INSTITUT ZA UPOREDNO PRAVO
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INSTITUT ZA KRIMINOLOŠKA I SOCIOLOŠKA ISTRAŽIVANJA
INSTITUTE OF CRIMINOLOGICAL AND SOCIOLOGICAL RESEARCH

PRAVOSUDNA AKDADEMIJA
JUDICIAL ACADEMY

VIII MEĐUNARODNI NAUČNI SKUP
VIII International Scientific Thematic Conference

MEDIJI, KAZNENO PRAVO I PRAVOSUĐE

Media, Penal Law and Judiciary

Tematski zbornik radova međunarodnog značaja
Thematic Conference Proceedings of International Significance

Urednici/Editors:

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CRIMINAL TRIALS "ON STREAMING": AN ANALYSIS OF THE POSSIBLE INFLUENCE OF THE MEDIA ON JUDGEMENTS BY THE JURY IN THE LIGHT OF THE BRAZILIAN LEGAL SYSTEM

Leonardo Simões Agapito*
Matheus de Alencar e Miranda**
Túlio Felippe Xavier Januário***

Trials by the jury are certainly important instruments to ensure, to the Defendant and to society itself, the possibility of a judgment by peers in certain types of crimes. However, the excessive exhibition of criminal cases made possible by mass media has progressively put in check the Defendants' guarantee of a fair trial in these procedures. This situation is particularly serious in systems – such as the Brazilian one – in which jurors can judge according to their "intimate conviction", since there is a real risk that they will form their opinion, not through the evidence produced in court, but rather on preconceived ideas. In addition to the long-standing incisive journalistic coverage, we observe that this issue has currently reached a new level: the release of films, series and documentaries about the cases, widely available on streaming platforms, even before the sentence. That being said, the aim of this investigation is precisely to analyze how media can negatively influence criminal trials by jury. For that, we will initially present the jury procedure provided for by the Brazilian legal system, with special attention to the issues related to the intimate conviction and the secrecy of the votes. Subsequently, we will present some exemplary cases in which there were proven deleterious effects resulting from the exorbitant media exhibition of the case before and during the trial. At the end of the paper, we will demonstrate that those repercussions go beyond the higher possibility of conviction (often undue), reaching family members and lawyers of the parties and even harming the Defendants in situations after the trial, whether with regard to the exercise of rights during the

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serving the sentence, or in their social reintegration after the release. Finally, we will propose some possible alternatives that, in our opinion, could improve the jury procedure in Brazil.

KEYWORDS: *criminal procedure, media influence, juror bias, Brazilian legal system.*

INTRODUCTION

The present paper aims to analyze the existing conflict between freedom of press and the Defendants' rights and guarantees, especially the presumption of innocence, due process and impartiality. For that, we will dedicate special attention to the Jury in the Brazilian legal system, in which the aforementioned issue presents major relevance, given the institute's procedures and particularities.

Although it is possible to identify some ancient institutes undeniably similar to the jury, such as the "centeni comites" or "judices jurati" in Rome and the "heliastas" in ancient Greece, it was, in fact, with the English *Magna Carta*, in 1215, that the institute was conceived in the forms currently known (Machado, 2012: 274; Rangel, 2008: 529). It was created as a means of resistance against the monarchical powers, which often manifested themselves through decisions handed down by the judiciary that were contrary to the interests of society. Article 48 of the abovementioned Law provided for that no one could be arrested or have their assets confiscated without a judgment by their peers, which are represented by the so-called "Grand Jury" or "Accusation Jury". Since it was understood that it symbolized the divine will, jurors should judge according to what they knew, based on the "*vere dictum*", regardless of any evidence (Rangel, 2008: 529-530).

In the same sense, with the 1789 revolution, the jury procedure was instituted in France in order to fight the methods, ideas and abuses committed by magistrates during the "*ancién régime*", which reflected the purest authoritarianism of the time. It then began to be disseminated in different European countries as an institute for the protection of freedoms and democracy, representing an undeniable restriction on judicial and monarchical arbitrariness (Nucci, 2014: 677).

In Brazil, the Jury was established in 1822, comprising 24 "good, honorable, intelligent and patriotic" citizens. It was initially competent for the judgment of crimes of freedom of press' abuse and its decisions was reviewed only by the Prince Regent. In the period between 1937 and 1946, the institute was abolished from the Brazilian legal system, but it was reestablished and is currently provided for by Article 5th, XXXVIII, of the Federal Constitution. Its competence encompasses the judgment of intentional crimes against life, consummated or attempted (Nucci, 2014: 678-679). It is important to point out the court will be competent to judge the

related crimes, whether against life or not (Dezem, 2015: 754-755). Currently, the Brazilian jury comprises one presiding judge, who will be responsible for directing and conducting the procedure, as well as writing the sentence, and by seven jurors (Sentencing Council), previously drawn, who will be responsible for establishing the facts and the law applicable to the case (Oliveira, 2014: 717).

Through this brief historical introduction, it is clear the relevance of the jury as an instrument to reinforce the democratic criminal procedure at times when authoritarianism surpassed the barriers of the executive power and invaded the judicial sphere[1]. However, as will be demonstrated in the course of this paper, the institute presents some obstacles that are difficult to overcome, making the doctrine less and less unison with regard to the benefits of this procedure.

In this article, we will analyze the issues that may arise from the adoption by the jury procedure, of the intimate conviction system, especially when heightened by the strong media coverage that cases involving serious crimes receive. After a brief comment on the Brazilian legal system regarding the jury trials, with special focus on the moment of the decision to be taken by the sentencing council, we will present some studies that support the hypothesis that jurors, as lay judges, are especially subject to external influences, that is, to not form their conviction solely based on the evidence produced in plenary. After that, we will present some doctrinal proposals that aim to solve this issue and provide greater guarantees of fair decisions in these procedures.

1. INTIMATE CONVICTION AND THE CONSEQUENT LACK OF FOUNDATION FOR JURORS' DECISIONS

As Antônio Alberto Machado (2012: 271) highlights, the jury court is one of the judicial bodies that arouse the most controversy in the Brazilian legal system. It has defenders and opponents without, however, any prospect of its extinction, or even of solving the problems that have accompanied it since its creation. Among its main controversial points, the lack of explanation of the decision-making grounds deserves to be highlighted. As Eugênio Pacelli de Oliveira (2014: 340) explains, in regular criminal procedures, Brazil adopts as system for evidence valuation the *free motivated conviction*, which imposes the necessary explanation of the judgment's grounds. Rational persuasion, as it is also known, does not allow the

[1] According to Diogo Malan (2021: 255), in North American constitutionalism, the jury is seen not only as a fundamental right of the accused, but as a true political institution fundamental to democracy, especially due to its importance in popular control over criminal justice and against arbitrary, corrupt, oppressive or tyrannical practices.

judge to transform his/her experiences into part of the evidentiary set. He/she must extract his/her conclusions from the evidence produced during the trial, being able, then, to form his/her free conviction. He/she must, however, to substantiate it in the sentence, persuading the parties and the community (Nucci, 2017: 399-400).

In turn, in the jury, the jurors value the evidence and form their conviction through the method of "intimate conviction", that is, they do not need to expose the facts and evidence that led them to such a decision and do not even need to stick to the facts ascertained during the trial (Vieira, 2003: 246). As Guilherme Madeira Dezem (2015: 419) explains, this system is based on an idea of the "magistrate's moral certainty", according to which justifications regarding his/her understanding and reasons would not be required in judgments.

One of the major risks of this system is that jurors do not judge only according to the procedurally obtained truth, but rather allow themselves to be influenced by preconceived ideas, prejudices and all kinds of intolerance that can arise not only in the plenary, but also based on information obtained by them through means not necessarily committed to the truth (Oliveira, 2014: 719). In this sense, Aury Lopes Jr. (2013: 1061) understands that the problem in question is aggravated by the fact that jurors are not assured by the same organic guarantees as members of the judiciary, making them more susceptible to external influences and pressures, such as press, politics and economical matters[2].

2. THE POSSIBLE MEDIA INFLUENCE IN THE FORMATION OF THE JURORS' JUDGMENT

The necessary compatibility between the freedom of the press, inherent to any democracy, and the maintenance of the state of innocence of the defendants until the final conviction changes this situation, is a very controversial issue and difficult to resolve. In Brazil, this problem has gained considerable prominence, not only in face of recent high-profile cases, to which the media has dedicated hours

[2] We must not forget that although there is a phase prior to the plenary session, known as the "pronúncia" and decided by the judge, as a rule, the ill-fated principle "in dubio pro societate" is invoked in cases where there are doubts regarding the authorship of the crime. As Marchi Júnior (2021: 174) denounces, the vicious circle observed in this context is serious, as the principle is applied to authorize reckless denunciations and the "sovereignty of verdicts" is invoked to support the immutability of the decisions taken by jurors. In fact, it is because of principles such as the "in dubio pro societate", that Ana Cláudia Bastos de Pinho and José Sales (2022: s. 2.1) refute the statement that the jury is a fully democratic institution. On the contrary, not even the most varied reforms carried out in the Brazilian criminal procedure were able to suppress the traces of authoritarianism present in it. Silva and Kavalli (2022: s. 17.5) also criticize the principle, explaining that it performs the function of making the valuation of the evidence presented by the prosecution unnecessary, facilitating the admission of the accusation without imposing major analysis of the achievement of a safe standard of proof.

and pages in order to get ahead of the judiciary and reach conclusions before even the closure of the police investigation. The methods and discourses adopted by the press spread the culture of fear and a sense of constant danger, forming public opinion towards the acceptance of punitive discourses and increasing pressure on the judiciary, for more severe and constant punishments[3].

In that sense, as explained by Luana Magalhães de Araújo Cunha (2012: 204), communication agents are not limited to transmitting objective data on criminal proceedings, but also try to decipher the language used by justice, often transforming the facts in large public spectacles, making them more attractive to the population.

Specifically with regard to cases within the jurisdiction of the Jury, the so-called "Caso Nardoni" gained notoriety in Brazil. It refers to the alleged murder of a 06 (six) year old girl, who would have been thrown from an apartment window in March 2008. The main suspects of the crime were her father and stepmother. The investigation and trial were marked by massive press coverage, with the leaking and transmission to the public of confidential information and even changes to the programming schedules of the main TV channels, so that the testimonies, investigations, arrests and the trial were followed live (Moretzsohn, 2010: 513).

The result of all this media exposure, which included constant reenactments of the crime, interspersed with photos of the child when she was still alive and smiling, interviews with her mother still in mourning, participation by members of the country's largest broadcasters in public protests and masses and, of course, statements by the prosecutors, who tirelessly went public to promise justice, could be seen in the public reaction: weeks after the crime, people from different parts of the country camped at the door from the defendants' house, chanting and throwing stones at both (Araújo, 2008: 193). Few months before the trial, the Court's telephone lines were congested due to the large number of people who, unaware of the jury procedure, would like to be jurors in the case to convict the Nardoni couple (Moretzsohn, 2010: 518). Even the defense attorney was attacked in front of the Court (Farah, 2010).

More recently, the relevance of these situations has been further aggravated by the phenomenon of streaming platforms. In the well-known case of the "*Boate Kiss*", for example, in which 242 people died and more than 600 were injured in a fire in a nightclub in January 2013, at least two documentaries were produced about the case and made available through these platforms, before final judgment by the competent jury.

This case also highlights a different problem: media coverage creates pressure around the investigation to charge the defendants for murder with the killing intent

[3] "Crimes against life often provoke passionate and irrational reactions. Considering the range of the media, it is not uncommon for a crime to be widely publicized, interfering with the preconceptions of potential judges of the case. It should be noted that the press - in their desire to reach more audiences - may act in a sensationalist manner, pre-judging the defendant, causing undue influence that goes beyond the limits of the lawsuit and obstructs an impartial trial" [free translation" (Silva; Avelar, 2023: s. 8.4.2).

(not by accident). As pointed out by Carlos Eduardo Rebelo (2022: 151), Brazilian law is not precise in the distinction between *intentional* and *unintentional crimes,* especially due to the intermediary category of the "*dolus eventualis*". According to the Brazilian Penal Code, the categories of intention and assumption of risk are equated, for the purposes of configuring *dolus* (Brasil, 1940)[4]. However, only intentional homicides are tried by jury. Therefore, there is usually media pressure for charging with intentional murder, so that the Defendant be judged by the jury. This situation raises doubts both regarding the media coverage of jury cases and the Brazilian handling of *dolus eventualis* (Rebelo, 2022: 223).

It is possible to observe, therefore, that although the media plays a very important role in terms of reinforcing publicity in criminal trials, often acting in favor of the Defendant and ensuring that there is no arbitrariness in his/her judgment, in other cases, it is extremely harmful, violating rights and guarantees, such as the presumption of innocence[5]. This fact is even more serious if we take into account the possibilities of deceit by the media, since it elaborates conclusive stories in very preliminary stages of the investigations. As can be concluded from the example of the "*Escola base*" [6] case, the serious damages caused by the disclosure of untrue facts by the press[7], although indemnifiable, often entail irreversible consequences, especially when related to criminal cases of major repercussion.

With regard to jurors, due to their (general) lack of legal formation, absence of organic guarantees and judgment by intimate conviction, their exposure to media material tends to affect them more and put into question guarantees such as due process, impartial judge and the presumption of innocence (Januário, 2019: 520)[8].

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[4] For a critical analysis of this framework: Januário (2017), Januário (2018).

[5] In this sense, as explained by Jorge de Figueiredo Dias (1974: 226), exceeding the limits of ideal publicity in a specific case poses a high risk against defendants' fair trial, as it can trigger emotional or demagogic campaigns in their favor or against them. According to the author, in some cases, the simple communication of data relating to the authorship and culpability of a given case can violate the most basic principles of criminal proceedings, ending up replacing the "legal trial by court" with the "trial by newspaper".

[6] In March 1994, parents of students at a school in São Paulo complained that the school's owners and employees had committed sexual abuse against their children. The chief investigator in charge, based on preliminary information and without checking their verisimilitude, disclosed the facts to the press, which led to a great popular commotion, causing the school to be looted and vandalized, the owners to go bankrupt and receive several death threats through anonymous phone calls. Months later, the investigation concluded that they were innocent, as the alleged abuses never have occurred (Azevedo, 2010: 206-207).

[7] Raphael Boldt (2021: 775) explains that in the society of networks and digital platforms, the decline of traditional media and the consequent decentralization of information transmission has weakened the quality and veracity of content that circulates on digital networks. In this sense, the emergence of the phenomenon of fake news is a decisive factor in understanding the transformations faced by society today.

[8] "Therefore, there is always doubt, because often the person sitting there as a juror is forged by the common sense of a society that, as we know, can be conservative and punitive, absolutely instinctive and reactive, very distant of the pillars of Law and, thus, of action, process, freedom, responsibility and others" [free translation] (Coutinho; Berti, 2022: s. 10.2.2).

In this sense, Ana Lúcia Menezes Vieira (2003: 246) warns that the effects of coverage of cases by the media is particularly worrying in the context of trials within the jurisdiction of the jury, since the impression that it conveys regarding the crime often ends up impacting jurors more than the evidence produced in plenary, since they are laypeople and tend to be more permeable to public opinion and the commotion created around the case.

According to studies carried out by Moran and Cutler (quoted by Bidino, 2014: 232-233), the exposure of jurors to the publication of information unfavorable to the defendant reinforces or creates certain prejudices in them, which there is no reason to believe will be eliminated before the final verdict. On the contrary, it can lead them to have a greater tendency to decide against him/her.

3. THE NEED FOR A BALANCE BETWEEN THE PRESUMPTION OF INNOCENCE AND FREEDOM OF THE PRESS

In light of the above, with regard to the Jury, there is a clear conflict of principles, guarantees and purposes of the criminal procedure. Freedom of expression through intellectual, artistic, scientific and communication activities is provided for by Article 5th, IX, of the Federal Constitution of Brazil, which also guarantees its exemption from censorship or license. That means that the individuals are free to externalize the judgments coming from their conscience through any instrument that makes it possible (Medina, 2014: 74).

As explained by Daniel Sarmento (2013: 255), freedom of expression, as well as freedom of thought, is based on the possibility of interaction, between individuals, for the formation and development of their personalities, also protecting true participatory democracy through broad access to information and opinions on matters of public interest, enabling the influence of fellow citizens and the prevalence of the best ideas.

It is also important to highlight the principle of publicity, provided for the Brazilian Federal Constitution in its Article 5th, LX, which only allows its restriction in cases where the defense of privacy or social interest so require. Article 93, IX, also provides for that all judgments will be public and only some acts may be restricted to the parties and/or lawyers, when there is no harm to the public interest in information (Brasil, 1988).

Therefore, the definition of a point of practical balance between the publicity of trials and the defendants' rights to an impartial trial and not to be considered guilty before a judgment is very controversial, especially in cases of the jury with major media repercussion. How to guarantee a fair and impartial judgment in such situations?

Article 201, §6, of the Brazilian Code of Criminal Procedure provides for the possibility of the judge determining judicial secrecy regarding data, statements and any other information contained in the records, with the purpose of, among others, avoiding harm to life privacy, honor, intimacy and the image of the victim, resulting from possible disclosures (Brasil, 1941).

It is possible to observe that, although part of the doctrine understands that the preservation of the defendant's rights must also justify the decree of judicial secrecy (since the public execration of any participant should not be a rule in criminal proceedings), in the few cases of application of this institute, protection of the victim is generally invoked, especially in cases related to sexual crimes or involving minors (Nucci, 2017: 540).

The Brazilian legal system also provides for the so-called "*desaforamento*", through Article 427 of the Criminal Procedure Code. It consists of the possibility of changing the competent court, at the request of the Prosecution, the Plaintiff, the Victim, or the Judge, when public order justifies it or there is doubt about the impartiality of the jurors or the safety of the Defendant. According to Nucci (2008: 107), especially with regard to cases of suspected jury impartiality, the aforementioned institute would not offend the principle of natural judge, since it is an exceptional measure, provided for by law and which aims precisely to guarantee impartiality in the trial, as there would be no possibility of justice with a biased panel of jurors. It is, however, a measure that is rarely accepted, since the impartiality of jurors is difficult to prove in court[9]. Furthermore, as Simone Schreiber (2008: 224ff) points out, Brazilian jurisprudence, although it is quite inclined to accept the requests for "*desaforamento*" presented by the Prosecution in cases of risk of intimidation of jurors by Defendants with great economic power, is largely contrary to Defense requests.

In our opinion, a change in the positions of the Brazilian courts on this matter is imperative, since the media increasingly exert influence on the formation of public opinion, often through programs that sensationalize criminality and which are not always committed to constitutional rights and guarantees, ending up exercising an early and public judgment of the Defendant (Batista, 2003: 261).

Therefore, despite being an exceptional measure, the "*desaforamento*" must be effectively applied when there are solid evidence of the jurors' impartiality, especially if we consider that, supported by the system of intimate conviction, they will be able to take into account information obtained from outside the trial and without commitment to the truth (Silva, 2015: 59).

[9] As exemplified by Aury Lopes Jr. (2013: 1031-1032), if the proof of suspicion due to breach of impartiality of a single judge is already difficult to accept, what can we say about proving a generic allegation of impartiality of a diffuse number of jurors.

It is important to highlight, however, that despite proving to be an instrument capable of preventing an partial trial in small towns, in which the seriousness of the crime or the identity of the victim or aggressor has led to widespread public commotion, the same cannot be said in relation to nationally notorious cases or those occurred in large cities, since their transfer would be ineffective (Nucci, 2008: 109). For these situations, Guilherme de Souza Nucci (2017: 535) defends a change in the attitude of the media itself. According to him, in order to make freedom of speech compatible with the parties' right to privacy and a fair trial, the press should refrain from delving into the personal lives of the procedural participants, especially the defendant, in addition to avoiding expressing opinions related to the case, remaining solely and exclusively in the scope of factual news.

There is also another idea to point out: the possibility of the defendant requesting not to be tried by jury. It is still not accepted by Brazilian jurisprudence, but a historical interpretation of the jury's constitutional provisions arguments in its favor. As Rangel (2008: 529-530) highlights, the jury was first conceived as the right to be judged by peers instead of the monarch. Considering that its competence is set in Article 5th of Brazilian Constitution, which enlists the fundamental rights of every citizen in Brazilian territory, it is possible to consider the jury as an individual guarantee. If the understands that media coverage its harmful by leaving him/her in a bad situation before the jury, he/she could ask for a technical (and not peers') judgement.

Paulo Rangel (2008: 554) also understands that Brazilian Jury must be readjusted to adapt to the commandments of the Federal Constitution, and the rules that contradict them must be revoked. In this sense, despite providing for the secrecy of votes, in its Article 5th, XXXVIII, "b", the Brazilian Magna Carta provides for, in its Article 93, IX, that all trials will be public and that all decision will be motivated, under penalty of nullity. In this way, he sustains the end of the system of intimate conviction, even within the Jury.

Dealing with what he considers to be the "*Achilles heel*" of the Jury, Lênio Streck (2001: 173-174) understands that a model in which there is no due justification or motivation of decisions is not compatible with the Democratic State of Law. He asserts, however, that this is difficult issue to solve, since the Federal Constitution guarantees the secrecy of votes. However, he understands that a Constitutional Amendment that changes the functioning of the jury would not violate immutable clauses, because the so-called "secret room" and, consequently, the secrecy of the votes, would be maintained. In this case, the Brazilian Jury would be able to operate in a different way and a different model could be scientifically investigated and designed, comparing the current one to others like the American, that asks to the jury for a unanimous verdict. It could be implemented asking for the jury not just the verdict (that could be by majority and not necessarily unanimous), but also its motivation.

Aury Lopes Jr. (2013: 1067) also understands that, despite the Jury not being essential for justice, its abolition is unfeasible, as it is constitutionally provided for. He defends, however, that profound and structural changes be made to it, in order to be compatible with an effectively guaranteeing criminal process.

Analyzing some instruments provided for by the North American legal system, which can be divided into i) those that aim to prevent the selection of partial jurors, ii) those that intend to neutralize any influences received by the selected jurors, iii) those that intend to shield them from receiving new information transmitted by the media and iv) those that aim to restrict the broadcasting of certain content by the press, Claudio Bidino (2014: 240-254) argues that this last option is the most effective in protecting jurors against undue media influence, despite highlighting the little practical application of this measure. According to the author, greater regulation of the sector is necessary, and the dissemination of certain information should be being prohibited, especially in the embryonic stages of investigations and actions.

In our view, in cases where the media repercussion is only local, the "*desaforamento*" is still the main instrument to guarantee the impartiality of jurors, and should therefore be applied in a more significant, albeit exceptional, manner by the Brazilian courts, especially when there is strong evidence that the repercussion of the case will influence the trial.

In turn, in cases where media exposure occurred in a relevant manner throughout the national territory, the institute in question would end up proving to be innocuous and should, therefore, not be applied. However, we do not sustain, given the risks inherent to it and the excessive restriction of guarantees it implies, that regulating the press is the best path. We understand, it is true, that a change of mentality among its members is favorable and necessary. Besides that, giving the defendant the right to choose between a peers' or a technical judgement could also alleviate this burden.

Having said that, we believe that, in fact, at the current stage reached by criminal procedural law, in order for it to be effectively garantistic and compatible with a Democratic State of Law, there cannot be a system in which unmotivated decisions are admitted, such as that of intimate conviction adopted by the Jury. Therefore, in the specific case of the Brazilian legal system, among the concrete and basic changes that should be carried out at the institute, it is necessary to modify the decision-making system, so that the guarantees for the secrecy of votes and the necessary justification for decisions can be made compatible.

Furthermore, we agree with Pinho and Sales (2022: s. 2.2) regarding the need for garantistic reinforcement in the stages prior to the plenary. In other words, careful compliance with the chain of custody of evidence, admissibility of defensive investigations and strict observance of the judge's impartiality and the guarantees of defense and contradictory in the phase of "pronúncia".

CONCLUSION

The jury has shown itself, throughout history, to be an important instrument of resistance to the abuses characteristic of authoritarian governments, having been disseminated as a strong example of a democratic institution. Over the years, however, new questions regarding the functioning of the institute were raised, causing not only the methods, but even its imperiousness, to be questioned by the doctrine. Unlike in the past, the arguments used by the Jury's refractors are not authoritarian in nature, but, on the contrary, based on the intention of protecting Defendant's guarantees, sustaining substantial changes or even the extinction of the institute.

As presented, one of the main problems identified in the Brazilian Jury concerns the decision-making model of the jurors, who, based on the "intimate conviction" system, do not substantiate or motivate their verdicts. This issue becomes even more problematic given the increasing influence of the media in criminal cases and the lack of organic guarantees and legal training of lay judges, who find themselves more defenseless and vulnerable in the face of external pressure. Furthermore, depending on the level of repercussion of the case, they already reach the trial contaminated by countless "evidence" collected by the press, which would often be procedurally inadmissible.

Therefore, in order to guarantee the impartiality of the jurors and, consequently, the Defendant's right to a fair trial, the Brazilian legal system provides for the institute of "desaforamento", which proves to be a suitable instrument for cases in which, despite having achieved major repercussion and popular commotion, it did not exceed the limits of a small region or district, thus making it possible to transfer it to another court in which the case is still relatively unknown.

In other situations, however, the aforementioned institute is not effective, since wide national dissemination would make it impossible to transfer it to a location where the jurors did not already have a preconceived idea of the case. For this reason, and taking into account the ineptitude and inadequacy of the other instruments available in the Brazilian legal system, it is necessary to make changes in the Jury's decision-making system, so that, despite guaranteeing the secrecy of the votes, the final verdict is well-founded, enabling the eventual analysis of the correlation between the decision and the evidence produced in the trial. With that, decisions corroborated only by personal prejudices and ideas produced and reinforced by the press could be avoided, readjusting, thus, the "people's Court" to a garantistic criminal procedure inherent to a Democratic State of Law.

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KRIVIČNA SUĐENJA "NA STRIMOVANJU": ANALIZA MOGUĆEG UTICAJA MEDIJA NA PRESUDE POROTE U SVETLU BRAZILSKOG PRAVNOG SISTEMA

Suđenja pred porotom su svakako važni instrumenti da se okrivljenom i samom društvu obezbedi mogućnost donošenja objektivne i pravične presude za određene vrste krivičnih dela. Međutim, prekomerno izlaganje javnosti krivičnih predmeta koje su omogućili masovni mediji postepeno je stavilo pod kontrolu okrivljenje i dovelo u pitanja garanciju pravičnog suđenja u tim postupcima. Ta situacija je posebno ozbiljna u sistemima – kao što je brazilski u kojima porotnici mogu da sude u skladu sa svojim "ličnim ubeđenjem", a gde postoji da će formirati svoje lično mišljenje nezavisno od dokaza izvedenih na sudu, već zasnovanog na predubeđenjima. Pored dugogodišnjeg oštrog načina izveštavanja od strane novinara, primećuje se da je način izveštavanja o krivičnim delima dostigao novi nivo: puštanje filmova, serija i dokumentarnih filmova o slučajevima, široko dostupnih na striming platformama, čak i pre izricanja kazne. Cilj ovog istraživanja je uprava analiza načina na koji mediji mogu negativno da utiču na stavove porote u krivičnim postupcima. Stoga ćemo najpre predstaviti proceduru po kojoj postupa porota u brazilskom pravnom sistemu, a sa posebnim osvrtom pitanja koja se odnose na lični sud i tajnost glasanja. U nastavku ćemo predstaviti neke primere u kojima su dokazani štetni efekti preteranog medijskog izveštavanja o slučaju kako pre, tako i tokom suđenja. Na kraju rada dokazaćemo da te posledice prevazilaze mogućnost osude i izricanja teže krivične sankcije (često neopravdane), da mogu da izlože javnoj osudi članove porodice i advokate stranaka, pa čak i da nanesu štetu okrivljenima u situacijama nakon suđenja, izdržavanja kazne i tokom njihove društvene reintegracije nakon izdržane kazne. Cilj takvog pristupa je predlaganje mogućih alternativan, koje bi prema našem mišljenju mogle da unaprede proceduru odlučivanja od strane porote u Brazilu.

KLJUČNE REČI: *krivični postupak, uticaj medija, predsude porote, brazilski pravni sistem.*