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On the protection of the legally incapable in Brazil: the (ir)reconciliation between Criminal and Civil Law

Sobre a tutela jurídica do incapaz no Brasil: o (des) encontro entre o Direito Penal e o Direito Civil

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Abstract: Based on the analysis of the case of Juvenal Raimundo de Araújo, this paper seeks to criticize the complete dissociation between the branches of Criminal and Civil Law, specifically in the treatment given to those considered incapable. When predicting institutionalization by an undetermined period of time of non-imputable individuals who committed a felony, the law maintains these persons far from community and family ties while hospitalized for psychiatric treatment. It was noticed that the weakening of such ties had negative repercussions years later, by the time of these persons' release, who often needed assistance to manage some acts of their civil life, requiring conservatorship. It is possible to conclude that, disregarding the complexity of the human being when making decisions that impact indefinitely in persons' lives, there is an aggravation of situations of vulnerability, which is why a more global and systemic view of legal problems is necessary for the promotion of human dignity.

Keywords: Conservatorship. Persons with intellectual disabilities. Judicial security measures. Institutionalization. Interdisciplinarity.

Resumo: O presente artigo busca, a partir da análise do Caso de Juvenal Raimundo de Araújo, criticar a completa dissociação entre os ramos do Direito Penal e do Civil, especificamente no tratamento dispensado àquele tido como incapaz. Ao prever a institucionalização por tempo indeterminado de inimputáveis que praticaram fato típico penal, a lei mantém essas pessoas distantes de vínculos comunitários e

familiares enquanto internadas para tratamento psiquiátrico. Percebeu-se que a fragilização de tais laços repercute negativamente anos depois, quando da liberação de tais pessoas, as quais, muitas vezes, precisam de assistência para gerir alguns atos de sua vida civil, necessitando de curadores judiciais. É possível concluir que, desconsiderando a complexidade do ser humano quando da tomada de decisões que impactam em definitivo a vida das pessoas, há um agravamento de situações de vulnerabilidade, razão pela qual uma visão mais global e sistêmica dos problemas jurídicos faz-se necessária para a promoção da dignidade humana.

Palavras-chave: Curatela Judicial. Pessoas com deficiência mental. Medidas de segurança. Institucionalização. Interdisciplinariedade.

1 INTRODUCTION

Juvenal Raimundo de Araújo, in 1968, at age 18, was considered mentally ill and forced, by a judicial security measure, to hospitalization at the Psychiatric Institute Governador Stênio Gomes, in Ceará, Brazil, after being accused of perpetrating attempted murder against his brother. He was institutionalized for about 46 years, until a joint effort of the National Council of Justice – CNJ, in 2013, found out that he had been confined for longer time than he was sentenced to, which is why measures were required to his disinterment (BRASIL, 2013, p. 84-5).

After so many years of hospitalization – justified by several psychiatric reports that attested his incapacity for social life – suddenly there was an urgent need to free him. In apparent change of understanding, his alleged illness gave way to the necessary respect to the time limit of his criminal verdict. By law, the time of the sanction and of medical treatment are to be equivalent.

For his return to social life, family or community ties were sought. Persons who could take in a man, now elderly, who since the beginning of adult life has not lived free. However, what links someone who has spent nearly half a century incarcerated could have outside the walls of the institution in which he had once lived for so long?

Currently, Juvenal resides in the so-called Therapeutic Residential Service, in Fortaleza, Ceará, a Unified Health System – SUS – program

that welcomes persons with mental disabilities who have no family or social ties. In 2020, a State's Public Prosecutor found that he and others, who reside in these homes, needed conservators so that their assets and business life could be managed, but who could perform such a role?

Juvenal's history can be told and analyzed from different perspectives, but this essay seeks to cut on the relation between Criminal and Civil Law, concerning this case. On the first topic, it aims to criticize the application of judicial security measures predicted by Criminal Law as an equivalent of psychiatric treatment. On the second topic, the conservatorship institute is legally analyzed in opposition with the recommendation formulated by a State's Public Prosecutor for the constitution of a Conservatorship Committee in Fortaleza, which came to reach, years later, Juvenal Raimundo de Araújo. Finally, on the third topic, the paper proposes a change of perspective on the compartmentalized way of seeing the human being: under the logic of one or another legal branch, which often provides unsatisfactory solutions, considering only a fraction of the reality at the time, what leads to, years later, an increasing of the problems concerning the protection of the incapable person, which is why only a more systematic treatment can promote a global vision that considers the complexity of the human being, seeking, as the last and main purpose, the promotion of human dignity, especially regarding persons in situation of extreme vulnerability.

2 JUDICIAL SECURITY MEASURES AND MEDICAL TREATMENT: IRRECONCILABLE TIMES

In the Brazilian legal system, when someone is charged with a felony, but is considered non-imputable[1], instead of receiving a regular

[1] Non-imputability is defined in art. 26 of the Penal Code: "the offender who, due to illness, incomplete or delayed mental development, was, at the time of the action or omission, entirely unable to understand the illicit nature of the fact or to behave according to this understanding".

criminal penalty – deprivation of liberty, restriction of rights, etc. – it is imposed a security measure. As a rule, the security measure applied to the non-imputable under the law is the admission to a custody hospital and psychiatric treatment. In some cases, when the penalty imposed is less severe than imprisonment, the judge may determine that the accused takes treatment as an outpatient. In any case, both measures have an indefinite duration, but minimum that varies from 01 to 03 years, ending only if a medical inquiry certifies the termination of the accused's dangerousness. This inquiry should take place at the end of the minimum period established for the measure and, thereafter, at least once a year.

However, at the time Juvenal Raimundo de Araújo was considered non-imputable and hospitalized, the security measures had a legal regulation quite different from the one that exists today, from the reform of the general part of the Penal Code, which took place in 1984. Security measures, at the time, distinguished themselves between custodial – hospitalization in a forensic hospital, in custody and treatment house or in an agricultural colony or work institute, of re-education or professional education – and non-custodial – probation, prohibition to attend certain places or local exile.

The measures were not necessarily related to the existence of any illness and may even be imposed on mentally healthy individuals. Their application presupposed an action defined as a felony and the dangerousness of the person charged with it, which could be inquired or, in some cases, just presumed. Was considered presumably dangerous someone with mental illness or incomplete or retarded mental development, so that they were exempted from criminal penalties. Likewise, those convicted of a felony committed while intoxicated by alcohol or any drug with similar effects, if their inebriety is habitual, the repeat offenders in intentional acts and those convicted of a crime that were associated in a gang of criminals. Out of these hypotheses, the judge should inquire the dangerousness when the personality and background, as well as the

reasons and circumstances of the act, authorize the assumption that the accused would come to offend again[2].

The individual's hospitalization in a forensic hospital also should be determined to those to whom were imposed a non-custodial security measure, but, in its course, got a mental illness, and, even if they were to be cured, the judge could determine the continuation of the previous measure, if understood that the dangerousness has not ceased with the cure. The minimum time that law stated for the hospitalization measure was 06 years for felonies that could be sentenced with over 12 years of custody, which was the case of Juvenal.

The dangerousness of the hospitalized person had to be reviewed, by medical expertise, only at the end of the minimum period stated by law and, thereafter, annually, if the hospitalization is not terminated, which only occurred when the cessation of dangerousness was attested. Security measures could be applied independently of the deprivation of liberty penalty, initiating when the latter ended, except, obviously, in the case of penalty exemption for non-imputability, when the security measure replaced the custody.

It is noticed that the security measures aimed at the social protection from the potential actions of individuals considered to be dangerous. But wouldn't that also be one of the purposes of the penalty? Would there be a double jeopardy? About this question, Basileu Garcia (1952, p. 594-5) understood that doctrinal efforts that sought to establish a separation between the institutes were, in a way, artificial, although, in what concerns to the application of the legal rules, the institutes actually dissociated themselves, due to the distinctive features of the legal regulation of both. If the penalties have

[2] Law n. 6.417/77 changed this verification, which would occur: 1) if their background and personality, the determining reasons and the circumstances of the act, the means employed and the ways of execution, the intensity of intent or degree of guilt, authorize the supposition that one will come or go back to offend; and 2) if the act itself reveals turpitude, perversion, wickedness, greed or moral insensitivity.

the so-called retributive-preventive characteristic (Garcia, 1952, p. 595), the security measures are eminently preventive. About this distinction, Basileu Garcia stated (1952, p. 595):

> It has been said that the penalty remains a punishment, even if, increasingly, there are efforts to expunge its retributive and expiatory characteristic. Although it is intended to, in its execution, avoid afflicting the convicted, and to cause suffering that makes him receive it as punishment, in fact, the penalty will never lose, in general consensus, the retribution of evil with evil, *malum passionais quod infligitur ob malum actionis*. Well, in contrast, security measures do not mean a punishment. They were instituted by the influx of collective defense thinking, given the concern to provide the delinquent a rehabilitative assistance.

However, the author himself considers these distinctive conceptual outlines not very convincing, because "will the security measure no longer be received, by those to whom they are imposed, as punishment?". And he also warns that there is an effective restriction of freedom to comply with such measures, adding to them the characteristic of temporal indetermination, which is not allowed in the imposition of custody.

In fact, the security measures had a duration linked to the permanence of the dangerousness, being able, thus, to bear a perpetual nature, even. That's where it lies, for Basileu Garcia (1952, p. 597-7 and 603-4), the most relevant distinguishing feature between them and the custodial penalty. While the penalties have a maximum limit; the security measures have minimum. In the same sense, José Frederico Marques (1966, p. 176) points out that "penalty and security measures constitute species of penal sanction", bearing the first repressive character and the second preventive, but both are "forms of the State's coercive power that takes place in an indirect manner". In this way, there was a notorious double jeopardy in the application of both the penalty and the security measure, one after the other. José Frederico

Marques (1966, p. 197) also thought that the "'two-sided' treatment that the Penal Code adopted, apparently because of practical reasons, should be replaced, as soon as there are the proper institutions, by a single criminal penalty".

Cezar Bitencourt (2004, p. 737) agrees that "the joint application of penalty and security measures violates the prohibition of double jeopardy, even though it has been said that the *foundation* and the *ends* of both are distinct, in reality, it is the same individual who bears the *two consequences* for the same act". Such a problem, however, does not persist in current law on the subject.

Thus, the very existence of the security measure is related to the degree of danger of the accused, who needs to receive adequate treatment so that he does not become a repeat offender. And, as already said, those who were exempt from penalties due to mental illness or incomplete mental development, like Juvenal, would be, by legal presumption, considered dangerous.

Considering that most of the mental illnesses that exempt penal imputability are incurable, as well as the incomplete or retarded mental development is, as a matter of fact, a perennial condition, there would be, in the situation under discussion, the imposition, in fact, of a perpetual security measure? While Basileu Garcia (1952, p. 604) understood that indeterminacy "leads to its eventual perpetuity", José Frederico Marques (1966, p. 199) thought that "a time indefinite sanction is not equivalent to a perpetual one". This last distinction seems to be artificial, since measures that do not have a maximum term may eventually last forever.

In addition, to what extent is it correct or appropriate, from a strictly medical point of view, to associate the existence of such a condition that exempts from criminal penalty to a permanent state of dangerousness, that is, the propensity for the individual, in freedom, to repeatedly commit felonies? Do the mental illnesses of this level, which deprive the person of the understanding of his act's illegality or of self-control, invariably lead to the inability to live together in

society, because, in a specific situation, the person committed a felony? These questions reveal the problem of presumed dangerousness. If, on one hand, security measures should cease when the cessation of dangerousness is certified by medical report, on the other hand, there is a legal presumption of dangerousness when the accused has a condition which, in most cases, will never be fully healed.

The current regulation of the matter has abolished the dangerousness presumption[3], but it continues to be the criterion for the application and cessation of the security measure. Although the use of this standard is questionable, the legislator did well in not setting parameters for the Judge to assess the dangerousness – and, mainly, to presume it –, since it is a matter to the psychiatric field, well before a legal one, whose professionals are responsible for the diagnosis, and are attentive to the evolution of concepts and medical science, which takes faster steps than the evolution of law.

Although the new legislation did not do it, the higher courts, through legal precedents, abolished the possibility of perpetuals security measures. The Superior Court of Justice – STJ – approved, after numerous decisions, in 2015, the Legal Precedent n. 527, according to which "the duration of the security measure should not exceed the maximum limit of the penalty imposed abstractly for the felony". Meanwhile, the Supreme Court understands that the duration cannot exceed the maximum limit for imprisonment penalty, according to art. 75 of the Penal Code, which was 30 years and, since January 2020, 40 years[4].

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[3] Cezar Bitencourt (2004, p. 739) understands that two types of dangerousness remain: the presumed, which applies to the non-imputable person under art. 26 of the Penal Code; and the real, recognized by the judge when the agent is semi-imputable. However, we understand that there is not a case of dangerousness presumption, at least according to the previous regulation, since the non-imputability is a result from medical verification which attests the individual's total cognitive and/or volitional impairment in relation to the criminal act.

[4] The STJ's solution seems more accurate to us, since it links the time of the security measure to the maximum penalty abstractly bound to the felony committed, due to the equality of treatment between the imputable and the non-imputable, also to

An even more sensitive problem is the establishment of a minimum duration for a security measure which purpose is preventive and has its continuity linked to the permanence of a mental state from which the person's dangerousness emerges. If the nature of the security measure is preventive – not retributive – and dangerousness is a condition certified by medical expertise, how could law predict that no one would have their dangerousness ceased before a certain period?

The criteria for evaluating the degree of dangerousness of the person considers not only the severity of one's mental illness, but also the individual's personal, social and behavioral characteristics, in an analysis that must be absolutely individualized and intimate. When law seeks to reach objectivity in such an investigation, which, by nature, is subjective, defining a minimum duration, it ends up making it harder to achieve the purpose of the measure: the cure, or, at least, the cessation of dangerousness. Therefore, all the temporal parameters legally defined are irreconcilable with the purpose of the treatment, making it more similar to the features of a penalty.

For Paulo Busato (2013, p. 863), the relationship established between the kind of security measure – hospitalization or outpatient treatment – and the gravity of the crime – penalty of imprisonment or simple detention – enforces "an idea of proportionality that is, at least, questionable". The relation between the security measure and the felony should only provide justification for the imposition of the security measure itself, but should not define what kind of measure will be imposed, which should be related to a "prognosis of a health treatment". See his reasoning:

reasonableness and proportionality. Still, such a solution is not the ideal one, mainly because, in practice, very rare are the cases in which maximum time prison sentences are given, and many felonies have a wide range of penalty variation. Simple homicide, for example, has a penalty range from 06 up to 20 years. Not to mention that the individual considered semi-imputable has his sentence reduced by up to two-thirds. Thus, the treatment given to the non-imputable remains unequal, in relation to the maximum duration of the measure.

> (...) That is, regardless of the crime, the basis on which should be, *de lege ferenda*, established which security measure will be executed should be related to the magnitude of the need for treatment, because it could be possible that, although the gravity of the felony, the disease related to it might be treatable with no need of hospitalization or, on the other hand, a less serious crime could be related to an illness that has a progressive symptomatic prognosis that requires hospitalization."

Busato (2013, p. 864) also draws attention to the fact that the outpatient treatment should be the preferred option, from which the judge would start, who would be responsible for imposing hospitalization only when the outpatient treatment proves to be insufficient for the aimed results. This would take into account the principle of minimum intervention, which rules the entire penal system. The author also argues that this would mean to give the same treatment that would be given to the patient who had not committed a felony, with the distinction that, in the case of the security measure, there would be judicial control, "the only derivation of the crime entirely legitimate and proportional".

It seems to us that the most appropriate legal treatment would be the one that delegates to the same medical board responsible for assessing the criminal imputability of the accused, the decision on which security measure is adequate for maximum effectiveness of the treatment, and how long should the measure last until further analysis of the results obtained. In any case, of course, the Judge would still hold the prerogative of disagreeing with the expert's conclusions, in a reasoned decision, according to art. 182 of the Code of Criminal Proceedings – CPP.

Considering such a problem, the adoption of an anti-asylum policy is increasing, a movement that defends the replacement of forced hospitalization measures, which exclude the individual from social interaction, by other types of treatments less restrictive of freedom. In 2001, Law n. 10.216 was sanctioned, which "provides the protection and rights of persons with mental disorders and redefines the care model in mental

health". The given legislation brings a list of rights of the person with intellectual disability, such as "being treated with humanity and respect and in the exclusive interest of benefiting one's health, aiming to achieve one's recovery through insertion in the family, at work and in the community"; "to have right to medical presence, at any time, to clarify the need or not for one's involuntary hospitalization"; and "being treated in a therapeutic environment by the least invasive means possible".

The legislation in question establishes a progressive dehospitalization program, as hospitalization would only be indicated "when extra-hospital resources seemed to be insufficient". Furthermore, it states that "the treatment will aim, as a permanent purpose, the patient's social reinsertion in their environment" and "the psychiatric hospitalization would only be imposed if supported by a detailed medical report that stated its reasons". It is important to emphasize that, among the modalities of hospitalization regulated by law, there is, indeed, the compulsory hospitalization which is legally determined. Finally, in its art. 5th, it determines that "the patient that had been hospitalized for a long time or that suffer from serious institutional dependence, due to their clinical condition or lack of social support, will be the object of a specific policy of planned discharge and assisted psychosocial rehabilitation, under responsibility of the competent health authority and supervision of an instance to be defined by the Executive Power, ensuring the continuity of treatment when necessary".

In the case analyzed in this essay, Juvenal received successive reports for the maintenance of his hospitalization. His prison-asylum situation began during the outdated regulation given by the Penal Code of 1940, continued through the reform of 1984, and clearly bypassed Law n. 10.216/2001, without any of the directly responsible for the inspection and execution of such measures or for the defense of Juvenal – State's Department of Justice[5], the Judiciary Power, Public Prosecution and

[5] Nowadays, in Ceará, the Department of Penitentiary Administration, created at the end of 2018, is responsible for managing the Psychiatric Institutes.

Public Defender's Office – proposing any action in his interest, considering that he had done double the time of the maximum penalty for the offense he had held responsibility for. Concerning Juvenal's situation, it was included in the General Report of the CNJ Custodial Task Force in State of Ceará (Brasil, 2013, p. 85):

> All situations involving these persons are deplorable, but one of them, for its peculiarity, caught everyone's attention, with great repercussion in the press at national level, which was that of Mr. Juvenal Raimundo da Silva, who joined the Psychiatric Hospital, according to the medical record, on February 10, 1978, however was already in the prison system since the 60s of the last century, having received a release order on November 6, 1989, due to the declaration of extinction of punishability. See the absurdity. This citizen ended up staying almost twenty-four (24) years in the Psychiatric Hospital, with his freedom restricted, with no one taking any action to cease the brutal illegality, which according to the press reports, only now has ended, after this situation was revealed, with the withdrawal of Mr. Juvenal – a man now over eighty (80) years old, in a wheelchair, in need to wear adult diapers, as can be seen in the photographic survey next to the inspection form at the Psychiatric Hospital – and his placement in what is considered to be an appropriate place.

After being "founded" by the CNJ's task force, in 2013, Juvenal, due to his complete lack of family and social ties, was sent to reside in the Therapeutic Residential Service – SRT –, of the Psychosocial Attention Network of Fortaleza – RAPS –, housing and care spaces maintained by Municipality and intended for persons with severe mental disabilities who do not have shelter in other places[6].

[6] As available in Brazil (2004, p. 6): "The Therapeutic Residential Service (SRT) – or therapeutic residence or simply 'housing' – are houses located in the urban space, constituted to respond to the housing needs of persons with severe mental disorders, institutionalized or not. The number of users can vary from 1 individual to a small

It should be noted that he was released due to a legal rather than a medical justification. He was not deinstitutionalized due to his full recovery and cessation of dangerousness, but due to the illegality of maintaining a security measure for more time than he was sentenced to serve, reinforcing the idea that safety and treatment measures have irreconcilable time lapses.

Recently, there was a request from the Public Prosecution's Office of Ceará, sustained by the Judiciary, to prohibit the entry of prisoners into Governador Stênio Gomes Psychiatric Hospital – institution where Juvenal was for more than four decades – to go through medical evaluation, under the justification that "the place does not currently have psychiatrists to perform these reports, so that the prisoners stay indefinitely in the unit, living together improperly with persons with diagnosed mental disorders that are under the imposition of security measures"[7]. Cases similar to Juvenal's seem not to be so rare.

After a lifetime institutionalized, nowadays Juvenal has no family or social ties, and has not recovered from his mental illness. He now needs a conservator to take care of his civil life issues, according to the State's Public Prosecution. However, who should be responsible for performing such a role, until then forgotten throughout Juvenal's civil life? This is what is going to be analyzed in the following topic.

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group of maximum 8 persons, which must always have professional support that is sensitive to the demands and needs of each person. The support of an interdisciplinary nature (whether the reference CAPS, or a primary care team, or other professionals) should consider the uniqueness of each of the residents, and not just projects and actions based on the collective of residents. The follow-up to a resident must continue, even if they change address or eventually be hospitalized. The psychosocial rehabilitation process must specially seek a way to the insertion of the user in the network of services, organizations and social relations of the community. Therefore, the insertion in an SRT is the beginning of a long rehabilitation process that should seek the progressive social inclusion of the resident".

7 As reported in: http://www.mpce.mp.br/2020/10/08/justica-acata-pedido-do-mpce-e-proibe-entrada-de-presos-em-unidade-psiquiatrica-para-realizacao-de-pericia/.

3 THE INSTITUTIONALIZED CONSERVATORSHIP: THE PROBLEMATIC PROPOSAL OF THE PUBLIC PROSECUTION'S OFFICE IN THE STATE OF CEARÁ

Conservatorship is a welfare law institute for the defense of the interests of incapable of age persons. Through a court case, it is assessed the need of a person of age to a conservator to perform acts related to their properties and businesses. Thus, it is a public function assigned by law to whoever will perform the conservator role.

Currently, several residents of the Therapeutic Residences in Fortaleza, such as Juvenal, have no conservators, which obstructs the full exercise of some civil life acts of these persons. Given this reality, the Public Prosecution's Office in Ceará proposed, via Recommendation, that the Health Department of Fortaleza created a Committee of eight institutional conservators to manage the pecuniary benefits of persons with disabilities that currently reside in the Therapeutic Residences. In a previous Recommendation[8], the same Bureau had already asked the Health Department to designate public servants to perform the role of conservators[9].

According to art. 1.767 of the Brazilian Civil Code, are subject to conservatorship: i) those who, due to a transitory or permanent cause, cannot express their will; ii) alcoholic persons and drug addicts, and iii) the prodigal ones. Considering the persons who reside in the SRT, their situation, in theory, would be the case of the first legal proposition. So, in order to be conservatees, these persons must be mentally disordered, unable to express their will or to behave according to it, needing, therefore, support in managing certain acts of civil life.

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[8] As reported in: http://www.mpce.mp.br/2020/10/06/mpce-recomenda-criacao-de-comissao-para-gerir-beneficios-dos-usuarios-de-residencias-terapeuticas-em-fortaleza/.

[9] Recommendation of the 137th Prosecution's Office of Fortaleza, specialized in the Defense of Public Health, through the administrative procedure n. 09.2020.0003616-2.

However, it is important to emphasize that the Statute of Persons with Disabilities – Law n. 13.146/2015 –, which is founded on the Convention on the Rights of Persons with Disabilities, a Human Rights Treaty with constitutional status in Brazil, since it was approved with a qualified quorum by the Parliament, brought numerous changes in the interpretation standards of various institutes related to persons with disabilities, seeking to protect them and to include them in society. The abovementioned Statute deals with the conservatorship institute in its art. 84 to 86.

Art. 85 of the Statute brings an important understanding regarding the dignity and autonomy granted to persons with disabilities, when it clearly establishes the boundaries of conservatorship. So, the role of the conservator concerns only acts related to properties and businesses rights, not reaching determinations regarding the conservatee's own body, sexuality, marriage, privacy, education, health, work and vote. The law also states that a conservatorship is not required for the persons with a disability to issue their official documents.

In addition, from the changes made by the Statute, persons with some sort of disability are no longer considered to be absolutely incapable, but fully capable, especially for existential acts of family nature, so that the appointment of a conservator is an absolutely extraordinary act (Tartuce, 2018, p. 1.601-2).

Thus, considering that extraordinary characteristic, it is important to assess the necessity of conservatorship through a case-by-case investigation, since law does not allow any unfavorable presumption in order to diminish the autonomy of such persons. To do so, regarding the case of persons with some kind of mental disability, before the appointment of a conservator, an expert analysis is necessary to determine their degree of autonomy, considering the existence of various degrees of psychological or psychiatric disorders. This is the procedure inserted in art. 753 of the Brazilian Civil Code of Proceedings – CPC –, regarding conservatorship, which also states that the expert's report must specify the acts for which there will be a need for a conservatorship.

Furthermore, as stated in art. 755 of CPC, the judge shall establish, when appointing a conservator, the limits of the conservatorship, associated with the degree of need of the conservatee, revealed by the expert's report, and shall also choose for the function whoever is capable of offering the best aid to the conservatee.

Regarding the analysis of the persons who could exercise such a role, the rule of art. 1.775 of Brazilian Civil Code is that there are preferential qualities for those who should be appointed as conservators, among spouses, partners, ascendants and descendants, so that only on the lack of such persons will it be up to the judge to choose a conservator.

The law is clear in establishing that it is up to the judge to choose the person's conservator when there are no persons with family ties to assume such responsibility. In this sense, the Recommendation of the Prosecution's Office, when requests that the Health Department's Head should appoint public servants to assume in court such a role, is legally questionable, since it is among the judge's competence to assess, according to the peculiarities of each case, who could perform as a conservator with greater quality.

In addition, the performing of a conservator's role is voluntary, since no person is obliged to accept and exercise it. Thus, any person who was nominated as conservator could refuse the task. There is no law rule that imposes such a restriction on individual freedom, as to be obliged to accept the appointment as a conservator of a person with mental disability, without even having the opportunity to refuse it. It is hard to imagine a situation in which someone could be forced to accept responsibilities that he claims not having interest in or even conditions or time to fulfill, especially when it comes to managing the income of another person[10].

[10] A more detailed analysis of this issue is not within the scope of this paper, but we understand that the Health Department's Head, within its institutional attributions, does not have adequate tools to find out which public servants could manage the income

The second proposal by the Public Prosecutor's Office, which recommends the creation of an Institutionalized Conservatorship Committee, says that it would be responsible for "planning, coordinating, standardizing, executing and controlling the pecuniary benefits of users of the Therapeutic Residences managed by the Health Department of Fortaleza, which are in lack of independence and self-determination and in need of conservatorship". The Bureau justifies this proposal on the overload of duties that the public servants that assume such role will have, so that the Committee could help them throughout this standardization of income management, facilitating, in theory, the performance of the role.

However, it is important to emphasize that there is not just a single model for exercising conservatorship. On the contrary, there is a relevant need to individualize the exercise of such public duty, in order to satisfy the specific demands of each person who needs such assistance. Thus, the function of a Conservatorship Committee that sought to standardize the conducts of the conservators of different conservatees would not be fulfilling the true scope of the law, which is to protect and assist in an individualized way each person in state of need.

Users of the Therapeutic Residences are men, women, some of them coming from other establishments, such as Juvenal, with different ages and degrees of autonomy and, therefore, with different needs and interests. A Committee that deliberates for a standardized way of using care benefits and other sources of income for all patients would subvert the main purpose of providing the best care interest of the conservatee.

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and eventual assets of persons who need conservatorship, considering that the tasks of such servants in the health area are not related to this kind of activity. The persons who work in Therapeutic Residences perform their duties as health professionals, promoting the necessary care to users of such services. However, it is not up to these professionals, nor to the Unified Health System, in general, to promote care related to assets, income or other business acts of such patients.

Additionally, it is important to emphasize that the Committee, as proposed, would exist within the Municipality's Health Department, a Bureau of the City's Executive Power, and would not replace the need for appointment of conservators who would, in fact, respond in court for the duty, once they have been designated.

As outlined by the Public Prosecutor's Recommendation, the Committee would be an internal commitment assumed by the Health Department with its servants, who would in fact be the ones obliged to fulfill the duties and burdens of a conservator due to a court decision. However, when giving a closer look to this issue, it is clear that the conservators would still be responsible for accountability before the court and for carrying out all legally required acts, since the Committee cannot be a legal replacement of such role. In this case, the Committee would not reduce or dismiss the legal obligations determined by conservatorship to the conservator, and, on the other hand, it would end up assigning one more obligation to the conservator, even if it could not be legally enforceable[11].

Thus, considering the unique existence of each human being, the various forms by which human dignity is manifested, as well as the particular needs of each individual, especially considering the peculiar situation of each person with a disability, it does not seem reasonable or even productive to seek a standard to the role of the conservators through an Institutionalized Committee.

The Recommendations of the Public Prosecution's Office – both the direct appointment of conservators by the Health Department's

[11] The proposal for a conservatorship Committee to be created under the structure of the Health Department, in our understanding, has no legal competence to establish specific criteria related to conservatorship, since this is a matter of Civil Law, which is exclusively of federal legislative competence, as stated in art. 22, item I, of the Federal Constitution. Some articles of that Recommendation, when establishing specific duties to the Conservatorship Committee, may suffer from material unconstitutionality, considering this inadequate assumption of legislative competence or, at least, they may be innocuous, given the impossibility of enforcement upon the appointed conservator.

Head or the creation of an Institutionalized Committee – seem not to take on account all of the issues beforementioned. It is a proposal that, along with its legal problems, has little practical viability.

Although it is not the goal of this essay to provide definitive answers to a matter as complex as this one, this research proposes a closer look and an accurate interpretation of arts. 39 and 40 of the Statute of Persons with Disabilities, which can guide the paths for a possible elucidation of the issue:

> Art. 39. Services, programs, projects and benefits under the public policy of social assistance to persons with disabilities and their families are aimed at assuring income security, reception, qualification and rehabilitation, development of autonomy, family and community coexistence, to promote access to rights and full social participation.
>
> § 1º Social assistance to persons with disabilities, according to the *caput* of this article, must involve an articulated set of services within the scope of Basic Social Protection and Special Social Protection, offered by SUAS, to assure fundamental security in the coping with situations of vulnerability and risk, by weakening of bonds and threat or violation of rights.
>
> § 2º Social assistance services for persons with disabilities in a situation of dependency should have social caregivers to provide basic and instrumental care.
>
> Art. 40. It is assured to persons with disabilities that do not have the means to provide for their own maintenance, nor to have it provided by their family, the monthly benefit of 1 (one) minimum wage, in accordance with Law n. 8.742, of December 7, 1993.

According to a combined interpretation of §§ 1º and 2º of art. 39, the SUAS – Social Assistance System – is responsible for providing assistance services regarding the persons with disabilities in situations of high vulnerability, in which are clearly included the persons with disabilities residing in the Therapeutic Residences.

The vulnerability of such persons is so great that the service needs to be multidisciplinary, involving not only the care of the person's health, but also all aspects of their life, which may involve managing their income and other acts related to businesses and assets that may be necessary. It is precisely for this reason that there are distinct areas of action within the scope of Social Security. While Health Department is responsible for procedures, doctor appointments and all other health protocols, it is up to Social Assistance to carry out other sorts of services, so that the person with a disability in need of assistance can obtain full care, regarding their various needs, which go beyond their physical or mental health.

Social Assistance has the responsibility, determined by the Constitution, to promote the integration of persons with disabilities, which may include the support from conservatorship, when necessary. Additionally, the benefit these persons receive – Benefit of Continued Provision, BPC – is legally established by LOAS – Social Assistance Organic Law –, assuring a monthly minimum wage to the persons with disability that can prove that they do not have the means to provide their own maintenance, nor to have it provided by their family.

Thus, if the person with a disability who is a user of the SRT in the city of Fortaleza receives the BPC and needs a conservator to support the management of his income and business acts, there is much more reason for such a conservator to be a designated professional of the Social Assistance System, considering their constitutional attributions.

Juvenal's case connects two critical situations, both from a Criminal and a Civil Law point of view, as outlined in the first two topics. The absence of dialogue between the legal branches creates situations of extreme vulnerability, causing huge difficulties in the conception of legal solutions that contemplate the human being within its complexity, which will be the issue addressed in the following topic.

4 EXTREME VULNERABILITY: BETWEEN CIVIL AND CRIMINAL LAW

When studying law, it is natural to divide it into areas: Public and Private Law, Criminal and Civil Law. When it comes to practice law, it is no different, the lawyers seek specializations in the chosen areas, the Courts – in larger cities – are specialized and public institutions such as the Public Prosecution and the Public Defense also tend to divide their members into specific branches of law.

Despite the advantages of specialized knowledge, allowing a professional to go deeper and get to know every detail of the themes they work with, specialization does not and cannot mean compartmentalization. The compartmentalization of knowledge, and consequently, of legal areas, causes a blurred vision, or even blindness, because the issue is treated as a problem merely of Criminal or Civil Law, not as an essentially human, complex problem, with its particularities and difficulties.

Rare seen to be the extremely simple situations that demand a trivial solution. Most human legal problems require a set of solutions that need to be interconnected, concatenated, in an interdisciplinary approach, taking into account the dimension of human nature, beyond the judicial solution, but also considering the social, economic and psychological aspects of the persons' lives. In the words of Costa and Rocha (2014, p. 197), "by proposing an interdisciplinary approach, one is not defending the annulment of the contribution of each science in particular, but an attitude that will prevent establishing the supremacy of a given science, to the detriment of other contributions equally important".

The law alone does not provide satisfactory answers. It is a science that needs all other areas of knowledge to support its performance. It is not possible to dissociate any legal solution of the necessary contribution of other sciences, such as medicine, psychology, sociology, criminology, engineering, economics, and many others, depending on

the specific case. On this reflection on the reconnection of knowledge in education, Lerbert (*apud* Morin, 2002, p. 529) states:

> One can establish a relationship between these knowledges by accepting to study the same object from different points of view, to make the student concretely realize the number of possible looks that can be directed at an object, but you can also see it in an extremely abstract way, looking from the most external level, which causes different sciences that study the object to connect or disconnect.

Thus, if there is a need for dialogue between different areas of knowledge, it is urgent that law be understood in its integrality[12]. In this sense, it is pertinent the reflection on the evolution of the Brazilian legal education model (Costa; Rocha, 2014, p. 186 and 190):

> Since the creation of legal courses in Brazil, it is possible to see evidence of the proposal for technical training of legal professionals. This is because the initial objective of the courses was to enable students to act in the new functions of the State. Despite that, it is since the University Reform that the technicist focus is established as a characteristic of the courses of the era. This phenomenon is due to the fact that the excessive specialization model is considered a dominant paradigm of modern science and due to the first movement of proliferation of law courses in the country.
>
> (...)
>
> Due to the context and proposals imposed by the reform of the 1960s, the university structures become vertical, to the detriment of academic autonomy and horizontal flexibility of interdisciplinary projects, while professors are dispersed between tight and closed departments in their own bureaucratic routine. To favor teaching with more focus on the technical

[12] There is even the systematic method of interpretation, which seeks to analyze legal norms among themselves. It assumes that the legal system is a unitary whole, which must present cohesion and coherence when analyzed in a systematic way.

> perspective, it is noticed an increasingly frequent movement of compartmentalization of knowledge. The different areas of knowledge are increasingly isolated from each other, with little or no interaction.

It is noticed that legal education is isolated in disciplines with a low degree of interaction and this is replicated as a professional model to be followed outside the university. Thus, specialization ends up leading legal professionals to often perform their role with absolute ignorance of other legal fields and to think under the bias of just one area of knowledge.

The exercise of interdisciplinary dialogue should start, primarily, between the legal areas itself, which results from the simple observation that every human being has a civil life and, eventually, it may also suffer from a criminal law suit implication. Life is unique, and the civil and criminal matters are deeply connected. The person who gets involved in a criminal law suit remains a father, son, husband, needs to manage his assets, works, continues to be a consumer, studies, and has all kinds of rights and duties.

The Civil Code accurately regulates someone's life history: from birth to death and its succession, passing through events such as becoming of age, marriage, protection of property and other possible complications along the way. One's civil existence is not usurped by any criminal law suit, and an individual, even if convicted, continues in the exercise of his civil life, albeit with certain limitations resultant of criminal conviction.

Thus, when law is compartmentalized, it pays attention only to a portion of reality, causing tragic legal solutions. They seem to solve an urgent problem, but actually contribute to the creation of other knots even more difficult to untie. Juvenal's case is a clear example.

Someone's vulnerability, which can be of so many types, can also emerge from this lack of a broad view of the problem. When human beings are treated only as the subject of a specific criminal law suit, they are exposed to treatment that does not take into consideration

the many other diverse issues of their life. Everything is put aside and gives space to the need to contain such dangerousness, measured by a flawed and arbitrary assessment of probability, as stated previously in this essay.

In Juvenal's case, it is also curious to notice that the same institution, as the proponent of the criminal law suit, which sought his institutionalization in a judicial psychiatric hospital, and which, as the responsible for law enforcement, neglected his situation of abandonment for 46 years, demands, many years later, as guardian of the interests of the incapable, measures in order to protect Juvenal's civil rights, through conservatorship[13].

However, the need for conservatorship so many years later occurred precisely from a situation triggered by his psychiatric institutionalization by more than four decades. The absence of family and community ties was aggravated by the long period of his removal from social life. It was exactly his prolonged institutionalization that made him distant from his civil life and his personal ties, which today are so necessary and that need to be fulfilled by unknown conservators.

Thus, Juvenal's exclusion movement is notorious. First, it was urgent to remove him from social life due to his mental condition, the risk he offered to society, based on a probabilistic analysis of dangerousness. This positivistic idea continues to influence Brazilian criminological thinking, which is verified when, although security measures are represented as treatment, they are regulated by a legal regime that is much more similar to that of criminal penalties, isolating the individual from society, as noticed by Shecaira (2018, p. 99):

> Rafaele Garofalo introduces the concept of fearfulness, which he holds to be the constant and active perversity of the delinquent

[13] The Public Prosecution has the attribution to defend the legal order, the democratic regime and the social and individual interests available, in accordance with art. 127 of Federal Constitutional. In art. 129, are stated the institutional prerogatives, such as the proposal of criminal law suits.

> and the amount of presumed evil that should be feared from him. This concept was decisive for later formulations concerning criminal intervention, proposed by positivists: the security measure. They verified the delinquent's social inadaptability, as well as the amount of evil presumed that one should fear from the dangerous individual, so that the security measure would be a containment instrument; thus, the fearfulness-security measure binomial arose.

If the security measure is applied under the justification that someone needs psychiatric treatment to avoid committing new felonies, the measure should actually be to care with absolute priority of that person. If the security measure has no retributive nature – as analyzed in the first topic –, Juvenal could have never gone through so many years cloistered and forgotten by a system that made him confined under the justification of subjecting him to medical treatment. In the end, Juvenal was always more a prisoner than a patient.

Wacquant (2011, p. 94) explains that, especially from the 1970s onwards, in a movement that starts in the United States, there is an abandonment of the ideal of rehabilitation and the consequent replacement by a new "penalogy" (2011, p. 94):

> Which purpose is neither to prevent crime nor to treat offenders aiming their eventual return to society once the sentence has been served, but to isolate groups considered dangerous and to neutralize their most disruptive members through a standardized series of behaviors and a random risk management, which look more like an operational investigation or a recycle of "social debris" than with social work.

The author deals with the choice of criminal policy that is now adopted. Yet that part of the justification for incarceration is rehabilitation, there is no effective measure in this sense, and the neutralization of individuals seems to be the main objective.

Such a criminal policy that excludes certain individuals in society – such as the ill, black persons and immigrants – is analyzed by

the author (2011, p. 70), who exposes the relationship between the increase of incarceration and the decrease of welfare policies:

> Collective causes are treated as pretexts in order to better justify individual sanctions that, being assured of having no influence on the mechanisms that generate delinquent behavior, are incapable of having other functions than that of reaffirming the State's authority at the symbolic level and strengthening its criminal sector in the material level, to the detriment of its social sector.

Regarding this, it should be emphasized that Juvenal was not released because he was considered to be able to return to social life, as the law stated is the purpose of such measures. Juvenal was simply forgotten. From the verification of his situation, the argument of dangerousness was left aside and gave way to the illegality of the excessive time in which he was cloistered, becoming now urgent to free him, which points to another contradiction in the system that connects imprisonment to medical treatment in the case of security measures.

After so many years in confinement, Juvenal was released to live in society, but there are no family or social ties able to help him in this transition, and that is why he needed to be welcomed by the Therapeutic Residential Service, as he had nowhere to go, now being an elderly person who needs even more special care.

As Foucault (2014, p. 224) exposes, society knows all inconveniences of prison and confinement, such as their dangerousness and uselessness, and yet do not know what to replace it with. It is the detestable solution that cannot be given up.

In the same sense, Davis (2018) also explains about our propensity to consider prison as something natural, being hard to imagine life without it. The author questions the reason of considering prisons as something irrefutable, and advocates for abolitionist ideas of incarceration.

Security measures cannot be tools of social exclusion. Not even under the justification of dangerousness can someone be banned from

maintaining and cultivating, even though with limitations, social and family ties. In fact, those ties must be fostered by the State, since it is an obligation due to the duties that come along with custody, as it also occurs with imputable prisoners who serve sentences.

Institutionalization brings to the State the duty of care and protection which, in the case of security measures, is not just related to someone's psychiatric treatment, as it must consider a future and possible life beyond the walls of the institution, considering that, if the measures are not perpetual, at some point they will end. Regarding the responsibility of the State, Brito (2016, p. 21) criticizes:

> In the forensic asylum, these gears are mainly represented by the juridical-punitive and medical-psychiatric knowledge. When you tell the history of a man hospitalized for more than four decades without the State being able to promote conditions of care, so that he can once again enjoy life outside the walls, the question about the practices of knowledge and power is relevant to the understanding of the management of the confinement of crazy bandits.

Isolating someone in a psychiatric institution with the alleged later purpose of reinserting him into social life, and also setting a minimum (and not maximum) time for this, seems paradoxical to us. To what extent the lack of social interaction of the mentally ill for a prolonged period of time would not make such a person more and more unfit for human interaction?

As a result of this long period of isolation, it is clear that the same mental condition that justified the imposition of a security measure now created the need of conservatorship. Free from forced institutionalization, but still dependent, Juvenal is considered incapable to manage his civil life, which is why the Public Prosecutor's Office demands that someone assumes the public role of a conservator, since Juvenal does not have any community or family ties.

Juvenal's civil incapacity results from the same mental condition that justified the security measure he served and, therefore, in theory, it has always existed. It is not a result from his institutional release, since he was always a person with a civil life who needed special attention.

There is an urgent need to rethink certain aspects of the criminal system, marked by exclusionary policies, especially regarding the integration of security measures to the civil conservatorship system. If an individual is considered criminally non-imputable, it should be mandatory to assess, through Civil Law procedures, whether that non-imputable person is also incapable or not for the acts of civil life, and, if required, a conservator should be appointed. It should be explained that the appointment of a conservator to assist in the criminal law suit, as established in § 2° of art. 149 and in art. 151 of CPP, in no way should be mistaken with the attributions of a conservator for civil purposes. Criminal and civil defense are diverse, but equally relevant.

On the other hand, it is urgent to review the length of the security measure, without the stipulation of a minimum term and supporting, as much as possible, the gradual reinsertion of the individual in society and the anti-asylum policy, which has long been a trend and recommends adoption of alternative solutions to psychiatric hospitalization, which should be the *ultima ratio* in case of non-imputability.

Juvenal's case is a warning to the murky reasoning of the legal system. It is a criticism on the branches that do not dialogue and that do not fulfill the purpose of law, an area of knowledge that aims to regulate life integrally.

Although impossible to predict all possible human situations that will demand legal protection, when assessing Juvenal's case more critically and in retrospect, it is clear that it could not have had a different outcome if the legal premises were questionable. There was no point in taking him away from social life if today the demand is to reinsert him into the community, including requiring persons to perform as conservators.

Criminal and Civil Law can and must have a common point, which should be at human rights, guardians of dignity. Thinking about solutions under the perspective of human rights means to see them considering, above all, the intrinsic value of any human being, regardless of their particular conditions, such as if they are fully capable or entirely incapable. While other legal branches think about particularities, the human rights think of universality, unity, indivisibility.

The acknowledgement that all rights have the same legal protection, since each one of them is essential for life with dignity, demands an action that promotes interaction among the diverse aspects of human life. It is necessary to balance the consequences of certain legal decisions, through a judgment that must go beyond the immediacy of the moment, in order to evaluate the long-term impact, benefits, and disadvantages of certain choices.

The perspective of human rights is especially important when we talk about persons in situations of extreme vulnerability, such as Juvenal and other persons with mental disabilities who received questionable treatments, which were excluded from community life and participation, and even today are not fully socially welcomed.

5 CONCLUSION

Security measures, despite having had considerable legislative evolution in recent decades, still have remnants of a positivistic criminology that portrays someone who has committed a felony as a dangerous offender, who needs to be isolated from life in society.

However, while the security measure grants this preventive basis, it is justified as a medical treatment capable of recovering these non-imputable persons. Thus, Brazilian legislation fails to apply specific temporary determinations, assuming competence that only the medical professional should be responsible for. It was noticed that

security and treatment measures have irreconcilable times, as they are not subject to the same premises and needs.

Juvenal Raimundo de Araújo is a tragic example of how confinement in psychiatric institutions does not achieve its purposes. He was forgotten and served time institutionalized far beyond what was defined in his sentence, without the expected recovery so he could return to community life. It is possible to see that the so feared dangerousness that once justified his institutionalization is no longer relevant to his release, because he should be freed anyway, due to the illegality of his confinement.

In addition, it was identified that the current need for conservators to manage Juvenal's assets and businesses stems exactly from the absence of family and community bonds, weakened and made impossible due to a lifetime of isolation forced by the State, through an exclusionary criminal policy.

Juvenal's case is a very frank illustration of the incongruity of different areas of law. Victim of both the criminal and the civil system. He is an example of the highest position of vulnerability that a human being can achieve. Despite the particularities that each legal branch has, they are, above all, knowledge that is at the service of the solution of human legal problems, and should therefore be analyzed systematically, in complementarity.

It can be settled that establishing meeting points between Criminal and Civil Law is urgent, and it can be achieved through the strengthening of legal education and professional practice with an emphasis on human rights and in the dialogue between the different areas of knowledge. The promotion of human dignity as a guide to judicial decisions is the best way to elucidate the possible paths that promote protection and care for those who need it most.

REFERENCES

BITENCOURT, Cezar Roberto. **Tratado de Direito Penal**: parte geral, vol. 1. 9ª ed. São Paulo: Saraiva, 2004.

BRASIL. MINISTÉRIO DA SAÚDE. **Residências Terapêuticas**: o que são, para que servem. 2004. Disponível em: https://bvsms.saude.gov.br/bvs/publicacoes/120.pdf. Acesso em: 10 out. 2020.

BRASIL. Conselho Nacional de Justiça. Departamento de Monitoramento e Fiscalização do Sistema Carcerário e do Sistema de Execução de Medidas Socioeducativas. **Relatório Geral do III Mutirão Carcerário do Estado do Ceará**. 2013. Disponível em: https://www.cnj.jus.br/wp-content/uploads/2019/09/Relat%C3%B3rio_Ceara_2013.pdf. Acesso em: 16 out. 2020.

BRITO, Luciana Stoimenoff. **Arquivo de um sequestro**: o homem mais antigo do Brasil. Universidade de Brasília (Doutorado em Ciências da Saúde). Brasília, 2016. Disponível em: https://repositorio.unb.br/handle/10482/19951. Acesso em: 21 de outubro de 2020.

BUSATO, Paulo César. **Direito Penal**: parte geral. São Paulo: Atlas, 2013.

COSTA, Bárbara Silva; ROCHA, Leonel Severo. Da Tecnicização do saber jurídico ao desafio de uma educação transdisciplinar. In: RODRIGUES, Horácio Wanderlei; SANCHES, Samyra Haydêe dal Farra Naspolini; AGUIAR, Alexandre Kehrig Veronese (org.). **Direito, educação, ensino e metodologia jurídicos**. Florianópolis: Conpedi, 2014. p. 183-203. Disponível em: http://publicadireito.com.br/publicacao/ufsc/livro.php?gt=137. Acesso em: 08 jan. 2021.

DAVIS, Angela. **Estarão as prisões obsoletas?** Rio de Janeiro: Difel, 2018.

FOUCAULT, Michel. **Vigiar e Punir**: nascimento da prisão. Petrópolis, RJ: Vozes, 2014.

GARCIA, Basileu. **Instituições de Direito Penal**: vol. I, tomo II. 2ª ed. São Paulo: Max Limonad, 1952.

MARQUES, José Frederico. **Tratado de Direito Penal**: vol. III – O delinquente – A sanção penal – A pretensão punitiva. 2ª ed. São Paulo: Saraiva, 1966.

MORIN, Edgar. **A religação dos saberes**: o desafio do século XXI. 3ª ed. Rio de Janeiro: Bertrand Brasil, 2002.

SHECAIRA, Sérgio Salomão. **Criminologia**. São Paulo: Thomson Reuters Brasil, 2018.

VIANA, Eduardo. **Criminologia**. Salvador: Juspodivm, 2020.

WACQUANT, Loïc. **As Prisões da Miséria**. Rio de Janeiro: Zahar, 2011.

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