminal liability provided for in Article 155(1) of the Criminal Code, created a prolonged state of legal uncertainty. The lack of immediate and clear intervention by the legislator has allowed for the emergence of divergent judicial practices, with courts having to interpret and apply the rules in the absence of coherent regulation. This situation has directly affected the principle of legality and legal certainty, calling into question the very effectiveness of criminal liability in ongoing cases. This situation directly affected the principle of legality and legal certainty, calling into question the effective nature of criminal liability in ongoing cases.

In this context, **Decision No. 16 of September 16, 2024**, handed down by the High Court of Cassation and Justice in the settlement of an appeal in the interest of the law, brought about a necessary unification of case law on the interruption of the statute of limitations. The Supreme Court ruled that procedural acts performed **before June 25, 2018**, have the effect of **interrupting the statute of limitations for criminal liability**, without it being necessary to demonstrate the existence of a systemic risk of impunity, regardless of the nature or severity of the offense. At the same time, for acts committed **after May 30, 2022**, the provisions on the interruption of the statute of limitations shall be applied in accordance with the amended form of Article 155 of the Criminal Code, as reconfigured by the Romanian Constitutional Court. Regarding acts committed before that date, the interruptive effect of procedural acts is conditional upon the identification of the more favorable criminal law, within the meaning of Constitutional Court Decision No. 265/2014.

This decision was an essential step towards restoring unity in the interpretation and application of the rules on the statute of limitations, particularly in highly complex cases, such as those involving corruption offences or offences against the financial interests of the European Union. By clearly defining the relevant moments in the evolution of the regulatory and jurisprudential framework, the High Court provided the courts of first instance with the necessary tools to correctly assess the applicability of the statute of limitations according to the succession of criminal laws over time.

The inconsistencies that arose in the interpretation and application of the provisions on the statute of limitations for criminal liability also had significant effects in international judicial cooperation. These uncertainties have affected the uniform application of Law No. 302/2004, particularly in proceedings concerning the European arrest warrant, extradition, and the recognition of foreign judgments, where the lack of regulatory clarity has hampered cooperation between judicial authorities, but these issues will be analyzed in the following sections.

2. The legal nature of the rules on the statute of limitations for criminal liability in Law No. 302/2004: Theoretical analysis in the light of Framework Decision 2002/584/JHA. RIL Decision No. 2/2012 of the High Court of Cassation and Justice

The provisions relating to the statute of limitations for criminal liability in the context of international judicial cooperation are regulated by Law No. 302/2004 on international judicial cooperation in criminal matters, being contained in Article 33(2), according to which “The submission of the extradition request interrupts the previously unexpired statute of limitations”, and Article 90(5), according to which “The transmission of the European arrest warrant for enforcement to the foreign authority competent to receive or enforce it interrupts the statute of limitations.”

The rules in question are predominantly procedural in nature, as they regulate technical aspects of cooperation between the judicial authorities of the Member States without affecting the content of substantive criminal law.

In contrast, the statute of limitations for criminal liability, as regulated by the Criminal Code, has a substantial legal nature, as it affects the very existence of the criminal legal relationship of conflict, extinguishing the state's right to hold a person criminally liable. This distinction is essential for understanding the limits within which the legislator may intervene, as well as for the correct interpretation of the provisions of Law No. 302/2004 in correlation with the rules of the Criminal Code.

Thus, although Law No. 302/2004 transposes Framework Decision 2002/584/JHA of the Council of the European Union, granting the European arrest warrant an accelerated and simplified extradition procedure (Explanatory Memorandum to Framework Decision 2002/584/JHA, points 7 and 11), its purpose is not to regulate the statute of limitations itself, but only to establish grounds for optional non-enforcement, left to the discretion of each Member State. The fact that the Framework Decision expressly refers to national legislation on the statute of limitations confirms that the European legislator did not intend to harmonize this institution, but recognized the particularities of each legal system, preserving the sovereignty of states in defining their internal criminal policy.

It is thus clear, both from the wording of the European regulatory document and from the rules transposing it into national law, that the supranational legislator, aware of the fact that there is no uniform European regulation of the statute of limitations for criminal liability (some legal systems regulating it as an institution of substantive law – as is the case in Romania – and others regulating it as an institution of procedural law) and that the criminal policy of each state is a matter of its sovereignty, that the legal norm of Community law confers on the European arrest warrant a legal nature with a pronounced administrative character – the role of the judicial authorities responsible for supervising the procedure being reduced to verifying the formal conditions for the enforcement of these warrants and ensuring that the rights of the persons sought are respected.

From this perspective, the transposition carried out by Law No. 302/2004 has raised and continues to raise problems of interpretation, since, due to the way it is drafted, it adds to the content of the European rule and may cause confusion regarding the nature and applicability of the statute of limitations in relation to the European arrest warrant procedure.

A first difficulty in interpreting and correlating the rules of international judicial cooperation with those of domestic criminal law arose during the period of application of the old Criminal Code. In this context, the High Court of Cassation and Justice was asked, for unifying judicial practice, to rule on an appeal in the interest of the law, which was finalized by Decision No. 2/2012 (DHCCJ No. 2/2012). The Supreme Court held that the direct transmission of the European arrest warrant to the competent foreign authority, following the location of the wanted person, constitutes a procedural act of the kind provided for in Article 123(1) (1) of the 1968 Criminal Code, and is therefore capable of interrupting the statute of limitations for criminal liability. Starting from the premise that the statute of limitations, with all its components—including the provisions relating to the causes of interruption—has, in Romanian law, the legal nature of a rule of substantive criminal law, the High Court emphasized that any provisions on limitation contained in procedural legislation, such as Law No. 302/2004, must be interpreted in a manner consistent and coherent with the provisions of the Criminal Code in force, in accordance with the principles of temporal application of criminal law.

Considering the time when the High Court of Cassation and Justice issued the above-mentioned RIL Decision, it is clear that the supreme court took into account, in its reasoning clarifying the effects of the transmission of the European arrest warrant, both the statute of limitations for criminal liability and the statute of limitations for the enforcement of the penalty, taking into account the wording of the provisions of Article 123(1) of the 1968 Criminal Code, which provided that "*The statute of limitations provided for in Article 122 shall be interrupted by the performance of any act which, according to the law, must be communicated to the accused or defendant in the course of criminal proceedings.*" In other words, within the limits of the powers vested in the High Court of Cassation and Justice, namely the interpretation of the law for unifying judicial practice, by RIL Decision No. 2/2012, the supreme court recognized the direct transmission of the European arrest warrant to the competent foreign authority (after the location of the wanted person) as an act provided for in Article 123(1) of the 1968 Criminal Code.

Interpretation difficulties also arose with the entry into force of the new Criminal Code on February 1, 2014, when a significant change was made to the previous regulation regarding the interruption of the statute of limitations for criminal liability, provided for in Article 155 of the Criminal Code. On the other hand, the provisions on the interruption of the statute of limitations for the enforcement of penalties, regulated by Article 163 of the Criminal Code, were taken over without any significant changes, remaining identical to those in the previous legislation.

Thus, it is noted that, in the period between the entry into force of the new Criminal Code and June 25, 2018, when the phrase "any procedural act" in Article 155(1) of the Criminal Code was declared unconstitutional, the legislator opted for a broad formulation in the matter of the statute of limitations for criminal liability, conferring an interruptive effect on any procedural act. This regulation marked a break with the previous view enshrined in Article 123(1) of the 1968 Criminal Code, which imposed additional conditions for interrupting the statute of limitations. In these circumstances, we consider that **Decision No. 2/2012**, handed down by the High Court of Cassation and Justice in an appeal in the interest of the law, **lost its relevance even before the Constitutional Court handed down Decisions No. 297/2018 and No. 358/2022**, as the new legislative concept

had significantly expanded the scope of acts capable of interrupting the statute of limitations for criminal liability.

At the same time, given the substantial changes made to the content of the current Article 155 of the Criminal Code compared to the former Article 123(1) of the 1968 Criminal Code, it must be concluded that **the previous interpretations of the High Court of Cassation and Justice regarding the application of Article 33(2) of Law No. 302/2004 no longer corresponded to the legislative reality applicable between February 1, 2014, and June 25, 2018, in the matter of the statute of limitations for criminal liability**, having been superseded by the new normative concept.

Therefore, as of February 1, 2014, RIL Decision No. 2/2012 remained relevant only in relation to the effects of the transmission of a European arrest warrant issued for the purpose of enforcing penalties, namely concerning the interruptive effect on the statute of limitations for the enforcement of penalties, without being able to produce effects in relation to the interruption of the statute of limitations for criminal liability.

After the new Criminal Code came into force, the issue of regulating the grounds for interrupting the statute of limitations for criminal liability led to a referral to the Constitutional Court, which issued Decisions No. 297/2018 and No. 358/2022. The first decision found that the phrase "any procedural act in the case" in Article 155(1) of the Criminal Code was unconstitutional, while the second decision found that the entire paragraph was unconstitutional.

In the grounds for Decision No. 358/2022 (para. 73), the Court held the following in para. 73: *"Consequently, the Court finds that, given the legal nature of Decision No. 297 of April 26, 2018 as a simple/extreme decision, in the absence of active intervention by the legislature, which is mandatory under Article 147 of the Constitution, during the period between the date of publication of that decision and the entry into force of a regulatory document clarifying the rule, by expressly regulating the cases capable of interrupting the statute of limitations for criminal liability, the active body of legislation does not contain any case allowing the interruption of the statute of limitations for criminal liability."*

However, the wording "**the active body of legislation**" leaves no room for interpretation and implicitly includes all relevant provisions, including those in Law No. 302/2004. Given that Article 33(2) and Article 90(5) of this law have never been applied or interpreted autonomously, but only in conjunction with the provisions of the Criminal Code, as is also apparent from RIL Decision No. 2/2012, it is clear that they cannot produce their own legal effects in the absence of a substantive criminal law provision expressly regulating cases of interruption.

Therefore, the aforementioned provisions of Law No. 302/2004 cannot operate independently, but only within the regulatory framework provided by the General Part of the Criminal Code, being inapplicable during the period when this regulation was affected by the decisions of the Constitutional Court.

3. The unpredictability of the regulation of the statute of limitations for criminal liability in Law No. 302/2004

In order to comply with constitutional standards, any legal norm—especially one that has criminal law implications—must meet the requirements of legal quality established

by the case law of the Constitutional Court and the European Court of Human Rights. These requirements imply that the law must be clear, accessible, and predictable, so that its addressees can understand without ambiguity its normative content and the legal consequences of their conduct. In the absence of these essential characteristics, the norm becomes imprecise and unpredictable, affecting the principle of legal certainty and generating the risk of contradictory interpretations in its application.

In light of the above, it can be argued that the rule provided for in Article 33(2) of Law No. 302/2004 on international judicial cooperation in criminal matters should be interpreted with the utmost caution, given its ambiguous and unclear nature. In fact, we could consider that this provision has been implicitly repealed, since its overlap and potential contradiction with the clear and exhaustive provisions of the Criminal Code undermine the principle of consistency and unity of the criminal law system. At the same time, the generic and imprecise wording of the provision, which refers to "*statute of limitations*" without expressly defining its type (e.g., whether it refers to the statute of limitations for criminal liability or the statute of limitations for the enforcement of penalties), accentuates the state of uncertainty and indicates that the main purpose of this provision seems to be related to the statute of limitations for the enforcement of penalties, which naturally excludes its direct applicability to the statute of limitations for criminal liability. Moreover, given that this provision is included in a law whose purpose is to describe the mechanisms for the enforcement of European arrest warrants, it can reasonably be assumed that the legislator intended to limit the interruptive effect of the statute of limitations exclusively to the statute of limitations for the enforcement of penalties.

Furthermore, we consider that – in the absence of an express provision in Article 155 of the Criminal Code leaving room for the regulation of special cases of interruption of the statute of limitations for criminal liability, such as the phrase "*and in other cases provided for by law*" – the legislative solution of providing for cases of interruption of the statute of limitations in extra-criminal rules or in laws on special procedures is unconstitutional, as it lacks the clarity, accessibility, and predictability that should characterize such an important institution.

This lack of regulatory consistency was highlighted in a court hearing (CAB Criminal case no. 166/119/2018) in which, when the expiry of the statute of limitations for criminal liability was discussed, the representative of the Public Prosecutor's Office argued that the issuance and transmission by the Romanian authorities, as well as the enforcement of European arrest warrants by foreign judicial authorities, pursuant to Article 33(2) of Law No. 302/2004 and interpreted in the light of Decision No. 2/2012 of the High Court of Cassation and Justice, in the resolution of an appeal in the interest of the law, would constitute acts with the effect of interrupting the statute of limitations. Furthermore, it was argued that these effects would apply to all defendants by virtue of the *in rem* nature of the interruption.

This interpretation, supported by unclear rules and uncertain correlations between criminal and extra-criminal legislation, as a result of the flawed regulation of the criticized legal provisions, as well as the intervention of the High Court of Cassation and Justice through RIL Decision No. 2/2012, in the context of the adoption of the new Criminal Code of 2014 and the pronouncement of Decisions No. 297/2018 and 358/2022 of the

Constitutional Court of Romania, has generated a state of legal uncertainty, which is why an exception of unconstitutionality was raised regarding Art. 33(2) and Article 90(5) of Law No. 302/2004, which was registered with the Constitutional Court under case file no. 1088D/2024 on 05.04.2024, with the case currently in the reporting phase.

This situation highlights, once again, the risks posed by the lack of legislative correlation and regulatory ambiguity in an area as sensitive as the statute of limitations for criminal liability.

Conclusions

The statute of limitations for criminal liability, as a rule of substantive criminal law, requires clear and predictable regulation, in accordance with the requirements of legality and legal certainty. The dysfunctions generated by the lack of correlation between Article 155 of the Criminal Code and the provisions of Article 33(2) and Article 90(5) of Law No. 302/2004 have led to serious legal uncertainties, in particular concerning the effects of the transmission or enforcement of the European arrest warrant on the statute of limitations.

In such a non-harmonized regulatory framework, where procedural rules appear to influence substantive criminal law institutions, the risk of violating constitutional and conventional principles becomes evident. It is precisely from this perspective that the exception of unconstitutionality currently pending before the Constitutional Court (Case file no. 1088D/2024) will be an essential test of the conformity of these provisions with the requirements of the rule of law.

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