

Published on 29 June 2017



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Statute of limitation reform in criminal matters

Since March 1, 2017, new provisions govern the statutes of limitations for the prosecution of criminal offenses (i.e. the time-line during which an offense must be prosecuted) and the statutes of limitations for the enforcement of penalties.

What are the consequences of these changes?

The statutes of limitations for the prosecution of *crimes* (felonies) and *délits* (misdemeanors) have been doubled

Prompted by the increase in life expectancy, the progress made in the preservation of evidence and the average statute of limitations applicable throughout Europe, the reform introduced by Law n°2017-242 of February 27, 2017 (the "Law") primarily resulted in the extension of the statutes of limitations for the prosecution of criminal offenses.

Specifically, under Articles 7 and 8 of the French Code of Criminal Procedure, as amended by the Law, the statute of limitations for the prosecution of *crimes* (felonies) is now twenty years (as opposed to ten years previously) and the statute of limitations for the prosecution of *délits* (misdemeanors) is now six years (as opposed to three years previously).

On the other hand, the statute of limitation for the prosecution of *contraventions* (petty offenses) remains unchanged.

The derogatory statutes of limitations for the prosecution of specific offenses remain unchanged

The derogatory statutes of limitations for the prosecution of particularly serious specific *crimes* (felonies)^[1] (thirty years) and *délits* (misdemeanors)^[2] (twenty years) remain unchanged.

The rules governing offenses against minors are maintained. For the criminal offenses listed in Article 706-47^[3] of the French Code of Criminal Procedure and the most serious acts of violence, the starting point of the statute of limitation period remains the date on which the minor attains 18 years of age. The offenses listed in this Article are subject to a derogatory ten-year statute of limitations, with the exception of sexual assaults and offenses for which a further derogatory statute of limitations of ten years applies (just like for the most serious acts of violence).

Lastly, genocides and crimes against humanity are not subject to any statute of limitation.

The specific case of clandestine offenses, i.e. hidden or concealed offenses

As an exception to the ordinary statutes of limitations, Article 9-1§3 of the French Code of Criminal Procedure provides that *“the statute of limitations for the prosecution of hidden or concealed offenses starts running from the date on which the offense has been discovered and established in conditions that allow public prosecution to be initiated or exercised”*.

An hidden offense is defined as *“an offense which, because of its constituent elements, cannot be known to the victim or to the judicial authority”* while a concealed offense is *“an offense of which the perpetrator deliberately performs any characteristic maneuver aimed at preventing its discovery”*. Such offenses include breach of trust, misappropriation of corporate assets, tax fraud and other financial and economic offenses.

The French legislator thus enshrined the case-law of the *Cour de Cassation* (French Supreme Court) but also introduced a deadline after which the prosecution of the offense, even if not discovered, is time-barred. This period, which starts running from the date on which the offense was committed, is twelve years for *délits* (misdemeanors) and thirty years for *crimes* (felonies).

This deadline has been harshly criticized by French legal writers and authors as some of them regretted that the new legal rules are more favorable for financial offenders than past case-law. This appeared to them all the more objectionable as the majority of hidden and concealed offenses are discovered through banking documentation and accounting books, i.e. pieces of evidence that stand the test of time.

This provision seems to contrast with the very spirit of the statute of limitation reform in criminal matters which tends to increase limitation periods.

The grounds for suspension and interruption of limitation periods set forth by the Law

Article 9-2 of the French Code of Criminal Procedure now lists the acts/actions that interrupt the limitation periods (i.e. acts/actions that make the limitation periods start running anew) and that were so far established by case-law.

As such, the following acts/actions interrupt the limitation period, within the meaning of the aforementioned Article 9-2: (i) acts of the public prosecutor's office and acts of the civil party(ies) who has/have joined the criminal proceedings that tend to the initiation of public prosecution, (ii) investigative actions of the public prosecutor's office and minutes drawn up by a criminal investigation police officer or by an authorized officer for the search and prosecution of the perpetrators of an offense, (iii) investigation actions ordered by an investigative authority or a similar authority for the same purpose, and (iv) any not-voidable court judgment or decision.

While the filing of a criminal complaint with police officers or the public prosecutor (*plainte simple*) still does not interrupt the statute of limitation period, police officers are now required to specify on the proof of filing of the complaint the duration of the applicable statute of limitations as well as the possibility to interrupt such limitation period by filing a criminal complaint and claim for criminal indemnification filed with the Dean of the investigating judges (*plainte avec constitution de partie civile*).

Lastly, Article 9-3 of the French Code of Criminal Procedure enshrined the case-law principle according to which the limitation period is suspended wherever there is a “*legal obstacle, as provided for by law*” or a “*factual obstacle that is insurmountable and that can be assimilated to force majeure*”.

The statutes of limitations for the enforcement of penalties remain virtually unchanged

The statutes of limitations for the enforcement of penalties have hardly been affected by the Law.

For *crimes* (felonies), the statute of limitations for the enforcement of penalties remains twenty years from the date of the final conviction. A derogatory statute of limitations of thirty years still applies to some types of *crimes* (felonies)^[4] and there is still no statute of limitations for the enforcement of penalties for crimes against humanity.

For *délits* (misdemeanors), the statute of limitations for the enforcement of penalties is extended from five to six years and such period starts running as from the date of the final conviction. A derogatory statute of limitations of twenty years still applies to some types of *délits* (misdemeanors)^[5].

Lastly, for *contraventions* (petty offenses) the statute of limitations remains unchanged, i.e. three years.

The application of the Law over time

Pursuant to Article 112-2 4 of the French Criminal Code, the Law is immediately applicable. This means that the Law will apply to offenses committed before its entry into force and for which the statute of limitation has not yet expired.

However, Article 4 of the Law specifies that “[the Law] *must not have the effect of making an offense time-barred if, at the time the Law comes into force, public prosecution had been validly initiated or exercised in relation to that offense*”.

The shortcomings of the new legislation

While the Law certainly clarifies applicable legal provisions and enshrines case-law developments, it does raise a number of issues concerning, in particular, the preservation of evidence and court congestion.

First, the reform raises the fear of the deterioration of evidence, testimonies and memories being particularly uncertain after a period of twenty years.

Second, it is likely to increase the number of criminal cases that the courts – which already lack resources – will have to handle. It would have been advisable to carry out an impact study and adequate means should have been allocated to the judiciary to meet the aims of the Law.

[1] *Crimes* (felonies) related to terrorism, drug offenses, offenses concerning the proliferation of weapons of mass destruction, eugenics and reproductive cloning, enforced disappearance, as well as war crimes (cf. Art. 7 of the French Code of Criminal Procedure).

[2] *Délits* (misdemeanors) related to terrorism, offenses concerning the proliferation of weapons of mass destruction punishable by ten years' imprisonment, drug offenses and war offenses (cf. Art. 8 of the French Code of Criminal Procedure).

[3] In particular: Murder, acts of torture and barbarity, rape, *délits* (misdemeanors) related to sexual assault, *crimes* (felonies) and *délits* (misdemeanors) related to human trafficking, sex trafficking/trade as well as other *délits* (misdemeanors) related to sexual offenses.

[4] *Crimes* (felonies) related to eugenics and reproductive cloning, enforced disappearance, war crimes, terrorism, drug offenses and offenses concerning the proliferation of weapons of mass destruction.

[5] *Délits* (misdemeanors) related to war offenses, terrorism, drug offenses and offenses concerning the proliferation of weapons of mass destruction punishable by 10 years' imprisonment.

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