

A Study on the Dispute over the Time Limit of Criminal Prosecution

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Abstract: The statute of limitations for criminal prosecution is the effective period within which criminal responsibility can be pursued according to law. Under the context of lenient punishment, the statute of limitations system, as one of the grounds for the abolition of punishment, fully embodies the fundamental concept of human rights protection. The statute of limitations for criminal prosecution has substantive legal attributes; for criminal acts committed before October 1, 1997, if the statute of limitations has expired, the perpetrators liability will not be pursued; if it has not expired, according to the principle of "abatement," the Criminal Law Article 88 of 1997 will determine whether the perpetrator should be held criminally responsible, and the endpoint of the statute of limitations is the endpoint set by Article 8 7 of the Criminal Law for different periods based on the statutory maximum penalty.

Article 12 of the current Criminal Law stipulates the principle of retroactive application of criminal law, but it also specifies that the premise for pursuing criminal responsibility according to the laws before the revision is "the provisions of Chapter IV, Section VIII of this Law shall require prosecution." The ambiguity of this provision and the controversy over the nature of criminal prosecution time limits have led to disputes in practice regarding the handling of prosecution time limits: Can the current Criminal Law be applied retroactively? Especially, whether the amendment of Article 88 of the 1997 Criminal Law, which modifies Article 77 of 1979 to "no limitation on the period of non-prosecution" (hereinafter referred to as "extension of prosecution time"), affects the statute of limitations for criminal acts completed before the effective date of the revised law? Reviewing the normative legal documents concerning criminal prosecution time limits in China, there are no systematic provisions regarding prosecution time limits, and in practice, a case-by-case approach is often adopted. Even between the old and new laws, there has been no consensus on this issue in individual case^[1].

This paper takes the retroactive power of the statute of limitations as the core issue, and takes the relevant provisions of Chinas statute of limitations system and criminal law theory as the basis to explore the specific application of the combination of the system and the retroactive power^[2].

1. The relationship between the statute of limitations and retroactive force

The system of criminal prosecution statute of limitations is a relatively obscure research direction

in the study of criminal substantive law and procedural law in our country, and our Criminal Law only has three vague provisions in Articles 87-89. Although the statute of limitations for prosecution and retroactivity seem to have no direct logical relationship, for acts committed before the implementation of new laws, when the new law enters the criminal litigation process, it is necessary to clarify the temporal effectiveness scope of the old and new laws^{[3][4]}. Moreover, the statute of limitations system in our Criminal Law is related to the application of the highest statutory punishment, and when the statute of limitations for a certain crime changes, the highest statutory punishment will also change accordingly. Furthermore, the system of criminal prosecution statute of limitations directly stipulates the extension, suspension, and interruption of the statute of limitations, which may lead to issues of choosing between the old and new laws.

2. The departmental law nature of the criminal prosecution time limit system

There are mainly three perspectives on this issue: the statute of limitations possesses dual attributes of substantive law and procedural law; the statute of limitations is a procedural law; the statute of limitations is a substantive law. Those who advocate the first perspective argue that: the statute of limitations is stipulated in both the Criminal Law and the Criminal Procedure Law. The Criminal Law of the Peoples Republic of China is a substantive law, and both the 1979 Criminal Law and the 1997 Criminal Law have provisions for the statute of limitations, while the Criminal Procedure Law also specifies procedural operations beyond the statute of limitations. If the statute of limitations system were purely a procedural law provision, it would only need to be separately regulated in the Criminal Procedure Law. This indicates that the statute of limitations can be both a substantive law and a procedural law. The statute of limitations substantively determines the exercise of the states power of prosecution; procedurally, it influences the initiation and operation of criminal proceedings. Article 87 of the Criminal Law states that "a crime shall not be prosecuted after the following periods have elapsed..." indicating that the necessary conditions for pursuing criminal responsibility are that the act constitutes a crime + meets the provisions of the statute of limitations. The statute of limitations grants the state the public authority to prosecute crimes; as a reason for the suspension of criminal responsibility, the statute of limitations allows the state to lose its power of prosecution at the substantive level, thus extinguishing the criminal responsibility of the offender. On the other hand, if the case does not meet the conditions after entering the criminal procedure, the provisions concerning the statute of limitations in criminal proceedings mean that they must exit the criminal litigation process. This limits the initiation and operation of criminal litigation procedures in terms of time limits, which has a procedural legal nature. Those who advocate the second viewpoint argue: the statute of limitations directly affects litigation procedures. French scholars point out: "If we consider that the completion of the statute of limitations can prevent the prosecution of criminals, thereby leading to the result that criminals are not punished as if they have been pardoned, then we should acknowledge that the completion of the statute of limitations indeed involves substantive law, and therefore, we should recognize: the law related to the statute of limitations is a substantive law^{[5][6][7]}. However, if we do not limit ourselves to considering the result of the statute of limitations on criminals but also consider the method of achieving this result, that is, once the statute of limitations has expired, criminal prosecution cannot be conducted in court against the criminals, then we should determine: the law related to the statute of limitations primarily involves litigation procedures, and therefore, the law concerning the statute of limitations remains a procedural law (procedural law)." The relevant provisions of the statute of limitations only affect the progress of criminal litigation procedures and do not involve substantive evaluation. Article 87 of the Criminal Law stipulates that "a crime shall no longer be prosecuted after the following periods have elapsed...", meaning that once the statute of limitations has expired, judicial authorities. The state no longer has the authority to

initiate criminal prosecution procedures. The statute of limitations extinguishes the states criminal prosecution power, not the criminal nature and penal liability of acts, nor does it affect the elements constituting a crime or the consequences of punishment, nor does it impact the specific content of criminal prohibitions and orders. In fact, the statute of limitations is equivalent to a statutory ground for non-prosecution, which only excludes the involvement of criminal proceedings without affecting the illegality and culpability of the crime itself. Therefore, the statute of limitations merely leads to the cessation of prosecution procedures without substantive evaluation. Advocates of the third viewpoint argue that the statute of limitations pertains to substantive conditions for pursuing criminal responsibility. The Criminal Law of the Peoples Republic of China is a substantive law, and both the 1979 Criminal Law and the 1997 Criminal Law have provisions for the statute of limitations. Article 87 of the Criminal Law states that "a crime shall not be prosecuted if the following conditions are met...", indicating that the necessary conditions for pursuing criminal responsibility are that the act constitutes a crime + meets the statute of limitations, thereby granting the state the power to prosecute crimes. The provisions on the statute of limitations in the Criminal Law are substantive legal provisions related to the prosecution authority of the prosecution agency over criminal cases. Moreover, in terms of the classification of the statute of limitations discipline, the vast majority of countries adopt the substantive law theory, with only France, Japan, Brazil, Turkey, Egypt, Belgium, and other countries adopting the procedural law theory^{[8][9]}.

3. Whether the statute of limitations has retroactive force

Does criminal law have retroactive effect? Legislative practices vary across countries, leading to two schools of thought. The principle of *lex mitior* (*lex mitior*) is divided into absolute and relative categories based on whether there are exceptions for punishing under new laws, namely the "*lex mitior*" principle and the "*lex mitior plus lex leni*" principle. The "*lex mitior plus lex leni*" principle aligns with the rule of law and is adopted by most Western countries. The principle of *lex mitior* in judicial practice is categorized into the "*lex mitior*" principle and the "*lex mitior plus lex leni*" principle based on whether there are exceptions for punishing under old laws. In China, there are mainly three perspectives on whether the provisions of the statute of limitations can have retroactive effect: the "*lex mitior plus lex leni*" perspective, the "*lex mitior*" perspective, and the "*lex mitior plus lex mitior*" perspective.

In response to this, the author believes that for criminal acts committed before October 1, 1997, if the statute of limitations has expired, the perpetrators responsibility shall not be pursued; if it has not expired, according to the principle of "abandonment," the Criminal Law of 1997 Article 88 shall be applied to determine whether the perpetrators criminal responsibility should be pursued. Firstly, the principle of "abandonment" in the statute of limitations is explicitly stipulated by the Criminal Law. The specific periods for the statute of limitations in the Criminal Law of 1979 and the Criminal Law of 1997 are the same, differing only in the provisions regarding the extension of the statute of limitations. Article 12 of the Criminal Law of 1997 explicitly states: "If the then-existing law deemed it a crime, criminal responsibility shall be pursued according to the provisions of Chapter IV, Section 8 of this Law." This indicates that the legislative intent was that "abandonment" applies only when there is controversy over whether a crime has been committed, while whether criminal responsibility should be pursued is uniformly determined according to Article 12 of the Criminal Law of 1997. Secondly, the statute of limitations does not fall within the scope of regulation by the principle of legality in criminal law. The statute of limitations does not involve elements of the crime or the content of punishment; the differences between the Criminal Law of 1979 and the Criminal Law of 1997 lie solely in the scope of cases exempt from the statute of limitations. The principle of legality in criminal law prohibits retroactive application of new laws to determine whether an act constitutes

a crime, which does not include when criminal responsibility should be pursued. Again, the "new" statute of limitations does not violate the principle of legality in criminal law. From the perspective of the purpose and task of criminal law, it is to punish crimes and protect the people, using punishment to combat all criminal acts. Punishment is a necessary evil. The amendment to the statute of limitations in Criminal Law 1997 is more conducive to combating crime and achieving the general and special preventive objectives.

4. Calculation of the statute of limitations

The author believes that the statute of limitations for prosecution should be temporarily suspended from the time of filing or acceptance and investigation, and resumes calculation after an effective judgment is made. The endpoint of the statute of limitations for prosecution is the end point set by Article 87 of the Criminal Law according to the statutory maximum penalty. Firstly, this article opposes the view that "the two functions of criminal law in punishing crimes and protecting human rights have a hierarchical relationship, and therefore when conflicts arise between punishment and protection functions due to the confrontation between the filing time theory and the result time theory, the punishment function must yield to the protection function, advocating the result time theory." Criminal law is not a law aimed at protecting criminals; the functions of punishing crimes and protecting human rights should be balanced, and ensuring the rights of defendants and victims should also be balanced. Therefore, when conflicts arise between the "filing time theory" and the "result time theory," the punishment function should not be sacrificed to accommodate the protection function. The statute of limitations for prosecution fundamentally prioritizes economic efficiency. The establishment of the statute of limitations for prosecution is intended to conserve judicial resources and costs, allowing old cases to give way to new ones, which is a compromise made by criminal law based on practical resources. As long as the law considers an act to be a crime at the time of commission, prosecution must be pursued to fulfill the criminal law's function of punishing crimes and ensure its effectiveness. The author advocates that prosecution should be conducted by the state with statutory power. As a prerequisite, only by setting the starting and ending points of the statute of limitations without affecting the progress of criminal proceedings can the state ensure its right to pursue criminal prosecution throughout the entire criminal litigation process. This ensures that the criminal prosecution of criminals has legitimate and reasonable grounds. Regarding the issue of the validity of normative documents raised by other scholars, the author believes that the "Reply" is not a judicial interpretation and does not need to be followed. The Supreme People's Court issued the "Regulations on Judicial Interpretation Work" (Fa Fa [2007] No.12) in 2007, Article 6: "The forms of judicial interpretations are divided into interpretation, regulation, approval, and decision..." Furthermore, the premise of judicial interpretations is that there are already relevant provisions in the law, while the Criminal Law does not specify the endpoint of the statute of limitations. Therefore, the "Reply" is not a statutory form of judicial interpretation but a "quasi-judicial interpretation document exceeding authority." Its interpretative power lacks legitimacy due to the lack of legislative and constitutional support, and from a theoretical perspective, it should be considered an overstepping and invalid judicial interpretation, lacking general guiding significance and the effect of mandatory compliance. If the initiation of an investigation is regarded as the endpoint of the statute of limitations, it would improperly set aside Article 88 of the Criminal Law regarding the extension of the statute of limitations. Article 88, Paragraph 1 of the Criminal Law stipulates that after initiating an investigation or accepting a case, one must "avoid evading investigation and prosecution." The "no-filing period" for prosecution does not apply. If the filing of a case is considered the end of the statute of limitations, it would mean that once a case is "investigated" or "accepted," the statute of limitations ceases to run, thus there would be no question of whether an individual has "evaded investigation and

prosecution." This effectively nullifies the exceptions to the statute of limitations. This leads to a situation where, as long as a case is not voluntarily surrendered after filing, it can be pursued indefinitely. If the legislative intent were such, the legislature could have directly stipulated in the Criminal Law that "after the Peoples Procuratorate, public security organs, or state security organs initiate an investigation or after the Peoples Court accepts a case, the no-filing period does not apply," without further elaboration.

5. Conclusion

The issue of criminal prosecution statute of limitations holds a significant position in the legal field, directly impacting the balance between protecting human rights and combating crime under criminal law. This article thoroughly analyzes the relationship between the statute of limitations and legal retroactivity, concluding that the statute of limitations should be regarded as part of procedural law and its application should follow the provisions of new laws. In terms of the specific calculation of the statute of limitations, this article proposes that the period set by Article 87 of the Criminal Law should be taken as the standard, while also considering the suspension of the statute of limitations after the case is filed to safeguard the states right to prosecute in criminal proceedings. The current Criminal Law still requires improvement in its provisions on the statute of limitations, particularly regarding inconsistencies in extending and terminating the statute of limitations.

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