

THE CRIMINAL JUSTICE SYSTEM IN BRAZIL: A BRIEF ACCOUNT

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I. INTRODUCTION

Brazil embraces the Civil Law tradition, and therefore its legal system depends upon a systematic interpretation of written and general rules, passed by the legislature or, exceptionally, by the Executive. Nonetheless, the influence of Common Law practices is increasing. For instance, since 2004, the Brazilian Supreme Court is authorized to set mandatory precedents in exceptional circumstances, obliging both the Executive and lower ranks of Judiciary. Up to now, the Supreme Court has acted in 32 instances.

The Brazilian criminal justice system is framed by the 1988 Constitution, which includes dispositions about: (i) the elaboration of rules on criminal and procedural matters; (ii) the Judiciary and other essential institutions; (iii) the procedural guarantees; (iv) juridical international cooperation. In a lower hierarchy than the 1988 Constitution, the 1941 Code of Criminal Procedure and many sparse regulations address criminal investigation, prosecution and adjudication in a more detailed manner.

II. THE FUNCTIONING OF THE BRAZILIAN CRIMINAL SYSTEM OF JUSTICE

In Brazil, besides the Especial Justices, or Special Courts, (Military and Electoral Courts), there are Federal and State Justices. In general, the Federal Justice (Federal Courts) has jurisdiction over crimes involving the interests of the Federal Government and other crimes indicated by Article 109 of the Constitution. The competence of the State Justice (State Courts) is residual. The Federal Public Prosecutors act in the Federal Courts, investigating and prosecuting federal crimes, like currency counterfeiting; smuggling; federal tax dodging; evasion of social security contributions; slave labour; formation of cartels; money laundering; illegal transfer of money overseas; banking frauds; international drug trafficking; internet paedophilia; crimes committed by Internal Revenue employees, Federal Police officers or by personnel of any federal agency or department; environmental crimes, etc.¹ The

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¹ According to the Federal Constitution, Article 109: “The federal judges have the competence to institute legal proceeding and trial of: (...) IV — political crimes and criminal offenses committed against the assets, services or an interest of the Union or of its autonomous agencies or public companies, excluding misdemeanours and excepting the competence of the Military and Electoral Courts; V — crimes covered by an international treaty or convention, when, the prosecution having started in the country, the result has taken place or should have taken place abroad, or conversely; V-A — cases regarding human rights referred to in paragraph 5 of this article; VI — crimes against the organization of labour and, in the cases determined by law, those against the financial system and the economic and financial order; VII — habeas corpus, in criminal matters within their competence or when the coercion is exercised by an authority whose acts are not directly subject to another jurisdiction; VIII — writs of mandamus and habeas data against an act of a federal authority, except for the cases within the competence of the federal courts; IX — crimes committed aboard ships or aircrafts, excepting the competence of the Military Courts; X — crimes or irregular entry or stay of a foreigner, execution of letters rogatory, after exequatur, and of foreign court decisions, after homologation, cases related to nationality, including the respective option, and to naturalization; XI — disputes over the rights of Indians. (...) Paragraph 5. In cases of serious human rights violations, and with a view to ensuring compliance with obligations deriving from international human rights treaties to which Brazil is a party, the Attorney-General of the Republic may request, before the Superior Court of Justice, and in the course of any of the stages of the inquiry or judicial action, that jurisdiction on the matter be taken to Federal Justice”. This and all the quotations are from *Constitution of the Federative Republic of Brazil*: Constitutional text of October 5, 1988, with the alterations introduced by Constitutional Amendments no. 1/1992 through 64/2010 and by Revision Constitutional Amendments no. 1/1994 through 6/1994. — 3. ed. — Brasilia: Chamber of Deputies, Documentation and Information Center, 2010

State Public Prosecutors act in the State Courts and investigate and prosecute crimes like murder, robbery, fraud, and all the offenses not framed in the other Courts.

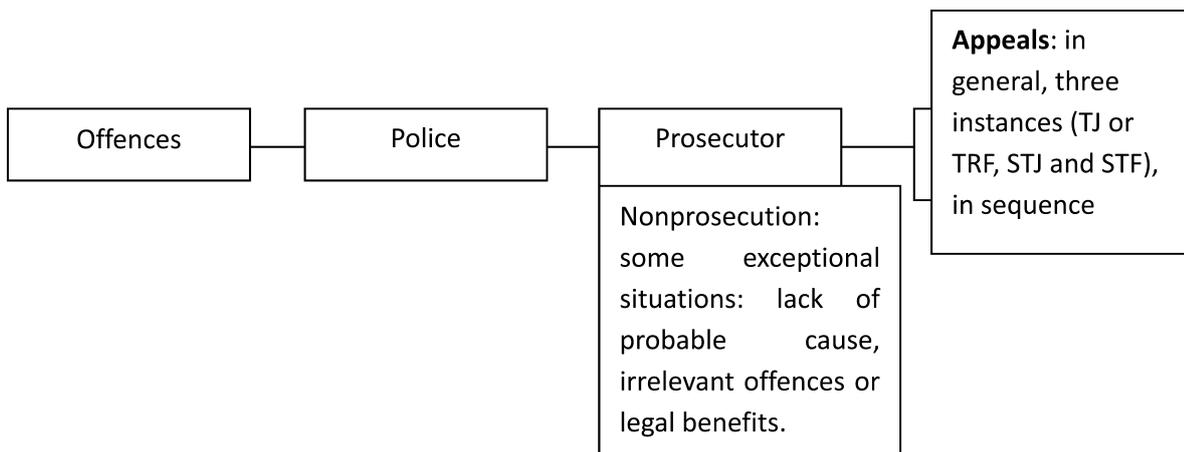
In essence, there are four different moments in the functioning of the Brazilian criminal system of justice: firstly, the investigative Police, the Public Prosecution or another legally authorized organ collects, if necessary, evidence of a fact that might be a crime and its agent (investigation); secondly, the Public Prosecution or, exceptionally, the victim accuses the possible agent (prosecution); thirdly, the Judiciary convicts or acquits the defendant (adjudication); fourthly, the criminal condemnation is implemented (execution).

During the first phase, there is an inquisitorial and not an adversarial system; the suspects may choose whether to be assisted or not by a lawyer, and, on their own initiative, may access non-sealed evidence regarding themselves. Judicial intervention occurs exceptionally, for instance, when a temporary prison is required.

In the second phase, the Prosecutor decides whether to sue or not. This decision is not discretionary, and whenever there is some evidence of a crime, there shall be an accusation. However, there are a few attenuations to this rule: (i) insignificant disconformities to criminal law may be considered irrelevant; (ii) some minor offences may not be investigated and tried if, given certain conditions, the possible agent voluntarily accepts light “penalties”.

In the third and fourth phases, there is a judicial process in an adversarial system; the legal assistance is mandatory and, in practice, ineffective to those who cannot afford private lawyers. It may be noticed that also during the investigation phase, the optional legal assistance will be guaranteed only to those who can afford private lawyers. With regard to criminal execution and imprisonment, Fingermann reports that Brazil maintains the fourth largest imprisoned population in the world, being exceeded only by the USA, Russia and China.² The author adds that “nearly half of Brazil’s incarcerated population is composed of pre-trial prisoners” and “80 per cent of the prisoners in Brazil are unable to afford a private lawyer”.³

The first, second and third phases — investigation until trial — will be the objects of deeper explanations. The next flowchart shows, briefly, how Brazil’s criminal system works.



A. Investigation

The agencies and organizations responsible for criminal investigations in Brazil are, mainly, the Federal Police (as the name explains, act in the whole country) and the Civil Police (that act in each State). The Federal Police investigate: (i) criminal offences against the political and the social order or to the detriment of property, services and interests of the Union and of its autonomous government

²Isadora Fingermann, “The challenges of access to justice and enforcement of the right to counsel in Brazil”, *Criminal Justice Matters*, 92:1, 24-25.

³Ibid.

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VISITING EXPERTS' PAPERS

entities and public companies (in one word, federal crimes), as well as other offences with interstate or international effects and requiring uniform repression as the law shall establish; (ii) illegal traffic of narcotics and like drugs, as well as smuggling, without prejudice to action by the treasury authorities and other government agencies in their respective areas of competence. According to the Brazilian Constitution, it is incumbent upon the civil police, except for the competence of the Union, to investigate criminal offences, with the exception of military ones. In other words, the Civil Police investigate crimes adjudicated by the State Courts and the Federal Police the crimes judged by the Federal Courts, the illegal traffic of narcotics and like drugs, smuggling and other offences with interstate or international effects requiring uniform repression as the law shall establish.

Also, there are other government agencies that investigate crimes in their respective areas of competence, although this is not their primary attribution. These agencies investigate when a criminal offence is discovered during the regular exercise of their legitimate functions. For instance: (i) The Environmental Agency (Ibama⁴) is responsible for investigating offences related to the environment; (ii) Internal Revenue Service (“Receita Federal”⁵) is responsible for investigating offences related with revenue frauds and other federal tax frauds; (iii) the Central Bank (“Banco Central do Brasil”⁶) investigates financial crimes; (iv) the Securities and Exchange Commission of Brazil (“Comissão de Valores Mobiliários- CVM”⁷) investigates offences in the securities market; (v) the COAF is the Brazil’s FIU — Financial Intelligence Unit — acting in anti-money laundering and countering the financing of terrorism activities.⁸

As said above, these agencies are not focused primarily on investigating crimes. They do so when, while developing their activities, they realize that a crime has been committed. In general, at the end of their activities, these agencies communicate to the Prosecutor’s Office, sending the evidence that an offence has occurred. Sometimes, just with the information sent by these agencies, it is impossible to initiate an immediate prosecution, so the prosecutor can complement the investigations, or it is possible to order the police to continue the investigation.

The investigation conducted by the Police is made in a police enquiry ruled by a chief police officer or police commissioner. These agents are graduated from law school and conduct the police enquiry under the supervision of the prosecutor. The judge acts in the investigation exceptionally, just when it is necessary to restrict the suspect’s rights or guarantees.

In Brazil, in general, public prosecutors cannot command the above-mentioned investigative organizations directly in a criminal investigation, but can request investigatory procedures and the institution of a police investigation. Nonetheless, there are few good examples of Joint Venture investigations, the so called “Task Forces” (like the *Banestado* case, that investigated the financial crimes related to the Bank of Banestado, in the Brazilian State of Paraná, with great results), where the Prosecutors can command the agents of other agencies, although there is no regulation of the Task Forces in Brazil.

According to the Brazilian Constitution, among other institutional functions of the Public Prosecution, it is their task to initiate, *exclusively*, public criminal prosecution,⁹ under the terms of the law (article 129, I) and to exercise external control over police activities (article 129, VII). According to a part of the doctrine and the case law, based on these constitutional articles, it is possible for the prosecutors to conduct their own investigation, grounded in the implicit power theory. In fact, a lot of corruption cases and important crimes were solved because of the prosecutors’ investigations, bringing to court a lot of politicians and agents used to impunity. In general, the prosecutors’ investigations are more efficient and independent than the ones conducted by the police, especially because the police

⁴More information available at <<http://www.ibama.gov.br>>, but only in Portuguese.

⁵More information available at <<http://www.receita.fazenda.gov.br/>>, but only in Portuguese.

⁶More information available at <<http://www.bcb.gov.br/?ENGLISH>>, in English.

⁷More information available at <<http://www.cvm.gov.br/ingl/indexing.asp>>, in English.

⁸More information available at <<https://www.coaf.fazenda.gov.br/conteudo-ingles/about-money-laundering>>, in English.

⁹Private prosecution in Brazil is possible in two cases. The first, when the criminal code said that a specific offence just can be prosecuted by the injured. The second, according to article 5º, LIX, of the Constitution: “private prosecution in the cases of crimes subject to public prosecution shall be admitted, whenever the latter is not filed within the period established by law”

officers do not have independence in their investigations and can be taken off the case by their superior, which is impossible when it comes to prosecutors.¹⁰

On the other hand, a part of the doctrine dissents about the possibility of prosecutor's investigation, based on the alleged abuses committed by the prosecution and the lack of legal regulation about the subject. In fact, there is no legal regulation about investigations conducted by the public prosecutors. Despite that discussion, it is common for prosecutors to investigate a lot of crimes on their own, especially crimes committed by police agents and corruption, with very good results. In this sense, to regulate these activities, there is a resolution (the level of which is below law) by the National Council of the Public Prosecution that regulates the investigation made by the prosecutors.¹¹ When the Prosecutor directly makes the investigation, he may interview the suspects and key witnesses directly. Furthermore, he is authorized to access public databases, to require information, exams, expert examination and documents from public and private authorities and request the police force to help the investigation.

The Grand Bench of the Supreme Court in Brazil has not decided yet whether it is possible for prosecutors to investigate, although there are other decisions of that court, from the benches,¹² accepting the prosecutor's investigation. The tendency of that Supreme Court is to accept the prosecutor's investigation at least in cases involving crimes committed by police officers and in other cases where the police do not have interest in investigating.

Very recently, there was a legislative proposal for changing the 1988 Constitution in order to restrict the legitimacy to conduct investigation solely by the Police, especially to forbid the prosecutor's investigation. This attempt, *inter alia*, has motivated several recent popular manifestations all over Brazil, and ended up being rejected by the Congress on June 25, 2013. There was a general belief that the proposed legislative alteration would propitiate impunity, as criminal investigations would become more unlikely, especially because the police crime clearance rate is very low, below 10%.

To sum up, there is a lot of discussion in this field in Brazil currently, but the tendency is to accept, although with limitations, the possibility of the prosecutors to investigate. In cases where the prosecutors investigate, the judge oversees the investigation, especially authorizing restrictive measure. Also, when a suspect's rights are disrespected, the judge may be required to correct the alleged abuse.

At this point, it is important to outline the investigative procedure. In fact, there is no procedure to be strictly observed. The president of the investigation (the police officer, in the police inquiry) has a relative discretionary power to determine the collection of evidence through the investigation. In other words, the strategy of the investigation is under the police officer's discretion. Despite that, the prosecutor, throughout the whole investigation, can interfere in this strategy, ordering the police to take specific measures or to obtain further proof. This is explained because the investigation is aimed to give the prosecutor the information needed to file a charge.

In general, the Brazilian Police does not have a good structure. There are a lot of crimes to investigate and little structure. In addition, especially in the State Police, unfortunately it is very common for police agents to be corrupted.

In general, the investigation is based just on acquiring statements from suspects, victims and key witnesses, as the primary means of gathering evidence, without the use of new techniques. Sometimes simple exams are made (as to prove the falsity of a document). In investigations related with drug trafficking, it is common to see the use of wiretapping. However, the Federal Police has been develop-

¹⁰ In Brazil, public prosecutors have equivalent status as the judges in terms of qualification, salary and guarantees of independence. Aside from disciplinary proceedings, they cannot be suspended from the performance of their duties

¹¹ Resolution n. 13/2006 can be obtained at: <http://www.cnmp.mp.br/portal/images/stories/Normas/Resolucoes/res_cnmp_13_2006_10_02.pdf>.

¹² The Brazilian Supreme Court is composed by 11 Justices, divided in two benches composed by five Justices each. In some cases, the Grand Bench (the eleven Justices together) votes to decide certain aspects, especially in important matters and when there is conflict between decisions among the two benches.

ing, since 1988, a better structure to investigate and sometimes to use new techniques of investigations.

During the investigation, the interviews of the suspect are, in general, documented in a written record, signed by the suspect. Generally, it has given the suspect the opportunity to confirm and to correct mistakes in the recorded statement. In some cases, the police records on video the interview, to give more reliance on the suspects' confession. To avoid further allegation of coerced confession — unfortunately still very common in Brazil — especially during detention, the police sometimes orders a medical exam, to show that no harm occurred during the interview. According to Brazilian regulation, in all cases the suspect's attorney can attend the interview conducted by investigative organizations.

The confession — documented on paper or on video — is able to be used as evidence to prove the defendants' guilt. Their statements, however, must be confirmed before the judge. According to article 200 of the Brazilian Criminal Procedure Code, retraction is possible in pre-trial confession. Due to that, if the confession before the Police is not confirmed in the judicial phase, it will be given little or no value. In Brazil, no one can be convicted in cases where the only proof against him is his own confession, according to articles 197 and 158 of the Brazilian Procedural Criminal Code.

In Brazil, the prevalent interpretation nowadays is that any interference with the suspect's privacy requires a warrant. Due to that, warrants are required to search in residences, in enterprises or to obtain data protected by constitutional secrecy (such as bank records, call logs and telephone communications, the secrecy of correspondence and other fiscal data). Judicial warrants are also necessary to authorize wiretapping, electronic surveillance, controlled delivery and "undercover agents".

Warrants are not required for personal searches, whether the suspect carries weapons or evidence. Finally, the Police and Prosecutors have access to the data containing personal information, like address, filiation and personal qualification, kept by the Electoral Justice, Banks, Internet Providers, Telephone Companies and others, without the necessity of a judicial order.

The investigation can last months and even years, until the expiration of the legal term. In certain periods of time (generally each 30 or 90 days), the Police must ask the prosecutor for an extension of the investigation. The prosecutor should, in this case, consent to the extension and determine the diligence the police must make during the period.

It is important to mention that the reported crime clearance rate in Brazil is very low, below 10%, and although it is difficult to measure, especially because the data are not reliable, it shows how inefficient the Brazilian criminal justice system is. Also, the system allows the defendant to indefinitely postpone the beginning of serving the conviction's sentence. This and other features give the sensation of impunity throughout Brazilian society, especially in offences like corruption, widely spread in society. In fact, in the 2012 Corruption Perception Index, Transparency International ranked Brazil 69th of the 174 jurisdictions covered by the index.¹³ According to Transparency International, some studies show corruption is now costing upwards of \$40 billion each year in Brazil.¹⁴

1. Pre-Indictment Detention

Regarding pre-indictment detention, according to the Brazilian Constitution (art. 5^o, subsection LXI), "no one shall be arrested unless in flagrante delicto or by a written and justified order of a competent judicial authority, save in the cases of military transgression or specific military crime, as defined in law".

In this way, the pre-indictment detention occurs, in general, if there is a warrant to arrest, issued by a judge, on the ground of (i) flight risk; (ii) risk of recidivism; (iii) risk that the suspect will destroy evidence or otherwise affect the investigation of the crime. The pre-indictment detention is only admitted whether there is probable cause and the crime has, in general, a statutory maximum penalty of at least 4 years. Pre-trial detention is only admitted if the use of other non-custodial solutions (such

¹³ <<http://cpi.transparency.org/cpi2012/results/>>.

¹⁴ <http://www.transparency.org/news/feature/brazil_one_million_people_demand_accountability>.

as bail, reporting to justice and electronic surveillance, for instance) are insufficient, taking for granted that pre-trial detention is used as an exceptional measure. Recently the Law 12.403/2011 was enacted, which changed a lot of aspects of pre-trial detention and changed the Brazilian system, especially creating a lot of alternative measures, to avoid, as much as possible, the use of detention.

The request of the detention could be from the prosecutor or the police officers (in this case, passing by the prosecutor). During the investigation, the judge cannot issue a warrant detention *ex officio*, although it is still possible during the trial. The suspect should be listened to, in general, before the expiration of the warrant, except whether there is risk of ineffectiveness of the measure. In this case, the detainee should present a reply after the detention. In Brazil, there is no detention hearing by the judge.

However, besides the warrant to arrest, the pre-indictment detention is possible when someone is caught while perpetrating a crime or immediately after it. In this situation, the offender can be arrested in *flagrante delicto*. It is important to mention that, although there is the right to silence, the police does not warn the detainee about this right in the moment of detention (but just before the interrogation). In other words, there is no similar warning as the “Miranda warnings”. The police, then, take the detainee to the police station and book him, although the criminal identification is exceptional.¹⁵

After the arrest, the police have 24 hours to obtain the statements of the witnesses and interview the detainee (custodial interrogation), making a report of the detention (called “record of the *flagrante delicto*’s detention”), to be sent to the judge and the prosecutor.¹⁶ This record indicates the circumstances of the prison and the legality of the detention. In some cases (offences with statutory maximum penalty lower than 4 years), after the report, the Police Officers can release on bail (*stationhouse bail*). In the other cases, the arrested will continue to be detained, until the judge’s decision. The detainee has the opportunity to be assisted by a lawyer during police interrogation, although it is not mandatory.

According to the Constitution, in case of *flagrante delicto*, the arrest shall be immediately informed to the competent judge — in practice, it occurs in 24 hours by sending a copy of the *flagrante*’s record to the judge — and the illegal arrest shall be immediately remitted by the judicial authority. After the communication and if the detainee was not released on bail by the police, the judge may release, with the use of one or several non-custodial measures. If the detention is necessary, the judge should issue a warrant to detain — and the suspect will continue to be detained.

The police or the prosecutor, except in the case of *flagrante delicto*, cannot detain a suspect without a judicial warrant, even in cases of urgency. In other words, there is no emergency exception and the police should obtain a detention warrant, unless the suspect is committing a crime or has just perpetrated it.

In Brazil, although there is no specific or explicit regulation, the maximum period to detain the suspect in pre-indictment detention is 10 days in State jurisdiction or 30 days in Federal jurisdiction. In some grave crimes — torture, illicit traffic of narcotics and related drugs, as well as terrorism, and crimes defined as heinous crimes — the pre-indictment detention could last for 60 days.

B. The Decision to Prosecute

At the end of the police enquiry, the police officer makes a brief and objective report, describing the diligence performed and the evidence obtained, and sends the police enquiry to the Prosecutor. The prosecutor has, then, three alternatives: (i) dismiss the case, if it is not possible to prosecute (for instance, where there is no probable cause related to the author of the crime or the materiality or if the offence is insignificant). The judge can disagree with the non-prosecution decision and, in these cases,

¹⁵ According to the Brazilian Constitution, “no one who has undergone civil identification shall be submitted to criminal identification, save in the cases provided by law” (Article 5º, subsection LVIII). The cases that the law allows the criminal identification are related to non-reliable documents or some types of crimes (as adulteration, fraud or forgery of documents).

¹⁶ In some small offences (with statutory maximum penalty not more than 2 years), the police do not make the report and interview the witness and the offender, releasing the offender on his or her own recognizance.

the superior organisms of the Public Prosecutor's Office will decide whether or not to prosecute; (ii) demand more investigation by the police; (iii) prosecute, if there is probable cause that an offence was committed. In this case, the police enquiry (or the previous investigation) and all the evidence collected go along with the indictment, during the whole trial.

C. Trial

The trial phase is an adversarial system, where the due process clause and a fair trial are granted to the defendant, with all the means related. In the first instance, in general, the cases are heard by a single judge, the same one that oversees the investigation. In other words, the competent judge is the same, from the beginning of the investigation until the first instance sentence. However, in cases involving crimes against life, such as homicide, the judgement is before a jury trial, formed by 7 lay citizens and the verdict does not have to be unanimous — a simple majority is sufficient. It is not possible to waive the right to a jury trial.

For crimes punishable by imprisonment for less than 2 years, there is a more simplified procedure that can lead to an agreement between the prosecutor and the suspects (called *transaction*). In these cases, if the suspect and his lawyer accept the proposition of a restriction, the case is dismissed.

In general, after the indictment, the procedures at trial begin. There is not a system of plea-bargaining in Brazil, where the defendant can plead guilty. There are just two benefits that mitigate the general rule: the transaction (see above) and the "suspension of the process". The latter allows the prosecutor to suspend the procedure, from two to four years, and, during that period, the defendant would be on a type of probation. The prosecutor considers some of these factors concerning the defendant and the crime: (i) the statutory minimum penalty should not be superior to 1 year; (ii) the offender's character and the circumstances under which the offence was committed; (iii) the defendant cannot be accused of another crime. If these factors are present, the prosecutor can offer the benefit and, if the defendant and his lawyer accept, the judge will suspend the process for, in general, two years. During this period, the defendant submits to some conditions and, in the end, the procedure could be dismissed. Besides that, the Brazilian criminal code does not allow summary procedure even when the defendant pleads guilty. Even in these cases, all the long and last procedure should be observed and the prosecutor has no discretion in the decision to prosecute.

If there is no suspension, the step-by-step from indictment to sentencing can be described as follows: (i) the judge analyses whether the accusation has probable cause and begins the trial, if so; (ii) after that, the defendant is summoned and presents an initial written reply, by his lawyer; (iii) on the ground of the defence's response, the judge can summarily acquit the defendant. If not, a hearing is appointed; (iv) on the occasion of these hearings, that are supposed to be unified, the victim, the witness and the expert witness testify (in general, maximum of eight for each part) and make their statements. After that, there is the judicial interrogation, when the defendant can remain silent, without any negative consequence. Then, the prosecutor and the defence should make their closing arguments, orally, in 20 minutes. At the end of the hearing, the judge should pass the sentence. This is the basic legal chronology of a criminal case.

Although this is the legal system, as a matter of fact it is very difficult to have a continuous and unified hearing. It is very common to have two or more hearings, for many reasons (difficulty to find witnesses, witnesses that do not appear, etc.) and, for that, it is very rare, in practice, to have a continuous and unified hearing. There usually is one hearing for the prosecutor's witnesses, one hearing for the defence's witnesses and a final hearing for the judicial interrogation. It is very common, too, for the prosecutor and the defence to require the judge to change the oral closing arguments for written allegations and the judge rarely sentences during the hearing. This is due to a very strong written tradition in Brazil.

The evidence collected during the investigation and the documents prepared by investigators are all referred to the judge after indictment. As previously said, the police enquiry or the previous investigation and the evidence collected during this stage go along with the indictment. In other words, the prosecutor cannot choose the best evidence appropriate to prove the defendant's guilt to the court. The evidence collected during the investigation, exclusively, cannot allow a conviction, although, according

to Article 155 of the Brazilian Criminal Procedural, it can be used to reinforce the evidence obtained in the trial phase.

Although it is not forbidden, the prosecutors in general do not prepare their witnesses before trial, probably because this may be misunderstood by the judge as an attempt to coerce the witness. However, the defence lawyers usually prepare their witness before trial.

As said before, if the confession before the police is not confirmed in the judicial phase it should be given little or no value. As a matter of fact, the judge should analyse the existing proof, to see if there is evidence to convict. In Brazil, no one can be convicted in cases where the only proof against him is his own confession, according to articles 197 and 158 of the Brazilian Procedural Criminal Code. In practice, however, it is common to see the courts admitting the pre-indictment confession with considerable value, although it is rare to convict only on the ground of the pre-indictment confession.

The evidence collected thorough the investigation is, in general, allowed to be submitted to the court. The only exception is the exclusionary rule, settled in the Constitution as follows: "evidence obtained through illicit means is unacceptable in the process" (Article 5^o, subsection LVI). For instance, evidence obtained with violation of privacy or bank secrecy and coerced confessions cannot be used to convict. Brazil does not adopt the rule against hearsay and, in fact, it is very common to see police officers testifying about the suspect's confession during the arrest, which is accepted by the case law.

Federal Statute n. 9.807/1999 regulates and organizes the system of victims and witnesses' protection (see pages 5-7). The Brazilian Criminal Code (Article 212), to prevent intimidation, authorizes the adoption of the video conference to hear the witness or the victim. If the required equipment is not available, the court may allow the hearing in the absence of the defendant. But the defence lawyer must always be present.

After the conviction, the defendant will remain at liberty until the final decision, unless there is the necessity of a warrant detention. The problem is that the parts could appeal on the ground of any argument and, besides that, there are almost three instances, what makes the beginning of the execution of the sentence very slow. In other words, the postponement of the final decision is very common, what allows, in a lot of cases, expiration of the statute of limitation and impunity.

III. CONCLUSION

The 1988 Brazilian Constitution structures our criminal justice system in a reasonable way. In practice, however, it does not work properly. Many different reasons have been pointed out to explain the problem, such as: (i) lack of governmental investment in building and maintaining prisons (building schools and hospitals is more appealing to voters, convicted people do not have the right to vote and temporary prisoners encounter many difficulties to vote); (ii) political influence over the high ranks of the Judiciary; (iii) an obsolete 1941 Code of Criminal Procedure, edited in a dictatorship and inspired by the fascist Italian Code of Criminal Procedure of 1930; (iv) absence of a systematic regulation on juridical international cooperation.

Nonetheless, there is hope. Brazil is receiving international pressure to improve conditions in the prisons, temporary prisoners were recently allowed to vote, important Brazilian politicians have been convicted of corruption in the recent Mensalão scandal, drafts of a new Code of Criminal Procedure and a Juridical International Cooperation Act are under discussion and many sparse federal rules, and the 1988 Constitution itself, have changed the essence of the 1941 Code of Criminal Procedure. Recently, as a result of popular demands to combat corruption, Law 12.850, of August 3, 2013, was enacted, aiming to regulate the new techniques of investigation to combat organized crime.