

Decision no. 297 of 26 April 2018
concerning the exception of unconstitutionality of the provisions of
Article 155 (1) of the Criminal Code
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Summary

I. As grounds for the exception of unconstitutionality, the authors argued that the wording “any procedural act” lacks clarity, precision and foreseeability, as procedural acts are divided into procedural and trial-related acts, which implies a different legal regime for each category. The wording criticised also gives the judicial bodies a large number of tools, some of which lack legal substance, to interrupt the course of limitation in respect of criminal liability. It has been argued that procedural acts which are purely technical in nature and do not affect the capacity of the offender and the basis for the accusation should not be included in the category of acts which interrupt the limitation period of criminal liability. At the same time, to the extent that the concept of limitation period for criminal liability is regarded as a form of sanctioning the inaction of the State’s bodies, they are interested in issuing inadequate procedural acts which do not have a concrete justification, in a abusive and superficial manner, which totally disagrees with the justification for the existence of the concept of limitation period and of the principle of equality of arms.

II. Having examined the exception of unconstitutionality, the Court held that the limitation of criminal liability was based on the idea that criminal liability should intervene promptly, as close as possible to the time when the crime was committed, as only in this way can the sense of security of social values and the trust in the authority of the law be protected. The later the criminal liability is attracted as compared to the date when the crime was committed, the less it is efficient, the social resonance of the perpetration of the crime is diminishing and the determination of criminal liability is no longer necessary as the consequences of the crime could have been removed or cancelled. At the same time, during the time elapsed from the commission of the offence, its author, under the pressure of the threat of liability, may correct his or her behaviour the need for imposition of a penalty not being necessary any more.

In order to have the effect of removing criminal liability, the limitation period should run without the intervention of any act that would bring the offence committed back into public conscience. The authors of the exception raise the issue of acts by which the limitation of criminal liability can be interrupted, claiming that not any procedural act should have that effect. In this respect, reference is made to the legislative solution regulated by Article 123 of the 1969 Criminal Code, according to which the period of limitation was interrupted by the fulfilment of any act which, according to the law, had to be communicated to the suspect or accused person.

The Court confirmed that acts carried out during the criminal proceedings by the judicial bodies may be classified as procedural and trial-related acts. Under this classification, trial-related acts are the legal instruments by which the procedural subjects are exercising their rights and fulfil their obligations, and procedural acts are the activities through which trial-related acts are implemented or through which it is ascertained the implementation or the content of an act or a trial-related measure or another procedural act is recorded.

According to the Court, the interruption of the course of the limitation period for criminal liability is a manner in which the society, through the State bodies, informs the suspect or accused person that the criminal act which he or she committed did not lose the social

resonance it had at the time it was committed. This measure shall therefore only be fully effective if there are legal levers to inform the person concerned about the start of a new period of limitation. Such a procedure of information may consist of the communication of the acts carried out in the case.

In view of these considerations, the foreseeable effect of the provisions of Article 155 (1) of the Criminal Code on the person who committed a criminal offence should be guaranteed by ensuring that the respective person is able to know the date of interruption of the limitation period and the start date for a new period of limitation. To accept the contrary solution is to create, on the occasion of the performance of procedural acts which are not communicated to the suspect or accused person, a state of perpetual uncertainty for the person concerned, given the impossibility of a reasonable assessment of the time interval between which he or she can be held liable for the acts committed, uncertainty which may last until the end of the special limitation period provided for in Article 155 (4) of the Criminal Code.

For these reasons, the Court found that the provisions of Article 155 (1) of the Criminal Code lacked predictability and were contrary to the principle of legality of criminalisation, as the phrase “any procedural documents” contained therein also envisaged acts which are not communicated to the suspect or accused person.

III. For all these reasons, the Court upheld the exception of unconstitutionality raised and found that the legislative solution providing for the interruption of the period of limitation of the criminal liability by fulfilling “any procedural act in the case”, contained in the provisions of Article 155 (1) of the Criminal Code, was unconstitutional.