RESTORATIVE JUSTICE: A PARADIGMATIC CHANGE IN THE MISDEMEANOR OFFENSES SYSTEM

JUSTIÇA RESTAURATIVA: UMA MUDANÇA PARADIGMÁTICA NO SISTEMA INFRACIONAL

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Abstract: The research approaches the concern with the human rights of children and teenagers, especially regards to teenagers in judicial conflict, so that law recognize and protect them. The attention that should be given to them is worldwide, even more so at the present time in which globalization is increasingly intensely. The countries must strengthen cooperation in this aspect, through international treaties and conventions, which serve as a basis for Constitutions and infra-constitutional laws, in a true dynamogenic process. It was adopted a descriptive and exploratory method to the objective, qualitative as to the approach and bibliographic as to the procedure, having as theoretical basis the specialized literature on the subject and the Brazilian legal doctrine. As a result, it was possible to verify that in Brazil is no longer used Minors' Code of 1979, which embraced the doctrine of the irregular situation in which children and teenagers were treated as objects of law. Nowadays it is adopted the Child and Teenager Statute of 1990, supported by the Federal Constitution of 1988, which started to treat them as subjects of law by accepting the doctrine of integral protection. In this way, the treatment received by juvenile offenders has changed, especially with regard to sending them to special types of prison, which has ceased to be the rule, to be the exception, despite some resistance from members of the Prosecutor's Office and the Courts. The Child and Teenager Statute also made it possible to implement restorative justice in misdemeanor offenses, through trained mediators, which is a method of conflict resolution that can and should be used on a larger scale in the Courts, in order to cure the consequences of the crime through the understanding between the offender and the victim, leaving the sentence for extreme cases.

Keywords: Misdemeanor Offenses. Teenagers. Restorative Justice. Human Rights.

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Resumo: O artigo contextualiza a preocupação com os direitos humanos das crianças e adolescentes, notadamente no que tange aos adolescentes em conflito com a lei, a fim de que as legislações os reconheçam e lhes protejam. Os Estados devem estreitar a cooperação nesse aspecto, por meio de tratados e convenções internacionais, que servem de base para Constituições e leis infraconstitucionais, num verdadeiro processo dinamogênico. Foi adotado o método descritivo e exploratório quanto ao objetivo, qualitativo quanto à abordagem e bibliográfico quanto ao procedimento, tendo como base teórica a literatura especializada sobre o tema e a doutrina jurídica brasileira. Como resultado, no Brasil houve a revogação do Código de Menores de 1979 que acolhia a doutrina da situação irregular em que crianças e adolescentes eram tratados como objetos de direitos, sobrevindo o Estatuto da Criança e do Adolescente de 1990, apoiado na Constituição Federal de 1988, que passou a tratá-los como sujeitos de direitos ao acolher a doutrina da proteção integral. O Estatuto da Criança e do Adolescente possibilitou a implementação da justiça restaurativa nos atos infracionais, por intermédio de mediadores capacitados, a fim de que a cura das consequências do ato infracional possa vir pelo entendimento entre o ofensor e a vítima, deixando-se a sentença para casos extremos.

Palavras-chave: Ato Infracional. Adolescentes. Justiça Restaurativa. Direitos Humanos.

1 Introduction

World society is evolving, notably because cultures are not static, nonetheless acquire new political, social and economic organization forms, even more so in the current context with globalization additional, which is in a superior state if we compare to its beginnings. Therefore, such changes inexorably reflect in all segments life, spreading in legal relationships. In this sense, the UN already referred to the need for a world without war, precisely thinking about future generations, this aspect is undoubtedly relevant for the protection of childhood and teenagers. It is the path that politics has chosen in relation to the global nature awareness of the childhood problem.

Then, it is urgent that the legislator and jurists adjust the law to the new living ways in the community. Following this directive, it is worth noting that the constitutional order established by the 1988 Brazilian Federal Constitution is based on a robust axiological load, which allows extensive interpretive activity, aiming to establish a dialogue between the positive legal order and the recurrent social order transmutation.

In this scenario, through the Child and Teenager Statute, the values *dynamogenesis* emerges in relation to the treatment given to children and adolescents, who are no longer objects

to be considered rights subjects. And in the search for the new paradigm effectiveness, Restorative Justice emerges, as an epistemological and methodological origin opposition, which aims at solutions to cure suffering arising from the infraction. For this, it is necessary to understand the perspective that children and adolescents are perceived by "Big adults".

Therefore, it is provided that the juvenile offender is not simply punished, but that the offender and the victim can together overcome the traumas caused by the infraction act. As a result, it is also necessary to understand the "children's game" meaning, to say that something does not mean much, we say that it is a children's game or game, this is the most diffuse and recurrent thinking way about childhood and that, in addition to the colloquial expression conveys a arrogance kind.

Therefore, the present study objective is to analyze the Institute of Restorative Justice biases, based on the *dynamogenesis* concept. In order to do so, a bibliographic review will be carried out on the *dynamogenesis* that occurred in the children and teenagers, followed by a Restorative Justice analysis.

However, it is worth remembering that it is not intended to exhaust the theme, but only to launch new looks at the concepts that underlie Restorative Justice, always in broader interpretation search, to enable the open wounds healing.

Hence, the article is divided with the *dynamogenesis* analysis of values that led to the children and teenagers recognition as subjects of rights, until reaching the Restorative Justice introduction, in the the Child and Teeanagers Statute, through article 35, item III, of the SINASE Law, with the mediators help - facilitating and impartial professionals, in order to obtain an understanding between victim and offender.

2 Values *dynamogenesis*: children and adolescents as subjects of rights

Law n. 8. 069, of July 13, 1990, entitled the Children and Teenagers Statute, followed the 1988 Federal Constitution guidelines and international documents on the subject, definitively breaking with the "irregular situation doctrine", established in the law n. 6. 697, of October 10, 1979, called the Minors' Code, which, according to Kátia Maciel (2014, p. 47):

> [...] led to the doctrine of Minors' Law construction, based on the lack-delinquency binomial. It was the criminalization phase of poor childhood. There was a general awareness that the State would have a duty to protect minors, even if it suppressed their guarantees.

It should be noted that the revoked Minors' Code treated children and teenagers as objects of rights. On the other hand, the Children and Teenagers Statute juxtaposed a new paradigm, so that children and teenagers began to be treated as subjects of rights:

> By definitively breaking with the irregular situation doctrine, until then admitted by the Minors' Code (Law n. 6.697, of 10.10.79), and establishing the integral protection

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> doctrine as the basic and only guideline in the children and teenagers care, the Brazilian legislator acted in a manner consistent with the 1988 constitutional text and international documents approved with broad community consensus of nations. (AMARAL; CURY, 2013, p. 17).

By the new Statute, the protection doctrine was established as a basic guideline in the children and teenagers. Such a paradigm shift is also the *dynamogenic* process result, according to Silveira and Rocasolano, "through a geometric-axiological model, dynamogenesis explains the process that underlies the new rights birth and development throughout history" (2010, p. 185). It is important to resume the childhood game or play idea. In consequence, the values *dynamogenesis* theory, within the Child and Teenagers Statute scope, was very important to change the protection scenario that children and teenagers, in which everything that is useless, unimportant, is a child's thing, that is, we have as adults a sick look that does not allow us to see something that is not our age and our time. This even explains why it has always been difficult to write a childhood story and why whenever something is described it is always an adult from somewhere or another who describes it. One of the ways children and teenagers were seen by adults is the treatment they received before and during the old 1979 Minors' Code validity, but which, with the new adult perspectives, began objects of rights transmutation, as previously mentioned, to subjects of rights.

It happens that the adult society perception in the estimating sense as valuable the issue related to children and teenagers rights was for several years in a suspended state, since the values, although recognized, were not yet covered by positive law:

> The starting *dynamogenesis* point values is an initial situation in which values are recognized a priori. In such a situation they find themselves in a suspended position. Therefore, they are not yet, because they are not felt by the community and, therefore, are not valid for the law. Therefore, they are in a pre-socio-legal and metas-socio-legal dimension.
>
> In the *dynamogenesis* process, the social community initially recognizes as valuable the value that underlies human rights (the dignity of the human person). Recognized as valuable, this value drives legal recognition, providing guidance and new content (freedom, equality, solidarity, etc.) that will expand the human dignity concept. This dignity, in turn, together with the concrete content of human rights, is protected through the normative and institutional complex represented by the law. (SILVEIRA; ROCASOLANO, 2010, p. 193 and 198).

It is worth remembering that the term IN-childhood is not a simple term: it indicates a life age, that is, a time opposed to others' neutral condition, but it hides an absence voice the most disturbing meaning. It is, then, a sick voice, whose time and speech are mixed in an intense tangle. Childhood lives by reflection, a double game that is established between the presence suggested by childhood - as the each story origin and as a translation means that is perpetuated - and the absence and silence that delegate to another one's own voice. Then the eloquent childhood silence makes one's own voice unexpectedly feel.

The regulation of these values, which are born individually and gradually become collective, bring to a concrete world reality a new protective understanding allied to human dignity, and, consequently, to human rights, which are the ultimate foundation of personal dignity, human being, notably in a democratic society:

> Democracy requires laws that guarantee and promote human dignity, ensuring their rights and the duties fulfillment. The current Statute responds to the desire, cherished for years, to provide the country with a valid instrument to safeguard life and guarantee the full girls and boys development in Brazil, especially the 30 million impoverished minors. (ALMEIDA, 2013, p. 19).

Consequently, it became fully viable for the aforementioned rights to be demanded, guaranteed and protected, as the legislator recognized a fact's existence and its value, felt and desired by society. However, it is opportune to understand society and childhood meaning as a complex game that links society to its childhood: it mixes time through the past memory experience and a future imagination. Childhood is society, but we don't always realize it, even when we declare its centrality and, therefore, we transform everything into pedagogy, which can be the worst way to take our relationship with our childhood seriously. It is the scholars of ethics who remind us that society is not just an equal cooperation between individuals' relationships and also between different generations.

It is possible to observe that these VALUES AND RIGHTS were gradually born in the international community, through the Geneva Child Rights Declarationin 1924, approved by the Nations League. Then came the Human Rights Declaration, approved by the UN General Assembly in 1948. Later, came the Child Rights Declaration in 1959, also approved by the UN General Assembly.

The struggle's context over such rights was also based on the "(…) intense national popular organizations mobilization and actors in thechildhood and youth field, plus pressure from international organizations such as Unicef" (MACIEL, 2014, p. 49).). It should be noted that in order to achieve this goal, international cooperation between nation-states took place, with the objective that this new protection could be implemented in several countries, promoting the children and teenagers human rights development and dissemination. Therefore, the recognition under examination emerges from one of the facets advocated in the Cooperative Constitutional State theory (HÄBERLE, 2007, p. 55-56).

Finally, the Child Rights Convention was approved in 1989 at the UN, entitled the New York Convention, Brazil signed on January 26, 1990 and ratified by Legislative Decree 28, of September 14, 1990 and promulgated by Decree 99.710, 1990. On the subject, Rossato, Lépore and Cunha teach:

> At the end of the First and Second World Wars, supported by the Man Rights Declaration, and based on its principles, the UN General Assembly approved the Child Rights Declaration in 1959, constituting this true watershed document, as the child passed to be seen as a subject of rights, abandoning the concept that it was an protection

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> object. It happens, however, that, like any rights declaration, the 1959 Declaration was not endowed with coercibility, and its fulfillment was at the States discretion. A document that had this characteristic was needed. And that document was the 1989 Child Rights Convention, also known as the New York Convention, which had the highest number of ratifications and the fastest accession on the planet. Through it, in the wake of the 1959 Declaration, the child is considered a subject of rights, who is entitled to full protection. (ROSSATO; LÉPORE and CUNHA, 2016, p. 40).

These documents have progressively awakened the modification and inclusion of these new rights in various legal systems, including Brazil's, as anticipated, with the advent of the Child and Teenagers Statute in 1990. Today we say that children have assumed a citizen's role, subjects of rights; have this recognition in the most varied national and international legislation; and become the concern object of the most diverse institutions. However, just look at the UNICEF reports in which two contradictory situations are evident: recognized guardianship, internationally guaranteed guarantees and, at the same time, the ineffectiveness and increasing violation of children and teenagers rights. Each abuse or violation grows in the shadow of the recognition and protection of children and teenagers rights. It is necessary to reflect on the ambivalence of this situation. Protection forces you to do something in the event of a breach, but that's not enough!

Within this context, we understand that the fight for children and teenagers human rights was not in vain, since the regulation meets the whole society aspirations given the importance of protecting the vulnerable people right, including to better guide law enforcers, in order to bring legal certainty:

> In the search for such a concept, we must first observe its main foundation — the human person dignity — because it is from this that the construction of human rights meaning valid for all takes place. We have already anticipated that from the end of the First World War, in 1918, the expression "human rights" was definitively linked to the human person dignity value, in the living, living and future of individuals within the community. This is the ultimate human rights idea, their evaluative and stable core, which gives them a unity and permanence sense. (SILVEIRA; ROCASOLANO, 2010, p. 216-217).

It is noted that the struggle is still arduous in the sense that the normalized children and teenagers human rights are materially implemented, as well as the full human rights range already recognized, as Bobbio warns: "[...] On a real level, it is one thing to talk about human rights, rights that are always new and more and more extensive, and to constitute them with convincing arguments; another thing is to guarantee them an effective protection" (BOBBIO, 2004, p. 32).

In a way, we are well served by legislation that supports human rights of all kinds. However, what is needed now is to promote effectiveness to those that have already been recognized, legislated and, in the legal system case, how it is decided. The deciding act on the children and teenagers issue deserves greater attention from the social sciences, because what we

have today are, as a rule, three decision forms: 1-decision and uncertainty, in this decision type the problem frame, but it is always uncertain in the effects of a decision to be made; 2- decision and ignorance, in which the problem format that led to the decision is not evident and, at the same time, the decisional alternatives are notable; 3- decision and risk, whose decision effects are evident, but the results cannot be predicted. They are all possible models and all present in the decisions that are made in relation to children and teenagers, but at the same time they are all inadequate because the strategy is confronted with the model of being, as a way of life, in which one cannot reduce the abstract hypothesis . It will be opportune to look at decisions about "minors" as Solomonic decisions that must strive for the search for prudence and wisdom in a condition, without compromise, tragic, in which it is necessary to reduce the "revelry", assuming the least painful success and traumatic for the "minor" and, save for him, but not only for him, the maximum of the possibilities that indicate improvements in life. In this sense, it is opportune to think of a fraternal code.

The fraternal code is an important choice from many points of view and for many reasons. Firstly, because it comes from its original meaning (childhood is a word that indicates the voice absence); secondly, because it starts from the "difference" of adults world and, thirdly, because it works along the fraternal right lines in a Western society that is projecting itself towards a democracy where the other is another self; where it exists, it breaks with the punitive logic.

2.1 The punitive logic insufficiency

Despite the historical law evolution with the Child and Teenagers Statute advent , juvenile offenders have been victims, in many cases, of the punitive logic applied to those over eighteen years of age. Such a scenario must be rethought, with public social engagement policies, avoiding unnecessary hospitalizations in establishments that do not differ much or almost nothing from those in which those responsible are serving time.

This is because, in several specific cases, there are numerous incursions by members of the *Ministério Público* (Attorney General's Office) and the Judicial in which the principle of the best teenagers interest and the peculiar person's condition in development is not considered.

Therefore, despite the normative provision, law enforcers forget that children and teenagers are subjects of rights, with absolute priority, since they are in a vulnerable situation. Therefore, they deserve special protection in order to guarantee their fundamental rights, conquered over so many years:

> The integral protection doctrine and the best interest principle are two basic rules of childhood and youth law that must permeate all interpretation types of cases involving children and teenagers. It is about admitting the absolute priority of children and teenagers rights. (ISHIDA, 2021).

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It is worth emphasizing that one of the factors that bring up the problem in question, unfortunately commonplace and which can even be treated as prejudice in relation to the Child and Teenagers Statute, comes from the very competence distribution system of the Judiciary and attributions of the *Ministério Público*. Again, the decision issue and its foundations reappears, as well as the tragedies produced and reproduced.

Consequently, the children and teenagers story who find themselves in institutions front is tragic, and the decision that is taken is also tragic; and even more, one cannot not decide, and one decides about something that cannot be remedied (for example, a abandonment state, a violence already suffered or a traumatic conflict between the parents); one decides not to restore happiness or well-being, but to avoid further ill-being. Each decision is necessary, in the sense that it is part of a circuit in which much is already committed, so it is necessary to choose the "lesser evil", but each decision is also tragic, as it affects the life of a child or adolescent. in a present with links to the future.

It should be noted that in the decisions context in non-specialized Courts, specifically in first and second-tier districts, magistrates and prosecutors work on broad-spectrum criminal content without considering the urgency of the decision in the children and teenagers case. In fact, regarding Mato Grosso do Sul Brazilian State's judicial organization, Law n. 1.511, of July 5, 1994, only establishes a court specialized in the infractions judgment, located in the Campo Grande district. The other courts with this competence are usually linked to other competences.

Therefore, at the same time that the imputable person is criminally prosecuted and judged, the person who is not imputable for an infraction is also judged. Consequently, this context helps to set aside the specific nuances that guide the processes involving teenagers in judicial conflict, making it difficult to implement the real objectives and values enshrined in Children and Teenagers Statute.

In this context, the infraction judgment committed by the teenager comes to receive the same punitive system directed to the process of the person over eighteen years old. It stands out that, sometimes, even with greater rigor under the false impunity premise that would be generated by Children and Teenagers Statute, whose bases are still poorly understood, even after more than thirty years of validity.

In this way, it is judged without considering a series of important aspects, especially the teenager's developing personality, which requires a different and humanistic view of the ministerial body and the magistrate. The judging and deciding on children and teenagers' complexity is often called hard cases or difficult cases that put every argument to the test. They are difficult by the very fact that a decision is necessary and will always be ambivalent. Each decision judges, chooses, privileges, and therefore satisfies one side and dissatisfies the other, that is, when you are forced to decide, it is very likely that you can make mistakes more often!

It should be noted that in the criticism context presented to the judicial competences system regarding the judgment of imputable persons and teenagers, the Interamerican

Commission on Human Rights asked the Interamerican Human Rights Court to pronounce on articles 18 (child rights), 25 (judicial protection) and 8 (judicial guarantees), related to the Children's Rights Convention, whose document attributes this condition to people who have not turned eighteen years of age, highlighting the following:

> In the same sense, it should be noted that to ensure, in the greatest possible measure, the prevalence of the child's superior interest, the preamble of the Children's Rights Convention establishes that this requires "special care", and article 19 of the American Convention indicates that it must receive "special protection measures". [...] that you can intervene in the decision-making processes if you have the personal and professional competence necessary to identify the recommended measures in the child's role; that the measures adopted have the objective of re-educating and re-socializing the minor, when appropriate; and that only exceptionally the use of measures depriving liberty is made. [...] That minors under 18 years of age be assigned to the criminal conduct commission to be subject to jurisdictional bodies other than those corresponding to the mayors of the city. [...] 13. That it is possible to use alternative ways of solving the controversies that affect children, but it is necessary to regulate with special care the application of these alternative means so that they do not alter or diminish the rights of children. (IDH COURT, 2022).

Consequently, in the light of the Interamerican Human Rights Court understanding, the teenager's trial should take place in specialized courts, and not in courts combined with other competences, notably with regard to criminal, reserved for those over eighteen years of age. When it comes to children and teenagers case, everything is even more delicate and difficult, as it takes us to old Solomonic wisdoms, often inapplicable today in everyday life. Furthermore, judging these cases is something that needs a lot of wisdom because, as we know, it is a very difficult condition, given that the contrast between rule and fact is mixed with the contrast between judge and psychologist and the issue in minors court is often confronted with different legal cultures. The question is: is this just a legal question? Or is it not necessary to return to the root of the problem, which is the affection deprivation, for example?

Note that the competences separation would prevent legal operators from being contaminated by those responsible processes of it. Therefore, they would not fail to take into account the principles that govern the people's condition in development, which would certainly reduce the indiscriminate socio-educational measure application of internment.

In addition, in order to avoid undesirable hospitalizations, article 35 and items of the SINASE Law list principles that govern the socio-educational measures execution, among which individualization stands out so that the magistrate can examine the age, capacity and circumstances teenager's personal.

As for age, it is a very relevant factor, as the age range established in Law n. 8069 of July 13, 1990, which ranges from twelve to eighteen years old, must be carefully detailed, pursuant to Article 2: "It considers for the law purposes, a child is defined as a person under twelve years of age, and a teenager as one between twelve and eighteen years of age." In addition, it is

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necessary to remember the meaning of the word childhood and arrogance, which adults often treat children with. In fact, we constantly forget that childhood's life span is different and the demands for violation of children and teenagers rights are always urgent. Not infrequently, we adopt a mistaken posture which we can call adult-centrism, in order to reproduce the logic of the oppressed and the overbearing.

This alert is accentuated because the chronological criterion established, although absolute, must be understood according to the characteristics of each personality in formation when judging a teenager for an infraction act, as provided in the United Nations Minimum Rules for the Children and Youth's Justice Administration – Beijing Rules:

> 4.1 In legal systems that recognize the criminal responsibility concept for young people, its beginning should not be set at too early an age, taking into account the circumstances that accompany emotional, mental and intellectual maturity. (UNITED NATIONS GENERAL ASSEMBLY, 1985).

In effect, the adolescent must receive from the law operators different treatments according to their abilities, which can be extracted especially from the psychosocial report, without, obviously, disregarding other proof means, which will outline the the offender personality, focusing primarily on the character pedagogical of socio-educational measures, aiming at the teenagers in judicial conflict resocialization and their inclusion in the social and family spheres, despite the retributive character cannot be disregarded.

Then, it is necessary to remember, once again, to pay attention to the governing legislation principle, singularly to the integral protection, established in article 1 of the Child and Teenagers Statute:

> Integral protection is based on the concept that children and teenagers are subjects of rights, vis-à-vis the family, society and the State. It breaks with the idea that they are mere objects of intervention in the adult world, placing them as holders of rights common to any and all people, as well as special rights arising from the peculiar people's condition in the development process. (CURY; GARRIDO DE PAULA and MARÇURA, 2002, p. 21).

In the outlined context view, the Children and Teenagers Statute brought guidelines to minimize one of the greatest atrocities of the former Minors Code, which consisted of the indiscriminate internment use, almost as a rule, of adolescents committing infractions.

However, it is worth noting that currently, the socio-educational internment measure is still commonly applied to teenagers in cases without violence or serious threat to other person, in flagrant disrespect to article 122 of the Child and Teenager Statute: "The internment measure can only be applied when: I – it is an infraction committed by serious means threat or violence to other person."

The notoriety of this reality led the Justice Superior Court to approve Precedent 492: "The offense analogous to drug trafficking, by itself, does not necessarily lead to a socio-educational measure imposition for the internment of adolescents."

In this context, the problem in question is largely limited to what was mentioned about the specialization lack of the courts for the infractions judgment. Therefore, the legal tone applied to those attributable ends up influencing the concrete cases analysis involving adolescents, in flagrant disrespect for the peculiar condition that involves them.

Therefore, the State Courts should make an effort to create more specialized infractional jurisdiction courts. They must also, through their judicial schools, promote courses that are aimed at overcoming this discrimination against teenagers in judicial conflict in order to protect their human rights to be treated as subjects of rights.

3 Restorative justice

The *dynamogenic* process, as seen, was very significant in valuing the society's feelings, initially internationally, gradually spreading throughout the world until it reached Brazil. The phenomenon highlighted was due to the urgent need to change the conception regarding the inadequate legislative treatment of children and teenagers, which led to the Child and Teenager Statute emergence.

In view of this, children and teenagers became subjects of rights, in obedience to the human dignity principle, which is the ultimate foundation of human rights. The paradigmatic change of this conception brought a new way of thinking and judging the infractions perpetrated by teenagers, seeking the appropriate socio-educational measure to the specific case, moving away from the punitive logic, the common practice in relation to the imputables judgments.

From this point of view, the Brazilian legal system is already prepared, at least legally, to give the correct pedagogical and retributive guidance to teenagers in judicial conflict.

Consequently, before instituting a process, or, if initiated, it is possible to implement restorative justice, which in the Amstutz's understanding (2019, p. 11): "is a theoretical and practical field that dates back to the 1970s. However, some indigenous communities have a long history of using restorative justice processes to deal with crime."

On the subject, it is emphasized that restorative justice does not have a standard concept, given that its origins diversity, especially indigenous peoples, but which, in general terms, can be considered as follows:

> [...] the Justice that puts energy in the future and not in the past. It focuses on what needs to be healed, what needs to be repaired, what needs to be learned from the crime. She looks at what needs to be strengthened so that these things don't happen again […]
>
> [Therefore, Justice should strive to:]

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1. Promote full participation and consensus;

2. Heal what has been broken;

3. Seek concrete and direct responsibility;

4. Gather what has been divided;

5. Strengthen the community to prevent future harm. (SHARPE, 1998)

Restorative justice brings with it the peace culture, promoting dialogue between the offender and the victim (here we also have an "am"-bivalent game, as the offender can also be a victim and the victim an offender) between members of a given community, because it is also affected, in order to heal (another ambivalence: where at the same time healing can make sick) what was broken, seeking recognition for the act performed responsibility and avoiding that it comes to occur again.

Aiming at a new justice conception, the Children and Teenagers Statute brings the resorting possibility to restorative justice as opposed to the sentence culture, which embraces the false premise that the magistrate solves everything, as Muller teaches (2007, p. . 152): "generally, the justice decisions cut the knot of a conflict, designating a winner and a loser: there is one who wins his case and another who loses it; and the two parties leave the court more adversarial than ever before."

It should be noted that restorative justice is a path that aims to provide other solutions, other than the judicial sentence, which can, with greater effectiveness, heal (and not heal) in a perennial way exposed wounds resulting from the infraction act perpetration, and even be disseminated in the Criminal Procedure Code area. Here, the forgiveness idea can be taken up again, it is non-violent when it is the work result on oneself, it means being aware that violence is in ourselves (or in the self) this will make it possible to elaborate a "mourning" of what we suffer, only in this way will we be able to distance violence thanks to our non-violent strength.

The current national and international legal system provides means for the teenagers in judicial conflict not to be, initially, a pure and simple punishment, but rather, for the offender and the victim to overcome together the traumas caused by the offense perpetrated, through restorative justice, using mediation.

Luis Alberto Warat (2018, p. 17) makes an important contribution to the topic of mediation: "Mediation is an ecological way of resolving social and legal conflicts; a form in which the gratification of desire replaces the coercive and third-party application of a legal sanction." This way of understanding mediation is the proposal of the Fraternal Law Metatheory, where the ecological model is the condition for a coexistence of good and evil, punishment and crime, violence and non-violence. Recognizing these ambivalences means not becoming paranoid about violence.

To make the institute effective, it is necessary to have the mediators help, who are facilitating and impartial professionals, who will collaborate in the search for curative and perennial understanding:

> Mediation usually starts with preliminary conversations, separate, each of the parties, these conversations allow the people involved in the conflict to express themselves in a climate of trust. The mediator does not conduct an interrogation of suspicions, he conducts a respectful questioning. Its intention is to understand the interlocutor and above all to help him to understand himself better, to reflect on himself and on his attitude in the conflict. The mediator practices, in a way, the art of maieutics (from the Greek maieutiké, which means the art of giving birth), that is, he helps his interlocutors to "give birth" to their own truth. (MULLER, 2007, p. 153).

It can thus be seen that restorative justice is a mechanism to give effect to the provisions of article 35, item III, of the SINASE Law: "priority to practices or measures that are restorative and, whenever possible, meet the victims needs." As a result, following the legislator will, the Justice National Council of Brazil issued Resolution 225/2016, with the implementing purpose of the restorative justice use, highlighting the 1st and 8th, respectively:

> Art. 1st. Restorative Justice is constituted as an orderly and systemic set of principles, methods, techniques and activities, which aims to raise awareness of the relational, institutional and social factors that motivate conflicts and violence, and through which conflicts that generate harm , concrete or abstract, are solved in a structured way as follows:
>
> I – it is necessary for the offender to participate, and, when applicable, for the victim, as well as their families and others involved in the harmful event [...];
>
> II – restorative practices will be coordinated by trained restorative facilitators [...];
>
> III – restorative practices will focus on satisfying the needs of all those involved [...].
>
> Art. 8th. The restorative procedures consist of coordinated sessions, carried out with the participation of those involved voluntarily, of the families, together with the local Law Guarantee Network [...].
>
> § 1. The restorative facilitator will coordinate the listening and dialogue work between those involved [...], and should emphasize during the restorative procedures:
>
> I – the secrecy, confidentiality and voluntary nature of the session;
>
> II – understanding of the causes that contributed to the conflict;
>
> III – the consequences that the conflict generated and may still generate;
>
> IV – the social value of the rule violated by the conflict. (CNJ, 2016)

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These legal provisions aim to define the institute, the application north and the principles to be observed, and the molds traced by the Justice National Council find support in the Howard Zehr's lesson:

> 1. It focuses on harm and consequent needs (of the victim, but also of the community and the offender).
>
> 2. It deals with the obligations resulting from these damages (the offender's obligations but also of the community and society).
>
> 3. Uses inclusive and cooperative processes.
>
> 4. Involves everyone who has a stake in the situation (victims, offenders, community members and society).
>
> 5. Seeks to repair damages and correct evils, as far as possible. (ZEHR, 2008, p. 239-240).

It must be remembered that, in order to implement restorative justice, there must be voluntary participation by the offender and the victim, and, as the case may be, by the family and the community, as the latter is interested in social peace so that harmful events are not repeat in your heart.

If there is a willingness on the part of those involved, the paths are open for an understanding between them, and it does not matter what the infraction was perpetrated, that is, even if it is of a serious nature, with violence to the person.

It is emphasized that depending on the infraction severity and/or the crime committed by the attributable, restorative justice will not influence the socio-educational measure or the penalty applied. However, with regard teenagers, this circumstance will be considered in the periodic evaluation carried out by psychologists, so that it will help the judgment in the decision about whether or not to maintain the measure, or even for progression to the open environment. As for the attributable, there is no legislation in Brazil that leads to the sentence reduction if participating in restorative practice. On the other hand, it does not prevent the execution court assessment from considering restoration as a measure of good behavior for the other benefits examination.

Therefore, restorative justice proves to be healthy, even in serious cases, as the victim will be able to obtain information from the offender and accelerate the healing process. However, this cure may not happen, but the attempt is valid, while for the offender it will serve to apologize and help in the recovery of the victims and himself:

> Dialogues between victims and offenders of serious crimes – homicide, attempted murder, sexual abuse, rape, armed robbery and other serious violence – have been carried out formally and institutionally in the United States and Canada [...]

> Most of the dialogues take place within a correctional institution, as the perpetrators of this crime type usually serve long sentences, even life imprisonment. [...]
>
> [...] the four most common reasons that lead the victim to want to participate are: seeking information; show the offender the impact of his actions; having some kind of human contact with the person who committed the crime; accelerate the trauma healing process. [...]
>
> Participation is voluntary on the part of the offender, but many agree to attend the meeting. In that same study, perpetrators of crimes gave the following reasons for participating: apologizing; help victims to recover; contribute to their own rehabilitation and healing; change the way victims see them. (AMSTUTZ, 2019, p. 59)

Finally, restorative justice is a mechanism that intends to transcend the normative punishment logic, which has not reduced the violence that plagues daily life, to give effect to the provisions of article 35, item III, of the SINASE Law: "priority to practices or measures that are restorative and, where possible, meet the victims needs."

4 Conclusion

The constant search for revealing paradoxes and ambivalences was the path followed in this reflection, we seek to demonstrate that the acts penalization practiced by children and teenagers is not produced by society, but 'IN' society, where we identify that it is in this society that the problems are produced and therefore also the solutions must find a locus for their solution. The conflict is always between an adult and a child, and as a child has no voice, his voice appears only through the conflict defined by the adults. The Law, as we know, sadly reaffirms the non-derogable children and teenagers rights, prohibiting (but using) techniques contrary to human dignity, condemning the manipulation practice of genetic heritage, for example. So the legal debate registers all the dilemmas that accompany similar Solomonic issues, so we will have to find a sentence in the Law, in the International Treaties.

The article also aimed to draw a parallel between the revoked Minors Code, which was in force under the 1967 Federal Constitution, which treated children and teenagers as objects of rights, through the irregular status doctrine, in contrast to several Treaties and Conventions that gave it greater protection. Then, a new constitutional order emerged, through the National Constituent Assembly, from which came the promulgation of the 1988 Federal Constitution, entitled Citizen Constitution, which embraced many rights and principles, especially those of the first, second and third generations, notably the children and teenagers human rights. This occurred through its article 127, which established the absolute priority principle, so that it created solid foundations for the Child and Teenagers Statute approval in 1990, which revoked the 1979 Minors' Code. Therefore, the new Statute broke with the dictates of the irregular situation doctrine, so that children and teenagers started to be treated as subjects of rights.

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In view of the above, the article sought to criticize the approach of the punitive logic of the adult to the teenagers, due to the competence distribution of the Judicial for these judgments, understanding that we always deal with a punishment ambivalence. This is because the same legal operators who militate in those process over eighteen years of age also judge teenagers, without considering a series of precepts outlined in the Child and Teenagers Statute, among them, the fact that they are people in training, a circumstance that causes many undue hospitalizations. Therefore, it is urgent that we have more specialized courts for the infractions judgment.

Restorative Justice's dissemination had also been advocated, including, in serious cases, so that the offender and victim, both voluntarily, in the mediator's presence, could, together, heal their open wounds because of the infraction, which would certainly bring peace. more perennial social, considering that the sentence culture has not been able to do so.

Our reflection not only criticizes the judgment system of teenagers, with some incursions in the field of those over eighteen years of age, but also to bring some reflective alternatives to think about children and adolescents in their wounded childhood, as we have a century of International Treaties, Constitutional Charters, Conventions, Statutes guaranteeing and protecting the children and teenagers rights, but in this globalized world their condition is even more degraded, we call this the protection ambivalence and lack of children and teenagers protection, in this way mediation is presented as an alternative revealing paradox.

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