

CrossRef DOI of original article:

1 Multitudinary Crimes in the Scope of the Collective Criminal
2 Process

3

4 Received: 1 January 1970 Accepted: 1 January 1970 Published: 1 January 1970

5

6 **Abstract**

7

8 *Index terms—*

9 **1 I. INTRODUCTION**

10 First of all, it is important to point out that multitudinous crimes are those committed by several people, without
11 a subjective link, in a collective turmoil and the biggest problem, in these kinds of crimes, lies in the difficulty in
12 identifying the participation of each agent during the commission of the crime.

13 So, this article intends to focus on the discussion about multitudinary crimes and the need (or not) to
14 individualize the facts committed by agents, since in such crimes there is no subjective link between the
15 participants. The unit of the process occurs, therefore, by the occasional intersubjective connection or by
16 simultaneity, understood as that in which two or more crimes have been committed, at the same time, by
17 several people together (art. 76, I, 1st part, CPP).

18 Considering the difficulty in knowing how each person acted in the commission of the crime, in order to
19 individualize their conduct, it is important to analyze the possibility of mitigating this individualization in the
20 initial accusation, from a procedural point of view. Therefore, it is necessary to verify if the concept of collective
21 London Journal of Research in Humanities and Social Sciences criminal procedure can be applied in the scope
22 of multitudinary crimes, in order to relativize the content of the initial accusation, described in article 41 of the
23 Criminal Procedure Code.

24 For this, the hypothetical-deductive method was used in relation to the doctrinal source, and, in the sequence,
25 were indicated the hypotheses that were tested through the bibliographical research technique.

26 **2 II. THE PROBLEM OF MULTITUDINARY CRIMES IN
27 THE PROCEDURAL SCOPE**

28 In the study of multitudinary crimes, there is a certain misinterpretation of its concept. This is because, as
29 already mentioned, they are those practiced by several people, without a subjective link, in collective turmoil.

30 In this context, the great difficulty is to identifying the participation of each agent during the commission
31 of the crime in order to establish the criminal responsibility of each one, in compliance with the constitutional
32 principles of culpability and personality of the penalty.

33 Here lies precisely one of the main discussions on this matter -the possibility of a concurrence of agents in crimes
34 committed by people in a crowd: on the one hand, there are those who believe the existence of a concurrence
35 of people *sui generis*, because, the collective commission of the crime, in these circumstances, despite occurring
36 in a normally traumatic situation, does not rule out the existence of psychological links between the members
37 of the crowd, that characterize the concurrence of people. In crimes committed by a delinquent crowd, it is
38 unnecessary to describe in detail the participation of each of the actors, otherwise it will make the application
39 of the law infeasible. The greater or lesser participation of each one will be object of the criminal instruction
40 (BITENCOURT, 2021, p. 276 -our translation).

41 On the other hand, there are those who claim that "the psychological link between the agents cannot be
42 presumed and must be demonstrated in the concrete case, so that all can be held for the result arising from the
43 sum of the conducts" (GRECO, 2019, p. 125; our translation).

44 It is worth noting that those who commit the crime under the influence of a crowd in turmoil will have their
45 penalties mitigated, as determined by article 65, III, e, of the Penal Code. This because,

46 The mitigating factor thus recognizes the lesser culpability of the individual who is influenced by the crowd
47 in turmoil, if he has not provoked it. It is not necessary that the subject has participated in the turmoil, but
48 that it has influenced his criminal resolution. The turmoil of the crowd must exert a decisive influence on the
49 configuration of the criminal will, therefore, the lesser exigibility of different conduct that will be directed to the
50 subject (GALVÃO, 2017. p. 883; our translation).

51 In this sense, there are decisions that do not recognize the mitigating factor provided for in article 65, III, e,
52 of the Penal Code, when the crimes of homicide were not committed under the influence of a crowd in turmoil,
53 but rather, for a pre-existing reason, consisting of the victims' refusal to pay to prison leaders and to continue to
54 their hunger strike: There are also judicial decisions in the sense of the inapplicability of this mitigating factor
55 when the appellant was the cause of the disturbance:[...]

56 [...] 3. The influence of a crowd, in the midst of turmoil (art. 65, item III, item 'e', of the Penal Code. (...),
57 the accused cannot take London Journal of Research in Humanities and Social Sciences advantage of the turmoil
58 which he caused, not proceeding, on the point, even to speak of a crowd, a mass dominated by the collective spirit
59 of aggression, since the appellant was responsible for the beginning of the melee, opting, after the physical fight
60 with the victim has ceased, to attempt three times against her life, using his vehicle for that purpose (TJDFT,
61 APR 20110710026799, 1^a T., Rel. Mário Machado, DJe 18/08/2011, p. 294; our translation).

62 In addition, those who promote, organize or lead the criminal practice or direct the activity of others will have
63 the aggravated penalty, according to the intelligence of article 62, I, of the Penal Code.

64 It is also important to emphasize that "in cases where the turmoil provoked by the crowd is a condition for
65 the very configuration of a crime, such as a feud, obviously the mitigating factor will not be considered, as it is
66 an element of the crime" (BOSCHI, 2014, p. 238-239; our translation).

67 So, another point that we have to analyze is the need (or not) to individualize the acts committed by the
68 agents, since in such crimes there is no subjective link between the participants. The unity of the process and
69 the judgment is therefore given by the occasional intersubjective connection.

70 The possibility of mitigating the individualization of conducts, in the initial accusation, becomes relevant from
71 the procedural point of view, because of the difficulty in knowing how each agent acted during the commission
72 of the crime, since the observance of individualization can lead to impunity. Therefore, it is necessary to verify
73 if the concept of collective criminal procedure can be applied in the scope of multitudinary crimes, in order to
74 relativize the content of the initial accusation, described in article 41, of the Code of Criminal Procedure, to the
75 point of describing the facts in a generic way, that is, refraining from individualizing the conduct of each agent.

76 3 In Search of Collective Criminal Procedure

77 The collective process does not exist separately from the codified system, because its institutes are informed
78 by traditional precepts and by concepts already elaborated, which must be reviewed from the perspective of
79 collective legal relations. In the collective process, it is necessary to re-read the classic dogmatics, considering
80 the peculiarities of collective interests (LEONEL, 2002, p. 89).

81 The collective process gained ground in Brazil, with the advent of the Consumer Protection Code. For Ada
82 Pelegrini Grinover (2018, p. 480), Finally, with the 1990 Consumer Protection Code, Brazil was able to count on
83 a true microsystem of collective processes, composed of the Code that also created the category of homogeneous
84 individual interests or rights -and Law n. 7.347/85, interacting through the reciprocal application of the provisions
85 of the two laws.

86 In Brazil, there are several microsystems that deal with collective interests and, therefore, collective protection,
87 such as the Public Civil Action Law, the Consumer Protection Code, the Child and Adolescent Statute, the Law
88 for the Defense of Investors in the Securities Market, the Law for the Defense of Persons with Disabilities, the
89 Antitrust Law, the Law of Administrative Impropriety and the Organic Legislation of the Public Prosecutor's
90 Office.

91 The legitimacy of the Public Prosecutor's Office to act in collective proceedings is not discussed, because it
92 must always operate in the defense of collective interests and, in this kind of process, the legal possibility of the
93 request will be viable, as long as there is no express legal prohibition. In this sense, for Ricardo de Barros Leonel
94 (2002, p.

95 4 435),

96 In examining issues of collective process, the starting point should always be the premise that the legal operator
97 must 'think collectively', examining procedural problems based on the idea that he is not dealing with an
98 individual controversy. Although the London Journal of Research in Humanities and Social Sciences observation
99 seems obvious, most of the mistakes that are made, in this matter, result from reasoning based on valid premises
100 for individual demands, but insubstantial to solve doubts related to collective protection. It will be unfeasible to
101 grant adequate dimension and operability to the collective process without changing mentality (our translation).

102 The collective process must fulfill an ethical and moral role, because of the possibility of several people being

103 part of the passive pole of the procedural relationship, although there is no subjective link between them, in
104 order to comply with the principle of procedural economy.

105 Its essence is always based when there are meta-individual or collective interests, as occurs, for example, in the
106 areas of security, tax, consumer, traffic and environment, that is, interests that are linked to community relations
107 and not to the individual in isolation.

108 In this area, the study about the possibility of applying the provisions of the collective procedure in the scope of
109 criminal procedural, especially in the so-called multitudinary crimes, becomes prominent, in view of the difficulty
110 founded, in the preliminary phase of the criminal procedure, in the identification and individualization of the
111 cooperation of each agent in relation to the various crimes committed.

112 It must not be forgotten that, for the occurrence of a multitudinary crime, there must be a collective action
113 and imputation. In this kind of crime, all the agents' conducts are in the same direction, however, without
114 a subjective link between them for this purpose. In other words, this kind of crime has its origin through a
115 turmoil in which there is the participation of several agents who, in an accidental unity of purpose, can offend a
116 plurality of legal interests. Its most relevant feature lies, as stated above, in the lack of prior agreement between
117 the contenders, a fact that makes it difficult the personal identification of each participant or co-author in the
118 commission of the crime.

119 In the criminal scope, when analyzing the "Carandiru Massacre", which took place on October 2, 1992, as a
120 result of a confrontation between prisoners at the São Paulo House of Detention (called Carandiru) and military
121 police officers, to contain a rebellion that took place there and which resulted in the death of more than 111
122 prisoners and many others wounded, due to the excessive violence used in this action, it is a true example of a
123 multitudinary crime.

124 A police investigation was started and the fact was notified to the Military Justice, and then it was sent to
125 the common justice system, "as well as an international complaint to the Inter-American Commission on Human
126 Rights, in order to hold the State responsible for the crimes committed by public agents who acted in contempt
127 of the Democratic State of Law" (OLIVEIRA, 2022; our translation), however, it was not possible to identify and
128 individualize the conduct that each defendant practiced, that is, it was not possible to describe and, therefore,
129 delimit the contribution of each criminal agent, in the initial accusation, in relation to all those deaths.

130 The same occurs in the criminal practice against economic order, more specifically, the "cartel formation",
131 provided for in article 4, II, of Law 8.137/90, in which the identification of the conduct of each agent is difficult
132 to be accomplished, a fact that currently, under the existing criminal procedural basis, can lead of impunity.

133 Indeed, in crimes of this nature, it is not possible to clearly describe, in the initial accusation, the action
134 committed by each of the agents. Therefore, generic complaints, which face the requirements of article 41 of
135 the Code of Criminal Procedure and, consequently, the individualization of criminal behavior, that involves
136 the typical description of multitudinary crimes, needs to be debated in order to verify the need to reject the
137 denunciation, for being inept, in the form of article 395, I, of the Code of Criminal Procedure or receive it,
138 considering the impossibility of describing the individual conduct, but rather the collective conduct and the
139 result. Moreover, perhaps the best moment to identify the individual conduct of the defendant is at the London
140 Journal of Research in Humanities and Social Sciences criminal instruction stage. However, if it is not possible
141 to identify it during the criminal proceedings, as it is a crime of a multitudinary nature, it becomes necessary
142 for the judge to reevaluate its contents in order to proceed the individualization, due to its relevance when he
143 recognizes the validity of the punitive intention and starts to the dosimetry of the penalty.

144 In this sense, the jurisprudence of the Federal Supreme Court has been oriented towards admitting the generic
145 narration of the facts, without discrimination of the specific conduct of each defendant (CPP, art. 41), when it
146 is a multitudinary crime, behold, only the instruction can clarify who, participated or remained unrelated to the
147 illicit action or the result obtained with it. In this case law, the denunciation indicates the fact attributed to the
148 patient and allows the exercise of the right of defense:

149 5 HABEAS-CORPUS. CRIMES, IN MATERIAL CONCURRENCE, 150 OF EXCHANGE RATE FRAUD AND FRAUD, IN 151 CRIMINAL CONTINUITY, AND GANG FORMATION. 152 ALLEGATION OF INEPTITUDE OF THE DENUNCIA- 153 TION AND LACK OF JUST CAUSE FOR THE CRIMINAL 154 ACTION:

155 MULTITUDINARY CRIME OR JOINT OR COLLECTIVE AUTHORSHIP. 1. It is not ineligible to denounce
156 any omissions regarding the requirements of art. 41 of the CPP -which can be replaced at any time, before the
157 final sentence (art. 569 of the CPP) -, as long as it allows the exercise of the right of defense. The defendant
158 must defend himself against the facts alleged against him and not against the kind of criminal offense invoked in
159 the denunciation. 2. In crimes of collective authorship, the complaint may generically narrate the participation
160 of each agent, whose specific conduct is determined in the course of the criminal action. Precedent. 3. The Penal
161 Code, when dealing with the concurrence of people, provides for the figures of author, co-author and participant,

6 III. FINAL CONSIDERATIONS

162 who, in any way, may be a legitimate passive pole in the action (art. 29), even if he has not practiced the conduct
163 foreseen in the core of the criminal type. 4. The special and summary rite of habeas corpus is not compatible
164 with the reexamination of facts and evidence. In summary, it is important the subsidiary application of the rules
165 of collective procedure to collective criminal procedure, due to the London Journal of Research in Humanities and
166 Social Sciences 13 inexistence of a law that deals with this matter in the criminal sphere. Therefore, recognizing
167 the application of the norms that provide for popular action as a basis for collective criminal proceedings, is a
168 coherent and important measure to avoid impunity.

169 6 III. FINAL CONSIDERATIONS

170 As can be seen, this is an extremely important discussion, since the mobilizations of people in favor of a certain
171 purpose, whether legal or not, can generate consequences that are often harmful. It happens because people have
172 expectations and desires and, depending on how this is stimulated, especially when crowds are organized, it makes
173 them end up behaving in a certain way that they were alone they would not do, and in the crowd, responsibility
174 can be diluted among its members and many can take advantage of this "anonymity" to avoid punishment, since
175 the way in which the criminal process is structured today, generic denunciations are not allowed.

176 Thus, it is necessary for the law to adapt to these new demands, either by the subsidiary use of the norms of
177 collective process, or by the creation of rules that discipline the collective criminal process. ¹ ²

¹ © 2023 Great] Britain Journals Press | 11 | Volume 23 Issue ???"? Compilation 1.0
² © 2023 Great] Britain Journals Press |

5.

Known but dismissed habeas corpus (STF. HC 75868/RJ, 2^a. T, Rel. Min. Mauricio Correa, j. 10/02/1998, translation).

DJ06/06/2003; our

However, despite this individualized description of the conduct of each agent being dispensable, it is necessary for the Parquet to establish the subjective link between the accused and the criminal practice, as the Superior Court of Justice has already decided:

REQUEST FOR EXTENSION OF HABEAS CORPUS. CRIMINAL PROCEDURE. CRIME AGAINST EXTORTION, MISAPPROPRIATION AND GANG FORMATION. THESIS OF INEPIITY OF THE DENUNCIATION. ABSENCE OF MINIMUM INDIVIDUALIZATION OF THE CONDUCT

THE ECONOMIC ORDER,

DEFENDANTS. ILLEGAL CONSTRAINT

ASSIGNED TO THE

EVIDENCED. REQUEST GRANTED. 1.

Although it is indispensable, in crimes of collective authorship, the detailed and individualized description of the conduct of each accused person, it cannot be conceived that the public prosecutor fails to establish any link between the accused person and the crimes imputed to him. 2. The absolute absence of individualized elements that point to the relationship between the criminal facts and the authorship offends the constitutional principle of full defense, thus rendering the denunciation inept. 3.

Figure 1:

178 Professor of the Masters and Doctorate Courses in Law at the Catholic University of Mozambique. Adjunct
179 Professor TIDE of the Law course at the State University of Maringá (UEM). He served as coordinator of
180 specialization courses in Criminal Sciences and Criminal Expertise, offered by PUC/PR, where he was also a
181 professor, for 14 years, in the undergraduate course in Law. Research Group: Multitudinary crimes in the scope of
182 the collective criminal process -State University of Maringá. ?: Doctoral Student in Law at the Federal University
183 of Rio Grande do Sul. Master in Criminal Law from the State University of Maringá (UEM). Undergraduate and
184 Graduate Professor in the Law course at the State University of Maringá (UEM). Research Group: Multitudinary
185 crimes in the scope of collective criminal process -State University of Maringá.

186 [London Journal of Research in Humanities and Social Sciences] , *London Journal of Research in Humanities
187 and Social Sciences*

188 [Leonel and De Barros ()] , Ricardo Leonel , De Barros . *Manual de Processo Coletivo*. São Paulo: Revista dos
189 Tribunais 2002.

190 [Brasil (2011)] , Brasil . [https://www.tjdft.jus.br/consultas/jurisprudencia/
191 jurisprudencia-em-temas/a-doutrina-na-pratica/gravantes-e-attenuantes-genericas-1/
192 circunstancias-attenuantes/ter-o-agente-cometido-o-crime-sob-a-influencia-de-multidao-em-tumul](https://www.tjdft.jus.br/consultas/jurisprudencia/jurisprudencia-em-temas/a-doutrina-na-pratica/gravantes-e-attenuantes-genericas-1/circunstancias-attenuantes/ter-o-agente-cometido-o-crime-sob-a-influencia-de-multidao-em-tumul)
193 APR 20110710026799, 1^a T., Rel. Mário Machado, DJe 18/08/2011. p. . (Tribunal de Justiça do Distrito
194 Federal e Territórios)

195 [Bitencourt ()] Cezar Roberto Bitencourt. *Tratado de Direito Penal: parte geral*, Bitencourt . 2021. São Paulo:
196 Saraiva.

197 [Carvalho et al. ()] *Crimes multitudinários: homicídio perpetrado por agentes em multidão*, Márcio Carvalho ,
198 Augusto Friggi , De . 2016. Curitiba: Juruá.

199 [Grinover and Pelegrini ()] 'Código Brasileiro de Defesa do Consumidor'. Ada Grinover , Pelegrini . *Rio de
200 Janeiro: Forense*, 2018. 12.

201 [Boschi and Antonio Paganella ()] *Das penas e seus critérios de aplicação*, José Boschi , Antonio Paganella .
202 2014. Porto Alegre: Livraria do Advogado. 7.

203 [Greco ()] 'Direito Penal estruturado'. Rogério Greco . *GEN* 2019. São Paulo.

204 [Galvão ()] Fernando Galvão . *Direito Penal: parte geral*. 9. ed. Belo Horizonte: D'Plácido, 2017.

205 [Brasil] *PExtDe no HC 214.861/SC*, 5^a. T., Rel. Min. Laurita Vaz, Brasil . 30/04/2012. https://processo.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=201101802203&dt_publicacao=13/08/2 (Superior Tribunal de Justiça)

206 [Oliveira et al. (2022)] *Responsabilidade Internacional do Brasil: uma violação aos direitos humanos no caso
207 ocorrido no "Carandiru*, Francisco Oliveira , Fagner Damasceno , De . <https://fagnerdamasceno.jusbrasil.com.br/artigos/1185832421/responsabilidade-internacional-do-brasil> jan.
208 2022. p. 16.