Game of the Critter: Incognito Brasileira

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SUMMARY

The game of the beast was a lottery invented in Rio de Janeiro in 1892 with the purpose of generating funds for the city's newly inaugurated Zoo, but due to its great popularization it was forbidden by the authorities. The illegality did not contain its expansion and quickly other cities of the federation happened to register occurrences of this lottery. Despite being considered a criminal contravention, the game of the animal has been increasingly propagated, in line with the principle of social adequacy. Being the subject of doctrinal divergences on the possibility of criminalizing or releasing this game, disadvantages and advantages will be demonstrated throughout this research. The deductive method is used as method of procedure and the bibliographic and jurisprudential method.

Keywords: Game of the Critter, Criminal Contravention, Advantages, Disadvantages, Jurisprudence, Doctrine.

1. INTRODUCTION

The game of the beast is a very old betting contest, considered by the Brazilian order and by much of the doctrine - such as Otávio Magano and [2]José Catharino [3]- an illegal practice. This mode of betting appeared in 1892, its main theme is animals, and its founder was Baron João Batista Viana Drummond, founder and owner of the Rio de Janeiro Zoo. Although this game is provided in art. 58 of the Criminal Offenses Act as an unlawful conduct, subject to fine and restrictive penalty of law, its practice has grown excessively in the urban centers of the country, as well as in medium and small cities.

Over time, the game of the beast has become a routine practice in the lives of several Brazilians and, consequently, generating many profits for the bankers (owners of the gambling houses), that in front of the exposed started to count on a greater number of managers and money changers.

This work has as scope the study of the infraction of the game of the beast, which was defined by the legislator as Criminal Contravention by Decree-Law no. 3.688 / 41, and has as main objective, to analyze the question of the possibility of decriminalization of the game of the beast pointing out relevant aspects such as the evolution of the game of the animal and its general aspects, the positioning of doctrine and jurisprudence on the subject, the effectiveness of the norm in our legal system, as well as the parameter of society on the release or elevation to crime status of this modality of play and its consequences, in view of the current laws applicable to those who practice this infraction and its current procedural legal scope.

The research is justified by the fact that the game of the beast has spread in an alarming way and pervades the most respected Brazilian Institutions directly and indirectly, as in the economy, in the labor, police, cultural and even legislative sector, seeking to clarify their facets as well as benefits and harms. In order to do this, we seek to bring the teachings of the most respected doctrinators on the subject by pointing out the divergences and convergences of opinions and positions, as well as the most current jurisprudence and relevant legislation.

2. STREET PLAY STORY

This lottery was created in 1892 by Baron João Batista Viana Drummond, founder of the Zoological Garden of Rio de Janeiro. The idea behind the idea was noble: the Baron wanted to attract more people to the zoo, compensating for the cut of government money, which held the place. In order to feed all the fauna, Drummond had the 25 animals printed on the tickets printed. Punctually at 5:00 p.m., he raffled one of them. Whoever had the winning figure earned 20 times the value of the ticket.

With the advent of the Republic in 1889, the subsidy was cut and the Baron who had employed all his fortune in the purchase of animals for the zoo and maintenance, began to experience a major financial crisis. At this moment, his Mexican friend Manuel Ismael Zevada, who was banking without much success on Rua do Ouvidor in Rio de Janeiro, played the game of flowers explored in Mexico, his hometown, and proposed a partnership with the Baron. Substituting the flowers for 25 animals, the names of a bug were stamped and written on the zoo ticket that cost a thousand reis the entrance.

Faced with the financial difficulties to feed the animals and pay the workers, there was no alternative but to put an end to the activities of the Zoo. However, Baron Drummond had the idea of ??creating a lottery, where the tickets would be sold in the zoo itself and would be worth both as a ticket and a ticket to participate in a lottery. Thus, in order to obtain resources for the maintenance of the Zoo of Rio de Janeiro, the most popular game in Brazil appears.[4]

At first, every visitor to the zoo received a ticket with the image of an animal. But, from 1894, each could buy as many tickets as he wanted. To combat betting, which became a craze throughout the city, the City Hall prevented the draw in 1895. But it gave zebra: instead of weakening the game, the prohibition strengthened the bicheiros. If before they bought the tickets in the zoo and resold them through the city, from that moment they got together to carry out the lottery on their own. Neither the threat of chain to the bicheiros with the criminalization of the game, in 1946, was able to hold the game. At that point, the animal was already a mania installed in the popular imagination, supported by a network of personal relationships and infallible "Brazilian way" to dribble repression.

The great popularity of the game of the animal warned to the police of the time and. in 1895, with the

stratospheric profits of the bets, the strong men of the game united with organized crime. They have launched tentacles in at least six areas: drug and arms trafficking, real estate speculation, prostitution, electronic games and clandestine transport, with boats and stockpiles. Mayor Werneck de Almeida published Decree No. 133, which prohibited the drawing of animals on the grounds of the Zoo, as authorities began to consider the game as a game of chance. In 1899, Law No. 628 was enacted, which instituted a sentence of one to three months' imprisonment for those accused of gambling and, in 1941, Decree-Law No. 3,688, which definitively prohibited the practice of gambling. such an act as a criminal contravention[5]. Even banned, the animal continues to this day with three daily drawings, representing a small slice of dirty money that feeds the criminals.

The story of the game of the beast is already 124 years and is enough to prove that it was successful and today is one of the most played modalities by all Brazilians. His current system is different from that of Baron Drummond, he is composed of several people and obeys a hierarchy, where first one has the figure of the banker ("owner" of the business), which counts on the function of its managers of the business administration) and lastly the sellers (known as money changers) who make the note of the bets and pass it on to the manager.[6]

Most dictionaries define the game of the beast as the "type of lottery in which it is played in the late 0000 to 9999, whose dozens correspond to 25 groups, each with the name of an animal, namely: ostrich, eagle, ass butterfly goat sheep ram camel cobra rabbit horse elephant rooster cat alligator lion monkey pig peacock turkey bull tiger bear deer cow "It is also criticized for being the game of the ignorant for not obeying the alphabetical order.

3. PITCH GAME LIKE CRIMINAL CONTROVERSY

From the Ordinances of the Kingdom until the time of Dutch Brazil, we find vestiges of practices considered as crimes that today are typified in the Law of Contraventions as, games of chance, that in one and another time its penalty varied between fines and / or small intervals of deprivation from liberty to harsher penalties in force in Northern Brazil in 1630, as a result of the Dutch Invasion [7]

The first time that the term contravention was used to determine species of offenses was in the Criminal Code of the United States of Brazil, dated October 11, 1890 (arts. 364 to 404), in which he repeated with very few additions the crimes of the Criminal Code of the Empire of Brazil, dated January 7, 1831, the first genuinely Brazilian code, when dealing with Police Crimes (sic) in Book IV, Chapters I to VIII , (arts. 276-307).

With very few additions, the Consolidation of Criminal Laws of 1932 repeated the same feat. On January 1, 1942, the Criminal Code, the Law on Introduction to the Penal Code and the Law on Criminal Offenses began to be enforced simultaneously, the latter with vehement opposition from the reviewer Alcânta[8]ra Machado who wanted to keep it disciplined in the Penal Code, howev[9]er, he was won over by arguments not to mix matters of minor importance with works intended to last for a long time.

As pointed out by some of the writers as a true interference with police power in criminal legislation, the Law on Criminal Offenses generally loses the repressive and preventive character initially intended with its entry into force, especially after the entry into force of the Law (Law on Special Civil and Criminal Courts) and Law no. 10.259 / 01 (Law on Special Civil and Criminal Courts in the scope of Federal

Justice), and which were recently amended by Law No. 11.313 / 06, subject that we will analyze later.

In Brazil, according to the doctrine, the contravention brings the idea of ??illegality of less importance than crime, "dwarf cri[10]me", due to the lesser potentiality of damaging the relevant social interests that the legifi- cant wanted to protect. Thus, it is common for people to say: "it is only contravention", that is, the population further softens what the law intended to soften, in this wake, instills in people the idea that contravention does not have much importance for our legal system. The criminal contravention is any offense that provides for confinement simple or fine, or both alternatively or cumulatively. It is worth remembering that there are criminal offenses disciplined in other legal acts, such as verbi gratia, Law No. 8,245 / 91 (Tenancy Law) and Law No. 4.771 / 65 (Forest Code), in this way, when other laws do not in a different way, the general provisions of the Criminal Offenses Act and Criminal Code, respectively in this order, will be applied, subject to the specialty criterion. In this case, it is necessary to not forget that the general law that benefits the defendant is an exception to the criterion of the specialty.[11]

The game of the beast, considered a contravention, finds a legal definition in article 58 of Decree-Law no. 3.688 of 1941, which was amended by Decree-Law no. 6,259 of 1944, and is worded as follows:

"Art. 58. Performing the so-called "game of Bicho", in which one of the participants, considered buyer or point, delivers a certain amount with the indication of combinations of figures or names of animals, corresponding to numbers, to the other participant, considered the seller or banker, which is bound by any lottery to the payment of cash prizes. Penalties of six (6) months to one (1) simple year of imprisonment and a fine of ten thousand cruzeiros, fifty thousand cruzeiros to the seller or banker, and from forty (40) to thirty (30) days of cellular imprisonment or a fine of two hundred cruzeiros to five hundred cruzeiros to the buyer or point. Paragraph 1. The following penalties shall be imposed on sellers or bankers:

1. a) those who serve as intermediaries in the conduct of the game;
2. b) those who carry, conduct, possess, have in their custody or power, manufacture, give, transfer, store anywhere, lists with indications of the game or material appropriate to the contravention, and in any way contribute to the their manufacture, use, travel or employment, regardless of their species or quantity;
3. c) those that carry out the investigation of lists or the organization of maps related to the movement of the game;
4. d) those who in any way promote or facilitate the performance of the game.§ 2 Any lists with clear or disguised indications are considered suitable for the proof of the contravention act, once the opening reveals that they are intended for the perpetration of the game of the beast. (grifonosso).

The official reason to ban gambling and gambling in general can be found in another Decree-Law. That of 9.215 / 1946, which revoked the abrogation of article 50, considering, among other things, that "repression of games of chance is an imperative of universal conscience" and that "the legal and religious moral tradition of the Brazilian people is contrary to practice and to exploitation and games of chance ".

It was, therefore, under this clearly moralistic (and now anachronistic) justification that the game of the beast went from popular practice to criminal wrong. It is true that the banning of the game of the beast did not come under a very strict legal guise. I imagine no one in 1940-41 thought of turning the game of the beast into a crime, punished with imprisonment or detention. They considered it appropriate to place him

with a minor criminal offense, a contravention, very similar to other similar contraventions, such as vagrancy (article 59: "To give oneself habitually to idleness, being vali[...]d for work"), begging (Article 60: "Begging, for idleness or cupidity", article revoked since 2009), and public drunkenness (Article 62: "Present publicly in a state of drunkenness, so that causes scandal[...]").

Even if it became illegal, but still part of popular culture, the game of the beast was open to anyone who had the criminal logistics to monopolize it. And so, little by little, fortunes were made and families of exploiters of the game of the beast created mafias worthy of Neapolitan or Sicilian stories. Obviously, since gambling was illegal, monopoly families had to create and maintain a network of corrupt private employees, securities, and public officials so that betting points were divided with the least possible trauma, either between families or with the state. In the beautiful novel "Agosto", Rubem Fonseca portrays well the penetration of the police of Rio de Janeiro by the monopolistic families of the game of the animal. Of course, at that time, drugs were still not as hard-legalized as they would be in the second half of the twentieth century, when they took the place of gambling as the most lucrative outlawed business.

This criminological configuration of the family / monopolist / mafia type made the successive generations of these monopoly families accumulate significant wealth. This wealth had to be drained, washed and accounted for, so that it could generate the most important currency of a capitalist-hierarchical society like the Brazilian one: luxury articles. And here comes companies (façades or not), oranges, offshor*e accounts* and all a clandestine engineering that seeks to make the *bicheiro* (a "contraventor" that attacks the "universal conscience") as an entre*preneur (a*n enviable and profitable figure who consumes and commands).

In the quest to erase the devalued identity of *bicheiro*s, the members of the monopolist families begin to invest in other social activities, which give them valued identities. It is again ironic, at this point, that one of these activities, be it the carnival, specifically the carnival of the samba schools of Rio de Janeiro. The irony is that an activity outlawed because of its affront to the "moral, juridical and religious values ??of the Brazilian people" seeks symbolic refuge precisely in the activity and social moment in which all moral and religious values ??are officially suspended in Brazil, with right to authorization for nudity, casual sex in public and other heresies more.

In any case, joining the illegalization of a culturally normal activity for the people, with the consequent monopoly of the activity made illegal, with the need of the monopolistic families of the game of the animal to seek socially valued identities, we arrived at Carlinhos Cachoeira. Apparently, it is a person who has enriched himself with the monopoly of the game of the beast, a monopoly that was provided to him by the illegalisation of this activity, many decades before. According to Cachoeira, "The bicheir*o brand* is powerful and state institutions are keen to maintain this paradoxical relationship with the game monopolists: millions of reais in public resources to investigate a mere criminal contravention; million dollars in money from the beast to fund carnivals, politicians and businessmen. A vicious circle that, like a waterfall, hides the real problem: the unsustainable illegalization of the game of the beast. "

However, when we analyze its structure we observe that the type requires active plurissubjectivity, that is, that there is one subject banking and another betting or participating in any way. Thus, we have the figure of the seller or banker, bettor or buyer and the intermediaries who are equated to the former for purposes of applying the penalty. Summary 51 of the STJ ended the minority jurisprudential divergence that

considered it necessary to identify the banker or punter for punishment of the intermediary, since the type in question despite being plurissubjective does not require the identification or punishment of the banker or seller to punish the intermediary , because "criminal responsibility is individual, so that in the case of co-authorship or participation does not require the punishment of all[12]."

It is worth noting that if it is considered immoral to play in lotteries exploited by the government, it would not be illegal to play the game of the beast, that is, the gambler does not commit any crime when playing, since the act of playing is not immoral; it is the same with people who work directly or indirectly for the banker, because they are only a job opportunity and we can not consider work as immoral, against good manners.

It is hoped that if we depart from custom as legal objectivity of the norm under study, we will also remove the typicality of who is not the "banker", this yes, if we consider the legal objectivity reality, would be the true transgressor of the norm by the fact of performing the exploitation of the game not allowed by the legislature, since, what the norm aims to protect is clandestine exploitation and not the act of gambling in games of chance. The Union, according to the Constitution of 1988, in its Article 22, item XX, legislates privately on: system of consortia and sweepstakes.

4. GAME OF THE BICHO AND THE PRINCIPLE OF SOCIAL ADEQUACY

As already mentioned elsewhere, the Bug Game is now considered to be an illegal activity, because it is considered to be a criminal contravention. However, it is part of the day-to-day life of many Brazilians, whether it is the practice of such activity or the social value given to the game of the beast. In general, Brazilians do not see this activity as illicit, whereas there is no popular repression against the game of the animal, nor is there a specific action of the Public Power itself, in combat to carry out such activity. This is a different phenomenon from that of slot machines, where there is a strong fear of a large part of the population practicing it, as well as of the Public Power itself, which acts intensively to prohibit the practice of such activity. THAT'S, 2016).

It is not necessary to walk much in the streets to see the activity of the game of the beast being played in several locations of a certain city. Thus, this fact demonstrates how the game of the beast is directly linked to society, while demonstrating the acceptance by society as well as the Public Power itself. If there was really a repression of the Public Power itself with such activity, as with other illicit activities, there would be constant persecution, whereas we hardly saw the repeated practice of the game of the beast.

Faced with this acceptance of society in the existence of the game of the animal, it gives rise to the principle of social adequacy, which provides, in a direct way, that, for a conduct / activity to be considered illegal, it is not enough that this activity is criminalized as a criminal offense by law, but rather must take into account the factor of the social order, that is, whether or not society approves the practice of such conduct / activity. In order to better explain what has become the principle of social adequacy, it is opportune to raise the definition of this principle, according to Luis Regis Prado, quoted in the work of Rogério Greco (2008, page 57 et seq.), Accordi[...]ng to The theory of social adequacy, conceived by Hans Welzel, means that although a behavior subsumes the legal model, it will not be considered typical if it is socially adequate or recognized, that is, if it is in accordance with the social order of historically conditioned life .

Thus, although the principle of social adequacy is not a principle expressed in our federal Constitution, it is argued that this principle supports the thesis that conduct that is accepted by society, but does not offend the Federal Constitution, becomes excluded from the criminal sphere. Therefore, since conduct is apparently typical, it will be in the realm of atypicality, once it is trimmed by society.

As a way of better illustrating the applicability of this principle, it is appropriate to use the theme of the death penalty. This issue, in turn, is accepted by a large part of society in relation to some crimes. However, the death penalty is expressly prohibited by the Federal Constitution, in its article 5, paragraph XLVII. Thus, such an example renders the principle of social adequacy inapplicable, since there is a legal prohibition in our Magna charter. Regarding the criminal contravention known as Jogo do Bicho, the activity, in turn, is accepted by society and there is no fence expressed in the Federal Constitution / 1988. Thus, it is verified, in a clairvoyant way, that the principle of social adequacy is perfectly applicable in the game activity of the beast.

However, although the principle of social adequacy can be applied with great care in the activity of the game of the beast, as shown elsewhere, one can clearly perceive that large parts of the jurisprudence in the area of ??Criminal Law primacy apply to criminal law rather than applying the principle of social adequacy. In this way, it is opportune to collate some jurisprudential issues which confirm that the jurisprudence is peaceful in the sense that what should prevail is the application of the Criminal Law and not the principle of social adequacy:

DEFENSIVE APPEAL. CRIMINAL CONTROVERSY. BITCH PLAY (ART. 58 § 1, B DL

6259/44). PEN OF 4 MONTHS OF SIMPLE PRISON AND 10 D.M., IN OPEN REGIME. ABSOLUTE PRETENSION FOR THE ATTIPICITY OF CONDUCT. APPLICATION OF THE PRINCIPLE OF SOCIAL ADEQUACY. IMPOSSIBILITY. IMPROVEMENT OF THE APPEAL. Materiality and authorship remained proven. Accused confessed to the practice of crime. There is, as yet, no formal and express revocation by the federal legislator of art. 58 of DL 6259/44, the activity of the game of the animal must be considered as a criminal contravention, attributable to all who are involved with it, whether as owners of stalls, intermediaries or bettors. The principle of social adequacy, as well as that of Insignificance and Minimal Intervention, should be applied with moderation, and it is not enough that conduct be tolerated socially, and it is necessary that the offense against the protected legal good be minimal. Our High Courts are repeatedly rejecting the atypical thesis of the behavior of those who engage in the game of the beast, understanding as inapplicable to the species the Principle of Social Adequacy. Precedents: RESP 25115-RO (RT 705/387), RESP 54716-PR, RESP 127711-RJ, RESP 215153, RESP 208037. RECEIVED KNOWLEDGE AND DISCOVERY. (TJ-RJ - APL: 00239936820088190202 RJ 0023993-68.2008.8.19.0202, Rapporteur: DES. PAULO SERGIO RANGEL DO NASCIMENTO, Judgment Date: 05/22/2012, THIRD CRIMINAL CAMERA, Publication Date: 10/15/2012 4:53 PM). (Our griffins).

It is understood by the analysis of the jurisprudential edges is that as long as the legislature does not revoke the device that provokes that the Bug Game is considered a Criminal Contravention, the judges and Courts will continue to disregard the principle of social adequacy. From another north, applying the principle of social adequacy, it is that the Game of Bicho will be within the scope of atypicity and, once in the scope in the atypicity, such criminal contravention will not imply in penal sanction. Nevertheless, it is a fact that the Game of Critter must undergo a p*rocess of Abolitio* Criminis, that is, it must be removed

from the legal system by a subsequent law, so that it decriminalizes such activity previously considered illegal.

5. DIFFERENCES OF DOCTRINE

Gambling is legalized in most parts of the world. Brazil is among the exceptions. Besides Cuba, it is the only non-Islamic country among the 156 listed in the World Tourism Organization that has not yet put all the chips in a deal that, at least at first glance, is a gold mine. In the United States, the largest betting market in the world, the value of gambling in 2014 reached $ 142.6 billion, according to The Economist. "It's a playful and painless way of collecting tax, it pays who seeks entertainment. Unlike anyone who bets on the lottery, no one plays thinking about changing the standard of living. It's fun. It is much more logical than wanting the return of the CPMF, "says Bruno Piovesan, financial director of the RS Jockey Club.

In Brazil, the practice of games of the same animal being illegal, happens freely in several cities. Even though it is considered as a criminal contravention, it is remarkable to realize that, in addition to illegal aspects, this practice affects not only the juridical part but also society as a whole in the social and economic spheres. This criminal infraction raises many questions when it deals with the principles inherent to the essential mission of Criminal Law. After all, by virtue of the principle of minimal intervention, fragmentation, social appropriateness, and insignificance, is the exploitation of Gambling still criminal contravention? Or, rather, that the practice of being common in the Federative Republic of Brazil would not cause custom to revoke Article 58 of Law 3.688 / 41?

In the quest for objections, it is indispensable to remember the guidelines drawn by each of the aforementioned principles, in order to evaluate the dominant position on the subject. The doctrine is divided as to the legalization of the game in our country, those who are in favor commonly use the arguments that the State itself exploits this activity and society does not recriminate it, on the other hand, those who are against point the huge losses social behavior that conduct can cause in the patrimony, the purse, the morality, the incentive to easy gain, in the institutions and etc, is also a matter of ideology, just as the church has always preached and condemned any form of gambling.

The first doctrinal current to position itself on the subject, based on the relevance of customs as a legitimate source of law in the international scope, admits the revocation of legal provision by custom, due to the social interest involved. The lawyer and master in the criminal sciences André Barros fights vehemently the idea of ??criminalization. For him, the game today is practically institutionalized: the scorers are on every corner, and the bicheiros fight for the stands. "Illegality only works for corrupt people to get along," he says. The lawyer, a master in criminal sciences and scholar of the subject, André Barros states that "The legalization of the game of the beast will be very good for Brazil. Its prohibition is an affront, a disgrace to Brazilian culture. It's like criminalizing samba. This illegality is a great hypocrisy and only matters to the system. "

Another who defends the release of the game of the beast - and other games of chance - is Senator Mozarildo Cavalcanti (PTB-RR). He argues that by regulating the practice, it is possible to avoid the association of gambling with organized crime, to foment tourism and to increase tax collection. In June, at the height of the Parliamentary Inquiry Commission (CPI) investigating the ramifications of the illegal gaming scheme of Carlinhos Cachoeira, the senator called for a referendum to be held for citizens to

decide on the subject.

For Mozarildo, "It is a contradiction to criticize the regularization of the game when the Brazilian government maintains control over the federal lotteries. The senator points out that in South and Central America, only Brazil and Cuba do not have legalized practice. To end this, last year he presented a bill to free the exploitation of bingos. The casinos would also be free in hotels in the Amazon and Pantanal, and would still be exempted the visa of foreign tourists to visit the two regions. According to the senator, the objective is to promote development and minimize social inequalities in these areas. The proposals are still under discussion. "

In this way, it is considered advantages, according to the abovementioned doctrinators, the question of the collection of taxes, being that with the illegal game, the government does not collect taxes, being that, currently, more than half of the money collected in the official lotteries is transferred to the government; there would be job creation because thousands of people working with the games would be entitled to all the labor benefits; there would be a decrease in violence, since the game of the animal today promotes violent territorial disputes with numerous murders. Legalization would end these confrontations; would be less corruption because legalization would end with the excuse given by some police, judges or prosecutors to pursue game owners. Or, worse, to demand money not to pursue, as denunciations show throughout history; there would be a guaranteed punishment: currently those who exploit gambling are framed for criminal contravention. In practice, it does not go to jail, nor does it bother much with the punishment of the law. The proposal of the proponents of the legalization of the bingos is that the clandestine ones are subject to the penalty of one to five years of prison, plus fine.

On the other hand, an article published by the Review of the Courts of the Adviser of the Public Prosecution Service of the State of Sergipe, a specialist in criminal law and criminal procedure and lawyer Maria Luiza Foz Mendonça shows another aspect of the reflexes that the game brings to the health of the individual, concern which until then we had not found in other doctrinator[13]s. The lawyer shows the pathological risks that the game causes in its victims passing through three phases: phase of the victory, phase of the loss and finally, the phase of despair. In the first phase the player experiences an indescribable excitement at the moment of winning, causing him to play more and more and having the false thought that luck is due to his abilities. In the second phase, the loss (which is inevitable, given the luck factor of most games), leads to an excess of optimism that will recover its loss (at this stage is already considered a pathological state). In the third stage of despair, the situation is complicated to the point of moving away from the family, delaying their accounts, dedication of the longest possible time with the game, excessive spending, etc., then the reflexes are predictable, because when you realize of the reality in which it finds itself begins to use illegal means (robberies, thefts, etc.) to pay its debt that does not stop growing. He also explains that it is in this last phase that physical and psychological exhaustion is common, sometimes even attempting suicide, it is even compared to alcoholic and drug addiction.

From the foregoing, it is well-known the eagerness of the doctrine to contribute to a better elaboration of laws that seek first of all to protect the interests of the society in the various followings in which it can influence, be it protecting the patrimony, institutions, morality, health , work and so on, not restricting to the interests of a single class of profiteers of human weaknesses to the detriment of the unbridled wave of capitalism in which we live. He points out Jordano Bruno, delegate of the Nucleus of Repression to the organizations Criminosa and Corruption (Nuroc) that the "Legalization will further stimulate money laundering, addiction and a lot of other irregularities. The game is just a thread that connects the entire

giant structure that is in its orbit. "

With regard to the disadvantages according to the abovementioned doctrinators, money laundering can be considered, since gambling establishments would be used to launder money applied by organized crime controllers, such as drug traffickers; difficulty to monitor: if today it is already difficult for police and prosecutors to monitor money laundering in games, it will be worse when the game is legalized;
the family breakdown because compulsive gamblers often lose fortunes. Legalization could further stimulate addiction and cause a social problem. A nickel-hunt collects, on average, $ 1,000 a day. Every bingo has hundreds of these machines. With a simpler model machine - which costs $ 2,000 - the owner can recover the investment in 48 hours.

Therefore, among the coercive state actions, the Criminal jurisdiction, according to the principle of minimum intervention, is visualized to the one that treats the most serious injuries to the most important juridical goods. It is important to emphasize that criminal law should only be considered when another branch of law is not sufficient to guarantee protection of the legal right, given its fragmentary character. In the same sense, social adequacy theory, in Luiz Regis Prado's lesson, "means that although a behavior subsumes the legal model it will not be considered typical if it is socially adequate or recognized, that is, if it is in accordance with the social order of historically conditioned life. "

In another twist, the principle of insignificance ("bagatelle crime") imposes on lawmakers the exact dictates of the principle of minimum intervention. By virtue of this principle, in cases in which - in spite of the formal adequacy between the fact provided in the law as a crime and the conduct of the agent - the injury to the protected legal right is minimal, there will be a material atypical behavior and, by syllogism, will not be before a crime. The Federal Supreme Court understands that the concrete application of the principle of insignificance is conditional on the cumulative fulfillment of four requirements, let us see: absence of social dangerousness of action; reduced degree of reproducibility of behavior; minimal offensiveness of the agent's conduct; inexpressiveness of the lesion to the protected legal good.

The tendency, from the principles explained, is by the interpretation that the lottery operation called game of the animal does not have any legal relevance for the Criminal Law and, therefore, must be considered as atypical fact. Nevertheless, it is necessary to know, also, three currents that they speak about the possibility or not, of revocation of legal device by the custom, in the terms of the article 4 of the Decree Law 4.657 / 42 (Law of Introduction to the norms of the Brazilian Law - old Law of Introduction to the Civil Code).

The first doctrinal current to position itself on the subject, based on the relevance of customs as a legitimate source of Law in the international scope, admits the revocation of legal provision by custom, due to the social interest involved with the support of André Barros (master in criminal sciences and lawyer) and Senator Mozarildo Cavalcante, professor of medicine Fernando Capez.

On the other hand, the second chain does not admit the exclusion of the norm from the legal system because of custom, but it understands that the judge should not apply the rule, because the conduct would be materially atypical with protection by Rogério Greco.

The third and last chain considers the indispensability of respect for the principle of legality, so that the only way to repeal the Law is through the promulgation of a new law, not to mention the abolitionist

custom advocated by a specialist in criminal law and criminal procedure and lawyer Maria Luiza Foz Mendonça, Jordano Bruno, delegate of the Nucleus of Repression to the organizations Criminal and Corruption (Nuroc), the indoctrinator Guilherme Nucci, among others.

Based on the prevalence of the third doctrinal current studied, the conclusion deserved is that the holding or holding of a lottery called the game of the animal remains a criminal offense (Criminal Offenses Act) and may subject the offender to simple imprisonment for the period of four months to a year.

Finally, it should be clarified that rarely is the accused accused of exploiting gambling of the beast only denounced by the Criminal Contravention of Article 58 of Law 3,688 / 41, with a common or formal contest for the commission of crimes of active corruption, of money and criminal organization (Law 12.850 / 13), which significantly increases the penalty limits in eventual conviction. By prohibiting or legalizing gambling, we must, first of all, get rid of the sophism that society is self-regulating its own principles and that the State is a reflection of its people, otherwise there would be no need to institute the social contract it gave to the State.

6. JURISPRUDENCE

Insists that many judged from 1995 onwards should not co-exist with regard to this game, since the profile of the offender of the game of the beast is usually a humble, labor-intensive person with very little education, with a good background and not recidivist, did not engage in any type of crime, associated with the little repression of the police and, together with the edition of Law 9.099 / 95, which provides for the criminal transaction and conditional suspension of the process, the jurisprudence is not the most contemporary because of the few chances that it is necessary to bring to justice this type of infraction, supporting the confirmation of the validity of the norm in detriment of the custom:

"CRIMINAL CONTROVERSY -" Game of the beast "- Tolerance of the Public Power and the prevailing custom - Irrelevance - Absolution inadmissible - Appeal provided - Application of art. 58, § 1, "b", of Decree-Law 6.259 / 44 - Intelligence of art. 2 of the LICC (TACrimSP - Ement.) RT 613/346. "

"Belonging to a group of risk, such as those who are addicted to drugs, or who are not part of the group. drugs, homosexuals, bisexuals, prostitutes.

"CRIMINAL CONTROVERSY -" Game of the beast "- Absolution of the agent by reason of custom - Inadmissibility (STJ) RT 715/539."

CRIME RESOURCE. CRIMINAL CONTROVERSY. BITCH PLAY, ART. 58, DECREE-LAW 6,259 / 44. TYPICITY AND PROBATIONARY SUFFICIENCY. CONDEMNANT JUDGMENT, WITH REDIMENSIONATION OF THE FEES APPLIED.

"1 - In compliance with the warrant for search and seizure, objects common to the practice of the crime were seized, as well as surprised the pointers and intermediaries of the game, who were denounced.

"2 The fact that the banker of the game is not at that moment does not prevent her condemnation, since it is notorious that she is the co-owner of the bank.

"3 - Having proven the occurrence of the criminal fact, condemnation is a necessary consequence.

PRELIMINARIES AWAY. APPEAL PARTIALLY PROVIDED TO REDEMPOSE THE PENALTY. (Appeal Crime Nº 71001694413, Criminal Appeals Court, Appeal Classes, Rapporteur: Cristina Pereira Gonzales, Judge on 08/08/2008)]

Although old, we find two decisions in which denies enforcement Article 58 of the Criminal Offenses Act, is as follows:

"CRIMINAL CONTROVERSY -" Game of the beast "- Repression that does not conform to reality - Contraventive mode incorporated into popular consciousness - Existence of various types of games allowed by the Public Power, generating the belief of the lawfulness of that - Absolution maintained - - intelligence of art. 58 of the Criminal Offenses Act. TaCrimSP (RT 606/338). "

"CRIMINAL CONTROVERSY -" Bug game "- Reprovability not inserted in popular consciousness - Repressive effect that does not meet social need - Decree absolution - Intelligence of arts. 58 of the Criminal Offenses Act and 386, VI, CPP. TaCrimSP (RT606 / 334).

The courts do not deny the rule by reason of the exploitation of lotteries by the State:

"CRIMINAL CONTROVERSY -" Game of the beast "- Promotion by the State of several lotteries - Allegation that can not be accepted, since those are protected by law, whereas such a game is punished by law in full force - Condemnation maintained (TACrimSP) RT 718/417. "

Although the majority jurisprudence has remained faithful in complying with judging according to the normative precepts enforcing what determines the law, since it has not been revoked. what is understood, however, is that some decisions point another way, deserving the attention of the legislator to a fact that he has always ignored, that is, the reality in which we live, being that it is necessary to legislate or repeal laws that become contemptible the contemporary society.

7. PROJECTS OF LAW

To try to combat this, the commission of jurists that studies the reform of the Brazilian Penal Code proposed the criminalization of the game of crime, with one to two years in prison. For the group, illegal activity should be taken more seriously by authorities because it is linked to crimes such as drug trafficking and homicide. The idea is to extinguish the Law of Criminal Offenses and to transform into crime not only the animal, but the other contraventions provided in it. In the case of games of chance, all those that are not authorized will be typed - lotteries, for example, are off the list.

In Espírito Santo, this rigor in the law is defended by Jordano Bruno Leite, delegate of the Nuroc who commanded the operation of the last week. According to him, the difficulty of supervision and the stimulus to addiction are the main arguments. "The law provides a loophole for a large enforcement network, which uses the money raised to fund campaigns and buy authorities," he says. The delegate believes that a possible legalization of the practice will stimulate money laundering. "They will say that everything that circulates has its origin in the bettors. And it will be much more difficult to monitor, "he believes.

Not a few of the bills presented in the National Congress in recent years, in all, are more than 60 bills from the year 1951 to 2004, seeking, in most propositions, the legalization of the game of the beast[14]. Let's look at some draft bills advocating legalization:

"PL-383/1999. Ementa: Establishes the Municipal Lottery of prognoses on the result of draw of numbers, organized according to the lottery called game of the animal and revokes legal provisions regarding its practice and determines other measures.

"PL-1212/1991. Ementa: Provides for the concession for the exploration of the lottery called Juego do Bicho and gives other measures. "

"PL-1176/1991. Comment: Decree-Law No. 3,688, of October 3, 1941 - Criminal Offenses Act. Explanation:

(DOWNLOADING THE GAME OF THE BITCH AS CRIMINAL CONTRAVENTION). "

"PL-5/1951. Summary: EXCLUDES THE ESTABLISHMENTS LICENSED FOR THE EXPLOITATION OF GAMES AND THE NAME OF THE GAME OF THE BICHO, OF THE PROVISIONS IN ARTICLES 50 AND 58 OF THE LAW OF CRIMINAL CONTROVERSIES. "

As it could not be left out of this work, we highlight some Draft Letters, in which it is sought a greater repression to the game of the animal:

"PL-1986/2003. Menu: Prohibits the practice and exploitation of bingo games, slot machines, game of critter and other games of chance. "

"PL-4902/1995. SUMMARY: FROM THE NEW WRITING TO ARTICLE 288 AND ADDING PARAGRAPH TO ARTICLE 159 OF DECREE 2848 OF DECEMBER 7, 1940, PENAL CODE, TO PROVIDE IN THE INFRACTIONS THAT DISCRIMINATES, THE ATTENTION OF THE PENALTY FOR THOSE WHO AS A MEMBER OF GUN OR GUN , COLLABORATE IN THE CRIMINAL LIABILITY OF THEIR OTHER MEMBERS, AND RAISES THE CONDITION OF CRIME THE ORGANIZATION OF THE 'GAME OF THE BICHO'. "

"PL-950/1968. Ementa: AMENDED ARTICLE 174 OF DECREE-LAW 2848 OF DECEMBER 7, 1940 (PENAL CODE).

Explanation: PLAY OF THE BICHO - PENALTY CLAIM FROM 01 TO 03 YEARS AND FINE OF ONE TO FIVE THOUSAND CRUISES) ".

Currently, most of the projects are in a state of inactivity, that is, no possibility of voting by archiving the projects in the face of rules of the Internal Rules of the House that bureaucratize the progress, appreciation, discussion, voting and so on. It is evident that our legifi- cant power did not have the will and political power to end a question that has been dragging since the middle of the last century, an opportunity was not lacking as we have just seen. Although regulated, it has long demanded a legal solution to resolve the issue, for despite existing laws the game continues to grow underground, causing, perhaps, more harm than if it were released.

In addition, the State is the largest official gambling banker, that is, those in which the result depends exclusively on luck. Leaving aside the immorality that the government says to curb), let us cite only a few games available in the market that have the same nature as the game of the beast, that is, the luck factor: Lotto, Loto-Mania, Sena, Mega- Sports Lottery, Quina and etc. Were it not for the label that the State attributes to the gambling or banking without the protection of the law, this whole discussion would not be necessary, since what is being discussed is the insensitivity of the State in continuing to steal itself in regulating once and for all the game question in the country elevating it to the condition of crime (if it is so evil the society) or discharacterizing it of the category of contravention, regulating this fact that is inherent to the human being, as we can observe throughout the history. What we can not agree with is the hypocrisy of the state in letting the archaic and static letter of the law point when it is maleficent and when it is not, simply aimed at those who benefit from gambling (Loterias Caixa, 2016)[15]

Most of the Projects are in favor of regulation, characterizing the games in general of the condition of prohibition and reverting to the society all the benefits that are expected that they bring with the legalization. First, the direct advantages are visible, since the State reverts the greater part collected in social projects like, National Fund of the Culture (3.0%), Ministry of Sport (4,5%), Brazilian Olympic Committee (1,7 %), The Brazilian Paralympic Committee (0.3%), Social Security (18.1%), Fund of 51 Student Financing for Higher Education (7.76%), National Penitentiary Fund (3.14%) and Income (13.8%) [16]

It should be remembered that this market employs thousands of honest and hardworking people who need an opportunity in this country where the unemployment rate is huge, and these workers are relegated to the destination and without any protection by the labor laws and benefits that result from a It is also worth noting that this informal market does not give these people citizenship, dignity of the human person and the social values ??of work and free enterprise, which are inscribed in our Federal Constitution of 1988, article 1, subsections II , III and IV, respectively.

FINAL CONSIDERATIONS

The criminal contravention in Brazil, not only of the game of the beast, is considered a kind of criminal infraction by the Law and has undergone many changes over time and has transformed itself into this enormous organization in which honesty, lack of effective punishment, not repression of the police, the tacit support of society and even the legifi- cant power, they see contributing to the fact that this infraction lasts longer. The reality is that the State is banking other games of chance, without being the game of the beast, which generates the collective conscience of a devaluation of the conduct and not of its illicitness, because this knows that it is prohibited and nonetheless does not stop playing. The custom does not have the condemnation to eliminate the illegality of this conduct, since the doctrine is majority in denying this type of revocation of the norms, mainly the penal ones.

However, the criminal contravention of the game of the animal does not correspond to the current reality, lacking that the legislator seeks other forms of an end point in the matter, because on the one hand it represses and on the other uses our legalistic system to explore alone what he himself condemns. Since this creates an insecurity in the basic principles that guide all structures of the criminal legal system in relation to the devaluation, social adequacy and last reason of the Criminal Law in relation to the game of the animal, altering the efforts to give systematic and coherence to the dogmatic study of the Law.

The doctrine and jurisprudence is divided as to its position on the legalization or not of the game of the animal, but when scientific criteria are used to give or deny validity to the norm, the majority is the conclusion that the norm is in force and must be applied , mainly because we adopt legality as the basis of our limitations of duties and obligations towards the State, otherwise chaos would be created.

Thus, we can conclude that the game of the beast is a criminal contravention before the express denomination, even if formal, gave him the Law of Introduction to the Penal Code, but if for the practice of the game of the beast its organizers practice other crimes, it is up to the police and the judiciary to prove these other crimes so that they can be held accountable, not for the fact of committing a simple contravention, but for the fact of practicing other crimes for the purpose of achieving a certain objective, whether licit or illicit, since evolution was the means to achieve these objectives and not the standard that incriminates this conduct.

The bills that foresee its elevation to the status of crime and its regulation are tendentious to assume the role that the State itself has already assumed, that is, the liberation. It is true that a possible liberation or a greater repression can harm other sectors such as the economy, the work and a number of others, it takes a long and serious study on the subject in order not to make rash decisions and to achieve its true objectives, which are social peace and the valuation of the human being with a member of a State, who owes him at least a little respect for his desires and accompany them in the normal evolution and change of customs of society. The certainty that society can coexist peacefully with a little impunity, but with injustice, never, as argues the illustrious Professor Adriano Conceição Abilio

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