

Introduction

The protection of human rights developed in the framework of international law has involved a series of consequences both in the political and the juridical spheres. One of such consequences lies in the emergence of the concept of transitional justice. This aims at giving to the States some guidelines of how to deal with the vast amount of atrocities against human rights committed during a period of war or dictatorship. States resort to different mechanisms according to the particular circumstances of every transitional experience.

In the context of transitional justice, the determination of the criminal responsibility represents one of the most difficult aims to achieve, despite the current existence of an international consensus that the serious violations of human rights must be prosecuted and punished. The duty of prosecuting those kind of crimes (the so-called core crimes) has challenged the use of traditional juridical institutions that prevent its consecution. A clear example of this is represented by the rejection of the passage of time as a cause of end of the criminal liability.

The objective of the research is focused on giving a justification for the rejection of the statute of limitations as a cause of end of criminal responsibility in matters of core crimes. It proposes that such justification lies in victims' rights. For that it is necessary to construct a framework of transitional justice focused on victims' rights, under which the statute of limitations will be submitted. The analysis of the Chilean transitional justice will allow to apply the general framework into a concrete case, and it helps illustrate how the international tendency to protect rights has overcome the domestic norms in matters of statutory limitation.

The research has been divided into five chapters, every one of them having a specific goal. Chapter I aims at describing the most relevant aspects of TJ, establishing a legal framework. The framework will be described through different aspects namely the definition of TJ, its classification and the political and juridical measures that can be enacted during the transition. Special consideration deserve the victims' rights, which play a role as a threshold for the achievement of the TJ goals. The importance of victims' rights is also reflected in their use as a limit for the enactment of political measures or for the re-thinking of traditional juridical institutions.

Chapter II focuses on the Chilean transition. A general overview of the transition from a political and juridical perspective will be considered. The juridical perspective seeks to determine how advanced the criminal prosecution in Chile was with regard to human rights violations committed during the dictatorial regime. The regular use of amnesty by national courts during the first years of the transition has decreased, until the point of being its use currently inexistent. This has implied that the courts must deal with another obstacle by the prosecutions: the statute of limitations.

Chapter III aims at analysing the statute of limitations. Since the Enlightenment, the possibility of extinguishing the criminal liability through the passage of time has been consolidated in the domestic legal orders, arguing different theories for justifying its existence. Nevertheless, since the Nuremberg trials has been developed in international law a rule of non-applicability of statutory limitation with regard to the most serious violations against human rights law and humanitarian law. In order to justify the non-applicability of statutory limitation it is necessary to undermine the foundation of the national statute of limitations. This implies firstly to take a position with regard to its foundation. In addition, it will determine the compulsory character that the non-applicability of statutory limitation represents to the States and the possibility of applying such a rule retroactively. For that, it will argue that the norms ruling the statutory limitation are not encompassed by the principle of legality.

Chapter IV is directed at determining how the Chilean legal order has recognized the rule of non-applicability of statutory limitation. This requires previously demonstrating the core crime nature of the offences committed during the dictatorships and the recognition of such kind of crimes in domestic law. The role of the judiciary is an important issue, since the courts has shown an evolution from strict application of the traditional norms in matters of statute of limitations to its rejection in base of international law-liked arguments. The foundation of the statute of limitations will be also argued to reaffirm the possibility of applying the rule of non-applicability of statutory limitation in the Chilean context. In addition, the problem of the so-called gradual statutory limitation will be also considered.

Chapter V aims at submitting the Chilean statute of limitations into the general framework developed in chapter I from the perspective of victims' rights. The test will show that statute

of limitations constitutes a hindrance for the achievement of the TJ goals and, therefore, its use must be re-evaluated. The way how the Chilean system has faced the re-thinking of traditional rules in matters of statutory limitation will permit to conclude whether the transitional justice process is conducted in a good direction or not.