PENALTY OF FINE FOR PEOPLE IN HOMELESS SITUATIONS: NEED TO RE-SIGNIFY THE PRINCIPLE OF PROPORTIONALITY IN ACCOUNT OF THE PRINCIPLE OF INDIVIDUALIZATION OF THE PENALTY

PENA DE MULTA PARA PESSOAS EM SITUAÇÃO DE RUA: NECESSIDADE DE RESSIGNIFICAR O PRINCÍPIO DA PROPORCIONALIDADE EM ATENÇÃO AO PRINCÍPIO DA INDIVIDUALIZAÇÃO DA PENA

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Abstract

This study analyzes the obstacles faced by the justice system when deciding cases involving the imposition of criminal fines on people experiencing homelessness, as well as the vulnerabilities and inequalities affecting this population. It emphasizes the need to adapt criminal sanctions to the socioeconomic circumstances of convicted persons. The research critically examines both the legislation in force and contemporary judicial practices, arguing that criminal fines should not be imposed on this vulnerable population. The study is guided by the following question: to what extent does the criminal fine, as currently prescribed and applied, perpetuate inequality and hinder the social reintegration of people experiencing homelessness? The research hypothesis is that refraining from imposing criminal fines on this population is a more equitable measure, consistent with the constitutional principles of human dignity, individualized sentencing, and proportionality. The methodology consists of a narrative literature review and a qualitative analysis of judicial decisions, encompassing leading scholarly works, relevant regulations and resolutions, and significant precedents of the higher courts. This position is grounded in the principles of individualized sentencing and proportionality, the provisions of Resolution No. 425/2021 of the National Council of Justice (CNJ), the individual

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rights and guarantees enshrined in Article 5 of the 1988 Federal Constitution, Brazilian criminal and civil legislation, the Universal Declaration of Human Rights of the United Nations (1949), and the combined analysis of precedents from Brazil's higher courts, as discussed throughout this study.

Keywords: *People Experiencing Homelessness; Criminal Fine; Proportionality; Individualized Sentencing.*

Contents: *1. Introduction; 2. The Criminal Fine; 3. Jurisprudential Overview and Mechanisms for Enforcing Payment of Criminal Fines; 3.1. Standing to Enforce a Criminal Fine; 3.2. (Non-)Payment of the Criminal Fine and the (Im)Possibility of Extinguishing Criminal Liability; 4. Consequences of the Failure to Extinguish Criminal Liability Due to Nonpayment of the Criminal Fine; 5. Profile of People Experiencing Homelessness and Penal Selectivity; 6. Individualized Sentencing: The Need to Reframe the Proportionality of Criminal Fines in Cases Involving People Experiencing Homelessness; 6.1. The Principle of Proportionality and the Criminal Fine; 7. Conclusion; 8. References.*

1 INTRODUCTION

This article undertakes a critical, questioning, and comprehensive analysis of the legislation and judicial practices currently governing the imposition of criminal fines on people experiencing homelessness. It invites deeper reflection on justice, proportionality, and the effectiveness of criminal sanctions imposed on members of a heterogeneous population group whose shared circumstances include marginalization, extreme poverty, weakened family ties, the absence of regular conventional housing, and the inability to enjoy basic rights enshrined in the 1988 Federal Constitution.

The central problem examined in this study is the imposition of criminal fines on people experiencing homelessness and the extent to which this practice perpetuates inequality and makes their social reintegration unfeasible. The fundamental research question is whether the criminal fine, as provided for under Brazilian law and applied by the justice system, constitutes an obstacle to effective citizenship and to the full exercise of fundamental rights by a population living in conditions of extreme vulnerability. The hypothesis is that refraining from imposing criminal fines on this vulnerable population is a fairer measure, compatible with the constitutional principles of human dignity, individualized sentencing, and proportionality. To support this analysis, the study adopts a qualitative methodology based on a literature review and an examination of judicial decisions, considering relevant legal scholarship, the rules in force - particularly Resolution No. 425/2021 of the National Council of Justice (CNJ) - and precedents of the higher courts. This qualitative approach enables a broad and critical understanding of the subject by considering both the domestic legal order and international human rights principles and guidelines, thereby allowing a more thorough assessment of whether criminal sanctions are suited to the socioeconomic realities of people experiencing homelessness.

The study examines the effects of the inability to pay a criminal fine on Brazilians who, after serving a custodial sentence or a sentence restricting rights,

experience a denial of citizenship - a form of social purgatory that prevents them from exercising basic rights. These barriers may include obtaining certain documents, exercising the right to vote, enrolling in social programs, securing the removal of criminal record entries, and obtaining formal employment, particularly in occupations requiring proof that criminal obligations have been discharged. All of this makes social reintegration more difficult and prevents the full exercise of citizenship.

Against this background, the article discusses the inconsistencies and potential functions of the criminal fine and explores paths toward a system of justice that genuinely observes the principles of individualized sentencing and proportionality.

The theoretical discussion rests on a combination of legal principles, statutory provisions, and scholarly contributions.

One of its core normative foundations is the principle of individualized sentencing, enshrined in Article 5, item XLVI, of the 1988 Federal Constitution. This principle requires sentencing to take account of the particularities of each case, including the defendant's personal characteristics and the circumstances of the offense. In addition, the principle of proportionality, reflected in Article 60 of the Brazilian Criminal Code, requires the criminal sanction to be appropriate both to the seriousness of the offense and to the convicted person's economic circumstances.

The central issue is therefore the need to reframe the principle of proportionality in the imposition of criminal fines in light of individualized sentencing, particularly in cases involving people experiencing homelessness. The study investigates the extent to which the legislation in force and prevailing judicial practice are unsuitable for this highly vulnerable population.

It argues that refraining from imposing criminal fines on this population is a more equitable and proportionate measure, consistent with constitutional principles and the guidelines established by Resolution No. 425/2021 of the National Council of Justice (CNJ), given these individuals' socioeconomic vulnerability and the need for criminal justice policies that promote social inclusion and restorative justice.

The methodology consists of a narrative review of the scholarship addressing the subject, encompassing its principal works. The same method is used to present and examine the relevant legislation and resolutions. Judicial decisions are analyzed primarily through a qualitative approach, focusing on the significant rulings issued by the higher courts on the matter.

Judicial practices must be reviewed, and sanctions must be adapted to the convicted person's economic circumstances, to ensure that the criminal justice system does not perpetuate social inequality and injustice, particularly with respect to people experiencing homelessness, who constitute one of society's most vulnerable groups.

2 THE CRIMINAL FINE

Although a fine is criminal in nature, it is governed by a distinct legal regime that differentiates it from other forms of punishment. Brazilian law prohibits converting a criminal fine into a custodial sentence. A pecuniary sanction must be imposed and enforced in a manner consistent with the convicted person's financial capacity, thereby ensuring that the sanction is fair and proportionate to the offender's economic circumstances.

Brazil's legal framework governing criminal fines has undergone significant changes in recent decades. Law No. 9,268/1996 and, more recently, Law No. 13,964/2019, known as the "Anti-Crime Package," substantially amended Article 51 of the Criminal Code, affecting the enforcement and collection of this sanction. These changes have generated new legal challenges and debates.

The imposition of criminal fines, particularly on vulnerable individuals such as people experiencing homelessness, raises crucial questions concerning proportionality and individualized sentencing. The difficulty of paying debts arising from fines, social stigma, and the barriers to the reintegration of formerly incarcerated persons are problems that require a more humane and equitable approach.

The case law has evolved toward considering convicted persons' economic circumstances when a criminal fine is enforced, recognizing, in certain cases, that an inability to pay may justify the extinguishment of criminal liability. Nevertheless, legal practices still require review and improvement to ensure that pecuniary sanctions fulfill their purpose without perpetuating social inequality.

3 JURISPRUDENTIAL OVERVIEW AND MECHANISMS FOR ENFORCING PAYMENT OF CRIMINAL FINES

A brief review of recent developments shows that, after Brazil became a party to the American Convention on Human Rights through Decree No. 678 of November 6, 1992 - which expressly prohibits imprisonment for debt - Law No. 9,268 was enacted in 1996. Among other changes, it amended Article 51 of the Criminal Code by classifying the criminal fine as a debt of value, subjecting its enforcement to the rules applicable to the Public Treasury and prohibiting its conversion into detention in the event of nonpayment.

3.1 Standing to Enforce a Criminal Fine

When called upon to address the matter, the Superior Court of Justice (STJ) issued Precedent Statement No. 521, which provided: "Standing to pursue judicial collection proceedings of an unpaid fine imposed in a criminal judgment belongs exclusively to the Public Treasury Attorney's Office."

This understanding changed substantially in 2018, when the Federal Supreme Court (STF) decided Direct Action of Unconstitutionality No. 3,150, filed by the Office of the Prosecutor General of the Republic. The Court held that, because a

criminal fine is penal in nature, its enforcement falls within the authority of the Public Prosecution Service, and jurisdiction lies with the criminal enforcement courts. The Public Treasury would therefore have only subsidiary standing to enforce the fine.

The judgment rendered by the STF in ADI No. 3,150 established that: (i) the Public Prosecution Service is the proper body to enforce a criminal fine before the Criminal Enforcement Court, following the procedure set forth in Articles 164 et seq. of the Criminal Enforcement Act; and (ii) if, after being duly notified, the prosecuting authority does not initiate enforcement proceedings within ninety days, the criminal enforcement judge must notify the competent Public Treasury authority - federal or state, as applicable - so that it may pursue collection before the Tax Enforcement Court under the procedure established by Law No. 6,830/1980.

Drawing on Justice Roberto Barroso's opinion, the Court reasoned that a criminal fine is an autonomous criminal sanction that performs a "retributive and general preventive role" by "discouraging, in the offender and in potential offenders, conduct stigmatized by criminal law."

In 2019, Law No. 13,964/2019 incorporated into the Criminal Code the STF's holding that jurisdiction to enforce a criminal fine lies with the Criminal Enforcement Court. Thereafter, the view also gained traction that the Federal Public Prosecution Service would be the sole party with standing to enforce the criminal fine, an issue that remained unresolved before the STF at the time addressed in the article.

In this regard, the merits hearing of Extraordinary Appeal No. 1,377,843/PR - General Repercussion Theme No. 1,219 - began in the Virtual Plenary in a session opened on December 16, 2022. The Reporting Justice voted to dismiss the extraordinary appeal and uphold the decision under review, with the aim of reaffirming the exclusive standing of the Public Prosecution Service to enforce criminal fines before criminal enforcement courts. He proposed that the Court establish the following framework for applying the precedent to be formed: (i) Article 51 of the Criminal Code, as amended by Law No. 13,964/2019, should apply from the date on which that law entered into force; (ii) all cases in which, after Law No. 13,964/2019 took effect, the Public Prosecution Service remained inactive and the matter was referred to the Public Treasury for registration of the criminal fine as outstanding public debt should be returned to the criminal enforcement court; and (iii) the modulation of effects adopted in ADI No. 3,150 should be observed, preserving concurrent authority of the Public Treasury Attorney's Office with respect to enforcement proceedings concluded or commenced before that judgment became final and unappealable.

The Reporting Justice also proposed the following holding under the general repercussion system: "In light of Article 51 of the Criminal Code, as amended by Law No. 13,964 of 2019, the Public Prosecution Service has exclusive standing to collect a criminal fine, which must be enforced before the criminal enforcement court; subsidiary standing of the Public Treasury is not applicable." The Reporting

Justice then requested that the case be removed from the virtual docket for in-person consideration.

At the time described in the article, however, the case had not yet been considered by the in-person Plenary. A request for provisional urgent relief, filed by the Office of the Prosecutor General of the Republic on December 13, 2023, also remained pending. The request sought to preserve the Public Treasury's subsidiary authority to collect criminal fines whose enforcement began on or after June 3, 2020, until the conclusion of Extraordinary Appeal No. 1,377,843/PR.

3.2 The Effects of Nonpayment on the Extinguishment of Criminal Liability

In 2015, the Superior Court of Justice consolidated the following understanding under Repetitive Theme No. 931: "Where a person has been sentenced to both imprisonment and a fine, once the former has been served - or the restriction-of-rights sentence that may have replaced it has been completed - nonpayment of the pecuniary sanction does not prevent recognition that criminal liability has been extinguished."

At that time, after a judgment imposing imprisonment and a fine became final and unappealable, the Criminal Enforcement Court merely informed the Public Treasury of the fine and proceeded only with the custodial sentence. Once that sentence was served, the criminal enforcement proceeding was closed.

The Public Treasury, for its part, did not enforce most fines reported by criminal courts because bringing enforcement actions often lacked sufficient economic and financial justification, as the amounts frequently fell below the statutory threshold for collection.

Following nationally significant cases such as the "Mensalão" and "Lava Jato" proceedings, a scholarly view began to develop that Brazil's courts should adopt a more stringent interpretation of criminal law.

As noted above, ADI No. 3,150 was decided in 2018, followed by the enactment of Law No. 13,964/2019.

The prevailing view then became that nonpayment of a criminal fine barred the extinguishment of criminal liability.

Consequently, in 2020, the Superior Court of Justice revised Repetitive Theme No. 931 for the first time, holding that a convicted person's failure to pay the fine prevented the extinguishment of criminal liability even after the custodial sentence had been served.

In light of the STF's recognition that the criminal fine is penal in nature and that the extinguishment of criminal liability depends upon payment or another ground for extinguishment, such as limitation, state prosecutorial bodies "began issuing normative acts to regulate the manner in which enforcement authorities should collect criminal fines" (Silva; Wanis, 2021, p. 355).

For example, under Article 12 of Joint Resolution PGJ-CGJ No. 05/2021, the member of the Public Prosecution Service responsible for criminal enforcement

must take the necessary steps to enforce the criminal fine after the judgment becomes final and unappealable. If the updated amount is less than BRL 5,000.00 (five thousand Brazilian reais), it may be collected through notarial protest, without judicial enforcement. If the updated amount exceeds BRL 5,000.00, judicial collection is mandatory, without prejudice to its combination with notarial protest (CNMP, 2023). This institutional policy seeks to ensure the effective nationwide collection of criminal fines by the Public Prosecution Service.

Along the same lines, the STF held that a sentenced person's deliberate failure to pay a cumulatively imposed criminal fine prevents progression to a less restrictive prison regime. Precedent: EP 12-AgR, Reporting Justice Luís Roberto Barroso.

In a different direction, the National Council of Justice adopted Resolution No. 425/2021, recommending that criminal fines not be imposed on people experiencing homelessness. It further recommends that, during criminal enforcement proceedings, where the custodial sentence has been served and the released person is found to be experiencing homelessness, the court consider whether criminal liability arising from the fine may be extinguished.

Also in 2021, the Superior Court of Justice revised Repetitive Theme No. 931 once again. It held that, where a convicted person demonstrated an inability to pay the criminal fine, the Judiciary could recognize the extinguishment of criminal liability - provided that the custodial sentence or restriction-of-rights sentence had already been completed - and relieve the individual of the obligation to pay the fine.

The STJ's revision was undoubtedly an advance for the prison system, but it retained a serious obstacle by making the extinguishment of criminal liability available only to those who could prove that they lacked the financial means to pay the criminal fine.

Recognizing the need for a further revision of the rule to determine how economic inability should be established and which party bears the burden of proof, the Third Section of the Superior Court of Justice revisited Repetitive Theme No. 931 for the third time on February 28, 2024, when deciding Special Appeals Nos. 2,090,454/SP and 2,024,901/SP. Applying a distinguishing analysis, the Court held that "nonpayment of a criminal fine, after completion of a custodial sentence or a restriction-of-rights sentence, does not prevent the extinguishment of criminal liability where the convicted person alleges lack of means, unless the competent judge reaches a different conclusion in a sufficiently reasoned decision that specifically demonstrates the person's ability to pay the pecuniary sanction."

The judgment observed that it is incompatible with the purposes and foundations of a democratic state under the rule of law to perpetuate a situation amounting to excessive punishment of persons who are manifestly unable, after serving a custodial sentence or a restriction-of-rights sentence, to discharge a debt that, although lawfully imposed, is no longer consistent at the enforcement stage with the purposes of criminal law or with the very concept of state punishment.

The Court emphasized the socioeconomic reality of most incarcerated persons in Brazil, who return to society after serving custodial sentences without resources and with substantial difficulties in achieving social reintegration. It concluded that, unless the convicted person is shown to have the means to pay the fine, lack of financial means must be presumed. The judgment therefore reaffirmed that inability to pay a fine should not obstruct the formerly incarcerated person's full reintegration into society.

Following this third revision of Repetitive Theme No. 931, the Superior Court of Justice adopted the view that, contrary to the rule prevailing before Special Appeal No. 2,024,901/SP, the Public Prosecution Service bears the burden of proving that the sentenced person has the financial capacity to pay the fine. This conclusion was confirmed in subsequent rulings, including Special Appeal No. 2,131,797/SP, decided on April 11, 2024.

At nearly the same time, in March of that year, the STF decided ADI No. 7,032 in the Virtual Plenary. It gave Article 51 of the Criminal Code an interpretation consistent with the Constitution, holding that, when a criminal fine is imposed together with a custodial sentence, nonpayment prevents recognition that criminal liability has been extinguished unless the inability to pay - including by installments - is demonstrated. The Court further recognized that the criminal enforcement judge may, at the appropriate time, extinguish the sentenced person's criminal liability by inferring the inability to pay from evidence already contained in the record.

As the higher courts began to recognize, placing the burden of proof on the convicted person - particularly a person experiencing homelessness - proved ineffective and perpetuated punishment for the poorest.

4 CONSEQUENCES OF THE FAILURE TO EXTINGUISH CRIMINAL LIABILITY DUE TO NONPAYMENT OF THE CRIMINAL FINE

The failure to recognize the extinguishment of criminal liability results in the suspension of political rights, prevents criminal rehabilitation, and may create restrictions affecting the Taxpayer Identification Number among other problems (IDDD, 2022).

Imposing a criminal fine and collecting it from persons who lack the economic capacity to pay operates as a genuine mechanism for perpetuating punishment. It frustrates the desired social reintegration of a convicted person living in poverty and also causes public resources to be wasted (Callegari, 2023).

Through its Directorate of Citizenship and Non-Custodial Sanctions (DICAP), the National Secretariat for Penal Policies (SENAPPEN) prepared a study entitled *Criminal Fines in Brazil: Nonpayment and Its Effects on the Social Reintegration of Persons Released from the Prison System*. The study sought to describe criminal fines within the Brazilian legal system and the effects of their collection on the lives of formerly incarcerated persons who lack the means to pay the amounts owed.

The analyses of the socioeconomic circumstances of persons released from prison reveal a predominant difficulty in paying debts arising from criminal fines. This situation is aggravated by the fact that most people subjected to custodial sentences belong to low-income groups. Data from the National Penitentiary Department Information System (Sisdepen, 2023) indicate that 65.44% of incarcerated persons in Brazil have completed, at most, elementary education. This indicator, together with other conditions of vulnerability, suggests that this population is concentrated in lower-income strata.

In addition, the stigma faced by people released from prison significantly restricts their prospects for reentering the labor market, participating in civic life, and accessing social programs. Nonpayment of criminal fines directly affects the exercise of fundamental civil rights. Ferrarini (2019), for example, identifies more than one million people who were ineligible to vote because outstanding fines prevented the extinguishment of criminal liability and, consequently, the regularization of essential documents such as voter registration and the Individual Taxpayer Registry (CPF). This condition also limits access to social benefits and programs, intensifying the cycle of marginalization affecting these individuals.

5 PROFILE OF PEOPLE EXPERIENCING HOMELESSNESS AND PENAL SELECTIVITY

Justice, as a constitutional principle, guarantees access to the Judiciary to all persons, whether Brazilian or foreign, as provided in Article 5, item XXXV, of the 1988 Federal Constitution. Effective access, however, is not limited to the formal ability to bring a claim before a court. It also requires a critical examination of how the Judiciary operates within a context of penal selectivity that frequently criminalizes poverty and marginalizes vulnerable groups.

Brazil has the world's third-largest incarcerated population, a situation that reveals an ineffective prison system characterized by high levels of violence, recidivism, and overcrowding (Brito; Colombo Júnior, 2022).

The selectivity of the criminal justice system, which disproportionately affects low-income individuals and racial minorities, requires the development of alternative penal policies that do not further aggravate these groups' vulnerability.

People experiencing homelessness illustrate the problem of penal selectivity. According to the Institute for Applied Economic Research (IPEA), this population increased by 38% between 2019 and 2022, driven by the COVID-19 pandemic, and reached 281,472 people.

The National Policy for the Homeless Population (PNPSR) and its Intersectoral Monitoring Committee, established by Decree No. 7,053/2009, are important milestones in guaranteeing the rights of this population. They facilitate access to social policies through intersectoral, cross-cutting, and intergovernmental action involving all levels of the federation and, above all, all three branches of government.

Under that decree, the homeless population is defined as a heterogeneous population group whose common features are extreme poverty, broken or weakened family ties, and the absence of regular conventional housing, and whose members use public spaces and degraded areas as places of residence and subsistence, temporarily or permanently, as well as shelters for temporary overnight accommodation or provisional housing.

According to Beserra and Freitas (2023, pp. 5-6), the homeless population is a phenomenon shaped by multiple determinants, including economic, social, cultural, and mental health factors, among others. It may also be understood as one expression of the broader social question, thereby presenting the State with an imperative challenge: to implement public policies capable of promoting access to social rights.

From this perspective, the PNPSR establishes a framework for recognizing the conditions of social vulnerability experienced by this group, including weakened family ties, extreme poverty, and rights violations arising from the lack of housing and means of subsistence (Nogueira; Duarte; Silva, 2019).

A 2023 situational assessment of the homeless population, prepared by the Ministry of Human Rights and Citizenship on the basis of data concerning persons registered in the Unified Registry for Social Programs (CadÚnico), identified 236,400 people experiencing homelessness - approximately one person per thousand inhabitants. The population was predominantly male (87%), adult, and Black (68%), and most were literate (90%). Respondents attributed their homelessness to family problems (44%), unemployment (39%), and the use of alcohol and other drugs (29%). Women accounted for 13% of the homeless population but represented 40% of reported cases of violence involving people in this situation (Brasil, 2023). These figures are estimates, and the differences among surveys - such as the IPEA study - expose gaps in access to rights, since not every person experiencing homelessness is able to obtain social benefits, including those linked to CadÚnico, which may require regularized civil documentation.

To advance this purpose within the Judiciary, Resolution No. 425/2021 of the National Council of Justice established the National Judicial Policy for People Experiencing Homelessness (PopRuaJud) and its intersectional dimensions. The policy seeks to assist this population, including when its members become involved in the criminal justice system. Resolution No. 425 underscores the urgency of constructing a judicial agenda that improves the quality of life of people experiencing homelessness, above all by securing their rights. It prompts an essential reflection on how to ensure that the justice system does not entrench social inequality and instead operates in a fairer and more humane manner.

It is therefore crucial to overcome a punitive culture and ensure that criminal intervention occurs only when absolutely necessary, in observance of legality and proportionality. Individualized sentencing and policies that recognize the vulnerability of people experiencing homelessness are essential to mitigating social inequality. Alternatives to incarceration, as contemplated in Resolution

No. 425/2021, should be considered in order to promote social reintegration and human dignity and to ensure that the justice system performs its role inclusively and effectively.

6 INDIVIDUALIZED SENTENCING: THE NEED TO REFRAME THE PROPORTIONALITY OF CRIMINAL FINES IN CASES INVOLVING PEOPLE EXPERIENCING HOMELESSNESS

Individualized sentencing is a fundamental principle that seeks to adapt the application of criminal law to the specific features of each case, considering the unique characteristics of the situation, the extent of the harm to the legally protected interest, and the particular aspects of the offender's personality.

Under Article 5, item XLVI, of the Brazilian Federal Constitution, legislation must regulate the individualization of punishment and may provide, among other measures, for deprivation or restriction of liberty, forfeiture of property, fines, alternative community service, and the suspension or deprivation of rights. This principle is essential to ensuring that justice is administered fairly and proportionately, with respect for the particular circumstances of each person and each case.

The imposition of criminal fines, however, particularly on people experiencing homelessness, raises significant questions concerning proportionality and individualized sentencing. In this respect, the revised formulation of STJ Repetitive Theme No. 931 and Resolution No. 425/2021 of the National Council of Justice represent important developments. The inability to pay a criminal fine should be recognized in the judgment itself or as soon as the custodial sentence has been served, with the fine immediately extinguished in order to promote a more equitable and proportionate system of justice.

Indeed, with specific regard to criminal fines, the ordinary legislature had already prescribed the need for proportionality in 1984. Article 60 of the Criminal Code provides that the fine must be proportionate to the offense and to the defendant's economic circumstances. Paragraph 1 further provides that the fine may be increased up to threefold where, in view of the convicted person's financial position, it would otherwise be ineffective even if imposed at the statutory maximum.

Moreover, when permitting deductions from the convicted person's salary or earnings, the Criminal Code provides that the pecuniary sanction may not affect resources indispensable to the maintenance of the convicted person and the person's family (Article 50, paragraph 2). This rule demonstrates the obligation to consider the convicted person's economic and financial circumstances when determining the fine.

This statutory framework seeks to ensure that sanctions, including pecuniary sanctions, are fair and proportionate and that the criminal justice system does not perpetuate economic injustice and inequality.

The legislature therefore established, in accordance with constitutional requirements, a specific method for individualizing criminal fines by taking the defendant's economic circumstances into account when setting the value of each day-fine. It plainly failed, however, to consider people experiencing homelessness when Article 49 of the Criminal Code established a minimum of ten day-fines, each of which may not be set below one-thirtieth of the highest monthly minimum wage (BRASIL, 1940). A minimum fine of BRL 470.00 (four hundred and seventy Brazilian reais) is disproportionate for a person with no income and leads to the perpetuation of punishment.

The problem is aggravated by the legislature's choice to establish far higher minimum fines for certain offenses, making payment impossible even for those who receive some income, however modest. For drug trafficking under Article 33 of Law No. 11,343/2006, for example, the statutory minimum is five hundred day-fines, resulting in a fine of BRL 23,000.00 (twenty-three thousand Brazilian reais).

Allowing criminal liability to be extinguished without payment of the fine for defendants who lack sufficient means does not exceed the constitutional boundaries of individualized sentencing, because the standard established by ordinary legislation fails to account for the economic circumstances of people experiencing homelessness.

6.1 The Principle of Proportionality and the Criminal Fine

The principle of proportionality precludes the enforcement of excessive punishments, including criminal fines that manifestly exceed the economic and financial capacity of formerly incarcerated persons. It is a fundamental safeguard against excessive punishment, including the payment of criminal fines plainly beyond a convicted person's financial means.

The 1988 Federal Constitution contains several provisions reflecting the framers' concern with proportionality in sentencing. The catalogue of rights in Article 5 includes the prohibition of the death penalty, life imprisonment, forced labor, banishment, and cruel punishment (items (a) through (e) of item XLVI); respect for the physical and moral integrity of incarcerated persons (item XLIX); the State's duty to compensate a person for imprisonment exceeding the terms of the judgment (item LXXV); and the duty to observe individualized sentencing (item XLVI).

At the international level, the principle of proportionality in sentencing may be inferred from several human rights instruments. The Universal Declaration of Human Rights (1949) provides that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Article 5). The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) prohibits torture and inhuman or degrading punishment (Article 3). The International Covenant on Civil and Political Rights (1966) contains an equivalent provision (Article 7). The American Convention on Human Rights (1969) likewise prohibits torture and cruel or degrading punishment and requires every person deprived of

liberty to be treated with respect for the dignity inherent in the human person (Article 5(2)). The African Charter on Human and Peoples' Rights (1981) also prohibits cruel or degrading punishment (Article 5).

The imposition of criminal fines, particularly on people experiencing homelessness, raises significant issues of proportionality and individualized sentencing. Resolution No. 425/2021 of the National Council of Justice calls for consideration of whether criminal fines should not be imposed on this vulnerable population, thereby promoting a more equitable and proportionate system of justice. It also highlights the need to reconsider the proportionality of the statutory minimum established by Article 49 of the Criminal Code so that individualized sentencing can take account of the economic circumstances of a person experiencing homelessness. Article 29 of Resolution No. 425/2021 expressly provides that "the vulnerability arising from homelessness must be considered at sentencing, and the imposition of the secondary penalty of a fine should be avoided."

If a criminal fine were imposed in the judgment, the Criminal Enforcement Court would subsequently have to waive it once the social vulnerability described in that Resolution has been established.

According to Melina Machado Miranda, supervisor at the Department for Monitoring and Oversight of the Prison and Socioeducational Systems (DMF/CNJ), the Judiciary is changing the role it plays in relation to other public authorities when addressing the homeless population. The social assistance specialist states that CNJ Resolution No. 425 assigns the Judiciary an active role in preventing the criminalization of people experiencing homelessness and in coordinating criminal justice policy with other judicial policies (CNJ, 2021).

Given the complex reality of people experiencing homelessness and the Judiciary's growing commitment to the issue, it is essential to build a new paradigm of adjudication. The imposition of criminal fines must take this population's vulnerability into account, ensuring that judicial decisions do not deepen social inequality.

7 CONCLUSION

The imposition of criminal fines in Brazil, especially on people experiencing homelessness, raises significant questions of justice, proportionality, and individualized sentencing. The analysis presented in this article demonstrates that, although the law establishes parameters for determining a criminal fine, those parameters are broad and allow judges to consider a variety of circumstances, including the offense, its consequences, the person's background, motives, subsequent conduct, and future prospects. This flexibility reduces the rigidity associated with mandatory minimum sentences in other countries, but it also creates challenges for consistency in sentencing.

The view that, in the absence of a specific statutory provision, a convicted person's poverty alone is insufficient to exclude a criminal fine is not consistent with the international instruments to which Brazil is a party. Payment by installments

under Article 50 of the Criminal Code and Article 169 of the Criminal Enforcement Act, even when adapted to the personal circumstances of a person experiencing homelessness, is insufficient to satisfy the principles of individualized sentencing and proportionality. Excluding the fine at the time of sentencing on the basis of poverty reflects an effort to preserve the coherence and integrity of the criminal justice system.

Maintaining the collection of criminal fines from people experiencing homelessness, however, perpetuates a double punishment: one imposed by the justice system and another resulting from the condition of extreme vulnerability in which they live. Continuing this practice not only disregards the humanitarian guidelines of Resolution No. 425/2021 of the National Council of Justice, but also undermines social justice by exacerbating inequality and making the rehabilitation and reintegration of these individuals even more difficult.

To ensure a genuinely fair and inclusive system of justice, the imposition of criminal fines on people experiencing homelessness must therefore be reconsidered. Refraining from imposing the fine in the criminal judgment would not violate the principle of legality; rather, it would reinforce the criminal justice system's commitment to human dignity and social equity. If the fine continues to be collected from these individuals, they will be unjustly punished twice: once by the Judiciary and again by their condition of extreme vulnerability.

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