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The influence of the media on the principle of the presumption of innocence in the jury trial

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ABSTRACT
This scientific research aimed to demonstrate the entire trajectory of the Jury Court, in the world and especially in Brazil, and its main characteristics, as well as the way in which the media use the prerogative of the prohibition of censorship by the Federal Constitution, which guarantees the freedom of journalistic information, to manipulate facts, impose opinions and influence the population. By acting in this way, the media, by portraying criminal events, violates other equally constitutional guarantees, invading privacy, presuming guilt and decreeing innocence. The research discusses the media as a means of forming public opinion and its reflections on the formation of the value judgment of the components of the sentencing council. To this end, a literature review was carried out through a bibliographic research on the subject. The study in question made clear this influence and the tragic effects it produces, as it provokes reactions in prosecutors, lawyers, jurors, witnesses and can lead to an erroneous sentence, using as an example a real case. It concludes that in the conflict between the freedom of the press and the fundamental rights of the suspect, the suspect must give way because of the suspect in order to have a fair trial, free from media influences, which demonstrates the free conviction of the jurors.

Keywords: Jury Court, Principle of the Presumption of Innocence, Media influence.

1 INTRODUCTION

The Jury Court is a differentiated institution in the Brazilian legal system, classified as a special procedure, has its foundation in the Constitution, located among the fundamental rights and guarantees. Therefore, it is an intrinsic right to the population, being a stone clause, not amenable to alteration or amendment. The Jury Court is responsible for the trial of intentional crimes against life, consummated or attempted, which are: homicide (Article 121 of the Penal Code), inducement, instigation or aid to suicide (Article 122 of the Penal Code), infanticide (Article 123 of the Penal Code), and abortion (Article 124 et seq. of the Penal Code). The final judgment will be carried out by a judge of law, knowledgeable of the norms and principles, and by seven more lay judges, who are people of the people. The jurors are formed by the population of the district, and with this there is a great diversity in the profiles of these, although this is the function of the court: to provide a trial to the defendant by his peers in society. However, this judgment may suffer some external influences, for example, the influence of the media, which is why this will be studied.

The right of the press is also guaranteed in the Constitution and located among the fundamental rights and guarantees, as well as the Jury Court. Some aspects of the media tend to sensationalism, that

is, the search for facts capable of making an impact, of shocking public opinion, without any concern for veracity. And when it comes to the law, the area most capable of remedying this search is the criminal one. Therefore, the trial by jury can cause prejudice in some principles, for example, the principle of presumption of innocence of the accused, since the juror can come to the plenary with the presumption of guilt of the defendant by the information transmitted by the media without a deepening of the facts.

2 DEVELOPMENT OF THE ARGUMENT

2.1 THE JURY COURT AND ITS HISTORICAL PART

The Jury Court is a popular institution with a democratic character, where there is the assertion that the "defendant will be judged by his peers." Regarding its origin it is known that it is about ancient times and there is some divergence in relation to the exact period, but according to John Gilissen[1], the origin of this institution would be related to the time of the Common Law, in the second half of the twelfth century, appearing really as a matter of the legal scope with the king of France, Henry II, in 1166.

However, in 1808 a Magistrate's Council Chamber replaced the jury, so the institution had a short duration during the government of Napoleon, who due to the character of dictator, did not like the jury.

The French Jury Court was represented as an ideological symbol of the French Revolution, as judges were not endowed with functional independence. It represented values and ideas of the time, having as its basic concept: liberty, equality and fraternity. "Freedom of decision of citizens; equality before justice and fraternity in the democratic exercise of power."[2]

In Italian territory, the popular institution instituted by the *Codex of the Procedure Penale of* 1859, was intended to express democracy, since it allowed society to integrate the judicial power and thus judge the causes. However, due to the fascist movement it was annihilated and replaced by another institute that only allowed certain people with social status and who were affiliated with the fascist party to participate in the administration of justice. He was called as an advisor. Even after the end of the dictatorial regime, the Jury did not return to the same character.

In England, the Jury Court had its origin related to a set of measures that were created as a form of resistance to the ordalis, during the government of King Henry II (1154 – 1189). Before the public prosecution was made by an official, equated to the figure of the Public Prosecutor, and later came the Grand Jury, which became the character of the local community and was formed by twenty-three

[1] GILISSEN, John. Introdução histórica ao direito. 3. Ed. Lisboa: Fundação Calouste Gulbenkian, 2001. p. 214.
[2] RANGEL, Paulo. Tribunal do Júri. 5. Ed. São Paulo: Atlas, 2014. p. 48.

people from the county, when it came to serious crimes, for example, homicide and robbery. He took the title of Jury of the Indictment.

The Jury Court arose with the task of removing from the hands of the despots the power of decision, which was always contrary to the interests of society, giving birth to the principle of due process of law.

After England, with the edition of Magna Carta in 1215 with King John Landless, the court spread throughout Europe, such as Spain, Switzerland, Romania, Greece, Russia and Portugal. And it was upon arriving in the United States that it acquired a more modern character[3].

The American popular institution has a character that distinguishes it from the rest. The U.S. jury prosecutes both civil and criminal cases. It is up to the jurors to direct the debates, the interrogations and the decisions of question of law, exercising the function of guardians of the rights guaranteed in the American constitutional amendments. The prosecution is left with only the burden of proof that there is sufficient evidence against the accused[4].

Thus, the basis of the American jury is its Constitution, so that is the fundamental substantive right of all defendants who commit an offense, no matter what, must submit to the people's court. There is another side of the institution, it is the exercise of citizenship. The power that emanates from the people is what prevents arbitrary decisions in law enforcement; Jurors know it has the function of educating society about moral, democratic and legal values.

The institution of the Jury Court only arrived in Brazil in mid-1822, when the ideals of independence emerged. It was in this chaotic political scenario of liberation of the Metropolis that the people's court was instituted by the Law of July 18, 1822, prior to the declaration of independence by Dom Pedro I on September 7. At this time, the jury was only used for press crimes and jurors were elected. Its feature was only changed with the promulgation of the Code of Criminal Procedure of the Empire of first instance, which provided in its text that only citizens electors of recognized good-being and probity were allowed to be jurors. That is, only those who had a good economic situation occupied the body of judgment[5].

The structuring of the jury in the empire was given by the grand jury *(gran jury), the small jury (*petty jury) and the justice of the peace. This was the one who received the complaint/complaint, and

[3] RANGEL, Paulo. Tribunal do Júri. 5. Ed. São Paulo: Atlas, 2014. p. 42.
[4] Ibid., p. 45.
[5] Having pondered in My Real Presence, that commanding Me to convene a General Constituent and Legislative Assembly for the Kingdom of Brazil, I necessarily cimpria Myself and by the supreme law of public salvation to prevent that either by the press, or verbally, or in any other way propagate and publish the enemies of order and tranquility and union, incendiary and subversive doctrines, disorganizing and dissociable principles; (...) I will, and with the opinion of My Council of State, provisionally determine the following: The Corregidor of Crime of the Court and House, who hereby appoints Judge of Law in the causes of abuse of the freedom of the press, and in the Provinces, which have Relation, the Ears of the crime, and that of the District in which they do not have it, shall appoint in occurrent cases, and at the requisition of the Procurator of the Crown and Treasury, who shall be the Prosecutor and Fiscal of taes delictos, 24 citizens chosen from among the good, honorable, intelligent, and patriotic men, the quaes shall be the Judges of Fact, to know of the criminality of the abusive scripts.

after proceeding with all the necessary steps, such as the interrogation, declared the act valid or unfounded. And then, the grand jury constituted a judicial clivo in which there was the debate among the twenty-three jurors to decide whether the indictment proceeded or not, it was called the indictment jury. If so, the defendant proceeded to the small jury, consisting of twelve jurors and known as the sentencing jury, where the trial of the merits of the charge would be made[6].

Given this, there was a rule that prevented jurors who participated in the prosecution jury from being able to participate in the sentencing jury, so that the impartiality of the natural judge was preserved, since they would not be able to judge the merits since they previously understood that there was evidence of authorship, according to Rangel[7]. However, the institution behaved in such a way as to avoid an abusive exercise of the accusation by the State.

However, in 1841 the Brazilian Jury Court was influenced by a dictatorial France of Napoleon, exterminating the possibility of appreciation by its peers of the accusatory claim, being in the hands of judges and / or police delegates. That is, both judges and delegates who were chosen by the Monarch would serve on the indictment jury. There was a purpose of establishing a punitive inquisitor system, because it took from the hands of the people the power to decide whether or not a citizen should be tried.

> The law (261 of 1841) did not improve the conditions of the system. On the contrary: it restricted the powers of the Justices of the Peace; created the chiefs of police, delegates, subdelegates, with judicial powers, including that of forming the guilt and pronouncing in all common crimes; abolished the jury of indictment, making the pronouncements uttered by the chiefs of police and municipal judges independent of support, and the appeal against them immediately, and determining that the pronouncements by the delegates and subdelegates would be upheld and revoked by the municipal judges. [8]

These changes were intended to make punishment easier, so that it would serve the interests of the state and express sovereign power, according to Paulo Rangel[9]. So much so that for the jurors to be chosen, it was necessary that they be trusted by the Court. All this reform had some reflexes, one of them was the need for unanimous votes for the condemnation of the death penalty, which required only a quorum of two-thirds.

When the Monarchy was banned and the Brazilian territory adopted the Republic as a form of government, the jury was regulated by Decree No. 848 of October 11, 1890. The court then had a composition of twelve jurors, which due to its even composition, allowed the defendant to have a greater opportunity to exercise his defense, since the condemnatory verdict only when there was a

[6] RANGEL, Paulo. Tribunal do Júri. 5. Ed. São Paulo: Atlas, 2014. p. 63.
[7] RANGEL, loc. Cit.
[8] ALMEIDA JÚNIOR, João Mendes de. O processo criminal brasileiro. 4. Ed. São Paulo: Freitas Bastos, 1959. p. 241.
[9] Ibid., p. 69.

decision with seven votes or more. The jury trial then gains an open, democratic character, with liberal postulates and guarantors of freedom[10].

The Brazilian popular institution also went through a strong influence of a despot character with the Vargas government and the Estado Novo. The ruler reiterated his authoritarianism by reducing the jury's jury to seven, those who were now chosen by the personal knowledge of the magistrate; This attitude that constituted the withdrawal of its sovereignty from society and the loss gave its popular and democratic character.

The jury known today in Brazil received influence from the English system in relation to the first jury council, or jury of indictment, and from the French system, the public prosecutor's office and the secret and written instruction, as João Mendes de Almeida Júnior writes[11].

2.2 THE JURY COURT CURRENTLY IN BRAZIL

The institution of the Jury Court is supported by the Brazilian Federal Constitution and its article 5, item XXXVIII, in which it is treated as a fundamental human right and guarantee.

> Art. 5 All are equal before the law, without distinction of any kind, guaranteeing to Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, in the following terms:
> [...]
> XXXVIII - the institution of the jury is recognized, with the organization that gives it the law, ensured:
> a) the fullness of defense;
> b) the secrecy of votes;
> c) the sovereignty of the verdicts;
> d) the competence for the trial of intentional crimes against life.

The Jury should be understood as the right of the people to participate directly in the decisions of the Judiciary, and the guarantee of due process of law so that those accused of the commission of intentional crimes against life are tried by a natural judge.

Although it has differential characteristics from other procedural procedures, it is an integral part of the Judiciary, because only in this way is justified the participation of the judge togado, also known as the presiding judge, as well as the application of the rules of criminal procedure in the processing of their trials.

The principles of the people's court are: the fullness of defense; the secrecy of votes; the sovereignty of verdicts; the competence for the trial of intentional crimes against life.

The trial of Jury Court cases is subject to a two-phase system. The first of these is the *judicium accusationis*, it is the phase of guilt formation. It begins with the receipt of the complaint by the judge, and then is given the period of ten days from the defendant's summons to present the prior defense.

[10] Ibid., p. 77.
[11] ALMEIDA JÚNIOR, João Mendes de. O processo criminal brasileiro. 4. Ed. São Paulo: Freitas Bastos, 1959. p. 240.

This moment of the defense is when the accused can allege everything that interests him, including the arguing of preliminaries, the offering of documents and justifications, as well as can point to evidence and call witnesses, a maximum of eight. If the defense is not presented, the magistrate must appoint a defender to then offer it, opening the deadline again. Next, the hearing of instruction and trial is determined, where in this will be heard the offended (a), when possible, the witnesses listed by the parties, obeying the order of first the prosecution and then the defense. Other acts that are deemed necessary, such as accompaniment and expert clarifications, will also be carried out at the hearing. And finally, there will be the interrogation of the defendant.

At the end of the first phase of the trial (*judicium accusationis*), the magistrate will then render his decision within ten days, and this may be: pronouncement, impronuncia, disqualification and summary acquittal.

The pronouncement is provided for in Article 413 of the Code of Criminal Procedure, it is a mixed interlocutory decision, which deems the accusation admissible when the materiality of the crime and the sufficient evidence of authorship are recognized, thus determining that the defendant be submitted to trial by the Jury Court in plenary.

Already decision of impronunciation is provided for in Article 414 of the Code of Criminal Procedure, and consists of a mixed interlocutory decision, however, of terminative character, since it puts an end to the process. There is the rejection of the complaint because there is no proven proof of materiality or sufficient evidence of authorship. But nothing prevents the offering of another complaint, provided that it is accompanied by substantially new evidence.

The declassification of the criminal offense is provided for in Article 419 of the Code of Criminal Procedure, and it is an interlocutory decision of a simple nature, since it changes the legal definition of the crime, that is, its typicality. As a consequence, there is a change in the jurisdiction of the trial, and therefore it is necessary to refer the case to the competent single judge.

And finally, the summary acquittal is found in Article 415 of the Code of Criminal Procedure, this is a terminative decision of merit, because it accepts the thesis of non-existence of the fact, of not having the defendant the author or participant of the fact, as well as of the fact not being considered a criminal offense, or of having been shown to exclude illegality or guilt, provided that it is clearly demonstrated at the stage of the formation of guilt (*judicium accusationis*). As a consequence, there will be no trial by the plenary, and so this decision can no longer be reviewed.

When there is the pronouncement of the defendant, it is moved to the second phase of the trial (*judicium causae),* known as the preparation of the plenary, provided for in Article 421 of the Code of Criminal Procedure. The judge will order the subpoena of the Public Prosecutor and the defender, so that within five days, they present the list of witnesses who will testify in plenary, being at most five for each party. Then, the magistrate will determine the importance of the evidence that must be

produced immediately and which will remain for the plenary. In addition, you must prepare a report of the process, that is, a brief summary without expressing any type of opinion, which will be delivered in copy to each of the jurors that will compose the Sentencing Council.

Once these preliminary questions are overcome, twenty-five people will be drawn from the general list of jurors, who will serve in the session by means of a call notice, which will count the date on which the jury will meet. And they will still be subpoenaed via mail or by any other means, for example, by telephone.

Article 429 of the Code of Criminal Procedure establishes an order of preference that must be respected for the trial: first the arrested defendants, among the prisoners, the oldest in prison, and in the case of equality, those who have been pronounced for the longest time.

Of the twenty-five jurors summoned, it is necessary that at least fifteen present themselves on the day of the trial, so that then, the prosecution and defense can manifest themselves as to the draw of seven. In other words, the defense and prosecution have the right to dismiss three of the jurors without justification.

Then formed the Court of Jury, by a learned judge, the president, and twenty-five jurors, of whom only seven will be drawn to compose the Sentencing Council, the trial will begin. It is of paramount importance that jurors remain incommunicado to each other throughout the trial under suspicion of possible nullity.

Once the instruction in plenary has begun, the order of the procedural acts will be: the declaration of the victim, when possible, the hearing of the witnesses, and the prosecution must precede those of defense, the clarifications of the experts and other necessary steps, and finally, the interrogation of the defendant.

At the end of the investigation phase, the debates will begin, with the prosecution having the first word, followed by the defense. The prosecution may replicate the defense, and the defense may rejoin.

It is possible for jurors to ask the presiding judge for objective clarifications of facts in the case if necessary to then judge themselves qualified to judge.

After this phase of the plenary, the jurors will then be sent to a different room, where they must answer YES or NO to the questions that will be presented by the presiding judge, these are focused on the materiality of the fact, the authorship or participation, the causes of reduction and increase of the penalty, the qualifiers and privileges. It is worth noting that the decisions of the Jury Court will be taken by majority vote.

Once the jurors' vote is over, it will be up to the magistrate to write the sentence. The presiding judge will not substantiate the sentencing decision, because it was up to the jurors, he must only apply the sanction, in a way that respects the three-phase system: establish the base penalty; insert

aggravating and mitigating factors; consider increases and decreases in penalty. Upon acquittal, the defendant shall be released immediately, unless imprisoned for another reason.

2.3 FUNDAMENTAL RIGHTS

2.3.1 The principle of the presumption of innocence

In the current Brazilian Federal Constitution, it was established that no one will be considered guilty until the final judgment of conviction, as provided for in article 5, item LVII of the Political Charter. According to Alexandre de Moraes[12] "enshrining the presumption of innocence, one of the basic principles of the rule of law as a guarantee of criminal procedure, aiming at the protection of personal freedom."

Therefore, the principle of the presumption of innocence imposes on the State the burden/necessity of proving the guilt of the individual, since he is constitutionally presumed innocent.

The principle referred to had its origin in the Declaration of the Rights of Men and Citizens in 1971, but only came to gain universal repercussion with the Declaration of Human Rights of 1948, of the UN.

> Article 11 of the Declaration: Every person accused of a crime has the right to be presumed innocent, as long as his guilt is not proved, in accordance with the law and in a public process in which all the necessary guarantees for his defense are ensured.

Brazil, despite collaborating to originate the aforementioned declaration of the United Nations, only implemented it in fact in the Brazilian legal system quarantine years later, that is, in the Constitution of 1988. However, the non-positivization of the principle did not mean its total ignorance, there was its transparency by the principle of contradictory and broad defense, which directed the processes and decisions of Brazilian justice.

In addition, it should be noted that the Brazilian legal system today has more than one legal text, of constitutional value that ensures the principle of treatment, as provided for in Article 8, item I of the Pact of San José of Costa Rica.

2.3.2 Freedom of the press

"No democracy survives without a free press and no dictatorship survives with a free press."[13]

Freedom of the press emerged in the early twentieth century when journalism became of capitalist interest, which envisioned the circulation of information as a "profitable press", and is currently provided for in the constitutional text, in article 5, item IX and article 220.

[12] MORAES, Alexandre de. Direito Constitucional. São Paulo: Editora Atlas, 2010. p. 240
[13] SOUSA, Jorge Pedro. Teorias da Notícia e do Jornalismo. Chapecó: Argos, 2002. p. 112.

The Brazilian press has suffered a lot in its trajectory with the Brazilian government, and because of this several rights related to information have been assured, for example: no law or device can veto in any way the full freedom of journalistic information; all censorship is forbidden; The right of reply is guaranteed, proportionate to the injury you have suffered. They are subject to compensation for material, moral or image damage.

However, it is not an unlimited right, since the Magna Carta itself brings limits to this freedom, as seen in article 5, item X and article 220, paragraph 1:

> "Art. 5 All are equal before the law, without distinction of any kind, guaranteeing to Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, in the following terms:
> [...]
> X - the intimacy, private life, honor and image of persons are inviolable, ensuring the right to compensation for material or moral damage resulting from their violation (...)."
>
> Art. 220. The manifestation of thought, creation, expression and information, in any form, process or vehicle shall not be subject to any restriction, subject to the provisions of this Constitution.
> § 1 - No law shall contain a provision that may constitute an embarrassment to the full freedom of journalistic information in any media outlet, subject to the provisions of article 5, IV, V, X, XIII and XIV.

The mass media have a duty to disseminate ideals and information, and the instant they do this duty, they are liable to make mistakes about that information, such as superficiality, trivialization, impartiality, and omission.

Therefore, it is recommended that legal cases of secrecy or secrecy of justice be as restricted as possible. In addition, the press must learn in the democratic exercise of its freedom, check the sources, the veracity and proof of the facts, and above all, make the disclosure without sensationalism, "knowing how to ponder the trinomial freedom, responsibility and individual rights."

2.4 THE MEDIA AND ITS POWER OF INFLUENCE VS. PRESUMPTION OF INNOCENCE

As exposed, the Federal Constitution provides for several rights and guarantees that are considered as fundamental, however, there are frequent times when these guarantees are confronted, and indirectly, limited.

As discussed, the Jury Court is an institution based on the sovereignty of the popular verdict, given that the jurors (laymen), are the judges of the cause, so it is irredeemable that because they are normal people within a society, create preconceptions of certain situations, in view of the information that is transmitted by the main media.

Therefore, it is completely convenient to assume that, although the Magna Carta presumes the innocence of the individual until proven otherwise, but nothing prevents the media, in several cases,

from condemning the defendant even before his trial. Now, the guy who is still a suspect is often judged by the opinion disseminated by the media.

Walter Ceneviva[14] observes when questioning on the subject:

> Sensationalism and "denunciation" are ways of acting found in electronic and printed media in many parts of the world. The official lie and the private lie use these procedures. Reader, viewer and listener must believe, disbelieving. Above all, they should be cautious about believing everything the media says bad about people and not believing what they say is good. Whoever only believed the malicious versions and drew from it the conclusion of being well informed, shows, in fact, naivety, because his deception will result in the benefit of people whose name does not appear, but are benefited.

It is inexcusable that freedom of the press should act unquestionably, without any moderation in the transmission of the news. In addition to the presumption of innocence of the accused, they also violate the principle of human dignity and due process, which provides for trial and conviction, if necessary, by justice, and not by the media that make use of sensationalism instead of quality in their sources of information.

Nilson Naves [15]discusses this:

> We must keep in mind that preparatory procedure, indictment, trial and conviction are acts that are constitutionally and legally the responsibility of the Judiciary with the valuable collaboration of the Public Prosecutor's Office and the judicial police. Thus, it is not correct that the news leads the community to conclude the guilt of the accused before the judicial pronouncement. It is not fair that the order of things should be reversed in people's minds, and the sentence should be passed even before the preliminary or preparatory procedure for criminal proceedings has been instituted by the police authority. Moreover, if the facts are not brought to trial, the suspicion is created that justice is part of collusion to cover up the alleged crime. Let us never lose sight of the fact that, among the fundamental rights and guarantees of our Constitution, it is inscribed that no one shall be found guilty until the final judgment of conviction. In fact, the axiological postulate of the presumption of innocence, because it is eternal, universal and immanent, does not even need to be recorded in a normative text.

In view of this, we have that the role of the media is not to judge but to present the facts in a complete and truthful way, without the objective of punishing the suspect, but rather to transmit to the public the reality of the facts.

Moreover, restrictions on freedom of the press concern honor, image, intimacy and privacy. Such as, within the criminal process to the principle of the presumption of innocence. Regardless of the constitutional configuration of freedom of information, there is no way to admit an absolute character in its exercise.

The harmonization between the principles of freedom of expression and individual guarantees of the accused must be carried out with consideration, given that they are the foundations of the democratic regime and the guiding principles of the rule of law. Taking into account that both values

[14] CENEVIVA, Walter. Denuncismo e sensacionalismo. Revista CEJ. 2003, p. 21
[15] NAVES, Nilson. Imprensa investigativa: sensacionalismo e criminalidade. Revista CEJ. 2003.

mentioned have constitutional natures, it is indispensable to make a logical reading of the Magna Carta, in search of also constitutional foundations to resolve the conflict. On the subject, Barroso lectures:

> The difficulty just described has already been widely perceived by the doctrine; It is common ground that cases like these are not solved by simple subsumption. It will be necessary a reasoning of diverse structure, more complex, that is able to work multidirectionally, producing the concrete rule that will govern the hypothesis from a synthesis of the different normative elements incident on that set of facts. Somehow, each of these elements must be considered to the extent of its importance and relevance to the concrete case, so that in the final solution, as in a well-painted picture, the different colors can be perceived, even if one or some of them will stand out over the others. This is, in general, the objective of what is conventionally called the weighting technique.

The analysis of the concrete case is fundamental to establish a point of balance between the opposing constitutional values. Regarding this subject, Ana Lúcia Menezes Vieira discusses the applicability of the principle of Proportionality of Contrasting Values:

> The valuation criteria should be careful and flexible, capable of providing an assessment of the colliding goods, sufficient for a choice in which there is no room for agency.
> [...] Where an individual good may suffer damage justifying the restriction of the freedom of the press, that right shall give way to that other. Otherwise, the protection of the media's right to inform, and to be informed, of the public, must prevail.

Thus, proportionality translates the obligation that the intermediary in a fundamental right is motivated by causes as serious as the affront imposed on it. That is, there must be a balance between the positive effects of the overvalued value and the burden inflicted on the antagonistic precept.[16]

It is worth mentioning that journalists should have the principle of Proportionality of Contrasting Values as one of the pillars of their activity, since the collision with other constitutional rights does not always come to the knowledge of the jurisdictional.

So, whether at the police station, in the interview with accused and witnesses or in reports that speak of crimes, the weighting between the colliding rights also needs to be done by the press professional himself. No value is absolute; Freedom of information cannot be exercised in an unrestricted way, just as the guarantees of the due process of law also do not have an immutable character, so that one does not fall into the abyss of agency, both for one side and for the other.[17]

Thus, in the collision between these fundamental rights, and it is not possible to reconcile them, the freedom of the press must succumb, in a proportionate and adequate way, to the principle of the presumption of innocence, since it is not reasonable for it to prevail to the detriment of the fundamental rights and guarantees of the individual. Just as the Magna Carta itself expressly provides:

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[16] ALMEIDA, Judson Pereira de. Os Meios de Comunicação de Massa e o Direito Penal: A Influência da Divulgação de Notícias no Ordenamento Jurídico Penal e no Devido Processo Legal. Revista Eletrônica Fainor, Vitória da Conquista, v. 1, n. 1, p.20-28, 2018Available at: <http://srv02.fainor.com.br/revista237/index.php/memorias/article/view/11/26>. Access on: 29 nov. 2018.

[17] ALMEIDA, loc. Cit.

> "Art. 220. The manifestation of thought, creation, expression and information, in any form, process or vehicle shall not be subject to any restriction, subject to the provisions of this Constitution."

As crimes have great moral value, the print increases the publicity when committing a crime, especially when it comes to intentional crimes against life, issuing value judgments about the criminal fact. For example, in relation to the influence of the media in the Nardoni case, Carla Gomes de Mello[18] explains:

> Take as an example, issue n.2057, of Veja Magazine, of April 23, 2008. On the cover, emblazoned are the faces of the father and stepmother suspected of having murdered the girl Isabela. Just below the image, the striking title, whose end draws our attention, since they are written in a larger size and in different colors from the one used at the beginning of the text: "For the police, there is no longer any doubt about Isabela's death: IT WAS THEM.

With this, the media promotes an early judgment that is not in accordance with the laws, nor with the Federal Constitution.

This vigilante character of the Media is examined by Márcio Thomaz Bastos:

> To bring a defendant to trial at the height of a media campaign is to lead him to a lynching, in which procedural rites and formulas are only the appearance of justice, covering up the cruel mechanisms of summary execution. This is a pre-conviction, that is, the person is convicted before being tried, as well defined in Black's Law Dictionary; in the entry Trial by news media: "It is the process by which the news of the press about the investigations surrounding a person who is going to be subjected to trial ends up determining the guilt or innocence of the person before he is formally tried."

The force that the media produce and project when reporting a crime is likely to influence even the judge, at the appropriate time to decide. Often, for fear of generating in citizens the feeling of legal insecurity, judges decide the way the media and the entire society influenced by it expect, not being objective and partial.[19]

2.5 METHODOLOGICAL PROCEDURES

For the present study, the most appropriate research method would be the dialectical method, because it is an explanatory research of a qualitative nature, subject to documentary and bibliographic procedures, since both material of a diverse nature and the theoretical references already analyzed previously will be used, and since it will be necessary a good theoretical and reflective development on the subject. Bibliographic surveys will be carried out in various sources such as dissertations, books, doctrines, theses and articles that already address the subject and in appropriate and reliable sites.

[18] MELLO, Carla Gomes de. Mídia e Crime: Liberdade de Informação Jornalística e Presunção de Inocência. Revista de Direito Público, Londrina, v. 5, n. 2, p. 106- 122, ago. 2010. Available in: <http://www.uel.br/revistas/uel/index.php/direitopub/>. Access in: 13 dec. 2010.
[19] MELLO, loc. Cit.

From the analysis and selection of the material, there will be the approach and questioning that exists in relation to the influence that the media exerts in the Jury Court, and what is the reflection of this in the face of the principle of the presumption of innocence, guaranteed in the Federal Constitution. Exploratory research will also be done through case studies, to exemplify and facilitate the understanding of the power of persuasion that the media emits today, and how harmful this can become in the questioning of a fair trial and due process, one of the cases that will be addressed is the Nardoni case, which took place in São Paulo, on the evening of March 28, 2008.

3 FINAL CONSIDERATIONS

From all the foregoing, it is concluded that at the same time that the Federal Constitution established the principle of freedom of information, aiming to guarantee the citizen the right to receive the fullest possible information on all facts of public interest, it also ensured the principle of the presumption of innocence with the objective of preserving the state of innocence of the accused until he is formally found guilty by a criminal sentence that has become final, for the commission of an offence.

In this way, there are limits to the exercise of these fundamental rights, hoping that one does not invade the sphere of the other. However, society's interest in news related to crimes and violence is notorious, and the media, holder of such knowledge, exploits the aforementioned issues in an exacerbated way, misrepresenting the facts, hurting the dignity of those involved and resulting in an early conviction of the accused suspect without due process.

With the accomplishment of the research, it is perceived that the impetuous influence of the media on the criminal process, on the trials, on the jurors, and, mainly, on the population as a whole.

There is no intention to censor the important work of the serious press committed to the true information of the facts, what should not be allowed is the tolerance of senseless and immediatist reports that disrespect the privacy of the citizen and mistakenly form the common sound under the pretext of obtaining high ratings of audience.

The "media sentence" dispenses with formalities and "becomes final" before public opinion without allowing the person sitting in the dock the opportunity to defend himself or, at least, to be aware of all the accusations that are imputed to him.[20]

With regard to the legal professional, there must be a compatibility between the guarantees constitutionally safeguarded, and when analyzing the concrete case, the principle of the presumption of innocence should override that of freedom of the press when it remains demonstrated that the violation of fundamental rights of the person will cause damages that tend to be prolonged in time.

[20] VIEIRA, Ana Lúcia Menezes. Processo Penal e Mídia. São Paulo: Editora Revista dos Tribunais, 2003. p. 30 e 31.

In view of this, it is up to the population to be more active with regard to information. It must demand news, truth and, above all, information. Since the whole society and more precisely all professionals who work in criminal prosecution have the duty to preserve the right of the citizen to be presumed innocent, not letting himself be influenced by media opinion.

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