To know through diversity: statutes of limitations in the main contemporary legal systems. An introduction.

di Simone Lonati

Abstract: The multiple interferences between limitation periods and criminal proceedings reflect on the difficult attempt to balance primary and essentially heterogeneous interests: on the one hand, the need to protect the accused from the «punishment of trial» and, on the other, the need to provide the criminal justice system with adequate time for prosecuting and adjudicating criminal offenses as a way to effectively protect the interests harmed by the commission of certain crimes. The matter is undoubtedly complex, as the issues and implications it gives rise to are multiple and varied.
The awareness that these considerations cannot be limited to a debate at a merely domestic level explains the reasons that have led to the drafting of the current special issue of DPCE, edited by Simone Lonati: the chosen perspective, that embraces the analyses of statutes of limitations in 23 legal systems in three continents, cannot be regarded as a simple juxtaposition of the rules and legal devices in force in systems of law that differ from one another but, rather, *as a way to know through diversity*. In this sense, without any claim of completeness, this collective work aims at offering updated and reliable information concerning statutes of limitations in different legal systems using a common thematic grid that can facilitate the synopsis and comparative analysis. In particular, the Authors have firstly gone through the key characteristics of statutes of limitations in each legal system (calculation criteria, running of the limitation period); secondly, special emphasis has been paid to the analysis of the statutes of limitations' dynamic aspect, which regards the concrete *modus operandi* of this legal device in the context of judicial proceedings.
Some interesting insights, that seem to reveal a *fil rouge* between the different legal orders, are briefly outlined in the conclusions of this introductory article.

1. Statute of limitations: present in nearly all systems of law.

The opportunity to acknowledge the ablative effects that the passage of time produces on criminal liability may be said to be, in the field of criminal law[1],

[1] For an overview of the different criticism raised on the grounds of this legal device see, among the less recent opinions, A. Feuerbach, *Kritik des Kleinschrodischen Entwurfs zu einem peinlichen Gesetzbuche für die Chur-Pfalz-Bayrischen Staaten*, 1804, Neudruck Frankfurt a.M., 1988, 242. A differentiated regime on criminal statutes of limitations, in relation to heinous and minor crimes, was also proposed by Cesare Beccaria, *Dei delitti e delle pene*, 1764, reprint, Torino, 1994, 73 ff. For a more recent critical look at the understanding of statutes of limitations as a consolidated legal device see v. M. Asholt, *Verjährung im Strafrecht*, Tübingen, 2016, 164 ff.; T. Hörnle, *Verfolgungsverjährung: Keine Selbstverständlichkeit*, in C. Fahl, E. Müller, H. Satzger, S. Swoboda (Eds.), *Festschrift für Werner Beulke zum*, Geburtstag, Heidelberg, 2015, 115 ff.

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a "generally undisputed option"[2]. Besides, if this were not the case, it would be difficult to explain why, to this day, criminal statutes of limitations are, regardless of any labels or debates as to their legal nature[3], generally envisaged in all contemporary legal systems, albeit with a few – yet relevant – exceptions.

This consensus can be explained by highlighting the reasons that traditionally lie behind statutes of limitations in the different legal systems; reasons which, regardless of the differences marking these systems of law, often coincide.

In this regard, there is a recurring idea that the passage of time after the commission of a crime–the so-called "time of oblivion"–weakens the need for retribution and prevention behind punishment, thus making crime control "unnecessary and inappropriate". Furthermore, noteworthy is also the observation that as the passage of time between a crime and its adjudication increases, to the detriment of the perpetrator, the difficulties connected with the collection and analysis of evidence increase, thereby impairing the defendant's "right to defend himself by presenting defense evidence" as a part of his broader "right of defense".[4]

Lastly, it is also argued that after a certain amount of time, reasonably established in accordance with the level of seriousness of an offence, the legal system guarantees to all individuals what has been defined by influential scholars as the "right to be left in peace, not to be haunted for life by the mistakes of the past and therefore the right to move on".[5]

Hence, it being understood that the *raison d'etre* of statutes of limitations is not in question, to discuss and reflect upon the issue of limitation periods means above all to consider their *quomodo*, and thus the most appropriate solutions for their regulation.[6]

[2] On the general consensus reached as to the possibility for criminal liability to expire as a result of the sheer passage of time, *see* D. Pulitanò *Il nodo della prescrizione*, in *Diritto penale contemporaneo, Rivista trimestrale*, 1/2015, 21 ff., available at www.penalecontemporaneo.it; See M. Helfer, *La prescrizione del reato: quali i rapporti tra diritto e tempo in Germania, in Austria e, di recente, in Italia?*, 98.

[3] The issue is described in these terms by H. Walder, *Schuldspruch trotz Verfolgungsverjährung*, in R. Hauser, J. Rehberg, G. Stratenwerth (Eds), *Gedächtnisschrift für Peter Noll*, 1984, 313 ff. For an overview of the different positions in this debate, regarding the distinction between the requirements for the exemption from punishment and the requirements for prosecution, see C. Roxin, *Strafrecht. Allgemeiner Teil*, Vol. I*: Grundlagen Der Aufbau der Verbrechenslehre*, 3rd ed., 1997; D. R. Pastor, *Acerca de presupuestos e impedimentos procesales y sus tendencias actuales*, in AA. VV., *Nuevas formulaciones en las ciencias penales. Homenaje al Profesor Claus Roxin*, 2001, 793 ff.; F. Giunta, D. Micheletti, *Tempori cedere. Prescrizione del reato e funzioni della pena nello scenario della ragionevole durata del processo*, 2003, 63 ff.; for an overview of the different solutions implemented in the different legal systems, see R. R. I. Vallés, *Il passaggio del tempo e la responsabilità penale*, in *Diritto Penale Contemporaneo, Rivista trimestrale*, 2/2018, 219 ff.

[4] F. Viganò, *Riflessioni de lege lata e ferenda su prescrizione e tutela della ragionevole durata del processo*, in *Diritto Penale Contemporaneo*, 18 December 2012, 25.

[5] In these terms, see also F. Viganò, *Riflessioni de lege lata e ferenda su prescrizione e tutela della ragionevole durata del processo*, *cit.*, 11 ff.

[6] F. Viganò, *Spunti di riflessione sulla riforma della prescrizione*, in *La Magistratura*, 9 January 2015, available at www.associazionemagistrati.it.

In this perspective, a particularly debated issue is the one regarding the interference between limitation periods and the course of criminal proceedings, for which a certain amount of time is more or less always required in order to fulfill the duties assigned to the judicial authorities by the State: adjudicating a criminal case, determining criminal liability and inflicting the penalties prescribed by the law on the individuals held responsible[7].

2. The "complex" nature of statutes of limitations.

Without a doubt, one of the most controversial issues in the criminal field is the regulation of the relationship between limitation periods and the time needed for adjudication–alias–the time for punishment and the time for proceedings. This aspect has always been at the heart of a heated legal and criminal policy debate, which, to date, can hardly be considered to have faded[8].

This debate firstly stems from the acknowledgment of the "complex" or, so to say, "amphibious" nature of limitation periods for criminal offences: a criminal law device that operates in the context of proceedings and produces substantive effects on the perpetrator, the victim, society and the State[9]. Existing reserves originate, from a theoretical standpoint, in the

[7] D. Pulitanò, *Sui rapporti fra diritto penale sostanziale e processo*, in *Riv. it. dir. e proc. pen.*, 2005, 951 ff.; Id., *Tempi del processo e diritto penale sostanziale*, in AA.VV., *Per una giustizia penale più sollecita: ostacoli e rimedi ragionevoli*, Atti del convegno di studio "Enrico De Nicola" organizzato dal Centro Nazionale di Prevenzione e Difesa Sociale, 2006, 42 ff. In this regard, see also, the observations clearly expressed by F. Viganò, *op. cit.*, 24.

[8] On this aspect, with no claim to exhaustiveness, see C. Marinelli, *Ragionevole durata e prescrizione del processo penale*, Torino, Giappichelli, 2016; S. Silvani, *Il giudizio del tempo. Uno studio sulla prescrizione del reato*, Bologna, Il Mulino, 129 ff.; F. Giunta, D. Micheletti, *Tempori cedere. Prescrizione del reato e funzioni della pena nello scenario della ragionevole durata del processo*, Torino, Giappichelli, 90 ff.; F. Giunta, *Tempo della prescrizione e tempo del processo. Logiche sostanziali, intersezioni processuali, prospettive di riforma*, in *Critica del diritto*, 2003, 178 – 179; Id., *Prescrizione del reato e tempi della giustizia*, report submitted at the national conference on *Accertamento del fatto, alternative al processo, alternative nel processo*, Urbino, 24 September 2005, 7 ff.; A. Nappi *Prescrizione del reato e ragionevole durata del processo*, in *Cass. pen.*, 2005, 1487 ff.; Id., *Poteri delle parti e prescrizione del reato*, in *Per una giustizia penale più sollecita: ostacoli e rimedi ragionevoli*, cit. 105 ff.; M. Bargis *La prescrizione del reato e i tempi della giustizia penale*, in *Riv. it. dir. e proc. pen.*, 2005, 1402 ff.; M. Cusatti, *Il decorso del tempo ed il processo penale alla luce del nuovo art. 111 della Costituzione*, in www.penale.it; M. Ferraioli, *Prescrizione del reato e tempi della giustizia*, report submitted at the national conference on *Accertamento del fatto, alternative al processo, alternative nel processo*, Urbino, 24 September 2005, 1 ff.; B. Romano, *Prescrizione del reato e ragionevole durata del processo. Principi da difendere o ostacoli da abbattere?*, in *Diritto penale contemporaneo, Rivista Trimestrale*, 1/2016, at www.penalecontemporaneo.it; D. Pulitanò, *op. cit.*, 507 ff.; Id., *Il nodo della prescrizione*, in *Diritto penale contemporaneo, Rivista Trimestrale*, 1/2016, available at www.penalecontemporaneo.it; F. Viganò, *Riflessioni de lege lata e ferenda su prescrizione e tutela della ragionevole durata del processo*, cit., 2 ff.;

[9] As to the «amphibious» nature of statutes of limitations, the intention is not to refer to or take a stand on the debated issue regarding the substantive, procedural or mixed nature of the provisions governing statutes of limitations but merely to grasp the cross-cutting or multiform nature that Carrara back in his time had already highlighted,

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"presumed antinomy between the rationale behind limitation periods, connected to the oblivion of long past crimes, and the understanding of its concrete functioning despite the launch of the judicial machine".[10] Furthermore, from an empirical viewpoint, these reserves are constantly fueled by recurring criticism regarding the hyper-function of statutes of limitations, accused of weighing excessively and at times intolerably over the number of premature judgments,[11] with detrimental consequences in terms of justice administration costs, impunity for the guilty and denial of justice to the victims, not to mention the far from negligible harm to the criminal justice system's overall credibility[12].

In an attempt to guide the interpreter towards a full understanding of the issues fueling the debate, it may be of use to make some brief general observations in order to shed some light on the different interests at stake in the interactions between time and criminal justice, namely, the State's punitive interest, on the one hand, and the individual rights of those accessing the justice system, on the other[13]. The aim is to set some fixed points from which to assess–for each of the legal systems under examination–the adequacy of the specific statutory solutions implemented, with the intent to find a more satisfying balance between the abovementioned interests: that of the State, and namely the need to protect the society it represents, and that of the individual, and namely its rights within the criminal justice system.[14]

The starting point of this thought can be no other than the need to maintain a clear distinction, in respect of the different interests involved between the weight that time carries before the criminal justice machine has

stating that «[statutes of limitations] under one standpoint appear to be a law based on formal requirements and under another a law based on substantive requirements», see F. Carrara, *Programma del corso di diritto criminale. Del delitto e della pena*, Bologna, Il Mulino, 1993, 541 ff. On the "amphibious" nature of statutes of limitations see also G. Giostra, *op. cit.*, 2122, who metaphorically defines the statute of limitations for criminal offences as the «platypus of our criminal justice system»; D. Pulitanò, *Intervento*, in AA.VV., *Sistema sanzionatorio effettività e certezza della pena. Atti del XXIII Convegno di studio E. De Nicola* (Gallipoli 27 -29 ottobre 2000), edited by Centro Nazionale di Difesa e Prevenzione Sociale, 2002, 304;

[10] In these terms, C. Marinelli, *op. cit.*, 46; similarly, S. Silvani, *op. cit.*, 14. The issue is place, in essentially similar terms, in foreign literature, see, for all, J. De Faria Costa, *O dereito penal e o tempo (Algumesa reflexoes dentro do nosso tempo e em redor da prescricao)*, at Semana Xuridica Portuguesa en Santiago de Compostela, 18.

[11] The statistics regarding Italy are particularly alarming. The percentage of judgments declaring the expiry of the statute of limitations, per judicial year, and with reference to each Court, are reported on the website of the Ministry of Justice www.giustizia.it.

[12] In these terms see, among others, M. Vietti, *Facciamo Giustizia*, Università Bocconi Editore, Milano, 2013, 62. Cfr., G. Marinucci, *Relazione di sintesi*, in *Sistema sanzionatorio: effettività e certezza della pena. Atti del XXII Convegno di studio E. De Nicola* (Gallipoli 27-29 ottobre 2000), edited by Centro Nazionale di Prevenzione e Difesa Sociale, Giuffrè, Milano, 2002, 238; G. Diotallevi, *I tempi della giustizia. Un progetto per la riduzione dei tempi dei processi civili e penali*, E. Paciotti (Ed.), Il Mulino, Bologna, 2006, 86.

[13] See S. Silvani, *op. cit.*, 150; G. Battarino, *Il tempo del procedimento penale, tra angoscia della prescrizione e conquista di buone prassi*, in *Quest. giust.*, 1/2017, 14.

[14] See A. Nappi, *La ragionevole durata del giusto processo*, in *Cass. pen.*, 2002, 154.

been launched, and the weight it takes on once criminal proceedings have been initiated.[15]

In the first case, absent univocal indications of the State's intention to prosecute and punish the offence, the "empty time"[16] separating the offence from the activities aimed at its prosecution and adjudication is the time during which the recollection of the offence gradually fades in the collective memory. It is the time during which, as evidence becomes stale, the individual's right to "defend himself" against allegations "by providing defense evidence" becomes increasingly complicated. It is the time during which the accused, whether guilty or innocent, is left at the mercy of uncertainty on his or her fate, lying exposed to the "Sword of Damocles of criminal investigations, proceedings and possible punishment".[17] As long as there is inaction, therefore, the passage of time lets crimes fall into oblivion "and gradually voids a delayed punitive action of any meaning".[18]

With the fulfillment of specific judicial acts served on the accused, the State, and through it, society, expresses a concrete interest in criminal prosecution: once inaction is removed, even the passage of time "tastes differently".[19] From this moment on, the memory of the offence and of the harm to society thereby caused are kept alive, and thus the sheer lapse of time is no longer able to weaken, let alone cancel, the purposes and possibility of punishment[20]. Furthermore, the accused is placed in the condition to plan his or her defense, hence evidence can no longer become stale and the right of defense is no longer undermined. Lastly, there is no need to end the State of uncertainty of the individual, as the mere risk of facing criminal prosecution has now become a reality.

Once the judicial machine has been launched, what takes hold is the punitive interest aimed at prosecuting and adjudicating the criminal offence. At the same time, however, other interests come into play, namely the individual's interest not to face criminal proceedings for an undue amount of time, and the State's interest to in any case ensure a timely punitive response[21]. At this stage, time takes on an ambivalent meaning of "instrument" and "constraint"[22]: it is a fundamental element for the proper and full exercise of jurisdiction, yet, at the same time, it is a factor that continuously widens the time gap between the offence and the State's punitive reaction, for which a reasonable timeframe must be ensured in the

[15] F. Basile, *La prescrizione che verrà*, in *Diritto penale contemporaneo, Rivista Trimestrale*, 5/2017, 136 ff. On this matter, with further references to Italian and foreign literature, see S. Silvani, *op. cit.*, 133 ff. and p. 294 ff.; F. Viganò, *Riflessioni de lege lata e ferenda su prescrizione e tutela della ragionevole durata del processo*, cit., 13 ff.
[16] G. Giostra, *op. cit.*, 2221.
[17] F. Basile, *op. cit.*, 140
[18] S. Silvani, *op. cit.*, 294.
[19] F. Basile, *op. cit.*, 141.
[20] See A. Macchia, *Prescrizione, Taricco e dintorni: spunti a margine di un sistema da riformare*, in *Quest. giust.*, 1/2017; F. Viganò, *Riflessioni de lege lata e ferenda su prescrizione e tutela della ragionevole durata del processo*, cit., 12.
[21] See, among others, S. Silvani, *op. cit.*, 294; F. Viganò, *Riflessioni de lege lata e ferenda su prescrizione e tutela della ragionevole durata del processo*, cit., 25.
[22] G. Battarino, *op. cit.*, 14.

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interest of all parties involved in the case, as required by the principle sanctioned, among others, in Article 6 ECHR.

From this perspective, aimed at shedding some light on the different interests at stake from time to time, what clearly stands out is the distinction between the period running outside the context of proceedings and the period running during the course of proceedings.

The legal effect arising out of the passage of time is, in both cases, the same: a limitation on the State's punitive authority. What changes entirely is the basic criterion for calculating the running of the statutory period: the time of oblivion, before the repressive State apparatus has brought its punitive action, is inactive time, which, being indifferent to all that takes place during its passage, runs continuously along a straight line; whereas the time for reaching adjudication pending proceedings is legal time, which, depending on the interactions between the parties involved, runs with pauses and intervals.

The interests lying behind time-barring in each case are different, since–as rightly pointed out–there are no criminal-policy grounds that may at once justify both pre-trial time limitation and time limitation pending proceedings: one thing is the "social stability purpose pursued by the non-punishment of long-completed misconduct, and another is the "defendant's right to be tried within a reasonable period of time".[23]

Ultimately, the rationale behind these two types of limitation periods is different: in one case, the time-barring of offenses, which presupposes and certifies society's oblivion of long-past criminal acts, puts an end to the increasing difficulties related to stale evidence and, finally, relieves the wrongdoer from the risk of criminal prosecution, allowing him or her to "move on";[24] in the other case, waiver of the State's punitive right, which attests the non-extendibility of prosecution rights against an individual, since "beyond a certain period of time, the public interest in the prosecution and adjudication of a criminal offense is considered secondary to the damage caused to the accused by the unreasonable prolongation of legal proceedings".[25]

To use a fortunate metaphor, one could also say that statutes of limitations in criminal law represent the *emergency drug* that the legal system uses to treat the chronic disease afflicting criminal proceedings: their lengthy or, if one prefers, unreasonable duration.[26] However, this drug–as accurately pointed out–is solely capable of acting on the external symptoms of the illness, and certainly not on its root causes, and especially, is liable to generate detrimental collateral effects.[27]

Metaphors aside, thorough consideration is required with regards to the complex relationship between statutes of limitations and the principle of

[23] G. Giostra, *op. cit.*, 2221.
[24] F. Viganò *Riflessioni de lege lata e ferenda su prescrizione e tutela della ragionevole durata del processo*, cit., 12;
[25] G. Giostra, *op. cit.*, 2221.
[26] Regarding the metaphor "statute of limitations-drug", frequently used in literature, see, among others, F. Viganò, *Riflessioni de lege lata e ferenda su prescrizione e tutela della ragionevole durata del processo*, cit., 2 ff.
[27] "Iatrogenic diseases, (thus) caused by the physician or by the medical treatment", as explained by G. Giostra, *op. cit.*, 2222.

trial within a reasonable time[28]–whether it be understood as legal guarantee or individual right–bearing in mind their clear dogmatic distinction and their mutual interferences in practice.

As to the first aspect, it is hard to fully endorse the idea that criminal statutes of limitations primarily serve the purpose to ensure the principle of fair trial within a reasonable time, as if by cutting off all that exceeds the time-limit imposed by said principle, the reasonable time of trial were in itself "expression of the right to oblivion as an individual guarantee".[29] The equation "criminal statutes of limitations = trial within a reasonable time" must at the very least be rescaled from both angles, upon the understanding that "it cannot be seriously argued that the duration of a trial completed within the relevant limitation period is always reasonable or that the duration of a trial that exceeds such period is always unreasonable".[30]

There are different arguments that support the above conclusion.

Firstly, the absence of a statute of limitations for a number of crimes, which, according to the opposing opinion, would justify endless trials. This being said, if there is no doubt that a trial's reasonable time must be

[28] For a more detailed examination on the matter, in relation to which Italian literature is truly immense, with no claim to exhaustiveness, see, M. G. Aimonetto, *La "durata ragionevole" del processo penale*, Torino, 1997; E. Amodio, *Ragionevole durata del processo, abuse of process e nuove esigenze di tutela dell'imputato*, in *Dir. pen. proc.*, 2003, 797; Id., *Giustizia penale negoziata e ragionevole durata del processo*, in *Cass. pen.*, 2006, 3406; Id., *La procedura penale dal rito inquisitorio al giusto processo*, ivi, 2003, 1419; S. Buzzelli, voce *Giusto processo*, in *Dig. disc. pen.*, agg., Torino, 2004; Id., voce *Processo penale (ragionevole durata del)*, in *Enc. dir.*, Annali, III, 2010, 1017 ff.; Id., *Durata ragionevole, tipologie procedimentali e rimedi contro i ritardi ingiustificati*, in AA.VV. A. Balsamo, R. E. Kostoris (Eds.), *Giurisprudenza europea e processo penale italiano*, Torino 2008, 255 ff. M. Cecchetti, voce *Giusto processo – a) Diritto costituzionale*, in *Enc. dir.*, agg. V, Milano, 2001; M. Chiavario, voce *Giusto processo II) processo penale*, in *Enc. giur. Treccani*, vol. XV, Roma, 2001; C. Conti, voce *Giusto processo – a) Diritto processuale penale*, in *Enc. dir.*, agg. V, Milano, 2001; R. E. Kostoris (Ed.), *La ragionevole durata del processo. Garanzie ed efficienza della giustizia penale*, Torino, 2005; P. Ferrua, *Il "giusto processo"*, Bologna, 2005; Id., *Il "giusto" processo tra modelli, regole e principi*, in *Dir. pen. proc.*, 2004, p. 401; Id., *La ragionevole durata del processo tra Costituzione e Convenzione europea*, in *Quest. giust.*, 1/2017; V. Grevi, *Alla ricerca di un processo penale "giusto". Itinerari e prospettive*, Milano, Giuffrè, 2000, 326 ff.; Id., *Il principio della "ragionevole durata" come garanzia oggettiva del "giusto processo" penale*, in *Cass. pen.*, 2003, 3204; A. Mura, *Teoria bayesiana della decisione e ragionevole durata del processo*, ivi., 2007, 3104; A. Nappi, *La ragionevole durata del giusto processo*, ivi, 2002, 1540; Id., *Prescrizione del reato e ragionevole durata del processo*, ivi, 2005, 1487; D. Pulitanò, *Tempi del processo e diritto penale sostanziale*, in *Riv. it. dir. proc. pen.*, 2005, 507; F. Siracusano, *La durata ragionevole del processo quale "metodo" della giurisdizione*, in *Dir. pen. proc.*, 2003, 757; P. Tonini, *sub Cost. art. 111*, in A. Giarda, G. Spangher, *Codice di procedura penale commentato*, 3° ed., vol. I, Milano, 2006; AA.VV., *Per una giustizia penale più sollecita: ostacoli e rimedi ragionevoli (Atti del Convegno, Milano 18 marzo 2005)*, Milano, 2006; AA.VV., *Tempi irragionevoli della giustizia penale. Alla ricerca di una effettiva speditezza processuale (atti del Convegno, Bergamo, 24-26 settembre)*, Milano, 2010; A. Bargi, *La ragionevole durata del processo tra efficienza e garanzia*, in AA.VV. F. Dinacci (a cura di), *Processo penale e Costituzionale*, Milano, 2010, 469 ff.; G. D'Aiuto, *Il principio della ragionevole durata del processo penale*, Napoli, 2008.

[29] For this type of interpretation, see M. G. Aimonetto, *op. cit.*, 1; F. Giunta, D. Micheletti, *op. cit.*, 47. For a different opinion see F. Falato, *Prescrizione corruzione e processi internazionali di mutua valutazione*, in *Arch. Pen.*, 3/2017.

[30] G. Giostra, *op. cit.*, 2221. In this sense, see also D. Pulitanò, *op. cit.*, 525.

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measured on the basis of the time necessary to effectively enforce all legal safeguards, then one is bound to admit that it would make "no sense to relate the limitation period to the seriousness of the offence".[31] This was pointed out by the European Court of Human Rights, according to which the reasonableness of the time of justice cannot be determined by a period expressed in "days, weeks, months, years or various periods depending on the seriousness of the offence"[32], as the reasonableness criterion hinges on the concrete circumstances of each case and is expressed, in particular, with ex post assessments of the decisions issued, which must take into account a number of parameters, such as the complexity of the case, the number of defendants, and the conduct of the judicial authorities and private parties[33].

Thus, by excluding a "functional osmosis" between the reasonable time requirement and criminal limitation periods, the sole interference noted between the two is merely potential and, in any case, indirect. There is no doubt that, where properly regulated, limitation periods may indirectly encourage a more expeditious justice system, by favoring a selection of the cases to be prioritized, and, failing this, by preventing unreasonably lengthy cases, thereby de facto serving the purpose of stemming, by way of

[31] G. Giostra, *op. cit.*, 2221.

[32] See, in the context of the decision of the European Court of Human Rights, *Stögmüller v. Austria*, Application No. 1602/62, Judgment 10 November 1962, in *Foro it.*, 1970, 1 ff and 41 ff.

[33] The European Court, when assessing the violation of the right to be judged within a reasonable time, expressly referred to the need to balance the prerogative of a speedy trial with the more general principle of good justice administration (see Bodaert v. Belgio, Eur. Ct. H.R., Oct. 12, 1992) on the basis of three criteria: a) complexity of the case, based on the seriousness of the offense, of the number of defendants and on the difficulties relating to the collection of evidence (see, among the many judgments, Neumeister v. Austria, Eur. Ct. H.R., App. No. 1936/63, June 27, 1968); Foti v. Italy, Eur. Ct. H.R, Mar. 7, 1996); Ferrantelli e Santangelo v. Italy) b) the conduct of the prosecuting authority, to be strictly intended in light of the obligation of the State to ensure trial within a reasonable time, and to organize the justice administration in such a way as to secure the need for a speedy trial (see Dumont v. Belgium, Eur. Ct. H.R., App. No. 49525, July 15, 2005; Donsimoni v. France, Eur. Ct. H.R., Oct. 5, 1999; Zannouti v. France, Eur. Ct. H.R., July 31, 2001; Saccomanno v. Italy, Eur. Ct. H.R. May 12, 1999; Capuano v. Italy, Eur. Ct. H.R., June 25, 1987); c) the conduct of the individual subject to proceedings, with particular reference to any obstructive tactics of the concerned party (see Gelli v. Italy, Eur. Ct. H.R., 19 Oct. 1999; Ledonne v. Italy, Eur. Ct. H.R., May, 12, 1999; Corigliano v. Italy, Eur. Ct. H.R., Dec. 10, 1982; Union Alimentaria Sanders Sa v. Spain, Eur. Ct. H.R., App. No. 11861/86, July 7, 1989, where the Court specified [para. 35] that the person concerned is required to use diligence in carrying out all the procedural steps relating to him, and to refrain from using delaying tactics and to avail himself of the scope afforded by domestic law for shortening proceedings, without however being under a specific obligation under this latter aspect). For a more thorough analysis on the matter, in scholarship, *see* M. Chiavario, *Ragionevole durata del processo penale e criteri di valutazione nella più recente giurisprudenza della Corte europea dei diritti dell'uomo*, in M. Bargis (Ed.), *Studi in ricordo di Gabriella Aimonetto*, Milano, 2013, 23 ff.; see also, S. Buzzelli, *Art. 6*, in G. Ubertis, F. Viganò (Eds.), *Corte di Strasburgo e giustizia penale*, Torino, 2016, 143-149; lastly, see A. Nappi, *Guida al codice di procedura penale*, Milano, Giuffrè, 2007, 27.

protection of the individual, delays in proceedings that would otherwise be unlimited[34].

Right here is the heart of the issue. Regulating statutes of limitations in criminal law hinges on the understanding that, in relation to proceedings, time-barring acts as a "therapeutic and pathogenic agent at once": limitation periods "induce the judicial authorities to pursue promptness and organizational efficiency in order to prevent cases from being time-barred, while encourage private parties to avoid premature judgments and to cause delays in the trial by any means possible [...] in order to benefit from the lapse of the limitation period".[35] There is no doubt that by steering the timeframes of the judicial activities in such a way as to avoid time-barring, statutes of limitation in judicial practice do in fact act as an accelerating factor for proceedings.[36] But it is equally clear that, from the defense's perspective, as soon as passing unpunished as a result of the sheer lapse of time appears to be a free and obtainable benefit, then this becomes the goal to be pursued at all costs through tactics solely aimed at running out the clock.[37]

A further testimony to the mutual negative influence between the duration of criminal proceedings and criminal statutes of limitations is the fact that limitation periods appear liable to guide the court's activity in the complete opposite direction to acceleration. Specifically, the impending prospect of the crime being time-barred may drive the court to push forward the declaratory judgment, passing the buck to the next or higher degree court, and in such a way contributing to extend proceedings, with the awareness that in any case the devouring force of time is bound to prevail.

3. The need to look up: aims and limitations of research.

The awareness that the above considerations, if limited to a debate at a merely domestic level, risk to fuel a partial–and in some way self-referential–vision of the matter, in itself explains the reasons that have led to the drafting of the current special edition of DPCE.

The aim is at once lofty and, so to say, "modest".

Lofty, inasmuch as it represents a significant effort to offer a perspective that is as broad as can be, embracing as much as 23 legal systems over three continents, on the study of statutes of limitations. An effort that cannot be regarded as a simple juxtaposition of the rules and legal devices

[34] G. Giostra, *op.cit.*, 2222; in the same direction see also P.M. Corso, *Verso una disciplina processuale della prescrizione?*, in AA. VV., *Azione civile e prescrizione processuale nella bozza di riforma di riforma della commissione Riccio*, M. Menna, A. Pagliaro (Eds.), Torino, Giappichelli, 2010, 82.

[35] G. Giostra, *op. cit.*, 2221.

[36] See the observations made by the Ministerial Committee chaired by Prof. Fiorella, *Relazione per lo studio di una possibile riforma della prescrizione*, available at *www.giustizia.it*.

[37] This observation may be said to be a commonplace in the thoughts expressed by legal scholars and the courts: see, among others, V. Grevi, *op. cit.*, 3210 ff.; F. Giunta D. Micheletti, *op. cit.*; G. Canzio, *op. cit.*, 13. See also N. Rossi, *Il principio della ragionevole durata del processo penale: quale efficienza per il giusto processo?*, in *Quest. giust.*, 2003, 905 ff.

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in force in systems of law that differ from one another. But rather, *as a way to know through diversity*[38]. Diversity, however, always imposes to consider the peculiarities that are distinctive of each legal order and, hence, the practical implications that the sheer import of such rules from one system to another would have in the legal systems other that the one in which they originate.

"Modest", since it seeks to take a serving role: it doesn't intend to be a point of arrival, but a point of departure. It doesn't claim to be particularly in-depth and extensive. These goals are beyond the scope of this volume, which simply intends to offer key, updated and reliable information coming directly from established national sources. In addition, this information has been provided on the basis of a common thematic grid laid out to facilitate the synopsis and comparative analysis. In order words, a work of long-range reconnaissance, which intends to be at the service of those who, in whatever capacity, are called to offer a contribution to the search of a solution that is able to provide the State's punitive intervention with a reasonable time dilation, while verifying the practical impact of the solutions considered from time to time.

In this perspective, the Authors have firstly gone through the key characteristics of this legal device, meaning the overall rules governing the calculation of time in order to identify the moment in which the time-barring effect is triggered. Hinging on the passage of time, statutes of limitations necessarily require such rules, and the latter (calculation criteria, running of the limitation period) are the rules that must be primarily referred to. Secondly, special emphasis has been paid to the analysis of the statutes of limitations' dynamic aspect, which regards the concrete modus operandi of this legal device in the context of judicial proceedings. Far from marginal in this last regard appears to be the different nature – substantive, procedural or mixed – that each legal system attributes to statutes of limitations.

To reveal in advance some of the observations made in this stimulating overview provided by the experts of the matter, note should be taken of the emergence of a legal device that falters precisely in relation to its *raison d'être*. The exclusion, common to all legal systems analysed, of a statute of limitations for certain crimes – as correctly widely requested at an international level with reference to crimes punished by international criminal law (crimes against humanity, war crimes, etc…) coexists with the shared need to protect specific categories of vulnerable victims, pursued, at times, through an extension of the limitation periods and, at other times, through the choice to postpone the running of such periods. In this same wake, legal systems have envisaged a number of events causing the expiration and tolling of the statutory periods, which often entail the denied risk of misuse of these devices by the prosecuting authorities. Ultimately, in the necessary balancing–common to all legal orders analysed–of the State's punitive interests with the needs connected to the protection of individual guarantees, the margin of protection assigned to the former often seems to prevail over the latter.

[38] R. Sacco, *Che cos'è il diritto comparato*, P. Cedon (Ed.), Milano, 1992, 16.