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UNLAWFUL EVIDENCE IN THE LIGHT OF THE PRINCIPLE OF PROPORTIONALITY: AN ANALYSIS OF THE SEARCH FOR CRIMINAL PROCEDURAL EFFICIENCY

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Abstract: The theme of this work is the analysis of the flexibility of the constitutional principle of prohibition of illegal evidence (CR, article 5º, LVI) through the principle of pro *societate* proportionality, which has been handled under the allegation of seeking procedural efficiency and impediment of impunity. For the defenders of this aspect, in certain cases, illegal evidence could be admitted in view of the public interest of punishing and guaranteeing social security. Notably, the political collective has become the target of measures, within the scope of criminal procedure, aimed at efficiency in the course of the *persecutio* criminis. Still within this perspective, in a hearing on the "10 Measures against Corruption" (PL nº 4.850/2016), proposed by the Federal Public Ministry, the former Federal Judge Sérgio Moro defended the preservation of illegal evidence in proceedings, as long as it was obtained with "good faith". It was then analyzed the easing of the prohibition of illegal evidence in the Brazilian context and the viability within the legal system.
Keywords: Illicit evidence. Proportionality. Procedural efficiency. Social protection.

PROCESS AND PROOF

It is necessary to ask what a process is; what is its reason for being, more precisely. To do so, we initially turn to the teachings of Carnelutti (2015, p. 93), who adds that:

> "(...) the first attribution associated with him [the judge] is precisely that of history or, more specifically, that of historiography, the latter conceived in its strictest and perhaps not sufficient terms. The historian peers into the past to find out how things happened. The judgments pronounced by this professional are, therefore, judgments of reality or, more exactly, judgments of existence; in other words, historical judgments" [1].

It must be noted that past facts can only be known indirectly, as it is impossible to relive someone else's experience. In more accurate words, "*crime is always a past fact, therefore, it is history, memory, fantasy, imagination. It's always imaginary, it's never real*"[2] (Carnelutti, 2015, p. 155).

In this wake, it is not up to the Judiciary to pursue the real truth, since the reconstruction that is entrusted to it is not consistent with the exact reproduction of an occurrence that can no longer be experienced. This, however, does not translate into the absence of criminal reprimand; the procedural approximation does not preclude the conviction of a fact and, consequently, the criminal response.

By exposing their narratives, the parties aim to convince the judge of a hypothesis, observing due process of law. The persuasive function is paramount in procedural law, without which the judge would maintain his ignorant position in a given context.

THE MATERIAL TRUTH

The criminal procedural rite constitutes a guarantee value (Grinover et. al., 2010, p. 124), through which the full defense, the contradictory and the impartiality of the judge are carried out. Taking into account the accusatory system, in which the judge must maintain an equidistant position from the parties and instruct the procedural acts in a limited way, it is inadmissible for the judging authority to invest in instructive powers, in order to cooperate with the search for evidence which must support any conviction.

Since the criminal procedure aims at convincing the judge from an approximation, the evidence cannot be invested with an unlimited character, which, in itself, desire a so-called *single, irrefutable truth of a hypothesis*. As a result of this vision, it must be reiterated that "*the parties do not judge;*

1. CARNELUTTI, Francesco. **How to make a process**. São Paulo: Editora Pillares, 2015. p. 93.
2. *Ibid*. p. 155.

the judiciary does not investigate or produce evidence."[3] (Abade, 2017, p. 86).

Ferrajoli (1995, p. 44/45) elucidates that the material truth is that which lacks legal limits, obtained by different means, giving fulcrum, therefore, to an authoritarian and irrational procedural law. In other words, when conducting itself outside procedural rules and beyond technical controls, the substantial truth becomes a value judgment that gives rise to an arbitrary processualistic.

Opposing this conception, formal truth is conditioned in itself, by observing procedures and procedural guarantees. As a result, as it is a more controlled method, it ends up generating a more restricted content, in order to ensure the integrality of the individual freedoms involved.

In this perspective, the Superior Court of Justice recently stated that:

> "(...) the opinion is unequivocal that the search for truth in criminal proceedings is limited by the rules of admission, production and evaluation of evidentiary material, which will serve as support for the judge's conviction. After all, the ends achieved by the criminal procedure are as important as the means used."[4]

It is seen that utopianisms are not associated with the constitutional content, as they are found in a sphere beyond what is feasible in legal terms. The confusion between *must-be* and being builds an interpretative distortion of the constitutional and legal contents, in such a way that the reason of the institutes remains emptied, frustrated.

ILLICIT EVIDENCE

The constituent edited article 5, LVI, of the Constitution, which provides that "evidence obtained by illicit means is inadmissible in the process". This prediction represents one more guarantee for the criminal procedure that must operate in harmony with the set of fundamental rights, because, otherwise, the accused ends up becoming a potential target of acts that go beyond the substantial limits in a Democratic State.

In this wake, it becomes visible that the Brazilian legal system prevents the State itself, in the desire to punish those who violated a rule, turning a blind eye to its own laws and breaking legal and constitutional limits in the probative scope, which ends up becoming in "State criminality", as named by Gössel (Ávila, 2006, p. 99).

With the enactment of Law 11.690/2008, responsible for reforming the Code of Criminal Procedure, to article 157 of the procedural law introduced a conceptual load of illicit evidence, by providing that these arise from the violation of constitutional or legal norms. However, it must be noted that the wording of the device under discussion may end up causing the expansion of the content of the illegality, which is not to be confused with nullity (Dezem, 2017, p. 154).

And also regarding the procedural reform, the legislator included §1, which provides for the inadmissibility of evidence derived from illicit evidence, unless there is no causal link. This is the doctrine of the "*Fruit of the poisonous tree*", initially elaborated by the US Supreme Court, in the precedent linked to the case of SILVERTHORNE LUMBER CO v. USA, from 1920.

The Court rejected a subpoena issued as a result of an illegal search, since the defect

3. ABADE, Denise Neves. **Absence of the principle of real truth in the guaranteeing criminal procedure**. *In:* Efficiency and Guarantee in Criminal Procedure: studies in honor of Antônio Scarance Fernandes. São Paulo: LiberArs, 2017. p. 86.

4. SUPERIOR JUSTICE TRIBUNAL. **Rcl 36.734/SP**, Rcl 36.734/SP, THIRD SECTION, Reporting Minister Rogerio Schietti Cruz, j. 02.10.2021, DJe 02.22.2021.

included in the antecedent had repercussions for the consequent, so that this must not be added to the case file. Later, in 1939, in the judgment of the case NARDONE v. US, the Supreme Court effectively coined the aforementioned expression, also known as the *taint doctrine*.

Despite the instituted reform, jurisprudence has not always welcomed the reception, in Brazilian law, of the taint doctrine. So much so that, at first, in the judgment of Criminal Action nº 307, the Federal Supreme Court understood that the illegality must be understood in itself, not extending the normative diction to the derived evidence[5].

Only in the judgment of HC 73.351/SP, in 1996, did the Supreme Court, by majority vote, manifest itself in favor of the adoption of the imported legal institute. In that case, the Court established its understanding in the sense that the illegality of the telephone interception contaminates other evidentiary elements eventually collected, arising from the information obtained in the wiretap, directly or indirectly[6].

It is necessary to pay attention to the content of the second part of §1 of article 157 of the CPP, which brings up two exceptions to illicit evidence by derivation, namely: the independent source theory (*independent source doctrine*) and the inevitable discovery limitation theory (*inevitable discovery limitation*), both conceived in the system of legal precedents North American.

Regarding the first, if it remains demonstrated that the evidence was obtained from an autonomous source of evidence, without any dependence connection with the illegality, then they are lawful, as they are not affected by the original stain. However, such legal inclusion is indispensable. This is because, if illegal evidence does not exist in the legal field, it is unfeasible for it to provide legal evidence. Now, a non-proof cannot cause a proof; if the illicit evidence has no causal relationship with the other evidence, then the contamination is not transmitted to them.

The said exception, set out in paragraph 2 of the article under discussion, was elaborated in 1984 by US law, in the judgment of the case Nix v. Williams-Williams II. In this case, the body of a homicide victim was found by the police as a result of information obtained through the accused's illegal declaration.

Regardless of the means by which the data regarding the whereabouts were collected, the Supreme Court concluded that the corpse would have been found in another way, since a group of two hundred volunteers participated in the searches lawfully. That is, even if the actions of the investigative authorities were different, the body would inevitably have been located, in a lawful manner, by the others involved in the case.

ILLICIT EVIDENCE IN THE BRAZILIAN LEGAL SYSTEM

In the digital age, in which digital technologies are undergoing intense development and are proving to be auxiliaries (if not protagonists, in certain cases) of operators in the most diverse areas, it is mandatory to analyze the evidence that is assiduously inserted in this context.

Article 5, X, of the CRFB states that "the intimacy, private life, honor and image of people are inviolable, ensuring the right to compensation for material or moral damage resulting from their violation.". In addition, item XII stipulates that inviolability also applies to the secrecy of correspondence and telegraphic, data and telephone communications.

The Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations in 1948, provides, in

5. SUPREME FEDERAL COURT. **Criminal Action 307/DF**, Full Court, Justice Ilmar Galvão, j. 11.23.1995, DJ 12.04.1995.
6. SUPREME FEDERAL COURT. **HC 73.351/SP**, Full Court, Rel. Min. Ilmar Galvão, j. 05.09.1996, DJ 05.15.1996.

its article 12, protection of the intimacy and privacy of every human being, in order to shield him from arbitrary interference that may unfold within his life. This provision is so necessary that the American Convention on Human Rights (Pact of San José de Costa Rica), enacted by Decree Number: 678 of 1992, repeats it in article 11th, items 2 and 3.

The Penal Code even regulates breaches of secrecy, insofar as it deals with breaches of domicile (article 150), breach of correspondence (article 151), breach of professional secrecy (article 154) and breach of computer equipment (article 154-A).

However, these predictions and limitations do not translate into an absolute prohibition of intervention in the privacy and intimacy of the human person, given that, on certain occasions, the legal system allows for the relaxation of said prohibition. This is what can be seen in the final part of item XII of article 5 of the Constitution, which expressly excludes the inviolability of secrecy in the criminal sphere, provided that it is judicially authorized.

Telephone interception, in general terms, is understood as "capturing communication between two people, performed by a third party" (Avolio, 2019, p. 105). That is, it is an interference during a telephone communication, either to obtain information or to prevent it. Notably, its legal nature is that of a source of evidence that, after due registration, will be integrated into the process. At an infraconstitutional level, Law Number: 9,296/1999.

Still in the field of electronic evidence capture, environmental interception is carried out live, without the support of a telephone set, by a third party, without the knowledge of the interlocutors. This modality is often used in investigative reporting by television stations that, in order to record relevant evidence, record the conversation of certain subjects, informing and disseminating the content of what was captured.

On the other hand, environmental listening differs from environmental interception as, in the former, one of those present is aware of the interception of the conversation. That is to say, the speculative purpose of the third party is known by one of the interlocutors.

Escaping the sphere of interceptions, clandestine recordings – telephone and environmental – do not rely on the presence of a third party, as one of the participants themselves, without the knowledge of the others, records the conversation.

The use of these means as evidence, however, is not absolute, given that it depends on just cause and the absence of violation of the interlocutor's privacy (Greco Filho, 2015, p. 7).

THE PRINCIPLE OF PROPORTIONALITY

In the context of the concrete delimitation of the content of fundamental rights, the principle of proportionality is imposed as a method through which the intensity of application of the principles involved will be analyzed and, consequently, graded[7]. That is, considering that, in conflicting hypotheses, the principles are not excluded from the legal system, the means by which the situation is resolved must generate a limited restriction.

Despite the principle of proportionality being in the constitutional field, it is worth noting that this position is quite recent. This is because it was only at the end of the 18th

7. "In those cases in which it is possible to use different means to impose a limit or this admits different intensities in the degree of its application, it is where the principle of proportionality must be used because it is the technique through which the optimization mandate is carried out. which contains all fundamental rights and the principle of reciprocal effect". VILLAVERDE, Ignacio**. The resolution of conflicts between fundamental rights. The principle of proportionality.** *In*: The principle of proportionality and constitutional interpretation. Quito: Ministry of Justice and Human Rights, 2008. p. 182.

century and the beginning of the 19th that proportionality was added to public law, more specifically, to administrative law.

It can not be forgotten that such periods were marked by liberal political and legal theories, which exalted the limited character of the State, insofar as the individual sphere must be protected against incautious State actions. Indeed, in 1791, Carl Gottlieb Suarez addressed the principle of proportionality, still linked to the Police Power, and divided it into three sub-principles, namely: proportionality in the strict sense, adequacy and necessity (Pulido, 2014, p. 59).

Only after the Second World War did proportionality enter the field of Constitutional Law, having been developed in depth by the Constitutional Court of Germany when applying it in the control of constitutionality of the acts of the Public Power, mainly those that deal with fundamental rights. The German Court, then, adopted the requirement of the full fulfillment of the three subprinciples indicated above.

Since fundamental rights assume an indispensable role in the Democratic State of Law, the limitations that they eventually suffer must be, in fact, adequate, showing themselves capable of promoting the constitutionally legitimate objective. Together, aiming to curb the state's impetus, within a framework with several possibilities, the limiting measure must be subsidiary, as it values the technique that proves to be less invasive of fundamental rights (Villaverde, 2008, p. 184).

Finally, proportionality in the strict sense dictates harmony between the means and the ends pursued, preserving the core of fundamental rights placed in balance, so that the radiated disadvantages in the individual field are the least impactful possible.

Finally, proportionality in the strict sense dictates the harmony between the means and the ends pursued, preserving the core of fundamental rights placed in balance, so that the irradiated disadvantages in the individual field are the least impactful possible. In this sense, Guerra Filho (2005, p. 95-96) explains that:

> "(...) even if there are disadvantages for, say, the interest of people, individually or collectively considered, entailed by the normative provision in question, the advantages it brings to interests of another order outweigh those disadvantages"[8].

It must be made explicit that these subprinciples must respect the order in which they were mentioned. This is because they are interconnected by a bond of subsidiarity, as it would be logical to examine the compatibility between means and ends before checking whether the limitation is capable of promoting the objective in view.

With regard to the incorporation of the aforementioned institute by Brazilian positive law, two positions are identified: (i) proportionality is based on constitutional principles and institutes – rule of law, legality, habeas *corpus* –, and *(ii)* proportionality supports it. in the very structure of fundamental rights. The present work supports the second thesis. Hence, Silva's lesson (2002, p. 44) is pertinent, who elucidates that, considering that fundamental rights are enforced in accordance with the factual and legal possibilities, proportionality is the technique through which the commandments optimization will be concretely carried out.

In other words, the principle of proportionality permeates the very idea of law, from ancient history to contemporaneity. One cannot, then, simply militate in favor of its express consideration by the legislator for it to be adopted in legal practice.

8. GUERRA FILHO, Willis Santiago. **Constitutional process and fundamental rights.** São Paulo: RCS Editora, 2005. p. 95-96.

THE USE OF ILLEGAL EVIDENCE PRO SOCIETATE: THE JUDICIARY AND THE LEGISLATIVE

In the criminal sphere, a number of jurists have brought up the so-called pro *societate proportionality*, whose definition boils down to handling the principle of proportionality that manipulates illegal evidence so that it is allowed in situations where the interests and protection of society are revealed in emphasis.

In 2019, in the wake of Constitutional Complaint Number: 34,403/PR, Minister Gilmar Mendes recognized the illegality of evidence obtained through a search and seizure at the residence of the accused, without the issuance of a written and individualized court order, as well as determined the removal of the material and derived evidence. At the time, two defendants in the Publican Operation had been convicted of corruption and money laundering, based on the body of evidence that was known to be illicit.

Furthermore, it is essential to direct our attention to Operation Lava Jato, which began in 2014, which sought to investigate and combat crimes of corruption and money laundering of national scope.

In May 2017, the environmental recording of the conversation between the businessman Joesley Batista and the then President of the Republic Michel Temer was released, which discussed the forwarding of the negotiations of the award-winning agreement. From then on, jurists began to discuss the possibility of admitting such recordings as evidence of crimes of passive corruption and obstruction of justice.

The Rapporteur of the Operation at the Federal Supreme Court, Minister Edson Fachin, decided that the investigation could not be blind in the event that there is evidential material that supports the accusation, even if involved by notable illegality. This understanding was based on a previous decision of the Supreme Court, reported by the then Minister Cezar Peluso, in the records of RE 583.937, in which it was recorded that environmental recording can be considered licit as long as there is no specific legal reason for secrecy or reserve conversational.

In addition, the attempt to relativize the prohibition of the use of illicit evidence also took place through the Legislative. In 2016, the Federal Public Ministry prepared a set of reforms called "10 Measures against Corruption", which once again establishes measures against corruption and other crimes against public property and combats the illicit enrichment of public agents.

In the frenzy of operations that investigated crimes against the Public Administration then in progress, one of the suggested measures, namely number 7, aims to reformulate criminal procedural nullities. More specifically, one of the focuses was to insert, to article 157 of the CPP, two paragraphs that add a rule for balancing the rights and interests at stake for the admission of illicit evidence.

At the time, it was being processed before the National Congress through Bill Number: 4,850/2016. In the Preliminary Draft, it is clear that the suggestion was rooted in the attempt to approach US law, in which the *exclusionary rules* were enshrined, by jurisprudence. In contrast, the issue of probative unlawfulness is elevated to constitutional importance in Brazil, not being just a product of the Courts.

In short, the justifications are based on the following pillars: (i) the maximum use of procedural acts performed as a duty of the judge and the parties; (ii) the impossibility of presumption of prejudice, demanding that the parties demonstrate, specifically and concretely, the impact generated on the exercise of fundamental rights; and (iii) care to bury major crime-fighting operations in advanced stages.

In this regard, §2 of article 157 of the CPP

would now provide for the exclusion of the illegality of the evidence when (i) obtaining the evidence could be achieved by an independent source; (ii) the public agent acted in good faith or believed that the diligence would be legally supported; (iii) the causal relationship was mitigated by an act subsequent to the defect; (iv) demonstrate the innocence of the defendant or reveal the necessary reduction of the sentence; (v) obtained in legitimate self-defense or that of third parties or in strict compliance with a legal duty; (vi) derived from a court decision later annulled.

Subsequently, in 2019, it began to be processed under number PL 3.855/2019, which, until the moment of registration of this work, awaits the Constitution of a Temporary Committee by the Board.

It must be seen, therefore, that, in the context of the major operations that were intended to combat corruption, with notable national and international visibility, the Federal Public Ministry and the Legislative branch proposed to change the rules regarding the illegality of probative evidence in the Code of Procedure Penal Code, in order to display a legislative reform in accordance with the then sociopolitical yearning.

THE SEARCH FOR EFFICIENCY IN CRIMINAL PROCEEDINGS

Guided by the lessons of Silva Sánchez (2004, p. 2-7), efficiency, at the legal level, is connected to economic analysis, which is based on a consequentialist stance. In this bias, Law seeks to calculate the costs and advantages of the institutes that characterize it. That is to say, the reduction of costs with the alleged criminal must be favored together with the increase of privileges for society in the majority.

Furthermore, the technological context strengthened changes in temporal reality. Time, whether in the virtual space or in the physical space, no longer walks at a slow pace; In fact, hypervelocity transforms the most diverse relationships, including legal ones.

With regard to criminal proceedings, Jezler Júnior (2019, p. 39) asserts that cyberacceleration also has effects on the feeling of public safety. This is because the increase in technologies leads to an increase in social risks, which are often portrayed in the most diverse media.

Obviously, the economicist idea that influences the legal logic operates in view of the result, the scope of something initially intended. This union reveals an undeniable breach of procedural norms and, more seriously, of fundamental rights and guarantees. That is to say: the procedural sphere cannot be at the mercy of the unbridled attempts to accelerate the judicial system, thus creating an illusion of achieving a greater goal - the imposition of a penalty.

Amidst the varied social occurrences that mark everyday life, the pretensions for agile solutions, at the lowest cost (at least at first sight), reveal a plausible path for society. However, this logic goes against fundamental rights. For Novais, the rights and guarantees guaranteed by the Constitution are, essentially, against majoritarians, operating alongside the weakest position; because, otherwise, majority conceptions would trample the dignity of the human person.

In this vein, the Portuguese jurist asserts that fundamental rights must be understood as *trumps* against the majority, insofar as they are

> "(...) a requirement to recognize the normative force of the Constitution, the need to take the Constitution seriously: no matter how major they are, the constituted powers cannot jeopardize what the Constitution recognizes as a fundamental right."[9]

9. NOVAIS, Jorge Reis. **Fundamental Rights: trumps against the majority**. Coimbra Editora, 2006. p. 36. Available at: Jorge-Reis-Novais-Trunfos-contra-a-maioria.pdf (tjce.jus.br). Accessed on: Jul. 2022.

In more specific terms, when eventual majorities arise in the clamor to enhance the efficiency of the criminal procedure through normative changes regarding the (in) admissibility of illicit evidence, nothing more represents an attack against fundamental guarantees and against the very idea of a Constitution aimed at ensuring human dignity.

Finally, it cannot be forgotten that the weakening of the fundamental norms that govern the Democratic State of Law by majorities also means the weakness of a social whole.

CONCLUSION

Throughout the research, it was concluded that the relativization of the constitutional prohibition of illegal evidence, through the principle of proportionality, can only be carried out in the cases in which it serves for the defense of the defendant, in order to escape the logic that the accused is condemned even though his innocence is proven.

On the other hand, the pro societate purpose is not in line with the criminal procedure of the Democratic State of Law, since the utopian intentions of eventual majorities and the unbridled discourse of the protection of the public interest notably weaken the due process of law, as well as feed judicial discretion and the absence of brakes, so necessary to the guarantee model.

The use of illegal evidence with a condemnatory objective transforms the State into a true protagonist of illegalities against citizens, and not a protector of them.

Even if the crime is repugnant and serious, the limits must be respected. Non-observance of the law is the law of an unbridled right and without commitment to the Democratic State.

REFERENCES

ALEXY, Robert. **Teoria dos direitos fundamentais.** São Paulo: Malheiros Editores, 2017.

AVOLIO, Luiz Francisco Torquato. **Provas ilícitas: interceptações telefônicas, ambientais e gravações clandestinas**. 7. Ed. São Paulo: RT, 2019.

BRASIL. Supremo Tribunal Federal. **Ação Penal 307/DF**, Tribunal Pleno, Rel. Min. Ilmar Galvão.

_____. Supremo Tribunal Federal. **HC 73.351/SP**, Tribunal Pleno, Rel. Min. Ilmar Galvão.

_____. Superior Tribunal de Justiça. **Habeas Corpus nº 213.448/RS,** Sexta Turma, Rel. Min. Sebastião Reis Júnior.

_____. **Rcl 36.734/SP**, Rcl 36.734/SP, TERCEIRA SEÇÃO, Rel. Ministro Rogerio Schietti Cruz.

CARNELUTTI, Francesco. **Como se faz um processo**. São Paulo: Pillares, 2014.

CARBONELL, Miguel. **El principio de proporcionalidad y la interpretación constitucional.** Quito: Ministerio de Justicia y Derechos Humanos, 2008.

FERRAJOLI, Luigi. **Direito e razão: teoria do garantismo.** São Paulo: Editora Revista dos Tribunais, 2014.

GRINOVER, A.P.; GOMES FILHO, A.M. **As nulidades no processo penal**. São Paulo: RT, 2011.

GUERRA FILHO, Willis Santiago. **Processo Constitucional e Direitos Fundamentais**. São Paulo: RCS Editora, 2005.

HAMILTON, Sérgio Demoro. **As provas ilícitas, a teoria da proporcionalidade e a autofagia do direito.** Revista do MPRJ, n. 11. RJ: Procuradoria Geral de Justiça.

JEZLER JÚNIOR, Ivan. **Prova penal digital: tempo, risco e busca telemática**. Florianópolis: Tirant Lo Blanch, 2019.

LOPES JR., Aury Celso L. **Fundamentos do Processo Penal**. Editora Saraiva, 2020.

_____. **Direito Processual Penal**. São Paulo: Saraiva, 2021.

MENDES, Gilmar; BRANCO, Paulo Gustavo Gonet. **Curso de Direito Constitucional.** 16ª Edição 2021: Série IDP.

NOVAIS, Jorge Reis. **Direitos fundamentais: trunfos contra a maioria.** Coimbra: Coimbra Editora, 2006.

PRADO, Geraldo. **Limite às interceptações telefônicas e a jurisprudência do Superior Tribunal de Justiça**. Rio de Janeiro: Lumen Juris, 2006.

PULIDO, Carlos Bernal. **El principio de proporcionalidad y los derechos fundamentales.** Bogotá: Universidad Externado de Colombia, 2014.

SANTIAGO, Nestor Eduardo Araruna. **Proibições probatórias no processo penal: análise do direito brasileiro, do direito estrangeiro e do direito internacional.** Brasília: Gazeta Jurídica, 2013.

SILVA, Virgilio Afonso da. **O proporcional e o razoável.** Revista dos Tribunais, n. 798. São Paulo: RT, 2002.

SILVA SÁNCHEZ, José-María. **Eficiência e direito penal**. Manole, 2004.

VAZ, Denise Provasi; DEZEM, Guilherme Madeira; ZILLI, Marcos Alexandre Coelho; LOPES, Mariangela Tomé. **Eficiência e Garantismo no Processo Penal: estudos em homenagem a Antonio Scarance Fernandes.** São Paulo: LiberArs, 2017.