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REDUCTION OF THE AGE OF CRIMINAL RESPONSABILITY: FAVORABLE, AND OPPOSITE ASPECTS A ANALYSIS OF THE ALIEN SYSTEM

REDUÇÃO DA MAIORIDADE PENAL: ASPECTOS FAVORÁVEIS, CONTRÁRIOS E ANÁLISE DO SISTEMA ALIENÍGENA

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RESUMO

A crescente onda de criminalidade fomentou a discussão sobre a redução da maioridade penal, ganhando espaço no meio acadêmico e social. De acordo com o sistema adotado pelo Brasil, os maiores de 12 e menores de 18 anos somente podem responder pelos atos ilícitos praticados nos termos do Estatuto da Criança e do Adolescente, ficando impossibilitada a aplicação da lei penal. O constituinte pressupôs que tais indivíduos não podem ser plenamente responsabilizados por seus atos por não terem o completo desenvolvimento mental. Na mesma linha, o modelo prisional brasileiro tem demonstrado que a finalidade reeducativa é meramente utópica, devendo-se preferir, segundo alguns, as medidas socioeducativas do sistema menorista. Para a corrente favorável à alteração da maioridade, o estágio de desenvolvimento atual, em contraposição ao vivenciado em 1940 (quando da edição do Código Penal) deve

ser levado em conta, por refletir diretamente no grau de compreensão dos adolescentes de hoje. No presente estudo, serão analisados os principais argumentos, favoráveis e contrários à mencionada alteração legislativa, bem como examinados alguns modelos estrangeiros, em especial o adotado no Canadá.

Palavras-Chave: Adolescente Infrator. Redução da Maioridade Penal.

ABSTRACT

The rising tide of crime has encouraged discussion of the reduction of legal age, gaining ground in the academic and social environment. Under the system adopted in Brazil, over 12 and under 18 can only answer for the torts committed under the Statute of Children and Adolescents, being unable enforcement of criminal law. The constituent assumed that such individuals cannot be held fully accountable for their actions for lack of full mental develop-ment. In the same vein, the Brazilian prison model has shown that reeducation purpose is merely utopian, should be preferred, according to some, the social and educational measures system. For the favorable current to the change of majority, the current stage of development, as opposed to experienced in 1940 (when the issue of the Criminal Code) should be taken into account, directly reflect the degree of understanding on today's teenagers.

In this study, the main arguments in favor and against the mentioned legislative change will be analyzed and examined some foreign models, especially the one adopted in Canada.

KEYWORDS: Teenage Offender. Reduction of Legal Age.

1 INTRODUCTION

Newspapers across the country reported, on April 3rd, 2012, that a 17-year-old adolescent, who had registered more than 120 offenses, attacked a prosecutor with scissors during her hearing. Death was prevented by the quick intervention of the prison guard, the judge, and the minor's own lawyer (AZEVEDO, 2012).

About a year later, we watched in horror as 46-year-old dentist Cinthya Magali Moutinho was murdered in São Bernardo do Campo. The victim was burned alive in her office after the robbers received information that she had only R$ 30.00 (thirty reais) in the bank. The fire was set by a 17-year-old teenager

who, according to the delegate reported at the time, recounted the episode "as if he were telling the chapter of a soap opera" (MELO, 2013).

In Tocantins, in July 2015, a seven-year-old child was raped by three teenagers while riding a school bus, while another teenager filmed the action. All the offenders were between 14 and 16 years old (REIS, 2015).

In Campo Grande, an adolescent author of four homicides, three attempted homicides, and several robberies stated that this is his way of enjoying life and that the short time he spent in prison is not suficient to discourage him from committing illicit acts (VITORINO).

Facts such as these reinforce the feeling of insecurity in society and rekindle the discussion on the option of the Constitutional Council to definit the age of criminal majority as of 18 years old. The Federal Constitution, in art. 228, maintains the model used since the edition of the Penal Code in 1940, which, according to a number of jurists and civil society, represents an outdated system.

A second group, however, does not believe that the reduction of the age of majority is capable of solving the problem of criminality, basing itself on the failure of the criminal prison system. This is the object of this study, which aims to analyze the arguments of both schools and draw a parallel with the model adopted in some countries, such as Canada, which is based on the personality and development of adolescents, and not merely on their biological age.

For a better understanding of the theme, we will initially make a brief summary about the current system of accountability of juvenile offenders, according to the Brazilian legal system.

Next, we will proceed to the analysis of the arguments in favor of and against the modification of the juvenile age, seeking to clarify the weaknesses of each trend.

Finally, we will approach the subject from the viewpoint of foreign legislation, more specifically that of Canada, the United States, and some European countries, in order to highlight the advantages of this system.

2 ACCOUNTABILITY SYSTEM FOR INFRACTIONAL ACTS IN BRAZIL

Initially, it is necessary to understand the analytical concept of crime that has been discussed by legal scholars over the decades. In Brazil, the finalistic concept prevails, according to which a crime is every typical, unlawful and culpable act. In this regard, we have the words of Toledo (1994, p. 80):

> Substancialmente, o crime é um fato humano que lesa ou expõe a perigo bens jurídicos (jurídicos-penais) protegidos. Essa definição é, porém, insuficiente para a dogmática penal, que necessita de outra mais analítica, apta a por à mostra os aspectos essências ou os elementos estruturais do conceito de crime. E dentre as várias definições analíticas que têm sido propostas por importantes penalistas, parece-nos mais aceitável a que considera três notas fundamentais do fato-crime, a saber: ação típica (tipicidade), ilícita ou antijurídica (ilicitude) e culpável (culpabilidade). O crime, nessa concepção que adotamos, é, pois, ação típica, ilícita e culpável.

Based on this assumption, we can say that the typical fact is composed of conduct, result, causality link and typicality in the strict sense (including the formal and the conglobant). Ilicitness or unlawfulness is the absence of behavior in a state of necessity, self-defense, strict compliance with legal duty, or the regular exercise of a right. Finally, culpability will analyze the potential awareness of illegality, the requirement of a different conduct and imputability (GRECO, 2008, pp. 141-144), the latter being the element that most interests us for the present study.

As stated by Greco (2008, p. 396), "for the agent to be held responsible for the typical and unlawful act that he has committed, he must be imputable. This is, therefore, the ability to attribute to someone the commission of a typical and unlawful act.

According to Sanzo Brodt (1996, p. 46),

> A imputabilidade é constituída por dois elementos: o intelectual (capacidade de entender o caráter ilícito do fato), o outro volitivo (capacidade de determinar-se de acordo com esse entendimento). O primeiro é a capacidade (genética) de compreender as proibições ou determinações jurídicas. Bettiol diz que o agente deve poder 'prever as repercussões que a própria ação poderá acarretar no mundo social', deve ter, pois, 'a percepção do significado ético/social do próprio agir'. O segundo, a 'capacidade de dirigir a conduta de acordo com o entendimento ético- jurídico'. Conforme Bettiol, é preciso que o agente tenha condição de avaliar o valor do motivo que o impele à ação e, do outro lado, o valor inibitório da ameaça penal.

This definition of imputability is essential for understanding the theme we are dealing with here. The Brazilian system has established two factors for excluding

imputability: psychological immaturity (mental illness or incomplete development) or age immaturity.

With regard to the age criterion, the Criminal Code of 1830 stated that anyone under the age of 14 was not responsible (and therefore could not be held accountable for typical and illegal acts). The 1890 Code provided for absolute impunity for those under 9 years of age and relative impunity for those over 9 and under 14, who would be held responsible under the terms of the aforementioned law if they demonstrated discernment. Both laws received a lot of criticism because of the low age limits, especially considering the social development of the time.

Decades later, under the terms of article 228 of the 1988 Federal Constitution and article 104 of the Child and Adolescent Statute, it was defined that those under the age of 18 were not criminally responsible. This does not mean, however, that they are absolutely irresponsible for their actions.

The Statute of the Child and Adolescent defines, in its art. 2, the two species of subjects of rights, stating that adolescents are individuals between the ages of 12 and 18 incomplete years. The responsibility for acts analogous to crimes or misdemeanors is reserved only to members of this group (art. 104, sole paragraph, and art. 105, both of the Child and Adolescent Statute).

Once the infraction has been committed, a Circumstantiated Occurrence Bulletin must be drawn up, in which the investigative acts will be carried out, similar to what occurs with the Police Inquiry. The law provides that the adolescent is assured the same guarantees of the criminal process (art. 111 of the Child and Adolescent Statute). This idea is reinforced by the edition of Precedent No. 342 of the Superior Court of Justice[1].

If there is evidence of authorship and proof of materiality, the Public Prosecutor's Office can promote the filing or offer a representation. The latter, as in the case of the accusation, is the opening piece of the process that will determine the responsibility of the alleged offender.

The point that differentiates this system from the one proposed by the Code of Criminal Procedure is the possibility that the member of the Public Prosecutor's Office may offer a remission proposal. remission. According to Veronese and Silveira (2011, p. 389),

[1] "In the procedure for application of a social and educational measure, the waiver of other evidence in view of the adolescent's confision is null and void".

> O benefício da remissão consiste em uma forma de exclusão do processo e, para concedê-la, o Promotor de Justiça deverá considerar circunstâncias e consequências do ato cometido, bem como o contexto social e a personalidade do adolescente. A remissão não implica no reconhecimento ou comprovação da responsabilidade, nem prevalece para efeito de antecedentes criminais. De acordo com a necessidade, poderá ser concedida cumulativamente com uma ou mais das medidas protetivas previstas no art. 101 do Estatuto, ou uma das medidas socioeducativas do art. 11, exceto a colocação em regime de semi-liberdade e a internação. Registre-se que a remissão deve ser aceita pelo adolescente e seus genitores ou responsáveis.

If the representation is offered, the judge will designate a date for the hearing to present the adolescent (art. 184) and afterwards, if necessary, appoint a lawyer to present a preliminary defense within three days, counting from the date of the hearing. Once the preliminary defense has been received, a further hearing will be scheduled for hearing the victim and witnesses.

If no further steps are required, the Public Prosecution Service will be given the floor, followed by the defense for presentation of oral arguments (oral, according to the literal meaning of § 4 of art. 186), and a sentence will be handed down afterwards. Once the representation has been deemed well-founded, the judge will apply one of the social and educational measures outlined in article 112: warning, obligation to repair the damage, community service, probation, placement in a semi-probation regime, internment in an educational establishment, or any of the protective measures outlined in article 101, clauses I to VI, of the same Manual.

In summary, the legal system understands that minors under 18 years of age do not have imputability, which is an element of guilt and, therefore, the concept of crime is not complete. For this reason, they would only respond for infractional acts, subjecting themselves to a considerably more lenient system.

Criticism of this model has gained weight in recent years due to the growing wave of juvenile violence, as mentioned above. The drug traffic has been using teenage labor for a long time, taking advantage of the fact that they are excellent shields for the real leaders, due to the low punishments. Even if caught, they would soon be able to return to "work.

As if this were not enough, we have been watching the news daily bringing information about barbaric crimes committed by teenagers, in alliance, or not, with adults.

Rape, robbery, and qualificated homicide are mere examples of the atrocities we have experienced.

For a portion of the population, the measures provided for by the national legislative system as sanctions are not sufficiently effective in re-educating offenders or inhibiting the practice of new acts. It is within this context that the advocacy of reducing the age of juvenile offenders arose, in an attempt to allow some adolescents, especially those aged 16 and upwards, to be subject to more severe penalties, answering under the terms of the Criminal Law.

For others, the problem lies in the erroneous application of the rules of resocialization. For this group, given the well-known fallibility of the prison system, it would be useless to subject adolescents to longer sentences, served in already overcrowded prisons. The solution for the growing wave of violence would lie in the fortification of the support structure (guardianship council, assistance entities, social assistance), in parallel with the improvement of education and the structuring of families.

Having made these considerations, we now proceed to the analysis of the proposals for modification of the age of criminal responsibility.

2.1 System Change Proposal

The issue has been discussed in Brazil since the 1990s, through numerous proposals for constitutional amendments. In the House of Representatives, the Proposal of Constitutional Amendment (PEC) No. 171, 1993, has 25 joined proposals, while in the Federal Senate, the Proposal of Constitutional Amendment (PEC) No. 26, 2002, has 6 substitutes.

In the Senate, Constitutional Amendment Proposal (PEC) No. 74 of 2011 establishes imputability from the age of 15 for crimes of murder and robbery followed by death. Constitutional Amendment Proposal (PEC) No. 21 of 2013 states that those aged 15 or older are fully accountable. Constitutional Amendment Proposal (PEC) No. 33 of 2012 states that those over the age of 16 and under the age of 18 may be subject to an incident of disregarding their lack of responsibility, to be initiated exclusively by the Public Prosecutor's Office and examined by the Child and Youth Court. The incident would only apply to heinous and equivalent crimes.

The granting of the request to disregard responsibility will occur in cases where the illicit

character of the act committed is proven, taking into account the entire family and social history of the adolescent. It is analyzed, therefore, if the entire family and social history of the adolescent. It is analyzed, therefore, if he is imputable in the material sense (possessing reason and volition). The sentence will be served in a specific establishment, different from the one for adults. On August 20, 2015, the first two proposals were rejected by the Constitution and Justice Committee, and the last one was approved.

Still in 2007, the Constitution and Justice Commission (CCJ) of the Senate approved the substitute Bill authored by then Senator Demóstenes Torres, which provided for the reduction of the age of majority to 16, only for heinous crimes and equivalent ones, provided there was a psychological report demonstrating full capacity to understand.

If this proposal is definitively approved, the wording of art. 228 of the Federal Constitution would become the following:

> Art. 228. São penalmente inimputável os menores de dezesseis anos, sujeitos às normas da legislação especial.Parágrafo único. Os menores de dezoito e maiores de dezesseis anos:
>
> I- somente serão penalmente imputáveis quando, ao tempo da ação ou omissão, tinham plena capacidade de entender o caráter ilícito do fato e de determinar-se de acordo com esse entendimento, atestada por laudo técnico, elaborado por junta nomeada pelo juiz;
>
> II- cumprirão pena em local distinto dos presos maiores de dezoito anos;
>
> III- terão a pena substituída por uma das medidas socioeducativas, previstas em lei, desde que não estejam incursos em nenhum dos crimes referidos no inciso XLIII, do art. 5º, desta Constituição.

One of the bills (nº 171, from 1993) was recently approved in the House of Representatives. According to this bill, those over 16 and under 18 who commit acts analogous to murder, bodily injury followed by death and heinous crimes may be prosecuted under the terms of the Penal Code. The penalty, however, must be served in an establishment different from that for minors under 16 or over 18. We shall consider this third type of establishment in more detail below.

The discussion, however, is far from over. The proposal approved by the House will now go to the Senate, where it will be voted on in two rounds. This is without mentioning the countless other projects that are awaiting deliberation.

By analyzing the mentioned proposals, we can see major and relevant differences between them, which have given rise to many discussions in the legislative and social scenario. It seems to us, however, that Senate Proposal for Constitutional Amendment (PEC) No. 33 of 2012 is closest to the idea defended in this article.

3 ARGUMENTS FOR AND AGAINST CHANGING THE AGE OF CRIMINAL RESPONSIBILITY

Initially, it should be understood that changing the current system for the age of criminal majority would invariably imply changing the Constitution itself, in its article 228. Professor Maria Garcia defends this possibility, arguing that it is the Constitution that "subjects those under 18 years old to the rules of special legislation, thus opening an exception to the rule itself" (GARCIA, p. 265). This is also the understanding of Professor Nucci (2000, p. 109).

Under the current model, adolescents who commit the most serious offenses, such as rape, qualified homicide, torture and drug trafficking, among others, are generally subjected to internment. This is the most severe socio-educational measure provided for under art. 112 of the Child and Adolescent Statute, and lasts a minimum of six months. After this period, the adolescent will be evaluated by a multidisciplinary team that, if necessary, may suggest the maintenance of the measure for an equal period, as long as it does not exceed three years.

This is the time, therefore, that a 17-year-old teenager who kills, in a cruel way, a fellow human being, will have his freedom restricted, while for those over 18 the Penal Code reserves the minimum penalty of 12 years (art. 121, § 2º, clause III, Brazilian Penal Code (CPB)).

As if the disproportionate nature of these sanctions were not enough, we must also consider that the vast majority of detention centers for adolescents are absolutely unsuitable for the educational purposes envisaged by the Child and Adolescent Statute. The National Council of Justice published the Final Report of the Justice for Youth Program, covering the period from July 2010 to October 2011, highlighting a number of problems encountered in juvenile detention units throughout the country, such as: lack of support from State Governments;

personal incapacity of unit managers; lack of educational and professional activities and psychological and social care for adolescents and their families; lack of uniformity in procedures for the execution of socio-educational measures.

The National Council of the State Prosecutor's Office also released a report of the data collected in the years 2012 and 2013 finding the following:

> f) No quesito salubridade, a situação mais crítica, com comprometimento das unidades por falta de higiene, conservação, iluminação e ventilação adequadas, foi verificada nos Estados do Piauí, Roraima e Sergipe, onde a totalidade das unidades foram consideradas insalubres. Os índices de insalubridade: Paraíba (80%), Goiás (85,7%), Pará (75%), Rio de Janeiro (71,4%), Mato Grosso (75%), sendo que o melhor quadro está em São Paulo e Ceará, onde 91,3% e 89,9% foram consideradas salubres, respectivamente. Em síntese, o Centro-Oeste, Nordeste e Norte, mais da metade foram consideradas insalubres; no sul, 40% foram reprovadas. A melhor situação é do Sudeste, com 77,5% de unidades salubres. g) Quanto às salas de aula adequadas, o Sudeste conta com 82,9%; o Norte com 72,5%, tendo gravitado entre 52% e 56% nas regiões Centro-Oeste, Nordeste e Sul[2].

The report also pointed out the deficiencies in the physical and personnel structure. It is certain, therefore, that the establishments designed for the internment of adolescent offenders are in the same or worse condition than the prison units, thus undermining the argument that sending adolescents to prison would be the same as enrolling them in a criminal school. As the above-mentioned reports indicate, the detention centers provide them with the same type of "education".

> Não serão cordeiros com lobos, e nessa mesma alegação indago qual o maior poder prejudicial, este salientado ou estes mesmos jovens criminais de 16 a 18 em contato com crianças de 10 a 15 anos que ainda tem uma grande chance de recuperação, com seus delitos menores, sendo influenciados, intimidados e até coagidos pela delinquência dos mais experientes que estão na faixa dos 16 a 18 anos e com grande certeza tem uma vasta atividade de infrações, como foi o caso conhecido do jovem vulgo Champinha (CAPUANO).

[2] Report shows overcrowding in juvenile detention facilities.

It is interesting to note the position of Gomes and Bianchini (2007, p. 8), as an intermediate position between reducing the age of criminal responsibility or maintaining it at its current level. According to these authors, although the prison system is ineffective in solving juvenile violence, as it does not fulfill its re-socializing objectives, it cannot be denied that the provision of a maximum of three years of confinement for adolescents who commit crimes involving cruelty is quite insufficient.

They therefore defend changing the legislative system to allow adolescents in such cases to be subjected to a longer period of deprivation of liberty, in establishments appropriate for their age group. They would not, therefore, be subject to the application of criminal law, but of the Child and Adolescent Statute itself, emphasizing the possibility of a longer period of subsumption to its repressive rules.

Attending to the interests of the latter trend, there is a Bill authored by Senator José Serra, already approved by the Senate and forwarded to a vote in the House of Representatives, providing for a term of up to 10 years in prison for adolescents who have committed an act analogous to a heinous crime (Bill 333 of 2015).

A very similar proposal, providing for a maximum term of internment of 8 years for infractions analogous to heinous crimes was made by Governor Geraldo Alckmin (Bill No. 7.197, 2002), still awaiting deliberation by the House of Representatives.

However, perhaps the greatest argument for those in favor of changing the age of criminal responsibility lies in the fact that the age criterion adopted by the Federal Constitution and the Penal Code is not based on any scientific reason. This is merely a criminal policy choice. A parameter was needed from which to distinguish offenders from criminals - the eighteenth birthday was chosen.

The justification for this differentiation is that the adolescent is a developing person and should be treated as such. However, a system is adopted in which development is not analyzed at any time. There is, in fact, no change in the psychological or social development of the adolescent during the night between the ages of 17 and 18.

Nothing like the metamorphosis of the butterfly that takes place. Therefore, a single night separates, just fictionally, the developed individual (who responds to the high rigors of the Penal Code) from the undeveloped (subject to the benefits

of the Child and Adolescent Statute). This occurs by the mere will of the Constituent.

All the examples cited above, during the introduction, deal with illegal acts committed by adolescents who were probably fully aware of what they were doing and were fully able to determine what they wanted to do (criteria of imputability).

Under these conditions, all these atrocities would have been committed out of mere disregard for the law, by individuals who have benefited from the low sanctions of the Child and Adolescent Statute and, afterwards, will continue their criminal enterprise.

Regarding what was stated at the end of the previous topic, it is known that adolescence is a period of profound neurological changes, which directly influence the behavior of individuals. Science has shown that some brain regions, such as prefrontal cortex, only reach their full development between the ages of 25 and 27 (HECKE, 2013).

It has been afirmed that around the eighteenth birthday synaptic pruning would occur in the human brain. During this period, the neurological system would eliminate a large portion of connections and strengthen others (RAEBURN, 2007). Thus, this would be a period in which the adolescent would be prone to new stimuli (which could influence his future behavior), as well as his complete neurological development.

According to this line of thought, criminal liability of minors under 18 years old would not be possible because only in this age group would neural development be complete. This argument, however, finds its fragile point in the development of science itself, which, as seen, more recently has pointed out that some areas of the human brain would only fully develop after the twenty-fifth birthday.

Another argument invoked by critics of the proposal to reduce the age of criminal responsibility is that this measure would violate the principle of full protection for children and adolescents. Thus, the definition of an adolescent as a person between the ages of 12 and 18 and the organization of a proper system for correcting deviant conduct would work as a true guarantee.

According to this point of view, the non-application of criminal law to minors under 18 years old is a fundamental clause that cannot be changed by a constitutional amendment. This is the opinion of Fábio Rocha Calliari, according to whom "Article 228 of the FC is an individual right, concretized in the principle

of human dignity. It is a negative freedom vis-à-vis the State, and, therefore, a fundamental clause, whose reduction cannot operate by means of an amendment to the Constitution" (CALLIARI, 2008, pp. 174-188). In the same sense, is the understanding of Silva (2006).

That said, regardless of the current stage of social development and the degree of understanding of today's or tomorrow's adolescents, as long as the constitutional system defined in 1988 was in effect, one could never consider the criminal liability of a person under the age of 18.

Such an idea is inconceivable in our view. Firstly, it should be noted that no guarantee (not even the right to life) is absolute, and the same should be said for the principle of full protection. Secondly, the definition of the aforementioned norm as a permanent clause is not express, being a mere supposition on the part of its defenders. This was, in fact, the understanding of the Senate Constitution and Justice Committee when it approved Constitutional Amendment Proposal (PEC) No. 33 of 2012, mentioned above.

Furthermore, as explained above, it is impossible to imagine that the degree of psychological and social development of an adolescent today is the same as it was almost thirty years ago (when the Constitution was enacted), or that it will be the same ten years from now.

To establish a blind rule (no adolescent under the age of 18 is capable of understanding the gravity and illegality of the acts he commits) is to close our eyes to reality, to plaster the legal system, and to leave a second constitutional guarantee in the lurch: public security.

On the subject, the words of Cavalcanti (2013, pp. 117-134) are salutary:

> Destaca-se, ainda, que essa defesa da fixação dos 18 anos como um marco mágico da inimputabilidade não tem amparo científico, não representa uma verdade reconhecida no âmbito das organizações internacionais, não foi agasalhada pela Unicef, que apenas recomenda a definição da idade penal mínima com base em critérios científicos. [...] Em verdade, o limite de inimputabilidade de 18 anos não é consagrado, na grande maioria dos sistemas jurídicos hoje vigentes.

Note that we are not considering the criminal liability of an incapable person, but rather of an individual who, although under the age of 18, is fully capable of understanding the acts he or she performs, thus preventing him or her from being benefited by a criterion that has no scientific basis.

A third argument would be that socio-educational measures, when properly applied, achieve the expected socializing and educational effect. Professor Tavares (2013), in a lecture given in the auditorium of the Superior Court of Justice, afirmed:

> O confinamento de adolescentes envolvidos em atos violentos não irá implicar a diminuição do número de infrações, irá apenas satisfazer sentimentos de vingança. Referindo-se ao ECA, arrematou: para menores infratores, sugiro mais assistência, mais educação, mais recuperação, mais estatuto e menos Código Penal.

The problem with this afirmation lies in the fact that only a small portion of the measures are well enforced and depend mainly on the adolescent's own will to abandon a criminal career.

Taking a closer look at the reality of the state of Tocantins, what we see are the districts that lack the structure required to provide the correct and proper application of, for example, the community service provision measure. Assisted probation is, in most cases, something absolutely utopian, especially due to the lack of trained professionals in sufficient numbers.

If we look at the Guardianship Councils (part of the assistance network) in most of the municipalities in the interior of the state, we will see entities with scarce resources and, mainly, people who, despite their good will, do not have the necessary legal and psychosocial knowledge to face the situation encountered. Not to mention the chaos of the public education system and the usual lack of structure that plagues Brazilian families.

Teles points to economic, social, and family deficiency to justificate the ineficacy of the juvenile accountability system, understanding this to be an argument that makes it impossible to toughen the system:

> Ora, se uma criança se encontra dentro de um ambiente de carência material e espiritual, alijada do acesso a seus direitos fundamentais, sendo envolta no triste quadro da pobreza, ignorância, falta de oportunidades, desagregação familiar, ausência de perspectiva de futuro, por óbvio que a probabilidade de sua absorção pelo mundo do crime cresce exponencialmente. Desse modo, o erro em considerar que o endurecimento das penas ou a ampliação da imputabilidade penal para atingir adolescentes com idade entre 16 e 18 anos resolveria o drama da violência social consiste no desconhecimento de que o direito foi forjado para ser aplicado de forma integral e não parcial, ou seja,

> somente um Estado que garante a todos a preservação concreta e efetiva da dignidade da pessoa humana, dando aos indivíduos condições de desenvolverem com plenitude as suas potencialidades, pode a posteriori punir o cidadão que delinqui. É justamente aqui que reside a perversidade do Estado brasileiro: ele exclui socialmente, depois reprime (TELLES, 2015).

In our view, this thought disregards extremely relevant factors, despite the brilliance of its author. The first of these is that the social, economic and family breakdown problems are not easy to solve and depend on a multitude of measures that, if well executed, will produce long-term effects. We are talking about improving education and health (which depends on high government spending), reducing/fimming unemployment (a logical consequence of improving the country's economy and increasing investments), among other social changes that would probably reflect a better structuring of families.

Considering the current reality in Brazil, what we can see is a scenario where there is little (or no) possibility of these changes occurring at a level sufficient to have the expected effect, at least for the next few decades. Until then, the problem of juvenile violence continues to grow and demands urgent measures.

The second relevant aspect to be considered about the above transcribed thought concerns its perfect subsumption to the penal system of repression. If the adolescent individual who develops in a model of disrespect for his fundamental rights cannot be severely punished for the illicit acts he commits, the same should be said about the adult individual. We would then live in a system of complete chaos, in which more than half of the population (who live without the aforementioned minimum conditions of dignity) would be allowed to commit crimes, without anything being done.

It is true that, in theory, the system foreseen by the Statute of the Child and Adolescent is great and has great possibilities for good results, if applied within the framework of an ideal social model. It is in practice that the problem lies, and it is also in practice that offenses are committed, and the population is put at risk. We must question, then, how long we will continue to wait for the State to create the instruments necessary for the system to function well, clinging to the fact that we have a method that is capable of re-educating in the abstract, although it fails vehemently in the concrete.

A third argument against the change seems to have been taken into consideration in the preparation of Bill no. 171 of 1993, approved in the first

round in the House of Representatives, when it determined that adolescents over the age of 16, convicted of serious crimes, should serve their sentences in a facility to be created, different from the one for adults and other juveniles subject to the regime described in the Child and Adolescent Statute.

If this were to be the case, the alleged risk of placing young people in "crime faculties" would be eliminated. Otherwise, it would require the expenditure of public funds to set up these entities - probably equal to or less than those that would result from the construction or expansion of existing prisons for the sheltering of convicted adolescents, considering the current situation of overcrowding.

Some opponents of the idea have argued that it is impossible to create a third type of establishment, with adolescents having to be subjected to sentencing (served in a regular penitentiary) or to socio-educational measures. We do not see it that way. Nothing prevents the reforming Constituent Power from making provision for a new establishment for serving sentences, aimed at adolescents who have committed serious crimes and are to be tried under the terms of the Penal Code.

This measure, in fact, aims to ensure the very condition of the developing person, satisfying the ideals of full protection. Moreover, the idea of individualizing punishment based on the agent's age and personality is not an unheard-of notion in the legal system (art. 5 of the Law of Criminal Executions).

Moraes (2000, p. 244), in dealing with international rules protecting the rights of prisoners, afirms that the United Nations (UN) provides for the need to separate prisoners into several categories, taking into consideration age, sex, criminal background and the necessary measures to be applied.

A latter group also argues that reducing the age of criminal responsibility would be a reflex of discriminatory and elitist thinking, which would target economically disadvantaged adolescents.

Again, we find no reason. What is being proposed is the application of the penal system to a portion of adolescent offenders, a system that applies to rich and poor alike.

It is certain that, statistically, most crimes are committed by people from lower economic classes, such as property crimes and drug trafficking. This fact, however, cannot be attributed to the will of the oppressive elite.

4 AGE OF CRIMINAL MAJORITY IN ALIEN LEGISLATION

In Canada, responsibility begins at the age of 12, just as in Brazil, and can be subject to criminal legislation as of the age of 14 when extremely serious offenses are committed, and are judged by the Common Justice System. The same happens in Denmark, starting at the age of 15.

The United States of America has, in some federal units, a system according to which, from the age of 12 on, adolescents can be judged in the same way as adults, as long as their capacity to understand is proven, and can even suffer life imprisonment and the death sentence.

Along the same lines, France has a relative presumption of penal irresponsibility for adolescents between the ages of 13 and 18. Once the crime has been committed and the adolescent's capacity for discernment has been demonstrated, he or she is judged as an adult, and the adolescent, up to 16 years of age, receives a mandatory reduction in sentence. In all other cases, reduction is optional.

In Russia, the age of majority begins at 14 for serious crimes, and at 16 for all others. In England, the minimum age of criminal responsibility is almost half of ours. Sweden and Norway, two world models of juvenile policies, adopt the age of majority at 15.

It is true that most countries in the world are going against the reduction of juvenile crime. Germany, for example, has set it again at 18 years, and Japan has set it at 20. It is impossible, however, to compare these models with Brazil's, mainly because of the enormous difference in levels of social development.

In our legal system, an adolescent over the age of 16 is capable of disposing, without assistance, of his assets through a will, acknowledging paternity, exercising a business activity (when emancipated), and voting, among other behaviors. He cannot, In our legal system, an adolescent over the age of 16 is capable of disposing, without assistance, of his assets through a will, acknowledging paternity, exercising a business activity (when emancipated), and voting, among other behaviors. He cannot, however, answer criminally for killing another person, regardless of his degree of understanding. There is no logic in this model.

It should be noted that one of the criticisms of the system currently adopted (purely age-based) lies in the fact that the criterion for determining the age of majority at 18 years of age has no scientific basis. Therefore, it does not analyze the psychological profile of the agent.

One day before the eighteenth birthday, the subject will respond for his acts under the Child and Adolescent Statute (ECA), as happened in the case of the teenager in the Federal District who killed his ex-girlfriend with a shot to the head (GALVÃO, 2013). The next day, the same act will be hit by the full rigor of the Penal Code. Therefore, the degree of development or capacity of understanding is not examined.

In these terms, some foreign models, especially that of Canada, are more coherent in defining that in more serious crimes, the perpetrator may respond more rigorously, provided that his or her capacity for understanding and will is demonstrated.

5 FINAL CONSIDERATIONS

From all of the above, it can be concluded that the arguments in favor of and against changing the age of criminal responsibility in Brazil do not (or at least should not) eliminate each other.

It is certain that if the State guaranteed better social conditions, especially employment and education, many children and adolescents would be able to grow up in an environment more suitable for their development, thus staying away from crime. And it is equally true that it is society's duty to demand such a posture from its leaders. The structuring of families is another relevant factor for the development of individuals; however, currently, it has been absent.

It is also well known that the correct application and enforcement of social and educational measures can achieve good results, allowing adolescent offenders to reintegrate into the social environment and perfectly correct their deviant behavior. The system provided for in the Child and Adolescent Statute suffers from the crisis of ineffectiveness (common to so many institutes in the legal system). Although it provides for measures that, in the abstract, are fully capable of revolutionizing the life of adolescent offenders, in practice, they leave much to be desired.

Contrary to what some advocate, however, these premises do not exclude or interfere with the need to discuss changing the treatment of juvenile crime, because even in the most developed of countries, there will always be, albeit on a smaller scale, juvenile violence.

We believe that all these factors mentioned (improvement in social conditions, correct execution of socio-educational measures, and change in criminal legal

treatment) are salutary and should be applied jointly, especially considering the long period of time required for the implementation and eficacy of the first two, as they depend on high budget expenditures in the first case, and, in the second case, on a change in perception and posture of society itself.

Until such social changes are made, some emergency measure must be adopted to curb juvenile violence and provide society with a minimum degree of security. It is in this scenario that the reduction of the age of criminal responsibility becomes relevant and, despite some criticism, fully possible to be applied in an effective manner.

We argue that any system that sets only static rules regarding the minimum age for criminal liability will be susceptible to misunderstanding. This is because the capacity to understand the illegality of one's own actions should be determined on a case-by-case basis, analyzing the level of development of each adolescent.

As demonstrated by the experience in the legal scenario, it is possible for a 16-year-old teenager to have full understanding of what he does, being able to freely determine himself according to his will. On the other hand, this fact cannot be taken as an absolute rule applicable to all people of the same age.

Now, the logic of the system currently adopted is based on the fact that adolescents, because they are developing people, should receive different treatment when they practice so-called deviant behavior. What is not understandable, however, is that a single minute, which separates the eighteenth birthday of this adolescent can be the water divisor between a developed and an undeveloped individual.

It would therefore be preferable to apply a system inspired, for example, by the Canadian model, defining an absolute rule for the age of criminal majority (those over the age of 18 can be charged) and a relative rule (those over 16 and under 18 can be charged when they commit serious crimes (as defined by law) and their capacity to understand and will is demonstrated).

This text does not intend to exhaust discussions on the problem of reducing the age of criminal responsibility, but we cannot close our eyes to reality with the belief that the model provided by the Statute of the Child and Adolescent (ECA) is self-sufficient, since, as demonstrated, it only works in theory, while in practice it is absolutely bankrupt.

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