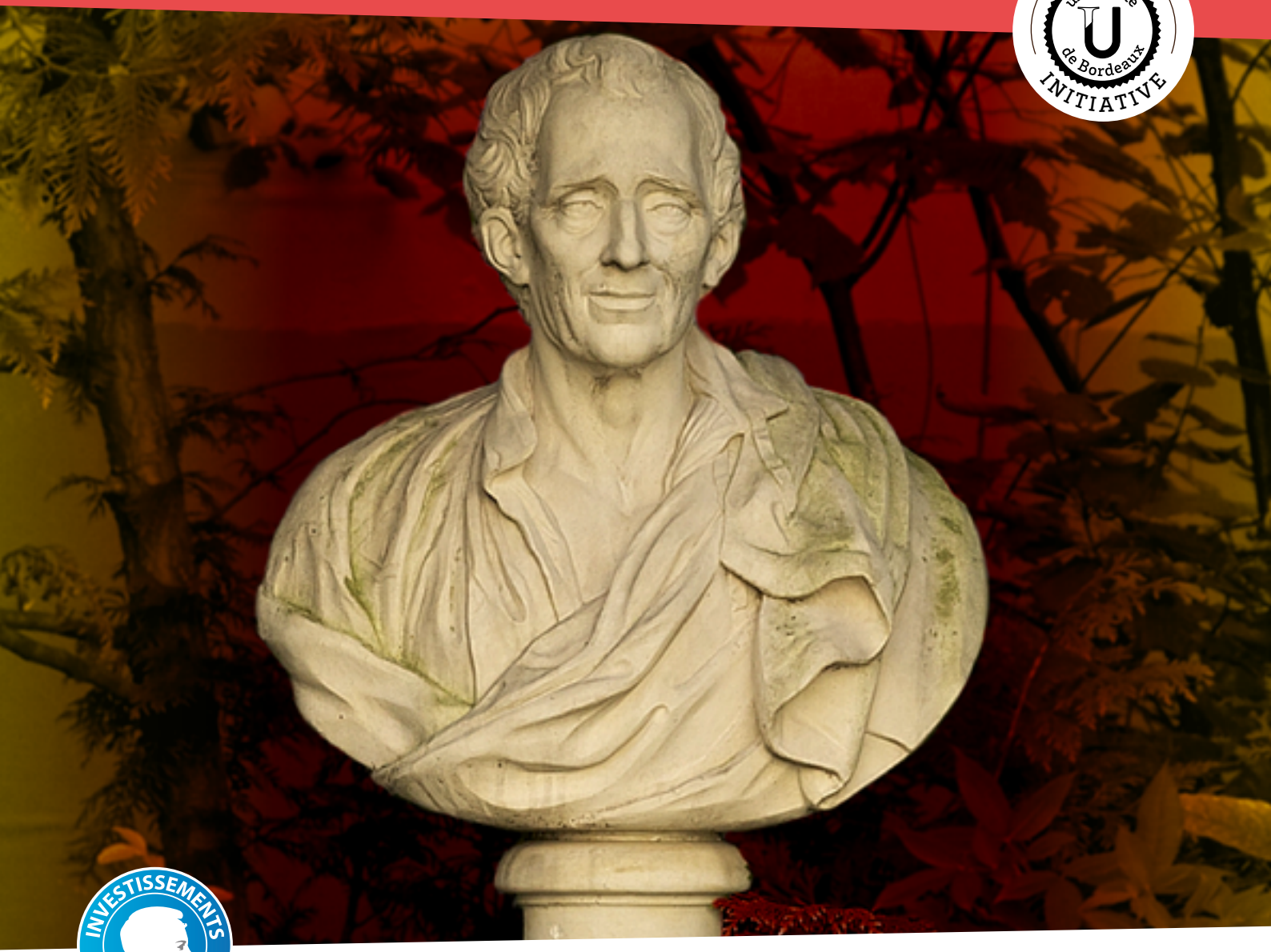
Issue No.3 | October 2015

Montesquieu Law Review

"The limitation period does not run in the event of an insurmountable obstacle to the effective prosecutions": case note on Cass. plen., 7 November 2014: appeal n° 14-83.739

Yannick Capdepon, Associate Professor, University of Bordeaux



Program supported by the ANR n°ANR-10-IDEX-03-02

Forum Montesquieu
Faculté de droit et science politique
université de Bordeaux

"The limitation period does not run in the event of an insurmountable obstacle to effective prosecutions": case note on Cass. plen., 7 November 2014: appeal n° 14-83.739

Yannick Capdepon, Associate Professor, ISCJ, University of Bordeaux

The French law on the limitation period applicable to public prosecutions is amongst the most ambivalent, seemingly equally committed to retaining the principle as it is to multiplying exceptions to it. There are times when the application of a general and impersonal law imposing a limitation period for prosecutions seems disproportionate to the seriousness of the act. Can we really ever forget the offence simply because time has passed? Case law does not appear to share that opinion, which benefits from an inaccurate and incomplete legislation to avoid the limitation period as far as possible. The decision handed down by the Court of Cassation on 7 November 2014 is the perfect illustration, and it deserves closer examination in that it comes from the Plenary Assembly of the Court of Cassation, the most solemn formation of the highest of France's courts.

The facts giving rise to this case are as simple as they are horrific; the latter feature also partly explains the solution that could be given to them. The new owner of a lodge discovered in his garden the remains of two new-born babies buried in his garden. Following an investigation, police authorities identified Mrs. Y as a possible perpetrator of the homicides, the latter then providing the location of six other corpses. Prosecuted for aggravated murder and concealment of children, she remanded in custody and, following the investigation, committed to an Assize Court by a decision of the Investigations Chamber of the Court of Appeal at Douai on 7 October 2011.

In support of this decision, the court rejected Mrs Y's application seeking a declaration establishing that the limitation period for a public prosecution had expired, on the grounds that the births and the immediate deaths of the new-borns had been kept secret by the defendant and that, consequently, no one was in a position to worry about the disappearance of a child whose brief existence had not been revealed by any obvious clue. It was therefore absolutely impossible for the prosecuting authority to bring a public prosecution before the discovery, much later, of the corpses. Consequently, the Court of Appeal considered that the starting point of the limitation period must be the day of the discovery of the bodies in 2010, not the date of the commission of the homicides, the dates of which had not been established.

This decision of the Court of Appeal at Douai was the subject of an appeal by Mrs. Y. The Criminal Chamber of the Court of Cassation, in a decision of 16 October 2013 (1), overturned the contested decision on the grounds of Article 7 of the Criminal Procedure Code. Under that Article, in criminal proceedings, the ten-year limitation period runs from the day on which the crime was committed. However, bearing in mind that the day of the discovery of the crime had to be taken as that point because of the secrecy surrounding the lives of children, the Court of Appeal had not complied with the wording of Article 7.

In accordance with the *cassation* technique, the matter was then referred to the Investigations Chamber of the Court of Appeal at Paris, which therefore had the task of establishing whether the prosecution was stature-barred in light of the solution outlined by the Court of Cassation. On 19 May 2014, the Paris Court delivered a judgment in which it was considered that the limitation period had not elapsed, repeating substantially the same reasons as those set out by the Court of Appeal at Douai. Indeed, the court considered that Mrs Y's successive pregnancies hidden by her obesity, so that neither her relatives nor the doctors consulted by those relatives had been able to see her condition. Thus, the babies having been born and died in complete anonymity, without anybody worrying about their disappearance, there was an insurmountable obstacle to an effective prosecution, which implies that it must be considered that the ten-year limitation period had been suspended until the date of discovery of the corpses.

Based on resistance to the solution provided by the Court of Cassation in its abovementioned judgment of 16 October 2013, the decision of the Paris Court was in turn the subject of an appeal; Mrs Y's arguments were the same as in the appeal against the judgment of the Douai Court: the breach of Article 7 of the Criminal Procedure Code. Where, in the same case, the decision of the second court is challenged before the Court of Cassation on the same grounds as in the first appeal, the Court must sit in plenary session as it must rule on a discrepancy between the Criminal Chamber of the Court of Cassation and the courts of appeal.

The discrepancy was the following: while for the two courts of appeal, the ten-year limitation period ran from the date of *discovery* of the crime where, owing to its concealment, the prosecuting authorities were unable to bring an effective prosecution, the Criminal Chamber of the Court of Cassation refused to defer the starting point, considering that in accordance with Article 7 of the Criminal Procedure Code, it was more suitable to look to the date of the *commission* of the crime.

The legal problem put to the Plenary Assembly of the Court of Cassation was very clear, namely that of establishing the starting point of the limitation period if the prosecuting authorities are unable to bring an effective prosecution. Here, it was a matter of deciding whether the secrecy surrounding the pregnancies and, therefore, the existence and death of the new-borns could justify having the limitation period run from the discovery of the bodies.

The Plenary Assembly of the Court of Cassation gave an answer in principle to the above question in its decision of 7 November 2014, discussed in this paper. For the senior judges, while Article 7 of the Criminal Procedure Code sets the starting point of the limitation period *on the day of the crime,* the limitation period must nevertheless be suspended in the event of an insurmountable obstacle to an effective prosecution. However, by considering, in its discretion, that the person's obesity had the effect of concealing her pregnancy and that the existence and death of the new-borns had been kept secret, the Court of Appeals had rightly inferred an insurmountable obstacle to an effective prosecution and therefore properly held that the limitation period had been suspended until the day of the discovery of the corpses. On this occasion, Mrs Y's appeal was rejected by the Court of Cassation sitting in its most solemn formation, thus upholding the decision of the two courts of appeal that heard the case and repudiating the judgment handed down by its own Criminal Chamber.

Nevertheless, and despite the authority that is naturally given to decisions of the Plenary Assembly of the Court of Cassation, the solution put forward on 7 November 2014 was very relative in scope and offered, in law, a very traditional solution if one sets aside (for the moment, at least) the factual context giving rise to it. Indeed, if we stick to the legal grounds mentioned at the beginning of the decision, the Court of Cassation merely recalled the rule mentioned at Article 7 of the Criminal Procedure Code, while stating just as traditionally that once it has arisen, the limitation period may be suspended until the discovery of the offence. The proposed solution is ultimately very simple: the limitation period begins to run on the day the crime was committed (I); in exceptional circumstances, this period may be suspended until the day of the discovery of the crime (II).

I. Setting the starting point of the limitation period to the date of the commission of the crime

In relying on Article 7 of the Criminal Procedure Code and by holding that the limitation period for bringing a prosecution beings to run as of the day on which the crime was committed, the Plenary Assembly specified the starting point of the limitation period, i.e. the *dies a quo,* the point at which the limitation period begins to run (A). No doubt that such a solution is perfectly legitimate and justified (B).

A. Setting the *dies a quo* the date of the commission of the crime

In stating that in principle, the *dies a quo* is the day of the commission the crime, the Court of Cassation applied Article 7 of the Criminal Procedure Code to the letter. This provision, in fact, clearly states that *"in criminal matters, and subject to the provisions of Article 213-5 of the Criminal Code, the prosecution must be brought within ten full years from the date on the crime was committed (...)*".The solution is not specific to criminal proceedings, and can be found in identical terms concerning for contraventions or misdemeanours. The severity of the offence does not change the starting point of the limitation period but only the time itself, which logically less for a contravention for a crime (2). Only crimes against humanity under Article 213-5 of the Criminal Code are an exception to the rule, because it is subject to the non-applicability of statutory limitations.

It is true that in its implementation, the rule mentioned in the provisions above is not always easy, because it is sometimes difficult to set the date of the commission of an offence. This difficulty can be a factual or a legal difficulty, as shown by this decision.

By applying Article 7 of the Criminal Procedure Code, the Plenary Assembly of the Court of Cassation considered that the provision should apply notwithstanding the difficulty to prove, in fact, the exact date of the commission of the offence. However, the Paris Court of Appeal had, on this point, upheld an opposite solution, strangely holding that since it was impossible to accurately determine the date of the last infanticide committed, Article 7 of the Criminal Procedure Code could not apply. For the trial court, it was another reason to consider that the starting point of the period should not be fixed on the date of the commission of the crime, but rather the date of its discovery. Fortunately, the Court of Cassation did not adopt such grounds for dismissing the appeal, and instead took care to recall the general rule set down in law. Indeed, and as was argued in the appeal on this point, the court must apply Article 7 in any case and, where the exact moment of the commission of the offence is not established in fact, it must draw its own conclusions as to the existence or non-existence of the limitation period in light of the attribution rules of the burden of proof (3).

While this difficulty probably deserved some developments, it was not the key issue, which instead lay in the difficulty in setting the date of commission of the offence, not in fact but in law. In this respect, case law supported by the doctrine draws a sharp distinction between instantaneous and continuous offences.

For instantaneous offences, i.e. that take place in one period of time, the implementation of the law is not complicated: once the date is established, the limitation period begins to run. This is what was argued by Mrs Y in support of her appeal, arguing correctly that homicide is an instantaneous offence and that the starting point of the limitation period had to be set to the day on which death occurred. It is in this sense that the Criminal Chamber ruled in its decision of 16 October 2013 in this case (4), and the decision was not repudiated in that sense by the Plenary Assembly, which would only go on to add the application of another rule.

But where the offence is continuous, i.e. if its commission extends over time, how to set a "date" for its commission in law? If we take the example of receiving stolen goods, the offence occurs on the day when the individual comes into possession of the stolen object and it will end on the day when he no longer possesses it. What to do about the time that will have passed between the beginning and the end of the commission of the offence? Should we take it into consideration when seeking to establish the limitation period? Under the legal provisions relative to the day of the commission of the offence, only two solutions are possible: either select the day on which the offence *begins* to be committed or the day on which it *ceases* to be. The issue is crucial to the limitation period because where the latter solution is selected, it will be easier to secure a conviction because the starting point is ultimately delayed in time, and the time of the commission of the offence is not taken into account. In the absence of any clarification of the provisions in one way or another, and on the basis of established case law, the Court of Cassation opted for a *dies a quo* set to the day on which the unlawful conduct ceased (5).This example is indicative of the Court of Cassation's manifest hostility in respect of the statutory limitation period which, between two solutions offered by legislation, opts for the solution that will serve in prosecuting and convicting the perpetrator of an offence more easily.

In this case, the Court of Cassation clearly did not question earlier case law on this point. The judgment is, in this respect, faithful to legislation and its established interpretation by the Criminal Chamber. We must rejoice as the solution of setting the starting point of the limitation period to the date of the commission of the offence is justified.

B. The justified setting of the *dies a quo* to the day of the commission of the crime

By endorsing the theoretical solution formulated by Article 7 of the Criminal Procedure Code setting the starting point of the limitation period to the day of the commission of the crime, the Plenary Assembly of the Court of Cassation affirmed its commitment to that basic rule.

In fact, the solution proposed here by the legislature does not lack in relevant bases. Better, the setting of the *dies a quo* to the date of the commission of the offence is perfectly suited to many bases of the same statutory limitation principle. Indeed, it usually justifies the limitation mechanism with two key ideas: the first is to base statutory limitation on the concept of a right to be forgotten. After a certain period, it would be inappropriate to prosecute an individual as long as the social disorder caused by the offence would naturally be appeased by the passage of time. This is the idea of social peace so dear to Montesquieu. Whatever the relevance of this statement

(6), it justifies setting the starting point of the period to the date of the commission of the offence since, from a theoretical point of view, it is at this point that the disturbance of public order occurs. The second justification for the statutory limitation mechanism lies in the decline of the evidence over time. After a certain period, the evidence of the offence is more difficult or impossible, which then justifies not prosecuting the accused party or parties. Again, if one subscribes to this idea (7), it is the date of the commission of the offence that will open trigger the limitation period, since it is from that time that the evidence of the offence becomes possible and that the various pieces of evidence will appear and start to decline over time.

We must therefore celebrate the return of this principle in the decision commented here, recalling that it is by no means superfluous owing to the incessant challenges brought against it by the legislature and the the courts. Indeed, in recent years, the legislature has multiplied the exceptions to the principle of setting the *dies a quo* to the date of the commission of the offence. If we simply mention here the most general legal exceptions (8) we may cite the case of some offences against minors (9), or against vulnerable persons (10). Worse still, sometimes it is the court which, in direct conflict with Article 7 of the Criminal Procedure Code, defers the start of the limitation period to the date of discovery of the offence when the latter is hidden. This case law is, for example, widely applied in matters involving the misuse of corporate assets. With regard to this crime, the Court of Cassation has consistently held that the limitation period for offences of misuse of corporate assets does not begin to run until the day when "*the offence appeared and has been observed under conditions allowing an effective prosecution to be brought*" (11). This solution again reflects the Court of Cassation's hostility to the statutory limitation mechanism, which does not hesitate in offering a solution that is radically opposed to the letter of Article 7 of the Criminal Procedure Code.

In our decision, the Plenary Assembly of the Court of Cassation strongly recalls the words of the provision: the starting point of the limitation period begins at the date of the commission of the offence, not the day of its discovery (12). Is the earlier case law then doomed to disappear? Nothing is less certain because it is necessary to consider another rule mentioned in the solution proposed here: if there is an insurmountable obstacle to an effective prosecution, the limitation period is suspended until the date of the discovery of the crime.

II. The suspension of the limitation period until the discovery of the crime

Herein lies the essential contribution of the decision of 7 November 2014: where it is impossible to bring an effective prosecution, the limitation period which begins to run on the day of the commission of the crime is suspended until the date of its discovery. Through legal sleight of hand, the Plenary Assembly succeeded in maintaining, in principle, those solutions hostile to statutory limitation, while providing a new legal basis which resides not in the extension of time from the starting point but in the application of another technique: the suspension of the limitation period. While the application of the suspension of the limitation period is in itself a classic solution (A), the fact remains that it may be debatable (B).

A. The classic use of the suspension technique

By stating that the limitation period may be suspended until the discovery of the offence, the Plenary Assembly of the Court of Cassation was no longer dealing with the issue of the starting point of the limitation period, but that of its expiry.

Indeed, as with most legal timeframes, the limitation period does not necessarily flow in a linear fashion. In the presence of certain events, it can be either interrupted or suspended. If interrupted, the time stops and starts again from scratch (13); in case of suspension, the time stops but starts where it left off before the occurrence of the event (14). For example, if four years of a ten-year limitation have elapsed and an interruption arises, the time stops and starts again for ten more years. In case of suspension, the time elapsed is deemed to have passed and, in this scenario, it starts to run again for six years. This is the second technique used by the Court of Cassation, which clearly states that when it is not possible to bring a prosecution, the limitation period is suspended and will run only from the date on which the crime is discovered.

Technically, the solution is as follows: the offence is committed at a time T and the limitation period, in accordance with Article 7 of the Criminal Procedure Code begins instantly. However, as it is not possible to bring a prosecution, the period is immediately suspended until the discovery of the crime. It is therefore a suspension *ab initio* of the limitation period. In reality, since the limitation period is immediately suspended on the day of the commission of the crime, it will begin to run for the full period at the time of the discovery of the offence. This is also where all the skill lies in the solution put forward the Plenary Assembly of the Court of Cassation, because the legal effect is the same as postponing in time the starting point of the limitation period! However, the legal basis is not the same, as it concerns the suspension of the limitation period and not its starting point. The solution is not technically the same as those which, in matters involving hidden or clandestine offences, postpone the starting point of the period to the date of the discovery of the offence. Moreover, the criterion adopted here by the Court of Cassation to form the basis of the suspension of the period is not exactly the same as that of the clandestine nature of the offence (15).

Indeed, in order to form the basis of the suspension of the limitation period, the decision discussed here used a criterion which resides in the absolute inability to prosecute the offence. In doing so, it applied a general principle of law known since the times of Roman law *contra non valentem agere non currit praescriptio* (16). The latter is very simple to understand: if it is absolutely impossible for the person who must act to do, the limitation period cannot be claimed against him. The application of this principle then reveals another basis for the limitation period applicable to public prosecutions under French law: the punishment of negligence on the part of public authorities (17). That is, if the prosecuting authority has waited too long to do its work, the limitation period sanctions its negligence. As regards a crime, the public prosecutor has ten years to prosecute the offence; if they allow that period to elapse, it shows neglect and limitation comes to punish inaction. But if it is to punish negligence, it is perfectly logical and legitimate not to apply the limitation period where it was absolutely impossible for the prosecuting authority to bring an effective prosecution. This is precisely the exception applied by the Plenary Assembly: owing to the facts of the case (concealment of corpses *and* births), the prosecution could not proceed, and therefore the period between the commission of the murders and their discovery cannot be argued against it.

While the *contra non valentem* principle is simple to understand, it is however not easy to determine precisely what is meant by “insurmountable obstacle to an effective prosecution”. While the concept obviously refers to the idea of an inability to act, it is as complex to interpret as the notion of inability is elusive. On this point, French doctrine often distinguishes between legal inability and the material inability to act.

In the first case, the application of *contra non valentem* is the result of of a circumstance that prevents the prosecution of the perpetrator. Such is the case for example of the individual who has immunity, such as the President of the Republic. On this point, the Court of Cassation held in accordance with Article 67 of the Constitution that the criminal immunity enjoyed by the Head of State makes any prosecution impossible throughout his term of office, and that the statutory limitation period applicable is then suspended (18).

In the second case, the inability to prosecute results from simple factual circumstances which radically prevent the public prosecutor from bringing an effective prosecution before the criminal courts. There is no shortage of case-law examples of the application of the *contra non valentem* principle which confirms that the solution adopted here is in no way innovative. It was thus considered, for example, that the statutory limitation period applicable to public prosecutions had to be suspended in times of war (19) or in the event of natural disaster. In this case, there was a material inability, the Plenary Assembly considering that in light of the concealment of pregnancies and crimes, the Court of Appeal had indeed characterised an insurmountable obstacle to an effective prosecution.

Does this mean, however, that concealing facts can be a necessary and sufficient criterion for the application of *contra non valentem*? The answer is no: the inability to bring an effective prosecution does not refer to the criterion of the clandestine nature of the offence; indeed, this concept was not used at all by the Court of Cassation in this case. In fact, the inability to bring a prosecution is a concept which, compared to secrecy, is both more extensive and more stringent. Firstly it is broader because, as has just been said, the inability to bring an effective prosecution may result from circumstances unrelated to the concealment of facts (20). But it is then especially strict in the sense that not all secrecy results in an inability to bring an effective prosecution. Indeed, the clandestine nature of the act often makes its prosecution more difficult, but not impossible. In fact, it is rare that criminal activity is performed in public, and that is also why police investigations exist. Also, in this case, the Plenary Assembly in no way stated that concealing an offence in itself always justifies the suspension *ab initio* of the limitation period. In the case in question, the decisive element very likely lies in the deliberate concealment of pregnancy. For this reason, no one could have known about the short lives of the new-borns, which explains why no investigation was conducted and no charges brought prior to the discovery of the corpses. However, if the pregnancies were known, it would not have been possible then to investigate the circumstances of the disappearance of the new-borns. This shows that in itself, simply concealing an offence is not sufficient to constitute an inability to prosecute, which is confirmed implicitly by the Court of Cassation in this case. The opposite result would have been extremely dangerous and unjustified in terms of the *contra non valentem* principle. The solution proposed here is not the assertion of a general principle, which results solely from facts submitted to the Court of Cassation (21). However, using the technique of suspending the limitation period is still debatable.

B. The debatable use of the suspension of the limitation period

Is the claim that the limitation period may be suspended until the discovery of the offence justified under French criminal procedure? The nuance is needed here as opposing arguments can be offered to support it or, conversely, to challenge it.

On the one hand, one could criticise the solution handed down here on the grounds that the suspension of a public prosecution is not generally recognised in the French Criminal Procedure Code. While it refers generally to the interruption of the period, suspension is the subject of a few scattered provisions. We may mention, for example, Article 6 paragraph 2 which provides that "*if a prosecution resulting in conviction has revealed the falsity of the judgment or decision which declared the public prosecution extinguished, the prosecution may be resumed. The limitation period is then treated as suspended from the date when the judgment or decision became final until that of the conviction of the person guilty of forgery or the use of forgery*". The assumptions are very specific and, therefore, confined to their respective areas (22). As such, one can then legitimately wonder whether it falls within the power of the Court of Cassation to apply the technique of the suspension of the limitation period beyond the cases provided by law. It is the principle of criminal lawfulness that seems to bear the brunt here, especially as the resulting solution is extremely unfavourable to the defendant. We could affirm in vain that case law has previously been able to apply the suspension beyond legal assumptions, as repeated violations of the principle of legality is obviously unable to justify it.

But on the other hand, it has already been pointed out that the technique of suspension here is based implicitly on the application of a general principle of statutory limitation that does not lack in logic. How, indeed, can prosecuting authorities be blamed for inaction when it is established that the prosecution really was impossible? While the solution here exceeds the terms of the law, it will be noted that it does not enter into direct conflict with anything in the French Criminal Procedure Code; this is not the case where, despite the clear wording of Article 7 *et seq.*, the Criminal Chamber admits a postponement in time of the starting point of the limitation period (23). One author had in fact felt able to suggest that the technique of suspending the limitation period could be used postponing its starting point (24).

This presupposes an acknowledgement that the basis of the limitation period does indeed reside in the sanction of inaction on the part of the authorities. Indeed, traditionally, limitation is based on three alternative considerations (25): the idea of a right to be forgotten based on social peace; the risk of loss of evidence over time and; lastly, the penalty for inaction on the part of the authorities. The first two are highly debatable. The preservation of social peace presupposes the consideration that the passage of time makes the prosecution of acts always contrary to public policy and that is not always the case (26), particularly in cases of serious offences. In this respect, there were more than six infanticides and it is not at all certain that the application of the limitation period serves to protect social peace (27). Moreover, many legal systems ignore the prescribed mechanism for the most serious offences and social peace seems to be satisfied with that (28). As for the risk of the deterioration of the evidence, that is a consideration of another time that ignores the great technological progress in this field. There remains the idea of sanctioning the inaction of the authorities which by its indisputable logic alone offers a consistent basis to the same principle of limitation (29). Thus, the idea of suspending the limitation period in the event of an inability to prosecute must be recognised as legitimate.

It is true that statutory recognition would be desirable, which would render inoperative any criticism based on a breach of the principle of criminal lawfulness. There are also simpler options: to simply abolish the statutory limitation mechanism for the most serious offences, and a minimum for crimes. Instead of constantly extending limitation periods and increasing legal exceptions to their starting point, the legislature would be wise to go to the end of its reasoning

by stating in principle that no crime is subject to statutory limitation. When an institution is so misguided and based on questionable foundations, its abolition, at least in part, is probably still the best solution.

Notes

(1) Cass. crim., 16 Oct. 2013: n°11-89002 and 13-85232.

(2) In French law, the statutory limitation period for a crime is in principle three years (CPP, Art. 8), while it is only one year for minor offences (CPP, Art.9).

(3) On this point, some writers consider that it falls to the Public Prosecutor's office to show the absence of a limitation period: J. Larguier & Ph. Conte, *Procédure pénale*: Mémento Dalloz, 23ème éd. 2014, p. 154.

(4) Cass. crim., 16 oct. 2013 : cited above

(5) See e.g.: Cass. crim., 19 Feb. 1957: bull. crim., n° 166, which held that the limitation period only runs where the criminal behaviour comes to an end "*in its constitutive acts and in its effects*".

(6) V. *infra* n° 33.

(7) Highly debatable in principle: v. *infra* n° 33.

(8) For other, more specific examples, see J. Pradel, *Procédure pénale*: Cujas, 17ème éd. 2013, n° 241.

(9) Here, the limitation period only begins to run when the child reaches legal majority and not from the date of the commission of the misdemeanour (C.P.P., Art. 8 para. 2)

(10) Here, the limitation period only begins to run on the date on which "the offence appears to the victim in circumstances allowing an effective prosecution to be brought" (C.P.P., art. 8 para. 3).

(11) Cass. crim., 7 Dec. 1967: D. 1968, p. 617, note J.M.R. On the basis of this decision, the Criminal Chamber set, in principle, the starting point to the day of the annual publication of the company accounts as any secrecy ends on that date (Cass. crim., 5 May 1997: bull. crim., n° 159), with the exception here of any concealment of the offence in said accounts (on the latter point, see Cass. crim., 30 Jan. 2013 : A.J. pén. 2013, p. 481, obs. A. Gallois; R.S.C. 2013, p. 354, note H. Matsopoulou).

(12) In this sense, the decision discussed here adopted the grounds stated in that case by the Criminal Chamber in its decision of 13 Oct. 2013 (cited above).

(13) J. Larguier & Ph. Conte, *Procédure pénale*: cited above, p. 152 : « *l'interruption anéantit le temps déjà écoulé* ».

(14) J. Larguier & Ph. Conte, *Procédure pénale*: cited above, p. 153 : « *Le temps écoulé avant la suspension reste acquis*».

(15) See in this sense, Ph. Bonfils, *Clandestinité de l'infanticide et suspension de la prescription* : Rev. Dr. fam. 2015, comm. 24. For a more nuanced opinion, see A.-S. Chavent-Leclere, Revirement de jurisprudence : la clandestinité de l'homicide volontaire permet le report du point de départ de la prescription au jour de la découverte du cadavre : Rev. Proc. 2014, comm. 326.

(16) J. Pradel, *Procédure pénale* : cited above, n° 249.

(17) J. Larguier & Ph. Conte, *Procédure pénale* : cited above, p. 152.

(18) Cass. plén. 10 Oct. 2001 : bull. crim. N° 206.

(19) Cass. crim. 1 August 1919 : D. 1922, I, 49, note P. Matter.

(20) See previous examples.

(21) See in this sense Ph. Bonfils, cited above, but who accepts that a solution in principle is

nevertheless drawing closer.

(22) For other illustrations within and aside from the CPP, see, v. J. Pradel, *Procédure pénale* : cited above, n° 250.

(23) Also, between a radically *contra legem* solution and another that is simple *praetor legem,* the second is always easier to justify. However, in light of the strength of the principle of criminal lawfulness, it is accepted that the distinction remains particularly fragile.

(24) P. Maistre du Chambon, *L'hostilité de la Cour de cassation à l'égard de la prescription de l'action publique* : JCP G, 2002, II 10075, n° 1.

(25) We will leave aside the ridiculous idea that statutory limitation is based on the notion that, in seeking to avoid prosecution, the perpetrator of an offence lives in fear and remorse and has therefore already been punished.

(26) See J. Pradel, *Procédure pénale* : cited above, n° 236, p. 194.

(27) Furthermore, it is highly likely that the seriousness of the facts played a part in the decision.

(28) This is the case in common-law systems, except for petty offences.

(29) This basis was also recognised in the Penal Code during France's revolutionary period (Art. 9 and 10 of the Code of 3 Brumaire, Year IV).