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### **The statute of limitations on the enforcement of criminal sentences: Challenges and the need for reform**

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#### **Abstract**

This paper analyzes the legal institution of the statute of limitations on the enforcement of criminal sentences, examining its foundational elements and the challenges that have emerged in its practical application. It explores the development of Supreme Court jurisprudence concerning this institution and highlights key interpretative trends. Particular attention is given to the difficulties judges encounter when applying statutory limitation rules to the enforcement of sentences, as well as to potential legal solutions addressing these challenges. In addition to doctrinal and jurisprudential analysis, the paper adopts a comparative perspective by examining relevant legal provisions in other jurisdictions, including Kosovo and Italy. Furthermore, it identifies existing legal gaps and emphasizes the need to harmonize current provisions with recent developments in criminal legislation, as well as to amend or introduce new provisions to ensure more effective and consistent application of the statute of limitations on the enforcement of criminal sentences.

**Keywords:** Statute of limitations on the enforcement of criminal sentences, interruption of the enforcement of criminal sentences, suspension of the enforcement of criminal sentences.

#### **1. Introduction**

The institution of the statute of limitations on the enforcement of criminal sentences is grounded in the principle that, although a conviction has become final, it may become unenforceable due to the expiration of legally prescribed time limits and the failure of state authorities to execute the sentence within that period. Consequently, once the statutory period has lapsed, the sentence can no longer be enforced against the convicted person. The rationale for incorporating the prescription of punishment into the Criminal Code is closely linked to one of the fundamental purposes

of criminal punishment rehabilitation. When a substantial period has passed without enforcement of the sentence, its punitive and preventive functions diminish, and the objectives of criminal punishment may be considered fulfilled through the mere passage of time and the offender's conduct during that period. Regarding statutory limitation periods, the European Court of Human Rights has emphasized that such periods, which are common within the domestic legal systems of the Contracting States, serve several important purposes. These include safeguarding legal certainty and protecting the rights of the accused, which could be compromised if courts were required to adjudicate cases based on evidence that may have deteriorated or become incomplete due to the passage of time.<sup>1</sup> This topic has been selected for examination due to the challenges encountered by courts in determining the limitation period for the enforcement of sentences, including issues related to the interruption and suspension of such periods. Additionally, the study addresses gaps in the criminal legislation, particularly in cases where no limitation periods have been expressly prescribed for certain types of punishments. The importance of this subject lies in its direct impact on individual liberty and legal certainty. The purpose of this paper is to identify and analyze the difficulties arising in the practical application of criminal legislation, as well as in the implementation of unified judicial practice, which in this area has allowed for divergent interpretations.

## **2. The institution of the statute of limitations on the enforcement of sentences in the Criminal Code and the need for legal amendments**

The statute of limitations on the enforcement of criminal sentences is regulated by Article 68 of the Criminal Code, which provides that a sentence shall not be enforced once specific time periods have elapsed from the date the judgment becomes final. These periods are: (a) twenty years for a sentence of fifteen to twenty-five years' imprisonment; (b) ten years for a sentence of five to fifteen years' imprisonment; and (c) five years for a sentence of up to five years' imprisonment or other lighter punishments. Pursuant to this provision, the legislator has determined the time limits after which a final conviction for criminal offenses may no longer be enforced. Conceptually, the provision is based on two cumulative elements: (i) the failure of the competent state authorities to execute the sentence and (ii) the expiration of the statutory time limit. The legislative intent underlying this rule is to impose a temporal restriction on the authority of state bodies responsible for the enforcement of criminal judgments, thereby ensuring legal certainty and limiting indefinite exposure to enforcement. A primary issue arising from Article 68 is the absence of any explicit regulation concerning the statute of limitations applicable to life imprisonment. Furthermore, the provision has not been harmonized with subsequent amendments to the Criminal Code. Notably, following the amendment to Article 32 introduced by Law No. 144, dated May 2, 2013, the maximum term of imprisonment was increased from twenty-

<sup>1</sup> Case *Coëme and Others v. Belgium*, Applications nos. 32492/96, 32547/96, 32548/96, 33209/96, and 33210/96, European Court of Human Rights, 22 June 2000.

five to thirty-five years. This amendment was also reflected in the Special Part of the Criminal Code. However, no corresponding amendment was made to Article 68 to regulate the limitation period for sentences of up to thirty-five years' imprisonment. In legal doctrine, divergent views have been expressed regarding the applicability of limitation periods to sentences of up to thirty-five years' imprisonment. Some scholars argue that, notwithstanding the absence of explicit regulation in the Criminal Code, such sentences—and potentially even life imprisonment should be subject to analogous interpretation under the existing limitation framework (Hasneziri, 2021). In contrast, other scholars adopt a different position regarding life imprisonment, arguing that the omission of any provision in Article 68 of the Criminal Code concerning this sentence—while expressly establishing limitation periods for less severe punishments—indicates that life imprisonment is not subject to statutory limitation (Hoxha et al., 2018).

In our assessment, under the current wording of Article 68, the prescribed limitation periods cannot be extended either to life imprisonment or to sentences ranging from twenty-five (25) to thirty-five (35) years of imprisonment. Although there is no explicit provision prohibiting the application of statutory limitations to these sentences, the absence of clearly defined time limits renders such application legally untenable. Therefore, legislative intervention appears necessary to clarify whether these categories of sentences are subject to specific limitation periods or should instead be considered non-prescribable. From a comparative perspective, reference to the Criminal Code of the Republic of Kosovo demonstrates a different legislative approach. Article 108(1) of that Code expressly provides limitation periods for both life imprisonment and other lesser sentences, thereby ensuring comprehensive regulation of the enforcement of criminal judgments. Another issue concerning the statute of limitations on the enforcement of sentences is the absence of an explicit provision in the Criminal Code regarding the non-prescription of sentences imposed for genocide, war crimes, and crimes against humanity. Although the Criminal Code does not expressly regulate this matter, such sentences are not subject to limitation. This is because the state has ratified the United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which forms part of the domestic legal order. Pursuant to Article 116 of the Constitution, which establishes the hierarchy of norms, international agreements ratified by law prevail over incompatible domestic legislation. Consequently, sentences imposed for these international crimes are not subject to statutory limitation. Article 6 of this Convention provides for the obligation of the States Parties to adopt legislative measures to ensure the non-prescription of war crimes and crimes against humanity, both with regard to criminal prosecution and punishment. Consequently, it is considered that a provision should be added to the Criminal Code expressly stipulating the non-prescription of the enforcement of sentences for these crimes. It is further observed that the Criminal Code does not contain any provision concerning the non-prescription of particularly serious crimes, unlike the explicit regulation regarding the non-prescription of criminal prosecution for the offences set out in Chapter II, Section I, Articles 76–79/c of the

Criminal Code. This omission constitutes a legislative shortcoming, leaving it to the discretion of the legislator to determine whether the statute of limitations on the enforcement of sentences should apply uniformly to all criminal offences or whether certain offences, by virtue of their gravity and nature, should be excluded from prescription. A comparative analysis reinforces this concern. The Criminal Code of the Republic of Kosovo, for example, expressly provides in Article 111(2) that punishment for aggravated murder is not subject to statutory limitation, thereby reflecting a differentiated legislative approach based on the seriousness of the offence. Based on the foregoing, it may be concluded that Article 68 of the Criminal Code of the Republic of Albania applies to all sentences of up to twenty-five years' imprisonment, irrespective of the nature of the criminal offence for which the sentence has been imposed. The only exception concerns crimes under international law, such as genocide, war crimes, and crimes against humanity, for which the United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity applies directly as part of the domestic legal order. Another significant issue concerns the absence of any provision regulating the statute of limitations on the enforcement of supplementary penalties. In contrast, other criminal codes, including those of Kosovo and North Macedonia, contain specific provisions addressing the prescription of such penalties, thereby ensuring systematic regulation of all forms of punishment. Certain scholars argue that, with respect to supplementary penalties in Albania, point (c) of Article 68 may be interpreted as applicable. This provision establishes a five-year limitation period for sentences of imprisonment of up to five years or other lighter penalties, and supplementary penalties could, under this interpretation, be subsumed within the category of "other lighter penalties."

However, such an interpretation appears problematic. Article 44(2) of the Criminal Code provides that, for certain supplementary penalties, enforcement commences only after the completion of the principal term of imprisonment. Depending on the duration of the principal sentence, applying Article 68(c) by analogy could result in the supplementary penalty becoming time-barred before its enforcement has even begun. This outcome would undermine both the coherence and the purpose of the sentencing framework. Accordingly, the resolution of this legal vacuum remains within the competence of the legislator. Finally, some criminal law scholars maintain that Article 68 should not be applied to recidivist offenders, arguing that such application would compromise the underlying rationale of the statute of limitations as a mechanism linked to rehabilitation and social reintegration (Hoxha et al., 2018).

A similar provision is found in Article 172(3) of the Criminal Code of Italy. In our view, however, insofar as the Criminal Code currently in force does not expressly exclude repeat offenders from the application of the statute of limitations on the enforcement of sentences, this legal institution must also apply to such individuals. Any deviation from this principle would require explicit legislative regulation. Another issue warranting discussion concerns whether a convicted person may benefit from the statute of limitations on the enforcement of a sentence in cases where that sentence has been joined with another sentence. In this regard, the United Chambers of the

Supreme Court of Albania, in Decision No. 1, dated October 28, 2022, clarified that a decision on the joinder of sentences does not constitute a new conviction decision. Rather, it represents a procedural mechanism related to the enforcement of multiple sentences, applicable both where an individual has been convicted simultaneously for multiple offences and where sentences have been imposed at different times. According to the Court, Article 68 of the Criminal Code of the Republic of Albania refers to the sentence imposed as a result of adjudication in a specific criminal proceeding. Consequently, the assessment of prescription must be based on the date on which each individual conviction decision became final, and not on the date of the decision ordering the joinder of sentences. The legislator, by establishing distinct limitation periods for different categories of punishment, has linked the prescription period to the sentence imposed for each specific criminal offence.

In our assessment, this interpretation is legally well founded. The institution of the statute of limitations is intrinsically connected to the sentence imposed for the commission of a particular criminal offence. Where an individual has committed multiple offences, the legislator provides distinct limitation periods corresponding to each sentence. The joinder of sentences does not create a new or autonomous punishment; therefore, the statute of limitations on enforcement must be calculated separately for each individual sentence rather than on the basis of the aggregated sentence resulting from joinder.

### **3. Commencement of the Limitation Period for the Enforcement of Sentences**

In the first sentence of Article 68 of the Criminal Code, it is provided that: “*A conviction decision shall not be enforced when, from the date it has become final, there has elapsed...*” Consequently, the central issue concerns determining the moment at which a conviction decision is considered final. Judicial practice has revealed divergent interpretations regarding this determination. For the purpose of calculating the commencement of the limitation period under Article 68, both the decision of the Court of Appeal and that of the Supreme Court have been used as reference points.

In this context, the analysis will focus on Unified Decision No. 2, dated November 3, 2014, of the United Chambers of the Supreme Court of Albania. In the first part of this decision, the Chambers examined the meaning of the term “final decision” and reached the following unifying interpretation:

In Albanian criminal procedural legislation, the expression “final decision” shall be understood, as the case may be, as a decision that has acquired the status of *res judicata* or as an “enforceable decision.” A criminal decision becomes “final” in the sense of *res judicata* when: (i) the Supreme Court rules pursuant to Articles 433 or 441(1)(a), 441(1)(b), 441(1)(c), and 441(1)(d) of the Criminal Procedure Code; or (ii) the parties fail to comply with the time limits provided for in Articles 415(1) and 435(1) of the Criminal Procedure Code for filing an appeal with the Court of Appeal or a recourse with the Supreme Court. In all other cases, the expression “final” shall be understood as referring to the “enforceable decision” of the Courts of Appeal (United Chambers

of the Supreme Court of Albania, 2014).

Accordingly, with respect to the Supreme Court's decision-making, a criminal decision becomes final when the Supreme Court:

- Declares a recourse inadmissible;
- Upholds the decision against which the recourse has been filed;
- Modifies the decision regarding the legal qualification of the offence, the type or measure of the sentence, or the civil consequences of the offence;
- Quashes the decision and resolves the case without remitting it for retrial; or
- Quashes the decision of the Court of Appeal and upholds the decision of the court of first instance.

This interpretation establishes a clear framework for determining the commencement of the limitation period for the enforcement of sentences, linking it to the procedural finality of each criminal decision.

With respect to the fourth and fifth issues submitted for unification, the Supreme Court of Albania concluded:

When the Supreme Court decides pursuant to Article 441(1)(c) of the Criminal Procedure Code by modifying the decision against which the recourse has been filed, the Supreme Court's decision shall serve as the basis for calculating the limitation period provided in Article 68 of the Criminal Code. In cases where the Criminal Chamber rules pursuant to Article 441(1)(d) of the Criminal Procedure Code, by quashing the decision of the Court of Appeal and upholding the decision of the court of first instance, the calculation of the limitation period shall commence from the date of the Supreme Court's decision (United Chambers of the Supreme Court of Albania, 2014). Although this Unified Decision clarifies certain procedural scenarios, it leaves open questions regarding the commencement of the limitation period in cases where the Supreme Court either declares a recourse inadmissible or upholds the decision of the Court of Appeal. In criminal law doctrine, some authors maintain that the limitation period for the enforcement of sentences should begin from the date of issuance of the Court of Appeal decision when the Supreme Court has: (i) declared the recourse inadmissible in chambers, or (ii) examined the case in a court hearing and upheld the decision of the Court of Appeal (Hasneziri, 2021). Upon analysis of the Unified Decision, which links the effect of finality to the exhaustion of ordinary remedies or the expiration of time limits for filing them, we consider that the date of issuance of the Supreme Court decision should always be used for calculating the limitation period. This applies even when the recourse is declared inadmissible or the Court of Appeal decision is upheld. A recourse before the Supreme Court constitutes an ordinary remedy, and as long as parties retain the right to exercise ordinary remedies, the decision has not yet become final and may be modified by a higher court. A comparable approach exists in the Criminal Code of Italy. Under Article 648 of the Italian Criminal Procedure Code, a sentence is considered irrevocable once no ordinary remedies remain available, except for extraordinary review procedures. This demonstrates a similar doctrinal principle linking the commencement of the limitation period to the exhaustion of ordinary legal remedies.

#### **4. Can the limitation periods for the enforcement of sentences be interrupted? Does the extension and suspension of limitation periods apply?**

The provision of Article 68 of the Criminal Code of the Republic of Albania neither provides for nor implies the existence of circumstances that could result in an extension of the limitation periods for the enforcement of sentences. Since the article establishes that the limitation period begins when the decision becomes final, no room appears to have been left for interpretation, regardless of when the sentence is enforced or whether enforcement is interrupted during its execution. This issue was examined by the United Chambers of the Supreme Court of Albania in Unified Decision No. 7, dated October 11, 2002. The majority concluded:

*In the Criminal Code and the Criminal Procedure Code, the interruption of the enforcement of decisions is not provided for... the application of criminal law by analogy is not permitted... Even based on a logical interpretation of the provision stating, "A conviction decision shall not be enforced when, from the date it has become final, there has elapsed...", there can be no extension of the limitation periods for any reason. This applies both to cases where the conviction has not been enforced at all and to cases where the sentence has commenced but is interrupted for any reason, such as the removal of the convicted person from enforcement.*

Conversely, the minority opinion in the same decision argued that the limitation period should be interrupted once the sentence begins to be enforced:

*When the convicted person begins serving the sentence, the limitation period is interrupted... Although the Criminal Code does not explicitly provide for the interruption of the statute of limitations on enforcement, the interruption exists as a factual situation. If, for any objective or subjective reason, enforcement is interrupted, the calculation of the limitation period begins anew from the moment of interruption.*

From a doctrinal perspective, we find the minority position more persuasive. The limitation period for enforcement should not continue to run once the sentence is being executed. Otherwise, a legal absurdity arises: for example, a person sentenced to fifteen years of imprisonment who benefits from parole after ten years could hypothetically avoid completing the sentence and request its extinguishment due to the expiration of the limitation period under Article 480 of the Criminal Procedure Code. This issue was revisited in Decision No. 1, dated October 28, 2022, of the United Chambers of the Supreme Court of Albania. The majority held that the conditions for amending Unified Decision No. 7 of 2002 were not met. However, the minority of judges argued that:

*An expansive interpretation of Article 68 of the Criminal Code respects the constitutional limits of judicial interpretation and the Supreme Court's competence to unify or modify judicial practice. The minority asserts that Unified Decision No. 7 of 2002 should have been amended to provide that, when a prison sentence begins to be enforced, the limitation period does not continue to run. In the event of voluntary departure from the place of enforcement, or failure to return after leave, the limitation period shall begin anew from the moment of departure or failure to return, until the expiration of the period established in Article 68.*

This minority interpretation aligns with the principle that the limitation period

should reflect the actual enforcement of the sentence, thereby preventing the legal inconsistencies that could result from counting time while the sentence is actively being served. The interruption of the limitation period is explicitly recognized in the Criminal Code of the Republic of Kosovo, which provides that:

*The limitation period is interrupted by any action initiated by the competent authority with the purpose of enforcing the sentence. After each interruption, a new limitation period begins to run.*

Similarly, Article 172(4) of the Criminal Code of Italy establishes that the limitation period commences upon the issuance of an irrevocable decision and, if enforcement of the sentence has begun, from the day on which the convicted person voluntarily avoids the execution of the sentence. In the draft law for the new Criminal Code of Albania, circulating since July 2025, some of the issues identified above have been addressed. The statute of limitations on the enforcement of sentences is included as an institution in Chapter II, Title IV, as one of the causes for the extinction of a sentence, with a total of five provisions regulating this matter. However, certain issues remain unresolved. Notably, the statute of limitations for supplementary penalties has not been provided for, and ambiguity persists regarding the commencement of the limitation period in light of the Supreme Court of Albania's decisions. For these reasons, we consider that the draft of the new Criminal Code should be revised to ensure greater clarity in the provisions concerning the statute of limitations on the enforcement of sentences. Such improvements are necessary to guarantee that the provisions are applied and enforced consistently by judicial authorities.

## 5. Conclusion

The statute of limitations on the enforcement of sentences is a crucial legal institution, both for achieving the purposes of criminal punishment and for establishing a temporal limit within which competent state authorities may enforce final criminal decisions. Despite multiple amendments to the Criminal Code over the years, this institution has not been updated or harmonized with other provisions of the Code. Consequently, there is a clear need for legislative intervention to address gaps, including the specification of criminal offences or sentences to which the statute of limitations does not apply, the treatment of non-prescribable sentences, and the establishment of limitation periods for supplementary penalties. Although the Supreme Court of Albania has intervened to clarify aspects of this institution, uncertainty remains regarding the commencement of the limitation period for enforcement. Future unifying decisions by the Supreme Court could provide further clarification and ensure consistent judicial application. Comparative analysis with other jurisdictions, coupled with the practical challenges observed in enforcement, highlights the necessity for clear statutory provisions regarding the interruption and suspension of limitation periods. Moreover, the law should establish a maximum period after which a sentence can no longer be enforced, irrespective of whether the limitation period has been suspended or interrupted. Such reforms would strengthen legal certainty and ensure

the uniform and effective application of the statute of limitations on the enforcement of criminal sentences.

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