

Statute of Limitations in Lawsuits Concerning Forgery of Official Documents in Light of Algerian Law and Judicial Precedent

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Abstract. The statute of limitations system in all types of crimes holds great importance for judges, defense attorneys, and even legal researchers, as it embodies the achievement of justice by protecting individuals' rights and freedoms. In Algerian legislation, the statute of limitations in criminal cases varies depending on the type of offense. According to Article 8 of the Code of Criminal Procedure, public prosecution is barred after 10 years for felonies from the date the crime was committed, 3 years for misdemeanors, and 2 years for infractions. Regarding forgery crimes, and pursuant to Article 20 of Law No. 24-02 on forgery-related crimes, they are subject to the general rules of limitation, meaning the period starts from the day the crime was committed. However, since forgery crimes are considered concealed crimes and are often difficult to detect on the day they occur, judicial precedent in some decisions has adopted the date of discovery of the forgery as the starting point for calculating the limitation period.

1. INTRODUCTION

The Algerian legislator has regulated forgery crimes in their various forms through a dedicated law, namely Law No. 24-02 dated February 26, 2024 (Law No. 24-02, 2024), which repealed the provisions of Articles 197 to 241 of the Penal Code that previously governed forgery crimes, transferring their content to the new law.

What unites the different types of forgery crimes, including the forgery of official documents, is that they are all based on the alteration of truth. In other words, merely altering the truth is sufficient to constitute the crime, regardless of whether the forged item is used. Moreover, the use of the falsified item is considered a separate crime in itself.

Although forgery is considered a serious offense, the Algerian legislator has applied to it the general rules of the statute of limitations as outlined in Articles 7, 8, and 9 of the Code of Criminal Procedure (Ordinance No. 66-155, 1966).

However, since forgery crimes—especially the forgery of official documents—are often only discovered years after they are committed, meaning it is impossible to detect the crime immediately, this has sparked debate and raised an important question: How effective is the statute of limitations in forgery crimes?

To answer this question, it is necessary to first define the concept of criminal statute of limitations and official documents, explain how the limitation period is calculated, and finally explore the position of Algerian courts regarding the calculation of the statute of limitations in lawsuits involving the forgery of official documents.

1.1. First: The Concept of Criminal Statute of Limitations

To understand the idea of criminal statute of limitations, we must first define the term linguistically and legally, and then identify its underlying causes.

1. Linguistic Definition of Statute of Limitations

In the Arabic language, the term *taqadum* (statute of limitations) comes from the verb *taqādama*, meaning "to become old or to elapse over time. (Mustafa et al., 1966) " The word implies the passage of a long period, and is often expressed as the passing of time over an existing matter (Qalaji and Qunibi, 1988).

2. Legal Definition of Statute of Limitations

In general legal terms, the statute of limitations refers to the passage of a specific period during which a right is not exercised without any legal obstacles. After this period, no individual may bring a claim to assert that right. This concept applies across all legal domains—civil, criminal, or disciplinary—because the statute of limitations is a legal doctrine that governs all branches of law (Zubaidi, 1992).

3. Definition of Criminal Statute of Limitations

In the context of criminal law, the statute of limitations generally refers to the expiration of the right to prosecute after a certain time has passed since the offense occurred. It is applied both in the Penal Code, regarding the limitation of penalties, and in the Code of Criminal Procedure, concerning the limitation of public prosecution (Souiki, n.d.).

What concerns us in this study is the statute of limitations for public prosecution, which refers to the passage of time after which a criminal case is no longer admissible (Shuaib, 2022). In other words, it is the period set by the legislator starting from the date the crime was committed or the date of the last investigative or inquiry procedure, without completing the remaining stages of the proceedings and without a judgment being issued. Once this period lapses, society's right to initiate prosecution expires (Chemlal, 2001).

4. Reasons for the Criminal Statute of Limitations

The reasons behind the statute of limitations can be attributed to several factors, the most important of which are:

- The passage of time since the crime was committed without prosecuting or punishing the offender leads to the crime and its effects fading from the memory of those who witnessed or knew about it. As a result, public interest in punishing

the offender diminishes, and the objective of general deterrence—which the legislator seeks to achieve through the penalty—can no longer be fulfilled (Sorour, 1996).

- The passing of many years since the commission of the crime often leads to the weakening or loss of evidence, whether physical evidence—such as handwriting comparisons or chemical analyses that deteriorate over time—or testimonial evidence, as witnesses may no longer accurately recall what they saw due to the lengthy period that has passed (Al-Ahwal, 1964).
- The disappearance of the offender from public view and their isolation from society deprives them of the rights and privileges enjoyed by ordinary individuals. This results in the offender suffering from fear, anxiety, and distress, which serves as a form of punishment in itself, caused by the pain and hardship of being away from their community and loved ones. Moreover, if the offender remains law-abiding during this period and does not reoffend, it demonstrates remorse and a commitment to good behavior (Souiki, n.d.).
- Society bears part of the responsibility for the failure or negligence in apprehending the offender and allowing them to escape.
- One of the reasons behind the statute of limitations in criminal matters is the failure of authorities to promptly initiate proceedings and enforce punishment within a reasonable timeframe (Ibid, p. 54).

1.2. Second: The Concept of Official Documents

An official or public document is defined as any document issued by a competent public official in accordance with their official duties, giving it an official character or endorsing it in accordance with applicable laws and regulatory provisions (Boussayka, n.d).

Official documents can be categorized into four types (Ibid, p. 438):

1. Government Documents: These are issued by public authorities, such as laws, presidential decrees, and ministerial decisions.
2. Judicial Documents: These include all documents issued by judicial authorities, such as court rulings, investigation reports, and expert opinions.
3. Public Officer Documents: These are documents issued by public officers such as bailiffs, notaries, and public auctioneers.
4. Administrative Documents: These are issued by various administrative authorities, such as decisions made by provincial or municipal authorities, and civil status records.

1.3. Third: Calculation of the Criminal Statute of Limitations

The legislator has provided for the statute of limitations and considered it a matter of public order, setting its duration according to the seriousness of the committed offense. It stipulates that public prosecution becomes time-barred after ten years for felonies, three years for misdemeanors, and two years for infractions (Articles 7, 8, and 9 of the Code of Criminal Procedure). The lesser the crime, the shorter the limitation period.

In Article 8 bis of the Code of Criminal Procedure, the legislator specifies that the statute of limitations does not apply to felonies and misdemeanors characterized by terrorist acts, transnational organized crime, bribery, or embezzlement of public funds.

The legislator determined that the period begins the day after the crime is committed and ends on the last day of the limitation period. Article 726 states:

"All deadlines mentioned in this law are complete deadlines; the first and last days are not counted. Public holidays are included in the period. If the last day falls on a non-working day, the deadline is extended to the next working day."

However, a major issue arises in identifying the exact moment the crime was fully committed, which is crucial to calculating the limitation period. Some crimes are committed in an instant (e.g., assault or battery), while others may take hours or days (e.g., property violations or fraud). Certain crimes may even take months (e.g., kidnapping). This requires referring to the classification of crimes based on their material element to determine when the crime is considered complete. Crimes can therefore be classified as:

- Positive crimes vs. negative crimes.
- Simple crimes vs. habitual crimes.
- Instantaneous crimes vs. continuous crimes.

For the purpose of our topic—the statute of limitations in cases of forgery of official documents—the most relevant classification is between instantaneous and continuous crimes.

1. Instantaneous Crimes: These are committed at a specific, single moment in time (e.g., theft, assault, or battery). In such cases, the statute of limitations begins the day after the act is completed, even if its effects persist or if the crime is not discovered or reported until days or months later (Jamal, n.d).
2. Continuous Crimes: These involve the ongoing commission of the criminal act over a period of time, with repeated intentional involvement by the offender throughout that period (e.g., kidnapping, failing to hand over a child to the rightful guardian, or concealing items obtained from a crime). In these cases, the limitation period begins the day after the criminal activity ends.

It's important to note two distinct types of continuity:

- Active continuity, where the offender's deliberate actions are repeated, which is what qualifies the offense as a continuous crime.
- Passive continuity, where the criminal effect persists without renewed offender action (e.g., completing unauthorized construction). In this case, the crime is considered instantaneous, and its persistence does not mean it is a continuous offense (Ibid, pp. 378–379).

1.4. Fourth: Calculation of the Statute of Limitations in Crimes of Forging Official Documents

The Algerian legislator has addressed forgery crimes of all types in a distinct and dedicated law, namely Law No. 24-02,

which repealed the provisions of Articles 197 to 241 of the Penal Code that previously governed forgery offenses.

Regarding the statute of limitations for forgery cases, Article 20 of Law No. 24-02 stipulates the same limitation rules provided in the Code of Criminal Procedure. That is, the general rules of limitation apply to both the crime of forgery and the use of a forged document.

However, it is important to note that the starting point for the statute of limitations differs between the two crimes:

- The crime of forgery is considered an instantaneous crime, meaning the statute of limitations begins to run from the day following the date the act was committed.
- On the other hand, the crime of using a forged document is often a continuous crime, meaning the statute of limitations begins to run from the day following the end of the criminal conduct constituting the continuity of the offense.

This interpretation is confirmed by the Egyptian Court of Cassation, which ruled that the use of a forged document constitutes a continuous crime. One of its rulings stated:

"The distinction between an instantaneous crime and a continuous crime lies in the nature of the material act constituting the offense as defined by law—whether the act is positive or negative, by commission or omission. If the offense is completed by the mere act itself, it is considered instantaneous. However, if the criminal state persists over a period of time, then the offense is continuous throughout that period."

What matters in determining continuity is the repeated, deliberate involvement of the offender in the punishable act. Time periods before the act (preparation or intention) or after it (when criminal consequences continue to exist) are not relevant in establishing the crime's continuous nature (Appeal No. 1130, session of 02-11-1975)."

However, despite this, we find that the Algerian judiciary is inconsistent in calculating the statute of limitations for forgery crimes. Sometimes, the limitation period is calculated from the date the act of forgery was committed, and at other times from the date of its discovery, without distinguishing between the crime of forgery and the crime of using forged documents.

First Opinion of the Supreme Court: Calculating the Limitation Period from the Date the Forgery Was Committed.

One ruling by the Supreme Court dated 04-03-2010 stated:

"Whereas, by reviewing the contested decision, it is clear that the objection based on prescription was rejected on the grounds that the limitation period begins from the date the forgery was discovered, which contradicts the above-mentioned legal texts and principles. This is because the criminal act occurred when the vehicle entered through the Port of Bejaia on 27-06-2001 and the documents were submitted to the customs authorities. However, the complaint was filed on 10-06-2006 (Ruling No. 547171, 2010) by the respondent B.H.M. Therefore, the public prosecution had become time-barred in accordance with the provisions of the law, leading to the annulment of the contested decision without referral."

Here, we see a contradiction between the judges of the court of appeal and those of the Supreme Court regarding the starting point for calculating the statute of limitations. The trial judges were correct, while the Supreme Court erred, since the determining factor in continuous crimes is the date the forgery is discovered.

In another ruling by the Supreme Court dated 27-12-2018, it was stated:

"The claim of the appellant public prosecutor is unfounded. The court of appeal judges did not violate the law at all, especially Article 08 of the Code of Criminal Procedure, because the statute of limitations in the crime of forgery—as it is an instantaneous crime—runs from the date the crime was committed, not from the date it was discovered. Therefore, the court of appeal judges did not violate Article 08 of the Code of Criminal Procedure and correctly applied the law. As a result, the sole claim raised by the public prosecutor is without merit and is therefore rejected, and his appeal is dismissed on substantive grounds (Decision No. 1299278 issued on 27-12-2018)."

In another ruling by the Supreme Court, in deciding on Appeal No. 548847 filed against the decision issued on 10-12-2007 by the Criminal Chamber of the Medea Court of Appeal in the criminal case, the court upheld the original ruling that declared the public action extinguished by prescription in relation to the crime of forgery in private documents, as stipulated and punishable under Article 220 of the Penal Code. The ruling stated:

Regarding the objection raised by the public prosecutor concerning insufficient reasoning:

"Upon reviewing the contested decision, it appears that the trial judges did not determine the date of the forgery incident for which the defendant was prosecuted and on which the calculation of the limitation period should be based. Contrary to the conclusion reached by the trial judges in the present case, the statute of limitations for the misdemeanor of forgery should be calculated from the date of the act, considering it an instantaneous crime, or from the date of the last judicial procedure taken in the case. Therefore, the objection raised by the public prosecutor is well-founded and must be upheld without addressing the objection raised by the civil party, leading to the annulment of the contested decision (Decision No. 548847 issued on 04-03-2010)."

Second Opinion of the Supreme Court: Calculating the Statute of Limitations from the Day the Forgery Act Is Discovered

The Supreme Court, in one of its rulings, adopted a different view, stating that the statute of limitations for the crime of forgery does not begin from the day the act was committed but rather from the day it was discovered.

In the decision issued by the First Division of the Criminal Chamber on 17/03/2011, regarding appeal number 660700 (Decision No. 660700 issued on 17-03-2011), it stated:

"...It must be recalled from the outset that forgery is a hidden crime, and the limitation period applicable to instantaneous crimes does not apply; rather, the statute of limitations begins from the day the crime is known or discovered..."

In another decision, the court also stated:

"The use of a vehicle imported into Algeria without completing customs procedures is a continuous crime, renewed each time the vehicle is used, and the statute of limitations is calculated from the last use, i.e., from the date the crime was discovered and ascertained." This opinion is sound and correct (Case No. 079789, decision dated 25-10-1992).

In a recent decision dated 30/01/2020, the court further ruled:

"The crime of using a forged document is subject to a three-year statute of limitations, which runs from the date the forged document is used (Case No. 0849515, decision dated 30-01-2020)."

Also, from the Supreme Court rulings supporting the calculation of the statute of limitations for the crime of forgery from the date of its discovery is the decision issued on 16-02-2012, resolving appeal No. 787930:

"Whereas, contrary to the complainant's claim, the judges of the indictment chamber adhered to the legal point decided by the Supreme Court. They discussed the issue of the statute of limitations raised by the appellant in their reasoning and concluded that the limitation period for forgery crimes begins to run from the date the incident is discovered, not from the date it was committed. They based the date of discovery in the present case on the date the appellant's brother appeared before the

urgent court on 08-08-2006. Therefore, they discussed the matter and responded according to the facts of the case, as required of them. Both grounds of appeal are unfounded and must be rejected (Appeal No. 787930 issued on 16-02-2012)."

Here, the Supreme Court confirmed the indictment chamber's decision that the statute of limitations for forgery crimes begins from the date the incident is discovered, not from the date it was committed, which is a sound opinion.

2. CONCLUSION

From what has been clarified above regarding how to calculate the statute of limitations in forgery cases, we conclude that the principle in Algerian legislation is that the limitation period starts from the date the crime occurs (Article 08 of the Code of Criminal Procedure). However, doctrinally, in cases where the forgery is hidden or continuous, the limitation period may be calculated from the date the crime is discovered or from the last use of the forged document. This approach has been adopted by judicial precedent in some forgery cases.

What can be criticized, however, is that the judiciary has been inconsistent, sometimes calculating the limitation period from the date the crime was committed and other times from the date of its discovery.

Therefore, what we consider to be fairer and more protective of the rights of the affected individuals is to calculate the statute of limitations in forgery cases from the date of its discovery, given that forgery is a hidden crime carried out secretly and is difficult to detect from the moment it is committed.

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