

# Substantive and Procedural Bases of the Statutory Limitation for Criminal Prosecution in the Legislation of Eastern European and Western Asian Countries

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## Summary

The statutory limitation for criminal prosecution is understood differently in various countries in Eastern Europe and Western Asia. These states have individual approaches to the problem, which can be divided into two groups. The first is states that give priority to the substantive basis of the limitation period, such as Armenia, Azerbaijan, Georgia, Kazakhstan, Moldova, the Russian Federation, Turkmenistan, and Ukraine. The second is states that give priority to the procedural bases of the limitation period, namely Bulgaria, Romania and Turkey. These differences have deep theoretical bases. Therefore, the abovementioned classification must be kept in mind when sharing the experiences of different countries in this area of law.

## 1. Introduction

The concept of statutory limitation<sup>1</sup> has been known in the criminal law for a long time. The criminal codes of many states include provisions on this concept. Despite this, many issues concerning statutory limitation are solved differently in various countries. This is due to the absence of a unified approach. What are the approaches that may exist in connection with this single concept? What can be the bases of different legislative regulation of a single concept? This research will answer these questions.

This article studies the reflection of the procedural and substantive bases of the statutory limitation on criminal prosecution in the legislation of different countries. Sharing the experience of neighbouring states is important for the development of national legislation. The comparison of legal norms on limitations helps to make it clear whether the national legislation is developing in the appropriate direction. In this article, the legislation of eleven Eastern European and Western Asian countries will be discussed; Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan, Moldova, Romania, the Russian Federation, Turkey, Turkmenistan and Ukraine.

The purpose of the article is to find some common and distinctive features of the statutory limitation on criminal prosecution in different legal systems and to analyse the differences by using comparative research. This will be useful for the development of national legislation in any particular country. It will also help to harmonize the different legal systems and thus enhance the sharing of each other's experiences.

## 2. The Place of the Statutory Limitation for Criminal Prosecution in the Criminal Code

Statutory limitation on criminal prosecution is the result of the expiration of a time period provided by a criminal code, which causes the release of a person from criminal prosecution and from being held

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<sup>1</sup> It should be noted that in the legislation of some states the term "prescription" is used, while in others "limitation" is preferred. In order to avoid misunderstanding, in this work, both terms are regarded as synonyms, and the term "limitation" is used for a single-sided approach. Therefore, those who use the term "prescription" should note that in this work "prescription" means "limitation", and where "limitation" is used "prescription" shall be understood.

responsible for a particular crime. There is no consensus among scholars whether this limitation is a procedural or substantive concept. Scholars provide various theories about the procedural or substantive nature of the statutory limitation, about the relationship of procedural and substantive elements,<sup>2</sup> and the necessity and justification of the limitation.<sup>3</sup> Furthermore, the controversy on these issues is obvious on a legislative level. The legislation of some countries supports substantive bases of the limitation, expressed in connection with substantive concepts of responsibility and the release from responsibility. Other countries support a procedural meaning of limitation which is expressed in the connection of limitation to the procedural concept of prosecution.

The procedural approach, in contrast, is obvious in the Bulgarian and Turkish criminal codes. Namely, the title of chapter 9 of the Bulgarian criminal code, which reflects norms about the limitation, is "Lapse of Penal Prosecution and Punishment Imposed".<sup>4</sup> Therefore, the limitation is referred to as a limitation on penal prosecution.<sup>5</sup> Penal prosecution is a procedural concept. The connection of limitation to the procedural concept of penal prosecution means the acknowledgement of its procedural nature.

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<sup>2</sup> For more details about the procedural and substantive nature of limitation see S. biWia., *xandazmuloba sisxlis samarTalsi*, Tbilisi, gamomc. `universal-~, 2010, pp. 196-199 [BICHIA, S., *Prescription in criminal law*, Tbilisi, Publishing house „Universal“, 2010, 196-199 – in Georgian]; Д. ОРЛОВ, *Теоретико-практические проблемы уголовно-правовой давности*, Владимир, изд.-во ВГПУ, 2007, p. 84 [D. ORLOV, *Theoretical-practical problems of criminal prescription*, Vladimir, 2007, 84 – in Russian]; S. L. CHADWICK, *The disappearing ex post facto clause and reviving time-barred prosecutions*, Southwestern University Law Review, 2000, #30, pp. 200-219; S. ZIMMERMAN, *Strafrechtliche Vergangenheitsaufarbeitung und Verjährung*, Freiburg im Breisgau, Edition Iuscrim, 1997, pp. 35-38 [S. ZIMMERMAN, *Prescription and review of the past*, Freiburg in Breisgau, 1997, 35-38 – in German]; E. RICHARDSON, *Eliminating the limitations of limitations law*, Arizona State Law Journal, 1997, #29, p. 1028; C. R. M. STANTON, *Implementing the Uniform Conflict of Laws-Limitations Act in Washington*, Washington Law Review, 1996, #71, pp. 871-899; L. COOPER., *Statutes of limitations in Minnesota choice of law: the problematic return to the substance-procedural distinction*, Minnesota Law Review, 1986, #71, pp. 363-391; М. МШВЕНИЕРАДЗЕ, *Институт давности в советском уголовном праве*, Тбилиси, изд. «Сабчота Сакартвело», 1970, pp. 35-63 [M. MSHVENIERADZE, *Statutory Limitation in Soviet Criminal Law*, Tbilisi, publishin house „Sabchota saqartvelo“, 1970, pp.35-63 – in Russian] ; M. PAWLOWSKI, *Der Stand der rechtlichen Diskussion in der Frage der strafrechtlichen Verjährung*, NJW, 1969, pp. 594-595 [M. PAWLOWSKI, *Juridical discussion of limitation in criminal law*, NJW, 1969, pp. 594-595]; E. JANTSCH, *Das strafrechtliche Verjährungsproblem*, DRiZ, 1968, pp. 196-200 [E. JANTSCH, *The problem of limitation in criminal law*, DRiZ, 1968, pp. 196-200]; A. ARNDT, *Zum problem der strafrechtlichen Verjährung*, JZ, 1965, pp. 145-149 [A. ARNDT, *Problems, connected to the statutory limitation in Criminal Law*, JZ, 1965, pp. 145-149 – in German]; В. САБЛЕР, *О значении давности въ уголовномъ правъ*, Москва, 1872, 112-142 [V. SABLER, *Importance of the statutory limitation in Crimina Law*, Moscow, 1872, pp. 112-142 – in Russian].

<sup>3</sup> For more details on the justification of limitation, see S. biWia., *xandazmulobis legitimaciis safuZveli sisxlis samarTalsi*, *Jurn. `samarTlis Jurnal-~, Tbilisis saxelmwifo universiteti*, 2010, #1-2, pp. 189-206, [BICHIA, S., *Base of legitimation of limitation in criminal law*, Tbilisi state university journal of law, 2010, #1-2, 189-208 – in Georgian] with a short summary in English, [http://www.law.tsu.edu.ge/files/Publications/Samartlis\\_Jurnali\\_2010\\_1\\_2.pdf](http://www.law.tsu.edu.ge/files/Publications/Samartlis_Jurnali_2010_1_2.pdf); ORLOV, *op. cit.*, n 2, p. 180; Y. LISTOKYN, *Efficient time bars: a new rationale for the existence of statutes of limitations in criminal law*, Journal of Legal Studies, University of Chicago, 2002, #31, pp. 99-102; X. АЛИКПЕРОВ, *Освобождение от уголовной ответственности в связи с истечением сроков давности*, Журнал "Законность", 1999, №8, p. 13 [X. ALIKPEROV, *Release from criminal responsibility because of expiration of limitation periods*, Journal "Zakonnost", 1999, №8, 13 – in Russian]; ZIMMERMAN, *op. cit.*, note 2, 48; T. OCHOA and A. WISTRICH, *The puzzling purposes of statutes of limitation*, Pacific Law Journal, 1997, #28, p. 493; A. ADLESHTAIN, *Conflict of the criminal statute of limitations with lesser offenses at trial*, William & Mary Law Review, 1995, p. 265; MSHVENIERADZE, *op. cit.*, n 2, pp. 63-77; SABLER, *op. cit.*, note 2, pp. 150-175

<sup>4</sup> Глава 9, Българският наказателен кодекс, в сила от 01 май, 1968, в версия от 23 декември, 1998, [http://www.vks.bg/vks\\_p04\\_04.htm](http://www.vks.bg/vks_p04_04.htm); Глава 9, Уголовный кодекс Республики Болгария, в силе с 01 мая, 1968, редакция 23 декабря, 1998 see: <http://law.edu.ru/norm/norm.asp?normID=1245689&subID=100109090,100109257,100109267,100109819#text>; Chapter 9, Bulgarian Penal Code, in force since 1 May 1968, 23 December 1998 edition; [http://www.mvr.bg/NR/rdonlyres/330B548F-7504-433A-BE65-5686B7D7FCBB/0/04\\_Penal\\_Code\\_EN.pdf](http://www.mvr.bg/NR/rdonlyres/330B548F-7504-433A-BE65-5686B7D7FCBB/0/04_Penal_Code_EN.pdf);

<sup>5</sup> *ibid.*, art. 80, part 3.

Chapter 3, section 4, of the Turkish Criminal Code contains the statutory limitation and is titled “Dismissal of Public Action and Vacation of Punishment”.<sup>6</sup> Here, the limitation is titled “limitation on public actions of the state”.<sup>7</sup> The connection of limitation to the public action expresses a procedural approach.

In these countries, the legitimacy and purpose of the limitation is connected with the activity of the state in the investigation process, but not with any process of change regarding the crime already committed or in the personality of the alleged criminal over the passage of time, as it is in the countries with a substantive approach to this subject.

Unlike Bulgaria and Turkey, other countries place the limitation in a chapter of the Criminal Code titled “Release from Responsibility”. Responsibility is thus treated as a concept of substantive law, i.e., these countries express a substantive foundation of the limitation. In the substantive approach, the legitimacy of the limitation is connected to the concept of criminal responsibility; the release from responsibility, the purpose of responsibility, the disappearance of the necessity of the responsibility, the achievement of the aims of responsibility,<sup>8</sup> the nature of the crime, the loss of the distinct signs of the crime, and changes in the personality of the criminal.<sup>9</sup> The procedural approach gives priority to the impossibility and pointlessness of the investigation, the avoidance of public expense, the loss of the evidence, etc.<sup>10</sup>

### 3. The Deadline of Limitation

The deadline of limitation is the moment when statutory limitation period ends running. This happens by expiration of the statutory limitation period, or by occurrence of certain juridical fact. This juridical fact is

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<sup>6</sup> See dördüncü bölüm, Türk Ceza Kanunu, 26 Eylül, 2004, <http://www.tbmm.gov.tr/kanunlar/k5237.html>; Fourth section, Criminal Code of the Republic of Turkey, 26 September, 2004, <http://legislationline.org/documents/action/popup/id/6872/preview>

<sup>7</sup> *ibid.*, art. 66.

<sup>8</sup> See ORLOV, *op. cit.*, note 2; MSHVENIERADZE, *op. cit.*, note 2; G. GRÜNWARD, *Zur Frage des Ruhens der Verjährung von DDR-Straftaten*, StV, 1992, pp. 333-338 [G. GRUNVALD, *About the suspension of the limitation of the crimes, committed in GDR*, StV, 1992, pp. 333-338 – in German]; R. BLOY, *Die dogmatische Bedeutung der Strafausschliessungs- und Strafaufhebungsgründe*, Duncker & Humblot, Berlin, 1976, p. 187 [R. BLOY, *Dogmatical essence of the circumstances of excluding the penalty or releasing from the penalty*, Duncker & Humblot, Berlin, 1976, p. 187 – in German].

<sup>9</sup> See OCHOA and WISTRICH, *op. cit.*, note 2; ADLESHEIN, *op. cit.*, note 2; В. СКИБИЦКИЙ, *Освобождение от уголовной ответственности и отбывания наказания*, Киев, 1987, p. 90 [V. SKIBICKY, *Release from criminal responsibility and penalty execution*, Kiev, 1987, p. 90 – in Russian]; С. ЗЕЛЬДОВ, *Соотношение сроков давности привлечения к уголовной ответственности и погашение судимости*, «Советская Юстиция», 1967, 12, p. 8 [S. ZELDOV, *Comparison of period of limitation for criminal prosecution to the period of former conviction*, Journal „Soviet Justice“, 1967, 12, p. 8 – in Russian]; Н. ДУРМАНОВ, *Освобождение от наказания по советскому праву*, Москва, 1957, p. 25 [N. DURMANOV, *Release from penalty execution in Soviet Law*, Moscow, 1957, p. 25 – in Russian]; И. СЛУЦКИЙ, *Обстоятельства, исключающие уголовную ответственность*, изд. ЛГУ, 1956, p. 11 [I. SLUCKY, *Circumstances that excludes criminal responsibility*, publ. LSU, 1956, p. 11 – in Russian]; M. LORENZ, *Die Verjährung in der deutschen Strafgesetzgebung*, Munich and Berlin, Verlag C. H. Beck, 1955, p. 56 [M. LORENZ, *Statutory limitation in German Criminal Code*, Munich and Berlin publ. C.H.Beck, 1955, p. 56 – in German]

<sup>10</sup> See P. KÖNIG, *Zur Verfolgungsverjährung von SED-unrechtstaten*, NStZ, 1991, pp. 566-571 [P. KONIG, *Limitation of criminal prosecution for crimes, committed in the period of SED-regime*, NStZ, 1991, pp. 566-571 – in German]; ARNDT, *op. cit.*, note 1; G. BEMMANN, *Zur frage der nachträglichen Verlängerung der Strafverfolgungsverjährung*, JuS, 1965, pp. 333-340 [G. Beman, *The problem of the prolongation of the limitation of criminal prosecution*, JuS, 1965, pp. 333-340 – in German]; U. KLUG, *Die Verpflichtung des Rechtsstaats zur Verjährungsverlängerung*, JZ, 1965, pp. 149-153 [U. KLUG, *Obligation of the constitutaional state relating to the prolongation of the limitation of criminal prosecution*, JZ, 1965, pp. 149-153 – in German]; F. CALVELLI-ADORNO, *Die Verlängerung der Verjährungsfrist für die Strafverfolgung von Verbrechen, die mit lebenslangem Zuchthaus bedroht sind*, NJW, 1965, pp. 273-276 [F. CALVELLI-ADORNO, *Prolongation of the limitation of criminal prosecution for the crimes, that can be punished with life imprisonment*, NJW, 1965, pp. 273-276 – in German]

a procedural act which ends the running of the statutory limitation period before its expiration date. Occurrence of this juridical fact excludes the continuation or restart of the limitation period. Within the scope of this article the deadline of limitation is understood as ending of period of limitation by juridical fact. The concept of deadline of the limitation period differs from the concepts of suspension and interruption of the limitation period. The problem is to indicate which of the following procedural acts may be considered as a deadline of the limitation period: beginning of an investigation, initiation of the prosecution, delivery of the case to the court, pronouncement of the verdict by the court of first instance, entry of the verdict into force etc. Indication as a deadline on some of these procedural acts expresses the procedural approach to the concept of the limitation, while others are compatible with the substantive approach to the limitation.

Notwithstanding the acknowledgement of the substantive meaning of the statutory limitation, the preference for its procedural nature is visible in Article 71, part 2, of the Georgian Criminal Code, according to which “the time period of the limitation shall cover the period from the day of wrongdoing to the initiation of prosecution”.<sup>11</sup> Of course, the avoidance of a prosecution also causes the avoidance of criminal responsibility, but the prosecution itself does not yet mean that the responsibility is already imposed. Criminal responsibility is the result of a crime. The commission of a crime by the accused must be established by a court. Until that moment, the presumption of innocence is in force.<sup>12</sup> That is why criminal responsibility can be imposed only by a court’s verdict of guilty. Therefore, criminal responsibility can still be avoided after the initiation of prosecution if the accused is acquitted or the prosecution is withdrawn.

Therefore, consideration of the initiation of a prosecution as a deadline of the limitation period denies any substantive sense to the limitation and gives it a fully procedural meaning. The placement of the statutory limitation in the chapter on release from responsibility<sup>13</sup> does not give it a substantive nature and cannot conceal the obvious domination of the procedural approach. However, according to Article 71, part 3, of the Georgian Criminal Code, “running of the limitation period shall be suspended if the criminal escapes from the investigation or the court. In such cases, the running of the period shall be resumed upon the apprehension or the appearance of the criminal in the court with a confession of guilt.” According to Article 167, part 1, and Article 170, part 2, of the Georgian Criminal Procedure Code, after apprehension a suspect is given the procedural status of an accused; simultaneously, the charge is brought, and the prosecution begins.<sup>14</sup> This means that, according to Article 71, part 3, of the Georgian Criminal Code, the period of limitation continues to run after the initiation of a criminal prosecution.

Therefore, after the systematic analysis of Article 71, parts 2 and 3, of the Georgian Criminal Code, it is possible to draw the conclusion that the term of the limitation period generally runs until the bringing of charges against a person. This means that the initiation of prosecution is precluded after the expiration of the limitation period but, if the prosecution is initiated within the limitation period, the term continues to run. Because the statutory limitation in the Georgian Criminal Code is a circumstance that releases the

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<sup>11</sup> saqarTvelos sisxlis samarTlis kodeqsis 71-e muxlis me-2 nawilis 1999 wlis 22 ivლის რედაქცია, <http://www.parliament.ge/special/kan/files/673.pdf>; 2000 wlis 30 maisis cvlileba, [http://www.parliament.ge/index.php?lang\\_id=GEO&sec\\_id=69&kan\\_det=det&kan\\_id=677](http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=677); Criminal Code of Georgia, art. 71, part 2, 22 July 1999, amended 30 May 2000; [http://www.humanrights.ge/files/code\\_criminal\\_genpart.pdf](http://www.humanrights.ge/files/code_criminal_genpart.pdf)

<sup>12</sup> me-5 muxlis pirveli nawili, saqarTvelos sisxlis samarTlis saprocso kodeqsi, 10 setemberi, 2009, [Art. 5, part 1 of Georgian Criminal Procedure Code, 10 September, 2009 – in Georgian] [http://www.parliament.ge/index.php?lang\\_id=GEO&sec\\_id=69&kan\\_det=det&kan\\_id=3792](http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=3792)

<sup>13</sup> *op. cit.*, note 11, chapter 13.

<sup>14</sup> *op. cit.*, note 12, art. 167, 170.

accused from criminal responsibility, it makes sense for the limitation period to run until the moment when the release from (avoidance of) criminal responsibility becomes impossible. Therefore, it is logical to consider that, according to the Georgian Criminal Code, the limitation period runs until the verdict of guilty enters into force. However, it is also true that the formulation of Article 71, part 2, of the Georgian Criminal Code makes it difficult to conclude this. Thus, it is better to formulate the idea of this norm differently; for instance, “a person may not be charged after the expiration of the limitation period. Furthermore, the period of the limitation runs until the verdict of guilty enters into force.” Nevertheless, with the help of a systematic analysis of Article 71, the judge can draw such a conclusion even without this amendment to the Code.<sup>15</sup> The criminal codes of Azerbaijan,<sup>16</sup> Armenia,<sup>17</sup> the Russian Federation,<sup>18</sup> Kazakhstan,<sup>19</sup> Turkmenistan,<sup>20</sup> Ukraine<sup>21</sup> and Moldova<sup>22</sup> count the limitation period as running from the moment a crime is committed to the moment when the verdict enters into force.

The Criminal Codes of these countries do not specify what kind of verdict is considered as a deadline of the limitation period: only verdict of guilty or the acquittal too. But according to relevant articles of their Criminal Procedure Codes the acquittal does not end the running of the limitation period because within the remained limitation period it is possible to revise the Judgment, renew the prosecution against the acquitted person and pronounce him/her guilty because of the newly revealed circumstances that proves a guilt of the person. That’s why limitation period continues to run after acquittal till the expiration of the limitation period or till the verdict of guilty enters into force.

It must be explained that in some of the countries verdict enters into force immediately after the Judge pronounces it, but in the others – only after the moment when the verdict becomes final. Verdict becomes final when the time-period given for filing an appeal expires and the judgment is not appealed. If the appeal is filed than the decision won’t enter into force and it will be changed by the decision of the appeals court or the cassation court.

As for the Criminal Codes of Bulgaria, Romania and Turkey, there are no special provisions about the deadline of the limitation period, but it is possible to infer a solution to this problem. For example,

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<sup>15</sup> See S. BICHIA, *Purpose of initiating criminal prosecution during the statute of limitations period*, *Legal Journal of Judges Association of Georgia*. “Justice and Law”, 2009, 1, 72-91, in Georgian and English.

<sup>16</sup> See Madda 75.2, Azərbaycan Respublikasının Cinayət Məcəlləsi, 31 yanvar, 2005, <http://genprosecutor.gov.az/?az/content/58/>; статья 75.2, Уголовный Кодекс Азербайджанской Республики, 31 январь, 2005, <http://www.legislationline.org/ru/documents/section/criminal-codes>; art. 75, part 2, Criminal Code of the Republic of Azerbaijan, 31 January 2005:

<http://www.legislationline.org/download/action/download/id/1658/file/4b3ff87c005675cfd74058077132.htm/preview>

<sup>17</sup> See art. 75, part 2, Criminal Code of the Republic of Armenia, 18 April 2003, in Armenian, English and French, at <http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=rus>

<sup>18</sup> See статья 78.2, Уголовный кодекс Российской Федерации, 24 май, 1996, <http://duma.consultant.ru/page.aspx?8550;1156455>; art. 78, part 2, Criminal Code of the Russian Federation, 24 May 1996, <http://www.russian-criminal-code.com/PartI/SectionIV/Chapter11.html>

<sup>19</sup> See статья 69.2, Уголовный кодекс Республики Казахстан, 16 июль, 1997, редакция 18 января, 2011, [Art. 69.2 of Kazakh Criminal Code, 16 July, 1997, edition of 18 January, 2011 – in Russian], [http://online.prg.kz/Document/Default.aspx?doc\\_id=1008032](http://online.prg.kz/Document/Default.aspx?doc_id=1008032)

<sup>20</sup> See статья 74.2, Уголовный кодекс Туркменистана, 12 июнь, 1997, [Art. 74.2 of Turkmenistan Criminal Code, 12 June, 1997 – in Russian], <http://www.Republic of Turkmenistan.gov.tm/ru/laws/?laws=01go>

<sup>21</sup> See Стаття 49.1, Кримінальний кодекс України, 01 Вересень, 2001, <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2341-14>; Статя 49.1, Уголовный кодекс Украины, 01 сентябрь, 2001, <http://meget.kiev.ua/kodeks/ugolovniy-kodeks/razdel-9/>; art. 49.1, Criminal Code of the Ukraine, 1 September 2001, <http://www.legislationline.org/download/action/download/id/1710/file/e7cc32551f671cc10183dac480fe.htm/preview>

<sup>22</sup> See статья 60.2, Уголовный Кодекс Республики Молдова, 18 April 2002: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=331268&lang=2>; art. 60.2, Criminal Code of the Republic of Moldova, 18 April 2002, <http://www.legislationline.org/documents/section/criminal-codes/country/14>

Chapter 7 of the Romanian Criminal Code, where the norm on the limitation is located, is titled “The Causes of Elimination of Criminal Responsibility”.<sup>23</sup> It should be doubtless that the avoidance of criminal responsibility is possible at any moment until a verdict of guilty comes into force. This is demonstrated by the fact that Article 158 of the Romanian Criminal Code foresees the withdrawal of the complaint in special cases as one of the circumstances that eliminates criminal responsibility. The withdrawal of the complaint is allowed at any moment until the final judicial decision is made.<sup>24</sup> The absence of a special provision on the deadline of the limitation period, the placement of the limitation provisions in the chapter on release from criminal responsibility, and the possibility of release from responsibility at any moment until the verdict of guilty enters into force, logically lead to the conclusion that the period of limitation runs until the verdict of guilty is delivered.

This conclusion is compatible with Articles 155 and 156 of the Romanian Criminal Code, according to which any procedural act interrupts the running of the limitation period, and if it is impossible to initiate or continue procedural actions because of a legal provision or *force majeure*, the running of the limitation period shall be suspended. According to Article 14 of Romanian Criminal Procedure Code, procedural actions begin with an act of accusation and last throughout the entire criminal procedure.<sup>25</sup> Article 16, part 1(f) of the Criminal Procedure Code, which provides that the prosecution should not begin after the expiration of the limitation period, but if the prosecution begins, the limitation period should be interrupted,<sup>26</sup> also strengthens the abovementioned conclusion. Finally, after conducting a systematic analysis of Chapter 7 of the Romanian Criminal Code, as well as the norms of the Criminal Code and the Criminal Procedure Code, it can be concluded that the limitation period, the expiry of which eliminates criminal responsibility, should run until the verdict of guilty is delivered.

As for Bulgaria, Chapter 9 of the Criminal Code where the norms on limitation are reflected is titled “Lapse of Penal Prosecution and Imposed Punishment”.<sup>27</sup> According to Article 79 of the Criminal Code of Bulgaria, the expiration of the limitation period prevents criminal prosecution. According to Article 80, the prosecution should not start if it had not been started before the expiration of the limitation period. According to these articles, it can be concluded that the period of limitation runs until the initiation of the prosecution, but Article 81 indicates that the running of the term is suspended when the beginning or continuation of the prosecution depends on the solution of some preliminary issues by a judicial act that has entered into force.<sup>28</sup> The words “or continuation” in this article mean that the term of limitation may be suspended after the initiation of prosecution, i.e., the limitation period continues to run after the initiation of the prosecution. According to the same article, the limitation period is interrupted by any act of respective bodies, undertaken for the purposes of prosecution of the person accused.

Even though the Bulgarian Criminal Code and Criminal Procedure Code do not offer a definition of criminal prosecution, criminal prosecution should be considered as unified multi-procedural actions against an alleged criminal. Procedural actions against the alleged criminal are possible only after the establishment of a connection between this person and the act that is under investigation. After this moment, the person is accorded a procedural status, that of the accused (Article 54 of the Bulgarian

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<sup>23</sup> Titul 7, Codul Penal al Romaniei, 24 iulie, 2009 [Chapter 7 of Romanian Criminal Code, 24 July, 2009 – in Romanian]: [http://www.just.ro/Portals/0/Right\\_Panel/Codul%20Penal/0510.pdf](http://www.just.ro/Portals/0/Right_Panel/Codul%20Penal/0510.pdf)

<sup>24</sup> *ibid.*, art. 158.

<sup>25</sup> articole 14, Codul de Procedura Penala al Romaniei, 01 July, 2010 [Art. 14 of Romanian Criminal Procedure Code, 01 July, 2010 – in Romanian]: <http://www.cameramures.com/ CPP.pdf>

<sup>26</sup> *ibid.*, art. 16, part 1 (f).

<sup>27</sup> *op. cit.*, note 4.

<sup>28</sup> *ibid.*, art. 79-81.

Criminal Procedure Code).<sup>29</sup> Therefore, by juridical sense, procedural actions against a concrete person begin after his accusation, and from this moment a criminal prosecution should also start.

Finally, the following conclusion can be drawn: according to Articles 79 and 80 of the Bulgarian Criminal Code, the expiration of the limitation period prevents the initiation of prosecution, but if the prosecution has already begun then, according to Article 81, parts 1 and 2, the term continues to run, although it can be suspended or interrupted by procedural acts. Because procedural acts against the accused are possible until the verdict of guilty enters into force, the interruption of the limitation period must also be possible at any time until this moment; i.e., the limitation period runs until the verdict of guilty comes into force.

As for Turkey, according to Article 66 of the Turkish Criminal Code, after the period of limitation has expired, a public complaint cannot be brought in the court but, according to Article 67 of the same code, the limitation is interrupted by; bringing the accused before the court, arrest, indictment and conviction. If the conviction interrupts the running of the limitation period, this means that the term has been running up to this moment. Therefore, based on Article 67, it can be concluded that the limitation period runs beyond the moment of the initiation of prosecution.<sup>30</sup> According to Article 66 of the Turkish Criminal Code, the limitation is termed “the limitation on public actions of the state”. According to the first part of Article 275 of the Turkish Criminal Procedure Code, an appeal against the verdict of guilty hinders the finality of the verdict. This means that proceedings still continue after the sentence has been passed in the court.<sup>31</sup> As is obvious, in Turkey the limitation period should last until the final judgment of conviction enters into force.

The duration of the limitation period up to the moment when the verdict of guilty enters into force highlights the substantive nature of a statutory limitation because the imposition of responsibility can be made only by the verdict of guilty, and at any time before this moment the avoidance of responsibility is possible. The imposition of responsibility is a notion of substantive law, while the statutory limitation is the means to avoid such responsibility. The same conclusion can be drawn after considering the problem of the deadline of the limitation period in the Criminal Codes of Turkey and Bulgaria notwithstanding their procedural approach. On the other hand, the same circumstance also acknowledges the procedural meaning of the limitation, because criminal procedures take place until the verdict of guilty, and the limitation affects procedural actions. This means that the running of the limitation period up to the moment of the verdict of guilty simultaneously expresses both natures of the limitation: the procedural and the substantive, while the flow of the limitation period until the indictment expresses only the procedural approach. Therefore, it can be said that to balance both fundamentals of the limitation, it is necessary to attach the deadline of the limitation period to the final verdict of guilty.

#### 4. Interruption of the Limitation Period

Interruption of the Limitation period means that running of the limitation period is stopped by definite juridical fact so that the period of limitation begins to run again from the date when that juridical fact took place.

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<sup>29</sup> See член 54, Наказателно-процесуалния кодекс на България, 29 април, 2006, <http://lex.bg/laws/ldoc/2135512224> ; art. 54, Criminal Procedure Code of the Republic of Bulgaria, 29 April 2006, [http://www.mjeli.government.bg/Npk/docs/CRIMINAL\\_PROCEDURE\\_CODE.pdf](http://www.mjeli.government.bg/Npk/docs/CRIMINAL_PROCEDURE_CODE.pdf)

<sup>30</sup> *op. cit.*, note 6, art. 66-67; madde 8, Türk Ceza Kanununda Değişiklik Yapılmasına Dair Kanun, 29 haziran, 2005, <http://www.tbmm.gov.tr/kanunlar/k5377.html>; art. 66-67, Criminal Code of the Republic of Turkey, <http://legislationline.org/documents/action/popup/id/6872/preview> (note: art. 66(5) was amended on 29 June 2005).

<sup>31</sup> See madde 275, Ceza muhakemesi kanunu, 04 Aralık, 2004, <http://www.tbmm.gov.tr/kanunlar/k5271.html>; art. 275, Criminal Procedure Code of Turkey, 4 December 2004, in Turkish and English: <http://www.justice.gov.tr/basiclaws/cmkk.pdf>

The substantive and procedural approaches are mostly expressed in the regulations of the interruption of limitation. Namely, the criminal codes of Bulgaria, Romania and Turkey indicate that procedural acts are the circumstances that interrupt the limitation period. For instance, according to Article 67 of the Turkish Criminal Code, the limitation period is interrupted by bringing an accused or suspect to court to give a statement or to be interrogated. It is also interrupted by an order for detention, an indictment that is related to the committed offence, or a conviction.<sup>32</sup> According to Article 81 of the Bulgarian Criminal Code, the limitation period is interrupted by any act of the relevant body undertaken for prosecution purposes and in respect of a person against whom the prosecution is directed<sup>33</sup> and, according to Article 155 of the Romanian Criminal Code, by any procedural action.<sup>34</sup> Providing these circumstances as the reasons for interruption of the limitation period is based on the opinion that, by using these measures, the state expresses a will to investigate, becomes active, and begins concrete actions to reveal the perpetrator of a crime. If the limitation is a concept that indicates the inactivity of the state, and a time that is given to the state to start active actions, then it is logical to conclude that procedural acts interrupt the running of the limitation period.

The states that share substantive bases of limitation do not connect the interruption of the period to the state's activity in the investigation process, but to the actions of the person under investigation, namely, to the commission of any further offence by him or her. For instance, according to the Criminal Codes of Armenia and Ukraine, the running of the limitation period is interrupted by the alleged criminal committing a new crime of medium gravity, or a serious or a grave crime.<sup>35</sup> According to the Moldavian Criminal Code, it is by committing a new crime that can be punished by deprivation of liberty for more than two years.<sup>36</sup> According to the Kazakh Criminal Code, it is by committing any new crime by a person who has already committed a serious or a grave crime,<sup>37</sup> if a commission of both – new and previous crimes will be proved in the court hearing.

The different approaches to the gravity of the new crime in different countries are not important because all of them are based on the same principle: the reason for the elimination of criminal responsibility after the expiration of the limitation period is a presumption of positive changes within the person who has allegedly committed a crime. Committing a new crime indicates the absence of positive changes. Therefore, the running of the limitation period becomes senseless. That is why a new crime interrupts the limitation period. As for the gravity of the new crime, it depends on a state's attitude to what can be considered as the indicator of the absence of positive changes in the personality of the alleged criminal. In practice, the provisions on the measure of gravity of any new crime serve this sole purpose: to solve the issue by taking into account the interests of the alleged criminal. Moreover, it can be considered as granting unjustifiable rights to the alleged criminal. A new crime of any gravity deserves a negative reaction, since it indicates some negative processes going on inside the person. Based on this thinking, the conclusion that a new crime of any gravity should interrupt the limitation period is logical. On the other hand, at the cost of committing less grave crimes, the indication that a new crime is relevant only if it is of a particular gravity can be a good method to prevent crimes of that gravity. This could partially justify the indication of the gravity of a new crime in the legislation.

The Criminal Codes of Azerbaijan, Georgia, the Russian Federation and Turkmenistan do not directly indicate the occasions of interruption of the limitation period. Therefore, it will be legitimate to conclude

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<sup>32</sup> *op. cit.*, note 6, art. 67.

<sup>33</sup> *op. cit.*, note 4, art. 81.

<sup>34</sup> *op. cit.*, note 23, art. 155.

<sup>35</sup> *op. cit.*, note 21, art. 49, part 3; *op. cit.*, note 17, of art. 75, part 3.

<sup>36</sup> *op. cit.*, note 22, art. 60, part 4.

<sup>37</sup> *op. cit.*, note 19, art. 69, part 4.

that they do not consider the interruption of the period. If these countries share the opinion that the reason for the limitation is a presumption about positive changes in a person, then it is difficult to understand why committing a new crime does not interrupt the limitation period. It is obvious that these states, in the consideration of this issue, share the position of those states that think that the period of limitation is not concerned with positive changes within a person; rather, it is the time allowed to the state for investigation purposes. One can say that such a position ignores the criminal law as “the law of the person” and acknowledges it as “the law of actions”. Criminal law truly is a law of actions, but it does not mean that the person should be ignored totally. That is why the courts pay attention to the aggravating or extenuating circumstances that concern the person. Taking into account personal characteristics is correct because criminal responsibility can be imposed on the person, and it must be fair and adequate, and in compliance with the purposes of such responsibility. This is impossible without taking into account the criminal’s personality. Therefore, the total separation of a person from the legal procedure is incorrect, especially in cases of aggregate crimes. In these cases, considering the crimes separately is not an appropriate method for the imposition of a fair measure of criminal responsibility.

After interruption, the limitation period may start running all over again from the interruption date. This is, for sure, the prolongation of the initial term and in cases of interruption several times, the term may be prolonged endlessly. Therefore, the Bulgarian and Romanian Criminal Codes determine an absolute period of the limitation. This is the period after the end of which the prosecution must stop, regardless of whether the running of the limitation period was interrupted or not. The absolute period of the limitation in these countries is an ordinary term plus one half of the period.<sup>38</sup>

From the above, it is obvious that these states do not connect the limitation only to the activity of the authority in investigation process. Otherwise, the existence of an absolute period would be unnecessary. There can be two possible reasons for an absolute term; firstly, considering the interests of the alleged criminal, and secondly, the disappearance of evidence. The first reason means the restriction of the state’s authority in favour of the interest of a person to return to a peaceful life as an ordinary member of society without fearing his or her past,<sup>39</sup> despite the fact that the state expressed a will to investigate the act he or she had committed in the past. This interest implies substantive grounds, but it also means giving a right to lawful actions. If this is so, then it is unclear why the commission of a new crime does not interrupt the running of the limitation period.

The interest of an individual implies living without the fear of punishment because of a past mistake. The state and society are interested in encouraging people not to commit further crimes by influencing them with legislative norms. The failure to commit a new crime for a long period of time raises the supposition that the individual has come to understand the essence of his or her responsibility. This is a positive subjective factor. A new crime, in contrast, indicates the violation of imposed obligations, which is a negative subjective factor. Committing a new crime before the expiration of the absolute period of limitation raises a conflict between public and private interests. When solving this conflict in favour of an individual, the latter must not feel fear about the past because of the expiration of an absolute term of limitation. Granting the priority to the public interest requires that even an absolute limitation period is restarted by the new crime, and the individual must bear criminal responsibility for his or her past crimes. Committing a new crime does not interrupt the limitation period in the states where there is a concept of an absolute limitation period. This means that the subjective factor is considered only in favour of an individual; meanwhile the same factor is never used against them.

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<sup>38</sup> *op. cit.*, note 4, art. 81, part 3; *op. cit.*, note 23, art. 155, part 4.

<sup>39</sup> See ADLESHTEIN, *op. cit.*, note 3.

Now, the other side of the case should be discussed. If the basis of an absolute term is the disappearance of evidence, then why do these terms vary according to the gravity of the crime and not the viability of the evidence? Some of the evidence of a grave crime may exist for longer than the evidence of a minor crime and, although it is prescribed by law, it may still be possible in practice to ascertain the occurrence of a crime after the expiration of the limitation period. Why then do legislators prevent the state from investigating the crime? This question can have two answers. One again concerns the person and the senselessness of the imposition of criminal responsibility; meanwhile, the second is connected to the opinion that the state avoids superfluous expenditure because the benefit of securing a conviction is less than the cost to the state<sup>40</sup> in time, energy, money, etc. The benefit of the conviction is connected to the achievement of special and general preventive aims and this, in turn, means positive changes in the behaviour of the criminal. In addition, an accurate comparison of the benefit of the conviction and the cost to the state is impossible because they involve incomparable components.

The comparison of the criminal codes of different countries shows that the absolute term of the limitation period is activated when the ordinary term of the limitation period is prolonged endlessly because of procedural reasons. In these cases, the absolute term of the limitation period limits the state's authority and precludes the continuation of procedural activity by the state despite the interruption of the limitation period. Therefore, the absolute term of the limitation should be considered as a mechanism restricting the state's authority in favour of the interests of the individual, namely the interest of returning to life as a full member of society without the fear of the past, which has a substantive basis. It is clear now that the existence of an absolute term for the limitation period underlines the substantive basis of this concept.

## 5. Suspension of Limitation

Suspension of Limitation means that a running of the limitation period is stopped by the juridical fact temporarily so that after disappearing of this fact the remaining time-period resumes running.

In every country, the suspension of the limitation period is connected to the impossibility or hindrance of procedural actions. For instance, according to the criminal codes of Azerbaijan,<sup>41</sup> Armenia,<sup>42</sup> Georgia,<sup>43</sup> the Russian Federation,<sup>44</sup> Ukraine,<sup>45</sup> Moldova,<sup>46</sup> Kazakhstan<sup>47</sup> and Turkmenistan,<sup>48</sup> the running of the limitation period is suspended if the accused escapes from investigation or court. Besides, according to the Georgian Criminal Code, the running of the term is also suspended when a person is under the protection of immunity or until the procedures linked to extradition are finalized.<sup>49</sup> In contrast with interruption, the suspension of the term does not cause the restarting of the full term. It stops the running of the term, and the term resumes from the day when the cause of the suspension disappears, for example, from the arrest or appearance in the court with a plea of guilty.

It is not hard to see that suspending the limitation period is connected to hindering the investigation, i.e., it has a procedural basis. Despite this, the suspension of the term can also be justified from a

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<sup>40</sup> see LISTOKYN, *op. cit.*, note 3.

<sup>41</sup> *op. cit.*, note 16, art. 75, part 3.

<sup>42</sup> *op. cit.*, note 17, art. 75, part 4.

<sup>43</sup> *op. cit.*, note 11, art. 71, part 3.

<sup>44</sup> *op. cit.*, note 18, art. 78, part 3.

<sup>45</sup> *op. cit.*, note 21, art.49, part 2.

<sup>46</sup> *op. cit.*, note 22, art. 60, part 5,

<sup>47</sup> *op. cit.*, note 19, art.69, part 3.

<sup>48</sup> *op. cit.*, note 20, art. 74, part 3,

<sup>49</sup> *op. cit.*, note 11, art. 71, part 6; also part 7 of the same article, amendment of 24 September 2010, [http://www.parliament.ge/index.php?lang\\_id=GEO&sec\\_id=69&kan\\_det=det&kan\\_id=4353](http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=4353)

substantive basis. For example, looking closely at the criminal codes of the abovementioned countries, it is clear that the limitation period is suspended by circumstances hindering the investigation that are caused by the suspect/accused person, e.g., hiding away from the investigators or failing to appear in court. In other words, the limitation period is suspended when a person hinders the investigation. This approach to the suspension of the limitation can be explained in the following way: because the limitation is a time period for observing positive changes within a person and giving him or her a chance to demonstrate these changes, it become questionable after this person has willfully hindered the investigation. Therefore, the limitation period should be suspended in such cases.

Contrary to this, the Bulgarian, Romanian and Turkish Criminal Codes indicate that the limitation is suspended by circumstances that hinder the investigation whether it is caused by the act of a person or not. Such circumstances, according to the Criminal Code of Turkey, can be the seeking of permission, a decision or the solution of an issue by another authority, or the abatement of the status of fugitive.<sup>50</sup> According to the Criminal Code of Romania this is by hindering the initiation or continuation of the investigation or court trial by a legal provision, or compulsive or unforeseen circumstances.<sup>51</sup> According to the Bulgarian Criminal Code, it is the necessity of solving some preliminary issues with a judicial decision upon which the beginning or continuation of a criminal prosecution depends.<sup>52</sup> This position can be justified in the following way: in these states, the limitation period is the time given to the state to conduct certain activities. Therefore, the impossibility of the state acting due to some objective circumstances that do not depend on the state's will must cause the suspension of the limitation period.

It is an interesting fact that some states determine absolute terms of limitation in the case of suspension of the term. For instance, in Armenia in cases of minor crimes and crimes of medium gravity, the absolute term of limitation is 10 years, and 20 years in cases of serious and grave crimes, with the condition that the limitation period is not interrupted by the commission of a new crime.<sup>53</sup> The Criminal Code of Kazakhstan indicates a common absolute term of 25 years with the same condition.<sup>54</sup> The absolute term of limitation in Moldova is 25 years with the same condition.<sup>55</sup> The absolute term of limitation in Ukraine is 15 years.<sup>56</sup>

In contrast to Romania, the abovementioned countries do not connect the absolute term of the limitation period to its interruption, but to its suspension. This must be explained by substantive grounds, namely, by giving priority to the interests of the suspect/accused person. The suspicion of the absence of positive changes in a person over a long time must be ended finally by the confirmation or rejection of such suspicion. Here, the absence of a new crime is the most important factor. The failure to commit any new crime during the absolute term of the limitation period is taken into account by the state as a reason to reject its suspicion and, despite the fact that this may hinder the investigation process, this becomes a mechanism to resolve the case in favour of the suspect/accused.

The condition of absence of a new crime in the criminal codes of Armenia, Kazakhstan and Moldova should be understood this way. Therefore, the suspicion of the absence of positive changes in a person, according to the abovementioned codes, can be abrogated by the eradication of the circumstances hindering the investigation. In this case, it is problematic to justify the detention of an accused against his will as a circumstance of disappearance of suspicion, but there is a way to solve this problem.

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<sup>50</sup> *op. cit.*, note 6, art. 67, part 1.

<sup>51</sup> *op. cit.*, note 23, art. 156.

<sup>52</sup> *op. cit.*, note 4, art. 81 part 1.

<sup>53</sup> *op. cit.*, note 17, art. 75 part 4.

<sup>54</sup> *op. cit.*, note 19, art. 69 part 3.

<sup>55</sup> *op. cit.*, note 22, art.60 part 5.

<sup>56</sup> *op. cit.*, note 21, art. 49 part 2.

Namely, because the action of an accused does not hinder the investigation, and because the state has the opportunity to undertake a full investigation, that is, the state is not hindered from realizing its authority fully, the issue is solved in favour of an accused. It must also be noted that the absolute term of the limitation in cases of both the interruption or suspension of the term gives priority to the interest of the individual prior to the interest of the state.

The Criminal Code of Bulgaria must be discussed separately. According to this statute, the absolute term of the limitation runs in both cases: the interruption and the suspension of the term where the absolute term exceeds the ordinary one by half.<sup>57</sup> It can be said that the absolute term of limitation generally is a mechanism to defend the interests of an individual prior to those of the state. Therefore, it is logical to end an indefinite process of investigation when the interruption or suspension of the limitation is not caused by the action of the suspect/accused.

## 6. Conclusion

Comparative analysis of the criminal codes of certain Eastern European and Western Asian countries show that the statutory limitation has a substantive-procedural nature, but the substantive and procedural elements are indicated through different combinations in different countries. Some legislation gives obvious priority to the procedural approach, while others, on the contrary, give priority to substantive elements. In general, neither approach will cause any problem if each concept and institution is understood properly before its dogmatic regulation.

Concerned with the wrongdoer, a fully substantive approach requires the disappearance of a concept of suspension of the limitation period. It requires also the interruption of the limitation period by a new crime, the continuation of running of the limitation period until the imposition of criminal responsibility, i.e., until the verdict of guilty enters into force. Because none of the states discussed in the article matches the listed requirements in full, it can be said that none of them promotes a fully substantive approach to the limitation.

A completely procedural approach requires that the length of the limitation period should not be set according to the gravity of the crime. It also requires no absolute period of limitation, seeing the limitation as a circumstance that precludes the initiation of procedural actions by the state. The limitation period runs until the initiation of procedural actions, but if it continues until a verdict of guilty is delivered, then each procedural action must interrupt the running of the limitation period. Moreover, if procedural actions are hindered, this must cause the suspension of the limitation period. Because none of the states discussed in the article matches the listed requirements fully, it can be said that none of them promotes a completely procedural approach to the limitation either.

As a result, it can be concluded that a more procedural approach is visible in Bulgaria, Romania and Turkey. On the other hand, a more substantive approach is visible in Armenia, Azerbaijan, Georgia, Kazakhstan Moldova, the Russian Federation, Turkmenistan and Ukraine. It must be said that Azerbaijan, Georgia, the Russian Federation and Turkmenistan basically promote a substantive approach to the issues of the statutory limitation, but at the same time they regulate some issues connected to the limitation with a more procedural approach.

This division must be helpful in the process of countries sharing their experiences because it helps to show which legal systems are closer to each other. Simultaneous procedural and substantive approaches to the limitation are acceptable but, in such a case, different approaches must be optimally harmonized to avoid artificial confrontation between the issues concerning the limitation. Sharing the

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<sup>57</sup> *op. cit.*, note 4, art. 81, part 3.

experiences of foreign countries is necessary, but the bases of each issue must be understood in depth and compared with the direction of legislative development in the home country before their implementation is fulfilled in domestic legislation.