

Summary

Evaluation of the Adjustment of Prosecution Limitation Regulations Act 2012

Peter Kruize (Ateno) in cooperation with Karel Harms, Sjoerd Huisman and Marjolijn van der Spek
University of Groningen

Law change of 2013

In 2006, the statute of limitations was abolished for crimes with a life sentence. Partly as a result of widespread abuse within ecclesiastical institutions becoming known, a new bill to amend the Criminal Code in connection with the amendment of the prosecution statute was submitted to Parliament in 2011. This has resulted in the Adjustment of Prosecution Prescription Regulations Act 2012, which entered into force on 1 April 2013 (hereinafter referred to as: amendment of the law of 2013).

Due to the amendment of 2013, crimes with a maximum sentence of at least twelve years no longer become time-barred; with the 2006 scheme these events expired after twenty years. The prosecution statute has also lapsed for a number of specific sex crimes with a maximum sentence of eight years, committed against minors. It concerns the systematic or professional production, distribution, etc. of child pornography (article 240b, second paragraph, Criminal Code), intercourse with a person incapacitated by consent (article 243), intercourse with a person between the ages of twelve and sixteen (article 245) and actual indecent assault (article 246). Finally, with the amendment of the law of 2013, the limitation period for crimes with maximum sentence of eight up to ten years has been extended from twelve to twenty years.

Purpose of the research

The aim of the study is to gain insight into the results of the 2013 legislative amendment. During the parliamentary debate on the legislative proposal, there was no insight into what the amendment was expected to produce. The minister has promised to evaluate the effects of the legislative change about five years after it came into effect. On the basis of the results of the evaluation study, parliament can determine whether the legislative amendment has (had) the desired effect.

Limitation period

In principle, the limitation period starts on the day after the offense was committed. There may also be a period in the case of multiple and continuous offenses. This may mean that part of this period is time-barred. Then we speak of partial limitation. There are several exceptions to the rule that the limitation period starts on the day after the date of committing. An important exception for this investigation is that the limitation period for sex crimes involving a child victim does not start until the day after the victim has turned eighteen. With the 2013 amendment to the law, sex crimes involving a child victim and a maximum sentence of at least eight years no longer expire, but this was the case with the 2006 regulation.

The statute of limitations is interrupted by an act of prosecution. There is no exhaustive list of what acts are covered, but the detention order and subpoena are the main acts of prosecution in this study.

After interruption, the limitation period starts again. The maximum limitation period is equal to twice the limitation period that applies to the relevant offense.

Research questions

The research answers the following four questions:

1. How many of the criminal offenses, submitted to the Public Prosecution Service, would presumably be time-barred without the 2012 Adjustment of Prosecution Prescription Regulations Act?
2. To what extent do the cases referred to in research question 1 concern offenses for which the limitation period has been extended or abolished and which criminal offenses exactly are involved?
3. How have these facts been disposed of by the Public Prosecution Service? How many offenses have been dismissed and how many offenses have been presented to the court?
4. What is the verdict of the court? In how many cases is the suspect found guilty or acquitted by the court?

Methods of research

Two lists of articles of law to which the 2013 amendment pertains have been compiled: a list of articles of law with a sentence of at least twelve years and a list of articles of law with a sentence of eight up to ten years. The Public Prosecution Service has provided two data files based on these two lists. These databases contain all the offenses sent to the Public Prosecution Service, in the period from April 1, 2013 (date of entry into force of the amendment) to December 31, 2019, which are on the two lists of relevant articles of law.

For these offenses, it was calculated how much time there was between the date of committing the crime and the date the case was submitted to the Public Prosecution Service. If this period is longer than twelve years (for offenses with a maximum sentence of eight to ten years) or twenty years (for offenses with a maximum sentence of at least twelve years), these offenses could potentially be time-barred without the amendment of the law. 2013. There are 374 offenses that comply with this. These offenses have been studied in more detail.

When it comes to sex offenses - and that is the case with 275 offenses - it is important to determine the age of the victim, because the statute of limitations for child victims of criminal offenses does not start until the day after the victim has become eighteen years old. The age of the victim was partly determined by searching the police administration by official report number and partly by reading published judgments, which were found on www.rechtspraak.nl on the basis of the public prosecutor's office number. However, the age has not been determined for all victims of sexual offenses.

Published judgments examined whether there were acts of interruption that would have prevented limitation under the 2006 regulation. Furthermore, more insight has been gained into the criminal offenses that have not been time-barred thanks to the amendment of the law in 2013 and insight has

been gained into the reasons why these offenses were sent to the Public Prosecution Service so many years after the date of committing the crime.

The numbers

In the period April 1, 2013 to December 31, 2019, a total of 71,051 offenses were submitted to the Public Prosecution Service to which the statutory amendment is applied. 374 offenses have been identified of which the initial limitation period - without the legislative amendment - would have expired on the date of entry into the Public Prosecution Service. However, 174 offenses are dropped, in the sense that we have established or reasoned that these offenses would not have been time-barred under the old regulation either. In addition, ten offenses were filed administratively because the offense was booked twice. This leaves 190 offenses that could possibly have expired without the amendment of the law. We are not writing presumably because it is very likely that some of these 190 facts would be dropped if we had access to all the relevant information. We were able to determine for twenty offenses that the offense would have been time-barred without the 2013 amendment.

The 190 offenses that might have been barred without the 2013 amendment have been submitted to the Public Prosecution Service in a period spanning six years and nine months. On an annual basis, this therefore concerns a maximum of 28 facts that may not be time-barred due to the amendment of the law in 2013.

The criminal offenses

The table below shows which criminal offenses are involved. The same three-way division was used: potential (purely on the basis of the committing and submitting date), possible (after correction, as far as possible) and confirmed (on the basis of the published judgment). In addition to sexual offenses, this mainly concerns human trafficking, deliberate deprivation of liberty, aggravated assault, robberies (theft with violence / extortion) and habitual money laundering.

The twenty determined offenses have been submitted to the court and the judgment has been published on www.rechtspraak.nl. Seven of these offenses would have involved a partial limitation without the amendment of the law. The charge was not committed at a specific time, but several times or continuously in a specific period. This applies to all four money laundering offenses, two rape offenses and one assault offense.

Overview of submitted offenses that potentially, possibly and confirmed would be time-barred without the 2013 amendment (01-04-2013 to 31-12-2019)

Article	Description	Potentially time-barred	Possibly time-barred	Confirmed time-barred
Limitation period extended from twelve to twenty years				
article 207	False statement	1	1	
article 209	Counterfeiting	1	1	
article 273f	Human trafficking	7	7	
article 279	Withdraw parental authority	1		
article 282	Deliberate deprivation of liberty	5	3	
article 291	Infanticide by mother	2		
article 302	Severe assault	19	7	5
article 312	Theft with violence	2	1	
article 317	Extortion	4	2	1
article 420ter	Money laundering as a habit / profession	49	45	4
<i>Subtotal</i>		<i>91</i>	<i>67</i>	<i>10</i>
Limitation abolished				
article 157	Arson	2		
article 242	Rape	61	47	6
article 244	Intercourse 12-minors	31	27	
article 245	Intercourse person 12-16	136	22	4
article 282	Deprivation of liberty (death)	1		
article 287	Manslaughter	5		
<i>Subtotal</i>		<i>236</i>	<i>96</i>	<i>10</i>
Limitation period extended (adult victim) / abolished (child victim)				
article 243	Community incapacitated	6	3	
article 246	Sexual indecent assault	41	24	
<i>Subtotal</i>		<i>47</i>	<i>27</i>	
Total		374	190	20

Reasons for late submission

Three reasons have been found why the offenses, which (possibly) would have been time-barred without the 2013 amendment, are submitted to the Public Prosecution so many years after they have been committed:

1. The victim reports a crime after many years. This is especially true with the sexual abuse of minors, but we also find this with assault of minors.
2. The suspect comes into the picture after many years. This applies to sexual and violent crimes where there is a DNA match many years later. Years after the crime has been committed, the profile of the suspect is included in the DNA database and first then is there a match with the track profile found on the PD and / or on the body and / or the victim's clothing.

3. Investigations are carried out far back in time. This applies to habitual money laundering. The police or the FIOD detect money laundering and go back in time as far as possible; to the point at which money laundering has started. The limitation without the 2013 amendment is then partial (for part of the period).

The settlement by the Public Prosecution Service

The settlement of the Public Prosecution Service has been documented for 190 possibly time-barred offenses. The accused has been summoned for 104 offenses, 7 offenses have not yet been settled and 79 offenses have been dismissed by the public prosecutor. There can be various reasons for dismissal of an offense. Only 3 of the 79 dismissals involved a policy dismissal. Two money laundering offenses were settled with a policy dismissal as well as an offense concerning intercourse with a person under the age of twelve. The other 76 dismissals are technical dismissals. This mainly concerns insufficient evidence. However, twelve offenses have also been settled with a technical dismissal because the Public Prosecution Service is inadmissible. This may indicate that the offense was already time-barred at the time of submission.

Judicial judgment

About half of the offenses in which the public prosecutor has decided to summon the suspect has not yet been brought to court or the results thereof have not yet been processed in the database made available to us. The judgment of the judge has been documented at the level of the charged act (not to the level of the suspect). Of the 104 offenses in which the public prosecutor decided to summon, 55 have already been to court. The court found the accused guilty for 38 of these offenses, 16 offenses are acquittal and the prosecution of 1 offense has been declared inadmissible.

Overview

The overview below summarizes the most important results of the study. A distinction has been made between the 20 offences that have been confirmed to be time-barred without the 2013 amendment and the 170 offences for which this may be the case.

Number of (possibly) time-barred offenses without the 2013 amendment and the further settlement of these offenses by the Public Prosecution Service and the court

