



CRIMINAL LIABILITY AND SECURITY MEASURES IN BRAZIL: A CRITICAL STUDY ON CNJ RESOLUTION NO. 487/2023¹



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ABSTRACT

This study addresses the relationship between criminal liability and security measures in Brazil, with a special focus on the consequences of CNJ Resolution No. 487/2023, which aims to reformulate the legal treatment of people with mental disorders who commit crimes. The analysis focuses on the challenges and implications of the application of this resolution, taking into account the ethical and legal issues involved in the process of assessing imputability and the security measures applied to non-imputable individuals. The main objective of the research is to examine the transformations proposed by the resolution, highlighting their impacts on the penal system, especially for criminals who have mental disorders. The methodology adopted was of a bibliographic and documentary nature, with a critical analysis of doctrines, jurisprudence and the resolution itself, in order to understand the legal and social implications of its implementation. The study revealed that CNJ Resolution No. 487/2023 seeks to align itself with the principles of psychiatric reform and human rights, proposing alternatives to traditional treatment, marked by asylum institutions. However, the survey highlighted the practical difficulties of implementation, such as the lack of adequate infrastructure and the need for a more careful assessment of criminal liability and the application of security measures. The final considerations pointed out that, although the resolution is a significant advance, its effective implementation requires an adaptation of the judicial and public health system, with continuous monitoring to ensure that the rights of individuals are respected without compromising the security of society.

Keywords: Criminal imputability. Security measures. Judicial system.

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INTRODUCTION

Criminal imputability is one of the central themes of criminal law, as it deals with the ability of an individual to understand the unlawful nature of his conduct and to determine himself according to this understanding. The concept of imputability is fundamental for the application of the principle of culpability, which is one of the pillars of the Brazilian penal system (Capuchinho; Gomes; Campos, 2022). In this context, imputability is directly related to criminal responsibility, that is, the possibility of the individual being considered criminally responsible for his or her acts. However, when the agent has mental disorders, it is necessary to assess his or her capacity for imputation, which can generate different legal consequences compared to fully imputable individuals.

In Brazil, the Penal Code, in its articles 26 and 27, provides that individuals suffering from mental illnesses or psychic disorders may be considered unimputable or semi-imputable, depending on the degree of impairment of their capacity for understanding and self-determination (Brasil, 1940). Criminal non-imputability does not exempt the agent from responsibility, but implies the need to apply security measures, such as hospitalization in an appropriate establishment for medical treatment, in order to protect both society and the individual himself (Abrantes; Leite, 2024). Such measures have been a controversial topic, as they involve the complex interplay between mental health, criminal justice and human rights.

CNJ Resolution No. 487/2023, which deals with the application of security measures for non-imputable persons in the prison system, emerges as an important normative milestone in Brazil, by regulating the performance of the Judiciary and health professionals in monitoring these individuals (Brasil, 2023). The Resolution reflects contemporary concerns about the need for adequate treatment for those who commit crimes while in a condition of mental disorder, balancing the right to health and public safety (Gobbo, 2024). However, the implementation of this Resolution generates several discussions about its practical effects, the risks of inadequate institutionalization and the guarantee of fundamental rights of those involved.

In this scenario, the application of security measures, according to CNJ Resolution No. 487/2023, has generated debates about the effectiveness and adequacy of hospitalizations in psychiatric establishments in the prison system, considering the scarcity of infrastructure and the overcrowding of these environments. In addition, jurisprudence and the performance of the higher courts raise the need to redefine the criteria of non-imputability, in view of the increase in people with mental disorders who commit crimes (Flausino, 2024). Many of these individuals face the risk of inhumane treatment, without

adequate medical monitoring, which intensifies the debate on the reform of the penitentiary system and the creation of new models of treatment.

Therefore, The analysis of this Resolution, considering the understanding of mental disorders and criminal liability, is essential for the construction of a fairer legal system. The objective of this study is to examine the relationship between criminal liability and security measures, focusing on the consequences of CNJ Resolution No. 487/2023 for non-imputable criminals, especially those who commit crimes due to mental disorders. The methodology will be bibliographic and documentary, with critical analysis of doctrines, jurisprudence and the Resolution, to understand its legal and social implications.

CRIMINAL IMPUTABILITY AND CRIMINAL RESPONSIBILITY IN BRAZILIAN LAW

In the context of Brazilian criminal law, criminal imputability is a fundamental concept for determining the criminal responsibility of the individual (Bonfim; Cordeiro, 2023). It refers to the agent's ability to understand the illegality of his conduct and to act in accordance with this understanding.

The Brazilian Penal Code, in its article 26, establishes that imputability is directly linked to the mental sanity of the individual, considering individuals unimputable to those who, due to mental illness, do not have the capacity to understand the illicit nature of their action or to behave in accordance with this understanding (BRASIL, 1940, art. 26). This premise seeks to ensure that people with severe mental disorders are not held unfairly accountable, since their capacity for action and judgment may be compromised.

Criminal imputability, therefore, has an intrinsic relationship with criminal liability, since it is from the analysis of this capacity that it is determined whether or not the agent will be punished. As Lara Carvalho (2019) explains, criminal law is a relationship of power of the State over the individual,

It is public law because it refers to the relationship between the State that wants to punish and the person who will receive the punishment, that is, it is a relationship between the State and the individual. It is up to the former to define what the criminal offenses will be, the conducts considered prohibited and, if carried out, will deserve a criminal sanction, which in Brazil will be the penalties and security measures (Carvalho, 2019, p. 27).

Criminal responsibility, therefore, will be attributed to those who, having the capacity for culpability, act consciously and deliberately in the face of the illegality of their actions. The definition of who is or is not imputable, therefore, is a criterion of great importance, as it directly impacts the sanction that will be imposed on the offender. The importance of this

analysis lies in the function of criminal law to protect fundamental legal assets, such as life, physical integrity, and property, as pointed out by Lara Carvalho (2019)

The analysis of criminal imputability must also consider the theoretical implications of culpability, as defended by Welzel, the father of finalism. According to Welzel (1964), human action is understood as an act that aims to achieve a specific end, and for the agent to be considered culpable, it is necessary that he has the ability to understand the illegality of his conduct and to determine his action based on this understanding. However, as Rodrigues (2018, p. 100) points out, not all individuals have this capacity. Rodrigues explains why this understanding is important

(...) the psychopath or sociopath, when living in society, has what Welzel calls "capacity for culpability", that is, he has the potential to understand the illicit nature of the fact and to determine (act) according to this understanding (RODRIGUES, 2018, p. 100).

In this context, it is crucial that society understands that the criminal sanction must be adapted to the mental conditions of the agent, so that justice is effectively achieved.

CNJ Resolution No. 487/2023, by proposing an Anti-Asylum Policy for the Judiciary, brings to light a reflection on the criminal responsibility of people with mental illnesses in Brazil. The rule establishes guidelines for implementing the Convention on the Rights of Persons with Disabilities (CRPD) and Law No. 10,216/2001, in the context of criminal proceedings and the execution of security measures. However, critics of the resolution, such as members of the Working Group (WG) of the National Council of Justice, point out that it may result in helplessness for those who, due to mental illness, have committed criminal offenses. The CRMs warn that ordinary medical establishments, which should be responsible for treating this population, do not have the necessary infrastructure to ensure the safety and safety of these people, which raises serious concerns about the effectiveness of the security measures established by the resolution (CNJ, 2023).

The case of *Ximenes Lopes vs. Brasil* highlighted the need to review policies for people with mental disorders who commit criminal offenses. CNJ Resolution No. 487/2023 seeks to balance the protection of the rights of these people with public order, but faces criticism for the lack of adequate infrastructure to treat this population (CNJ, 2023). The criticism of the CRMs points out that the rule can compromise the security and rights of individuals, in addition to putting at risk the protection of society's legal assets. This highlights the complexity between criminal liability, mental health, and security measures in Brazil, requiring a more in-depth reflection on public policies in this context.

CNJ Resolution No. 487/2023 imposes a challenge on Brazilian criminal law, by integrating the rules for the protection of the rights of people with disabilities. However, the

lack of adequate infrastructure to apply these measures reveals a disagreement between the proposal and the practice, especially in the treatment of individuals with mental illnesses. The transfer to common health units, without the necessary infrastructure, can harm both public safety and the rights of offenders, pointing to the need to reformulate public mental health policies in the penal system.

THE DISTINCTION BETWEEN IMPUTABILITY AND SEMI-IMPUTABILITY: LEGAL AND PRACTICAL IMPLICATIONS.

In Brazilian criminal law, imputability is a central concept for the determination of criminal responsibility, being one of the essential elements for the configuration of culpability. Imputability is characterized by the individual's ability to understand the unlawful nature of his or her action and to behave in accordance with this understanding (Pereira *et al.*, 2024).

According to article 26 of the Brazilian Penal Code, imputability is directly related to the individual's mental health, and its absence can be configured by mental illnesses that prevent this understanding. Therefore, totally unimputable individuals cannot be held criminally liable, being subjected, instead, to security measures, which aim at the rehabilitation and protection of society (BRASIL, 1940). The distinction between imputability and semi-imputability, therefore, is based on the individual's ability to understand the illegality of his action, but with the presence of a partial limitation of his capacity for self-legislation.

Semi-imputability, in turn, refers to situations in which the agent, although he or she has some capacity for understanding and self-determination, has his or her ability to act according to reason reduced by a mental disorder (Silva, 2021). This means that, in the case of semi-imputability, the agent can still perceive the illegality of his action, but this perception is compromised to a greater or lesser extent, impairing his ability to act in accordance with this understanding (Pereira, 2024).

Lemes (2021) points out that in Brazil, semi-imputability is treated differently by case law, which considers it as a mitigating factor, which may result in a reduction of the sentence. However, the boundaries between imputability and semi-imputability are not always clear, requiring an in-depth analysis of the specific case, usually by means of specialized medical expertise.

From a legal-practical point of view, the distinction between imputability and semi-imputability has significant implications for the application of criminal sanctions. While the non-imputable are subjected to security measures, the semi-imputable can be held

criminally responsible, but with a reduced penalty, taking into account the reduction of their capacity for culpability.

Regarding the application of CNJ Resolution No. 487/2023, which aims to reformulate the treatment of people with mental disorders in the penal system, the distinction between imputability and semi-imputability plays a relevant role. The resolution establishes guidelines to ensure that the rights of people with disabilities, including those with mental disorders, are respected in the context of criminal proceedings. This requires critical reflection on how public policies and judicial decisions can be better adjusted to ensure that individuals with mental disorders, whether imputable or semi-imputable, receive appropriate treatment and respect their fundamental rights (CNJ, 2023).

THE RELATIONSHIP BETWEEN MENTAL DISORDERS AND CRIMINAL LIABILITY: ETHICAL AND LEGAL ISSUES

The relationship between mental disorders and criminal liability is a complex and delicate issue that, in Brazil, involves an in-depth analysis of the behavior of the individual in conflict with the law, taking into account his ability to understand the illegality of his acts.

Criminal imputability, provided for in the Brazilian Penal Code, is the legal concept that establishes whether a person is responsible for his or her unlawful acts, based on his or her ability to understand the unlawful nature of his or her conduct and to behave in accordance with this understanding. However, people with mental disorders may have difficulties in discerning the nature of their acts or in acting according to the awareness of illegality, configuring non-imputability or, in less serious cases, semi-imputability (Barcelos et al., 2020).

In Brazil, forensic psychiatry plays a fundamental role in associating the study of mental disorders with criminal law. The cross-sectional study by Barcelos and other authors (2020) carried out at the Forensic Medical Institute of Belo Horizonte (2014-2015) revealed that, among the individuals evaluated, 33.1% were considered within the psychic normality, while 26.8% had psychotic disorders, with imputability attributed to 682 individuals, and semi-imputability to 653. The legal implications of this mainly involve the assessment of the capacity for understanding and self-determination, essential factors to define criminal responsibility. The study also indicated that crimes such as theft, robbery, and drug trafficking are the most frequently committed by people with mental disorders, which expands the discussion on the best practices for the treatment and rehabilitation of these individuals in the judicial system, without compromising public security and fundamental rights (Barcelos et al., 2020).

Emblematic cases such as that of Suzane von Richthofen, the Park Maniac (César Augusto Bezerra de Oliveira) and Pedrinho Matador (Pedro Rodrigues Filho) illustrate the tension between mental disorders and criminal liability in Brazil. In Suzane von Richthofen, although she was diagnosed with personality disorder, the defense was unable to convince the court of her non-imputability, and the accused was considered fully imputable, being sentenced to prison.

The "Park Maniac" was also analyzed from the perspective of psychopathy, but, when considered imputable, he served time for his crimes. Pedrinho Matador, with a history of family abuse and possible psychopathy, was also considered imputable, despite the allegation of semi-imputability. These cases reveal the challenge that the Brazilian justice system faces when dealing with individuals whose psychiatric conditions may influence their ability to understand or control their actions. However, the criminal justice system tends to maintain the full accountability of these individuals, even when the presence of mental disorders is evident.

The Ximenes Lopes Case, in turn, has great relevance for the legal and ethical discussion on the criminal liability of individuals with mental disorders. This case, which involved a man with psychiatric disorders and who committed crimes, resulted in the formation of a working group at the National Council of Justice (CNJ) to review the treatment of people with mental disorders in the criminal justice system. The case led to the creation of CNJ Resolution No. 487/2023, which seeks to reformulate the application of security measures, including the deactivation of psychiatric custody institutions, the so-called "total institutions". The resolution, which establishes a new protocol for the treatment of these people, is part of the guidelines of the Anti-Asylum Policy and Law 10.216/2001, which provide for the treatment of these people in the Unified Health System (SUS), respecting their human rights (Conjur, 2024).

CNJ Resolution No. 487/2023, by proposing deinstitutionalization and the implementation of more humanized treatments, promotes a reassessment of the practices of internment and custody of people with mental disorders in the penal system. This movement aims to ensure that people with mental disorders are treated in environments that are appropriate for their care, rather than remaining in obsolete institutions, which are often inadequate for the treatment of their conditions. According to the resolution, the SUS should be the main care network for these individuals, with the application of safety measures in a way that is more aligned with the principles of psychiatric reform and the anti-asylum struggle (Ferreira, 2024). However, the transition to this new reality requires the creation of an adequate infrastructure, as evidenced by the difficulties faced by

establishments such as the Pedro Marinho Suruagy Judicial Psychiatric Center in Alagoas, which is still in the process of adapting to the new regulations (Ferreira, 2024).

In addition, CNJ Resolution No. 487/2023 has important implications for the treatment of individuals with mental disorders who commit crimes. According to the most recent survey by the National Secretariat of Penal Policies, there are about 2,736 people complying with security measures in Brazil, of which a significant part is already being treated in outpatient units, such as the Psychosocial Care Centers (CAPS). However, the change to a treatment model in units appropriate to mental health is still a challenge, as it requires the adaptation of courts, states, and municipalities to the new policy, with deadlines and concrete actions to ensure the effective implementation of the Anti-Asylum Policy (Conjur, 2024). Planned and gradual deinstitutionalization, as discussed in recent studies, such as that of Flausino (2024), reflects an effort to break down the barriers of total institutions, providing the reintegration of people with mental disorders into society in a dignified and effective manner, respecting their human rights and promoting their recovery.

These questions highlight the dilemma faced by the Brazilian criminal justice system when dealing with criminal liability in individuals with mental disorders. CNJ Resolution No. 487/2023, by seeking to humanize the treatment and reinforce the rights of these people, proposes a reconfiguration of the criminal justice system, in view of the needs and rights of this vulnerable population. However, their practical implementation reveals structural challenges, such as the lack of adequate infrastructure for care and the risk of helplessness for these individuals, which makes it necessary to have an ongoing debate on the effectiveness and applicability of the new guidelines in the context of mental health and criminal justice in Brazil.

CNJ RESOLUTION NO. 487/2023 AND ITS IMPACTS ON THE APPLICATION OF SECURITY MEASURES

CNJ Resolution No. 487/2023, which establishes the Anti-Asylum Policy within the Judiciary, introduces a new perspective on the treatment of people with mental disorders in the penal system. Its central objective is to promote deinstitutionalization and the replacement of asylum practices with alternatives that respect human rights, in line with the Convention on the Rights of Persons with Disabilities (CRPD) and Law No. 10,216/2001.

The resolution brings advances by establishing guidelines that aim to ensure a more humanized and specialized treatment, but also generate practical and legal challenges in relation to the implementation of security measures (CNJ, 2023). Such challenges mainly

involve the lack of infrastructure necessary to adequately accommodate individuals undergoing treatment, which can compromise both their recovery and public safety.

One of the main impacts of CNJ Resolution No. 487/2023 is the attempt to replace traditional psychiatric units with institutions that provide more integrated and less segregated treatment. While this change is an evolution in terms of human rights, it also raises concerns with regard to security, as the common health facilities, to which individuals are often referred, do not have the necessary structure to deal with security issues effectively.

CNJ Resolution No. 487/2023 also directly interferes with the concept and application of security measures. Traditionally, security measures aim at the rehabilitation of non-imputable or semi-imputable individuals, guaranteeing them adequate treatment and social reintegration. However, the resolution proposes a model that, by prioritizing deinstitutionalization and treatment in common health units, faces the obstacle of the lack of a robust infrastructure. This generates a disagreement between the objective of rehabilitation and the actual conditions in which the treatment will take place, putting the individual's safety and right to mental health at risk (CNJ, 2023).

The implementation of CNJ Resolution No. 487/2023, therefore, requires a significant improvement in the treatment of people with mental disorders within the penal system, especially with regard to security measures. Although the resolution seeks to balance the rights of persons with disabilities with the needs of public order, its implementation faces the difficulty of aligning existing resources with the proposed objectives. In order for security measures to be applied effectively and respectfully, it is essential to create a support network that includes specialized professionals and adequate structures for the treatment of mental health in the penal system (CNJ, 2023).

FINAL CONSIDERATIONS

It is possible to conclude that the objective of analyzing the relationship between criminal liability and security measures, focusing on the consequences of CNJ Resolution No. 487/2023 for non-imputable criminals, was fully achieved. The bibliographic and documentary research enabled a deep understanding of the legal treatment of individuals with mental disorders, especially those involved in crimes, and of the implications of this new resolution. The analysis of doctrines, jurisprudence, and official documents revealed the changes proposed by the Resolution, highlighting its intentions to promote a more humanized justice system aligned with human rights, while facing significant challenges to its effective implementation.

CNJ Resolution No. 487/2023 emerges as a response to criticism of the previous system, characterized by asylum practices and the absence of adequate infrastructure for the treatment of individuals with mental disorders. The resolution introduces deinstitutionalization measures, promoting the transfer of treatment for these people to appropriate health units, such as the Psychosocial Care Centers (CAPS), in line with the guidelines of Law 10.216/2001 and the Anti-Asylum Policy.

However, the critical analysis revealed that the transition to this model of care requires a substantial adaptation of the judicial and public health system, which can be a challenge, given the lack of infrastructure in several regions of Brazil. The extension of the deadlines for the implementation of these measures, as occurred with the CNJ's decision in 2024, reflects the practical difficulties of this change.

Regarding criminal liability, the study highlighted that, although CNJ Resolution No. 487/2023 aims to guarantee the rights of individuals with mental disorders, it does not eliminate the need for critical evaluation of the criminal liability of these individuals. Cases such as that of Suzane von Richthofen, the Park Maniac, and Pedrinho Matador demonstrate the complexity of the relationship between mental disorders and criminal responsibility.

The research showed that, despite the presence of psychiatric disorders, many of these individuals are considered imputable, which generates an ethical and legal dilemma on how to balance criminal accountability with the need for adequate treatment for them. The CNJ Resolution contributes to the discussion on criminal liability, by introducing the possibility of more appropriate treatments, but there are still gaps that need to be filled, especially with regard to judicial monitoring and the guarantee of effective and dignified treatment.

Another relevant point discussed was the issue of semi-imputability, which reflects the intermediate stage of the individual's capacity to understand. Cases such as that of Ximenes Lopes helped to highlight the need for more individualized treatment for people with mental disorders, highlighting the importance of psychiatric expertise for the assessment of criminal responsibility. Although CNJ Resolution No. 487/2023 has taken an important step in recognizing the rights of individuals in conflict with the law, the practical implementation of this resolution needs to be accompanied by greater training and adaptation of professionals involved in the assessment of imputability and the application of security measures.

Finally, the research achieved its objective by discussing the legal and social implications of CNJ Resolution No. 487/2023, highlighting both the advances and the

challenges. The resolution represents an important milestone for the treatment of individuals with mental disorders in the penal system, promoting a system more aligned with human rights and the guidelines of psychiatric reform. However, the study concludes that the effective implementation of this norm depends on structural changes in the judicial and public health system, as well as continuous reflection on the adequacy of security measures and the most effective ways to ensure the rehabilitation and reintegration of these individuals into society.

Thus, the research points to the need for a continuous improvement of public policies aimed at mental health in the criminal context, so that the objectives proposed by the CNJ Resolution can be achieved in an effective and humanized way.

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