

Criminal statute of limitations: issues of improving Article 78 of the Criminal Code of the Russian Federation and the practice of its application

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Abstract: The author analyzes the current and, in his opinion, still unresolved issues of the legislative regulation of the limitation period for criminal prosecution and law enforcement, it defines some vectors of the state's criminal law policy in this area, offers specific proposals for improving the wording of Article 78 of the Criminal Code of the Russian Federation and the practice of its application.

Keywords: crime, statute of limitations, criminal liability, release, statute of limitations, statute of limitations.

The establishment of a time frame for exemption from criminal liability distinguishes the institution in question from all other types of exemption from it. The question is, what is the basis of the statute of limitations as a circumstance that conditions exemption from this responsibility? It seems to us that it is based on the principle or regularity of the constant variability of the world.

Prescription is a general social concept and derived from the word "long ago", meaning from the point of view of etymology "a long time ago" or "for a long time" [1, p. 152]. Prescription, as a criminal law problem, arises in connection with

the gap in time between the crime and the establishment of responsibility for its commission. And when this gap becomes significant, exceeding (sometimes several times) the term of punishment stipulated in the sanction, the question arises about the expediency of criminal prosecution of the person who committed the crime.

A.A. Piontkovsky saw the essence of the "criminal statute of limitations" in the fact that after a certain period of time it becomes impossible both to initiate criminal prosecution and to enforce a court-ordered sentence [2, p. 7]. Many other forensic scientists in the XIX and XX centuries stood in the same positions.

And in modern literature, when analyzing Article 78 of the Criminal Code of the Russian Federation, the statute of limitations is interpreted as the expiration of the terms stipulated in it after the commission of a crime, although some authors focus on some accents; whether it is the basis for exemption from criminal liability [3, p. 68], does the statute of limitations exclude criminal liability [4, p. 12], whether as a result of the expiration of the statute of limitations, the state refuses to prosecute [5, p. 275–276], or it becomes impractical to bring to this responsibility [6, p. 347] or the legal relations arising as a result of the commission of a crime are terminated [7, p. 184]. Despite the seemingly rather narrow, local framework of the institution of criminal limitation, it, in our opinion, is of fundamental importance for the constitution in legislation and understanding in practice of such important provisions as the principles of inevitability and justice, differentiation and individualization of criminal responsibility, its goals, the promotion of positive post-criminal behavior, the retroactive force of criminal law, judicial discretion, categorization of crimes, etc. Let us refer to the verdict of the Sterlitamak City Court of the Republic of Bashkortostan dated December 31, 2019, by which Akhmadeeva was found guilty of committing a crime under Part 3 of Article 159 of the Criminal Code of the Russian Federation, she was sentenced to 2 years of

imprisonment conditionally with a probation period of 2 years. The court, having appointed a suspended sentence, entrusted her with the performance of certain duties: to register with the penal enforcement inspectorate at the place of residence, where to appear for registration twice a month on the days set by the inspector of the UII, not to change her place of residence without notifying the inspection. At the same time, the sentence changed the category of the crime committed by Akhmadeeva, provided for in Part 3 of Article 159 of the Criminal Code of the Russian Federation, from grave to medium-gravity crime. Akhmadeeva was released from her suspended sentence according to paragraph "b" of Part 1 of Article 78 of the Criminal Code of the Russian Federation due to the expiration of the statute of limitations [8].

As can be seen, the court resorted to an unusually broad discretion - changed the category of the crime from serious to medium-gravity crime, sentenced her conditionally and released her from the prescribed punishment due to the expiration of the statute of limitations. Although the court in its verdict referred to the presence of the disease in Akhmadeeva, nevertheless, she cannot be considered a strong argument in favor of reducing the duration of the statute of limitations.

From the above sentence and the cassation ruling by which it was upheld, it is clear how the issues of the statute of limitations are most closely interrelated with many other provisions of criminal law.

Even more differences in the theory of criminal law are observed when determining the grounds for exemption from the criminal legal burden due to the expiration of the statute of limitations. They are objectively determined by the nature of its regulation in the Criminal Code of the Russian Federation. In Part 1 of Article 78 of the Criminal Code of the Russian Federation, it is imperative that the competent authorities release the person who committed the criminal act from

criminal liability if the terms stipulated in this norm have passed since the date of the commission of the crime.

If, for example, when being released from criminal liability under Part 1 or 2 of Article 75 of the Criminal Code of the Russian Federation, a court or other law enforcement agency analyzes the actual circumstances, establishing certain forms of active repentance, then when being released from it under the norm in question, the court is guided by only one fact – the expiration of the statute of limitations, without going into the material, internal "reasons" for exemption from criminal liability.

The issues of the socio-legal nature of the basis and conditions are interrelated, mutually conditioned, therefore they should be considered together. Thus, it is hardly possible to correctly determine the socio-legal essence in isolation from the grounds and conditions of liberation, because it is the grounds and conditions that help to reveal the nature of the institution in question. It is also impossible to correctly determine the terms for crimes committed with complex complicity or ongoing, lasting crimes without taking into account the legal nature of this type of release.

Scientists have been turning to the problem of determining the essence of the basis, the prerequisites for exemption from criminal liability for the expiration of the statute of limitations since the XIX century.

A.A. Piontkovsky eloquently wrote about reducing public danger, changing the identity of the culprit after an incident of a certain time. In his opinion, this value of time serves as the basis of the criminal statute of limitations [2, p. 11]. I.Ya. Foynitsky linked the statute of limitations with the characterization of the culprit's personality, its changeability [10, p. 112].

In modern literature, the grounds for the institution of exemption from criminal liability for prescription are recognized as the inexpediency of bringing to

this responsibility, and the loss of the public danger of the deed, and the reduction of the public danger of the person guilty of committing a crime, and the complete loss of public danger [11, p. 4–5; 12, p. 97–98]. For the most part, these and other definitions of the grounds for exemption under Part 1 of Article 78 of the Criminal Code of the Russian Federation reflect certain signs of it, but do not, as they say, represent its full "picture". At the same time, it is impossible to limit ourselves to the statement of the inexpediency of bringing to responsibility, since it itself needs some justification; it would be wrong to recognize as this basis the loss of public danger of the crime committed, since the statute of limitations, as a general rule, does not affect it. It would hardly be correct to agree that reducing the degree of public danger of a person who has committed a crime can be recognized as the basis for exemption from criminal liability. The public danger of a person in the criminal-legal dimension is or is not. Of course, as already noted, exemption from criminal liability under Part 1 of Article 78 of the Criminal Code of the Russian Federation is imperative, therefore, the law enforcement agency proceeds only from the fact that the statute of limitations has expired. But here it is possible to raise questions – if the perpetrators of a crime do not completely lose their public danger during the prescribed period of limitation, should not its duration be increased in the law, or, for example, should not the law provide not only for suspension, but also for a break in the flow of the limitation period?

A more acceptable reason is, in our opinion, (as in general, and many authors) the loss of a person who committed a criminal act, a public danger. However, this statement needs some explanation. By providing for the institution of limitation, the State thereby demonstrates to persons who have committed crimes that if they do not commit new crimes within the established time limits, do not evade the investigation or the court, or from paying a court fine, they will be released from criminal liability.

In the act on the release of a person behind the statute of limitations, there are also elements of forgiveness, manifestations of mercy on the part of the state, but this release is not a complete forgiveness of the guilty. Moreover, a negative attitude towards the crime and the person who committed it is manifested here (albeit in a different form). [3, p. 5].

It seems to us that the socio-legal nature of the grounds for exemption from criminal liability at the expiration of the statute of limitations is the loss by the person who committed the crime of public danger, and the possibility of exemption from it guaranteed by the state, as a manifestation of his forgiveness.

The prerequisites of the considered type of release are the expiration of the statute of limitations, not committing a new crime, not evading the investigation, court or payment of a court fine, as well as the consent of the person to terminate criminal prosecution (in this case, the release can be carried out only at the discretion of the court).

Let's focus on the last condition of exemption from criminal liability. It is known that the termination of criminal prosecution in connection with the expiration of the statute of limitations is not allowed, and the proceedings are conducted in the usual manner (paragraph 3 of Part 1 of Article 24; Part 2 of the Code of Criminal Procedure of the Russian Federation), if the person does not plead guilty and insists on further consideration of the criminal case. As we see it, the usual procedure of the case involves in these cases and sentencing, including indictment. When studying judicial practice, we came across numerous formulations in sentences that the court releases a person from punishment, while referring to Article 78 of the Criminal Code of the Russian Federation. So, Zhilyakov was sentenced under Part 4 of Article 159, Article 73 of the Criminal Code of the Russian Federation to 5 years of probation, the probation period was set at 4 years; according to paragraph "b" of Part 2 of Article 165 of the Criminal

Code of the Russian Federation to 3 years of imprisonment. Zhilyakov was released from punishment due to the expiration of the statute of limitations. Acts containing signs of a crime under Article 159.4 of the Criminal Code of the Russian Federation and committed before 12.06.2015, may not qualify under art. 159 of the Criminal Code of the Russian Federation, since the sanction under this article contains a more severe punishment. Such acts should be qualified under Article 159.4 of the Criminal Code of the Russian Federation. The appellate instance sentenced Zhilyakov to 2 years and 6 months of probation and set a probation period of 2 years. Zhilyakov was released from his sentence in accordance with paragraph "b" of Part 1 of Article 78 of the Criminal Code of the Russian Federation and paragraph 3 of Part 1 of Article 24 of the Criminal Procedure Code of the Russian Federation, since six years have elapsed since the commission of a medium-gravity crime [9].

According to the verdict of the Crimean District Court of November 19, 2019. Kononov was convicted under Part 1 of Article 199 of the Criminal Code of the Russian Federation to a fine in the amount of 1,000,000 rubles. On the basis of paragraph "a" of Part 1 of Article 78 of the Criminal Code of the Russian Federation, he was released from the sentence imposed due to the expiration of the statute of limitations of criminal prosecution [13].

In other words, we are talking about widespread judicial practice; courts are forced, passing convictions, that is, bringing a person to criminal responsibility, to release him only from punishment. The instructions of the Criminal Procedure Code of the Russian Federation alone in these situations are not enough, since in this case we are still talking about the provisions of substantive (criminal) law. Therefore, in order to ensure the purity or perfection of legal technique, it would be necessary, in our opinion, to supplement Article 78 of the Criminal Code of the Russian Federation with a separate part (say, ch. 2.1) as follows: "If a person

insists on considering a criminal case, then, if there is an appropriate basis, the court issues a guilty verdict and releases him from the imposed punishment."

In our opinion, there is a certain imperfection in the regulation of the duration of the statute of limitations. For example, this term for crimes of minor gravity is set at 2 years, although the legislator changed this category of crime (Part 2 of Article 15 of the Criminal Code of the Russian Federation), for crimes of medium gravity he set a term 1 year longer than the possible term of imprisonment, and for crimes of special gravity a 15-year statute of limitations is provided - it seems that it should be equal to 20 years to match the maximum term of this type of punishment.

The fact that the grounds for exemption from criminal liability under Article 78 of the Criminal Code of the Russian Federation is the loss of a person of public danger, although it is not directly indicated in the law, but it seems to us that it is presumed by the entire structure of Article 78 of the Criminal Code of the Russian Federation and in general the logic of establishing differentiated limitation periods and its non-use in the commission of particularly dangerous crimes. In principle, it is possible to increase the duration of the statute of limitations; and here we are not talking about the deterioration of the criminal legal status of a person (as, for example, occurs with an increase in the terms of punishment), but about creating prerequisites or increasing guarantees of his self-correction.

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