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## **Retroactive Prescription from the Time the Complaint Was Filed**

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**Abstract:** This study aims to understand the neurobiology of perfectionism within the framework of cognitive neuroscience, focusing on mental disorders, as part of the program developed by CPAH - Center for Research and Analyses Heráclito. The research focuses on analyzing the brain function of perfectionists, using gifted individuals as a reference due to their higher tendency towards perfectionism. The study also includes individuals with high abilities, disorders such as Avoidant Personality Disorder, Obsessive-Compulsive Disorder (OCD), Obsessive-Compulsive Personality Disorder (OCPD), as well as anxiety disorders, depression, and mood disorders. Factors such as childhood criticism, high expectations, and competitive environments are also considered.

The research is based on neuroimaging studies that highlight the importance of the dorsolateral prefrontal cortex and the anterior cingulate cortex in executive control and error correction, elements directly linked to perfectionist behavior. Additionally, dopamine and its influence on the reward system, along with the role of the amygdala in emotional processing, are crucial factors in how perfectionists deal with success and failure.

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### **1. Introduction**

#### **Retroactive Prescription**

Retroactive prescription occurs after the sentence or conviction has already been officially established . It is like a late discovery, taking into account the penalty actually applied to the defendant , the guidelines of article 109 of the Penal Code and the time elapsed from the receipt of the complaint until the publication of the sentence or conviction .

In order to understand and analyze the issue of retroactive prescription from the filing of the complaint , it is important to contextualize the discussion within the Brazilian legal system , especially with regard to Criminal and Procedural Law. Retroactive prescription is a complex matter that involves counting the prescriptive period after the commission of a crime, considering the significant procedural milestones. The central issue of the debate is whether the period for retroactive prescription should begin from the moment the complaint is filed by the Public Prosecutor's Office or from its receipt by the judge.

Retroactive prescription is a crucial concept in the legal system that has significant implications in the judicial process . Originating from the field of criminal law, retroactive prescription is a phenomenon that occurs when the time limit for the punishment of a crime has already elapsed before the defendant is even convicted. Let us explore this concept further based on actual articles of the penal code and legal discussions .

According to the Brazilian penal code, retroactive prescription is defined as the situation in which the prescriptive term for the punishment of a crime has already elapsed before the end of the judicial process, provided that this

term was already in progress at the time the defendant was prosecuted. In other words, if the prescriptive period is already in progress when the defendant is prosecuted, and if the time necessary for the prescription elapses before the trial is even concluded, retroactive prescription occurs.

The application of retroactive statute of limitations has been the subject of intense debate in courts and among legal scholars. Some key issues include determining when the statute of limitations begins to run, the exceptions to the statute of limitations, and the criteria for interrupting or suspending the statute of limitations. For example, in a given case, a defendant may argue that the statute of limitations should run from an earlier date, such as the date the crime was committed, while prosecutors may argue that the statute of limitations should start running from the time the defendant was formally charged. These legal nuances are often discussed in court to determine whether retroactive statute of limitations applies in a given case.

Retroactive statute of limitations has significant consequences for the legal system. When it occurs, it means that someone can no longer be punished for a crime, regardless of the merits of the case or the severity of the offense. This can lead to impunity for serious crimes and frustration for victims and society at large. In addition, retroactive statute of limitations can raise questions about the effectiveness of the legal system in ensuring justice and punishing the guilty. Some argue that retroactive statute of limitations is necessary to protect the rights of defendants and avoid lengthy legal proceedings, while others see it as a flaw in the system that allows criminals to escape accountability.

There are four main types of prescription of punitive claims:

**Abstract Prescription:** This modality is calculated based on the maximum penalty provided for the criminal type in question and occurs before the final sentence becomes final.

**Retroactive Prescription:** This is the main focus of our article. Retroactive prescription is that which occurs after the final judgment of the sentence or conviction.

**Supervening Prescription:** Here, the prescription is based on the penalty actually applied to the defendant. The time frame is the publication of the sentence or conviction and the date of the final judgment.

**Virtual Prescription:** This type of prescription is based on the penalty hypothetically applied to the case, indicating an anticipated prescription. However, it is important to note that the Superior Court of Justice (STJ) does not recognize this type of prescription, as established in Summary 438 of the STJ.

### **Contextualization According To The Brazilian Penal Code**

Retroactive prescription is regulated by the Brazilian Penal Code, especially in the articles that deal with prescriptive terms and their interruptions. Traditionally, the starting point for counting the retroactive prescription period has been the receipt of the complaint by the judge, as it is considered an act that confirms the just cause for criminal action and effectively initiates the process. However, there is a minority doctrinal school that argues that the starting point should be the filing of the complaint by the Public Prosecutor's Office, as mentioned by Júlio Fabbrini Mirabete.

Regarding retroactive prescription, there are some important points to address:

**Procedural Agility:** It is argued that counting the statute of limitations from the filing of the complaint would encourage greater speed in the processing of cases, as it would pressure judges to analyze the complaints more quickly.

**Responsibility of the Public Prosecutor's Office:** The Public Prosecutor's Office, as the holder of the criminal action, when filing the complaint, already carries out a preliminary judgment on the admissibility of the accusation, which could be considered sufficient to start counting the prescriptive period.

**Judicial Impartiality** : The argument that the judge, as an impartial figure, should not influence the prescriptive term with his decision to accept or not the complaint , reinforces the idea that the action of the Public Prosecutor's Office already constitutes a relevant procedural act.

However, the majority position maintains that the statute of limitations should start to run from the moment the judge receives the complaint , since this act represents a judicial analysis that confirms the presence of sufficient evidence of authorship and materiality of the crime, constituting a more solid and secure framework for counting the prescriptive period.

### **The Role Of The Public Prosecutor 'S Office In Criminal Prosecution**

When considering the role of the Public Prosecutor's Office as the holder of the criminal action, it becomes evident that its action is fundamental for the triggering of the criminal process. The Public Prosecutor's Office is the body responsible for investigating , accusing and promoting the criminal action , representing the interests of society in the criminal prosecution . Therefore, it is reasonable to argue that the beginning of the counting of the retroactive prescription should coincide with the moment in which the Public Prosecutor's Office offers the complaint .

Concrete data extracted from studies on the functioning of the criminal justice system corroborate this position . The role of the Public Prosecutor's Office in the pre-trial phase, such as conducting investigations and collecting evidence , demonstrates its active role in conducting the criminal proceedings from the very beginning. Furthermore, statistical analyses reveal that the majority of cases that result in criminal proceedings begin with the action of the Public Prosecutor 's Office, either through its own investigations or at the instigation of third parties. On the other hand, some argue that the moment the magistrate receives the complaint is more appropriate to start counting the retroactive prescription, since the judge is an impartial agent in the criminal process. However, it is important to highlight that the impartiality of the magistrate should not be confused with his passive role in receiving the complaint . Statistical data and case law analyses demonstrate that the magistrate plays a technical and impartial role in the process of receiving the complaint . His function is not to decide on the guilt or innocence of the accused, but rather to verify whether there are minimum indications of authorship and materiality to initiate the criminal process. Therefore, the receipt of the complaint by the judge does not imply any substantial interference in the merits of the case, and it is more appropriate to consider the moment the complaint is filed by the Public Prosecutor's Office as the starting point for counting the retroactive prescription.

### **Refutation of the objection that counting would be punitive**

Finally, the objection arises that considering the filing of the complaint as the beginning of the retroactive prescription period would be a punitive measure, harming the defendant . However, this objection is not sustained when we analyze the nature and purpose of the retroactive prescription period . The retroactive prescription period is not a punitive measure , but rather a procedural guarantee that aims to ensure that the State exercises its criminal action effectively and within a reasonable period of time . By considering the filing of the complaint as the starting point for the retroactive prescription period , the defendant 's guilt or innocence is not being determined , but merely establishing a time limit for the State to exercise criminal action . Statistical data and empirical studies demonstrate that counting the retroactive prescription from the date of filing the complaint does not have a significant impact on criminal prosecution , but rather on ensuring the speed and effectiveness of criminal proceedings. Therefore, this objection is not sustained when faced with a detailed analysis of the nature and purpose of retroactive prescription .

### **The Process During The Retroactive Prescription In Cases Of Legal Entities**

The impact of retroactive prescription on legal proceedings is significant and can influence defendants, victims, and society at large. Here are some analyses based on articles on the subject:

**Defendants** : For defendants, retroactive prescription can be both a relief and a frustration . In cases where the process drags on for years, retroactive prescription can result in the extinction of the defendant's punishability, freeing him from the legal consequences of the crime. However , for defendants who wish to prove their innocence

, retroactive prescription can prevent the conclusion of the process and the opportunity to clear their names. This is contradictory since retroactive prescription does not prevent one from proving one's innocence; it is only a blessing in the life of the defendant.

When retroactive prescription occurs, it is often due to deficiencies in the criminal justice system. This could be due to delays in investigations, failures in evidence collection, or a lack of sufficient resources to pursue the case. In situations like this, the correct approach would be to place the blame on the state, not the defendant or the victim. If the state fails to provide a properly functioning justice system, it is considered negligence on the part of the state.

Therefore, it is essential that the state assumes responsibility for ensuring that laws are applied correctly, especially when companies are involved. In a scenario where processes are applied correctly, within judicial institutions, it ensures the improvement of investigation and trial procedures, in addition to guaranteeing better resources so that crimes committed are investigated, tried and punished as they should be, in accordance with the principles of justice and the rule of law.

**Efficiency of the Judicial System** : In addition, retroactive prescription highlights the need for reforms in the judicial system to ensure a more efficient and rapid administration of justice. Delays in judicial proceedings can contribute to the prescription of crimes, highlighting the **importance** of procedural speed and the optimization of judicial resources.

### **Retroactive Prescription Periods**

The statute of limitations is determined by specific laws and can vary considerably depending on the type of crime and the circumstances involved. In general, the statute of limitations occurs when the period between the filing of the complaint and the final decision of the trial exceeds the legal limit established for each type of crime. Here is some information extracted from articles on the subject:

**Minor crimes** : For minor crimes, such as those of a minor nature, the retroactive prescription periods may be shorter, generally ranging from 2 to 4 years. Here, the prescription period was placed in the abstract, which is defined by article 109 of the Criminal Code. In retroactive prescription, the abstract penalty is not used. It uses the penalty actually applied to the defendant.

**More serious crimes**: In cases of more serious crimes, such as murder or rape, the retroactive statute of limitations tends to be longer and can be up to 15 years. However, these terms can also vary depending on factors such as the age of the defendant, the length of the legal proceedings and the occurrence of appeals.

**Calculation of the term**: The **calculation** of the retroactive prescription term generally begins from the date of receipt of the complaint by the competent judge. From that moment, the maximum term permitted by law for the conclusion of the legal process begins to run.

### **Exceptions And Special Cases**

In cases of retroactive prescription, exceptions and special situations may arise that interrupt or suspend the limitation period, especially when legal remedies are involved. Here is some information based on articles on the subject:

**Judicial Appeals**: One of the main reasons for the interruption or suspension of retroactive prescription is the appeals filed by the parties involved in the process. When a judicial decision is challenged through appeals, the retroactive prescription period may be interrupted until all appeals are definitively judged.

**Fugitives from Justice :** If the person is on the run or in an unknown location, the retroactive limitation period may be suspended until the person is found and the case can be resumed. This prevents the person from benefiting from the limitation period due to their own escape from justice .

**Interruptive Causes:** Certain causes provided for by law would not suspend the statute of limitations if it has expired. Preventive detention ensures the effectiveness of the investigation and the judicial process, as well as the private prosecutor of the process, ordering detention or a precautionary measure does not suspend the statute of limitations. I did not understand the context, and I do not think it is necessary to say.

### **Legislative Reform Proposals**

Contemporary discussions on retroactive prescription cover a variety of issues , from proposals for legislative reform to ethical and moral considerations. In recent years , several articles have addressed these issues, highlighting the need to review and update laws related to retroactive prescription , as well as the ethical dilemmas involved.

In relation to legislative reform, some articles have suggested the need to review retroactive prescription periods , arguing that current periods may be inadequate to deal with the complexity and delay of legal proceedings. Proposals to change legislation often aim to establish more reasonable deadlines that are proportionate to the seriousness of the crimes, ensuring that justice is effectively achieved.

Furthermore , contemporary discussions on retroactive prescription also include ethical and moral considerations , especially with regard to justice and fairness in the legal system. Issues such as the state's responsibility to ensure the enforcement of victims ' rights and the protection of defendants against prolonged and unfair proceedings are frequently debated .

Another point of discussion is the relationship between retroactive prescription and impunity. Some articles question whether the prescription periods established by law are adequate to ensure that the guilty are punished or whether they end up contributing to impunity due to the delay in legal proceedings. In addition , there are debates about the need to reconcile procedural speed with due process, ensuring that the fundamental rights of the accused are respected, while at the same time seeking to avoid impunity and guarantee justice for the victims .

### **Final Considerations**

Retroactive prescription is a frequent topic of discussion in the context of the Brazilian legal system . However, a comparative analysis with legal systems from other countries can enrich our understanding of the subject and provide valuable insights into different approaches. In many countries, the concept of retroactive prescription is recognized, but its application varies considerably. For example, while some countries establish longer or shorter prescriptive periods for certain types of crimes, others adopt different procedures for interrupting or suspending the prescriptive period . By observing these differences , we can identify best practices and potential challenges in managing retroactive prescription.

Furthermore, it is essential to explore specific reform proposals related to retroactive prescription. Detailing these proposals and how they could address the challenges identified in the Brazilian legal system is essential to advance the debate on the topic. Such proposals could include changes to prescriptive deadlines, introduction of new criteria for interruption or suspension of the prescriptive period , and measures to promote a more efficient administration of justice .

In addition to the practical and legal considerations , it is crucial to examine the ethical and moral implications of retroactive prescription . This involves reflecting on issues of fairness in the legal system, safeguarding victims ' rights , and protecting defendants from prolonged and unfair proceedings. A more in-depth analysis of these issues can enrich the debate and help guide policies that promote justice and respect for the fundamental rights of all parties involved. In many countries , the concept of retroactive prescription is recognized, but the details of its application vary significantly. For example, while some countries may adopt longer or shorter prescriptive periods for certain types of crimes, others may have different procedures for interrupting or suspending the prescriptive period . Observing these differences can provide valuable insights into best practices and potential challenges in

managing retroactive prescription. Exploring specific reform proposals related to retroactive prescription is essential to advance the debate on the topic. Although discussions on legislative reforms have been mentioned, it is important to detail what these specific proposals are and how they could address the challenges identified in the Brazilian legal system. Such proposals may include changes to prescriptive deadlines, the introduction of new criteria for interruption or suspension of the prescriptive period, and measures to promote a more efficient administration of justice.

In addition to the practical and legal considerations, it is also crucial to examine the ethical and moral implications of retroactive prescription. This includes reflecting on issues of fairness in the legal system, ensuring victims' rights, and protecting defendants from prolonged and unfair proceedings. Further consideration of these issues can enrich the debate and help guide policies that promote justice and respect for the fundamental rights of all parties involved.

## Conclusion

During our discussion of retroactive prescription, we explored several aspects of this complex topic within the context of the Brazilian legal system. Initially, we examined the definition and functioning of retroactive prescription, highlighting its importance in the judicial process and the implications of its application. Next, we analyzed different perspectives on the starting point for counting the retroactive prescription period, considering actions such as the filing of the complaint by the Public Prosecutor's Office and the receipt of the complaint by the judge.

beginning with an in-depth discussion of retroactive prescription and how it compares to the legal systems of other countries. This dialogue highlighted the need to adopt a global perspective to enrich our understanding and identify exemplary practices that could be adapted to the Brazilian context. During the discussion, we also focused on specific reform proposals that could improve our legal system, effectively responding to the challenges we currently face. Retroactive prescription remains a topic of significant importance and complexity within the Brazilian legal system. As we move forward in the study and debate on this issue, it is essential to maintain an open approach that incorporates diverse perspectives and seeks solutions that promote justice, equity, and respect for the fundamental rights of all stakeholders.

Furthermore, the crucial role of ethical and moral considerations in discussing this sensitive issue was highlighted. Issues such as fairness in the legal system, the protection of victims' rights and the guarantee of the rights of the accused were highlighted, reinforcing the need for a fair balance that ensures the integrity and justice of our legal system. However, it is important to recognize that the discussion may not have covered all pertinent aspects related to retroactive prescription. Aspects such as the practical consequences of this legal practice and the analysis of specific cases deserve further investigation. Furthermore, a more careful examination of the legislative reform proposals currently under discussion could provide even richer insights.

## Author Statements:

- **Ethical approval:** The conducted research is not related to either human or animal use.
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