THE CRIMINAL SCIENCES JOURNAL
TCSJ
"AL.I. CUZA" POLICE ACADEMY

THE PROBLEM OF DETERMINING THE STATUTE OF LIMITATIONS FOR CRIMINAL LIABILITY IN THE CASE OF ADMINISTRATIVE CONTROLS

ADRIAN ȘTEFĂNEL MANAFU[1]

IONUȚ ANDREI BARBU[2]

Abstract: *Administrative control is a key mechanism for ensuring legality and efficiency within public institutions, serving a preventive, corrective, and guiding role. This article addresses the issue of invoking statutes of limitation during administrative control actions, emphasizing that such bodies lack the legal authority to determine prescription, particularly in cases involving financial damages or indications of criminal offenses. The legal implications and risks of these unjustified practices are highlighted, as they may undermine both the legality and effectiveness of administrative oversight. The article concludes by stressing the need for clear legal boundaries and adherence to statutory competences in the exercise of control functions.*

Keywords: *administrative control; prescription; finding prescription of criminal liability*

Administrative control is the most complex form of control exercised over the activity of public institutions and authorities. The role of this administrative control is not only to ascertain errors or abuses committed, but also to guide, orient and correct the actions, practices and customs within public authorities and institutions, in order to ensure the compliance of the activities carried out by the latter with the requirements and role established by the legal framework.

Administrative control has given rise, among theorists, specialists in administrative law, or even among those who actually provide such a form of control, to countless discussions related to its methods, instruments, limits, or purpose.

An important step in this direction was taken by adopting Emergency Ordinance no. 87/2020 on the organization and functioning of the Prime Minister's Control Body, as well as for the

[1] Head of Department, Anti-Corruption Control and Integrity Department, National Regulatory Authority for Mining, Petroleum and Geological Storage of Carbon Dioxide, Romania, E-mail: amanafu@yahoo.com
[2] Associate Professor, PhD, Department of Public Law, "Alexandru I. Cuza" Police Academy, Bucharest, Romania, Corresponding author: ia_barbu@yahoo.com

Copyright: ©2025 by the authors. Open access publication under the terms and conditions of the Creative Commons Attribution (CC BY) license
https://creativecommons.org/licenses/by/4.0/

TCSJ, Vol. 3, no. 1/2025, pp. 19-23

establishment of measures to improve its activity[1], in art. 3, letter c), establishing that among the functions of the Prime Minister's Control Body is "the function of methodological coordination of structures with control responsibilities within the ministries and authorities of the central public administration, while respecting their operational independence" .

In parallel with the implementation of this legal framework, the Prime Minister's Control Body began a series of meetings with representatives of the control body structures within public institutions and authorities, through which an attempt was made to develop a subsequent legal framework with the aim of standardizing the instruments and methods of administrative control and of defining more clearly the role of this type of control. From the discussions with the aforementioned representatives, it emerged that one of the problems faced during control actions and implicitly when materializing them through the preparation of control acts is the invocation of the statute of limitations in the following cases:

-the existence of prejudices, or possible prejudices during the audit of the Court of Accounts, or of the controls carried out by the control bodies themselves;

-the existence of reasonable indications regarding the commission of criminal acts;

In the first situation, the applicable legal texts are quite clear, namely:

I. **of the Administrative Code**[2]

Art. 490, paragraph (1): "The breach by public servants, with guilt, of their official duties shall entail administrative, civil or criminal liability, under the terms of the law and this code"

Art. 499: "The civil liability of a public servant shall be incurred:

a) for damages caused with guilt to the assets of the public authority or institution in which he works;

b) for failure to return within the legal term the amounts that were improperly granted to him;

c) for damages paid by the public authority or institution, as principal, to third parties, pursuant to a final court decision."

Art. 500: "1) The compensation for damages caused to the public authority or institution in the situations provided for in art. 499 letters a) and b) shall be ordered by issuing an order or an imputation provision by the head of the public authority or institution, **within 30 days from the discovery of the damage**, or, as the case may be, by assuming a payment

[1] With the subsequent amendments and completions brought by Emergency Ordinance no. 6/2024 for amending and completing Government Emergency Ordinance no. 126/2005 on the representation of Romania or public institutions before the International Court of Arbitration of the International Center for Settlement of Investment Disputes and before other international judicial and arbitral courts, as well as for completing Government Emergency Ordinance no. 87/2020 on the organization and functioning of the Prime Minister's Control Body, as well as for establishing measures to improve its activity.

[2] Approved by Emergency Ordinance No. 57/2019.

commitment, and in the situation provided for in letter c) of the same article, on the basis of the final court decision.

(2) Against the order or imputation provision, the public official in question may address the administrative court, under the conditions of the law.

(3) The order or imputation provision that remains final as a result of the failure to file or the rejection of the action with the administrative court constitutes an enforceable title.

(4) The right of the head of the public authority or institution to issue the order or imputation provision shall be prescribed within 3 years from the date of occurrence damage" .

II. **of the Civil Code**:

Book VI "On Extinct Prescription, Lapse and Calculation of Terms", Title I, Extinct Prescription, especially art. 2500, 2501, 2506, 2513, 2512, 2523.

However, there have been situations when "those interested" (or those in a position to apply the aforementioned legal provisions) have invoked in their own control acts the intervention of prescription after having ascertained the existence of a prejudice caused at the level of the institution or public authority, although art. 2512[1] and art. 2513[2] of the Civil Code are clear in this regard. Or if **"the competent jurisdictional body cannot apply the prescription ex officio**" the legitimate question arises whether an "administrative control body" can apply it? In our opinion, the answer can only be negative.

In the second situation, related to the discovery, during the administrative control, of reasonable indications regarding the commission of criminal acts, especially those in Title V of the Penal Code – "Corruption and official offences", Chapter II – "Official offences" [3], **the criminal legislation no longer provides for legal provisions** such as those contained in Articles 2512 and 2513 of the Civil Code, which exclusively assigned to the **"competent jurisdictional body" the right to establish the occurrence of the statute of limitations, but not under any conditions, including the impossibility of applying it ex officio**, but despite this, the administrative control structures "were tempted" to apply, or to establish the occurrence of the statute of limitations when apparently the criminal acts had occurred some time ago, naturally referring, in their opinion, only to the provisions of Article 154 of the Criminal Code[4]. Such a "temptation" was the consequence of completely unjustified and

[1] Art. 2512: "1) The prescription may be opposed only by the person in whose favor it flows, personally or through a representative, and without being required to produce any contrary title or to have been in good faith.
(2) The competent jurisdictional body may not apply the prescription ex officio.
(3) The provisions of this article are applicable even if the invocation of the prescription would be in the interest of the state or its administrative-territorial units" .

[2] Art. 2513: "The limitation period may be opposed only in the first instance, by objection or, in the absence of an invocation, at the latest at the first trial date to which the parties are legally summoned."

[3] From experience, the most frequent situations fall within the scope of "abuse in service" and "negligence in service" .

[4] (1) The limitation periods for criminal liability are:

unprofessional reasons for not sending criminal prosecution bodies notifications regarding criminal acts that occurred many years ago or not sending people to prosecutors' offices even though the acts are time-barred, etc.

The provisions of art. 155 of the Penal Code – "Interruption of the course of the limitation period for criminal liability" or of art. 156 of the Penal Code – "Suspension of the course of the limitation period for criminal liability" were thus ignored, since it is difficult to believe that a control structure can assess, for example, what are those "unforeseen or unavoidable" circumstances that "prevent the initiation of criminal action or the continuation of the criminal trial" [1] or can know whether the procedural acts in question have been fulfilled[2]. In addition, there are also special situations of interpretation and uniform application of the provisions of art. 154 paragraph (2) of the Penal Code, established by Appeal Decisions in the Interest of the Law and which have the same object[3]. **However, the essential fact is that there is no legal**

a) 15 years, when the law provides for the crime committed a life sentence or a prison sentence exceeding 20 years;
b) 10 years, when the law provides for the crime committed a prison sentence exceeding 10 years, but not exceeding 20 years;
c) 8 years, when the law provides for the crime committed a prison sentence exceeding 5 years, but not exceeding 10 years;
d) 5 years, when the law provides for the crime committed a prison sentence exceeding one year, but not exceeding 5 years;
e) 3 years, when the law provides for the crime committed a prison sentence not exceeding one year or a fine.
(2) The time limits provided for in this article shall begin to run from the date of the commission of the offence. In the case of continuous offences, the time limit shall run from the date of cessation of the action or inaction, in the case of continuous offences, from the date of the last action or inaction, and in the case of habitual offences, from the date of the last act.
(3) In the case of progressive offences, the limitation period for criminal liability shall begin to run from the date of the action or inaction and shall be calculated in relation to the penalty corresponding to the final result produced.
(4) In the case of offences of trafficking and exploitation of vulnerable persons and offences against sexual freedom and integrity, other than those provided for in art. 153 para. (2) lett. c), as well as the crime of child pornography, committed against a minor, the limitation period begins to run from the date on which he/she became an adult. If the minor died before reaching the age of majority, the limitation period begins to run from the date of death.

[1] See art. 156, paragraph (1) of the Penal Code.

[2] See art. 155, paragraph (1) of the Penal Code.

[3] Admission decision - RIL no. 5/2019, published in the Official Gazette no. 334 of 2 May 2019:
In the interpretation and application of art. 174, with reference to art. 154 paragraph (2) sentence I of the Criminal Code, establishes that:
The date of the commission of the offense and, implicitly, the date from which the limitation period for criminal liability begins to run in the case of simple offenses whose objective side involves the occurrence of damage or the achievement of undue benefit over a period of time is understood to be the moment of the occurrence of the first damage or the achievement of the first undue benefit.; Admission decision: RIL no. 1/2025, published in the Official Gazette no. 326 of 11 April 2025:
In the interpretation and uniform application of art. 174 and art. 154 paragraph (2) of the Criminal Code, the date of the commission of the offense and, implicitly, the date from which the limitation period for criminal liability begins to run in the case of single offenses provided for in Articles 289-292 of the Criminal Code, in the event that several normative modalities of the material element are performed, on different dates, is understood to mean the date of the commission of the first alternative modality, independently of the subsequent, subsequent performance of several alternative modalities of the content of the offense and regardless of the time interval that interposes between the date of the commission of the first alternative modality and the commission of another alternative modality or between the acts that make up the action characteristic of one of the normative modalities of committing the act, respectively the date of the commission of the first act in a succession of acts corresponding to a single normative modality.

provision that grants an administrative control structure the power to determine and apply the statute of limitations for criminal liability, which is also the conclusion that emerged from informal discussions held at meetings with representatives of control body structures within public institutions and authorities.

Moreover, according to the provisions of criminal procedure, there are three situations that refer to the subject under analysis. Thus, in a first situation, when the criminal investigation body carries out the criminal investigation and finds that the limitation period for criminal liability has expired according to the provisions of art. 16 paragraph (1) letter f) of the Code of Criminal Procedure, it prepares and sends a report with a proposal for dismissal to the prosecutor supervising the criminal investigation. In another situation, when the prosecutor is obliged to carry out the criminal investigation[1] and finds that the limitation period for criminal liability has expired according to the provisions of art. 16 paragraph (1) letter f) of the Code of Criminal Procedure, it prepares a dismissal order. Finally, when the judge or the president of the court finds during the trial that the limitation period for criminal liability has expired according to the provisions of art. 16 paragraph (1) letter f) of the Code of Criminal Procedure, it orders the termination of the criminal trial in accordance with the provisions of art. 396 paragraph (6) of the Criminal Procedure Code[2].

References

Emergency Ordinance no. 57/2019, on the Administrative Code

Emergency Ordinance no. 87/2020 on the organization and functioning of the Prime Minister's Control Body, as well as for the establishment of measures to improve its activity

Law no. 135/2010, on the Criminal Procedure Code, as amended and supplemented

Law no. 286/2009, on the Criminal Code, as amended and supplemented

Law no. 287/2009, on the Civil Code, republished, as amended and supplemented

Negruț, G. & Boroi, A. (2024) *Criminal Procedural Law*, 4th Edition, revised and updated, Hamangiu, Bucharest.

[1] Art. 56.paragraph (3) of the Criminal Procedure Code

[2] For more details, see G. Negruț, A. Boroi, (2024) *Criminal Procedural Law*, 4th ed., revised and updated, Hamangiu Publishing House, Bucharest, pp. 74, 97 and 590.