

***SOCIAL JUSTICE FOR VULNERABLE CHILDREN: THE JURY/HAPPY  
CHILD PROJECT IN TOCANTINS***

*JUSTIÇA SOCIAL EM FACE DE CRIANÇAS EM VULNERABILIDADE ALIMENTAR: PROJETO  
JÚRI/CRANÇA FELIZ NO TOCANTINS*

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## RESUMO

Trata-se de estudo de caso a partir da análise de diversos autos de processo penal da competência do Tribunal do Júri das Comarcas de Wanderlândia, Goiatins, Itaguatins e Colinas do Tocantins/TO, tendo como objeto o Projeto Júri/Criança Feliz enquanto boa-prática no Judiciário, desenvolvido pelo magistrado José Carlos Ferreira Machado, onde ocorre a destinação de alimentos excedentes das Sessões do Júri para escolas públicas e entidades que acolhem crianças em vulnerabilidade alimentar. Registra-se, nesta pesquisa, a existência da coisificação do ser humano na sociedade contemporânea e como o Judiciário, por meio de boas-práticas, pode dar efetividade à Justiça Social propiciando reforço alimentar para crianças em vulnerabilidade alimentar, além da promoção de palestras sobre o papel do Judiciário e das instituições. O sentido do presente artigo é investigar a potencialidade do Judiciário em promover a dignidade da pessoa humana por meio de recursos excedentes e disponibilização do

magistrado para a concretude do projeto social em comento, daí parte-se de teóricos como Giorgio Agamben, Michael Foucault, dentre outros, a fim de buscar compreender essa prática empregada no Judiciário do Estado do Tocantins.

**Palavras-Chave:** Criança. Vulnerabilidade Alimentar. Projeto Social. Judiciário. Boas-Práticas.

## **ABSTRACT**

This is a case study based on the analysis of several criminal proceedings within the competence of the Jury Court of the Comarca of Wanderlândia, Goiatins, Itaguatins and Colinas do Tocantins/TO, having as object the Project Jury/Happy Child as a good practice in the Judiciary, developed by the Magistrate, José Carlos Ferreira Machado, where surplus food from the Jury Sessions is destined for public schools and entities that welcome children in food vulnerability. This research registers the existence of the objectification of the human being in contemporary society and how the Judiciary, through good practices, can give effect to Social Justice by providing food reinforcement for children in food vulnerability, in addition to promoting lectures on the role of the judiciary and institutions. The meaning of this article is to investigate the potential of the Judiciary to promote the dignity of the human person through surplus resources and availability through the Magistrate for the concreteness of the social project in question, hence it starts with theorists such as Giorgio Agamben, Michael Foucault, dentre others, in order to seek to understand this practice employed in the Judiciary of the State of Tocantins.

**KEYWORDS:** Child. Food Vulnerability. Social Project. Judiciary. Good Practices.

## **1 INTRODUCTION**

The primary function of the Judiciary is to provide judicial services, and so, in the face of legal proceedings, a sentence is passed putting an end to them. However, alongside this, in its secondary (atypical) role, the judiciary also has the function of regulating and administering public affairs within its sphere of competence (Bateman; Snell, 1998, p. 430).

In addition to the system described above, it is clear that in administrative management it is possible for the Judiciary to find itself with a surplus in the meals destined for the Court Session of the Jury. This surplus is caused by several variables, such as: the Session in which the replication does not take

place, and therefore there is no rejoinder, shortening the course of the Session; the manifestation of the Public Prosecution Office arguing in the debates of the Session of the Jury for the acquittal of the defendant, which makes the argument of the Defender faster; in short, sometimes, in the specific case, it is possible for situations in which the Session of the Jury takes place more briefly than provided by the president of the Court of the Jury.

Therefore, in Sessions of the Jury, it is customary for the presiding judge to organize meals for the jurors, the court clerks and the parties to the case, as well as for the accused. In this context, it is common to have lunch, an afternoon snack and dinner. When some of the above variables occur, the Session of the Jury ends before the scheduled time, and so there is a surplus of those meals.

In this context, for Stoner and Freeman, control lends itself to ensure that the administrative activities carried out conform to the planned activities (Stoner; Freeman, 1995, p. 440). However, in the sensible world, there are unpredictable variables that go beyond the possibility of controlling planned activities.

In short, in a practice of transgression (Foucault, 2009, p. 14), the aim is not to bring to light only the problem itself, that is, the food vulnerability of children, or even the surplus of meals in the Sessions of the Court of the Jury. What is sought is to investigate the effectiveness of the Judiciary in the administration of surplus meals from the Session of the Jury as an instrument to bring the Judiciary to the community, enabling the implementation of Social Justice in the administration of its surplus resources.

The aim of this article is to investigate the effectiveness and legal adequacy of the Jury/Happy Child Project, implemented by Magistrate José Carlos Ferreira Machado, in the Criminal Courts of the Courts of the cities of Wanderlândia, Goiatins, Itaguatins and Colinas do Tocantins /TO, as a good practice to be encouraged by the Court of Justice of the State in other Courts of the State of Tocantins.

## **2 OVERVIEW OF CHILDREN IN FOOD VULNERABILITY IN THE STATE OF TOCANTINS**

In the State of Tocantins, according to data from the Brazilian Network for Research and Food Sovereignty and Security, 280,000 people had nothing to eat:

Em pouco mais de um ano, a fome dobrou nas famílias com crianças menores de 10 anos - de 9,4% em 2020 para 18,1% em 2022. Na

presença de três ou mais pessoas com até 18 anos de idade no grupo familiar, a fome atingiu 25,7% dos lares. Já nos domicílios apenas com moradores adultos a segurança alimentar chegou a 47,4%, número maior do que a média nacional. (Rede Brasileira de Pesquisa em Soberania e Segurança Alimentar e Nutricional, 2022)

In this scenario, according to research carried out by the Brazilian Research Network on Food and Nutritional Sovereignty and Security (PENSSAN Network), run by the "Vox Populi" Institute in partnership with Ação da Cidadania, "ActionAid" and the Friedrich Ebert Foundation Brazil, in the State of Tocantins,

Ao todo, 1,48 milhão de tocaninenses vivem com algum nível de insegurança alimentar que pode ser leve, moderada ou grave, isso corresponde a 65,2% da população. Dentro dessas famílias vivem pelo menos 130 mil crianças com menos de 10 anos.

Under the terms of the Law No. 11.343 of 2006 – the Organic Law on Food and Nutritional Security (LOSAN), food security is the fundamental right of every human being to have access to food on a permanent basis and with quality, in order to supply their biopsychic development.

It is an elementary right for people to have access to food, a right not to go hungry, which is clearly a human right. So much so that the inclusion of the right to food in the Article 6 of the Federal Constitution reaffirms the commitment to international human rights treaties of the Federative Republic of Brazil, including: The Food Convention of Haia, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, among other international treaties.

In particular, the Article 11 of the ICESCR: "(...) recognizes the right of everyone to an adequate standard of living (...) including adequate food" and "the fundamental right of everyone to be free from hunger...".

In the sphere of human rights, when there is a violation of the right to food, there is clearly an attack on the dignity of the human person. Not having food, or having it poorly, especially affecting children, is considered an act of cruelty and inhumanity in the international community, so much so that countless international treaties have been agreed throughout history.

Moyses and Collares (1997) conceptualize that there is a distinction between hunger and malnutrition; there is hunger when human beings are deprived of the basics of food for their routine activities, because they lack food; malnutrition is

the intensification of hunger, or hunger qualified by prolonged hunger. When hunger becomes prolonged, the body of the person begins to sacrifice itself and they enter a process of malnutrition, causing loss of sight, impaired mobility, lack of or impaired reasoning (ibid., p. 232).

Being hungry or experience malnutrition, even more so when we are talking about children, human beings in a state of development, it can well be portrayed in the Greek figure of "Zωή" (Agamben, 2002, p. 34), materializing a naked life, in which the human being is deprived of their fundamental rights, it is life put into the wild, disqualified, unprotected from what would be the most elementary to human dignity. Although all human rights are equally important as axioms, the fact is that the violation of the basic right to food is as fundamental as it is dramatic, especially when it happens to children, who are developing people with inherent weaknesses.

According to Houston, in children, the effects of hunger cause traumatic sequelae and, in the case of malnutrition, can affect health in adulthood, especially with regard to cognitive development, which further restricts future social mobility (Houston apud Patto, 1997, p. 171-191).

The scenario of food insecurity relates to a process of unequal production and distribution of goods and services: social inequality. It is therefore an expression of social inequality (Panigassi; Segall-Corrêa; Marín-León et al., 2008).

### **3 THE EFFICIENCY, MORALITY, LEGALITY AND LEGITIMACY OF THE ROLE OF THE JUDICIARY IN CHILD MAINTENANCE PROTECTION**

From the above panorama, we can infer that there is a crucial demand for society: the right to food, especially for children who are vulnerable, as a way of guaranteeing human rights.

Of course, observing the tripartition nature of powers, the Executive Branch is responsible for promoting food security as a public policy, which is why the National Food and Nutrition Policy (PNAN) and the National Food and Nutritional Security System (SISAN) are at the heart of it, under the Law No. 11.346 of 2006.

However, in addition to exercising jurisdiction, the Judiciary sometimes also administers and regulates, thus permeating its typical and atypical functions (Da Silva, 2002). Inevitably, however, the premise that all activities carried out by the State powers must be subject to the constitutional precepts of legality, efficiency and morality.

In order to analyze the legality of the Jury/Happy Child Project, developed in the Criminal Courts of the cities of Wanderlândia, Goiatins, Itaguatins and Colinas do Tocantins/TO, by Judge José Carlos Ferreira Machado, it is appropriate to analyze the idea of controlling administrative acts as an instrument to guarantee that the activities carried out are in line with the activities planned in terms of legality (Stoner; Freeman, 1995, p. 440). However, of course, in the concrete world, there are variables, unpredictable situations that go beyond the possibility of control over planned activities.

In this context, the surplus of meals at the Session of the Jury is a common situation, it should be repeated, when, for example, there is no reply from the Public Prosecution Office, or when the Prosecutor argues for the acquittal of the accused, or in other situations such that the Session of the Jury ends before the expected time.

The contemporary legal question, in this scenario, is to interpret by legality, and not by the letter of the law itself, but in the teleological terms of the rule itself; so much so that, under the terms of the Article 5 of the Decree-Law No. 4,657 of 1942, it is defined that, in the "(...) application of the law, the Judge shall take into account the social purposes to which it is directed and the requirements of the common good (...)".

Rudolph von Ihering criticized the merely conceptualist jurisprudence, the pure subsumption of the fact to the text of the norm, and, furthermore, proposed a finalistic character, aiming to replace a closed legality with a hermeneutic system of a teleological character (Herkenhoff, 1997, p. 45). And so the questioning of legality here results not in the letter of the law itself, but in the social sense that it wishes to achieve in favor of the common good and the public interest. In this way, providing surplus food for children in vulnerable situations is in line with the law, observing the right to priority, for example, when we look at the Article 4 of the Law No. 8,096 of 1990, or even the Brazilian Constitution under the Article 227.

In the handling of public affairs, in this context, there must also be efficiency (Meirelles, 1996) in administrative acts; thus, it is not enough for public activity to be carried out in accordance with the law, but there must be positive results for the public service, meeting the needs of the community. This is the constitutional postulate set out in the article 37 of the Federal Constitution of the Federative Republic of Brazil.

In this way, in the case of the Jury/Happy Child Project, it is in line with the principle of efficiency, because the surplus of food in the Sessions of the Jury, caused by variables that are beyond administrative control, allows this food, instead of being discarded, or even destined for the servers of the Judiciary, to be destined for children in vulnerable food situations. In this way, the precept of the best interests of the child is contemplated, even giving prominence to the theory of integral protection in favor of children and adolescents in the allocation of public policies and the promotion of fundamental rights.

If there is a Session of the Jury, it is the responsibility of the President of the Criminal Court to provide the jurors, court clerks and parties to the proceedings with the usual meals (lunch, snacks and dinner). If there are uncontrollable variables that shorten the Jury Session, such meals become surplus and, according to the constitutional precept of efficiency in public administration, such food must be efficiently destined for the community that needs such meals due to food vulnerability, especially children and adolescents who have the right to priority in public affairs.

This priority is in line with the Doctrine of Comprehensive Protection for Children and Adolescents, under the terms of the Article 227 of the Constitution of the Republic of Brazil, which is enshrined in the Law No. 8,069 of 1990 – the Statute of the Child and Adolescent. Thus, considering that the right to food is a human right, and given that children and adolescents are in a state of human development and deserve priority in the protection of their rights, it is efficient to allocate the surplus meals from the Court of the Session of the Jury to children who are in vulnerable food situations, instead of promoting the mere disposal of these meals or allocating them to judicial servers.

Still in this context, all branches of the State must act under the principle of administrative morality; it is not enough for an administrative act to be based on legality and efficiency; it must permeate the axiom of public morality (Mazza, 2014, p. 34), and it is not unreasonable to perceive the allocation of surplus meals to children and adolescents in a situation of hunger or malnutrition as a conduct endowed with morality in the sense of protecting a fundamental right endowed with priority in favor of children.

At the same time, it should be noted that the Jury/Happy Child Project is not just about allocating surplus meals from the Session of the Jury to children and adolescents who are vulnerable to food shortages, but also creates a space for the Judiciary to get closer to the local community, because when the surplus food

in question is donated, there are lectures given by the magistrate and the clerks of the Criminal Court.

It is about donating surplus food and bringing the judiciary closer to children and teenagers who are vulnerable. This approach creates a space of trust among citizens, who are still infants, and the Judiciary as an institution focused on promoting Social Justice.

Thus, there is legality in the Jury/Happy Child Project, since it is up to the Judiciary to take care of the destination of the surplus meals from the Session of the Jury, given that teleologically there is a public interest in promoting the right to food for those who are vulnerable to food; even so, the constitutional precept of efficiency and administrative morality is fulfilled when these meals are destined for children and adolescents in a situation of hunger, or malnutrition, as the most socially impoverished social group.

It should be noted that bringing the judiciary closer to the community is a premise of the Democratic Rule of Law, as opposed to the totalitarian regimes of the past, in which there was the figure of the "pure" Judge, or the one "stuck" in his office, a situation that must be overcome by the realization that it is important for the magistrate to know the reality of the community in order to judge more efficiently in the search for the application of Social Justice. In this way, "it is the judge, as an individual, who must become imbued with this spirit of change" (Nalini, 2006), even more so when he or she is required to take administrative measures to deal with the surplus of meals at the Session of the Jury.

#### **4 APPLICATION OF THE JURY/HAPPY CHILD PROJECT**

In field research<sup>1</sup> in the Criminal Courts of the Courts of Wanderlândia, Goiatins, Itaguatins and Colinas do Tocantins/TO, the clerk of the respective Courts made available the minutes and statements of the Sessions of the Jury in which there was a surplus of meals with the consequent donation of food to vulnerable children and lectures by the magistrate and clerks.

From the above, more than fifty Sessions of the Jury were held between January and May of 2023, in which there was a surplus of meals for unpredictable reasons, which were donated to public schools (Wanderlândia, Goiatins and Itaguatins) and to Fabiano de Cristo Home (Colinas do Tocantins/TO), a

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<sup>1</sup> Pesquisa feita entre os meses de abril e maio de 2023.



philanthropic organization that provides assistance to children and adolescents at risk and/or socially vulnerable. It is interesting to note that the surplus meals from the Sessions of the Jury in question are not leftovers, but surplus food with packaging that has not yet been broken.

In order to guarantee greater transparency and respecting the participation of the parties and jurors in the Jury/Happy Child Project, the Presiding Judge of the Session of the Jury has adopted the methodology of inquiring and recording in the Minutes of the Session whether or not they agree to the donation of surplus meals to children and adolescents in vulnerable food situations, indicating the charity or school that would receive the food in question.

At the end of the Sessions of the Jury, the magistrate, the President of the Session of the Jury, invites the parties to the proceedings (the State Prosecution Office and the Defense) along with the court clerks to accompany the donations and give a talk at the beneficiary charity or school.

In this way, the Jury/Happy Child Project ends up bringing the judiciary closer to the community<sup>2</sup>, especially the economically poorest social groups, creating a space of belonging in which children and adolescents who are vulnerable to food end up identifying the Judiciary as a power focused on good social practices.

It is not a question of distorting the duties of the Judiciary, but of rationalizing surplus meals from current variables, so that, in the atypical function of administration, the President of the Court of the Jury ends up applying Social Justice, involving the parties to the case (the State Prosecution Office and the Defense) and the jurors in the deliberation of donations and the holding of lectures. Thus, not only the magistrate and the parties to the case, but also the jurors (representatives of the people) end up actively participating in the Jury/Happy Child Project which, in turn, brings the Judiciary closer to the most socially deprived communities<sup>3</sup>.

Thus, Naline (2007, p. 309) defines:

(...) o destino do juiz no milênio próximo é libertar-se dos contornos de um agente estatal escravizado à letra da lei, para imbuir-se da consciência de seu papel social. Um solucionador de conflitos, um harmonizador da sociedade, um pacificador. A trabalhar com categorias abertas, mais próximo à equidade do que à legalidade, mais sensível ao sofrimento das partes, apto a ouvi-las e a encaminhar o drama para uma resposta consensual. Enfim, um agente desperto para o valor

<sup>2</sup> Nessa linha, "A aplicação do direito redescoberta pela sociologia jurídica". (Guibentiff, 1992)

<sup>3</sup> Nesse sentido, "O direito e a comunidade: as transformações recentes da natureza do poder do estado nos países capitalistas avançados". (Santos, 1982).

solidariedade, a utilizar-se do processo como instrumento de realização da dignidade humana e não como rito perpetuador de injustiças.

It should be noted that Fabiano de Cristo Home, a philanthropic organization in the city of Colinas do Tocantins/TO, is the institution that has been benefiting from the Jury/Happy Child Project, between April and May of 2023, providing care for 362 children and adolescents who are food insecure; of these, 113 are children aged 0 to 6; and 119, aged 7 to 14. The Public School Units in the cities of Wanderlândia, Goiatins and Itaguatins/TO together serve more than 2,000 children and adolescents.

Many of these children do not have the opportunity to receive a daily meal, or when they do, it is in a school or philanthropic environment. Many of these children have never even seen a Judge, Prosecutor, Public Defender or Lawyer in their lives. Hence the premise of making the fundamental right to food viable in the face of the surplus in the Sessions of Jury and, at the same time, bringing the agents of the process closer to the most socially impoverished community.

## **FINAL CONSIDERATIONS**

Judicial technicality and an attachment to formalism, to the "encased" magistrate, reclusive in his office, are predicates of judges who only reproduce social inequalities (Nascimento, 2023), founded on the capitalist system, which makes people a thing.

In order to exercise the judicial function, the magistrate, as a special servant of the community, must exercise it with a social conscience and a sense of common interest, and must get to know the human being "in loco", investigating the community in which man is inserted (Tonet apud Susana; Soares; do Carmo et al., 2007, p. 232). Beyond processes, formalism or technicality, the judicial function must move away from axioms of superiority, and the magistrate must rationalize and realize that, in the typical and atypical functions of the Power he exercises, there are spaces to apply Social Justice.

The law judge is going through a functional crisis (Dutra, 2001, p. 344), in which society has no sense of belonging, like the Judiciary of the last century, in which the law ends up serving only to contemplate minority social groups. Citizens often don't know what a Judge is for or what transformative social impact he or she can have on the lives of people.

This work, through field research, elucidates the good practice carried out by the Criminal Courts of the Courts of Wanderlândia, Goiatins, Itaguatins and Colinas do Tocantins/TO, which, through the Jury/Happy Child Project, developed by Magistrate José Carlos Ferreira Machado, involves the local community through the Council of Jurors and procedural parties, in order to make it possible to donate surplus meals from the Jury Session, thus benefiting children and adolescents in vulnerable food situations and bringing the Judiciary closer to the local community through donations and lectures.

Such practices should be propagated, multiplied and encouraged for the judiciary in the Brazilian state, thus making it possible, rationalized by the control of surplus meals from Jury Sessions, to be destined, in the bias of Social Justice, to economically poorer social groups.

It is pertinent for the Court of Justice of the State of Tocantins to consider this project as a good practice to be encouraged in the Judiciary, so that the Jury/Happy Child Project can be adopted by other magistrates, which would benefit children and adolescents who are vulnerable to food.

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