Statute of Limitations in the Polish Criminal Law

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Abstract

The article discusses the problems of the statute of limitation in the Polish criminal law. It is a traditional institution of the Polish criminal law which repeal the punishment or enforceability of adjudicated penalties in connection with the passage of time. This article shows, among others, essence, the legal nature and the reasons for limitation, its constitutional conditions and the current regulatory approach in the Polish law. It takes into account the case-law of the Polish Constitutional Tribunal and the Supreme Court. These bodies often spoke on the topic of limitation.

Keywords: *Statute of limitation, excluding the punishment, repealing the enforceability of adjudicated penalties, polish criminal law.*

I. The essence of limitation, the constitutional conditions and types

Limitation is a factor which repeal the penality or enforceability of adjudicated penalties in connection with the passage of time. The occurrence of limitation does not pick up the criminal nature of the act, however, it precludes the possibility of sanctions for the offense or the execution of sanctions. Limitation therefore is a factor that breaks the link between criminality and the penality[1]. Repealing of penality is absolute and occurs *ex lege.*

To properly define the essence of limitation and its position in the Polish legal system, it is necessary to look at this institution from the constitutional perspective and to answer the question of whether the limitation is the constitutional right of an offender. The current Polish Constitution of 2 April 1997[2] refers to the limitations in three regulations (Article 43, 44 and 105 Paragraph 3), which will be more widely mentioned, but none of them exposes it directly as a right enjoyed by certain categories of people. Nevertheless, the doctrine expressed the view that under the Constitution there is a subjective right of the perpetrator to the limitation[3]. However, it is a secluded

[1] See R. Koper, K. Sychta, J. Zagrodnik, 'Karnomaterialne aspekty instytucji przedawnienia – zagadnienia wybrane' in G. Artymiak, Z. Ćwiąkalski (ed.), *Współzależność prawa karnego materialnego i procesowego* (Warszawa 2009) 187–188; I. Andrejew in I. Andrejew, W. Świda, W. Wolter, *Kodeks karny z komentarzem*, (Warszawa 1973) 351.

[2] Official Journal of Laws No. 78, item 483 as amended.

[3] See M. Kulik, *Przedawnienie karalności i przedawnienie wykonania kary w polskim prawie karnym* (Warszawa 2014) 107.

point of view, not accepted by the representatives of the doctrine[4], and the jurisprudence of the Polish Constitutional Court[5] and the Supreme Court[6]. Dominant opinion is expressed most fully by the Constitutional Court that the Constitution does not give rise to reconstruct the offender's rights to the limitation and therefore he cannot expect that penality of his crime will be excluded at a given time. This expectation is constitutionally unjustified even if the laws in force at the time of the offense provide deadlines of its limitation, because the legislator has a wide discretion in their modification, including extension, depending on the current needs of the criminal policy. In the light of the Constitution an offender cannot count on the fact that commission of crime will be barred at the date specified by the regulations in force at the time of its commission. After committing the crime legislator may in fact extend the deadline for its limitation, and even - as it seems - abolish the statute of limitations (Constitutional Tribunal take a stand that even if the legislator did not foresee the legal institution of limitation, it would not be possible to argue that some constitutional rights and civil liberties have been violated in this way[7]). The Constitutional Tribunal emphasizes that the rules governing the limitation period cannot be treated as a guarantee for the perpetrators, because they are not established due to the perpetrator, but due to the desirability of punishment and implementation of the desired criminal policy by the legislator. Therefore, the statute of limitations - in the opinion of the Constitutional Tribunal - is not a constitutional right of the offender, but the element of criminal policy, which defines the "temporal extent of use of the competence of classifying the act in criminal law and the associated criminal sanction by the competent authority"[8].

The above perception of the statute of limitation by the Constitutional Tribunal does not mean, however, that the legislator has an unlimited freedom when it comes to giving it a definite shape. In particular, it should be noted that the scope of that freedom is changing significantly when a period of limitation which is valid at given time has expired. Then the legislator may not lead to a "revival" of the limitation period, or - in other words - the repeal of the effects of limitation and the restoration of the penality of expired crimes. Such a legislative procedure would remain in contradiction with the principle of citizens trust in the state and its laws (Article 2 of the Constitution) and the principle of lex retro non agit (Article 42 paragraph 1 of the Constitution). Thus

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[4] See e.g. L. Kubicki, 'Nowa kodyfikacja karna a Konstytucja RP' (1998) Państwo i Prawo No. 9-10, p. 30; T. Sroka in M. Safjan, L. Bosek (ed.), *Konstytucja RP. Komentarz*, Vol. I (Warszawa 2016) nb. 3-7; A. Zoll, 'Nowa kodyfikacja karna w świetle Konstytucji' (1997) Czasopismo Prawa Karnego i Nauk Penalnych No. 2, p. 105-106.

[5] See e.g. the judgments of the Constitutional Tribunal of: 25 May 2004, in case SK 44/03, OTK-A 2004, No. 5, item 46; 2 September 2008, in case K 35/06, OTK-A 2008, No. 7, item 120; 15 October 2008, in case P 32/06, OTK-A 2008, No. 8, item 138; 13 October 2009, in case P 4/08, OTK-A 2009, No. 9, item 133.

[6] See e.g. resolution of the Supreme Court of 6 June 2002, in case I KZP 15/02, OSNKW 2002, No. 7-8, item 49; decision of the Supreme Court of 22 April 2009, in case IV KK 14/09, OSNKW 2009, No. 7, item 54.

[7] See e.g. the judgment of the Constitutional Tribunal of 25 May 2004, in case SK 44/03, OTK-A 2004, No. 5, item 46.

[8] See the judgment of the Constitutional Tribunal of 15 October 2008, in case P 32/06, OTK-A 2008, No. 8, item 138.

prolonging the period of limitation is possible only if it takes place before its expiry, calculated in accordance with the previously applicable regulations[9].

In addition, the Constitutional Tribunal recognizes that under the Constitution, and in particular Article 42 paragraph 1 read in conjunction with Article 2 and 7, it must be reconstructed a principle that anyone who commits an act prohibited under penalty by the law in force at the time of its commission, is subject to criminal responsibility. Therefore, if the offender committed a crime it should be a principle to brought him to criminal responsibility. This principle, according to the Constitutional Court, indicates the constitutional relationship between the crime and the penal consequences of its commission (penalty). At the same time the need to safeguard this principle, and the affirmation of its content, to preserve its essence, causes that any exceptions should be treated narrowly[10]. The statute of limitation, as an institution breaking the link between the offence and the punishment, is an important exception to the principle of criminal responsibility of the offender. Moreover, as noted by the Constitutional Tribunal, the limitation weakens the sense of inevitability of liability relating to violations of the law and can weaken the sense of the law as such, a sense of justice and the principles of democratic rule of law. Therefore, the legislator, shaping the institution of limitation, and thus realizing the specific criminal policy "should therefore exercise extreme caution, especially when the legislator reduces the period of limitation"[11]. In particular he should pay attention that the shape of the institution of limitation cannot give a sense of impunity and injustice. If this happens, it is justified, both legally and socially, to introduce the regulations that will reduce the likelihood of avoiding responsibility and punishment, and that kind of regulation could be eg. the provision which will extend the limitation period[12].

Limitation is one of those institutions of the Polish criminal law, which operate in that law almost from its inception. Initially, in the former Polish criminal law the statute of limitation took the form of a limitation of the criminal complaint and was only related to the offenses prosecuted on a private accusation, ie those which were harmful only to the victim, without prejudice to the interests of the state[13]. The first modern Polish Penal Code, which was the regulation of the President dated 11 July 1932- Criminal Code[14], knew already extensive statute of limitation with wide range of application. In this Code, there were three types of limitation, namely the limitation of criminal proceedings (Article 86), the limitation of sentencing (Article 87) and the limitation of enforcement of the sentence (Article 89). The wide range of applications of the institution of limitation was also maintained by the next Polish Criminal Code, which was the Act of 19 April 1969[15], although that act reduced the types of limitation to two, namely the limitation of penality (Article 105 and 106) and the limitation of enforcement of the sentence (Article 107). Such an approach of the limitation and such a terminology has

[9] See e.g. the judgments of the Constitutional Tribunal of: 25 May 2004, in case SK 44/03, OTK-A 2004, No. 5, item 46; 15 October 2008, in case P 32/06, OTK-A 2008, No. 8, item 138.

[10] See the judgment of the Constitutional Tribunal of 25 May 2004, in case SK 44/03, OTK-A 2004, No. 5, item 46.

[11] Ibid.

[12] Ibid.

[13] More information on the historical development of the institution of limitation see M. Kulik, Above, p.1 and next.

[14] Official Journal of Laws No. 60, item 571 as amended.

[15] Official Journal of Laws No. 13, item 94 as amended.

been basically maintained in the current Law of 6 June 1999 - Criminal Code[16], which distinguishes two types of limitation, namely the limitation of penality (Article 101 and art. 102) and the limitation of enforcement of the sentence (Article 103). It should be noted that the limitation is actually related to almost all categories of crime, because only some of them are exceptionally excluded by the legislator from the application of that institution (Article 105).

II. Legal nature and justification of limitation

You can extract three different positions on the legal nature of limitation. The first one assumes that the limitation period is the institution of substantive criminal law[17]. According to the second point of view the limitation has a procedural character[18]. In turn, the third view assumes mixed (substantive and procedural) nature of the limitation[19]. Today, it must be emphasized above all the substantive nature of that institution, but there are also important arguments located in the field of the procedural law. The procedural elements of the institution of limitation are - firstly- connected with the fact that begining of the limitation period depends on some procedural actions. Secondly, an appearance of limitation cause a parallel procedural effects in the form of occurence of obstacles to the process, which results a refusal or discontinuance of criminal proceedings (Article 17 paragraph 1 item 6 of the Act of 6 June 1997 - The Code of Criminal Procedure[20])[21]. As a result, in the case of an offense, which penality was expired, it cannot be passed a sentence of conviction or acquittal, but merely a decision to discontinue the proceedings. Undoubtedly, you should strongly emphasize the substantive nature of the limitation, because all the provisions of the existing Criminal Code make the statutory periods of limitation on the nature of the offense and its legal qualification or the type and amount of the penalty, specifying at the same time the condition of limitation. Linking the limitation with the offense or sanction clearly demonstrates that this institution fulfill some functions in the field of substantive criminal law. Repeal of penality, specified in the rules of substantive law, is in this case the circumstance of original importance, which must occur as a first, so that you could even consider the possibility of refusal or discontinuance of criminal proceedings[22].

Despite the fact that the limitation is not a constitutional right of the citizen and is a part of the criminal policy of the state in which the legislator has a broad discretion, however - as emphasized by the Constitutional Tribunal - the existence of a limitation in

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[16] Official Journal of Laws of 1997, No. 88, item 553 as amended, hereinafter referred to as Criminal Code or k.k.

[17] See A. Zoll in A. Zoll (ed.), *Kodeks karny. Część ogólna. Komentarz*, Vol I (Warszawa 2004) 1307; P. Hofmański, S. Zabłocki, *Elementy metodyki pracy sędziego w sprawach karnych* (Warszawa 2006) 31.

[18] More on this topic K. Marszał, *Przedawnienie w prawie karnym* (Warszawa 1972) 79–80; J. Czabański, M. Warchoł, 'Przerwa i zawieszenie biegu przedawnienia – uwagi de lege ferenda'(2007) Prokuratura i Prawo No. 10, p. 51.

[19] See T. Grzegorczyk, J. Tylman, *Polskie postępowanie karne* (Warszawa 1999) 177.

[20] Official Journal of Laws of 1997, No. 89, item 555 as amended, hereinafter referred to as k.p.k.

[21] See L. Wilk in O. Górniok (ed.) *Kodeks karny. Komentarz* (Warszawa 2006) 373.

[22] See R. Koper, K. Sychta, J. Zagrodnik, Above 191–194; the judgments of the Supreme Court of: 10 March 2004, in case II KK 338/03, OSNwSK 2004, item 521; 22 October 2009, in case IV KK 446/08, KZS 2010, No. 2, item 16; decision of the Supreme Court of 22 April 2009, in case IV KK 14/09, OSNKW 2009, No. 7, item 54.

the legal system must have a strong and convincing justification. As already mentioned, the statute of limitations- as a institution breaking the link between crime and punishment- is an important exception to the constitutional principle of criminal responsibility of the offender, and such exceptions should be treated narrowly[23].

Over the years, the limitation was justified by the different rations, both of a substantive and a procedural. As regards the arguments concerning the substantive law, the following theories appeared in the literature: 1) a theory of retribution assuming that the torment of the offender, associated with the possibility of detection and imposing a penalty, is a sufficient penance for the offense, if such a state lasted for a longer period of time (this theory shall be regarded as obsolete, because it ignores other purposes, which are today posed in front of the penalty)[24]; 2) a theory which is based on a general deterrence and a blurred memory of a crime - the passage of time cause that a social sense of justice does not need to punish the offender, that is forgotten[25]; 3) a theory justifying the existence of the institution of limitation by repealing of social harm due to the passage of time (in relation to this theory it is rightly underlined that the evaluation criteria of social harmfulness, included *de lege lata* in Article 115 paragraph 2 of the k.k., ie. the type and nature of the infringed goods, the size of the damage or threat of injury, the manner and circumstances of the offense, the weight of the duties violated by the perpetrator, the form of intention, motivation of the perpetrator, the type of prudential rules violated the and the degree of their violation, are permanent in the sense that the passage of time does not change their perception and relativizing to the offense; thus the passage of time cannot reduce, much less remove the social harm of crime); 4) a theory of rehabilitation of the perpetrator assuming that after a certain period of time the offender could be improved, which could make his punishment inexpedient[26].

On the other hand, the following procedural theories has appeared in the literature to justify the institution of limitation: 1) a theory of evidence - implies the existence of evidentiary difficulties that may occur after a considerable lapse of time, eg. the destruction, seizure or loss of material evidence, the death of witnesses and so on. The risk of passing an incorrect judgment increase when it occurs[27]; 2) a theory of tardiness of the prosecutor - limitation is a reaction directed against the prosecutor in connection with his indolence and negligence, which did not lead to hold perpetrators criminally responsible (this theory is, however, in conflict with the principle of legality which is in force in the Polish criminal proceedings, and thus the duty of the prosecution of crimes which could not yet expires or disappears due to the tardiness of the prosecutor in a particular case)[28]; 3) a theory of resignation from the complaint - the passage of the statutory limitation period does not result in the repeal of penality, but causes the

[23] See the judgment of the Constitutional Tribunal of 25 May 2004, in case SK 44/03, OTK-A 2004, No. 5, item 46.

[24] R. Koper, K. Sychta, J. Zagrodnik, Above, 197.

[25] K. Banasik, *Przedawnienie w prawie karnym w systemie kontynentalnym i anglosaskim* (Warszawa 2013), 96 and next; I. Andrejew, *Polskie prawo karne w zarysie* (Warszawa 1983) 322.

[26] K. Marszał, Above, 56; E. Bieńkowska in G. Rejman (ed.) *Kodeks karny. Część ogólna. Komentarz* (Warszawa 1999) 1293.

[27] See J. Śliwowski, *Prawo karne* (Warszawa 1979) 307; K. Buchała, *Prawo karne materialne* (Warszawa 1980) 648.

[28] R. Koper, K. Sychta, J. Zagrodnik, Above, 195–196.

disappearance of powers of the state to punish the perpetrators. However, limitation shall causes a loss of right to complaint[29].

Currently in Polish literature the views of justifying the existence of a limitation primarily by general and individual deterrence are dominant. It is also an argument from the field of a substantive law. In this respect, it is pointed out that the justification of limitation should be sought primarily in the context of the objectives of the penalty. From the point of view of general deterrence, the passage of time cause the decreasing of the possibility of shaping the legal awareness of the society and it eliminates the need to redress the social sense of justice. A gradual blurring of the memories of the crime and the weakening of the impression caused by such an act undermine the sense of punishment[30]. In terms of the individual deterrence, it is pointed out that with the passage of time the possibility of preventive and educational impact on the offender by a penalty is excluded[31]. I. Andrejew even argued according to the provisions of the previous legal status that if the perpetrator did not break the law during the period of limitation, it indicates a superfluity of his punishment from the point of view of preventive and educational impact[32]. In addition, a justification for the limitation with help of procedural arguments is currently heavily accented. According to that, criminal proceedings after a considerable lapse of time since the offense could encounter major difficulties of evidence[33].

Similarly, so from the perspective of the objectives of the punishment (the arguments of substantive law) and the difficulties of proof (the arguments of the procedural nature), the legislator seems to perceive the limitation. In justification of the draft of the Criminal Code it is indicated that the passage of limitation periods "outdate the realization of the objectives of punishment and it also may lead to avoid the destruction of the social inclusion process of the offender. Some practical considerations which are connected with the difficulties in the process of proving the fact of committing a crime are also important"[34].

III. Limitation of penality

Limitation of penality is the negative procedural premise, since its existence, in accordance with Article 17 paragraph 1 point 6 k.p.k., results a refusal or discontinuance of criminal proceedings. If the court recognize during the proceedings that the penality of an offense has expired, it excludes the possibility of a conviction or acquittal[35].

The Criminal Code provides a diverse range of limitation periods of the criminal offenses. The main circumstance which determine the length of the limitation periods is the type and the shape of the anticipated penalty (for imprisonment) and the weight of act. It is about a threat of punishment in the law, not the punishment imposed in

[29] K. Marszał, Above, 67.

[30] R. Koper, K. Sychta, J. Zagrodnik, Above, 198–199.

[31] A. Zoll, Above, 1307.

[32] I. Andrejew, Above, 322.

[33] See A. Zoll, Above, 1307; L. Wilk, Above s. 373; A. Marek, *Prawo karne* (Warszawa 2004) 376.

[34] Nowe kodeksy karne – z 1997 r. z uzasadnieniami (Warszawa 1997) 171.

[35] See the judgments of the Supreme Court of: 8 June 1977, in case I KR 87/77, OSNPG 1977, nr 11, poz. 114; 18 July 1975, in case IV KR 132/75, Gazeta Sądowa 1975, No. 22; decision of the Supreme Court of 2 July 2002, in case IV KKN 264/99, Legalis.

concreto. The modifications of the statutory penalty clause associated with an extraordinary mitigation of punishment, its extraordinary aggravation and withdrawal from punishment are irrelevant in fact[36].

Limitation periods of the crimes prosecuted ex officio and crimes prosecuted on private accusation are defined in Article 101 k.k. For clarity it needs to be clarified that the criterion of the division of crimes into crimes prosecuted ex officio and triable on private prosecution is their mode of prosecution. The first offense is prosecuted by indictment (ex officio) by the body acting on behalf of the State. The second category of crime is prosecuted on private accusation, so the initiative of the victim is necessary. The principle is the prosecution by indictment, so the private prosecution is limited to the few crimes which mainly violate the individual interest of the victim (eg. defamation, insult), which justifies the decision to transfer the competency of prosecution to the victim.

When it comes to the limitation period of crimes prosecuted ex officio- in accordance with Article 101 paragraph 1 k.k. - the penality of such an offense ceases after: 30 years when the act is a homicide, 20 years- when the act constitutes another serious crime[37], 15 years - when the act constitutes a misdemeanor punishable by imprisonment exceeding five years, 10 years- when the act constitutes a misdemeanor punishable by imprisonment exceeding three years, 5 years- when it comes to other misdemeanors.

The period of limitation starts from the date of the offense, except for the material offence (classified as an effect-producing offence), where there is a rule that the limitation period of their penality starts from the moment when the effect came (Article101 paragraph 3 k.k.). Ratio legis of the latter regulation is associated with the prevention of the limitation of penality, where the effect appears after a considerable period of time since an act or omission which caused that effect.

When it comes to limitation of offences prosecuted on a private accusation- according to Article 101 paragraph 2 k.k. - the penality of such an offense shall cease at the end of one year from the moment when the victim learned about the offender, but no later than at the end of 3 years from the time of its commission. Article 101 paragraph 3 k.k. is respectively used with respect to the limitation of an material offence prosecuted on a private accusation.

A special regulation concerning the limitation of penality is Article 101 paragraph 4 k.k., which appearance in the Polish legal system should be associated with the implementation of some of the instruments of European Union law, in particular Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography. That decision compelled the member states in the Article 8 paragraph 6 to enable the prosecution of at least the most serious

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[36] See A. Wąsek, *Kodeks karny. Komentarz*, Vol I. (Gdańsk 1999) 309; the judgment of the Supreme Court of 4 July 2001, in case V KKN 346/99, Prokuratura i Prawo 2001, No. 12, item 1.

[37] According to the Article 7 § 1 k.k., crimes under Polish criminal law are divided into serious crimes and misdemeanors. The serious crime is an act punishable by imprisonment for not less than 3 years or a more severe penalty (Article 7 § 2 k.k.). Misdemeanor is the offense threatened with a fine of more than 30 the daily rate or above 5000 zł (the currency of Poland), the penalty of restriction of liberty exceeding one month or imprisonment in excess of one month (Article 7 § 3 k.k.). At the core of the division of crimes into serious crimes and misdemeanors is their social harmfulness *in abstracto*, determined by the legislator on the stage of criminalization and determining the penalty incurred for their committing. Serious crimes are more socially harmful than the misdemeanors *in abstracto.*

offenses set out in this provision after coming of age by the victim. By this way the European legislator moved towards the creation of possibility that the victim of a sexual offence after coming of age - and therefore fully consciously and independently of any pressure from the closest person (when the offense took place in that circle of people) - could reveal the crime and that such action could result in the possibility of conducting a criminal prosecution in this matter[38]. Article 101 paragraph 4 k.k., after introducing into the Polish legal system, has undergone many changes and now it states that in the case of: 1) crimes against life and health, committed to the detriment of a minor, punishable of a maximum of more than 5 years imprisonment, 2) the offenses referred to Chapter XXV of the Criminal Code ("Crimes against sexual freedom and decency"), committed to the detriment of a minor or when the pornographic content include the participation of a minor - the limitation of penality may not take place before reaching 30 years of age. For clarity it requires an explanation that the concept of a minor used in the Article 101 paragraph 4 k.k. shall be construed in accordance with Article 10 paragraph 1 and 2 of the Act of 23 April 1964 - Civil Code[39]. In the light of these provisions, a minor is a person under 18 years old who has not came of age by marriage.

Both in respect of the offenses prosecuted ex officio and offences prosecuted on private accusation the legislator predicted extension of the limitation periods. In Article 102 k.k. the legislator decided that, if within the period of limitation specified by Article 101 k.k. the criminal proceeding was initiated, the penality of crimes prosecuted by indictment expires over 10 years, and the penality of crimes prosecuted on a private accusation cease at the end of 5 years - counted from the end of that term. The aim of the regulation of Article 102 k.k. is to enable the criminal proceedings, despite the fact that the statutory limitation periods referred to in Article 101 k.k. has already passed. But the initiation of such proceedings before the expiry of the limitation periods is one of the main condition.

IV. Limitation of enforceability of adjudicated penalties

Limitation of enforceability of legally valid adjudicated penalties is regulated by art. 103 k.k. The legislator adopted the type and the size of imposed penalty as a criterion of the length of the limitation periods It is not important whether a penalty was imposed for an act which is a serious crime or a misdemeanor, as it is irrelevant whether it was an act prosecuted ex officio or on private accusation, The consequence of the expiring of the limitation periods, reffered in Article 103 k.k., is the lack of feasibility of executing of imposed but unexecuted penalties. In such a situation, the executive proceedings shall be called off by the court (Article 15 paragraph 1 of the Act of 6 June 1997 - Executive Penal Code[40]).

According to the Article 103 paragraph 1 k.k., it is impossible to execute the sentence if the period of time from the moment of validating the sentence is: 30 - in the case of a sentence of imprisonment exceeding five years or severe penalty; 15 - in the event of a conviction to imprisonment not exceeding 5 years; 10 - in the event of a conviction for another penalty.

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[38] See explanatory to draft law amending the Criminal Code and other laws, Sejm Paper No. 458 of 18 April 2008.

[39] Consolidated text: Official Journal of Laws of 2016, item 380 as amended.

[40] Official Journal of Laws No. 90, item 557 as amended, hereinafter referred to as k.k.w.

Limitation of execution of the sentence is not running at the time of its execution, which is reflected in Article 15 paragraph 4 k.k.w., which provides, inter alia, that the execution of a sentence of imprisonment in the same or another case suspends the running of the statute of limitation. It should also be appreciated that - in accordance with Article 15 paragraph 3 k.k.w. – the suspension of the enforcement procedure, which occurs in the case of long-term obstacle preventing the enforcement proceedings (Article 15 paragraph 2 k.k.w.) does not suspend the limitation period, unless the convicted person evades execution of the sentence. In the latter case, the period of suspension of the running of the statute of limitation may not exceed 10 years.

In accordance with Article 103 paragraph 2 k.k., the regulation of Article 103 paragraph 1 point 3 k.k., providing a 10-years limitation period for enforcement of the punishment, shall be applied to punitive measures, compensatory measures and confiscation. It means that the legislator has established a 10-year limitation period for execution of the mentioned measures.

V. Suspension of limitation period

Suspension of limitation period is regulated in Article 104 k.k. That suspension is associated with legal obstacles to criminal proceeding or continuing already initiated proceeding and lies in the fact that the limitation period is suspended for the duration of such obstacles. The period of suspension of the limitation period is not included in the limitation period. This period begins to run after the repealing of the reasons for the suspension[41]. Suspension of limitation period is applicable to the limitation of penality and the limitation of execution of adjudicated penalties.

The reason for suspension of limitation period are the situations where the provision of the Act expressly does not allows for an initiation or continuation of criminal proceedings (eg. in the case of using the immunity by the perpetrator). It is not about any actual inability to initiate or continue the proceedings, caused eg. illness of the accused, but about a legal obstacle. It should be noted, however, that if the legal barrier to the initiation or continuation of the proceedings is the lack of request for prosecution or the lack of private prosecution, the limitation period is not suspended (Article 104 paragraph 1 k.k.). It is about preventing the situation that the victim by not filing a complaint or a request could not allow to occur limitation and thereby maintain the offender in uncertainty[42].

The specific case of the suspension of limitation period is described in the Article 44 of the Constitution, which provides that the limitation period in relation to the crimes not prosecuted for political reasons, committed by public officials or on their order, shall be suspended to the moment of removal of these causes. The specificity of such suspension of the limitation period is based primarily on the fact that its due is not a obstruction of a legal nature, but specific factual circumstance. This circumstance is the failure to prosecute for a political reasons[43].

The reason for introducing an Article 44 to the Constitution were historical experiences, which shows that in the past, and especially in the years 1944-1989, there

[41] See W. Świda, *Prawo karne* (Warszawa 1978) 379.
[42] W. Świda, Above, 379.
[43] See T. Sroka, Above, nb. 27.

were accidents in Poland, when the crimes committed by public officials or on their order have not been prosecuted for political reasons[44]. The legislator, by introducing an Article 44 of the Constitution to the legal system, took the view that the impunity of public officials and persons acting on their order, whose offenses were not prosecuted for political reasons, cannot be reconciled with the social sense of justice (the principle of social justice) and the rule of law[45]. Therefore, with a view to preventing such impunity, the legislator decided in Article 44 of the Constitution, as in the provision of a higher order than the statutory provision, for the suspension of the limitation period of crimes not prosecuted for political reasons until the expiry of those reasons. This regulation is effective both in relation to the events of the past, as long as they have not yet been barred, as well as events that might occur in the future[46].

Article 44 of the Constitution - in accordance with Article 8 paragraph 2 of the Constitution - should be directly used by law enforcement authorities, and the legislator can not adopt the provisions that allow for the free statute of limitation with respect to the crimes not prosecuted for political reasons, committed by public officials or on their order. Such provisions would be contrary to the overriding regulation, which is the Article 44 of the Constitution[47].

Another case of suspension of the limitation period can be found in Article 105 paragraph 3 of the Constitution. It applies to parliamentary immunity. This provision stipulates that the criminal proceedings initiated against a person before the day of his election as a deputy, shall be suspended - at the request of the Sejm - until the expiry of the parliamentary mandate. At the same time, this provision provides that in such a situation the limitation period shall be suspended for that time. The latter solution - as emphasized in the doctrine - is to ensure that "using immunity will not change in total impunity"[48]. It should be noticed at the same time that Article 105 paragraph 3 of the Constitution shall also be applied accordingly to the senators (Article 108 of the Constitution).

VI. The exclusion of the statute of limitation

Article 105 paragraph 1 and 2 k.k. excludes the possibility of limitation of penality and the limitation of execution of the sentence in relation to the categories of crimes listed therein. This regulation is an exception to the rule that prosecution of the offense and the possibility of execution of the sentence cease with the passage of time. On the basis of Article 105 paragraph 1 k.k. a derogation from this rule is justified mainly by the particular nature and weight of the categories of crimes listed therein, and in relation to art. 105 paragraph 2 k.k. there is moreover an argument associated with inactivity of procedural bodies, not interested in prosecution of certain offenses committed by public officials, which could lead to their limitation. The provision of Article 105 paragraph 1

[44] See P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.* (Warszawa 2000) 64.

[45] T. Sroka, Above, nb. 11 and the literature cited there.

[46] Ibid., nb. 9-10 i 34-36 and the literature cited there.

[47] In accordance with article 8 paragraph 1 of the Constitution, the Constitution is the supreme law of the Republic of Polish, which means, inter alia, that the provisions of laws must be consistent with it.

[48] J. Repel in J. Boć (ed.), *Konstytucje Rzeczypospolitej oraz komentarz do Konstytucji RP z 1997 roku* (Wrocław 1998) 185.

k.k. should be seen as a sign of fulfillment of constitutional and international obligations, resulting primarily from the provisions ratified by Poland of the Convention of 26 November 1968 on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity [49].

Article 105 paragraph 1 k.k. states that the penality of crimes against peace, crimes against humanity and war crimes cannot expire. Such a definition of crimes covered by that provision should be associated with the acts set out in Chapter XVI k.k., entitled "Crimes against peace, humanity and war crimes". In turn, Article 105 paragraph 2 k.k. regulates that the penality of intentional offense of homicide, grievous bodily harm or deprivation of liberty connected with particular torment, committed by a public official in the performance of official duties, cannot expire. In the constitutional context it is necessary to notice a close relationship between Article 105 paragraph 1 k.k. which excludes the limitation of penality of crimes against peace and humanity and war crimes, and Article 43 of the Constitution, which states expressis verbis that war crimes and crimes against humanity are not subject to statute of limitations. The last provision obliges the legislator to maintain such a state of law, where there is no possibility of limitation of penality of two categories of offenses, namely war crimes and crimes against humanity. In addition, Article 43 of the Constitution includes a warrant, addressed to the Polish authorities, of prosecution and hold responsible of each perpetrator of war crimes or crimes against humanity[50].

The justification for the above duties of the legislator and the authorities, underlined in Article 43 of the Constitution, is an exceptional weight of war crimes and crimes against humanity which hit the base of being of nations and the elementary sense of justice. Therefore, even a significant passage of time since the commission of such a crime does not outdate a need of its punishment and satisfying in this way the social sense of justice[51].

Recognizing the close relationship between Article 105 paragraph 1 k.k. and Article 43 of the Constitution, it cannot be assumed at the same time that in this latter provision the concept of war crimes and crimes against humanity should be explained through the prism of the Criminal Code, and in particular Chapter XVI ("Crimes against peace, humanity and war crimes"). Article 43 of the Constitution is in fact a reference to the norms of international law and, in particular, cited Convention of 26 November 1968 about not applying the limitation to the war crimes and crimes against humanity. Therefore the concepts of war crimes and crimes against humanity included in this provision should be explained as it is done in the international law, regardless of the classification used in the Polish Criminal Code[52].

VII. Summary

The current shape of the statute of limitation in the Polish criminal law is the result of many years of evolution of this institution, which in the modern and extensive form

[49] Official Journal of Laws of 1970, No. 26, item 208 as amended.

[50] See B. Banaszak, M. Jabłoński, J. Boć in J. Boć (ed.) *Konstytucje Rzeczypospolitej oraz komentarz do Konstytucji RP z 1997 roku* (Wrocław 1998) 88.

[51] See Z. Siwik in J. Boć (ed.) Ibid., 88.

[52] See L. Kubicki, Above, 30-31 i 32; B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (Warszawa 2012) nb. 1; T. Sroka, Above, nb. 35.

appeared for the first time in the Penal Code of 1932. It should be emphasized that the Polish doctrine has never widely questioned and does not actually question the meaning and the need of functioning of the limitation in the criminal law. Of course, the doctrine indicated and currently indicates the number of specific reservations as to the shape of the institution, but these reservations never led to formulate demands the elimination of the limitation from the Criminal Code. These demands do not appear despite the fact that in the light of the Constitution - as has already been mentioned - there are no obstacles to eliminate the institution of limitation from the Polish criminal law, and in particular, it would not violate the constitutional rights and civil liberties. Approvals for the institution of limitation in Poland seems to correspond with the trends occurring in other European countries, where, except for the countries of the common law, the institution of limitation exists in a relatively wide range. It seems that today a far-reaching critique of the institution of limitation, affecting its basics and aiming to eliminate or at least to significantly reduce the limitation, was rejected[53]. There is also no indication that in the foreseeable future this situation can fundamentally change.

[53] Such criticism has performed particularly in the second half of the eighteenth century and in the nineteenth century. The critics were, inter alia, Beccaria and Feuerbach. It was pointed out, inter alia, that the limitation period is an alien institution for the criminal law moved from civil law, incompatible with typical criminal law justice objectives. The legitimacy of the existence of limitation in criminal law was also questioned by representatives of the school of anthropological, who claimed that the institution favors clever criminals who managed to hide the offence (see M. Kulik, Above, 9).