



The Banalization of Mental Disorders and its Relationship with the Improper Judicial Sentence of Individuals in the Prison System

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Abstract— *Analysis of the prison population with mental disorders and court decisions. It analyzes the stereotypes that guide the scope of mental health, especially with regard to individuals in the Brazilian prison system. It aims to verify the social disbelief about the effectiveness of psychic health treatments as a driver for the occurrence of sentences that transgress the non-imputability of people with mental disorders; investigate the decision of judicial authorities in requesting the imprisonment of subjects with mental disorders instead of plausible psychiatric hospitalization; investigate the performance of interventions within prisons to adapt the environment to those sentenced with mental disorders; address the incoherent incarceration of mentally impaired individuals associated with the occurrence of overcrowding in prisons; report the damage to social reinsertion of the impertinent court decision of people with mental disorders. The methodology consisted of bibliographical research and published articles, books, legislation and other documents related to the theme were used. Thus, based on these parameters, the violation of fundamental rights of individuals with mental disorders was observed as a result of the lack of measures to adapt the prison environment to their specific needs, contributing to the destabilization of the prison system and hindering resocialization. It concludes with the defense of a perceptible urgency concerning social actions with a focus on the importance of treatments that are attentive to individual subjectivities in order to attenuate the trivialization of this situation.*

Keywords— *mental disorders, judicial decision, prison system.*

I. INTRODUCTION

Today's society is marked by a closer look at the specifics of man, but it still shows great challenges related to this. In this sense, this research aims to examine the relationship between the existence of stereotypes about the need for therapeutic treatments for mental disorders and

court decisions that violate the appropriate sanction to individuals according to the psychic health framework. Thus, the possible negligence of the role of justice that judges should have under the law is analyzed, noting the interference that the arrest of subjects without proper examination of the situation by the judiciary authorities

affects the principles of equity and dignity present in the psychological ethics and Brazilian legal rules.

Discussing court decisions through the social view of mental disorders is relevant due to the trivialization of treatments for mental disorders and its relationship with the improper judicial sentence of individuals in the prison system. In this sense, “Accepted by Brazilian doctrine and jurisprudence, the fair process, however, is far from corresponding to an effective reality in the country's criminal procedural system, as will be seen notably regarding the treatment of defendants with psychiatric problems.” (OLIVEIRA; GEMAQUE, 2021, no page).

Nowadays in Brazil there is a need to debate judicial decisions through the social view of mental disorders. From this perspective, there is, in the practice of the country's legal system, a trivialization of the treatments for mental disorders, considering inappropriate and negligent judicial sentences towards individuals in the prison system. In this sense, there are failures in the Judiciary itself in safeguarding fundamental rights and guarantees guaranteed by the Brazilian Magna Carta (BRASIL, 1988).

Regarding the theme, the research problem was: What extent is the existence of stereotypes linked to measures to minimize mental disorders related to court decisions that violate the appropriate sanction for individuals? Wherefore, the general objective based on verification of social disbelief about the psychic health treatments effectiveness as a driver for the occurrence of sentences that transgress the inability to blame for people with mental disorders.

Proportionately, the specific objectives correspond to: a) Investigate the judicial authorities' decision in requesting the imprisonment of subjects with mental disorders to the plausible alternative of psychiatric hospitalization; b) Investigate the performance of interventions within prisons to adapt the environment to those sentenced with mental disorders; c) Addressing the incoherent incarceration of mentally impaired individuals associated with the occurrence of overcrowding in prisons; d) Report the damage to social reinsertion of the impertinent court sentence of people with mental disorders.

In the research, it was intended to verify the negative consequences for subjects with mental disorders imprisoned incoherently and, in this regard, in addition to inadequate prison can become traumatic and increase the recurrence of crimes, the chances of worsening psychological instability reveal a situation in which the individual reintegration into society is only made difficult. Thereby, understanding the prejudices that influence

inappropriate judicial decisions is essential for the development of this work, as well as to avoid the occurrence of further impacts such as these on society.

The methodology understood the bibliographic research apprehended as one whose “[...] main sources for conducting the research are bibliographic (books, book chapters, scientific articles) [...]” (MAZUCATO, 2018, p. 46). Articles, books, legislation, magazines and other documents related to the theme were used.

The bibliographical research is based on the works of Negrelli (2006), Sequeira (2006), Damas (2011), Sousa (2019), Fiorelli and Mangini (2020), among others. The sections that make up the article are: Court decisions and the arrest of people with mental disorders; intervention measures in prisons for mentally challenged individuals; incarceration of people with mental disorders and prison overcrowding; unfair court sentences and its impacts on the social reintegration of prisoners; and the last considerations.

II. JUDICIAL DECISIONS AND THE PRISON OF SUBJECTS WITH MENTAL DISORDERS

They aim to cover the population in general, the written laws have as a parameter the common human being of a certain time or social context. From this perspective, “[...] in cases of people with some type of mental suffering, the intensity and quality of the disorder must be assessed, in order to assess the possibility or not of making it responsible”. (FIORELLI; MANGINI, 2020, p. 162). Thus, there is a need to adapt judicial decisions to ensure the effectiveness of rights and sanctions related to criminals with mental disorders.

Depending on the social context, it appears that the presence of prejudice in society associated with the essentiality of psychiatric treatment for mentally impaired individuals enables the formation of a situation in which “Data from the National Council of Justice (CNJ) reveal that hundreds of prisoners with mental problems they are in prison when they should be in psychiatric treatment, inpatient or outpatient treatment”. (OLIVEIRA; GEMAQUE, 2021, no page).

Furthermore, the State in the condition of protecting the social organism, has failed, mainly, regarding the occurrence of transgressive sentences against the non-accountability of people with mental disorders, leaving society vulnerable to various social pathologies. Firstly, requirements that can ensure health in a broad way must be guaranteed.

It is not by chance that Fiorelli and Mangini (2020, p. 163) state:

People with psychological distress who have committed criminal offenses, in the event of a psychological disorder preventing discernment of the act committed, will be responsible for determining, in light of this understanding, instead of the penalty, a security measure in the modality of hospitalization or treatment. It occurs in some psychoses that can lead the individual to commit a crime, without having an understanding of the act caused (for example, the memory gaps in twilight states).

With regard to the judicialization of the social issue, it is understood by the transfer of responsibility from the Executive to the Judiciary regarding the guarantee of social rights, in the interdiction process, causing the deprivation of the interdict with regard to the enjoyment of civil and political rights. In this bias, in contemporary Brazil, we can see the configuration of reckless practices in dealing with those who experience the most diverse specific mental disorders (IAMAMOTO, 2008; NETTO, 2010).

About civil interdiction, it is understood:

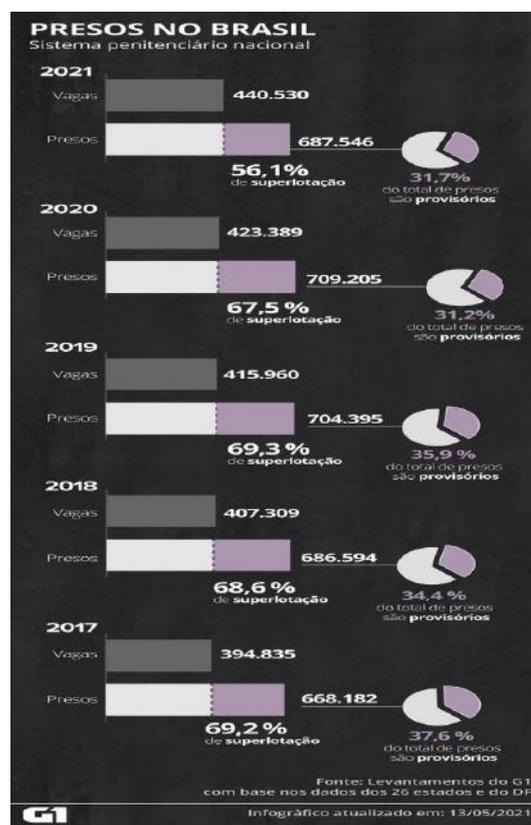
[...] as a judicial measure that promotes the protection of people with mental disorders, as they do not have the autonomy to exercise civil life acts and, consequently, need the help of third parties for their needs, from all orders, are heeded. The curator, appointed by the judge based on criteria established by the Civil Code, is expected to exercise his functions with zeal, with a view to guaranteeing the satisfactory material and psychosocial reproduction of his trustee. (BARISON; GONÇALVES, 2016, p. 53).

However, in view of the reality of the country, there is negligence regarding the legal treatment of these special cases and, after such sentence, there is a violation of fundamental rights, such as health, as Brazilian prisoners are at margin of Sistema Único de Saúde¹ (SUS), as the hospitals and services of these penitentiary areas do

not have their expenses covered by the SUS, being defrayed by the penitentiary system's needy funds (DAMAS, 2011).

III. INTERVENTIVE MEASURES IN PRISONS FOR MENTALLY IMPAIRED INDIVIDUALS

Contemporary Brazil reaches the epicenter of a social and political crisis. In this sense, the negligence of the Executive Power regarding the promotion of measures that have the objective of significantly reducing the overcrowding rates of the prison system, reveals the cruel face of the reality of Brazilian prisons with unhealthy structures and that reached the mark of 682,000 people in the prison all over the country, with a total of 241,000 people above the system's capacity (WITH overcrowded prison system [...], 2021), according to the infographic on the G1 news portal (Figure 1).



Picture 1 – Prisoners in Brasil

Source: With overcrowded prison system [...] (2021).

Photo: Élcio Horiuchi (2017).

Structural factors, such as insufficiency, overload and unhealthy cells, create a harmful environment for individuals in prison, with the proliferation of epidemics and the spread of diseases. In addition to these, there is

¹ Unified Health System.

also the precarious diet of inmates, indiscriminate use of drugs, and the need for hygiene, which affect the individual entering prison due to some type of disease. With regard to medical-hospital treatment, this does not exist in prisons. When there is a need for transfer to hospital detainees need an escort by the Military Police which, in most cases, is not available. Moreover, in addition to this dependence on the escort of the Military Police, prisoners also depend on the availability of places in public hospitals, which are not always free to receive these patients.

In view of this serious scenario, we are aware of the fact that Brazilian prisons are marked by a mixture of structural and procedural shortages, which directly affect the synthesized results regarding the much-desired inmates' resocialization and their health. In this bias of needs, investigations currently admit that prisoners have higher percentages of mental disorders when compared to society in general (CONSTANTINO; ASSIS; PINTO, 2016).

The problem of this serious situation directly affects the growth of people in prison with psychiatric problems in the Brazilian prison system. The Union's Public Defender's Office conducted a study in 2017 on mental health in federal prisoners and found a significant increase in cases of suicide attempts in these individuals who already suffered some type of psychiatric problem: 12% have resorted to suicide and 60% suffer from some psychic damage. In this study by the Defender's Office, it is noteworthy that it was taken into account that such prisoners were subjected to constant isolation rules, serving the sentence away from their families and the lack of specific medical treatment for which disorder they were suffering and no intervention in prisons to adapt this environment towards these individuals (OLIVEIRA; GEMAQUE, 2021).

References from the assistant judge of the Presidency of the National Council of Justice (CNJ) Douglas de Melo Martins, coordinator of the Department of Monitoring and Inspection of the Prison System and of the System for the Execution of Socio-Educational Measures (DMF), in 2013 demonstrate the range of prisoners with mental disorders in prisons with unhealthy and overcrowded cells, while these people study being in psychiatric treatment, outpatient treatment or inpatient treatment. This reality denounces a lack of interventions with the objective of enabling the execution of the sentence, pertaining to psychiatric problems, within these prisons. In addition, she also accuses of non-compliance with Resolution n° 35 of the body that provides for the rules to be analyzed by the country's Judiciary Branch with

regard to the treatment of judicial patients and the execution of security measures. In this sense, when updating the agency's guidelines after the publication of Law n° 10,216 / 2001, an anti-asylum policy was instituted, but this was not evidenced in practice, according to the assistant judge of the CNJ presidency (Agência CNJ de Notícias, 2013).

A cause that can explain this need for interventions in such specific areas, also pointed out by the representative of the CNJ, is the Brazilian penal legislation interpretation, which is linked to compliance with security measures for the prison system. For the magistrate, it lacks an evaluative aspect of the law when it comes to individuals who suffer from some mental problem, in what concerns mainly, the taking of a sentence.

Likewise, the magistrate also draws attention to the problem of resistance found in the public health network. Since, according to this CNJ representative, Sistema Único de Saúde (SUS) uses as an argument an alleged danger to refuse to take in these people. Therefore, according to the aforementioned magistrate, most of the time they remain in prison in prisons without any specific treatment.

IV. PEOPLE'S INCARRIAGE WITH PSYCHIC DISORDERS AND PRISON OVERCROWDING

According to the authors Fiorelli and Mangini (2020, p. 335): "The risk when evaluating the impact of a penalty is to do it from the perspective of a relatively well-established society, for which the dimension of the penalty seems substantial, forgetting realize that there is a marginalized society, without rights and expectations". It is possible to prove this fateful reality, since the percentage of provisional prisoners (without trial) corresponds to 31.9% of the total, according to the G1 news portal (SILVA; GRANDIM; CAESAR; REIS, 2021). Ergo, the analysis of the incarceration of people with mental disorders is of substantial relevance, since several criminal behaviors can be performed due to a mental disorder.

In this perspective, Fiorelli and Mangini (2020, p. 163) highlight that:

[...] with the advent of Law No. 10.216/01, which deals with psychiatric reform and redirects the care model in mental health, the penal institutions destined to carry out such intervention would also be the so-called judicial asylums, or Hospitais de Custódia e Tratamento

Psiquiátrico² (HCTP), obliged to discharge their patients, referring them to public services, preferably constituted in the extra-hospital network, such as the CAPS (Centros de Atenção 3.4 Psicossocial³).

However, in relation to the incarceration of mentally debilitated individuals, it is possible to notice that there is a distortion of this recommendation, in view of the aforementioned data. It appears, therefore, that the multidisciplinary action is violated, causing the elements related to subjectivity to get lost in the midst of procedural rites. Thus, instead of individuals who commit acts of psychotic delinquency being referred to Psychosocial Care Centers, they add up to the prison population in penitentiaries, which according to G1 are 54.9% above capacity (SILVA; GRANDIM; CAESAR; REIS, 2021).

Under this panorama, it is important to highlight that:

The number of individuals with mental illnesses who are involved in the criminal justice system is increasingly on the rise. Studies have found incidences of 10 to 15% for severe mental illness among prisoners compared to an incidence of 2% in the general population. (SILVA; ROSA; AMBONI; MINA; COMIM; QUEVEDO, 2011, p. 74).

In view of this, it appears that the lack of adequate psychological assistance to offenders who commit crimes committed as a result of a mental disorder, directly contributes to the population growth in penitentiaries, therefore, it is worth highlight that:

In the United States, as of mid-2005, more than half of all prison inmates had mental health problems, including 705,600 inmates in state prisons, 78,800 in federal prisons, and 479,900 in local jails. These estimates represented 56% of state prisoners, 45% of federal prisoners, and 64% of inmates in local jails (9). Several reasons were cited for this phenomenon. These include lack of access to adequate treatment for people with mental illness in the community, limited bed availability

in psychiatric hospitals, interactions between people with severe mental illness and law enforcement, and more formal and strict criteria for civil engagement. (SILVA; ROSA; AMBONI; MINA; COMIM; QUEVEDO, 2011, p. 73).

At the same time, it is observed that the overcrowding of the prison system can impact the mental health of the prisoner, generating risk factors in the prison population. According to Gomes and Molina (apud FIORELLI; MANGINI, 2020, p. 334):

[...] the penalty may be essential, however, ..., it stigmatizes the offender, triggers his 'criminal career', consolidating his 'deviant' status and fatally fulfills the always pessimistic social expectations regarding future behavior of the ex-punished (*self-fulfilling-prophesy*).

Thereby, the inclusion of individuals with mental disorders in the outdated penitentiary system causes alarming consequences for the entire society. The shortage of spaces and, consequently, the overcrowding “[...] which is accompanied by mistreatment and violence among prisoners, in some cases with total loss of control by the State – added to the growing violence throughout the national territory it can lead to a strangulation of the system [...]” (FREITAS, 2012, no page).

Thus, the lack of psychosocial assistance added to the aggravating unhealthy conditions in the penitentiaries, they appear as decisive factors for the improper judicial decision of mentally debilitated individuals in the prison system. It is evident, therefore, the need for interventional actions to resolve this issue. Therefore, it is emphasized that:

In the prison setting, including early intervention and treatment, post-release follow-up to divert mentally ill offenders away from substance use, and support their return to the community are goals that can help reduce these rates seen in many countries. In the community setting, active case management, including access to inpatient beds and coordination between mental health services and other agencies, is critical to continuing care for patients at risk of violence in the community. Recommendations to reduce

² Hospitals for Custody and Psychiatric Treatment.

³ Psychosocial Care Centers.

criminalization through greater coordination between police and mental health professionals, increase training for mental health workers and police, improve post-prison mental health services, and develop effective community treatments for criminals with mental illnesses. (SILVA; ROSA; AMBONI; MINA; COMIM; QUEVEDO, 2011, p. 74).

It is reported the need for actions to reintegrate prisoners into society, especially those with mental disorders, when providing psychological support, guaranteed by public policies.

V. UNEQUAL JUDGMENT SENTENCE AND ITS IMPACTS ON THE SOCIAL PRISONERS' REINSERTION

When referring to the issue of social reintegration of common prisoners, there are major obstacles to their integration, as it can be seen that:

Prison is a human dump, a horror place, of total invisibility, a place of annihilation of man, of imprisonment of being. Inhuman conditions, or, as the prisoners teach me, a place where you don't sleep peacefully, where no one trusts anyone, nor is anyone guaranteed who will be alive tomorrow, a place outside the law. In the name of the law and an alleged penal treatment, we find men abandoned, in groups, excluded, without a place, although included by the law. One observation is inevitable: non-place kills a man alive. (SEQUEIRA, 2006, p. 668).

In this sense, it is observed that, if a mentally healthy individual before becoming imprisoned has their social rehabilitation hampered by the current prison system, subjects who are unfairly sentenced are much more affected. In this regard, "[...] it is common for a delinquent, after having been subjected to unfair or excessive punishment, to justify his act. That is, he defends himself from unfair treatment in prison, and decides to 'cash' and get revenge when he has the opportunity, becoming a real criminal". (DAMAS, 2011, p. 50).

At the same time, it is noted that subjectivity needs to be taken into account in criminal treatment, since it is essential for the repair of the offender, and there

should be an appreciation of the seriousness of the examinations that indicate the causes of their criminal attitudes, respecting the non-imputability of the mentally debilitated when applicable (SOUSA, 2019). In this way, the court decision that does not prioritize the need for specific recovery of people with mental disorders formulates a situation that makes them susceptible to the worsening of the previous clinical condition that collaborated to commit a certain crime, constituting an object contrary to basic psychic recovery, which is the right of every human being (SANTA RITA, 2006).

Linearly, it can be noted, together with the worsening of psychiatric problems, the significant increase in the frequency of suicides among prisoners with poor mental health. In this bias, it appears that:

[...] Although prison is a form of punishment for the crime committed, it also acts as a filter for social problems and shelters groups that present high degrees of deprivation, configuring the final social exclusion. One of the factors identified as a cause for the growing number of suicides in the prison environment is the high rate of mental illnesses observed in the incarcerated population. As an explanation for this fact, the beginning of the deinstitutionalization process of psychiatric hospitals has been mentioned, with the consequent criminalization of mental illness. (NEGRELI, 2006, p. 40-41).

At the same time, the growth of these problems related to mental health is not only fueled by the hostility of the prison environment itself, but also by the neglect of the social bonds imposed by the restrictive measures. In this way, it must pay attention to the study presented by the Public Defender of the Union, in which it was pointed out that federal prisoners marked by regular isolation rules in federal prisons and by the prohibition of serving their sentence close to family members are related to an alarming increase in cases suicide attempts and psychiatric problems (OLIVEIRA; GEMAQUE, 2021).

Furthermore, in addition to the damage caused to the psychological and emotional relationship of incarcerated individuals with mental disorders, there are challenges to their employment in decent jobs and consequently to their appropriate social rehabilitation. In this conception, there is discrimination by employers in society in general, who do not even consider the possibility

of having in their establishments an employee who has already been a prisoner (GASPARIN, 2010).

Therefore, given the prejudice that contributes to the discrimination of prisoners with mental disorders due to negligent decisions by judges and the marginalization by society in general, the integrative role of education is highlighted to mitigate this problem by raising awareness of the basic needs of these excluded from society. Thus, it is noteworthy that:

[...] the precariousness of assistance to the prisoner and also to victims and ex-convicts, also linked to the chronic lack of resources of all kinds for the penitentiary system as a whole, in addition to non-compliance with the progression of the regime, they are making the application of the law of criminal executions unfeasible, causing the system to have to amortize these difficulties, having to seek an escape from all this. It is within this framework that education assumes a preponderant role in the process, whether as a process of social awareness or as a mechanism of alienation, the school, and, therefore, education becomes one of the greatest lifelines of and in the system. (GARUTTI; OLIVEIRA, 2012, p. 29).

In this sense, prisoner reintegration actions need to be supported by educational policies that are effectively implemented with a view to alleviating social discrimination responsible for inappropriate prison conditions and social treatment that prevent the correct recovery of people with impaired mental health to life in society.

VI. LAST CONSIDERATIONS

The research was concerned with addressing aspects related to court decisions that do not take into account the need for specific treatment of people with mental disorders, while seeking to understand the context that supports it, as well as the damage to the prison system as a whole and to the social rehabilitation of individuals. In this regard, the importance of developing measures that make sanctions more appropriate to the situation of each offender and facilitate the dignification of their reintegration into society was highlighted.

For the development of the research, the problematic was: What extent is the existence of stereotypes linked to measures to minimize mental disorders related to court decisions that violate the appropriate sanction for individuals?

The general objective was related to verifying the social disbelief about the effectiveness of psychic health treatments as a driver for the occurrence of sentences that transgress the non-imputability of people with mental disorders, and the specific ones: Investigate the judicial authorities' decision in requesting the imprisonment of subjects with mental disorders instead of plausible psychiatric hospitalization; Investigate the performance of interventions within prisons to adapt the environment to those sentenced with mental disorders; Address the incoherent incarceration of mentally impaired individuals associated with the occurrence of overcrowding in prisons; Report the damage to social reintegration of the impertinent court sentence of people with mental disorders.

From the bibliographical research, it was verified the frequent disrespect of court decisions to the specifics of treatment that subjects with mental disorders must have in order to correct their tendency to commit infractions. From this perspective, society's prejudice was observed about the need for recovery of these individuals in psychiatric hospitals or adapted prisons, which made it possible to perceive worsening conditions of mental disorders, prison overcrowding and challenges to their social reintegration.

In this perspective, this article sought to draw the attention not only of the community in general, but also of public authorities in relation to the problems that the mentally unstable prison population suffers in contemporary times. Wherefore, it aimed to bring a reflection that the only right the detainee must lose when being convicted is freedom, the others must be ensured by institutions and society.

Thus, with the approach of Fiorelli and Mangini (2020), in the work *Legal Psychology*, and mainly, the criticism present in Damas' (2011) dissertation about mental health related to the penitentiary scope, one can see the seriousness that guides the reality of mentally debilitated detainees, who have most of their fundamental rights, such as health, neglected by the Public Power. It is important to emphasize that the results present in such works, in this research, can provide fundamental elements for future operations in the Brazilian prison system and for the creation of public health policies, especially with regard to mental recovery.

The elaboration of other researches on the social context is suggested, which contributes to the development

of inequitable judgments for mentally debilitated people, given the prevailing social discrimination that excludes them from carrying out psychiatric treatments according to their subjectivities. Thereby, it emphasizes the importance of collecting and analyzing data that can improve the understanding of this situation, as well as provide a better awareness to society from the analysis of scientifically supported information that highlights the current marginalization of these subjects.

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