
HOMELESSNESS IN THE DIGITAL AGE IN THE FACE OF THE COVID-19 PANDEMIC

AS PESSOAS EM SITUAÇÃO DE RUA NA ERA DIGITAL EM FACE DA PANDEMIA DA COVID-19

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ABSTRACT

Objective: This article analyzes the factual-legal situation of the vulnerability of homeless people in the technological age of the 21st century in the context of the Pandemic caused by COVID-19. It discusses the causes and effects of this reality, directing the analysis on the legal consequences, notably on the constitutional principle field, derived from the absence of public policies of housing and health in facing the pandemic crisis.

Methodology : This research is exploratory, qualitative and based on scientific articles, specialized doctrines, people reports, news and government platforms.



Results: It is considered the importance of the analysis of the causes of increased vulnerability in relation to homeless people, highlighting the need for preventive measures in public policies that effect the right to housing and health, and prevent systematic violation of constitutional principles. It is concluded, therefore, the existence of national legislative collection on the subject, but a scenario of disdain in its governmental application.

Contributions: the main contribution of the work is to identify the growing number of people living on the streets so that the public authorities address this conspicuous situation of vulnerability and develop health and housing policies that will provide the safeguarding of lives that do not have physical conditions to defend against spread of the pandemic. It is a warning to the scenario of the deep invisibility of those who die in the dark of the streets.

Keywords: homeless; vulnerability; covid-19; public policy; fundamental rights

RESUMO

Objetivo: *O presente artigo analisa a situação fático-jurídica de vulnerabilidade das pessoas em situação de rua na era tecnológica do século XXI no contexto da Pandemia ocasionada pela COVID-19. Discorre-se sobre as causas e efeitos desta realidade, direcionando a análise sobre as consequências jurídicas, notadamente, no campo principiológico constitucional, derivadas da ausência de políticas públicas de moradia e saúde no enfrentamento da crise pandêmica.*

Metodologia: *Trata-se de pesquisa de cunho analítico, qualitativa e embasada em artigos científicos, doutrinas especializadas, relatos de pessoas e em notícias jornalísticas publicadas e plataformas governamentais*

Resultados: *Considera-se a importância da análise das causas de aumento da vulnerabilidade em relação às pessoas de situação de rua, destacando-se a necessidade de medidas preventivas constitutivas em políticas públicas que efetivem o direito à moradia e à saúde, e obstaculizem a violação sistemática a princípios constitucionais. Conclui-se, portanto, a existência de acervo legislativo nacional sobre o assunto, mas um cenário de desídia em sua aplicação governamental.*

Contribuições: *A principal contribuição do trabalho reside em identificar o crescente quadro de pessoas em situação de rua para que os poderes públicos atentem à esta situação manifesta de vulnerabilidade e desenvolvam políticas sanitárias e de abrigo habitacional que importem, na salvaguarda de vidas que não possuem condições físicas e fáticas para medidas de prevenção à propagação da pandemia. Trata-se de um alerta ao cenário da profunda invisibilidade daqueles que morrem no escuro das ruas.*



Palavras-chave: *peças em situação de rua; vulnerabilidade; covid-19; políticas públicas; direitos fundamentais*

1 INTRODUCTION

This article will analyze the factual-legal situation of the vulnerability of homeless people in the digital age (21st century) and under the tragic scenario of the Pandemic caused by COVID-19. After more than 70 years of the Universal Declaration of Human Rights, the principles and fundamental rights framework historically built in our Federal Constitution of 1988 are severely in constant violation in the face of the situation of the vulnerability of the mentioned homeless people considered "invisible" in the phenomenal world and consequently, in the midst of the pandemic moment.

This time, the issue will be focused on the discussion of the causes that challenge the increasing vulnerability and, notably, the accurate examination on the deficiency of public policies in the country that cause the aggravation of the crisis caused by the COVID 19 pandemic, under the point o view of human persons in housing vulnerability.

Therefore, the theme of this work will be closely linked to the punctual inquiry whether the pandemic evidenced the chaos of the absent or deficient public health policy, "legitimizing" the discourse of uncontrolled containment of the pandemic or whether, whereas, on account of the precise collection of theoretical and scientific data, it is noted that the principles violated had already been violated and were currently the main reason for the spread of the pandemic, highlighting the need for urgent public measures, preventive and reparative measures?

Thus, the choice of the theme will be justified, due to the importance of the issue, because the vulnerability suffered by the people analyzed here, in addition to generating rejection to the state of abandonment in the face of their situation, increases their daily mortality due to the disappearance of public housing policies, victimizing a perverse number that paradoxically contradicts the so-called digital era, democratic rule of law and dignity of the human person.



In the first part, it will address conceptual aspects of vulnerability and of the concept of homelessness. It will follow with the confrontation of the street condition in a global perspective of policies and norms related to the theme.

On the third part, it will be highlighted the need for public policies to tackle the pandemic and deal with this vulnerable group of street people as preventive measures for the spread of the virus and loss of life.

As for the methodology, an exploratory and qualitative research will be carried out, using data collection techniques based on scientific articles, specialized doctrines, empirical reports found on the news and government platforms.

2 ABOUT VULNERABILITY AND THE STREET SITUATION IN THE TECHNOLOGICAL AGE

In order to address the dignity of vulnerable people in the digital age, more specifically, those on the street, it is necessary to answer the question: "what is vulnerability"? It is an expression that is often mistaken for hypo-sufficiency. In principle, it is understood as a condition that indicates a fragility (not necessarily a weakness in the epistemological sense).

From the legal point of view, in Brazil, vulnerability represents both an individual and collective fragility, depending on the context, and can be seen as an inseparable quality of the person, not being confused with hypo-sufficiency, since this concerns the fragility of economic or technical character. It is also possible to speak of: a) environmental vulnerability, such as that which affects people who live in risk areas, subject to flooding; b) social vulnerability, affecting people or families in process of exclusion, who live on the margins of society, largely – but not exclusively – by socioeconomic factors. In addition, collectives of vulnerable people can be observed that can be mentioned: people who are in extreme poverty, minorities victimized by racism, the LGBTI community, refugees, people with disabilities, among others.

In relation to homeless people, it is understood as those whose dwelling takes place in public places or hostels, which commonly have a situation of work, living



conditions and precarious social insertions. The Institute of Global Homelessness defined the street situation as "*the lack of access to minimally adequate housing*" (INSTITUTE OF GLOBAL HOMELESSNESS, 2019). It is important to point out that under this context, the homeless person is the one who is in a state of anomie, that is, who has experienced a process that culminated in the break (exogenous or not) with the rules of society. The work, therefore, makes an epistemological cut on vulnerability, emphasizing the person on the street, that is, the person who suffered a process of social exclusion, in the lessons of Hannah Arendt (2014), with the fragilization and rupture of social bonds in dimensions (i) economic; (ii) socio-family; (iii) citizenship; (iv) human life and (v) social representation.

This marginalization results in a fragility of the person's own identity, leading to a process of socio-family disconnection and with the world of work. This also affects other emancipatory psychosocial processes, such as consciousness and the feeling of belonging. Thus, the fragility process is converted into isolation due to "*the economic vulnerability added to the other vulnerabilities*", that is, "*housing, affective, ethnic-racial, gender issues, violence and discrimination, among others*" defining a state of deprivation of liberty in all areas of life" (ALCANTARA; ABREU; FARIAS, 2015, p. 132).

It should be noted that the social vulnerability above presents causes of order "*apparently external structures meet systemic patterns of social exclusion and discrimination and, at the same time, governments fail to deal with the new challenges within the Human Rights perspective*" (SILVA, 2017).

And this social isolation ends up being legitimized by institutions, by the State, culminating in depersonalization, by printing a treatment of services offered precarious and discontinuous and that, later, as will be analyzed in this study, there will be damaging legal consequences as regards prophylaxis on the COVID-19 pandemic.

There is also the role of qualified information or disinformation in the digital age that the pandemic, in the face of people on the streets, can generate. The appeal for solidarity campaigns in digital media can be effective, through the growth of private initiatives and non-governmental organizations to help in specific situations. In the case of the Covid-19 pandemic, as soon as the health condition was decreed,



restrictive measures were initiated, companies made donations to governments, like São Paulo, which raised, until April 2020, more than R \$ 300.000.000,00 (three hundred million reais) (PORTAL DO GOVERNO DE S.PAULO, 2020) as well as several online presentations (the so-called Lives) were carried out and an estimated amount of approximately R \$ 200.000.000,00 (two hundred million reais) (FOLHA DE S.PAULO, 2020).

On the other hand, there is no way to disregard the factual paradox between the undeniable advance of technology and the minimal lack of resources and policies for the realization of human rights admitted as fundamental in our legal-constitutional order, even because, the approach on COVID-19 prevention in the face of people living on the streets is no longer observed (FOLHA DE S.PAULO, 2020), perhaps due to the phenomenon of individualism and subject exposure bordering on the phenomenon of cultural and political disinformation.

3 UN AGENDAS FOR THE HOMELESSNESS: DEALING WITH CONSEQUENCES AND A BRIEF LOOK AT COMPETING CAUSES

The UN Millennium Summit set eight objectives, the main commitment of which was the promotion of the dignity of the human person and the reduction of poverty in the world. At that time (in the year 2000), there were more than 1 billion people living in extreme poverty, with lack of drinking water and food. This commitment was called the Millennium Development Goals (MDGs). In 2015, the new development agenda, Agenda 2030, was approved with Sustainable Development Goals (SDGs), emphasizing poverty eradication. Brazil stood out for reducing extreme poverty from 25.5% in 1990 to 3.5% in 2012; infant mortality declined from 53.7% to 17.7%. The criterion of "extreme poverty" is met at the time by the person who receives less than US\$ 1.25 per day (SHECKSHER, 2020).

It should be noted that, although they deal with extreme poverty, neither the Millennium Development Goals nor the Sustainable Development Goals explicitly addressed homeless, that is, they continue, in their own way, invisible. It is necessary



to look at the possible causes and treat them, not being restricted to the consequences, with palliative measures. And poverty is one of the possible causes, not the only one. It is possible to list as possible causes of the street situation, the increasing structural unemployment, migration, chemical dependence, mental illness, family conflicts and the absence of government policies and agendas that propagate the virus of hopelessness, violation of the principle of efficiency, social justice and social welfare advocated in the constitutional preamble of our country.

To this extent, the revised European Social Charter includes the obligation to "*prevent and mitigate the condition of the homeless population with a view to progressively eliminating this situation*".

It is concluded, therefore, that there needs to be measurement for strategic policy responses. The Economic, Social and Cultural Rights Committee focuses on the need for integrated housing strategies, as well as monitoring and accountability with reporting objectives, deadlines and reporting procedures.

4 HOMELESS IN THE CITY OF SÃO PAULO: INFRACONSTITUTIONAL NORMS AND PROSPECTS ON THE PANDEMIC

The city of São Paulo is the largest and most developed in Brazil. It is the financial center of the country and, like every major urban center (and megalopolis), attracts and welcomes a wide diversity of people who migrate from other cities in search of better living conditions, escape from violence, especially poor who feel "expelled" the countryside, the average cities, other places where development is not possible.

Despite the difficulty of precision in the numerical survey concerning homeless, the scenario measured in the city of São Paulo, Brazil, shows the unconstitutional results contrary to the UN's wishes translated above: from 2000 to 2015, the number of homeless and sheltered people rose from 8706 to 15905, that is, almost doubled the number. Of this total, 82% were men, 14.6% were women and 3.4% were not defined. These numbers, repeat, are restricted to the city of São Paulo. Also due to the



age criterion, 36.6% are between 31 and 49 years old; 15.3% are between 18 and 30 years old, that is, almost 50% in productive age and among children and adolescents, the percentage is 3.1%. Of this total, 90% of children are cared for, while more than half of adolescents are homeless. Between 2007 and 2008, there were almost 32,000 adults living on the streets in Brazilian capitals and large cities, not including young people and children (PORTAL DA CIDADE DE S.PAULO, 2018).

Referencing the above data to Brazil and the pandemic, we can observe the number of 100 million poor people, of which 25 million in São Paulo, still in 2019. This means that the number of people without adequate housing because of poverty can grow exponentially in the coming years, even more as a consequence of the Covid-19 pandemic. The IBGE census, which would be conducted in 2020, was postponed indefinitely, and it is estimated that, in the city of São Paulo, the number of people living on the streets exceeded 20,000 (FELIX, 2020).

In São Paulo, two basic infraconstitutional norms can be enumerated regarding the subject of people living on the streets, namely: a) Decree 7053/2009 that instituted the National Policy for the Homeless Population, based on the principles of universality, equality and equity, as well as respect for human dignity, the right to family and community coexistence - essential for a sense of belonging -, appreciation, respect for life and citizenship, humanized care and respect for social conditions and differences of origin; b) Law 12.316/97 regulating Decree 40.232/2001, making it mandatory to care for people in the described condition, with respect to precepts that evoke respect, equality, the dignity of the human person, non-discrimination, non-violence, among others, seeking access to essential services; c) in 2016, the São Paulo Municipal Law nº 16,520 amended Law nº 12,316/97 to include a normative provision to guarantee the maintenance of small and medium-sized pets to the shelters, following a trend that occurs in Brazilian and São Paulo jurisprudence, more specifically, regarding the relevance to the development of the potentialities of the human personality; d) in 2001, the São Paulo Municipal Law nº 13.178 instituted the Program of Collective Action of Work of the Municipality of São Paulo, known as Program Operation Work, targeted at the low-income population, including those living on the streets, with a view to promoting reintegration into the labor market, without,



however, generating employment links arising from the programme between the municipality and the worker, which must prove its specific condition that enables it to participate in the program; e) Municipal Decree of São Paulo nº 57.975/2013 instituted the Intersectoral Committee of Municipal Policy for the Population in Street Situation - PopRua Committee, composed of representatives of public bodies and civil society, for unpaid positions, with a view to drawing up projects and targets, objectives, responsibilities and budget monitoring, monitoring, organization and policies aimed at the homeless; f) in 2013, the São Paulo Municipal Law nº 15.913 instituted the program of care to the homeless integrated with the benefits of housing and health care, repeating part of the principles already listed in Law 12.316/97 and extending the housing and social lease care linked to the Minha Casa Minha Vida Program - created by the federal government, through Law 11.977/2009 -, in addition to the creation of service protocols, according to the Specialized Service in Social Approach (Federal Law nº 12.435/2011).

In terms of legislation of the Municipality of São Paulo so far, it is possible to observe not only the existence of some laws whose contents are sometimes repeated, but also a major political problem - and that is not the privilege of the Brazilian city highlighted: the discontinuity of projects. At each new political cycle, a different regulation, which does not necessarily align with the previous one, and from which legal beneficiaries are invariably suffer, bearing in mind that structural policies with regard to housing are not analysed, employment and health: indissoluble link to the filling of the content of the principle of the dignity of the human person (Art. 1, III, CF).

Some sectorial norms are worthy of applause as regards the service to people in street situation a) Public Defense's Decree 666 establishes guidelines for the care of this public. B) in the field of health, there are Street Office teams that integrate primary care from the Psychosocial Care Network and develop Primary Health Care actions. And what stands out, in short, is discrimination, especially by hygiene conditions; c) the Franciscan Solidarity Service characterized as a center of welcome, listening and departure.

These are effective local work initiatives and policies, but they are reduced to scarce resources and very small geodemographic areas. However, these are positive



experiences that could, in fact, gain ground ahead of the political will and the dissemination of technology convergence networks.

5 HOMELESS: THE ABSENCE OF PUBLIC POLICIES AND THEIR LEGAL CONSEQUENCES IN A PANDEMIC STATE

And here it begins by assessing the empirical situation of people on the streets, whose vulnerability transcends the tragic phenomenon and devastates the concept of sustainability, whether from an economic, social, environmental, political and cultural point of view:

The street is not the only address of people who have no place to live. To have what they call a roof, although improvised, people share with rats, garbage and rubble, spaces unimaginable. There are people who live in shackles (concrete tubes) and holes (...) In mocós, as the locals call the holes, the lighting is obtained thanks to clandestine connections. To get water, people go out with cans on their heads, dribble their cars to cross the tracks to the nearest house. The bathroom is improvised outside the dwellings that are guarded by the faithful mongrels. Makeshift houses are not just holes or caves (...) Some people choose to live in shackles left in parks and squares, others sleep in old cars and even in tombs. (JORNAL O ESTADO DE SÃO PAULO, 2011)

In the 20th century, the narrative observed above, despite subtle outlines of distinction, is supported by the evident evidence left in the early 19th century when Laurentino Gomes analyzes the vessels and hygienic conditions that cause contamination of endemic diseases and sometimes pandemics, noting thus the cyclical character of human history:

There was no running water or toilets. To do the physiological needs were used cloacas, platforms tied to the bow, suspended on the railing of the ships, where the waste was thrown directly to the sea (...) In the suffocating heat of the tropical areas, Rats, cockroaches and woodworm infested the supply depots. The water soon rotted, contaminated by bacteria and fungi (...) In tropical regions, other threats were dysentery and typhus, caused by the lack of hygiene and contamination of water and food. (...) To prevent diseases and the proliferation of pests, I demanded that the ships' clothes and



dependencies were always clean, which explains the strict discipline that the officers kept on board (GOMES, 2010, p.51)

There is, therefore, undeniable and imperious importance in the pandemic context of observing the preventive role of public policies, referring at this point, that the State to be democratic of Law carved under the ontos of the Brazilian Federal Constitution of 1988, becomes to have positive action in relation to the socioeconomic transformations, creating activities organized with the priority election of ends and with more adequate instruments to achieve them (COMPARATO, 1997, p. 11-22).

Public policies, in this sense, are considered as instruments of action of governments, marking a goal to be achieved at the economic, political or social level of the community (BUCCI, 2002, p. 252), distinguishing the aforementioned concept of plans. These can be externalized through plans, having a general, regional or even sectorial character (objective-setting laws, instruments and conditions of implementation).

According to the World Bank's Pollution Problem Management Report for Brazil since 1998, there is a list of aspects of pollution that cause real damage to human health and ecological loss, precisely because of the lack of implementation of housing plans and environmental sanitation. Among them, there is the worsening of health due to the lack of safe sewage collection, surface water pollution in urban areas generating visual impacts, odor and restriction to leisure activities, and inadequate management of solid waste (PHILIPPI JR., 2005, p. 20). Thus, the effective absence of sectorial public policies in the social areas of sustainable housing and sanitation is consolidated.

Of course, policies need to be marked and constructed according to an analysis of the crystal-clear marginalization that exists between poverty, the absence of healthy housing and diseases, notably in the face of the pandemic resulting from COVID-19. Allied in a single way to the policies the so-called "good government" is inseparable aspect for the characterization of the Federative Republic of Brazil "*sustainable, humanistic, valuing science and technology and above all, fulfilling the value and fundamental guarantee of life*" (FULLER; BARRETO JUNIOR, 2020, p. 48).



Therefore, it is not enough just to understand sectorial public policies, but the living and constitutional understanding of what comes to be the right to housing that in this work is put as a touchstone on the theme of the pandemic today throughout the world experienced. The law in question is therefore not restricted to a ceiling, but to a sustainable site, in accordance with the provisions of the City Statute (Law 10257/2001), which makes it possible for the human person to fulfil the rights laid down at least in Articles 1, 3rd, 5th, 6th and 7th of the Federal Constitution, in particular, physical and mental health for their biopsychosocial development.

Since March 11, 2020, when the pandemic was declared by the World Health Organization (WHO, 2020) the economic slowdown, the increase in unemployment and the lack of effectiveness of public policies increased poverty, misery and hunger in Brazil. (UNA-SUS, 2020).

With the advent of the COVID pandemic, the inequalities and organic-social and economic dysfunctions came to the fore, emphasizing the indisputable relationship between health and sustainable urban development, that is, the existence of the right to sustainable housing, that in the words of Ingo Wolfgang Sarlet, it has standard elements established by the UN Commission on Economic, Social and Cultural Rights, namely: a) basic infrastructure for ensuring the health, safety, comfort and nutrition of right-holders (access to drinking water, electricity, lighting, basic sanitation); c) access to reasonable housing conditions, among others (2014, p. 273/274).

Therefore, given the scenario of the absence of public policies of balanced or sustainable housing and consequently, the absence of environmental sanitation, including especially sanitation and water supply, the conclusion not only theoretical, but practical, it is precisely the increase in the exponential of the pandemic that basically requires care in the face of isolation and hygiene measures.

If on the one hand a homeless person has not fulfilled the objective and analytical meaning of the principle of the dignity of the human person on account of having denied the minimum for its existence, on the other hand, the Social State, does not exist and becomes rhetorical discourse amid the emergence of the so-called Pandemic State.



5.1. LEGAL CONSEQUENCES: FUNDAMENTAL RIGHTS AND CONSTITUTIONAL PRINCIPLES RETALIATED BY THE PANDEMIC STATE

Faced with the aforementioned State, the legal scenario has opened up possibilities for facing serious legal consequences that are highlighted here punctually to follow.

Initially from the nerve point on the absence of urban planning or policies aiming at the achievement of the social and constitutional objective related to sustainable housing has been observed the growth of neighborhoods without structural connection of paving, transport, environmental sanitation, leisure. From the perspective of the existence of a disordered territorial growth (and not development), with the unbalanced use of natural resources and having the street as "housing" - epistemological cut of the study, violence begins to grow motivated by the precariousness of public services, social mobility, unhealthy health conditions, that is, by socioeconomic factors that further aggravate inequalities. In this context, the pandemic is subsumed among the factors that aggravate urban violence rates (CARMONA, 2014, p. 89).

Subsequently, the situation of people on the streets makes it impossible to impose prophylactic quarantine and hygiene measures as a major factor in tackling (or not) the pandemic, remaining the right to individual and social health which is flagrantly hostage to the situation of vulnerability. How to find measures of asepsis, without drinking water, soap, sink or toilet (even public)?

As stated previously, the pandemic has left behind the deep and systemic failures of the public policies inherent in housing, which has been subjected for decades to aggressive processes of "privatization and gentrification" (ROLNIK, 2019). Based on this phenomenon, the political strategies that began before the pandemic and until then must continue, according to Raquel Rolnik and Eva Garcia Chueva (2020, p.4) is a change from a legal context of social emergency, namely: a) rent price regulation, as it has been occurring in Berlin, San Francisco, New York, Spain and Denmark; b) intervention on tourist rental (conversion to residential housing) as in New York, Amsterdam and Catalonia; c) zonification of areas of social interest that combine



urban development institutes in "special areas of social interest" with progressive tax policies on empty real estate (ROLNIK, SMOLKA, FURTADO, 2014, p. 69-75).

The reality that gives us the imponderable sense of contempt for social justice is that the pandemic not only noted, but also pointed out that more than 220,000 people on the streets are still without drinking water, sewage, public toilets, sinks, showers or soap. According to the Institute of Applied Economic Research (IPEA), the number of homeless people in Brazil increased 140% between 2012 and March 2020, reaching almost 222 thousand people (LIMA, 2021, p. 11-12).

The COVID-19 theme, therefore, has serious consequences for the social functions of the city that represent actions and programmes aimed at the effective satisfaction of its inhabitants in relation to the rights that are necessary to achieve the well-being and environmental balance. It is clear from the national scenario that social functions are not fulfilled, especially in São Paulo, in view of the irrealizability of the rights to life, equality and freedom of the homeless.

In this regard, it is stated that the principle of the dignity of the human person covers not only the protection of civil and political rights, but above all "*ensures the realization of the right to freedom, considered not only as the physical, but as that of being able to enjoy economic, social and cultural rights.*" (FULLER, 2017, p.215).

This explains the words of Paul Roubier (2005, p.317) on the need for thinking a modern philosophy of social values that brings us the agenda to be addressed to all public policy and critical-reflective legal analysis on the pandemic COVID-19:

En étudiant l'aspect extérieur des règles de droit, nous avons reconnus l'existence d'une première valeur, qui est la sécurité juridique, laquelle commande toute une série des conséquences avantageuses à la société (autorité, paix, ordre). L'étude du fondement des règles de droit nous a mis en présence d'une seconde valeur, que est la justice, valeur essentielle au bon ordre des rapports humains, avec ses qualités propres d'égalité et de généralité. Enfin l'étude du bit des règles de droit nous a revele uma dernière valeur, qui est la civilisation ou le progres social (bonheur, subsistance, abondance, culture...) (emphasis added).

It is certain that the sick man does not live, but only survives. And this, in the face of the pandemic, brings the notion that, amid what is being observed today with



the number of daily deaths in Brazil, the pandemic has become the systemic active subject of the rupture of constitutional imperatives in relation to existence with dignity.

In addition to the consequences already examined and with the awareness of not closing the issue outright, regarding the legal consequences of the pandemic in the context of people living on the streets, it is still possible to highlight other points mentioned below.

The damage to the physical and psychic health of a patient affected by COVID-19 generates the antithetical health versus disease and with it, comes the concept of pain that is legally undetermined concept. For its definition it is possible to find at least seven aspects about the term, being able to classify it as physical, psychic, social, emotional and spiritual (PESSINI, 2002, p.62). According to neurologist Álvaro Lima Costa, pain is endowed with a strong degree of subjectivity, finding a strong link with individual circumstances and qualities (SANVITO, 2001, p.17). However, it is certain that this is a complex and multidimensional phenomenon, considering aspects of cultural, philosophical, spiritual and psychological order (FULLER, 2004). And, still clearer that the pain experienced by the absence of health (physical or psychic) or uncontained fear in the future generates the inability of the individual to assume goals and prospect hopes that sediment the stony core housed in the constitutional preamble and especially, art. 5th of the Federal Constitution of 1988.

The above situation tends to further increase the situation of individuals unable to attempt to exercise their right to work, due to the crisis in their biopsychosocial state and the feeling of vulnerability and anguish that threaten the uniqueness of their being, committing their ontological and individual dignity head on.

On the other hand, entire families on the streets end up having aggravated and compromised other social rights, such as the inherent education of children, being relegated to them the possibility of implementing the right to education, not only by being on the streets, but because they are potential victims of the virus, thus generating a vicious circle: pain- disease- death in a whole family context of thousands.

From the above scenario, we see before the pandemic a scenario of treachery to the fundamental rights of housing, education and health, whose pandemic evidences crying out about the incontestable chasm existing to the attainment of the



equal opportunity of all to the exercise of fundamental rights (social citizenship) as ethical and normative-constitutional imperatives.

Another highlight that manifests itself on the pandemic effects on people living on the streets is the so-called "social Darwinism", coined since 1940 by the American historian Richard Hofstadter.

The current society already entering the fourth so-called digital revolution is experiencing several legal-social paradoxes, because while searching for growing markets of new technological convergence networks, sees itself with the national pandemic reality, systematically violating the principle of isonomy - wrapped up in the very principle of the dignity of the human person - by the simple factual outline visualized by seeing someone drink the water that runs on the threshold of a sidewalk and pick up their livelihood from the garbage.

In this sense, it must be accurately observed that in a democratic state the objective is the protection of goods considered essential to the existence of man, since such a regime sediments the perspective of man being considered not as a means, but as an end to Kantian and humanistic precepts" (FULLER, 2011, p. 286).

In 1859 was created the theory of Charles Darwin called "The origin of species", whose avant-garde content was notorious in its theory on the evolution of species, pointing out that living beings constitute the product of an environmental adaptive process, that the species that best adapted to the environment had greater survival capacity in relation to others. Therefore, the ability or not to transform and adapt led to the life or extinction of species.

Translating the aforementioned theory to the field of social sciences, the narrative on adaptation to the social environment eventually developed the notion that certain societies/communities/civilizations were possessed of certain characteristics that considered them superior to the others. Historically, it has become the discursive resource for movements from neocolonialism to extreme right-wing nationalist movements that publicize in full digital age and born of solid humanistic world statements, the neo-Nazi superiority movement and others with the focus of promoting discrimination based on hate speech.



In this sense, hate speech brings crimes that carry linguistic elements that attack facts and concrete patterns such as racist, religious, sexist, gender, race, disability or illness (LÓPEZ, 2017, p. 108). Aversion to the other due to discriminatory factors puts individual legal assets or the collective in danger of injury.

Social Darwinism shows in its roots that poverty "*in addition to evidencing the natural inferiority of some individuals, was perceived as something necessary and positive for society*" (MENEZES, 2008). Therefore, eugenics would guarantee the survival of the "strongest", that is, whose rights to the minimum for their existence were guaranteed to them, while the poor, by the "natural order of inadequacy" to the environment, they would be excised for the so-called civilizing process as a natural causal process.

Of course there are calls in the area of Public Health for social determinants of health (SDH), considered as the social conditions in which people live, or the social characteristics within which life takes place, such as education, work environment, unemployment, social health services, housing and could not fail to indicate water (TARLOV, 1996).

However, there is no way to rule out that these determinants characterize inequalities that keep legal acceptability in a state called Democratic, in which health should be the right of all and protected by the Public Power (art. 196, CF) and annihilate the notion of citizenship provided for in Articles 4 and 19 of the 1972 Stockholm Declaration, art. 10 of the Rio Declaration of 1992 and art. 225 of the Federal Constitution, understood as an instrument of effectiveness of the dignity of the human person, constituting essentially the right to have rights, according to the conception of Hannah Arendt.

Based on the above considerations, there is a clear subsumption of the phenomenon of social Darwinism, pandemic and homeless people.

It seems that in the face of the neologism "new normal", the passivity before the number of deaths, transmission of the disease and impossibilities of social distance and measures of hygiene to the people in situation of street, became something referring only to lines of metrics and statistical evaluations based on the theory analyzed above.



However, behind every statistic is the alarm that the poverty and the poor conditions of those who live on the streets, beyond the numbers that highlight social inequalities, frighten the meaning of the word warm life as a fundamental and natural right, according to the jusnaturalism of the "Law of the People" propagated by Hugo Grócio and the basis for international humanitarian law (BENDIM; OLIVEIRA, 2020).

The seriousness of the pandemic expansion, coupled with the absence of effective, preventive and scientifically-based government public policies has led to an increase in social exclusion, in which the profile of victims punctuates residents of the periphery (ESTADO DE S. PAULO, 2020, p.A18). In the peripheries and on the streets, families without rooms, without economic potential to maintain hygiene measures, there is no space for the isolation of infected people, there is no water, there is no soap (ESTADO DE S.PAULO, 2020, A13).

Faced with the tragedy announced and ongoing in the country, before the "invisible" who live in tunnels, improvised sidewalks with cardboard ceilings, concrete shackles, finally, deprived of sustainable housing, the right to the inviolability of the right to life, to liberty, to equality, to property and health (biopsychosocial) has been collapsing in the face of a subliminal Darwinism and tissue in social practice.

The "invisible" homeless have supported the principle of equality, becoming potential victims of the loss of public policies to face decent housing, health and inclusion (labor, cultural and social):

Égalité juridique: égalité en droits et en obligations juridiques (...); b) égalité réelle: égalité économique, égalité physique, intellectuelle, etc. Impossible à réaliser pleinement mais la société peut faire des efforts plus ou moins grands pour réduire les écarts (fiscalité, sécurité sociale, instruction...). Les droits économiques et sociaux contribuent au progrès de l'égalité réelle (POUILLE,2008, p. 134).

The pandemic has not only generated the lethality of life, but of values imposed in the Constitution of the Federative Republic of Brazil. It is the phenomenon of lethargy to the production of equity, social justice and the common good, making health as an option/possibility for those who can adapt to the phenomenal world.



In the midst of the numbers, there are lives that are part of us, because they are part of our dying humanity.

6 FINAL CONSIDERATIONS

In the democratic state of Brazil, the high rate of vulnerable people living on the streets shows the inefficiency of state policies aimed at promoting the reduction of inequalities, the fight against extreme poverty, the imperative need for healthy housing, the right to education, access to work, the right to freedom that only exists when the human person has the minimum for a quality existence.

The dignity of the human person remains blurred and the people living on the streets are still invisible, despite the digital age that connects people instantaneously, with the circulation of information in the same way.

Furthermore, the pandemic situation for people in vulnerable situations is deep dissonance with the technological growth that should be the instrument to raise social and educational movements the citizenship of alterity for the promotion of minimal conditions and tending to prevent the extermination that impels our country to humanitarian, social and health chaos; to the extermination of the effectiveness of the principle of dignity, equality, freedom, life with quality.

During the Covid-19 pandemic, homeless people, besides the social isolation provided by social invisibility, become victims of ineffective and discontinuous governmental health policies (as several were highlighted as disjointed from the executive schedule), evidencing even more the lack of concretization of rights constitutionally outlined as core stone pertaining to confer not mere survival, but existence with quality. Rights that perish with the virus and its victims and that can be drafted on the perverse circle of pain-disease - death, burying on the negligence of government policies the rights to life, health, housing, work, education, fillers of the content of the principle of the dignity of the human person.



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