Ius Humani

Revista de Derecho. Vol. 14 (I) (2025), pp. 531-567. ISSN: 1390-440X — eISSN: 1390-7794

Recepción: 26-04-2025. Aceptación: 30-06-2025. Publicación electrónica: 17-07-2025

https://doi.org/10.31207/ih.v14i1.424

THE PRINCIPLE OF EXCEPTIONALITY IN CANADA'S, BRAZIL'S AND COSTA RICA'S JUVENILE PRE-TRIAL DETENTION

EL PRINCIPIO DE EXCEPCIONALIDAD EN LA DETENCIÓN PROVISIONAL DE MENORES EN CANADÁ, BRASIL Y COSTA RICA

Gabriela Brant[*]
Deborah Soares Dallemole[**]
Ana Paula Motta Costa[***]

Abstract: This research analyzes the institute of socio-educational pre-trial detention (PTD) and its relationship with the guiding principles of the Brazilian Child and Adolescent Statute (ECA), in particular, the principle of exceptionality, which characterizes this measure with the nature of ultima ratio. The hypothesis raised was that, currently, there is an expansive application of the PTD beyond the legal possibilities caused by the imprecision of the legislation that governs the institute. In order to reach such an understanding, a

[*] Researcher at the Youth and Violence Research Observatory (Observa JUV/UFRGS). Bachelor in Legal and Social Sciences from the Federal University of Rio Grande do Sul. ORCID ID: https://orcid.org/0000-0002-8986-3309. gabrielabrantf@gmail.com.

[**] Researcher at the Youth and Violence Research Observatory (Observa JUV/UFRGS). PhD candidate and Master in Law from the Federal University of Rio Grande do Sul (UFRGS). ORCID ID: https://orcid.org/0000-0001-6133-2250. deborahdallemole@gmail.com.

[***] Coordinator of the Youth and Violence Research Observatory (Observa JUV/UFRGS). PhD in Law from the Pontifical Catholic University of Rio Grande do Sul (PUC-RS). Professor in the Graduate Program in Law at the Federal University of Rio Grande do Sul (UFRGS). Postdoctoral researcher in Criminology and Juvenile Justice at the Center for the Study of Law and Society (Berkeley Law), University of California. ORCID ID: https://orcid.org/0000-0002-4512-1776. anapaulamottacosta@gmail.com.

comparative analysis was developed, whose object was the juvenile legislation of Canada and Costa Rica compared to Brazilian regulations, as these first two have a restrictive view of state power. It was observed, in the legislative field, that the Latin American legislation analyzed has a more principled nature –with the direct naming of such notions, but without directly including them in the material content of its norms–, while Canada has a legislation which absorbed such precepts in its articles, increasing the requirements for the determination of PDT and restricting the space for discretionary action by judges. In conclusion, it was found that there is a maintenance of the guardianship logic in the Brazilian legislation with the understanding that incarceration solves the problems (often of a social nature) related to the commitment of criminal infractions. Therefore, it is understood that the way in which the principle of exceptionality was incorporated into Brazilian legislation allows for spaces of judicial discretion and application of the restriction of freedom prior to the sentence in a broader way.

Keywords: Child and Adolescent Statute, Comparative law, Principle of exceptionality, Socio-educational measure, Socio-educational provisional detention.

Resumen: *Esta investigación analiza la institución de la detención provisional (DP) socioeducativa y su relación con los principios rectores del Estatuto del Niño y del Adolescente (ECA), en particular, el principio de excepcionalidad, que caracteriza esta medida con la naturaleza de ultima ratio. La hipótesis planteada fue que, en la actualidad, existe una aplicación expansiva de la DP, más allá de las posibilidades legales, causada por la imprecisión de la legislación que regula el instituto. Para llegar a esta comprensión, se desarrolló un análisis comparativo cuyo objeto fue la legislación juvenil de Canadá y Costa Rica en comparación con la normativa nacional, dado que estos dos países tienen una visión más restrictiva del poder estatal. Se observó, en el ámbito legislativo, que la legislación latinoamericana analizada tiene un carácter más principista –con la mención directa de tales nociones, pero sin incluirlas directamente en el contenido material de sus normas–, mientras que Canadá cuenta con una legislación que absorbió estos preceptos en sus artículos, con lo que aumentó los requisitos para la determinación de la DP y restringió el margen de discrecionalidad de los jueces. En conclusión, se constató que persiste la lógica tutelar en la legislación brasileña con la idea de*

que la privación de libertad resuelve los problemas (a menudo de naturaleza social) relacionados con la comisión de infracciones. Por lo tanto, se entiende que la forma en que el principio de excepcionalidad se incorporó en la legislación brasileña permite espacios de discrecionalidad judicial y una aplicación más amplia de la restricción de la libertad antes de la sentencia.

Palabras clave: *Derecho comparado, Detención provisional socioeducativa, Estatuto del Niño y del Adolescente, Medida socioeducativa, Principio de excepcionalidad.*

I. INTRODUCTION

This article aims to address the institute of socio-educational PTD, which is the only precautionary measure provided by the specific legislation, the ECA, for its application to adolescents involved in criminal investigations. The PTD is primarily governed by article 108 of the ECA, being restricted to a maximum of 45 days and subject to the guiding principles (brevity, exceptionality, and respect for the particular condition of being a developing person). Such a measure may be determined in cases where there is evidence of authorship, materiality, and the imperative necessity of its application. The principle of exceptionality, which serves as the key analytical focus of this study, refers to the understanding that incarceration should only be applied when no other measure is sufficient, meaning it is a measure of *ultima ratio*.

However, as will be discussed later, this research adheres to the idea that the ECA suffers several deep-rooted issues, particularly regarding the need for

conceptualization and definition of its terms. With the current legislation being vague and ambiguous, lacking the concrete application of its principles within the legal text, it creates broad discretionary spaces for judicial decision-making. The objective of this research, therefore, is to understand how foreign legal systems address the fundamental principle of exceptionality in relation to PTD within the regulations governing their juvenile justice systems. This will be explored through a comparative method.

This article is divided into five sections. The first provides an explanation of how PTD operates within the Brazilian legal framework. The second outlines the methodological approach used in this research. The third and fourth sections examine the legislation of Canada and Costa Rica, respectively. Finally, a critical analysis of the findings from each section is conducted, along with an assessment of the potential implications for Brazilian legislation.

II. PTD IN BRAZILIAN LEGISLATION

Socio-educational PTD, as regulated by the ECA, is the only precautionary measure applicable to adolescents during criminal proceedings. This form of detention, also referred to as precautionary care for adolescents in conflict with the law, must be ordered by a reasoned judicial decision. Given its characteristics, it is considered the juvenile equivalent of preventive custody (Shecaira, 2008), since it may be applied during the investigation or trial phases, provided the legal criteria are satisfied.

PTD may only be imposed when, in the event of a future conviction, the judge could apply the socio-educational measure (MSE) of confinement

(Shecaira, 2008). This is restricted to the situations outlined in article 122 of the ECA. Accordingly, one of the following conditions must be present: a) the offense involved violence or serious threat (article 122, I); b) there is repeated commission of serious offenses (article 122, II); or c) there was non-compliance with a previously imposed MSE (article 122, III). In addition, the imposition of PTD must respect the guiding principles of the ECA: brevity, recognition of the adolescent as a person in development, and exceptionality. The latter, which is the focus of this research, is rooted in the idea that confinement, as a form of deprivation of liberty, should never be considered a privilege or benefit, nor is it the most effective way to implement a socio-educational project. It is to be used only when no other alternatives are available (Saraiva, 2006). Thus, custody is not in itself a tool for "re-educating" the adolescent but a context in which socio-educational intervention takes place (Shecaira, 2008).

Additionally, article 174 of the ECA justifies PTD in cases of serious offenses with substantial social repercussions, for the adolescent's personal safety, or to maintain public order. However, such detention requires "sufficient" evidence of authorship and materiality, along with the "imperative necessity of the measure" (Brazil, 1990, article 108). The duration is limited to 45 days, without the possibility of extension, reflecting the legislator's intent to protect adolescents from prolonged exposure to state power, considering their inherent vulnerability as individuals in development.

These restrictions might initially suggest that the punitive power of the state is effectively limited. However, the ECA contains various drafting and conceptual flaws that permit extensive judicial discretion. The lack of clarity in the terminology (an issue that affects the ECA as a whole) is evident in the

provisions governing PTD. Terms such as "seriousness of the offense" (article 174), "significant social repercussions", and "imperative necessity of the measure" are never precisely defined, rendering the legal text vague and ambiguous.

Moreover, most of the criteria for applying PTD do not align with the precautionary function of such measures. That is, the justifications offered do not serve to safeguard the regular progression of the criminal process, which is the primary purpose of precautionary measures in criminal procedure (Lopes Jr., 2022). The internal inconsistency of the legislation is also evident in article 174 of the ECA, which raises constitutional concerns, particularly in cases where detention is applied for the adolescent's own safety. If the objective of maintaining public order violates the principle of strict legality in adult criminal justice (da Silveira, 2015), then depriving adolescents of their liberty under the justification of personal protection is even more problematic. Such reasoning implies that detention could benefit the adolescent, which directly contradicts the foundational principles of the responsibility model and the principle of exceptionality that underpin the ECA.

The vague terminology used in the legislation has led to a lowered standard for the reasoning required in decisions ordering PTD. While the Code of Criminal Procedure (CPP) considers a decision unfounded if it "employs indeterminate legal concepts without explaining the concrete reason for their application to the case" (Presidência da República, 1941), juvenile legislation lacks equivalent safeguards. Although legal doctrine interprets the requirement of a "written and reasoned order" in article 108 of the ECA as one that must present the factual and legal grounds –namely, evidence of authorship and materiality– supporting the judge's decision, along with compliance with

applicable legal criteria (Saraiva, 2006), judicial practice shows a notable divergence. Case law indicates that judicial justification often relies solely on the phrase "imperative necessity of the measure" (Batista, 2006), used vaguely and without specific connection to the facts. Even when evidence of authorship and materiality is referenced, it is generally assessed in a generic manner (Gutiérrez, 2014).

This situation reveals a paradox: the CPP, which applies to adults and subsidiarily to adolescents, is more specific and restrictive concerning the state's punitive powers and, in this respect, offers greater protection of individual rights than the ECA does for adolescents. This discrepancy constitutes a clear violation of the principle of legality, which is explicitly affirmed only in Law No. 12.594/12 (National Socio-Educational Assistance System Law), stating that no adolescent should "receive harsher treatment than that given to an adult".

Moreover, the absence of alternatives to detention, both for MSEs and precautionary custody, reflects a similar violation. The adult criminal system provides several mechanisms to reduce the use of PTD, including the nine precautionary measures listed in article 319 of the CPP, such as periodic court appearances, fines, and electronic monitoring. The CPP not only outlines these alternatives but also requires a detailed justification for PTD, explaining why less intrusive measures are inadequate. In contrast, juvenile justice lacks such options, leaving judges with no choice but full detention in all cases requiring close supervision, regardless of whether less invasive interventions might suffice.

The only area in which the ECA is more restrictive than the CPP is the 45-day limit on PTD for adolescents. While adult detention has no such fixed limit, the CPP mandates periodic review every 90 days to reassess whether the legal requirements remain valid, allowing for adjustment based on evolving circumstances (Sanguiné, 2014). The ECA, in turn, does not require review at the end of 45 days but mandates the adolescent's immediate release. Failure to comply constitutes a criminal offense under article 235 of the ECA, punishable by up to two years of detention.

Despite this formal safeguard, the effectiveness of the 45-day limit in practice is questionable. The internal inconsistencies and contradictions of the ECA contribute to systemic issues in the juvenile justice and socio-educational system, especially in relation to PTD. According to the National Socio-Educational Assistance System's (SINASE) Evaluation Survey, the national average duration of detention is 41.89 days. However, courts often disregard the prohibition against extending detention beyond 45 days, even in exceptional situations such as the 2020-2022 pandemic. This occurred in various jurisdictions, including the São Paulo Court of Justice (Silveira and Cáceres, 2022), the Federal District Court of Justice (da Silva and da Silveira, 2021), and the Rio Grande do Sul Court of Justice.

It is important to stress that any extension of PTD is unlawful. The ECA does not permit such extensions, regardless of whether the original conditions still apply. Unlike the CPP, the adolescent's release is not contingent on a change in circumstances. Despite proposals from other fields (Sobral and Matos, 2023), the argument that flexible interpretation of the time limit is in the adolescent's best interest is unfounded. International legal standards emphasize procedural celerity and respect for the adolescent's stage of development

(Saraiva, 2006), and abandoning this principle would be a significant regression. If no conviction is issued within the 45-day period, continued detention lacks legal justification and violates the principle of legality. Therefore, the judicial decisions that fail to comply with this limit constitute abuses of the State's power and are legally invalid.

Additionally, the number of adolescents in PTD further supports the notion of systematic disregard for legal principles, particularly the principle of exceptionality. In 2008, Brazil had 16 868 adolescents in closed MSEs[1], with about 22 % in PTD, according to the SINASE's 2013 Annual Survey. By 2017, this number rose to 24 803 adolescents, with 4832 in PTD, representing 19.40 % of those in closed settings.

These figures and patterns underscore the flaws in the ECA, especially in its provisions on PTD. While the ECA aims to provide legal protection, its normative intentions are only partially realized. In practice, remnants of the old guardianship model persist, and judicial practices continue to reflect a systemic pattern of violations of the legal principles that should guide PTD. This highlights the need to examine how similar institutions function in other legal systems.

III. METHODOLOGY

Given the above, this study aims to analyze how foreign legislations address the fundamental principles related to the PTD in the regulations governing their juvenile criminal justice systems. This analysis is conducted

[1] Total number of adolescents in MSE detention, MSE semiliberty, and PTD.

using the comparative method, because understanding how other nations legally approach a social phenomenon and the state response to it serves as a way to reflect on the Brazilian juvenile criminal justice system, and possibly to identify its shortcomings and potential solutions.

This research does not aim to interpret foreign legislation through the lens of Brazilian law. Instead, it seeks to identify similarities and differences (Jansen, 2019) between foreign equivalents of Brazil's PTD for adolescents, focusing on how the principle of exceptionality is applied in other legal systems. The study adopts a micro-comparative approach, which involves the comparison of specific legal institutions, issues, norms, or conflicts of interest (Zweigert and Kötz, 1998), allowing for greater depth and precision in the analysis.

To conduct this comparison, the research employs both functionalist and contextualist methods. The functionalist method, which is the primary approach used here, is grounded in the idea that legal comparison is only meaningful when it involves elements that perform equivalent functions (Zweigert and Kötz, 1998; Campos, 2016). The contextualist method, on the other hand, stresses the importance of considering the broader context in which the legal institution operates to ensure a valid and meaningful comparison (Campos, 2016).

Accordingly, to facilitate a dialogue between legal institutions that are functionally similar but structurally different, the selected elements must be conceptually broad enough to accommodate such variation (Zweigert and Kötz, 1998). In this study, the focus is on institutions that allow for the deprivation of

liberty of adolescents before a judicial conviction –that is, before a final ruling issued after due legal process–, based on an alleged unlawful act.

In addition, the comparative analysis incorporates the historical and socio-political factors that have shaped each country's legislation, and situates the current state of juvenile criminal justice within these broader contexts (Jansen, 2019). Although the scope of the article does not permit an exhaustive examination, the research avoids analyzing legislation in isolation, thus preventing a disconnect between normative texts and their practical application (Zweigert and Kötz, 1998).

In that sense, the comparison focuses on the juvenile justice systems of Canada and Costa Rica. Canada was selected because, despite allowing judicial discretion, its legislation sets relatively strict limits on pre-sentencing detention; for example, it does not permit the use of state custody as a substitute for protective measures (Alvi, 2012). Costa Rica, in turn, was chosen due to its juvenile justice system being recognized for its strong procedural guarantees and emphasis on protective principles, including strict conditions for the deprivation of liberty. Furthermore, Costa Rica's historical trajectory presents points of comparison with Brazil's experience.

Finally, while the significant legal and socio-cultural differences between these countries, especially in relation to Canada, are acknowledged, such contrasts are considered valuable. They offer the opportunity to critically examine the various legal responses to the issue under analysis and contribute to a broader understanding of possible alternatives.

IV. YOUTH CRIMINAL JUSTICE ACT (YCJA) AND PTD

The YCJA came into effect in 2003 with two theoretically contradictory main objectives: to emphasize preventive and extrajudicial measures to reduce youth institutionalization while simultaneously restoring public confidence in the justice system by increasing the severity of legislation for certain offenses (Bala and Anand, 2009). This contradiction arises from the presence of opposing understandings of youth justice within the law: on one hand, it incorporates the labeling theory and acknowledges that adolescent institutionalization negatively affects identity formation; on the other hand, it tacitly accepts that punishment "works" and creates a deterrent effect among other young people (Alvi, 2012).

This inconsistency appears throughout the provisions of the YCJA. The legislation grants exclusive jurisdiction to the Youth Justice Courts for any crime allegedly committed by an adolescent, defined as an individual between 12 and 18 years old, though its effects may extend to individuals up to 20 years of age (Davis-Barron, 2009). It upholds the notion of limited responsibility, ensures most procedural rights essential to due process, and increases the possibility of applying extrajudicial measures, especially for first-time offenders and those accused of minor crimes (Smandych, 2006). At the same time, the YCJA permits the transfer of adolescents aged 14 and older to the adult justice system for trial and sentencing in certain situations. It also preserved the "presumptive offenses" provision, originally introduced by the Young Offenders Act (YOA), which mandated the automatic transfer of 16- and 17-year-olds to adult court for specific offenses, though this provision was

declared unconstitutional in R. v. D.B. (2008) due to the reversal of the burden of proof (Davis-Barron, 2009).

In addition to other sentencing mechanisms established under the YCJA, custodial sentence limits vary: most offenses carry a maximum of two years; offenses that would result in a life sentence for an adult have a three-year limit; and in specific cases, such as first-degree murder, the maximum is six years[2]. When adolescents are transferred to adult court and sentenced as adults, there is no cap on penalties, although age-related factors may affect parole eligibility[3] (Bala and Anand, 2009).

In 2012, the Canadian government enacted the Safe Streets and Communities Act, introducing substantial amendments to the YCJA in response to court decisions, such as the invalidation of presumptive offenses, and in line with the "Law and Order" principle. These changes included broadening the definition of "violent crime" and clarifying various provisions, particularly those concerning PTD, which became more restrictive.

Currently, the provisions on PTD prior to sentencing are found in Part 3: "Judicial Measures of the YCJA", specifically within the sections on detention and release (§§28–31(6)), with §§29(1), 29(2), and 30.1 being the most relevant[4]. The YCJA also allows for the subsidiary application of Part XVI

[2] Ten years in total, consisting of up to six years of incarceration and up to four years of supervised conditional release (the measure equivalent to assisted liberty in the Brazilian system) [s. 42(2)(q)(i), YCJA].

[3] It is worth reiterating that only specific cases can be transferred for trial in the adult court, requiring requests and special procedures from the prosecution for this to occur.

[4] The abbreviation "s." refers to the section of the legislation being discussed, following the conventions of the foreign bibliography and legislation.

of the Canadian Criminal Code to address matters not explicitly covered by youth justice legislation [§28].

In response to both the YOA and the Supreme Court's ruling in R. v. J. J. M. (Davis-Barron, 2009, p. 185), §28.1 of the YCJA expressly prohibits the use of PTD as a substitute for social welfare interventions, including child protection or mental health services. In such cases, the judge must refer the adolescent to social assistance agencies, which are responsible for determining appropriate support [§35] (Bala and Anand, 2009). Although this restriction has faced academic criticism (Davis-Barron, 2009), it aligns with the Canadian Charter of Rights and Freedoms, and the United Nations Convention on the Rights of the Child, especially given that under the YOA, many youths were detained for social rather than criminal reasons (Bala and Anand, 2009).

Likewise, Section 29(2) outlines the cumulative criteria for PTD in subsections (a), (b), and (c) (Canada, 2021). Subsection (a) relates to the seriousness of the alleged offense, requiring that it either be a serious crime or that the adolescent have a history of pending charges or convictions [§29(2)(a)]. Notably, convictions do not need to be final –unlike the Brazilian notion of "trânsito em julgado"–, and pending charges are treated similarly to convictions. Canadian law defines "serious offense" and "serious violent offense" in §2(1), with the former referring to any offense punishable by five or more years of imprisonment, and the latter including crimes such as first-degree murder, attempted murder, manslaughter, and aggravated sexual assault.

The second criterion under subsection (b) requires sufficient evidence suggesting that (i) the adolescent is unlikely to appear in court; (ii) detention is necessary to ensure public safety, including the victim's protection and

prevention of reoffending; or (iii) for serious offenses, detention is required to maintain public confidence in the administration of justice [§29(2)(b)]. While the law does not define the factors judges must consider under (i) and (ii), allowing for broad discretion, PTD based on public confidence (subsection iii) must consider an illustrative list of four elements: the apparent strength of the prosecution's case, the seriousness of the offense, aggravating circumstances such as firearm use, and the potential sentence length upon conviction (Bell, 2011).

The third criterion requires that no alternative measures are available that could: (i) reduce the risk of the adolescent failing to appear in court; (ii) protect the public from potential harm posed by the adolescent; and (iii) maintain public confidence in the administration of justice, depending on the justification invoked under the second criterion [§29(2)(c)]. As previously stated, these three criteria are cumulative, and the judge must justify detention by establishing at least one basis within each category. However, both §§29(2)(b) and 29(2)(c) employ the phrase "the judge or justice is satisfied, on a balance of probabilities", which anchors the decision-making process in judicial discretion and distances it from strictly objective standards.

Regarding procedural timelines, there is no maximum duration for PTD, nor does the legislation require expedited proceedings for cases involving detained adolescents (Bala and Anand, 2009). Nonetheless, §30.1 of the YCJA mandates a review every 30 days for cases in which release or bail has not been granted. These reviews follow the adult procedure set out in §525 of the Criminal Code.

PTD is further limited by the requirement that the prosecution demonstrate the inadequacy of release or bail, with or without conditions [§29(1) of the YCJA and §515(2) of the Criminal Code]. The available release conditions are listed in §515(4), including: (a) appearing in court as required; (b) remaining within a designated jurisdiction; (c) notifying authorities of changes in address, employment, or occupation; (d) avoiding contact with victims, witnesses, or associated individuals; (e) refraining from visiting certain locations; (f) surrendering all passports; (g) complying with any protective conditions for victims or witnesses; and (h) observing any other reasonable conditions imposed. These provisions limit the use of PTD by making available to youth the same alternatives offered to adults, although subparagraphs (g) and (h) leave considerable room for judicial subjectivity.

Additionally, the YCJA stipulates that unconditional release should be the default [§29(1)]. The imposition of the conditions listed above is only permitted when three requirements are met simultaneously: the measure is necessary to ensure the adolescent's appearance in court or to protect the victim; the condition is reasonable given the circumstances of the offense; and the adolescent is capable of complying with it (Bala and Anand, 2009).

In practice, the juvenile justice system may not fully reflect the "Law and Order" momentum that influenced some legislative reforms, yet it clearly demonstrates the impact of the 2002 and 2012 legislative changes. These reforms contributed to reducing the number of custodial sentences and limiting the use of PTD for adolescents.

As illustrated in Figure 2 below, data from the Canadian federal government allow for an overview of the number of adolescents entering the

youth justice system through custodial sentences and PTD between 1997/1998 and 2021/2022. Until 2001/2002, the year before the YCJA came into effect, both measures were widely applied, with an annual average of 15 614 adolescents in PTD and 16 261 in custody. This pattern changed in 2002/2003, when the number of adolescents in custody declined by over 30 % (to 12 343). This downward trend continued gradually, with the number reaching 4635 in 2011/2012, roughly 40 % of the 2002 figure.

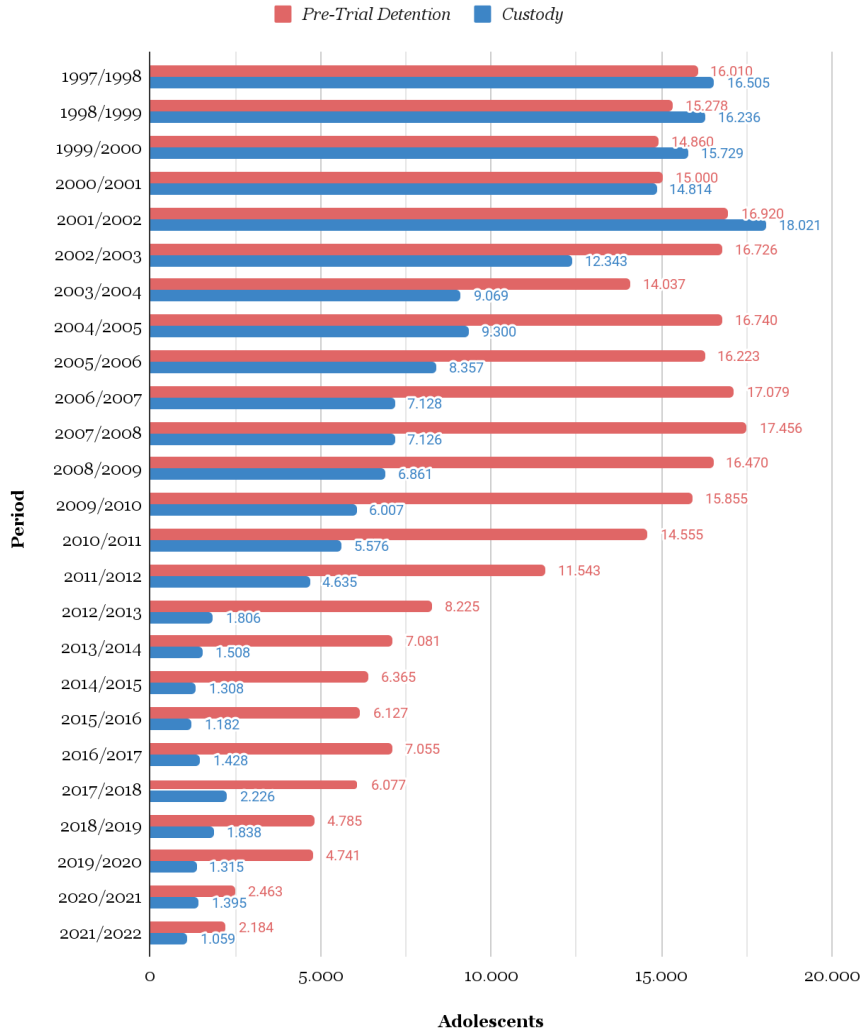
However, PTD did not follow the same trajectory. While custodial sentences decreased, PTD remained relatively stable, peaking in 2007/2008 with 17 456 adolescents detained without conviction and maintaining an annual average of 15 668. This trend shifted in 2012/2013, following the YCJA amendments, which led to a reduction in PTD cases from 11 543 to 8225 in a single year. The decline continued in subsequent years, reaching 2184 in 2021/2022, a reduction of over 70 % compared to 2012/2013.

Finally, custodial sentences were also impacted by the 2012 amendments. The number of detained adolescents fell from 4635 in 2011/2012 to 1806 in 2012/2013, with an average of 1507 detainees annually between 2012/2013 and 2021/2022.

Figure 1

Number of adolescents in PTD and custody (1998-2022)[5]

[5] The "custody" data includes the numbers related to adolescents in secure custody, open custody, and community portion of custody supervision, the latter being part of the custodial sentence determination, even though the adolescents are no longer confined. Thus, data on "deferred custody and supervision" were not included. According to the Canadian government, "The Youth Criminal Justice Act (YCJA), which came into effect on April 1, 2003, replacing the Young Offenders Act (YOA), stipulates that the final third of most custodial sentences must



Note. Taken from *Youth releases from pre-trial detention, by length of time served and sex,* by Statistics Canada, 2023a, https://n9.cl/qb3x2w

be served under community supervision" (Statistics Canada, 2023b, p. 1), which includes the community portion of custody supervision. As for the PTD data, only figures explicitly categorized under this term were considered, excluding the number of adolescents in "provincial director remand", which is the Canadian equivalent of Brazil's "internação-sanção" (sanction-detention) measure.

Despite that, it is important to question the fact that, even with the 2012 legislative changes, PTD accounts for more than twice the number of adolescents serving a custodial sentence. This contrasts with countries like Brazil, where PTD accounts for only 20 % of incarcerated adolescents. In Canada, the opposite is observed: between 2012/2013 and 2021/2022, adolescents sentenced to custody represented, on average, only 30 % of incarcerated youth.

Thus, it is evident that the ideological contradictions underlying the YCJA have had a significant impact on the provisions regarding PTD and its procedures. Some sections conflict with international human rights instruments, while others represent advancements in juvenile justice legislation. This directly influences the practical reality of youth incarceration; while custodial sentences are more restrictively applied, PTD does not appear to be used with the same level of caution.

V. JUVENILE CRIMINAL JUSTICE LAW (LJPJ) AND PTD

The paradigm of the minor as an object, as in Brazil, only began to be challenged in Costa Rica in the late 1980s and early 1990s, with the 1989 International Convention on the Rights of the Child having a significant impact on Latin American legislation and leading to the approval, in 1996, of the current LJPJ in Costa Rica (Llobet, 2018).

The LJPJ is grounded in the Doctrine of Integral Protection, which, as previously noted, recognizes children and adolescents as rights holders and, therefore, includes their rights within the category of human rights. It also

adopts a responsibility model that assigns limited accountability to adolescents for their actions. Compared to the previous framework, the current legislation is more comprehensive, addressing material, procedural, and enforcement aspects of the juvenile justice system. It maintains the principles of specialized justice and dedicated juvenile courts (Sotomayor, 1997), prohibits indeterminate sanctions, and establishes the Criminal Procedure Code as a subsidiary framework for situations not covered by the specific legislation.

The LJPJ applies to adolescents between 12 and 18 years of age. In this context, a major innovation was the classification of youth into two age groups (12 to 15, and 15 to 18 years old), allowing for differentiated state responses, including restrictions on the applicable sanctions (Llobet, 2018, p. 43). The legislation prioritizes avoiding deprivation of liberty due to its negative consequences and emphasizes the explicitly pedagogical nature of the system, which aims at the adolescent's personal development and reintegration into society (Sotomayor, 1997).

Moreover, the sanctions established by the LJPJ fall into three categories: socio-educational sanctions, guidance and supervision orders, and custodial sanctions (article 121), totaling 14 options. The first group includes open sanctions similar to those in the ECA, such as warnings and supervised release. The second group consists of judicial orders and restrictions affecting the adolescent's social conduct, such as prohibiting contact with certain individuals or visiting specific places (Burgos-Mata, 2016). Regarding custodial measures, paragraph C provides for house arrest, part-time detention, and detention in a specialized center; the most severe and most frequently applied sanction (Burgos-Mata, 2016). For adolescents up to 15 years old, the maximum custodial term is 10 years, and for those between 15 and 18, it is 15

years[6]. This measure is only applicable for intentional offenses carrying prison terms longer than six years or in cases of non-compliance with a prior sanction (Beloff, 2007).

PTD is governed by articles 58, 59, 60, 87, and, complementarily, 131 of the LJPJ. It may be imposed by a judge upon receipt of the accusation (article 87), provided its exceptional nature is respected, as established in article 59. This article states that "pre-trial detention shall be exceptional, especially for those over twelve and under fifteen years old" (Ley 7576 de 08/03/1996), and that no less severe measure is appropriate for the specific case.

Article 59 also sets the time limits for PTD: a maximum of two months, extendable for an additional two months upon review by a higher court, for a total of four months. In the same way, article 60 further mandates that cases involving adolescents in PTD must be prioritized in the judicial system to ensure the shortest possible detention period. According to article 58, PTD must be served in a specialized detention center, in areas separate from those housing-sentenced adolescents. Importantly, the LJPJ does not require a reassessment of the procedural risk that originally justified the PTD after the four-month period; there is no provision mandating ongoing risk evaluation to justify continued detention.

[6] It is interesting to mention that these time limits were modified and determined during the legislative process, and are currently heavily criticized by legal scholars for contradicting the guiding principles of the legislation, such as the principle of brevity (Beloff, 2007). The original bill, which was developed in collaboration with some legal scholars in the field, including Dr. Carlos Tiffer Sotomayor, initially proposed maximum limits of three and five years for the respective age groups (Llobet, 2008, p. 44).

As for article 58, this explicitly defines PTD as a precautionary measure within the juvenile process, outlining three possible justifications for its imposition: if the adolescent's release would pose a) a reasonable risk of evading justice; b) a danger of destroying or obstructing evidence; or c) a threat to the victim, complainant, or witness. These grounds aim solely to protect the criminal process, which is the exclusive purpose of precautionary measures (Lopes Jr., 2022). Notably, the juvenile legislation does not recognize recidivism or repeated offenses as valid grounds for PTD. However, some interpretations within Costa Rican legal doctrine and by the Juvenile Criminal Superior Court have applied the Criminal Procedure Code to justify PTD based on the risk of recidivism, to the detriment of adolescents (Campos and Vargas, 2000).

Regarding alternatives to PTD, article 87 of the LJPJ states that, upon receiving the accusation, the judge may impose PTD or any other supervision and guidance orders provided by law (as mentioned above), which may not exceed six weeks in duration, with no mention of the possibility of extension. Although the law does not explicitly establish a hierarchy between PTD and less restrictive measures in this article, it can be inferred, considering the exceptional nature of PTD as addressed in article 59, that the judge must justify the inadequacy of supervision and guidance orders in the specific case when deciding on PTD.

Finally, when it comes to the practical application of juvenile legislation, what can be mentioned is that, according to the 2012 Diagnostic Report on Costa Rica's Juvenile Criminal System, between 2006 and 2012, there was an average of 32 adolescents in PTD, with a growing trend over the years, reaching a peak of 62 adolescents in 2012. However, beyond this, further

analysis is impossible, as the current information provided by the Costa Rican government does not specify details regarding PTD. Thus, despite this researcher's intentions, we proceed to the comparative analysis of the studied legislation without a detailed examination of Costa Rican data due to their absence[7].

VI. CRITICAL ANALYSIS

This section aims to explore the similarities and differences between the legislation of the three countries examined in this study (Brazil, Canada, and Costa Rica) with a particular focus on PTD and how each legal framework is structured to uphold the principle that such measures should remain

[7] And here is a brief reflection on the difficulty of obtaining criminal data, both historical and up-to-date, born from the challenging experience this researcher had while writing this section. Between Canada, Brazil, and Costa Rica, one could say that the entire spectrum of data availability was witnessed. Canada, as discussed, had specific information on the juvenile justice system dating back to 1998, updated annually, with various methodological explanations about the presented data, in addition to making them available in an interactive table that is easily accessible and intuitively manageable.
Brazil, as addressed in Chapter 2, does the bare minimum regarding data availability. It produces supposedly "annual" surveys that are delayed (when they are even produced, given that there has been no SINASE Survey since 2017), containing little information and even less quality analysis (such as the never-corrected error in the 2017 Survey regarding the figures on semi-liberty and provisional detention on pages 29 and 32).
Finally, it cannot even be said that Costa Rica does the bare minimum, as its information is provided together with adult data, without any possibility of separation, offering a meager amount of details (the current website, Annex C, does not include any information on pre-trial detention, for example) and an outrageous absence of methodological explanation, with tables and systems that are entirely incomprehensible, even if colorful.
In this sense, one must ask who and which entities benefit from the absence of numbers regarding the penal system and from the inability to develop in-depth and high-quality analyses of current criminal policies. Unfortunately, there is no time to delve into this topic in this work, but the need to investigate why researching in Brazil –and in Latin America in general– is evident.

exceptional. The practical application of these laws is also considered, albeit secondarily.

All three countries experienced comparable historical trajectories in the evolution of their juvenile justice systems, marked by the phases of penal indifference, the tutelary model, and the responsibility model. Across these contexts, impoverished youth were commonly associated with "moral vices" and, by extension, with criminality, prompting varied state responses during the adoption of the tutelary model.

The primary distinction lies in the timing of these legislative developments. Canada implemented new tutelary legislation as early as 1908. Brazil followed in 1927 and reinforced the model in 1979, while Costa Rica officially adopted it in 1963. A similar pattern is evident in the transition to the responsibility model, which was introduced in Brazil and Costa Rica following the 1989 International Convention on the Rights of the Child. This led to Brazil's ECA in 1990 and Costa Rica's LJPJ in 1996. In contrast, Canada began applying the responsibility model earlier, with the YOA in 1985, later consolidated and supplemented by international standards in the YCJA of 2002.

Canada's earlier implementation of the responsibility model also made its juvenile justice system more susceptible to ideological shifts originating in the United States in the late 1990s, particularly the "Law and Order" movement. This influence shaped the drafting of the YCJA, whereas its impact reached Latin America more gradually. For example, Brazil introduced its first legislative measures influenced by this doctrine in 2006, with Law 11.343 on drug-related offenses, and in 2007, with Law 11.464, which amended the Heinous Crimes Law.

Currently, juvenile justice systems in all three countries reflect a shared understanding of the adverse effects of full custody, the importance of procedural safeguards, and the need to define the temporal limits of imposed measures. They also emphasize the application of less intrusive sanctions before resorting to detention. However, two key aspects distinguish the foreign systems from Brazil's and are especially relevant here: the terminology used and the position on indeterminate custodial sentences.

The first distinction involves the language employed in juvenile justice, particularly how terminology is used to obscure the penal and punitive nature of state action, even under a responsibility model. In Brazil, since the enactment of the ECA in 1990[8], there has been an ongoing doctrinal debate over whether MSEs carry a penal nature. While this debate lies outside the scope of this study, it has led some scholars to oppose the term "Juvenile Criminal Law" in favor of "socio-educational law" or similar alternatives, given that one of the stated purposes of MSEs is the adolescent's re-education. This dispute is reflected in the terminology adopted by the ECA, which attempts, often superficially, to avoid penal connotations. For instance, crimes and misdemeanors are labeled as infractions; arrest *in flagrante delicto* becomes apprehension *in flagrante*

[8] This conflict was not included among the topics of this research because, for this author, it does not constitute a relevant subject of discussion. By allowing the state to take interventionist action through deprivation of liberty in response to the commission of a crime or misdemeanor as provided for in the Brazilian Penal Code, it becomes clear, in the author's opinion, that the matter has a punitive and criminal nature.
This research is based on the premise that juvenile discipline is part of criminal law and follows the doctrinal understandings of this field, such as the necessity of procedural criminal guarantees in the juvenile criminal process. These guarantees aim to balance the participants and protect the accused from the power of the state, just as in the adult criminal process.

delicto; prison sentences become MSEs; and indictment becomes representation. These are changes in form, not in substance.

This practice is either absent or only minimally present in the analyzed legal systems. In Costa Rica, legal doctrine explicitly identifies the use of the term *measures* as a remnant of the tutelary model. Under the responsibility model, which recognizes the special and limited accountability of adolescents, the appropriate terminology is "sanctions" (Maxera, 1992), thereby rejecting euphemistic language that obscures the coercive nature of state intervention (Burgos-Mata, 2005).

Canada, by contrast, systematically adopts the terminology of the Criminal Code in its YCJA, clearly stating that the terms used have the same meanings as in adult criminal law [s. 2(2)][9]. With the sole exception of replacing *prison* with *detention* –a term that still accurately reflects the deprivation of liberty–, the YCJA retains terms such as *custody*, *offenses*, and *bail*.

Unlike Brazil, neither Canada nor Costa Rica exhibits the doctrinal conflict regarding the penal nature of juvenile legislation. In both systems, this nature is explicit and undisputed (Bala and Anand, 2009)[10]. The YCJA itself defines the law as "an act in relation to criminal justice". This clarity prevents the persistence of tutelary model remnants, such as the idea of custody as beneficial, the absence of procedural guarantees, or paternalistic judicial interventions.

[9] 2 (2) Unless otherwise provided, words and expressions used in this Act have the same meaning as in the Criminal Code.

[10] "An Act in respect of criminal justice for young persons and to amend and repeal other Acts".

This connects directly to a second area in which Canada and Costa Rica diverge from Brazil: the indeterminate duration of custodial MSEs, arguably the most glaring legacy of the tutelary model within the ECA. In Brazil, custodial MSEs are imposed without a fixed term, subject only to a maximum of three years and periodic reviews every six months. According to Brazilian scholars who support the ECA, this indeterminacy differs from that of the tutelary model (García, 2010), as it acknowledges the individual development of each adolescent (Batista, 2006) and respects their condition as persons in development. Based on this reasoning, the principle of proportionality is considered less central in juvenile justice (Shecaira, 2015). However, in practice, indeterminacy has come to function as a form of prolonged punishment.

Thus, defending this characteristic is problematic, particularly when it involves arguments suggesting a "natural" attenuation of proportionality; a fundamental principle of criminal law. García (2006) later revised his position, emphasizing the discretionary and subjective nature of this indeterminacy, framing it as part of the broader interpretative crisis surrounding the ECA. The absence of a correlation between the offense committed, the adolescent's social conditions, and the sanction imposed undermines both the doctrine of integral protection and the rule of law by disregarding the principles of proportionality and equality (Oliveira Jr., 2014).

Moreover, this practice violates the principles of individualized sentencing and legality. Costa Rican doctrine expressly opposes the possibility of indeterminate detention (Maxera, 1992), and article 26 of Costa Rican law explicitly prohibits the imposition of indeterminate sanctions under any

circumstances[11]. The same principle applies in Canada, which required fixed sentencing durations as early as the 1985 YOA. Finally, the current YCJA reinforces this requirement, mandating that judicial decisions specify the exact duration of the sentence in days or months [s. 42(4)] (Bala and Anand, 2009).

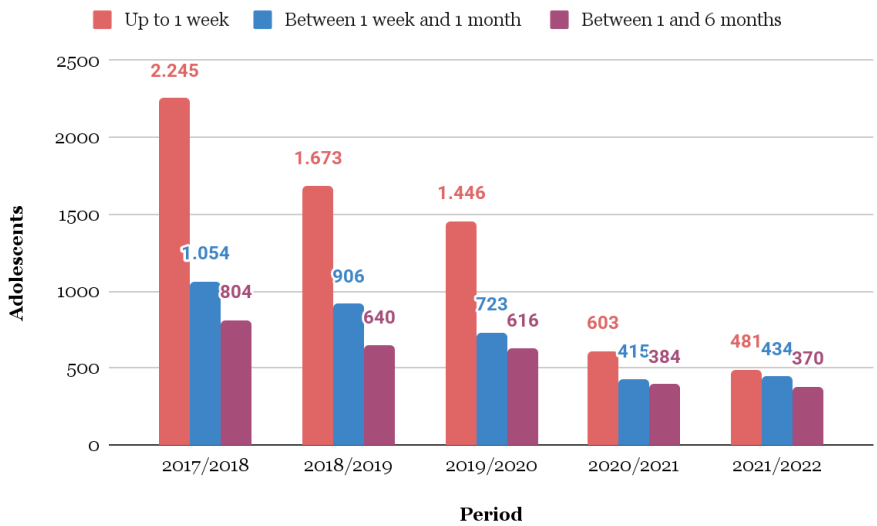
On both points (the use of euphemistic language and the acceptance of indeterminate custodial measures), it is evident that Brazilian legislation has not sufficiently distanced itself from the tutelary model. The ECA's retention of certain "salvationist" elements reveals a continued reliance on discretionary and expansive state and judicial powers, hindering the full development of the responsibility model.

Figure 2

Length of time in Canadian PTD (2017-2022)[12]

[11] Article 26. Principle of determining sanctions. Indeterminate sanctions may not be imposed under any circumstances. The foregoing does not exclude the possibility of the minor being released early.

[12] It is important to mention that a considerable number of adolescents were released in these years without their time of compliance being accounted for. This number has been clearly decreasing over the years, but still reached close to one-third of the adolescents released in 2021/2022 (Statistics Canada, 2023a). In any case, since Figure 2 works with absolute numbers, there is no direct influence that can be observed at the moment. However, the absence of this information may distort the analysis.



Note. Taken from *Youth releases from pre-trial detention, by length of time served and sex,* by Statistics Canada, 2023a, https://n9.cl/qb3x2w

Therefore, it is visible in this figure that there has been a general decrease in adolescents in PTD in Canada, as discussed previously. However, more relevant is the fact that, even without provisions explicitly defining this, in the last five years, approximately 50 % of adolescents in PTD were released within a month, which is less than the maximum time allowed in both Brazil and Costa Rica. This calls into question how important it is, in the context of the juvenile system, for legislation to explicitly establish protective principles in the face of the concrete restriction of the state's punitive power, which is the dichotomy seen between the Latin American legislations and the Canadian one.

In that sense, the YCJA, while acknowledging its alignment with the United Nations Convention on the Rights of the Child and emphasizing the appropriateness of extrajudicial measures in addressing juvenile delinquency, does not explicitly incorporate the principle of exceptionality regarding the

detention of adolescents; nor does it, as Costa Rican legislation does, establish a principle of prioritizing cases involving adolescents in PTD. Nevertheless, the YCJA stands out as the most detailed and comprehensive juvenile criminal law among those analyzed, and, in practice, it is also the most restrictive concerning the use of PTD.

For Latin American scholars, accustomed to principle-based frameworks like the ECA and LJPJ, which grant broad discretionary power to judges, the contrast posed by the YCJA prompts critical reflections on the assumption that simply enshrining protective principles in legislation is sufficient to curb punitive tendencies expressed through judicial decisions. While Canadian legislation remains influenced by the "Law and Order" ideology and is not ideal in all respects, the significant decline in the number of institutionalized adolescents (whether sentenced or in PTD) demonstrates that legislative reform plays a key role in shaping criminal policy. It also shows that even within a national history marked by detention and incarceration, less interventionist alternatives can be developed and implemented.

In this context, it becomes clear that the PTD MSE in Brazil does not align, in practice, with the principle of exceptionality established by the ECA. The notion of custody as an *ultima ratio* measure remains largely confined to legislative, doctrinal, and judicial discourse and is not effectively reflected in the law's structure or its application. The absence of this principle in the concrete language of the ECA, whose articles remain vague and general, suggests that its mere mention is mistakenly presumed sufficient to limit the use of PTD.

This raises an important question: to what extent does the inclusion of the principle of exceptionality –without the effective implementation of its core concepts– actually function as a protective element within the juvenile justice system? As noted, the principle emerged alongside the adoption of the doctrine of integral protection and the recognition of children and adolescents as rights holders. In theory, it marked a break from the previous tutelary model by rejecting the notion that custodial measures are beneficial. However, the analysis indicates that, in Brazil, its incorporation has had the opposite effect: the principle of exceptionality has come to represent a renewed commitment to the logic of the tutelary model.

This principle was introduced during a transitional period in juvenile law, when efforts were being made to limit the state's power over adolescents; a power that had previously faced no real constraints. Yet its broad and imprecise formulation in the legislation has created a flexible framework for applying PTD. Unlike Canada, which establishes three cumulative legal criteria, or Costa Rica, which defines three specific conditions under which detention may be applied, Brazil lists general grounds for PTD in article 108 of the ECA and leaves room for broad interpretation through the inclusion of "exceptional cases".

This situation calls for a deeper inquiry: is the lack of concrete restrictions on PTD a flaw within a system designed to be protective, or does it reflect the actual functioning of a system that, despite its rhetoric, continues to treat adolescents as objects of intervention? While the discourse has changed, the practice remains interventionist. The system continues to appropriate protective terminology –today framed as "best interests of the child", "re-

education", and "social reintegration", and previously as "salvation", "treatment", or "protection"– to justify the exercise of state control over vulnerable youth. In this context, the principle of exceptionality operates less as a safeguard and more as a legal device that legitimizes the provisional restriction of one of the most fundamental rights: freedom of movement, without a conviction or final judgment.

In the same line, if the intervention advocated by the "child savers" under the tutelary model represented a "profound commitment" to mechanisms of social control (García, 2006, p. 9), then the principle of exceptionality, as introduced in the ECA, reflects a similar commitment to judicial decisionism and the continued, widespread institutionalization of adolescents.

To summarize, the central research question of this study was: how does the principle of exceptionality function in the application of PTD within the juvenile justice systems of Costa Rica and Canada, compared to Brazil? The findings demonstrate that, in the Brazilian context, the principle, due to its lack of concrete implementation, contributes more to expanding the use of PTD than to restricting it; that is, it serves to maintain the legacy of the tutelary model within a socio-legal framework that claims to protect the rights of children and adolescents.

VII. CONCLUSIONS

This research aimed to analyze the institution of provisional socio-educational detention from the perspective of one of the guiding principles of the ECA: the principle of exceptionality. For that, three main characteristics of

this measure were addressed: its criteria for application, the existence of alternative precautionary measures, and time limitations.

In the Brazilian context, the application of PTD requires sufficient evidence of authorship and materiality, as well as proof of the imperative necessity of the measure. Additionally, it is restricted to a duration of 45 days and is affected by the governing principles of the ECA. However, it is evident how the general issues of the ECA (vagueness, generality, lack of definitions) also affect the articles regulating PTD, allowing for broad judicial discretion and reducing limits on the state's punitive action.

This situation is not observed in the Canadian juvenile legislation and is found in a slightly different form in Costa Rica. It is noted that Canada, despite not explicitly naming exceptionality, has absorbed this notion into its legislative text by including a greater number of cumulative criteria for applying PTD, creating alternative precautionary measures, and, even without establishing a maximum time limit, requiring a burden of justification for the decision that prevents most adolescents from having the measure extended after the first review.

Costa Rica, on the other hand, similarly to Brazil, has a more principle-based legislation, naming its guiding principles without effectively restricting state power; however, Costa Rican legislation innovated by requiring only criteria of precautionary nature, as well as by mandating that a higher court reviews the ruling to extend PTD. Furthermore, both legislations contrast with the ECA by providing various types of precautionary measures: Canada applies the same ones used for adults, while Costa Rica extends its supervision and

guidance measures to the pre-sentencing stage. In this sense, it is possible to understand that the principle of exceptionality is recognized as essential in all three legislations; nevertheless, the expression and impact of this principle in legal drafting differ significantly.

Thus, it is concluded that the principle of exceptionality, as inserted in juvenile legislation –in an abstract manner, without materialization in the articles, and without concrete restrictions on state action–, does not have real effectiveness in protecting adolescents from discretionary decisions and limiting the deprivation of liberty of these individuals, who are at a crucial stage in the development of their identity. Therefore, further research is necessary to practically understand, using examples from other states, the most appropriate way to introduce concrete restrictions on the application of PTD into legislative texts, as well as to eliminate the tutelary notion that custody is beneficial in all situations.

REFERENCES

Alvi, S. (2012). Youth Criminal Justice Policy in Canada: a critical introduction. Springer.

Asamblea Legislativa de la Republica de Costa Rica. (s.f.). Ley 7576 del 08/03/1996 [Ley de Justicia Penal Juvenil].

Bala, N., & Anand, S. (2009). Youth Criminal Justice Law. (2. ed.). Irwin Law.

Batista, K. (2006). O Direito Penal Juvenil. Editora Revista dos Tribunais.

Bell, S. (2011). Young Offenders and Youth Justice: a century after the fact. (4. ed.). Nelson Education.

Beloff, M. (2007). Los Nuevos Sistemas de Justicia Juvenil en América Latina (1989-2006). Unicef. Justicia y Derechos del Niño, (9), 177 - 218.

Burgos-Mata, Á. (2005). La Sanción Alternativa en la Jurisdicción Penal Juvenil en Costa Rica. Acta Académica, 35, 143-164. http://revista.uaca.ac.cr/index.php/actas/article/view/405.

Burgos-Mata, Á. (2016). 20 Años de Justicia Penal Juvenil en Costa Rica. JURIS - Revista da Faculdade de Direito, Rio Grande, 26, 129-167. https://periodicos.furg.br/juris/article/view/6298/4131.

Campos, D. (2016). Métodos em Direito Comparado. Revista da Faculdade de Direito - UFPR, 61(3), 189-212.

Campos, M., & Vargas, O. (2000). Análisis de la detención provisional en materia penal juvenil (1 de enero al 30 de junio de 1998). En Ley de Justicia Penal Juvenil en Costa Rica: lecciones aprendidas. UNICEF.

da Silva, L., & da Silveira, P. (2021). A atuação do Poder Judiciário no Sistema Socioeducativo Durante a Pandemia: Uma Pesquisa no Tribunal de Justiça do Distrito Federal. Anais do VIII Seminário Direito Penal e Democracia: "Juventudes no Brasil: entre políticas de morte e resistências". www.even3.com.br/anais/juventudesresistencias.

da Silveira, F. (2015). A banalização da prisão preventiva para a garantia da ordem pública. Revista da Faculdade de Direito da UFMG, (67), 213 - 244. 10.12818/P.0304-2340.2015v67p213.

Davis-Barron, S. (2009). Canadian Youth and the Criminal Law: one hundred years of youth justice legislation in Canada. LexisNexis.

García, E. (2006). Evolução histórica do Direito da Infância e da Juventude. En ILANUD, A. SEDH, & UNFPA, Justiça, Adolescente e Ato Infracional: socioeducação e responsabilização. ILANUD.

García, E. (2010). Art. 121. En E. d. ed.), Cury, M. Malheiros Editores.

Gutiérrez, E. (2014). O Controle Jurídico-Penal de Adolescentes: o exemplo da internação provisória da jurisprudência do STJ e do TJRS em casos de tráfico de drogas. Revista

de Estudos Empíricos em Direito, 1(2), 100-121. https://doi.org/10.19092/reed.v1i2.37.

Jansen, N. (2019). Comparative Law and Comparative Knowledge. En M. Reimann, & R. Zimmermann, The Oxford Handbook of Comparative Law (2da. Ed.) (págs. 292-328). Oxford University Press,.

Llobet, J. (2018). La Justicia Penal Juvenil en Costa Rica (1996-2017). En C. Sotomayor, Derecho Penal Juvenil: experiencias y buenas prácticas. Editorial Jurídica Continental.

Lopes Jr., A. (2022). Prisões Cautelares. (7. ed.). Editora Saraiva Jur.

Maxera, R. (1992). La Legislación Penal de Menores a la Luz de los Instrumentos Internacionales: el caso de Costa Rica. Del Revés al Derecho. Editorial Galerma.

Oliveira Jr, D. (2014). Uma Leitura Constitucional das Medidas Socioeducativas e a Lei n. 12.594/12: a necessária individualização das medidas previstas no Estatuto da Criança e do Adolescente. Juizado da Infância e Juventude, 8, 73-80.

Presidência da República. Decreto-Lei nº 3.689 de 3 de outubro de 1941. Código de Processo Penal. Diário Oficial da União.

Sanguiné, O. (2014). Prisão cautelar, medidas alternativas e direitos fundamentais. Forense.

Saraiva, J. (2006). Compêndio de Direito Penal Juvenil: adolescente e ato infracional. (3. ed.). Livraria do Advogado.

Shecaira, S. (2008). Sistema de Garantias e o Direito Penal Juvenil. Editora Revista dos Tribunais.

Shecaira, S. (2015). Sistema de Garantias e o Direito Penal Juvenil. (2ª ed.). Editora Revista dos Tribunais,.

Silveira, P., & Cáceres, K. (2022). A internação provisória de adolescentes e o Tribunal de Justiça de São Paulo: uma abordagem criminológica das decisões publicadas durante a pandemia. Revista Brasileira de Segurança Pública, 16(3), 96–11. 10.31060/rbsp.2022.v16.n3.1653.

Smandych, R. (2006). Canada: Repenalization and Young Offenders' Rights.arry. En J. Muncie, & B. Goldson, Comparative Youth Justice (págs. 19-33). SAGE Publications.

Sobral, B., & Matos, S. (2023). A possibilidade de prorrogação do prazo máximo de internação provisória: Legal Prohibition Offensive to substantial due process of law and to the defense of society. Revista de Doutrina Jurídica, 114, 10.22477/rdj.v114i00.826.

Sotomayor, C. (1997). De un Derecho Tutelar a un Derecho Penal Mínimo/Garantista: nueva ley de justicia penal juvenil. Revista de Ciencias Penales de Costa Rica, (13), 98 - 109.

Statistics Canada. (2023a). Canada. Youth releases from pre-trial detention, by length of time served and sex. Obtenido de https://n9.cl/qb3x2w

Statistics Canada. (2023b). Youth admissions to correctional services. https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510000501

Zweigert, K., & Kötz, H. (1998). Introduction to Comparative Law. (3. ed.). Oxford University Press.