



Judicial Jurisprudence in Criminal Matters: The Statute of Limitations of Public Action as a Model

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Abstract:

Judicial jurisprudence in criminal matters represents a complementary tool, being an interpretative source for criminal law texts, assisting and guiding their understanding and examination, especially in cases marked by ambiguity, lack of clarity, and imprecision. For this reason, the judiciary endeavors to unify the method of interpreting criminal provisions, in order to reduce discrepancies in rulings and contribute to the stability of the judicial system as a whole, considering that the contradiction of legal criminal texts, as revealed through practical application, constitutes a primary and necessary reason to resort to judicial jurisprudence, which brings about a change in jurisprudence and proposes legal amendments.

The role of judicial jurisprudence in this field is manifested in clarifying the obscure vision concerning matters related to public action, notably regarding the commencement of the statute of limitations period and its interruption in continuous, repeated, and composite offences.

Keywords: judicial jurisprudence, public action, ambiguity, duration..

ملخص:

إن الاجتهاد القضائي في المادة الجزائية، يمثل أداة تكميلية باعتباره مصدرا تفسيريا للنص الجزائي مساعدا ومرشدا لفهما وفحصها، سيما في الحالات التي يشوبها الغموض، وعدم الوضوح وعدم الدقة، ولهذا يسعى القضاء جاهدا لتوحيد طريقة تفسير النصوص الجزائية، وذلك من أجل التقليل من تباين الأحكام، والإسهام في استقرار النظام القضائي ككل، على اعتبار أن تعارض النصوص القانونية الجزائية الظاهر من

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خلال التطبيق العملي، يعد سببا رئيسا وضروريا للاستعانة بالاجتهاد القضائي، الذي يحدث تغيير في تفسير واقتراح التعديلات القانونية، ويتجلى دور الاجتهاد القضائي في هذا المجال في توضيح الرؤية الغامضة، بخصوص المسائل المرتبطة بالدعوى العمومية، سيما الأمر المتعلق ببدأ سريان مدة التقادم وانقطاعها في الجرائم المستمرة والجرائم المتكررة والمركبة.

الكلمات المفتاحية: الاجتهاد، القضائي، الدعوى، العمومية، الغموض، المدة.

Introduction:

The role of judicial jurisprudence is essentially manifested in the application of legislative texts and the settlement of disputes brought before the judiciary.

In the face of the shortcomings of legislation, its lack of clarity, and ambiguity, it has become imperative for the criminal judge to resort to interpreting legal provisions and adapting their application to the cases presented, through judicial jurisprudence which contributes to filling legal gaps and establishing legal principles, which become a reference to be followed and emulated by trial judges, within the limits of the rule prohibiting broad jurisprudence of criminal law provisions, except when such jurisprudence neither creates a crime nor imposes a penalty.

Judicial jurisprudence represents an important interpretative source in criminal matters, which are directly connected to the fundamental rights and freedoms of individuals; for this reason, the judge undertakes their jurisprudence and application in public action, which constitutes the legal means by which criminal proceedings are initiated against offenders.

Judicial jurisprudence in criminal matters also plays a prominent role in establishing and developing the state's criminal policy, interpreting and revealing all the legal loopholes affecting criminal provisions, especially those related to the statute of limitations of public action, which raises several practical problems essentially connected to the commencement of its period in cases other than simple and immediate offences, whether regarding continuous, repeated, or composite crimes, and its interruption. On this basis, judicial jurisprudence by the Supreme Court seeks to find and unify solutions to these issues.

Recourse to judicial jurisprudence regarding the statute of limitations of public action is due to the complexity or ambiguity present in some legal provisions, resulting from the urgent need to update them. The Supreme Court thus plays a major and effective role in guiding judicial practice and interpreting the provisions of the law relating to limitation through its judicial jurisprudences, which constitute a refuge for judges, lawyers, and all researchers in this field, particularly when disputes arise concerning the date of



commencement of the limitation period or the occurrence of legal causes leading to its interruption.

Judicial jurisprudence concerning public action represents a vital tool regarding legal qualification, which contributes to filling legislative voids, ensuring and achieving justice, as it serves as an important reference for the judiciary.

To address this topic, we raise the following problematic:

What is the position of the Supreme Court judges regarding the statute of limitations of public action in cases of ambiguity in procedural criminal provisions?

To answer this problematic, we will set this out in two sections:

Section One: The Specificity of Judicial Jurisprudence in Criminal Matters

Section Two: Aspects of the Exercise of Judicial Jurisprudence in the Statute of Limitations of Public Action

Section One

The Specificity of Judicial Jurisprudence in Criminal Matters

Judicial jurisprudence in criminal matters is characterized by specificity in terms of its definition and the authority entrusted with its exercise. This specificity includes the conditions and rules to be relied upon in criminal matters, whether concerning substantive rules related to criminal law on the one hand, or procedural rules related to criminal procedure law on the other. This is what we shall address as follows:

Subsection One: The Specificity of Judicial Jurisprudence in Criminal Matters in Terms of Concept

The specificity of judicial jurisprudence in criminal matters is manifested in defining its nature and the authority responsible for exercising it. This shall be clarified as follows

Part One: Definition of Judicial Jurisprudence in Criminal Matters

Etymologically, jurisprudence (jurisprudence) in Arabic means effort, hardship, and exertion. It was formerly referred to as "the applied science of law,"¹ and in Roman law, it meant "the practical knowledge of law."² In modern times, it has become associated with the function of the judge, who adheres to it when delivering judgment, whether concerning the texts of the law or deriving the applicable ruling in the absence of a provision or in case of its ambiguity.

On this basis, it can be defined as a set of judicial rulings and decisions interpreting criminal provisions in light of deducing implications by embodying principles and finding applicable solutions in the field of criminal law in cases of lack of clarity in the meaning and structure of the criminal text, considering that no jurisprudence is permissible when a criminal text is clear, provided that jurisprudence remains narrow in its substantive aspect, while it may be broader in its procedural aspect.



Section Two: The Authority Responsible for Judicial Jurisprudence in Criminal Matters

In order to identify the authority responsible for judicial jurisprudence in criminal matters, it is necessary to determine the narrow meaning of judicial jurisprudence and to whom it is entrusted. This is because judicial jurisprudence in this narrow sense refers to the jurisprudence issued by a competent authority under specific conditions and procedures, which the judiciary has established and consolidated in practice.

And while judges of the first and second degrees in criminal matters are required to exert effort in interpreting the criminal text and accurately applying it as a legal model to the facts of the case at hand, this effort, in its general framework, does not amount to the narrow concept of judicial jurisprudence unless it is issued by the Supreme Court (Cour Suprême) in the form of a decision ratified or agreed upon by the assembled chambers, provided that such jurisprudence does not create a crime nor establish a penalty.

The Supreme Court, as the authority legally empowered to review and assess the works of courts and tribunals, is responsible for ensuring the unification of judicial jurisprudence throughout the country and for ensuring respect for the law. This is the task assigned to it by the Algerian constitutional legislator pursuant to Article 179, paragraphs 1 and 3 of the Constitution³, through the issuance of its decisions by one of its various chambers, particularly the criminal chamber, the mixed chamber, or the assembled chambers, in accordance with the provisions of Article 15 of Organic Law No. 11-12 of 26 July 2011, defining the organization, operation and jurisdiction of the Supreme Court.⁴

The purpose of this task entrusted to the Supreme Court is to unify judicial jurisprudence by providing legal solutions to various disputes and establishing legal principles to assist the legislator in developing legislative texts — especially in criminal matters — and filling any gaps revealed during their application.

The Supreme Court has attached great importance to judicial jurisprudence, through its concern to unify it and avoid contradictions between the decisions of its various chambers. To that end, in 2014, it created a Department of Documentation and Legal and Judicial Studies, itself composed of several units, the most important of which is the Judicial Jurisprudence and Legislation Monitoring Unit⁵.

According to Article 16 of the Internal Regulations of the Supreme Court, this unit is charged with preparing a file on the development of judicial jurisprudence, monitoring it by analyzing its decisions, issuing regular analytical indexes arranged according to the topics of judicial jurisprudence, and proposing the revision of legislative texts in light of judicial jurisprudence, under the guidance of the chamber presidents.

The Judicial Jurisprudence and Legislation Monitoring Unit is made up of four offices, namely: The Civil Judicial Jurisprudence Monitoring Office, The Legislation Monitoring Office, The Criminal Judicial Jurisprudence Monitoring Office, The Judicial Jurisprudence Index Office.

Pursuant to the aforementioned Article 16, the Criminal Judicial Jurisprudence Monitoring Office is tasked with studying the decisions of the criminal chamber and the misdemeanors and infractions chamber, extracting the legal principle, classifying the decisions of both chambers by



subject and in alphabetical order, identifying possible contradictions between decisions, and notifying the First President of the Supreme Court.

The Judicial Jurisprudence Index Office is, in particular, responsible for preparing comprehensive annual indexes of judicial jurisprudence in light of the classification of chamber decisions, as well as periodic thematic indexes of judicial jurisprudence.

Thus, judicial jurisprudence represents the provision that replaces the legal text in case of its absence, ambiguity, or imprecision — provided it neither creates a crime nor establishes a penalty. It must be derived from the principles and rules governing criminal matters without deviating from their meaning. In this case, it is binding on trial judges,⁶ who, if they fail to comply, expose their judgments to cassation in the event of an appeal before the Supreme Court against the judgments or decisions rendered by the courts and tribunals.

From the foregoing, it appears that judicial jurisprudence has at least two concepts: one broad and one narrow.

The former consists of jurisprudence in general, covering all decisions of the Supreme Court in its various chambers, which are not binding on trial judges.

The latter consists of the Supreme Court's decisions approved unanimously by the assembled chamber, which strives to avoid contradictions and inconsistencies in its decisions. This concept morally binds trial judges, who, if they fail to adhere to it, expose their rulings to cassation.

It should be noted that certain decisions rendered by the misdemeanors and infractions chamber and others by the criminal court, although not issued by the assembled chambers, have nevertheless, in certain respects, stabilized in their jurisprudence and have become part of the established judicial jurisprudence. This is acknowledged in the journal published by the Supreme Court, which carries on its cover the heading ⁷“Judicial Jurisprudence of the Supreme Court” and, in special issues, the heading “Judicial Jurisprudence of the Criminal Chamber.”⁸

This journal is subject to joint review by a body composed of the President of the Supreme Court and the chamber presidents, constituting the journal's scientific committee. Its index also includes the title “Judicial Jurisprudence of the Supreme Court.”

Proponents of the broad concept of judicial jurisprudence rely on the provisions of Article 179 of the 2020 Algerian Constitution, which assigns the Supreme Court the mission of unifying judicial jurisprudence in general, without specifically limiting it to the assembled chamber, which confirms the possibility of judicial jurisprudence being issued by a single chamber of the Supreme Court.

Practical judicial reality has shown that the Supreme Court has rendered different judicial jurisprudences in criminal matters in similar issues. This has compelled it, when faced with conflicting jurisprudences, to issue landmark decisions through its assembled chambers. These decisions fall within its core function aimed at unifying judicial jurisprudence on one hand and addressing legislative shortcomings and interpreting texts on the other.

When the issue involves a divergence of judicial jurisprudence, it thereby establishes the correct legal rules to be applied and lays down, for this purpose, the correct standards for interpreting criminal texts, in accordance with the provisions of Article 18 of Organic Law No.



11-12 of 26 July 2011 defining the organization, operation and jurisdiction of the Supreme Court.

Judicial jurisprudence based on the above clarification, even if it is issued by joint chambers, is considered relative jurisprudence; it remains in effect for a certain period which may be long or short. It is not fixed and can be completely changed in a specific issue within criminal law. This is what is referred to as a total change in judicial jurisprudence. In this case, consideration is given to the number of different judicial bodies that issued decisions constituting the judicial jurisprudence and those rejecting it, the number of decisions issued that constitute it, and the general nature of the applied solutions.

Second Subsection: The Specificity of Judicial Jurisprudence in Criminal Law Regarding Its Controls

Reliance on judicial jurisprudence in criminal law is subject to adherence to a set of controls and conditions⁹, whether related to the jurisprudence of criminal and penal texts or procedural formal texts¹⁰, which we will clarify as follows:

First Part: Objective Controls of Judicial Jurisprudence in Criminal Law

Judicial jurisprudence in criminal law is governed by a set of specific rules and principles that constitute objective controls relied upon in issuing judicial judgments and decisions, which can be summarized as follows:

First: The principle of no jurisprudence with the existence of an explicit, clear, and complete criminal text:

There can be no place for judicial jurisprudence if the criminal text is clear and complete, as this enshrines the principles of legality, separation of powers, and non-interference in judicial matters in general and criminal judiciary in particular, in the work of the legislative authority. This control is embodied in the legal rule mentioned in Article 116 of the Penal Code, which punishes temporary imprisonment for the perpetrator of the crime of treason in its specific meaning related to public office¹¹, with imprisonment from five to ten years.

Judges who intervene in legislative work—whether by issuing decisions containing legislative texts or by preventing the implementation of one or more laws during deliberations¹², to determine whether laws will be promulgated or implemented—are addressed in this article by the phrase "issuing decisions containing legislative texts"—meaning judicial jurisprudence with the existence of a clear and complete legal text is prohibited.

On this specific basis and according to the concept of violation, judicial jurisprudence in criminal law may be invoked in cases where the criminal text is unclear, i.e., when it contains ambiguous and vague terms requiring intellectual effort to ascertain the true meaning of the ambiguous term and to provide a precise¹³, comprehensive, and exhaustive definition. This situation imposes on the criminal judiciary the obligation to engage in jurisprudence to clarify and logically interpret the criminal text.



An example is Article 48 of the Penal Code, which excludes punishment for one forced to commit a crime by an irresistible force.

The term "irresistible force"¹⁴ after it is a vague and unclear term, which led the Algerian judiciary to interpret such ambiguity relying on French administrative jurisprudence's clarifications on this term when adjudicating administrative contract disputes. Any event beyond the defendant's will, for which they bear no responsibility, causing them to breach legal or contractual obligations, includes sudden incidents or force majeure by natural causes (such as earthquakes, floods, epidemics, etc.), or human acts (such as errors by the harmed party or others).¹⁵

Judicial jurisprudence may also be relied upon in criminal law when there is an incomplete criminal text, known as a fragmented text. This situation occurs if the national legislator adopted criminal legal provisions from a foreign or comparative legislator¹⁶, and this quotation was affected by certain defects, such as the translator omitting a paragraph of the foreign text. Here, if the judge finds from the nature of the text that there is a break, illogicality, or incompleteness in the criminal text's meaning, the judge engages in jurisprudence to fill these gaps by referring to the original source from which the national legislator borrowed and looks for the omitted paragraphs and applies them in their ruling as judicial jurisprudence, not as applying foreign law. This reinforces the principle of national legal sovereignty within the narrow limits of jurisprudence required to apply the legal model to the case at hand, which forms the basis for acquittal or conviction.¹⁶

Second: The principle of mandatory adherence to narrow jurisprudence in the substantive aspect

The jurisprudence issued by the criminal judge when adjudicating a specific case presented before them must comply with the principle of substantive legality, i.e., the legality of crimes and penalties, to protect individual rights and freedoms in accordance with Article 165 of the Constitution and Article 1 of the Penal Code, given that the judiciary is tasked with protecting those rights and freedoms according to Article 164 of the Constitution. The latter guarantees litigants protection against any arbitrariness, especially when the judiciary departs from the general rules established pursuant to Article 174 of the Constitution.¹⁷

The jurisprudence made by the criminal judge in the substantive aspect must not be broad but rather narrow if the text suffers from ambiguity or incompleteness. The judge must avoid, when interpreting the substantive criminal text, creating a crime that did not exist before or imposing a penalty not provided by law. Doing so would transform the judiciary from a judicial authority that resolves disputes into a legislative authority that criminalizes and punishes¹⁸. The judge has no jurisprudential authority in the absence of a substantive criminal text indicating that the conduct is criminal or punishable. If the judge attempts to criminalize or punish conduct not prohibited or punishable by law, they violate the principle of legality enshrined by the Constitution in Article 165, which states that the judiciary must act on the bases and principles of legality and equality.¹⁹

And other constitutional principles that constitute guarantees for the protection of individual and collective rights and freedoms, as also enshrined in Article 1 of the Penal Code regarding the non-existence of crime and punishment or security measures without law — behavior prohibited and referred to by Article 116 of the Penal Code as previously explained.



The principle of narrow jurisprudence of the substantive criminal text is fulfilled on the condition that it neither creates a crime nor imposes a penalty, with the expansion in jurisprudence²⁰, in this case, benefiting the accused rather than working against them, especially if the text is linked to a reason for permissibility or exemption from punishment.

Part Two: Procedural Controls on Judicial Precedent in Criminal Law

Judicial precedent in criminal law is also governed by rules and principles that collectively form procedural controls, as follows:

First: Considering Broad Jurisprudence in the Procedural Aspect as a Guarantee for the Proper Administration of Justice

The Code of Criminal Procedure includes a set of procedures and regulations that must be adhered to from the moment the crime occurs until the issuance of a final judgment with res judicata effect.²¹ The Code of Criminal Procedure, as is well known, is the law of freedoms or guarantees; it regulates the methods of investigation and inquiry into the crime and its perpetrator and organizes all stages of the public prosecution, starting from its inception and initiation, through investigation and trial, to subsequent appeal procedures.²²

The jurisprudence applied to these procedural rules differs from that applied to substantive rules established in the Penal Code. Accordingly, the jurisprudence of procedural rules is broad, as these rules are enacted by the legislator to secure and guarantee the proper administration of justice and the rights of the accused.

Jurisprudence or judicial precedent concerning procedural (formal) rules differs from its counterpart in substantive rules; it grants judges wide latitude to adopt logical jurisprudence methods based on the principle of legality of crimes and punishments. Judicial precedent in this case may be broad,²³ meaning judges should not restrict themselves to the narrow jurisprudence principle applied to substantive texts related to criminalization and punishment, since judges rely here on logical methods based on expansive jurisprudence and judicial precedent of procedural texts, provided this does not harm the interests of the parties, especially the accused, who is considered the central figure in the public prosecution.²⁴

Second: The Jurisprudence Must Favor the Accused

If the criminal text is highly ambiguous, making it impossible for the interpreter to ascertain the legislator's intent, and multiple jurisprudences seem equally plausible, then the jurisprudence that favors the accused should be preferred. The general rule for actions is permissibility, so the principle of broad jurisprudence—or judicial precedent in favor of the accused and against their detriment—stems from the presumption of innocence principle stated in Article 41 of the Algerian Constitution, as well as Article 1 of the Code of Criminal Procedure, amended by Law No. 17-101 dated 27 March 2017²⁵.

Since the presumption of innocence enshrined in the Constitution and law results in the burden of proving the commission of the crime falling on the public prosecution, exempting the accused from proving their innocence, the jurisprudence of doubt—whether due to ambiguity, vagueness, contradiction in the criminal text,²⁶ or weakness in the evidence—should always



favor the accused. Therefore, the judge must respect, when interpreting or exercising judicial precedent in a criminal case, the interest of the accused. Otherwise, the precedent would be unconstitutional and illegal, infringing upon the presumption of innocence, which is a constitutional and legal guarantee that must underpin any judicial precedent.

Section Two: Manifestations of the Practice of Judicial Precedent in the Prescription of Public Prosecution

The prescription of public prosecution, or what is called the statute of limitations of the crime, means the lapse of a certain time period specified by law, starting generally from the date of commission of the crime, during which no procedural steps have been taken to initiate prosecution. The Algerian criminal legislator has regulated the prescription of public prosecution or statute of limitations of the crime in Articles 6, 7, 8, 8 bis, 8 bis 1, and 109 of the Code of Criminal Procedure.²⁷

According to Article 7 of the Code of Criminal Procedure, the statute of limitations for felonies expires after a full period of 10 years starting from the date of the crime, if no investigation or prosecution procedure has been taken during that period. If procedures were taken within that period, the limitation period only runs after a full 10 years from the date of the last procedural act.²⁸

According to Article 8 of the Code of Criminal Procedure²⁹, the public prosecution expires in misdemeanors after a full period of 3 years, and according to Article 9, the public prosecution for infractions expires after a full period of 2 years³⁰.

Article 8 bis of the Code of Criminal Procedure excludes crimes that are not subject to prescription of public prosecution, which includes felonies and misdemeanors described as terrorist and sabotage acts, organized cross-border crime, bribery, and embezzlement of funds.

A careful observer of these various procedural texts notes that no issues arise except concerning crimes of a special and diverse nature, such as continuing crimes, successive crimes³¹, and others. In such cases, the penal text may contain ambiguity and obscurity. Herein lies the role of judicial jurisprudence (jurisprudence) in finding a solution to determine the commencement of the statute of limitations period for the public prosecution, its calculation, interruption, or suspension.³²

First Subsection: Commencement of the Statute of Limitations for Public Prosecution

The commencement of the statute of limitations period for a crime or public prosecution differs according to its nature from one crime to another, as per the perspective or jurisprudence of the Supreme Court, which will be clarified below:

Part One: Continuing Crime

This type of crime consists of an act that is capable of continuing and renewal over a period of time; it is a continuous criminal activity lasting for a variable duration, possibly occurring in multiple locations.³³ Examples include possession of narcotics, concealment of stolen or unlawfully obtained items from a felony or misdemeanor (which is based on the element of possession), kidnapping, use of forged documents, and failure to deliver a child to the person legally entitled to custody.³⁴



The commission of this kind of continuing crime requires jurisprudential jurisprudence from the Supreme Court, particularly regarding the start of the statute of limitations period for public prosecution, due to the specificity and variety of these crimes. Several judicial rulings have been issued on this matter, considering that the limitation period for continuing crimes begins from the date the continuing state ends. This principle was affirmed by the Supreme Court in its criminal ruling dated 25/10/1992, under No. 79789, concerning limitation in continuing crimes,³⁵ which begins from the date of the last act of use to initiate public prosecution, which the legislator determined to lapse after a full period of three years from the date of the crime. Therefore, any judgment contrary to this constitutes a misapplication of the law. The limitation period in such cases starts only from the last act of use, and thus, lower courts ruling on the limitation of acts before this date have erred in applying the law, justifying annulment and overturning of the contested decision.³⁶

The jurisprudence of the Supreme Court has consistently held that the limitation period for forgery offenses begins from the date of discovery of the crime, not from the date of its commission. This was affirmed by the Supreme Court in its ruling dated 05/06/1990,³⁷ Cassation No. 61453, which established that the limitation period starts from the day the crime was discovered. Therefore, violating this principle constitutes a breach of law. This principle also applies to the crime of using forged documents, where the limitation period starts from the day the forged document was used, and also to forgery itself, where the limitation period starts from the day the forgery related to the public prosecution's document becomes known. This was also clarified by the Supreme Court in its ruling dated 18/02/2009, No. 572259³⁸. However, the Supreme Court later reversed this jurisprudence, considering forgery a momentary (instantaneous) crime rather than a continuing one, thus affirming the principle that the limitation period for public prosecution runs from the day the crime was committed, as ruled in the decision dated 27/12/2018, No. 21299278.³⁹

Part Two: Successive or Repeated Acts Crime

Successive acts crimes, by their nature, involve repetition and succession of the constituent acts, i.e., the physical act constituting the crime occurs in batches or repeatedly and successively, sharing the unity of the right infringed upon and the criminal purpose. These consist of a group of behaviors,⁴⁰ each of which is considered a criminal act by itself under the law. They share a unity of criminal offense, such as someone who steals from a house repeatedly in successive episodes. In such cases, jurisprudence holds that the statute of limitations for public prosecution begins the day following the last act constituting the crime, as affirmed by the Supreme Court's ruling of the First Criminal Chamber dated 09 July 1974, No. 9198, which ruled that the limitation period starts from the day after the last act of execution.⁴¹

It is worth noting that successive acts crimes differ from habitual crimes, which consist of more than one act but where the legislator does not criminalize or punish the commission of a single act alone; rather, the habit or regularity of committing the act must be established. The habitual acts are not punishable individually by themselves but are penalized based on the element of repetition and habit in committing them. Habit requires the repetition of an act of the same nature more than once, such as habitual commission of slander punishable under Article 195 of the Penal Code. The limitation period for public prosecution in such habitual crimes is calculated from the day the last act revealing the habit was committed.⁴²



As for repeated successive crimes, they also differ from composite crimes. Composite crimes consist of several acts that are not of the same nature and are unlawful, all forming the material element of the crime. For example, the crime of fraud aimed at seizing another's money by deceit, punishable under Article 372 of the Penal Code, which involves using fraudulent methods such as using a pseudonym or fictitious status.⁴³ In such composite crimes, the statute of limitations for the public prosecution period is calculated from the last act constituting either of the two crimes—that is, the limitation period starts from the completion of the crime being prosecuted.

subsection Two: Interruption of the Statute of Limitations for Public Prosecution

To understand how the limitation period is calculated in cases of interruption of the public prosecution statute of limitations, it is necessary to distinguish between interruption and suspension, as follows:

Part One: Distinguishing Between Interruption and Suspension of the Public Prosecution Limitation Period

By examining Articles 6 paragraph 1 up to Article 10 of the Code of Criminal Procedure, it is clear that the legislator explicitly stipulated that the limitation period begins on the day the crime was committed. If any procedural action is taken in relation to it, the limitation period is fully recalculated from the date of the last action, and the prior period is disregarded. This is inferred from Article 7 paragraph 2 of the Code of Criminal Procedure, which provides that if an action was taken during that period, the limitation period does not run except after a full ten years from the date of the last action. The same provisions apply to misdemeanors and violations according to Articles 8 and 9 of the Code of Criminal Procedure.⁴⁴

Meanwhile, the suspension of the statute of limitations refers to the halting of counting the limitation period until the cause of the suspension ceases to exist, while preserving the previous duration without canceling it. This preserved time is then added to the time after the suspension is lifted, completing the remaining period together with the prior one.

The Algerian procedural legislator regulated the suspension of the statute of limitations for public prosecution in three provisions:

Article 6 paragraph 2 of the Code of Criminal Procedure, which states that if procedures lead to a conviction that annulled the public prosecution on the basis of forgery or use of forged documents, the limitation period is considered suspended from the date the judgment or decision became final until the date of the conviction of the forger or user of the forged document.

Article 37 bis 7 of the Code of Criminal Procedure concerning mediation procedures, which provides for the suspension of the statute of limitations during the period allocated for implementing the mediation agreement.⁴⁵

Article 110 paragraph 3 of Law No. 15-12 relating to child protection, which considers recourse to mediation as a suspension of the public prosecution statute of limitations, starting from the date the Public Prosecutor issues the mediation procedure order.⁴⁶



Part Two: Supreme Court Jurisprudence on the Interruption of the Public Prosecution Statute of Limitations

Procedures that interrupt the statute of limitations for public prosecution include investigation and prosecution steps. The Supreme Court's jurisprudence has held that sending the Public Prosecutor a medical certificate constitutes an interrupting act for the statute of limitations. This was affirmed in the criminal cassation decision issued on 05 February 1991, referenced in the Supreme Court Judicial Journal, Issue 01, 1992, file number 74645,⁴⁷ entitled Interruption of Limitation Period by Prosecutor's Correspondence. The core of this ruling is that it is legally established in misdemeanors and felonies that investigation and prosecution procedures interrupt the limitation period. Therefore, the criticism of the decision for misapplying the law is unfounded. Since in this case the medical certificates requested by the Public Prosecutor are part of the investigation procedures that interrupt the limitation period,⁴⁸ being an essential element of the case and for charge qualification, aiming to continue the investigation, the appellate judges correctly ruled the interruption. Consequently, the appeal should be rejected.

Conclusion

The criminal judge, after the legislative text, acts according to the principle of criminal legality, as established by Article 1 of the Penal Code, which states that there is no crime, no penalty, nor security measures without a law. This principle is strictly adhered to by judges in criminal matters. In all cases, the criminal judge has only one binding source—the legislative text—and judicial precedent does not constitute a binding source in the presence of an explicit text. Moreover, the use of analogy is prohibited; thus, the judge cannot analogize one provision to another, as each provision has its own specific content. However, as an exception, in cases of textual ambiguity or incompleteness, the criminal judge may resort to a narrow jurisprudence of the substantive text and a broad jurisprudence of procedural provisions, provided that such judicial jurisprudence does not create a criminal offense or impose a penalty.

In general, the Supreme Court's jurisprudence in criminal law, which includes decisions providing guidance to other judicial bodies, is not legally binding but only morally or ethically binding, considering it is the highest legal authority. The criminal judge is guided by the settled jurisprudence of the Supreme Court and applies it. Non-compliance with such guidance amounts to a violation of the law. It is noted that trial judges, when a judgment or decision is quashed on appeal, are bound by the Supreme Court's ruling regarding the legal point it decided upon, pursuant to Article 524 of the Code of Criminal Procedure.

Therefore, the Supreme Court's jurisprudence remains temporary and should be superseded by a clear and explicit legal text that resolves any ambiguity in the matter. Thus, judicial precedent plays the role of revealing gaps in the criminal law text and developing the criminal policy of the state and the legislative system in general.



Through our study of this subject, we have reached several conclusions and accordingly made proposals, as follows:

First: Results

- Judicial precedent in criminal law represents an imperative embodied in judicial decisions that clarify penal provisions and provide practical solutions when the meaning and structure of the criminal text are unclear.

- The body responsible for judicial precedent in criminal law is the Supreme Court, which issues its decisions in its plenary chambers, a power explicitly provided for in the Constitution.

- Despite the importance of plenary chambers' precedent, it remains relative in duration and subject to change, given the practical reality of conflicting decisions, including those issued by the Supreme Court's plenary chambers.

- Judicial precedent in criminal law is governed by a set of principles and rules that serve as objective and procedural constraints that must not be violated.

- The issue of the statute of limitations for public prosecution causes no substantive or procedural legal problems when related to simple crimes. However, regarding continuous and composite crimes, it raises several issues, primarily concerning the commencement, interruption, and suspension of the limitation period, which necessitates the intervention of judicial precedent.

Second: Proposals

- To ensure the effective role of judicial precedent in criminal law, especially regarding the statute of limitations for public prosecution, we propose the following:

- The necessity of unifying judicial precedent and avoiding conflicting rulings by the Supreme Court.

- Issuing authoritative decisions by the Supreme Court's plenary chambers, updated to align better with the spirit and objectives of the law.

- The relative nature and susceptibility of judicial precedent to change necessitate precise criminal legal texts to avoid ambiguous jurisprudence and provide definitive legal solutions, particularly concerning the statute of limitations for public prosecution.

- Clearly defining the commencement of the statute of limitations for continuous and composite crimes within explicit criminal legal provisions, benefiting from the Supreme Court's jurisprudence, and distinguishing the different cases of limitation regarding its calculation, interruption, suspension, and related consequences.

The margins

1/Hocine FRIHA, Judicial Jurisprudence: Its Concept and Conditions, Journal of Judicial Jurisprudence, Laboratory of the Impact of Judicial Jurisprudence on Legislative Movement, University of Mohamed Khider Biskra, Issue No. 1, March 2004, p. 12.



2/Yahia BOURI, Criminal Judicial Jurisprudence, Journal of Judicial Jurisprudence, Laboratory of the Impact of Judicial Jurisprudence on Legislative Movement, University of Mohamed Khider Biskra, Issue No. 1, March 2004, p. 28.

3/Presidential Decree No. 20-442 of 30 December 2020 relating to the 2020 Constitutional Amendment, Official Gazette No. 82, issued on 30 December 2020.

4/Organic Law No. 11-12 of 26 July 2011 defining the organization, operation, and jurisdiction of the Supreme Court, Official Gazette No. 48, issued on 31 July 2011.

5/Internal Regulations of the Supreme Court, approved by the General Assembly on 24 November 2013, Official Gazette No. 34, issued on 16 June 2014.

6/See for this the Supreme Court Journal, Criminal Chamber Jurisprudence, Special Issue, 2019, pp. 1-2 .

7/This title includes the joint chambers and other ordinary chambers; see also the Supreme Court Journal, Issue 01, 2009, pp. 3-4.

8/Ashraf Tawfiq Shamseddine, Explanation of the Penal Code — General Section: The General Theory of Crime and Punishment, Third Edition, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2013-2014, p.

9/Mohamed Yousfi, Mostafa Bouazza, The Rules of Criminal Judicial Jurisprudence between Theory and Practice, Al-Ustadh Al-Bahith Journal for Legal and Political Studies, University of Mohamed Boudiaf — M'sila, Volume 06, Issue 02, December 2021, p. 602.

10/The crime of treason related to public office is considered one of the crimes committed against the Constitution, which — when perpetrated by a public official — constitutes either a collusion on their part, or an arbitrary act, infringing upon the personal liberty of the individual, or upon the national rights of one or more citizens. These are the acts stipulated in the first section of Chapter Three of the Penal Code, in Articles 102 to 118 thereof. Accordingly, any personal reasoning (jurisprudence) by the public official that contradicts the rule “no jurisprudence where an explicit text exists” places them under the scope of having committed one of the crimes mentioned in the aforementioned articles.

11/Ordinance No. 66-156 of 8 June 1966, containing the Penal Code, Official Gazette, Issue No. 49, issued on 11 June 1966, as amended and supplemented by Law No. 82-04 of 13 February 1982.

12/Abdallah Ouhaibia, Explanation of the Penal Code, Bayt Al-Afkar, Dar El Beida, Algeria, 2022, p. 101.

13/Order No. 66-156 dated June 8, 1966, containing the Penal Code, Official Gazette No. 49 dated June 11, 1966 ‘

14/Muhammad Yousfi, Mustafa Bouazza, former reference, P.603 ‘

15/same reference, P. 604

16/LakhmissiAtamnia, Jurisprudence in Criminal Law and Its Effect on Legislative Movement, Journal of Human Sciences, Mohamed Khider University of Biskra, No. 278, 7th Year, April 2005, pp. 277-278.

17/See Articles 164, 165, 174 of Presidential Decree No. 20-142 dated December 30, 2020, concerning the 2020 constitutional amendment, Official Gazette No. 82 dated December 30, 2020.

18/Abdallah Ouhaibia, Explanation of the Penal Code, cited above, p. 101.

19/Abdallah Ouhaibia, Explanation of the Algerian Code of Criminal Procedure: Investigation and Inquiry, Dar Houma, Bouzareah, Algeria, 2015, pp. 9, 15.

20/Abdallah Ouhaibia, Explanation of the Algerian Code of Criminal Procedure: Investigation and Inquiry, former reference, pp. 15.



- 21/Ashraf Tawfiq Shamsuddin, Previous reference, p. 68.
- 22/See Article 41 of the amended Algerian Constitution of 2020, as well as Article 1 of Order No. 66-155 dated 8 June 1966, including the amended Code of Criminal Procedure by Law No. 17-107 dated 27 March 2017.
- 23/Abdallah Ouhaibia, Explanation of the Algerian Code of Criminal Procedure: Investigation and Inquiry, cited above, p. 146.
- 24/Refer to Articles 06, 07, 08, 105 (and 105 bis), and 09 of Order No. 66-155 dated 05 June 1966, containing the Code of Criminal Procedure.
- 25/Mohamed Zaki Abu Amer, Criminal Procedures, Al-Maaref Publishing, Alexandria, Egypt, 1994, pp. 461–464.
- 26/Nidham Tawfiq Al-Majali, Explanation of the Penal Code: General Section, Analytical Study of General Theory of Crime and Criminal Responsibility, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2005, p. 52.
- 27/Abdelhamid Al-Shawarbi, Criminal Defenses, Al-Maaref Publishing, Alexandria, Egypt, 2002, p. 235.
- 28/Abdallah Ouhaibia, Explanation of the Penal Code, previously cited, p. 243.
- 29/See the Supreme Court's criminal ruling dated 25/10/1992, Judicial Journal of the Supreme Court, Issue 02, 1993, p. 205.
- 30/Criminal Cassation ruling dated 05/06/1990, Judicial Journal of the Supreme Court, Issue 03, 1993, p. 305.
- 31/Criminal Cassation ruling dated 18/02/2009, Judicial Journal of the Supreme Court, Issue 02, 2009, p. 347.
- 32/Criminal Cassation ruling dated 27/12/2018, file No. 1299278, published on the Supreme Court website coursupreme.dz.
- 33/Atef Al-Naqeeb, Principles of Criminal Trials: Comparative Study, 1st edition, Dar Al-Manshorat Al-Huquqiya, Lebanon, 1993, p. 197.
- 34/Nidham Tawfiq Al-Majali, previously cited, pp. 59-60.
- 35/Abdallah Ouhaibia, Explanation of the Penal Code, previously cited, p. 248.
- 36/Djillali Baghdadi, Judicial Jurisprudence in Criminal Matters, Volume One, National Institution for Communication, Publishing and Distribution, Rouiba, Algeria, p. 224.
- 37/Nidham Tawfiq Al-Majali, Reference above, p. 57
- 38/See Article 195 of Order No. 66-156 dated 8 June 1966, containing the Penal Code.
- 39/Abdallah Ouhaibia, Commentary on the Penal Code, Reference above, p. 247
- 40/Same reference, p. 247
- 41/See Article 372 of Order No. 66-156 dated 8 June 1966, containing the Penal Code, amended and supplemented by Law No. 06-23 dated 20 December 2006.
- 42/Abdallah Ouhaibia, Commentary on the Penal Code, Reference above, p. 249
- 43/See Articles 6(1), 7(2), 8, 9, and 10 of Order No. 66-155 dated 8 June 1966, containing the Code of Criminal Procedure
- 44/Abdallah Ouhaibia, Commentary on the Code of Criminal Procedure, Dar Houma, Bouzareah, Algiers 2017-2018, p. 165
- 45/See Articles 6(2) and 37 bis 7 of Order No. 66-155 dated 8 June 1966, containing the Code of Criminal Procedure, amended by Order No. 15-02 dated 23 July 2015
- 46/See Article 110(3) of Law No. 15-12 dated 15 July 2015 concerning child protection, Official Gazette, Issue 39, dated 19 July 2015
- 47/Ibrahim Abdul Khaliq, Comprehensive Encyclopedia of Criminal Defenses, Part One, Dar Allam for Legal Publications, n.d. 2013, p. 82



48/Also see Article 7(1) of Order No. 66-155 dated 8 June 1966 containing the Code of Criminal Procedure Criminal cassation decision dated 05 February 1991, Supreme Court Judicial Journal, Issue 01, 1992, p. 210

Bibliography List setting:

First: References

1 /The amended Algerian Constitution of 2020, promulgated by Presidential Decree No. 20-442 dated 30 December 2020 regarding the constitutional amendment of 2020, Official Gazette No. 82, issued on 30 December 2020.

2 /Organic Law No. 11-12 dated 26 July 2011, determining the organization, function, and jurisdiction of the Supreme Court, Official Gazette No. 48, issued on 31 July 2011.

3 /Law No. 15-12 dated 15 July 2015 concerning child protection, Official Gazette No. 39, issued on 19 July 2015.

4 /Order No. 66-156 dated 8 June 1966 including the Penal Code, Official Gazette No. 49, issued on 11 June 1966, amended and supplemented by Law No. 82-04 dated 13 February 1982, and further amended by Law No. 06-23 dated 20 December 2006.

5/Order No. 66-155 dated 8 June 1966 including the Code of Criminal Procedure, amended and supplemented by Order No. 15-02 dated 23 July 2015, and further amended by Law No. 17-07 dated 27 March 2017.

6/Internal Regulations of the Supreme Court approved by the General Assembly on 24 November 2013, Official Gazette No. 34, issued on 16 June 2014.

Second: References

Books:

1 /Ibrahim Abdel Khaleq, Comprehensive Encyclopedia of Criminal Defenses, Vol. 1, Dar Allam, 2013.

2 /Ashraf Tawfiq Shams El-Din, Explanation of the Penal Code - General Section: General Theory of Crime and Punishment, 3rd Edition, Dar Al Nahda Al Arabia, Cairo, 2013-2014.

3 /Djillali Baghadi, Judicial Precedent in Penal Matters, Vol. 1, National Institute for Communication, Publishing and Distribution, Algeria, 1996.

4 /Atef Al-Naqeeb, Principles of Criminal Trials: A Comparative Study, 1st Edition, Dar Al-Manshourat Al-Huquqiya, Lebanon, 1993.

Abdel Hamid Al-Shawarbi, Criminal Defenses, Al-Ma'arif Publishing, Alexandria, Egypt, 2002.

5 /Abdallah Ouhaibia, Explanation of the Algerian Code of Criminal Procedure: Investigation and Inquiry, Dar Houma, Bouzareah, Algeria, 2015.

6 /Abdallah Ouhaibia, Explanation of the Code of Criminal Procedure, Dar Houma, Bouzareah, Algeria, 2017/2018.



7 /Abdallah Ouhaibia, Explanation of the Penal Code, Bayt Al-Afkar, Casablanca, Algeria, 2022.

8 /Mohamed Zaki Abu Amer, Criminal Procedures, Al-Ma'arif Publishing, Alexandria, Egypt, 1994.

9 /Nizam Tawfiq Al-Majali, Explanation of the Penal Code - General Section: Analytical Study of the General Theory of Crime and Criminal Responsibility, Dar Al-Thaqafa Publishing and Distribution, Jordan, 2005.

Articles:

1 /LakhmissiAtamnia, "Jurisprudence in Criminal Law and its Impact on Legislative Movement," Journal of Humanities, Mohamed Khider University of Biskra, Issue 7, February 2005.

2 /Hocine Feridja, "Judicial Precedent: Concept and Conditions," Journal of Judicial Precedent, Laboratory for the Impact of Judicial Precedent on Legislation, Mohamed Khider University of Biskra, Issue 1, March 2004.

3/ Mohamed Yousfi, Mustafa Bouazza, "Controls of Criminal Judicial Precedent Between Theory and Practice," Professor Researcher Journal for Legal and Political Studies, Mohamed Boudiaf University of M'sila, Vol. 6, No. 2, December 2021.

4 /Yahya Bouri, "Criminal Judicial Precedent," Place of Judicial Precedent, Laboratory for the Impact of Judicial Precedent on Legislation, Mohamed Khider University of Biskra, Issue 1, March 2004.

Journals:

1/Judicial Journal of the Supreme Court, Issue 01, 1992.

2/Judicial Journal of the Supreme Court, Issue 02, 1993.

3/Judicial Journal of the Supreme Court, Issue 03, 1993.

4/Judicial Journal of the Supreme Court, Issue 01, 2009.

5/Judicial Journal of the Supreme Court, Issue 02, 2009.

6/Judicial Journal of the Supreme Court, Special Issue on Criminal Chamber Jurisprudence, 2019.

Decisions:

1/Decision dated 27/12/2018, Case No. 1299278, published on the Supreme Court website coursupreme.dz.