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PUNITIVE JUSTICE AND RESTORATIVE JUSTICE IN LIGHT OF THE PROCESS OF ENSURING THE INTERESTS OF THE VICTIM IN INTERNATIONAL HUMANITARIAN LAW

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ABSTRACT
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CONCEPTUAL LANDMARKS OF THE RESEARCH

The relevance and importance of the research topic. Despite the high degree of civilization and culture that humanity is presumed to have in the contemporary period, it seems that the most ‚accessible' way to resolve various political, ethnic, economic, geographic, demographic, or other divergences remains military aggression, the fight ‚with arms in hand' - which unfortunately is the bloodiest method and brings the most serious harm to humanity.

Present even today all over the planet, war remains an important part of human history, still ongoing, a way to resolve disputes between states through weapons, which is why it is considered that all history books represent only a listing of wars, and peace will always remain the dream of philosophers. The ancients used to say: ‚homo homini lupus', recognizing in the relationships between large human communities the existence of a war of all against all.Statistics show us that in the 5600 years of human history, only 292 years of peace have been recorded, the permanence of war being considered a normal state of relations between states, with disastrous results for humanity.

The synthesis of the genesis and evolution of international humanitarian law leads to the conclusion that mitigating the consequences of war and protecting victims among combatants, but especially among those who are not part of the hostilities, is an ancient concern of humanity, yet it seems to always be extremely relevant.

In this context, despite the challenges faced over time in implementing norms based on the three facets of victims' rights—protection, participation, and remedy—international law has placed the victim at the center of the dispensation of justice.

The relevance of the research topic is primarily given by the reality we live in every day, by the multitude of armed conflicts occurring across the globe, generating a plethora of victims of violations of fundamental rights and freedoms.

Justice, as a general concept, in all its forms, but especially restorative justice, arises as a pragmatic response of international law to the issue of the injuries and harm suffered by victims of armed conflicts, international humanitarian law addressing their situation through the lens of the non-existence of express solutions that could ensure the transition from the perspective of victims, from a period of conflict to a post-conflict period, without consequences that could affect the individual and implicitly the society from which they come.

The subject addressed is particularly important within international law because, although there are numerous international organizations worldwide with clear responsibilities in the spectrum of resolving conflict situations that arise internally or externally, they still seem incapable of preventing and combating such armed aggressions, thus maintaining an alarmingly high number of victims.

At the same time, the importance of the subject is also given by the fact that over time, the manner in which justice has been applied has been punitive in nature, focused on the needs of the states rather than meeting the needs of the victims.

The degree of study of the research topic. The subject addressed, although relatively little known, is highly appreciated at the international level, precisely because of the tendency of national legislative systems and international courts to focus on the need to apply punishments, to the detriment of meeting the needs of victims.

Although international literature has sufficient sources of information in the field of international law and the subfields of international humanitarian law and human rights law, on the concept of victim and the way to approach their situation, it seems that the degree of applicability is still very low.

The achievements of public international law in the last century along these lines, with regard to the field of incrimination of acts with a potentially criminal nature, have unfortunately not led to notable achievements in the creation and implementation of concrete international legal institutions and instruments, which are capable of capitalizing on the legal norms already in force.

In light of the deficit of criminal jurisdiction, the sanctioning of international crimes continues to be achievable on a case-by-case basis, by the criminal courts of each state, with limited and circumstantial exceptions within the national framework. Thus, although in the current period and stage of development of international doctrine and jurisprudence, justice based on restorative and human rights principles has experienced significant dynamism, unfortunately, within the criminal process, the greatest importance is given to the sanctioning of legislative violations, to the detriment of the process of reconciliation and restoration of the rights of the victim.

The purpose of this research is to highlight the primary role of restorative justice in the process of reconciliation between the victim and the offender, as well as in guaranteeing the protection of the victim's legitimate rights and interests. Through its fundamental principles – accountability, reparation of harm and voluntary participation – restorative justice offers an alternative or complement to the traditional criminal system, focusing not only on sanctioning the perpetrator, but also on the psychological, social and material needs of the victim. This approach significantly contributes to the restoration of equity and the reintegration of both parties into the community, ensuring the victim a safe and fair framework to express their suffering, to receive recognition and compensation, as well as to obtain essential clarifications for the personal healing process.

In this regard, the study will analyze various mechanisms and instruments of international justice and responsibility, with an impact on the field of international humanitarian law, within the framework of a comparative study, which

will allow the assessment of the level of applicability at international level of existing legal norms. The study will target both doctrinal aspects and the jurisprudence of the main legal institutions with responsibilities in managing the issue of the situation of victims of armed conflicts, as well as, by analogy, aspects of transitional justice, in different post-conflict situations and areas.

Given the increasing importance given to restorative justice within modern legal systems, as well as the need to adapt judicial mechanisms to the real needs of victims, the present research approach is structured around clearly defined objectives, intended to reflect the complexity of the topic and to contribute to a deeper understanding of the role of this form of justice in the process of reconciliation and reparation:

1. Analyzing the concept and evolution of international justice, clarifying its basic principles.
2. Identifying and analyzing the institutions of international humanitarian law that regulate the implementation of international criminal responsibility.
3. Analyzing the principles, functions and limits of punitive justice, as a traditional model of criminal sanctioning in society. Identifying the historical and philosophical foundations of the punitive system, evaluating the effectiveness of punishments and analyzing the social impact of the sanction on the offender and the victim.
4. Investigating the efficiency, applicability and impact of restorative justice as an alternative model of response to crime, focused on reparation of harm and reconciliation.
5. Analyzing the transition process from punitive justice to restorative justice within transitional justice, in international law, with an emphasis on the mechanisms used in post-conflict states. Assessing the efficiency of restorative models in achieving the objectives of reconciliation and reparation.
6. Formulating and substantiating strategic and normative recommendations for the coherent and efficient implementation of restorative justice in international law, with an emphasis on the post-conflict and transitional justice context. The analysis of the specialized literature represented an essential stage, within which a broad documentation of existing sources was carried out, in order to identify the most relevant scientific contributions dedicated to the subject addressed. This stage allowed the outline of a solid theoretical foundation for the present work and facilitated the understanding of the way in which previous research was structured. At the same time, the research methods and tools used in previous studies were examined, which allowed highlighting insufficiently explored areas and aspects that require further investigation in future investigations, such as areas such as victimology, punitive and restorative justice, or international humanitarian law.

Research hypothesis. For the purpose of the proposed study, we started from the importance of promoting the interests of victims of armed conflicts and subsequently implementing the mechanisms and instruments of international humanitarian law to create the necessary conditions for reconciling the situations of victims and post-conflict societies.

Thus, the main hypothesis of the study will be considered the determination of the need for active and direct involvement of states and international institutions in the process of ensuring the interests of victims of international humanitarian law by developing and applying legal instruments agreed upon by all interested parties, in order to ensure justice based primarily on respect for fundamental human rights and freedoms and on the concrete restorative needs of victims.

Summary of the research methodology and justification of the chosen research methods. In the process of conducting the study and preparing the paper, we used the following scientific research methods:

1. Historical method – which allowed for an analysis of how legal systems have developed over time depending on the cultural, political, economic and religious context. At the same time, the study assessed the evolution over time of the concept of victim, their rights but also of the normative, doctrinal and jurisprudential framework, in terms of ensuring the interests of victims within international humanitarian law.

2. Logical method – is one of the most important approaches used in the analysis of the development of the concept of restorative justice, allowing for the coherent and rational pursuit of legal ideas, principles and institutions according to their internal logic, not only according to the historical context. The method allowed for an in-depth study of the effects produced by the instruments and mechanisms of international humanitarian law and human rights law on the individual and society victims of an armed conflict.

3. The comparative method – through which we conducted an examination of the modalities of implementation of the international normative framework in the national justice systems of some states as well as an analysis of the modalities of application of the principles specific to the doctrine and international jurisprudence, in different areas of the planet, in the field of ensuring the interests of victims of armed conflicts;

4. The quantitative method – involved the use of numerical data, statistics and mathematical analyses to understand, evaluate and compare the efficiency and impact of restorative justice programs. The approach was complementary to the qualitative method and was essential in the scientific validation of interventions in this field. The method contributed to ensuring the accumulation of that volume of knowledge, theoretical sources of information but also case studies,

which could constitute important sources in the process of implementing the concept of restorative justice.

5. The systemic method – allowed us to highlight both the strengths and weaknesses of the system for implementing the concept of restorative justice and the concepts of transitional justice, thus having real possibilities of consolidating and implementing good practices and reviewing and improving the most poorly developed ones;

6. The prospective method – was used for the purpose of identifying and analyzing effective methods of cooperation in interested states affected by the rigors of armed conflicts and international institutions with responsibilities in the difficult field of ensuring the interests of victims and establishing standards and the international framework for managing their situation.

7. The synthetic analysis method – represented the fundamental approach in scientific research, used to integrate the information obtained about this complex phenomenon that is restorative justice – into a coherent, systemic and rational understanding. Applied in this context, the synthetic analysis method allowed the combination of data, concepts and models resulting from the scientific study, in order to formulate a clear, explanatory and integrative overview of how restorative justice works, its impact and theoretical and practical implications.

The scientific problem solved consists in determining and arguing the importance and necessity of developing and adopting international legal mechanisms and instruments that can clearly and undoubtedly establish the legal status of victims in contemporary armed conflicts, by concretely describing the factual situations, the rights and freedoms of victims. At the same time, the mechanisms and instruments developed should be capable of establishing what are the specific normative deficiencies at the international level but also at the level of national justice systems as well as the most appropriate methods of harmonizing and improving the two justice systems.

Achieving this objective could take place primarily by adopting the concepts of transitional justice in general implementation, by analyzing and copying the justice systems of other states, in which the mechanisms for protecting victims are functional and capable of satisfying their needs, but especially by determining the effects produced on victims of post-conflict situations of the implementation of restorative justice instruments.

Thus, in the general interest of all states, the need to maintain a stable balance between punitive and restorative mechanisms should prevail, the only one capable of ensuring the restoration of trust between former adversaries but also the trust of victims in the intentions of states or guilty persons to restore their rights and interests.

The novelty and scientific originality of the topic of the thesis lies in the analysis of the evolution of the traditional paradigm of the reaction to crimes and conflicts. Whereas, traditionally, the reaction focuses on punishment, restorative justice emphasizes the repair of damage, the restoration of relationships and the active involvement of the affected parties – victim, offender and community. Thus, punitive justice is based on the violation of the law, the state as the injured party, guilt and punishment, while restorative justice (new justice) sees the crime as a rupture in interhuman relations, a concrete suffering of real people and an opportunity for repair and transformation. This reorientation has major implications in criminology, criminal law, psychology and sociology.

Most of the concepts analyzed in the study – victim, punitive justice, transitional justice – are relatively new, developed only in recent decades, even if certain elements were previously known.

Thus, in the last 3 decades, the social consciousness oriented towards the victim has developed in tandem with the consecutive establishment of defense mechanisms. An increasingly intense re-knowledge of the substantive right to reparation has been associated with the increase in its awareness among the decision-makers involved in the process of developing these mechanisms. The mentioned procedural right includes not only the right of access to a mechanism (process or program) of collective reparation but also the right to effectively participate in the reparation process, including in the phase of its establishment, in order to identify the most appropriate system or program of reparation for each individual.

The international community has become increasingly aware of the fact that transitional justice in post-conflict states and communities, including the effective reparation of the harm suffered by victims, is a vital issue of international concern. In this context, the individual right to reparation concerns not only the responsible states and groups but also the international community and therefore, the international law of reparation must be understood as a triangular structure in which the dynamic relationships between victims, responsible persons and the United Nations (representing the interests of the international community) can interact with each other.

The scientific originality of the doctoral thesis results from the exclusive nature of the way of approaching the concept of „restorative justice", related to the personal and societal reconciliation needs of the individual - victim of international crimes or offenses. Thus, within the study, the victim is not viewed and analyzed only through the prism of the quality of party in a criminal trial but beyond this quality, as an entity that encompasses needs, rights and freedoms, the guarantee of which falls to the states and international institutions, through the mechanisms and instruments of international humanitarian law and human rights law.

THESIS CONTENT

Chapter 1, entitled **"The Individual as a Special Subject of Responsibility in International Criminal Law"**, analyses the evolution of the institution of international criminal responsibility in the context of public international law. Starting from the observation that identifying an effective mechanism for addressing, at the international level, serious violations of human rights and fundamental freedoms continues to be a challenge, the chapter proposes a specific approach to a classic subject, emphasizing the individual dimension of responsibility.

Although established international mechanisms have often provided limited results, there are nevertheless viable models in domestic law that can inspire the development of more effective instruments in preventing and punishing international crimes, as well as in ensuring reparations for victims. In this direction, the analysis proposed in the chapter highlights the need to reposition the individual – with his or her rights and needs – at the center of the concerns of international humanitarian law, emphasizing the essential nature of victim-oriented justice.

Paragraph 1.1. "The institution of criminal liability in international law", is dedicated to the analysis of the institution of criminal liability which is an integral part of public international law, which presupposes compliance with international obligations expressed in the norms and principles of international law, which make up the international legal order.

Being a complex legal entity, international criminal liability guarantees the effectiveness of international law and beyond the particularities of any form of responsibility, it performs important functions of international law: international legality, ensuring international legal order, building international relations, developing international relations.

Liability implies legal relations specific to each field of law and in a narrow sense, as a form of legal liability, it constitutes the obligation of the person concerned to bear a punishment for a crime committed and the right of the competent courts to apply this punishment. The essence of the application of criminal liability is that it is strictly personal and applies exclusively to the perpetrator of the crime. In modern international law, criminal liability is defined as an attribute of the natural person and not of a natural person.

In terms of its quality as a complex legal entity, international criminal liability guarantees the efficiency of international law, fulfilling, beyond the particularities of each form of liability, important functions in international law: international legality, guaranteeing the international legal order, establishing international relations, developing international relations.

Identifying the most appropriate mechanism to address massive violations of human rights and fundamental freedoms at the international level seems to be an ongoing challenge. It is true that international institutions are working to update the condemnation of human rights violations and to constantly adapt the mechanisms for protection and reparation in this annual process. The increasing ingenuity of criminals means that international bodies in this field are always one step behind, thus recognizing the urgent need for a progressive approach to the problem.

This is an area where international mechanisms have, for the most part, provided limited results, although there are real sources of inspiration in national programmes in terms of their competence to prevent and combat international crimes and to untangle prejudices, with a focus on the specific needs of victims.

In terms of its quality as a complex legal entity, international criminal liability guarantees the efficiency of international law, fulfilling, beyond the particularities of each form of liability, important functions in international law: international legality, guaranteeing the international legal order, establishing international relations, developing international relations.

Paragraph 1.2. "Study of international crimes and delicts as the object of international criminal liability. Causal relationship between violation and injury". Given that national and international criminal law, as well as the dominant legal doctrine, have established the principle that the offense in the form of offenses and misdemeanors is the only basis for criminal liability, we considered it appropriate in this paragraph to describe the acts or omissions that, by their nature, constitute international crimes or delicts.

According to the norms of criminal law, an action or omission constitutes an in-crime if it was committed with guilt, represents a threat to social relations in relation to the legal system and is provided for by criminal law, which implies the imposition of a sanction and the adoption of a series of measures to repair the damage caused by the offense.

According to the norms of criminal law, an action or omission constitutes an in-crime if it was committed with guilt, represents a threat to social relations in relation to the legal system and is provided for by criminal law, which implies the imposition of a sanction and the adoption of a series of measures to repair the damage caused by the offense.

Therefore, I considered it particularly important to conduct an in-depth analysis of the legislative violations, identifying the specifics of their commission in relation to the impact of the victim on the persons concerned. At the same time, it is absolutely necessary to know the personal, social and financial implications

of the violations on the victims, in order to allow the justice system to adopt the best mechanisms in the process of repairing the damage caused.

At the same time, the paragraph addressed an existential condition of international criminal liability, namely the causal link between the violation and the damage, establishing that the damage must result from the violation of international law, requiring a sufficiently close causal link between the damage suffered and the conduct that violates international law.

Damage that is to remote from the contested conduct or to insignificant does not constitute an adequate basis for establishing a potential right to compensation.

In this context, it remains the task of decision-makers to determine the causal requirements necessary in establishing a defense mechanism in order to find an appropriate balance between the victims' request for fair and effective reparation and the need for a rapid and efficient resolution of the situation complained of.

Paragraph 1.3. "The person as a subject of public international law and beneficiary of the normative framework of international humanitarian law" places the individual at the center of the interest and objectives of international humanitarian law and studies the essence and primary condition of the development of national and international systems of legal treatment in order to achieve justice in the interest of the victim and to repair the damages and prejudices suffered by him, as a result of armed conflicts, namely the thorough knowledge of the psychology of persons who fulfill the quality of victim, of the particularities and specificity that this quality brings to the individual. In treating the individual's situation, there cannot be a parallelism between the status of victim and international criminal liability.

Obviously, suffering does not stop when the executioner stops physically punishing. It just changes its nature. For those who escape death, they begin a delicate daily survival marked by the presence of post-traumatic stress disorders: stress, anxiety, sexual problems, difficulty concentrating, the feeling and fear of abandonment, nightmares, recurrent phobias, low self-esteem and confidence, are the first, most frequently observed symptoms.

The victim can clearly benefit from judging the person who caused his or her prejudice, even having the real possibility of actively participating in the process, in the hearings or following its development through the media. Thus, the victim can obtain, in addition to the satisfaction of the personal need for justice to be done, the certainty of seeing the definitive removal of the aggressor's threat, the precious recognition of his or her suffering and the harmful experience. Justice benefits from the presumption of legitimacy which has the gift of increasing collective awareness of individual suffering.

The competent authorities, victim support services and restorative justice services must provide the necessary information and advice in an accessible and clear manner, using various means, so that they can be easily understood by the victim. Thus, at the end of this paragraph, a brief analysis of some international norms and resolutions of some international Conventions with incidence in the field of protection of fundamental human rights and freedoms and restorative justice has been carried out.

The second Chapter: "Ensuring the interests of victims in light of the priorities of contemporary international humanitarian law" – aims to analyze the specificity of international criminal liability through the prism of criminogenic and victimizing factors, as well as the factors that guarantee the process of adopting and implementing international norms regarding the rights of victims.

Paragraph 2.1. "Criminal liability in the context of the institution of international liability: philosophical and legal aspects" complements paragraph 1.1. of the first chapter and carries out a more in-depth study of the particularities of international criminal liability through the prism of the specificity presented by ensuring the interests of victims in international humanitarian law.

This paragraph discusses in detail the sanctioning and non-sanctioning forms of international liability, establishing that the realization of liability in international law is not necessarily characterized by the existence of distinct stages, but by the fact that it takes place in an international framework, in the absence of superior authorities above the guilty entity or the parties involved.

Examining non-sanctioned liability, the study found a common aspect with sanctioned liability, namely that both ultimately provide for an additional burden. The main difference is that in the case of non-sanctioned liability, it occurs in the absence of fault on the part of the person to whom it is attributable. The exercise of the measure of objective liability should not be seen as the restoration of the violated legal order, the restoration of the previous legal status, because the previous legal status was not violated.

Sanctional liability is a component part of law in general, since otherwise the meaning of the social presence of law as a manager of social relations is lost. Objective liability can be viewed as a conscious result of normative activity, arising from the complexity of human relations and, in particular, from technical and scientific progress. Objective liability appears only when there are express legal regulations.

The study allows us to conclude that it is useless to attempt to give a general assessment of liability, which would include both sanctionable and non-sanctionable (objective) liability. Both at the national and international levels, it is impossible to prohibit the occurrence of damage, but only to prohibit actions or inactions likely to cause damage, which can be foreseen.

The law does not regulate the results of an activity, but the activity itself, the author's behavior being the one that contributes directly or indirectly to achieving or eliminating a negative effect thereof. If the damage caused is caused by natural phenomena or other actions to which no willful acts on the part of the perpetrators can be attributed, then any question of classifying the activity in question as legally meaningful is excluded.

The negative effects that may occur in certain situations for some legal subjects or in the event of causing damage to another legal subject must be analyzed in light of the subjective specifics of the actions that led to its causing. This is necessary to establish the subjective and legal aspects of the activity causing the damage, with the immediate consequence of the relevant imputation of the obligation to compensate.

Paragraph 2.2. „Progressive-pragmatic approach to the relationship between criminology and victimology in the light of international humanitarian law", is intended to carry out a study on the international criminogenic evolution and implicitly the victimological evolution, between which there is a close and indubitable link.

From the point of view of the evolution of criminology, as a branch of science, the main objective of interest was represented by the seriousness of the violation of rights committed, and then the emphasis was directed to the physical and psychological conditions of the perpetrator. Only in the third stage of the development of criminology, the interest of specialists was also directed to the victims of crimes, towards the end of the Second World War, when it was found and understood that the study of a criminal phenomenon would be incomplete without the study of the consequences of the criminal act, namely the way in which the interests of the victim were affected and prejudiced.

From the numerous studies developed in the field, it results that the notion of the concept of "victim" has become increasingly widespread, leading to the clear delimitation of victimology, as a branch independent of that of criminology. Moreover, a clear definition of victimology as an independent science was achieved in the scientific world.

Thus, although victims became the object of international law late, after 1985, their situation was regulated by a plurality of international legal norms, the scope of their application covering all categories of victims analyzed: victims of crimes, victims of abuse of power, persons harmed by unlawful acts of exceptional gravity, who fall under the incidence of international norms on human rights, armed conflicts, international crime or terrorism.

The catalog of rights recognized by different categories of victims by the international norms related to each one, builds the legal status of each category of

victims. At the same time, these rights constitute obligations on the part of states, because they have implemented them. Despite the diversity and particularization regarding the categories of victims, it can be concluded that there is a common legal status of victims, which is composed of most of these rights – at least of all those rights firmly enshrined in existing treaties on human rights. Moreover, it should not be forgotten that the victim is a natural person and, as such, is entitled to the rights that international treaties recognize for all humanity and that states must protect.

The most important gap in the field of international law, regarding victims, is that related to victims of terrorism. Only the Council of Europe has paid attention to it through institutional norms, while the European Union has only included certain references in its Framework Decision, 2002/475/JHA, of 13.06.2002, on combating terrorism. Although it has recognized that terrorism is an international crime that seriously violates human rights, no international form regarding victims of terrorism and their rights has yet been adopted by the United Nations.

Comparative analysis of data from the Web of Science and Scopus databases highlights a constant increase in academic interest in topics related to restorative justice, victims' rights, victimology and international humanitarian law, with significant peaks in periods marked by international debates on judicial reforms and the protection of fundamental rights. The geographical and institutional distribution of publications shows a concentration of scientific production in the Anglo-Saxon space, but also an increasingly visible involvement of prestigious European universities and academic centers in Asia. The bibliometric results indicate a strong interconnection between the legal field and the social sciences, as well as the emergence of interdisciplinary subfields, such as the impact of new technologies on the application of humanitarian law. Overall, the data confirm the global relevance of these topics and reflect the trend of integrating multidisciplinary approaches in contemporary legal research.

Paragraph 2.3. "Ensuring the interest of the victim as one of the basic priorities of international humanitarian law at the current stage", substantiates the study on the victim as a subject of international humanitarian law, primarily based on the specificity that constituted the status of the injured person within the Rome Statute, on which the establishment of the International Criminal Court was effectively based.

At the same time, the study also addresses the status of victims within the ad hoc tribunals for the former Yugoslavia and Rwanda, which represented a first turn towards the "spirit of Rome". The study then addresses the issue of the general rights of victims, as initially envisaged, analyzing a series of universal

texts or regional conventions that have gradually established the specific rights of victims. In this respect, articles 2 and 9 of the 1966 International Covenant on Civil and Political Rights are crucial, as they develop article 8 of the 1948 Universal Declaration of Human Rights. Equally important are the 1950 European Convention on Human Rights and articles 3 and 14 of the 1948 Convention against Torture. These texts recognize the right to complaint or compensation for victims whose fundamental rights have been violated.

The study also provides a comparative analysis of the position of the victim in the criminal justice system, which varies considerably from state to state and depends in particular on the respective legal system, namely the common law and the Romano-Germanic legal system. Among the countries that have adopted the common law system are the United States, Canada, the United Kingdom, the Philippines, Israel, India, Australia, Pakistan, etc. The Romano-Germanic system is widely spread in continental Europe, in some African and Asian states: Lebanon, D. D. Congo, Syria, Senegal, etc. and even in Latin America.

In the common law system, the role of victims is generally limited to that of a participant as a witness. The active participation of the victim is generally considered incompatible with the essential principles of criminal justice, which is why the idea of granting victims a more significant role is met with fierce resistance. One of the major concerns of common law practitioners regarding the involvement of victims in the criminal process is that the involvement of a third party could disrupt the balance of the criminal process, which traditionally consists of a confrontation between the prosecution and the defense. This would significantly delay the procedure and, thus, jeopardize the defendant's right to a fair trial.

In contrast, in the Romano-Germanic system, victims are generally given an active and central role in the criminal process, allowing them to participate and seek reparation.

The last part of the paragraph refers to the principle of universal jurisdiction, which allows the national authorities of States to investigate and, if there is sufficient evidence, to prosecute persons accused of committing international crimes outside their territory, even if there is no direct connection with that State. This principle is based on the idea that certain crimes such as genocide, crimes against humanity, war crimes or torture are extremely serious and therefore detrimental to the fundamental interests of the entire international community. It follows that it is not essential that the crime be imputable to the State exercising jurisdiction, or that the nationality of the suspect or victim, or that the damage be directed at the legitimate national interests of that State.

In the analysis of universal jurisdiction, the comparative method between the system in force in the United States of America and the European one was used.

Paragraph 2.4. "Theoretical and practical aspects of ensuring victims' rights in international jurisprudence" is intended to analyze the essential documents with international application and those with regional application, with an impact on the field of determining victims' rights.

The paragraph begins with a brief analysis of the historical evolution of the rights of victims of armed conflicts, followed by an analysis of the relevant documents in the field, namely those with international application:

— United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power,

— United Nations Fundamental Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and International Humanitarian Law – "Van Boven/ Bassiouni Principles",

— United Nations Principles on the Protection and Promotion of Human Rights in the Fight against Impunity – "Joinet/Orentlicher Principles", as well as those with regional application:

— European Union Framework Decision on the Standing of Victims in Criminal Proceedings

— Council of Europe Recommendation on the Position of Victims in Criminal Law and Procedure.

An examination was made of the development of the concept of safeguarding the interests of victims, in particular by recognising rights that would enable victims to be aware that criminal proceedings, including national and international proceedings, have a restorative character in addition to their punitive nature, thus granting victims a primary role in the implementation of justice and equality.

This development has been strongly influenced by international law, in particular international criminal law and humanitarian law. In particular, the increasingly close integration of international humanitarian law with international human rights law has led to a greater emphasis on the role of victims in criminal law and criminal proceedings and, more broadly, to a shift in focus from the concept of "criminology" to that of "victimology".

The concept of the "awakening from hibernation" of international humanitarian law since the early 1990s, namely with the fall of the "Iron Curtain", has led to a spectacular development in international criminal law. The establishment of ad hoc criminal tribunals for the former Yugoslavia and Rwanda, hybrid tribunals for Sierra Leone, Cambodia and East Timor, and the creation of the International Criminal Court have made it possible to take into account the interests of victims to a previously unthinkable extent. International judicial proceedings have

had a strong and positive impact on the national criminal law of States, together with the implementation of several recommendation documents described and analyzed in this study. However, we are still at the beginning of this journey. Unfortunately, practice in conflict zones shows us that, in reality, victims still face numerous difficulties in asserting their interests and rights. Examples include Ukraine, Russia, Kosovo, Bosnia and Herzegovina, Morocco, Algeria, Rwanda, Lebanon, Colombia, the Democratic Republic of the Congo, Chile, etc. I have deliberately cited examples from several continents to emphasize that protecting the interests and rights of victims in criminal trials and proceedings is a global and systemic issue.

However, international law faces a difficult but noble task: standardizing the normative framework for victims' rights and promoting the idea of implementing not only conventional norms, but also the spirit of these internationally adopted documents.

Chapter 3: „The relationship between punitive justice and restorative justice in the context of ensuring the interests of the victim in international humanitarian law and international criminal law" – is intended to carry out a comparative analysis of the specifics of the two ways of administering justice, in order to determine the beneficial and negative aspects of the process of achieving international protection of the interests of victims of armed conflicts and the need to meet their needs.

Paragraph 3.1. "Punitive justice in light of the tasks facing international humanitarian law and international criminal law"

Given the everyday reality that a crime is considered condemnable by the civil society to which the offender belongs because of its relationship with the value system of that society and, therefore, the question arises: "who, how and under what conditions is it necessary to bear the consequences of this harm?", this section aims to identify and analyze in detail the possible avenues of justice in the case of the commission of the crime, emphasizing the impact on the victims.

Therefore, the study highlighted that, at the current stage of development of international doctrine and jurisprudence, although justice based on the principle of restorative justice and human rights has gained considerable momentum, the greatest importance remains in the process of punishing violations of the law by imposing sanctions.

Punishment, as an instrument of law, is felt to be justified by the psyche of all those involved in the criminal process, namely civil society, state officials, representatives of international institutions, judges, police officers, and last but not least the criminals who witness its imposition or await it.

The more pressing aspect, however, refers to the position of the victim, who, unlike those listed, cannot actively participate in the choice or imposition of punishment. In this situation, the application of the sanction against the criminal does not bring satisfaction and reconciliation to the victim, but only satisfaction to the State, whose legislative and legal system was violated and which was formally rehabilitated by the imposition of punishment.

In this context, several modern theories of criminal law have developed, which have undergone a process of metamorphosis: from concepts focused strictly on the application of punishment to ensure the satisfaction of the state (concepts of utilitarian and retributive justice) to modern theories based on the rights of victims and the desire to satisfy their needs (the concept of restorative justice).

Utilitarian justice is based on the principle of human happiness, security and psychological well-being, as well as the need to reduce suffering. Therefore, states, through their systems and legislative bodies, have the obligation to ensure the highest level of social happiness.

Thus, the literature questions the usefulness of punishing the guilty for something they have already done and of causing additional suffering at a social level, in addition to the suffering already caused to the victim. The purpose of punishment should be to prevent the perpetrator or other persons from committing other antisocial acts. Only when this goal is achieved, punishment as a legal institution has fulfilled its true purpose.

The application of punishment in the concept of a (retributive) punishment system, aims at what should be done in the present in view of something from the past and consists in giving something in return, namely the need for the state to punish the offender for the crime committed.

The retributive justice system is also known as „justice as fairness" and is a form of social justice that seeks a fair distribution of burdens, advantages and disadvantages among members of society, regardless of their status, only in this way can the individual be assured the right to equal treatment before the courts.

Human rights-oriented justice is a synthesis of utilitarian and retributive justice systems that is related to the modern international scene.

Even if a human rights-oriented justice system is not exclusively focused on victims, it is likely to provide them with some satisfaction by translating their values into rights specifically tailored to their needs. This period of justice includes two phases, one that focuses on the offender and only then one that focuses on the needs of the victim. But even so, it represents a huge step in the struggle to integrate the values of restorative justice.

Paragraph 3.2. "Restorative Justice between the Need to Hold Persons Guilty of International Crimes and Conventional Offences Accountable and the Implementation of the National Reconciliation Process" focuses on an in-depth study of the specifics of the restorative way of delivering justice and on the analysis of how it encompasses suggestive mechanisms and instruments that can satisfy the legitimate needs of the victim.

The first part of the paper examines trends towards an individual right to reparation. It is emphasized that the numerous provisions of international human rights law provide a clear legal basis for this right. First, human rights law establishes individual rights at the primary level. Although the issue of the applicability of human rights law in armed conflicts has long been and remains a controversial issue, it is now widely accepted that, despite controversies regarding its applicability in armed conflicts, human rights law applies in parallel with international humanitarian law and that it is at least theoretically possible for victims of armed conflicts to invoke certain human rights laws.

In the second part, the specific characteristics of restorative justice were analyzed and it was demonstrated that, in light of the objectives and principles of this concept, characterized by the restoration of rights and benefits damaged or lost as a result of the commission of the crime, it represents the most satisfactory form of justice for the victim, as it offers them opportunities to restore and guarantee their rights and freedoms in the form of compensation or mediation. For example, if a victim has lost a property right or a material benefit, compensation as a means of restorative justice offers the victim the opportunity to recover the lost property or right or an equivalent value from the perpetrator of the damage or through the intervention of the State, if the material means of the perpetrator are not sufficient to cover the value of the damage caused. For victims who suffer the consequences of violent crimes that have affected their life and physical integrity, it is clear that material compensation cannot be obtained. However, the possibility of mediation between the victim and the perpetrator by the State and its institutions can restore the victim's right to move safely and without fear. It is very important that the offender is aware of the consequences of his actions and the danger to which he exposes the victim. His attitude towards restorative methods can reduce the victim's anxiety and increase his satisfaction with the justice system.

All sources of dissatisfaction can be relativized through the restorative approach, which, through compensation and mediation, contributes to the formation of the following profiles: a victim who is entitled to his rights, freedoms and benefits; an offender who exercises self-determination by becoming aware of the impact of his act on the victim, repenting of the act and actively contributing to

reparation; and a community that feels more protected from the new imbalances created by the commission of new crimes.

Restorative justice, practiced in response to the harm caused by international crimes and wrongs, offers an innovative framework that provides a basis for justice in the policy and practice of justice, considering and responding to unjust events and crimes through an alternative and innovative approach. The ultimate goal of restorative justice is to repair the harm caused by an unjust incident, taking into account the needs of the victim, the offender and the community.

Opportunities are provided to those most directly affected by crime. This approach ultimately seeks to meet the diverse needs of victims and contribute to individual and community safety, while holding the offender accountable and developing skills to become a better and more productive human being in a positive way.

The principles and practices of restorative justice are applied across all areas of international humanitarian law.

These include victim-offender dialogue, victim-offender dialogue (also called mediation), circles, support programs, reparation and accountability councils, restorative conferences, restorative community services, etc. Restorative principles refer to the process of repairing damaged personal and community relationships. The focus is on the victim, and the goal is to heal and restore the victim's physical, emotional, mental, and spiritual well-being. It also requires targeted interventions from the offender to regain dignity and self-confidence and to return to a healthy physical, mental, emotional, and spiritual state.

Restorative principles refer to the process of making things right for themselves and for those affected by the offender's behavior. In order to restore relationships, it is important for the offender to repair the wrongs they have committed by asking for forgiveness, making amends, and taking actions that demonstrate their sincerity in their intention to make things right. In such conditions, crime can be viewed as a natural human error that requires corrective intervention by national and international law enforcement agencies.

Although research suggests that punishment is not an adequate response to the complex problems faced by victims of crime, its use remains the unchallenged status quo.

World leaders are beginning to realize that punishment is not enough. The pain caused by the use of punishment is insufficient to teach a lesson to those who harm, and it fails to address the needs of the injured for healing and reparation. At the same time, it fails to seriously consider the needs of those around them for a sense of group safety.

Restorative justice is a modern term for an ancient idea that aims to describe a justice rooted in human dignity, healing, and connection.

Paragraph 3.3. "The interest of the victim as one of the basic objectives of transitional justice in the context of the tasks facing international humanitarian law at the contemporary stage".

This paragraph aims to analyze transitional justice, the main objective of which is to establish mutual trust between hostile groups and promote the institutional exchanges necessary for a new relationship within the population that will allow the establishment of the rule of law, including through effective control of the practice of total or partial impunity and, perhaps most importantly, the restoration of the dignity of victims.

Transitional justice, through its various components, achieves a general symbiosis between restorative justice measures, through truth and reconciliation commissions and the establishment of criminal justice mechanisms, especially with regard to those directly or primarily responsible for the most serious crimes. In other words, transitional justice aims to restore the rule of law and ensure the functioning of judicial institutions for the future, combat impunity for crimes committed in the past, and reform the institutional system.

The first part of the paragraph deals with the legal status of the victim of a crime, which has brought significant changes to the vast majority of national criminal systems, but especially in international criminal law. The results of these developments have laid the foundations for the creation of an authentic social status for the victim, faithfully reflecting the expectations regarding the recognition of their social status. At the national level, criminal law has undergone a significant change after several decades: from the classic vision of the victim in the trial, perceived as a creditor of damages and claims against a person who suffers, to a conception that assumes that suffering is absolutely necessary to be taken into account. The purpose of criminal proceedings is no longer simply to convict the offender and to protect public order, but equally to end the suffering of victims and to support them in the process of rehabilitation. Rehabilitation in question is often seen as a bridge between the recognition of the wrongdoing of the perpetrator and, consequently, of his guilt, and the recognition of the suffering of victims by the courts and society as a whole.

The section then focuses on the general provisions governing the system of victims' participation in the International Criminal Court (ICC), analyses the specific features of this Court and carries out case studies to examine how the issue of victims' interests, rights and freedoms can be addressed.

The last part of the paragraph provides a point-by-point analysis of some judicial systems in which the establishment and exercise of transitional justice

has been obstructed. It discusses whether the end of an armed conflict provides the necessary and sufficient conditions for the implementation of transitional justice measures. To this end, the necessity of the disarmament, demobilization and reintegration process in relation to the requirements of transitional justice is examined in specific cases such as the Great Lakes region (the cases of Burundi and Rwanda), the Democratic Republic of Congo (DRC), and the Asian region (the case of Cambodia).

Among the most pressing issues surrounding the ICC's victim participation regime is how to strike a balance between the interests of victims and other procedural interests. We have previously explained that such participation compromises the balance between prosecution and defence, thereby undermining the right of the suspect or accused to a fair and speedy trial and the prosecutor's interest in presenting evidence and victims as witnesses. Moreover, victim participation – usually combined with protective measures – can increase the public interest in a public hearing, which should provide an opportunity for review without impeding the administration of justice. Among other things, the ICC, as a treaty body, has other overriding interests, namely those of States Parties – the speed of proceedings and the containment of costs.

As noted above, the early involvement of victims in the investigation phase may conflict with the prosecutor's interest in conducting an objective, impartial and confidential investigation. The balancing of these competing interests must be taken into account by judges when granting access to victims, in particular when determining the scope and modalities of their participation. The issue of balancing interests can also be viewed in a broader context when addressing the general aspects of the objectives of prisons and correctional institutions under international criminal law.

The comparative summary presented in table no. 3.7., annex no. 7, highlights the evolution of the various institutional formulas designed to respond to serious international crimes, highlighting both their potential in promoting criminal responsibility and the limits encountered in the effort to transform international law into a real instrument of justice.

The process of reconstruction and restoration of social balance, essential in the transition from an internal conflict to a sustainable and stable socio-political framework, usually requires the use of various justice mechanisms. These include, among others, the restorative dimension of justice, which, although it may be perceived as a symbolic form of revenge, has the role of contributing to the reestablishment of relations between the parties in conflict and facilitating the process of reconciliation. Democracy and long-term stability, in a society emerging from conflict, require not only revenge, but also reconciliation between

victims, perpetrators and society through forms of restorative justice. The restoration of the legal framework is indispensable to allow both victims and those responsible for abuses, together with the entire community, to participate in the reconstruction of a societal model based on consolidated norms and reconfigured legal principles.

The general conclusions and recommendations highlight the main results of the research, which mainly consist in outlining a conceptual and operational framework for the integrated understanding and application of punitive, restorative and transitional justice in the context of international humanitarian law. This framework highlights the importance of the balance between sanction and reparation, as well as the need for the active involvement of victims and communities in the justice process, as essential elements for the prevention of recidivism, social reconciliation and the consolidation of sustainable peace. The results also emphasize the relevance of international cooperation and the adaptation of legal mechanisms to the cultural and political particularities of each state or region.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

1. International justice has developed in response to the need for accountability for serious crimes that transcend national borders, such as genocide, war crimes and crimes against humanity. It is based on universal values such as respect for human rights and the protection of peace.

The evolution of international justice is marked by 4 essential stages:

— The rudimentary beginnings, with the establishment of ad hoc international tribunals, such as those in Nuremberg and Tokyo;

— Theoretical and normative consolidation in the post-war period, including the adoption of UN statutes;

— Modern institutionalization through the creation of the International Criminal Court (Rome Statute, 1998);

— The recent extension of international criminal jurisdiction to non-state actors and contemporary conflicts.

The concept of international justice has transformed from an idealistic idea into a concrete legal reality, thanks to advances in public international law, institutional development, and the pressure of global public opinion to sanction impurity.

The evolution of international justice reflects a constant tension between the principle of state sovereignty and that of international responsibility, especially in the context in which some states refuse to submit to or cooperate with international courts.

International justice remains a developing project, with important potential for maintaining world peace and order, but which requires reforms to fully achieve its goals: universality, impartiality, and efficiency.

2. The institutions of international humanitarian law represent the fundamental pillars of the fight against impunity, at a global level, ensuring accountability for those responsible for serious international crimes, such as genocide, war crimes, and crimes against humanity.

The International Criminal Court (ICC) is currently the most important permanent institution with jurisdiction in matters of international criminal responsibility, acting complementary to national judicial systems and having a central role in strengthening a global legal order.

Ad hoc international tribunals, such as those for the former Yugoslavia and Rwanda, have represented essential stages in the development of international jurisprudence and have set important precedents in matters of individual responsibility and the interpretation of humanitarian norms.

Although the International Court of Justice (ICJ), has no criminal jurisdiction, it indirectly contributes to the achievement of international justice by in-

terpreting and applying the rules of international humanitarian law in disputes between States.

Organizations such as the International Committee of the Red Cross (ICRC), although not judicial institutions, have a crucial role in monitoring compliance with international humanitarian law, providing information and promoting international humanitarian standards.

Fundamental principles such as individual responsibility, the imprescriptibility of international crimes and the absence of functional immunity, constitute the basis on which the normative architecture of international criminal responsibility is built.

However, the efficiency of these institutions is limited by the lack of cooperation on the part of some states, by political constraints and resources, but also by the absence of effective universal jurisdiction.

The achievement of international criminal responsibility is the result of collaboration between specialized international institutions, humanitarian law norms and the political will of states. Despite all the progress made, it is necessary to strengthen international cooperation and collective will in order for these institutions to fully achieve their mission: ensuring justice for victims and preventing new atrocities on a global scale.

3. Punitive justice is based on a retributive logic, in which the sanction is seen as a form of restoring moral and legal order, by imposing a punishment proportional to the gravity of the act.

The main functions of the punitive justice system are repressive, dissuasive and retributive, focusing more on punishing the offender than on the needs of the victim or social reintegration.

While punitive justice is fundamental for guaranteeing public order, it presents significant limits: high recidivism, overcrowding of prisons, high social and economic costs, negative impact on the reintegration of offenders, and victim dissatisfaction. The punitive model is predominant in most contemporary penal systems but is under pressure from the need for reform in the face of crises of efficiency and legitimacy.

Punitive justice remains a traditional legal model essential for maintaining order and enforcing the law, but in the context of new international social and criminological realities, the need for openness to forms of justice centered on victims, reparation and reintegration, such as restorative justice, is becoming increasingly clear. This transition does not imply the abandonment of punishment but a rethinking of its purpose.

4. International restorative justice is a complementary approach, not an absolute alternative to international criminal justice. Although it does not replace

classic criminal mechanisms, such as those of the International Criminal Court, restorative justice offers a humanized dimension, focused on repairing suffering and rebuilding trust in communities affected by serious conflicts.

While international criminal systems are often technical and distant, restorative models involve victims in the process of expressing their suffering, negotiating reparation and reintegrating the offender, fostering a form of participatory justice. Restorative justice encourages honest recognition of guilt and the impact of one's actions on others, which is often lacking in international criminal proceedings, which focus more on legal guilt than reconciliation.

International studies show that restorative programs, where implemented correctly, reduce the likelihood of offenders reoffending and increase the degree of reconciliation between the groups involved.

International restorative justice offers an ethical, humane and community-based approach to accountability after serious crimes have been committed, particularly in the context of armed conflict, political transitions or post-genocide crises. Although it is not a universal solution, it contributes essentially to healing collective traumas and rebuilding social relationships destroyed by violence.

5. Transitional justice is a complex legal and political framework used in post-conflict or post-dictatorship periods, which aims to: recognize victims, hold perpetrators accountable, and rebuild a democratic society.

The fundamental principles of this form of justice include truth, accountability, reparation, guaranteeing non-repetition, and reconciliation.

International law supports transitional justice through instruments such as the UN Conventions, the Rome Statute, and Security Council Resolutions.

The punitive approach (e.g., international criminal tribunals) has proven effective in establishing individual responsibility for serious crimes, but has limitations regarding victim involvement and social reconciliation.

On the other hand, the restorative approach (e.g., the Truth and Reconciliation Commission of South Africa) has favored the active participation of victims, the recognition of suffering, and the reintegration of perpetrators into the community.

The two models are not contradictory but complementary and their combination offers more sustainable results in the management of collective memory and re-conciliation.

Restorative models applied in post-conflict contexts (for example: Rwanda, Colombia, Sierra Leone) have demonstrated a high degree of satisfaction among victims and have contributed to social stabilization. Reparation is not only material but also symbolic – public recognition, requests for forgiveness, memorials, etc. – which reinforces the sense of perceived justice.

Reconciliation is deeper and more sustainable when offenders publicly take responsibility for their actions and participate in supervised restorative processes.

International organizations (UN, ICC, Council of Europe, ICTJ) have played a catalytic role in promoting restorative justice as part of transition strategies. They provide technical, financial and normative support as well as monitoring frameworks for the implementation of restorative mechanisms. However, the effectiveness of their intervention depends on local political will and the degree of cooperation of post-conflict states.

The transition from punitive to restorative justice, in the context of international transitional justice, reflects a maturation of the approach to conflict and responsibility. Combining the firmness of criminal sanctions with the empathy of the restorative process offers a real chance for rebuilding trust, social cohesion and lasting peace in communities affected by systemic violence.

6. To be effective and legitimate, restorative justice must be strengthened both by clear international legal norms and by coherent global strategies and dedicated resources. This approach allows the international community to respond not only through sanctions but also through healing, reconstruction and human accountability, especially in the face of collective traumas caused by conflicts and serious crimes.

Considering the studies conducted in the field of the thesis subject and the personal conclusions established and presented in its content, the following will provide a brief presentation of our recommendations:

I. Strategic recommendations (political, institutional and operational)

a) Integrating restorative justice into post-conflict transitional justice processes

Restorative justice should be conceived as an essential component of post-conflict mechanisms, alongside the criminal tribunal, institutional reforms and truth commissions.

In this regard, it would be beneficial to implement restorative programs that would operate in parallel with the investigations of the International Criminal Court or with national processes.

b) Creating an international coordination and standardization body Under the aegis of the UN or the ICC, an International Platform for Restorative Justice could be created whose main tasks would be: developing ethical guidelines and standards, providing training and expertise to member states (trainer of trainers) and supervising the equitable application of restorative methods.

c) Supporting states through international funding mechanisms and technical assistance

Establishing an International Restorative Justice Fund, financed by the UN, the EU and other donors, to support local reconciliation programs, victim compensation and the training of mediators and specialists.

d) Strengthening the role of victims and affected communities by providing for their active involvement in international strategies and in the decision-making and reparative process.

e) Creating hybrid tribunals with restorative functions

In parallel with international criminal courts or ad hoc tribunals, hybrid tribunals can be established to combine criminal justice for serious crimes with restorative mechanisms for medium-level crimes or for cooperating perpetrators.

II. Normative and legislative recommendations

a) Establishing a clear international legislative framework for restorative justice. There is a need to develop an international convention or UN protocol that would define, regulate and encourage the use of restorative justice in transnational or post-conflict cases.

This framework should establish:

- Fundamental principles (voluntariness, reparation, participation)
- Rights of victims and offenders
- Quality standards and protection of the restorative process

b) Integrating restorative components into transitional justice mechanisms

It is recommended that all post-conflict processes supported by the UN, ICC or other international bodies include:

- Truth and reconciliation commissions
- Compensation systems based on dialogue and agreement
- Public procedures for recognizing the suffering of victims

c) Incorporating restorative methods into international criminal law and national codes

National criminal procedure codes and the statutes of international courts should provide for:

- The possibility of international mediation in non-violent cases
- Negotiated reparations as a form of sanction
- Conditional closure of cases based on restorative agreements

d) Ensuring legal protection for participants in restorative processes by respecting the principle of voluntariness, confidentiality of the process, absence of coercion or self-incrimination, protection of victims from revictimization.

e) Promoting the establishment and international cooperation between practitioners. International restorative justice requires specialized trainers, mediators, judges, psychologists and sociologists. It is recommended to develop international training programs, networks of practitioners coordinated by the UN, ICC or Council of Europe, concrete guides to good practices and sharing of experiences.

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3.1. In the works of scientific manifestations included in other databases accepted by ANACEC

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ADNOTARE

Dulcinatu Ionuț - Gabriel. ***Justiția punitivă și justiția restaurativă în lumina procesului de asigurare a intereselor victimei în dreptul internațional umanitar.***

Teză de doctor în drept la Specialitatea 552.08 – Drept internațional și european public, Chișinău, 2025

Structura tezei: Introducere, trei capitole, concluzii generale, recomandări și bibliografie din 240 surse, 137 pagini text de bază. Rezultatele obținute au fost publicate în cadrul a nouă lucrări științifice.

Cuvinte cheie: victimă, conflict armat, crimă, delict, drepturile omului, răspundere penală internațională, justiție punitivă, justiție restaurativă, Curtea Penală Internațională

Domeniul de aplicare: Drept internațional și european public

Scopul lucrării: determinarea rolului primordial al justiției restaurative, în procesul de reconciliere și asigurare a intereselor victimei precum și asigurarea accesului victimei la un sistem de justiție centrat pe nevoile acesteia.

Obiectivele cercetării: stabilirea poziției și situației individului ca subiect de drept internațional public și beneficiar al cadrului normativ de drept internațional umanitar; analiza specificului răspunderii penale internaționale cu privire la săvârșirea crimelor și delictelor internaționale; descrierea co-raportului dintre criminologie și victimologie prin prisma dreptului internațional umanitar; identificarea drepturilor victimelor, raportat la doctrina și jurisprudența internațională; stabilirea specificului sistemelor internaționale de aplicare a pedepselor în lumina sarcinilor ce stau în fața dreptului internațional umanitar și al dreptului internațional penal; aprecierea aportului justiției restaurative în contextul consolidării și reconcilierii situației victimelor crimelor și delictelor internaționale; analizarea contribuției justiției restaurative la restabilirea încrederii victimelor în actul de justiție; determinarea raportului dintre capacitatea pedepsei și a restituției, ca instrumente ale justiției, de natură a aduce satisfacție nevoilor victimei.

Noutatea și originalitatea științifică: sunt determinate de împrejurarea că justiția restaurativă este un concept relativ nou al justiției tranziționale, care a început să se dezvolte în ultimele trei decenii. Dreptul Internațional este pus în fața unei dileme – ce este mai important, adoptarea unei justiții punitive centrate pe sancționarea crimelor și delictelor internaționale sau punerea accentului pe nevoile de reconciliere și reparație ale victimelor ?

Deși justiția restaurativă este un termen modern pentru o idee străveche acesta încearcă să descrie o justiție înrădăcinată în demnitatea umană, vindecare și interconectare.

Noutatea științifică a temei este dată și de realitatea contemporană în care, în pofida gradului de civilizație pe care omenirea pretinde că îl deține, se pare că în continuare, varianta cea mai uzitată în soluționarea diferendelor internaționale, este tot conflictul armat, generator de suferință și victimizare.

Rezultatele obținute care contribuie la soluționarea unei probleme științifice importante rezidă din formularea conceptului justiției restaurative, care se realizează ca urmare a prejudiciilor cauzate prin crimele și delictele internaționale, ca un cadru inovator ce oferă o bază pentru echitate în politicile și practicile de justiție, vede și răspunde la evenimentele ilicite și criminalitate, printr-o abordare alternativă și inovatoare.

Semnificația teoretică: abordarea conceptului justiției restaurative spre deosebire de cea punitivă, este una nouă, încă în proces de consolidare. Justiția restaurativă este un concept nou, cu obiective și principii specifice, propriile izvoare, subiecte și obiecte, spre deosebire de justiția punitivă care este un concept expres, recunoscut, consolidat și acceptat, care nu mai necesită abordări și dezbateri suplimentare.

Valoarea aplicativă a cercetării: studiul oferă informații apte de a fi valorificate de către factorii de decizie în procesul asigurării intereselor victimelor conflictelor armate, cum ar fi cel ruso – ucrainean sau israeliano–palestinian, în plină desfășurare, care trenează de perioade mari de timp și sunt generatoare însemnate de persoane care se încadrează în categoria victimelor, în viziunea dreptului internațional umanitar.

Studiul poate fi utilizat în procesul de instruire a unor specialiști ce activează în domeniile criminologiei și victimologiei, o abordare bazată pe nevoia restituției, putând permite instituirea unor centre de cercetare pe diferite aspecte ale domeniului.

Implementarea rezultatelor științifice: rezultatele științifice ar putea face parte din materia de pregătire a echipelor din Moldova și România, care participă la abordarea situației refugiaților războiului din Ucraina precum și la dialogul la nivel național în contextul unui proces re reconciliere a victimelor conflictului militar. Totodată, studiul în cauză poate fi inclus ca și material științifico–didactic, pentru studenții Facultăților de Drept, Psihologie, Relații Internaționale, Politologie, etc..

АННОТАЦИЯ

Дульчинату Ионуц-Габриэль. ***Карательное правосудие и восстановительное правосудие в свете обеспечения интересов жертвы в международном гуманитарном праве.*** **Диссертация на соискание учёной степени доктора права по специальности 552.08 – Международное и европейское публичное право, Кишинёв, 2025 г.**

Структура диссертации: Введение, три главы, общие выводы, рекомендации и библиография, включающая 240 источников. Основной текст содержит 137 страниц. Полученные результаты были опубликованы в девяти научных работах.

Ключевые слова: жертва, вооружённый конфликт, преступление, правонарушение, права человека, международная уголовная ответственность, карательное правосудие, восстановительное правосудие, Международный уголовный суд.

Область применения: Международное и европейское публичное право.

Цель работы: определить первостепенную роль восстановительного правосудия в процессе примирения и обеспечения интересов жертвы, а также гарантировать доступ жертвы к системе правосудия, ориентированной на её потребности.

Задачи исследования: установление положения и статуса личности как субъекта международного публичного права и бенефициара нормативной базы международного гуманитарного права; анализ специфики международной уголовной ответственности в отношении совершения международных преступлений и правонарушений; описание соотношения между криминологией и виктимологией через призму международного гуманитарного права; выявление прав жертв с точки зрения международной доктрины и судебной практики; определение особенностей международных систем исполнения наказаний в контексте задач, стоящих перед международным гуманитарным и международным уголовным правом; оценка вклада восстановительного правосудия в укрепление и примирение положения жертв международных преступлений и правонарушений; анализ вклада восстановительного правосудия в восстановление доверия жертв к акту правосудия; определение соотношения между наказанием и реституцией как средствами правосудия, способными удовлетворить потребности жертвы.

Научная новизна и оригинальность: определяются тем, что восстановительное правосудие является относительно новым понятием переходного правосудия, развитие которого началось в последние три десятилетия. Международное право поставлено перед дилеммой: что важнее — применение карательного правосудия, сосредоточенного на наказании за международные преступления и правонарушения, или акцент на потребностях жертв в примирении и компенсации ущерба? Хотя восстановительное правосудие — современный термин, он отражает древнюю идею справедливости, основанной на человеческом достоинстве, исцелении и взаимосвязи.

Научная новизна темы обусловлена также современной реальностью, в которой, несмотря на уровень цивилизации, на который претендует человечество, вооружённый конфликт по-прежнему остаётся наиболее часто используемым способом разрешения международных споров, порождающим страдания и жертв.

Полученные результаты, вносящие вклад в решение важной научной проблемы, заключаются в формулировании концепции восстановительного правосудия, применимого к ущербу, причинённому международными преступлениями и правонарушениями, как инновационного подхода, предлагающего базу для справедливости в правовой политике и практике, воспринимающего и реагирующего на незаконные действия и преступность альтернативным и новым способом.

Теоретическая значимость: подход к восстановительному правосудию в отличие от карательного является новым и находится в процессе становления. Это самостоятельная концепция с собственными целями, принципами, источниками, субъектами и объектами, в отличие от карательного правосудия, которое представляет собой устоявшуюся, признанную и принятую систему, не требующую дополнительных дискуссий.

Прикладное значение исследования: работа предоставляет информацию, которую могут использовать лица, принимающие решения в процессе обеспечения интересов жертв вооружённых конфликтов, таких как российско-украинский или израильско-палестинский, продолжающихся на протяжении длительного времени и порождающих значительное количество лиц, подпадающих под категорию жертв в понимании международного гуманитарного права.

Исследование может быть использовано при подготовке специалистов в области криминологии и виктимологии, а подход, основанный на необходимости реституции, может стать основой для создания исследовательских центров по различным аспектам данной сферы.

Внедрение научных результатов: научные результаты могут быть включены в подготовку команд из Республики Молдова и Румынии, участвующих в решении проблем, связанных с беженцами из зоны военных действий в Украине, а также в национальный диалог в контексте процесса примирения жертв вооружённого конфликта. Вместе с тем, данное исследование может быть использовано в качестве научно-методического материала для студентов факультетов права, психологии, международных отношений, политологии и других.

ANNOTATION

Dulcinatu Ionuț - Gabriel. ***Punitive justice and restorative justice in the light of the process of ensuring the interests of the victim in international humanitarian law.*** **Doctor of Law Thesis at Specialty 552.08 – Public International and European Law, Chisinau, 2025**

Thesis structure: Introduction, three chapters, general conclusions, recommendations and bibliography from 240 sources, 137 pages of basic text. The obtained results were published in nine scientific papers.

Keywords: victim, armed conflict, crime, tort, human rights, international criminal responsibility, punitive justice, restorative justice , International Criminal Court

Field of study: Public international and European law

The aim of the paper: determining the primary role of restorative justice , in the process of reconciliation and ensuring the interests of the victim, as well as ensuring the victim's access to a justice system centered on his needs.

Research objectives: establishing the position and situation of the individual as a subject of public international law and beneficiary of the normative framework of international humanitarian law; analysis of the specifics of international criminal liability regarding the commission of international crimes and misdemeanors; describing the relationship between criminology and victimology through the lens of international humanitarian law; identification of victims' rights, in relation to international doctrine and jurisprudence; establishing the specificity of the international systems for the application of punishments in the light of the tasks facing international humanitarian law and international criminal law; assessing the contribution of restorative justice in the context of strengthening and reconciling the situation of victims of international crimes and misdemeanors; analyzing the contribution of restorative justice to restoring victims' trust in the act of justice; determining the ratio between the capacity of punishment and restitution, as instruments of justice, likely to bring satisfaction to the needs of the victim.

Scientific novelty and originality: are determined by the fact that restorative justice is a relatively new concept of transitional justice, which began to develop in the last three decades. International law is faced with a dilemma - what is more important, the adoption of a punitive justice centered on the sanctioning of international crimes and misdemeanors or the emphasis on the needs of reconciliation and reparation of the victims?

restorative justice is a modern term for an ancient idea it attempts to describe a justice rooted in human dignity, healing and interconnectedness.

The scientific novelty of the theme is also given by the contemporary reality in which, despite the degree of civilization that humanity claims to possess, it seems that in the future, the most used option in the resolution of international disputes is all armed conflict, generating suffering and victimization.

The results obtained that contribute to the solution of an important scientific problem: reside in the formulation of the concept of restorative justice , which is carried out as a result of the damages caused by international crimes and misdemeanors, as an innovative framework that provides a basis for equity in justice policies and practices, see also respond to illicit events and crime, through an alternative and innovative approach.

Theoretical significance: the approach to the concept of restorative justice, as opposed to the punitive one, is a new one, still in the process of consolidation. Restorative justice is a new concept with specific objectives and principles, its own sources, subjects and objects, unlike punitive justice which is an express, recognized, consolidated and accepted concept that no longer requires further approaches and debates.

The applied value of the research: the study provides information capable of being used by decision-makers in the process of securing the interests of the victims of armed conflicts, such as the Russian -Ukrainian or Israeli-Plestine conflict , in full swing, which has been going on for long periods of time and they are significant generators of people who fall into the category of victims, in the vision of international humanitarian law.

The study can be used in the training process of specialists working in the fields of criminology and victimology, an approach based on the need for restitution, which may allow the establishment of research centers on different aspects of the field.

Implementation of the scientific results: the scientific results could be part of the training material of the teams from Moldova and Romania, which participate in addressing the situation of refugees from the war in Ukraine as well as in the dialogue at the national level in the context of a reconciliation process of the victims of the military conflict.

At the same time, the study in question can be included as a scientific -didactic material for students of the Faculties of Law, Psychology, International Relations, Political Science, etc.

DULCINATU IONUȚ - GABRIEL

PUNITIVE JUSTICE AND RESTORATIVE JUSTICE IN THE LIGHT OF THE PROCESS OF ENSURING THE INTERESTS OF THE VICTIM IN INTERNATIONAL HUMANITARIAN LAW

SPECIALTY 552.08. INTERNATIONAL AND EUROPEAN PUBLIC LAW

ABSTRACT
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