



## THE PROTECTION OF JURORS IN TRIALS OF HIGH-RISK INDIVIDUALS AND THE GUARANTEE OF INDEPENDENT AND IMPARTIAL JUDGMENT<sup>1</sup>



<https://doi.org/10.56238/levv16n47-070>

Submitted on: 03/21/2025

Publication date: 04/21/2025

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### ABSTRACT

The Jury Court is one of the most traditional and symbolic institutions of the Brazilian penal system, with its constitutional legitimacy ensured by article 5, item XXXVIII, of the Federal Constitution. Its main characteristic is to allow the direct participation of society in the trial of intentional crimes against life, reinforcing the democratic ideal of active citizenship. However, the current scenario of organized crime in the country imposes new challenges to the maintenance of impartial and safe trials, especially in cases involving defendants linked to criminal factions. The exposure of jurors to high-risk contexts makes them vulnerable to threats, pressures and reprisals, generating an environment of fear that can compromise freedom of conscience and the impartiality of the verdict. In addition, the lack of technical preparation of these citizens, associated with the lack of adequate public protection policies, weakens the quality of decisions and the very credibility of the Jury Court as a guarantor of criminal justice. In this work, I critically analyze the structural gaps in jury protection and examine the effects of this reality on due process. From a qualitative approach, based on doctrinal, legislative and jurisprudential review, I propose concrete mechanisms to mitigate such risks, such as the use of technologies for remote trials, the confidentiality of the identity of jurors, the institutional reinforcement of security and the implementation of specific protection programs. I intend, therefore, to contribute to the improvement of the current model of the Jury Court, in order to reconcile popular sovereignty with the principles of impartiality, security and legal rationality.

**Keywords:** Jurors' Safety. Criminal factions. Brazilian Penal System. Witnesses.

<sup>1</sup> Article presented to the Bachelor's Degree in Law of the Institute of Higher Education of Southern Maranhão – IESMA/Unisulma.

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## INTRODUCTION

This article presents the protection of jurors in highly dangerous trials in the Jury Court, although popular participation in the Judiciary is a democratic emblem, when intentional crimes against life are on the agenda, however, the challenges faced in the face of the growing influence of organized crime and factions that plague our country are highlighted. The Jury Trial provided for in article 5, item XXXVIII, of the Federal Constitution of 1988, represents an important manifestation of popular participation, but the vulnerability of jurors has become a relevant concern, where threats, intimidation and reprisals can compromise the impartiality of decisions. Although Law No. 13,964/2019 has promoted significant changes in criminal procedure, the protection of jurors still lacks effective mechanisms to ensure their safety and preserve the integrity of the trial. Given this scenario, this study seeks to analyze the flaws of the current system and propose measures to strengthen the protection of jurors, such as anonymity, remote trials, and specific protection programs, contributing to the improvement of the Brazilian penal system.

The problem is aggravated by a scenario of highly organized crime, such as that represented by criminal factions that operate beyond prison and that, in some cases, exercise power over entire communities. Jurors summoned to try members of these organizations face not only the technical challenge of trial, but also the real risk of reprisals. In this context, as Barros (2021) states, popular justice can be converted into emotional justice, or worse, into intimidated justice. This reality imposes a critical review of the way the Jury Court is structured and operationalized, in order to preserve not only the rights of the defendant, but also the physical and psychological integrity of the judges.

In the doctrinal and jurisprudential sphere, there is a growing concern with the limits of the lay juror's performance. Doctrinaires such as Lopes Jr., Barros, Santos, and Monebhurrún have contributed with consistent criticism of the current configuration of the jury, highlighting the absence of reasoning in the decisions, the technical fragility of the trial, and the emotional manipulation to which jurors are subject (Barros, 2021; Santos, 2011; Monebhurrún, 2022). In addition, empirical studies reveal the existence of external pressures — especially in trials of highly dangerous defendants — that directly impact the autonomy and tranquility necessary for deliberation. The absence of effective public policies to protect jurors makes this scenario even more alarming.

In this context, the research problem that guides the present work is: **how to reconcile the sovereignty of the popular verdict with the need to guarantee the impartiality and safety of jurors in trials of highly dangerous defendants?** This question challenges the traditional notion of popular participation and requires a critical

approach to the limits and possibilities of democratic justice in the face of concrete risks to the integrity of its lay operators.

The general objective of this article is to analyze the structural and institutional conditions that compromise the impartiality of the trial by jury when it comes to defendants linked to criminal organizations. Specifically, it seeks to: (i) examine the functioning of the jury rite in the light of constitutional guarantees; (ii) discuss the effects of the lack of technical preparation of the jurors; and (iii) to propose guidelines for the protection of these procedural subjects, with a view to building a fair, safe and rational trial.

The methodology used is qualitative, based on bibliographic review and normative analysis, combining classic and contemporary authors of the legal-criminal procedural doctrine, as well as empirical data mentioned in recent academic articles. The article is also based on the technique of problematization and hierarchization of legal sources, as recommended by Monebhurrin (2022), which enables the construction of a critical analysis based on the constitutional and infra-constitutional foundations that govern the theme. The text is structured in four main sections, in addition to the introduction and conclusion. The first section presents the functioning of the Brazilian Jury Court rite. Next, the lack of technical preparation of the jurors is analyzed as a factor of vulnerability in the trial. The third section discusses the challenges of impartiality in the face of trials involving criminal organizations. Finally, the conclusion systematizes the main reflections and proposes measures for institutional improvement, without giving up the democratic values that underpin the popular jury.

## **THE FUNCTIONING OF THE RITE OF THE BRAZILIAN JURY TRIAL**

The Jury Court is one of the pillars of the Brazilian criminal process, provided for in article 5, item XXXVIII, of the Federal Constitution of 1988, being responsible for the trial of intentional crimes against life. This institution represents the direct participation of the people in the administration of criminal justice, which reinforces its democratic character. The Code of Criminal Procedure, instituted by Decree-Law No. 3,689/1941, regulates its detailed operation and establishes the steps that guarantee due process, full defense, and adversarial proceedings (Brasil, 1941; Brazil, 1988).

The historical origin of the Jury in Brazil dates back to the Decree of 1822, which provided for the so-called "de facto judges" to judge abuses of freedom of the press. This model was improved throughout the Brazilian constitutions until it was consolidated, as a stony clause, by the 1988 Constitution. Among the fundamental principles of the Jury Court are the sovereignty of verdicts, the secrecy of votes, the fullness of defense and the

competence to judge intentional crimes against life (Brasil, 1988; Barros, 2021). This combination between tradition and constitutional provision gives the Jury a singular importance within the Brazilian legal system. The origin of the Jury in Brazil dates back to the imperial period, with the Decree of 1822 that instituted the so-called "de facto judges", responsible for judging crimes related to freedom of the press. Over time, this structure was improved by successive constitutions until its consecration as a stony clause in the 1988 Constitution. Currently, the fundamental principles of the Jury Court are: the fullness of defense, the secrecy of votes, the sovereignty of verdicts, and the competence to judge intentional crimes against life (Barros, 2021).

This combination of historical tradition and constitutional provision gives the Jury Court a prominent position in the legal system. However, its hybrid nature — marked by the performance of lay citizens alongside legal professionals — generates tensions between legal technique and judgment based on personal conviction. Such tensions are even more evident in contexts of organized crime or media repercussions.

The rite of the Jury Court is divided into two main phases: the **judicium accusationis**, aimed at the admissibility of the accusation, and the **judicium causae**, which corresponds to the trial itself. Next, each phase will be detailed in subchapters, highlighting its stages, procedural guarantees, and objectives.

## FIRST PHASE - *INCIDIUM ACCUSATIONIS*

The first phase of the Jury Court rite aims to verify whether there is sufficient evidence of authorship and materiality to justify taking the defendant to trial before the Sentencing Council. This stage has a limited inquisitorial nature and is conducted exclusively by a professional judge (Mirabete, 2014).

The procedure begins with the filing of the complaint by the Public Prosecutor's Office or with the criminal complaint, in permitted cases. After receipt, the investigation begins, with the hearing of witnesses, gathering of evidence, carrying out diligences and the interrogation of the defendant. Then, the final allegations are presented by the parties (Cunha, 2022).

Once the investigation is concluded, the judge analyzes whether there are sufficient elements to pronounce the defendant. The decision to pronounce is not a conviction, but an admission that there are reasonable indications to submit the accused to trial by jury. This decision must be reasoned and is subject to appeal (Brasil, 1941, arts. 408–414).

## SECOND PHASE - *INCIDIUM CAUSAE*

With the final and unappealable indictment, the second phase begins: the trial by the Sentencing Council. At this stage, the process is sent to the Jury Court, where the trial itself will take place. The session is public, with the exception of cases involving security or sexual crimes (Porto, 2020). The jurors are chosen by lot from a previous list of twenty-five names called for the session. Of these, seven are selected to compose the Sentencing Council. The prosecution and defense may refuse up to three names without justification, in addition to presenting grounds for removing others due to impediment or suspicion (Brasil, 1941, art. 436).

During the session, the parties present witnesses, evidence and orally support their theses. The presiding judge guides the jurors on the questions to be voted on. Such questions deal with the materiality of the fact, the authorship, and the possible existence of qualifiers or exclusions of illegality.

The jurors decide by simple majority, voting secretly by means of ballots. At the end, the presiding judge prepares the sentence based on the jurors' answers and applies, if necessary, the appropriate penalty according to the Penal Code. This model of judgment, based on the intimate conviction of the jurors, guarantees the sovereignty of the verdict and citizen participation, but also reveals vulnerabilities, especially in cases of high dangerousness, in which the safety and impartiality of the jurors can be put at risk (Barros, 2021).

### **LACK OF PREPARATION: THE LACK OF TECHNICAL KNOWLEDGE ON THE PART OF THE JURORS**

The structure of the Brazilian Jury Court, although supported by democratic ideals, such as popular participation and the sovereignty of verdicts, reveals a fundamental contradiction: the lack of technical preparation of the jurors who decide on the life and freedom of the accused. The Federal Constitution of 1988 guarantees that intentional crimes against life are judged by a council of lay citizens (Brasil, 1988), but does not impose any requirement of legal training for the exercise of this function. In practice, this means that profoundly complex decisions are made based on personal impressions, feelings and convictions, and not on technical knowledge of Criminal and Procedural Law.

Jurors, because they do not have legal training, tend to interpret the arguments presented in plenary based on subjective perceptions. As Barros (2021) points out, jurors' knowledge comes from their life experiences, habits, and beliefs, which makes them vulnerable to the rhetoric of the parties, especially in trials marked by engaging and

emotional oratory. Unlike robed judges, who are trained for years to apply the law impartially, jurors have no prior access to the case file or technical understanding of legal terminology, which compromises the rational analysis of the evidence.

This limitation is aggravated by the fact that the entire trial is essentially based on orality. As the jurors do not study the records in advance, they depend exclusively on the narratives presented in the plenary to form their conviction. This unbalances judgment and favors emotional manipulation. As Barros (2021, p. 9) states, "the outcome of the trial ends up being conditioned by subjective elements, such as the charisma of the speakers, emotional rhetoric, and dramatic staging", which distances the judgment from the ideal of legal rationality.

The doctrinal criticism of the jurors' performance is not recent. Authors such as Coelho and Lopes Jr. point out that the jury is little interested in legal-dogmatic debates and allows itself to be involved in the theatrical construction of the discourses (Barros, 2021, p. 108). This characteristic reveals an inversion of the logic of the criminal trial, as the decision is no longer based on legal foundations and is guided by emotional conviction. The risk, therefore, is not only in the imprecision of the judgment, but in the legal uncertainty generated by the absence of technical criteria.

Impartiality, which should guide any criminal process, is also compromised by the technical unpreparedness of the jurors. As Lopes Jr. maintains, "legal knowledge is fundamental for a more accurate or at least less flawed judgment to be made". The margin of error becomes much greater when the trial is conducted by people who do not master the technical elements of the case. This reveals a contradiction between the democratic ideal of popular participation and the need for decisions based on the law.

Even if the plurality of views in criminal judgment is valued, it is essential to recognize that the exercise of jurisdiction requires a minimum basis of understanding of the applicable legal norms. The juror does not need to be a specialist, but should receive introductory training and technical support to understand the dynamics of the criminal process. The absence of this training not only puts the accused at a disadvantage, but also compromises the credibility of the verdict itself. This reality makes it urgent to implement corrective measures. The obligation of prior and standardized training, provided by the Judiciary, could prepare jurors to correctly interpret the arguments presented. In addition, the accompaniment of a neutral technical advisor during trials could help in understanding the key points of the prosecution and defense, preserving the impartiality of jurors and reducing the risk of arbitrary decisions.



Santos (2011) offers an even deeper critique of the Jury Court, by pointing out that the decisions of the Sentencing Council, because they do not require reasoning, reproduce a solipsistic and individualistic logic, incompatible with the Democratic Rule of Law. This absence of justification weakens the control over the legality of decisions and compromises the constitutional principle of the motivation of judicial acts (Santos, 2011). From the philosophical-legal point of view, this decision-making structure without grounds breaks with the rational criteria required by the democratic theory of jurisdiction. As recommended by Monebhurrin (2022), the construction of legal argumentation must start from rational problematization, the definition of key concepts, and the hierarchy of sources. The absence of this systematization on the part of the jurors distances the judgment from the requirements of legal rationality.

Popular participation, despite its symbolic importance, needs to be reconciled with mechanisms that guarantee technically valid decisions. As Gomes and Jurubeba (2025) argue, the democratic legitimacy of the jury cannot do without its institutional credibility. And this credibility is directly related to the training of citizens who exercise the judging function. Moia da Costa and Misaka (2019) also criticize the functional illegitimacy of the popular jury, highlighting that the current model does not guarantee fair decisions, but rather spectacular ones. The emblematic case of the Doca Street trial, for example, demonstrated how the defense arguments were guided by subjective and prejudiced narratives, which compromised the rationality and fairness of the verdict (Costa and Misaka, 2019).

In addition, the absence of technical criteria makes jurors vulnerable to media manipulation and social pressure. As Santos (2011) observes, the absence of reasoning transforms the verdict into an act of individual conscience, with no possibility of rational review, which frontally violates the principles of due process of law and full defense.

Even if the democratic value of the institute is recognized, the structural risks that arise from the lack of preparation of the jurors cannot be neglected. The legitimacy of the Jury Court, as proposed by Gomes and Jurubeba (2025), is only sustained if it is accompanied by institutional measures that qualify popular participation and ensure a minimum of technical rationality in decisions. The proposal of prior training of jurors, defended by several authors, emerges as a viable alternative to mitigate this deficiency. In addition to basic training in Criminal and Procedural Law, the presence of neutral technical advisors during trials could favor a critical understanding of arguments and the maintenance of impartiality (Costa and Misaka, 2019).

A debate is also needed on the reformulation of the verdict system, so that the jurors' decisions are justified, even if in a simplified way. As Santos (2011) points out, only through

the requirement of motivation is it possible to control the rationality of decisions and avoid arbitrariness. Finally, it is not a matter of extinguishing popular participation, but of reformulating the model so that it simultaneously meets the principles of democracy and justice. As Barros (2021, p. 15) concludes, "the lack of preparation and the absence of institutional support compromise the quality of decisions, putting at risk the principle of due process".

Thus, the strengthening of the Jury Court necessarily involves the restructuring of its training, supervision and reasoning mechanisms. Only with a more conscious, technical and responsible performance on the part of the jurors will it be possible to guarantee truly fair trials compatible with the precepts of the Democratic Rule of Law.

### **SUMMONING JURORS AND THE FRAGILITY OF FAIR TRIAL IN CASES AGAINST MEMBERS OF CRIMINAL ORGANIZATIONS**

The Brazilian Code of Criminal Procedure, enacted in 1941, was conceived in a historical context in which the phenomenon of organized crime did not yet appear as a structured threat to public order. In the following decades, however, Brazil witnessed the vertiginous growth of large-scale criminal factions, such as the First Capital Command (PCC) and the Red Command, whose influence goes beyond the limits of penitentiaries and directly reaches institutions such as the Judiciary and the Public Prosecutor's Office (Almada, 2021). This socio-criminal transformation has imposed urgent challenges on the criminal procedural structure, notably with regard to the protection of jurors summoned to trial crimes involving such organizations.

The popular jury, the foundation of democratic participation in the criminal process, is particularly vulnerable in trials involving criminal organizations, given the absence of solid security protocols for jurors. The citizens called to compose the Sentencing Council, often coming from the same communities in which the defendants work, face a scenario of fear and veiled pressure, which directly compromises their impartiality. As Barros (2021, p. 13) warns, "there is a great fear of pronouncing verdicts in the face of reprisals, which can occur when judging a citizen of the community".

This structural vulnerability cannot be considered a simple side effect of the system, but rather a failure that compromises the very core of due process. The impartiality of the trial, guaranteed by article 5, item XXXVII of the Federal Constitution (Brasil, 1988), requires more than the absence of a bond between judge and defendant — it also requires that the judge be free from external pressures and have his physical, emotional and



psychological integrity guaranteed. The mere possibility of coercion is enough to deform the decision-making process, transforming a technical judgment into an act of survival.

Documented cases of threats, intimidation and reprisals against jurors have become increasingly frequent. In a trial held in São Paulo, jurors reported that one of the defendants, an alleged member of the PCC, threw threatening looks and veiled messages during the session, which led to the dissolution of the Sentencing Council due to loss of subjective impartiality (Barros, 2021, p. 81). Situations like this demonstrate that, in practice, the State summons the common citizen to a function of high responsibility without offering the minimum of protection.

The legal doctrine already recognizes this institutional failure as a factor of serious legal uncertainty. As Ianni (2021, p. 96) points out, "the dignity of the human person must permeate all moments of the criminal process, including the condition of the lay judge, who, exposed to fear, may be forced to decide against his own conviction". Thus, the fullness of the defendant's defense cannot be guaranteed at the cost of sacrificing the safety and freedom of the jury, under penalty of compromising not only the specific trial, but the legitimacy of the Jury Court itself as an institution.

In addition, it is important to highlight that the exposure of jurors is aggravated by the absence of public policies aimed at protecting their identity. There is no concrete provision in the current criminal procedural legislation for the adoption of measures such as the preservation of anonymity, the use of fictitious identities or the holding of sessions with restricted access. The direct exposure of the juror in the plenary, with the possibility of recordings and images broadcast on social networks, transforms civic duty into a personal and family risk (Almada, 2021, p. 8).

The fragility of the system is even more evident in the face of technological advances and contemporary hyperconnectivity. As Monebhurrin (2022, p. 9) points out, the modern criminal process must respond not only to the classic requirements of the adversarial and broad defense, but also to the socio-technical complexity that affects the integrity of criminal prosecution. In the case of jurors, this implies thinking about hybrid models of protection, such as videoconference sessions, hidden jurors, or even technical jurors with preserved identity, as occurs in some European countries.

It is not, therefore, a matter of eliminating the popular jury, but of rethinking its mechanisms in contexts of highly organized crime. Measures such as discreet escort of jurors, protected identification, prior screening of risk antecedents and psychological support must be integrated into the process, as instruments to guarantee substantial

justice. As Barros (2021, p. 15) points out, "jurors are vulnerable because the system summons them, but does not protect them".

The absence of these institutional safeguards undermines the credibility of verdicts and allows popular justice to become "justice with fear" — a form of decision vitiated by coercion. According to Barros (2021, p. 17), "it is not enough to allow the people to judge; It is necessary to ensure that the trial is fair, balanced and rational, so that popular justice does not turn into emotional justice – or, worse, justice with fear". This demonstrates that the democratic legitimacy of the Jury Court does not derive only from its popular composition, but from the quality of the decision-making environment.

Finally, it is necessary to understand that impartiality is not an intrinsic attribute of the judge, but rather an institutional condition to be promoted by the State. As Ianni (2021, p. 122) warns, "there is no democratic justice possible if fear is the determining element of the trial". Thus, guaranteeing the physical and psychological integrity of jurors is not a benefit — it is an inescapable requirement for criminal justice to be legitimate, rational, and effective. Only with the creation of specific protocols, focused on the reality of organized crime, will the Jury Court be able to continue exercising its role within the Democratic Rule of Law.

## CONCLUSION

The present research demonstrated that the current model of the Brazilian Jury Court, despite its constitutional consecration as an expression of popular sovereignty, is tensioned by structural and conjunctural challenges that compromise its effectiveness as a legitimate instance of criminal justice. Among these challenges, the lack of technical preparation of the jurors and, especially, their vulnerability to trials involving defendants linked to criminal organizations were highlighted, a factor that jeopardizes the impartiality, the personal safety of the jurors and, consequently, the integrity of the criminal process.

Throughout the study, it was observed that the democratic logic of the Jury Court, based on citizen participation, conflicts with the contemporary requirement of a technical, reasoned and rational judgment. Lay jurors, without legal training and without adequate emotional preparation, are summoned to decide on complex and often high-risk cases, which exposes them to psychological pressure, veiled threats and even concrete reprisals. This reality transforms the trial into an exercise of resistance, when it should be a space of free conviction, supported by effective procedural guarantees.

As discussed, the absence of public policies aimed at protecting jurors directly contributes to the weakening of the verdict itself, since decisions made under fear or

intimidation cannot be considered truly free. This finding shows that the current model fails to protect not only jurors, but the entire criminal justice system, since it compromises the legitimacy of the procedural result and undermines society's confidence in the institution of the Jury.

The doctrinal and jurisprudential analysis revealed that there are no constitutional impediments to the adoption of mechanisms that ensure the protection of jurors in high-risk situations, as long as these measures respect the principles of full defense and adversarial proceedings. Thus, proposals such as the use of qualified anonymity, trials with a restricted audience, hybrid or telepresence sessions, mandatory technical training and psychological support for jurors are not only viable, but necessary to preserve due process in its entirety.

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In addition to immediate protection solutions, the research points to the need for a deeper institutional rethinking of the role of the Jury Court in the current Brazilian criminal scenario. The permanence of the Jury as a stony clause must be made compatible with the complexity of contemporary crimes, requiring a more consistent dialogue between democratic tradition and institutional modernization. It is not a matter of extinguishing popular participation, but of adapting it to the requirements of a more technical, transparent and protective criminal process.

It was also possible to verify that the lack of reasoning in the jurors' decisions and the permissiveness with rhetorical and emotional arguments weaken the legal rationality of the trial. The sovereignty of the verdict, without the requirement of justification, needs to be reviewed from the perspective of minimum motivation, as a way to ensure greater control of legality and avoid arbitrariness. Such a change would allow the maintenance of citizen participation with more responsibility, making the performance of the Sentencing Council more consistent with the rights and procedural guarantees in force.

In view of all these aspects, it is concluded that the strengthening of the Jury Court depends on a normative and organizational restructuring that makes it more efficient, safer, and aligned with constitutional values. It is necessary to invest in jury training, create permanent structures of protection in cases of highly dangerous defendants and foster an



institutional culture that values not only popular participation, but also the physical, psychological and decision-making integrity of lay judges.

Finally, the importance of the Jury as a democratic instrument is reaffirmed, but with the warning that its continuity must be accompanied by urgent reforms. Impartiality cannot be a legal illusion; it must be guaranteed by real and effective structures. Only when the procedural system is able to protect jurors and ensure decisions free of fear and manipulation, will it be possible to say that the Jury Court truly fulfills its constitutional mission: to be a space of justice, reason and citizenship.

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