

Section 5: Statutory Limitations

Article 9: Statutory Limitations for Criminal Prosecution

Except as otherwise provided for in Articles 10–12, the prosecution of a criminal offense is barred after the following periods have elapsed:

- (a) thirty years in the case of a criminal offense for which a maximum penalty of thirty years or life imprisonment is prescribed;
- (b) twenty-five years in the case of a criminal offense for which a maximum penalty of twenty years or life imprisonment is prescribed;
- (c) twenty years in the case of a criminal offense for which a maximum penalty of fifteen years is prescribed;
- (d) fifteen years in the case of a criminal offense for which a maximum penalty of ten years is prescribed; and
- (e) ten years in the case of a criminal offense for which a maximum penalty of five years is prescribed.

Commentary

Statutory limitations act as a time constraint upon the court hearing a case concerning a particular criminal offense. After a certain period of time has elapsed, the prosecutor may no longer prosecute the alleged perpetrator of a criminal offense. The primary rationale behind a statute of limitations is to safeguard the suspect against the possibility of prejudice from excessive delays in prosecution. As time progresses, it becomes increasingly difficult for the defense to gather evidence to mount a defense to the criminal charges. The passage of time also makes it equally difficult for the prosecution to

gather the evidence necessary to prove a criminal offense. For example, material evidence may have been destroyed or lost and witnesses may no longer be available, especially in post-conflict environments, where residents may have fled the jurisdiction due to the conflict and where records may have been destroyed in the course of the conflict. Another rationale in support of limitation periods stems from the theory that the passage of time lessens the justification for prosecution, since the victim, relatives, and society may have moved on and reconciled themselves with the wrongs of the past. Therefore, opening things up may do more harm than good.

Under the MCC, and generally under the domestic criminal legislation in many states, the more serious the criminal offense, the more time is granted to prosecute a person for it. The need for a state to ensure long statutory limitation periods for more serious offenses is also recognized in a number of international conventions, such as the United Nations Convention against Transnational Organized Crime, Article 11(5); the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Article 3(8); and the United Nations Convention against Corruption, Article 29. The particular limitation periods set out in Article 9 were arrived at following a comparative study of the statutory limitations in various states and taking into account international obligations relating to statutory limitations contained in the international conventions mentioned above.

Although not provided for in the MCC, some legal systems also provide for statutory limitations on the enforcement of punishments, whereby the imposed punishment cannot be carried out after a designated period has elapsed.

It should be noted that in some legal systems there are no statutory limitations. A number of Islamic legal experts consulted while the Model Codes were being vetted pointed out that in some states domestic legislation does not provide for statutory limitations.

The limitation periods in Article 9 are fixed. The periods can be extended only where the statutory limitations can be lawfully suspended for a certain period of time under Article 12. In practice, therefore, the period between completion of a criminal offense and prosecution for the offense may be longer than the applicable period set out in Article 9. Reference should be made to Article 12 and its accompanying commentary.

Article 10: Statutory Limitations Applicable to an Adult for Criminal Offenses Committed as a Juvenile

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1. Article 9 does not apply to a person over the age of twenty-one years who allegedly committed a criminal offense when he or she was under the age of sixteen years.

2. Article 9 does not apply to a person between the ages of eighteen years and twenty-one years who has allegedly committed a criminal offense, except for:
 - (a) a criminal offense committed when he or she was over the age of sixteen years and under the age of eighteen years; or
 - (b) a criminal offense with a minimum penalty of two years' imprisonment that was committed when he or she was under the age of sixteen years.

Commentary

Article 10 operates to exclude the operation of Article 9 in certain circumstances outlined in Paragraphs 1 and 2, barring the prosecution of persons for criminal offenses committed as juveniles in some cases. A comparative survey of criminal codes and criminal legislation from different states found that this provision was a feature of domestic criminal laws in many jurisdictions where statutory limitation of criminal offenses is recognized.

Article 11: Nonapplicability of Statutory Limitations to Genocide, Crimes against Humanity, and War Crimes

Genocide, crimes against humanity, and war crimes are not subject to any statutory limitations.

Commentary

In contrast to other criminal offenses in the Special Part of the MCC, the offenses of genocide, crimes against humanity, and war crimes are not subject to statutory limitation periods. This means that a person can be prosecuted at any time after the alleged commission of the criminal offense. The approach taken in the MCC follows that of the Rome Statute of the International Criminal Court (Article 29) and many criminal codes, all of which exclude limitation periods for these particular criminal offenses. This approach is also consistent with the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1970) and the European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes (1974). The rationale behind the prohibition on statutory limitations for crimes against humanity and war crimes, as set out in the preamble to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and

Crimes against Humanity, is that providing limitation periods for “the gravest crimes under international law” prevents their prosecution, which is an important element in preventing their future perpetration and in protecting human rights and fundamental freedoms.

Article 12: Running and Suspension of Statutory Limitations

1. The statutory limitation period begins to run from the day on which the criminal offense is completed.
2. Where a criminal offense was committed against a person when the victim was a child, the statute of limitations does not begin to run until the person reaches the age of eighteen years.
3. The statutory limitation period may be suspended when:
 - (a) the prosecutor has formally suspended the investigation under the MCCP;
 - (b) the suspect or the accused has evaded the administration of justice;
 - (c) a request to obtain evidence located in a foreign jurisdiction is pending before a foreign court or authority, under Chapter 14, Part 1, of the MCCP; or
 - (d) other valid grounds bar the prosecution of the criminal offense.
4. The statutory limitation period recommences from the beginning if the perpetrator commits an equally grave or graver criminal offense before the statutory limitation period has expired.

Commentary

Paragraph 1: This paragraph presents no difficulty when a criminal offense is perpetrated through an act or a series of acts that culminate at a certain period in time. The difficulty may arise when an offense is a “continuing offense.” The question of when the offense was committed then arises. In many jurisdictions, the statute of limitations does not begin to run until the criminal conduct in its totality has ceased. This is the approach most favored by the drafters of the MCC.

Paragraph 2: The “freezing” of the statute of limitations with respect to a criminal offense committed against a person under the age of eighteen years is a common feature of domestic criminal law in many states.

Paragraph 3: It is a universal feature of states that possess statutory limitation periods that there are statutorily defined circumstances in which the period can be suspended temporarily. In some systems, this process is called tolling. The MCC defines four instances in which the statute of limitations should be suspended: when the prosecutor has suspended the investigation; when the perpetrator has evaded the administration of justice; when a request for evidence abroad is pending; and when “other valid grounds bar the prosecution of the criminal offense.” Evading the administration of justice means that a person has left his or her home and has concealed himself or herself to avoid punishment. The person does not have to leave the jurisdiction or the territory in order to evade justice. The fourth ground upon which the statutory limitations can be suspended, under Paragraph 3(d), is more open-ended and is subject to judicial interpretation. Such a provision could include, for example, an instance in which prosecution of a person is impossible for a period of time because he or she possess certain immunities or other privileges that preclude it.