



# A influência da mídia no caso Richthofen: entre a liberdade de imprensa e a violação de direitos fundamentais\*

*The influence of the media in the Richthofen case: between press freedom and the violation of fundamental rights*

*La influencia de los medios en el caso Richthofen: entre la libertad de prensa y la violación de derechos fundamentales*

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## Resumo

A presente pesquisa objetiva analisar o caso Richthofen sob a perspectiva de estudo dos Direitos Fundamentais, buscando compreender se a midiatização excessiva do caso estaria colocando em risco a ressocialização dos detentos e, consequentemente, ferindo os Direitos Fundamentais aos quais os mesmos fazem jus. Enfoca-se assim no seguinte problema de pesquisa: quais os Direitos Fundamentais que possam estar sendo violados pela reiterada midiatização excessiva do caso Richthofen? Para tanto, procedeu-se à seleção de notícias do caso criminal na página do Google Notícias, tendo ainda como recorte um período de delimitação temporal de sete anos. A partir desta conjuntura, o artigo será dividido em três etapas: O primeiro capítulo abordará o caso criminal ora em estudo, sendo posteriormente feita a contextualização dos aportes teóricos de Direitos Fundamentais e abordagem do estudo do caso Lebach, finalizando com a análise das reportagens filtradas, aplicando os conhecimentos descritos nos capítulos anteriores e buscando compreender se há Direitos Fundamentais sendo violados em razão da midiatização excessiva. A metodologia adotada é predominantemente dedutiva, contando ainda com o auxílio do método de procedimento monográfico e da técnica de pesquisa de documentação indireta. Concluiu-se, por meio da análise dos materiais encontrados, que a midiatização excessiva do caso Richthofen põe em risco a ressocialização dos reeducandos, ferindo Direitos Fundamentais como o direito à privacidade, aplicação da dignidade humana e a garantia do direito de ressocialização.

**Palavra-chave:** caso Richthofen; direitos fundamentais; mídia.

## Abstract

*This research aims to analyze the Richthofen case from the perspective of studying fundamental rights, seeking to understand whether the excessive media coverage of the case would be putting the detainees' resocialization at risk and, consequently, violating the fundamental rights to which they are entitled. It focuses on the following research problem: Are there rights (principles and rules) being violated by the repeated excessive media coverage of the Richthofen case? For this purpose, news of the criminal case was selected on the google news page, with a time frame of 7 years. From this juncture, the article will be divided into three stages: The first chapter will address the criminal case now under study, followed by the contextualization of the theoretical contributions of Fundamental Rights and the approach to the study of the Lebach case, ending with the analysis of the filtered reports, applying the knowledge described in the previous chapters and seeking to understand whether there are Fundamental Rights being violated due to excessive mediatization. The methodology adopted is predominantly deductive, with the aid of the monographic procedure method and the research technique of indirect documentation. It was concluded, through the analysis of the materials found, that the excessive media coverage of Richthofen endangers the re-education of re-educators, violating Fundamental Rights such as the right to privacy, application of human dignity and the guarantee of the right to re-socialization.*

**Kewywords:** Richthofen case; fundamental rights; media.

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## Resumen

La presente investigación objetiva analizar el caso Richthofen bajo la perspectiva de estudio de los Derechos Fundamentales, buscando comprender si la mediatisación excesiva del caso estaría poniendo en riesgo la resocialización de los encarcelados y, consecuentemente hiriendo los Derechos Fundamentales a los cuales los mismos hacen justicia. Se enfoca, así, en el siguiente problema de investigación: ¿Cuáles los Derechos Fundamentales que puedan estar siendo violados por la reiterada mediatisación excesiva del caso Richthofen? Para tanto, se procedió a la selección de noticias del caso criminal en la página del Google Noticias, teniendo todavía como recorte un período de delimitación temporal de siete años. A partir de esta coyuntura, el artículo será dividido en tres etapas: El primer capítulo enfocará el caso criminal ora en estudio, siendo posteriormente hecha la contextualización de los aportes teóricos de Derechos Fundamentales y enfoque del estudio del caso Lebach, finalizando con el análisis de los reportajes filtrados, aplicando los conocimientos descriptos en los capítulos anteriores y buscando comprender si hay Derechos Fundamentales siendo violados en razón de la mediatisación excesiva. La metodología adoptada es predominantemente deductiva, contando aún con la ayuda del método de procedimiento monográfico y de la técnica de investigación de documentación indirecta. Se concluyó, por medio del análisis de los materiales encontrados, que la mediatisación excesiva del caso Richthofen pone en riesgo la resocialización de los reeducandos, hiriendo Derechos Fundamentales como el derecho a la privacidad, aplicación de la dignidad humana y la garantía del derecho de resocialización.

**Palavra-chave:** Caso Richthofen; derechos fundamentales; medios.

## 1 Introduction

The protection and enforcement of Fundamental Rights has a vast history of debates, with one of its central points being the role of the Judiciary in trying to resolve these conflicts. Although they are mostly provided for in the Federal Constitution of 1988 (Brasil, 2022a)<sup>1</sup>, ensuring their applicability when they are in confrontation with other rights of the same hierarchy has been an arduous challenge.

In this sense, the objective is to develop the research with the analysis of the Richthofen case from the perspective of the study of Fundamental Rights, whose purpose is to understand whether the excessive disclosure of the case would be putting at risk the rehabilitation of the inmates and, consequently, hurting their Fundamental Rights.

The choice of the criminal case is justified because it continues to be the target of constant attention of the media, even though the facts occurred in 2002, that is, the media interest has lasted for more than 20 years. Furthermore, because there is a conflict between the fundamental right to freedom of the press and Suzane's fundamental right to social reintegration (in addition to other fundamental rights of personality).

To this end, we proceeded to the selection of journalistic articles on the Google News page, using the words "case" and "Richthofen" as a keyword to filter the search. In addition to this first cut/selection in the research, it was decided to delimit the analysis of the reports in the period from October 2015 to October 2022, since it is the date on which the main perpetrator of the crime,

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<sup>1</sup> BRAZIL. [Constitution (1988)]. **Constitution of the Federative Republic of Brazil of 1988**. Brasília, DF: Presidency of the Republic, [2022a]. Available at: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm). Accessed on: 16 nov. 2023.

Suzane Von Richthofen, began the progression of the regime. Therefore, it is proposed to analyze the journalistic articles related to the period of progression of the inmate's regime, not extending the study to the date of the events of the criminal facts. That said, the first search resulted in the finding of 92 reports on the criminal case, from which the duplicates and those that had no direct relationship with the research, thus leaving 63 news items for observation.

In this way, the following proposal is stipulated as a research problem: what are the Fundamental Rights that may be violated by the repeated excessive mediatization of the Richthofen case? It should be noted that, although there are three convicted in the case under analysis, the research is focused on the main perpetrator of the crime, Suzane Von Richthofen, since it is seen that the incessant interest of the media is concentrated on her.

The questions indicate, as a general objective, to understand the theoretical contributions of Fundamental Rights, exploring the conceptions of legal norms, including the study of the impactful Lebach case in the German legal system, to then apply this knowledge to the case under analysis, aiming to understand whether the frequent disclosure of a criminal case that occurred 20 years ago would be violating the Fundamental Rights of the inmates and putting their rehabilitation at risk.

The relevance of this research is inserted in the concern with the realization of Fundamental Rights in the rehabilitation of inmates, who may be affected by the continuous dissemination of old news that promote an imaginary of criminal impunity. The choice of the theme for the development of the present work is justified because the aforementioned criminal case influenced criminal legislative changes, which demonstrates the current relevance of the case.

From this conjuncture, the article will be divided into three stages: the first chapter will address the criminal case under study, and then contextualize the theoretical contributions of Fundamental Rights and approach the study of the Lebach case, ending with the analysis of the filtered reports, applying the knowledge described in the previous chapters and seeking to understand if there are Fundamental Rights being violated due to excessive mediatization.

That said, to carry out this research, the deductive method of approach is adopted, analyzing the results found in the practical research carried out on Google News over a period of five years.

In addition, the monographic procedure method is also used, indirect documentation with bibliographic emphasis, considering that bibliographic works, media coverage and secondary data on the subject in question are used as basic sources. The choice of the method is justified because the study of a specific theme will be used as a parameter, based on a punctual and critical study, leaving aside purely dogmatic or analytical approaches that would question little about the object of study.

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## 2 Coverage of the Richthofen Case by the Brazilian media

On October 31, 2002, the São Paulo police were called to investigate the death of engineer Manfred Albert and psychiatrist Marísia Von Richthofen, who were killed while they slept at their home (Memória Globo, 2021)<sup>2</sup>.

During the investigations, the couple's daughter, Suzane Von Richthofen, 18 years old at the time, confessed to the crime, in partnership with her then-boyfriend Daniel Cravinhos and her brother-in-law Cristian Cravinhos. According to the information obtained during the criminal investigation, one of the clues that led the police to suspect those involved was in the arrest of Cristian Cravinho, on November 7, 2002, after the boy bought a motorcycle just ten hours after the crime (Memória Globo, 2021)<sup>3</sup>.

In 2005, the accused won the right to await the trial of the case in freedom, a decision that was reversed for the Cravinhos brothers after they revealed details of the crime in a radio interview (Memória Globo, 2021)<sup>4</sup>.

The trial began on July 17, 2006, lasting five days of testimony and debate, resulting in the conviction of the accused. In 2009, after serving 1/6 of her sentence and having the right to progress to the semi-open regime, Suzane Von Richthofen had her request for progression conditioned to a criminological examination, with interviews and psychological tests (Memória Globo, 2021)<sup>5</sup>.

After having her request for regime progression denied, Suzane's defense requested again two years after the first request for regime progression, which was again denied by the courts, even though the plaintiff had the objective requirements for it (Memória Globo, 2021)<sup>6</sup>.

It should be noted that at the time of the facts, due to the decision of the Federal Supreme Court in Extraordinary Appeal No. 579167, those convicted of a heinous crime before the enactment of Law No. 11,464/2007 (Brasil, [2022b])<sup>7</sup> were allowed to progress in the regime after serving 1/6 of the sentence.

Still in 2006, Suzane gave an interview to Rede Globo, being on provisional release while the procedural instruction took place. However, the interviewers leaked Suzane's statements during the pause of the interview, in which she received guidance from her lawyer

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<sup>2</sup> MEMÓRIA GLOBO. Richthofen case. **Globo Memory**, Rio de Janeiro, RJ, 28 Oct. 2021. Available at: <https://memoriaglobo.globo.com/jornalismo/ coberturas/caso-richthofen/noticia/caso-richthofen.ghtml>. Accessed on: 01 Dec. 2022.

<sup>3</sup> *Ibidem*.

<sup>4</sup> *Ibidem*.

<sup>5</sup> *Ibidem*.

<sup>6</sup> *Ibidem*.

<sup>7</sup> BRAZIL. **Law No. 7,210, of July 11, 1984**. Establishes the Penal Execution Law. Brasília, DF: Presidency of the Republic, [2022b]. Available at: [https://www.planalto.gov.br/ccivil\\_03/leis/l7210.htm](https://www.planalto.gov.br/ccivil_03/leis/l7210.htm). Accessed on: 16 nov. 2023.

(Grigori, 2021)<sup>8</sup>.

Just one day after the leak of Suzane's speech, the prosecutor responsible for the case requested the arrest of the accused until then, and the request was accepted by the judge in the case.

In September 2021, the US company Amazon Prime released two films about the crime, entitled "The Girl Who Killed Her Parents" and "The Boy Who Killed My Parents", a work that addresses the version told by both Suzana and the Cravinhos brothers (Grigori, 2021)<sup>9</sup>.

In the same year, Suzane obtained judicial authorization to study Biomedicine at the University of Taubaté (Grigori, 2021)<sup>10</sup>. Therefore, the media interest in each stage of the Richthofen case was remarkable, as well as in the progression of the regime of the perpetrator of the crime and her decisions during the execution of the sentence.

In the next chapter, the theoretical bases of Fundamental Rights will be structured, with attention to the German case of Lebach.

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### 3 Contextualizing the theoretical contributions

Although the importance of the historical context and its explanation in the emergence and consolidation of Fundamental Rights is unquestionable, this work begins by clarifying that this content will not be addressed in detail because it is not the focus of the research, as well as due to the limitation of pages that this article lacks.

Finally, it is necessary to bring to the debate the German case of Lebach, which is a judicial request to the German justice system to prevent the televising of a documentary about the coverage of a robbery known as the "murder of Lebach's soldiers" (Martins; Schwabe, 2005)<sup>11</sup>.

The approach to the case is relevant, as it is one of the most important cases and is related to

the judgments of the Brazilian Superior Court of Justice on the so-called "right to be forgotten" (Sarlet, 2015)<sup>12</sup>.

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<sup>8</sup> GRIGORI, Pedro. 19 years of the Richthofen case: remember the journalistic coverage of the crime that stopped the country. **Correio Braziliense**, Brasília, 31 Oct. 2021. Available at: <https://www.correiobraziliense.com.br/brasil/2021/10/4959553-19-anos-do-caso-richthofen-relembre-a-cobertura-jornalistica- do-crime-que-parou-o-pais.html>. Accessed on: 02 Dec. 2022.

<sup>9</sup> GRIGORI, Pedro. 19 years of the Richthofen case: remember the journalistic coverage of the crime that stopped the country. **Correio Braziliense**, Brasília, 31 Oct. 2021. Available at: <https://www.correiobraziliense.com.br/brasil/2021/10/4959553-19-anos-do-caso-richthofen-relembre-a-cobertura-jornalistica- do-crime-que-parou-o-pais.html>. Accessed on: 02 Dec. 2022.

<sup>10</sup> *Ibidem*.

<sup>11</sup> MARTINS, Leonardo; SCHWABE, Jürgen. **Fifty years of jurisprudence of the German Federal Constitutional Court**. Montevideo: Konrad Adenauer Foundation, 2005. p. 486.

<sup>12</sup> SARLET, Ingo Wolfgang. From the Lebach case to the Google vs. Spanish Data Protection Agency case. **Legal Consultant**, São Paulo, SP, June 5, 2015. Available at: <https://www.conjur.com.br/2015-jun-05/direitos-fundamentais-lebach-google-vs-agencia-espanhola-protecao-dados-mario-gonzalez/>. Accessed on: 12 Dec. 2022.

The Lebach case concerns the conviction in 1970 of those responsible for the death of four soldiers and the wounding of a fifth officer. In the process, the main perpetrators were sentenced to life imprisonment, while the participant was sentenced to six years in prison (Sarlet, 2015)<sup>13</sup>.

The author of the request was convicted of having assisted in the criminal preparation, having alleged in the judicial request that the documentary presented his name and photo, as well as would be broadcast shortly before his release (Martins; Schwabe, 2005)<sup>14</sup>. In the present case, the claimant was about to be entitled to conditional release, which is why he filed a lawsuit to prevent the transfer (Sarlet, 2015)<sup>15</sup>.

Initially, attempts to suppress the disclosure were denied by the Mainz State Court and the Koblenz State High Court, and the request was only upheld by the country's TCF (Federal Constitutional Court), on the grounds **of violation of personality development rights (art. 21 GG)** and on the grounds that interference with the freedom of broadcasting would be justified in the case under analysis (Martins; Schwabe, 2005)<sup>16</sup>.

The Artistic Intellectual Property Act (*Kunsturhebergesetz*<sup>17</sup>) has space for weighing media interests and the protection of other rights, such as the protection of personality. It so happens that, in the dissemination of news involving serious crimes, the constitutional protection of personality does not admit that the means of communication are concerned with the person of the criminal and his private life for an unlimited time and beyond the current news, even if the right to information is guaranteed to the population (Martins; Schwabe, 2005)<sup>18</sup>.

That said, it was argued that reporting, even later, would be inadmissible if the objective intention is to cause considerable new or additional damage to the person of the criminal, especially if the intention lies in threatening his reintegration into society. Therefore, the threat to the complainant's rehabilitation was identified, since the program about the crime in which the convicted person participated, and which had his identification, would be broadcast at a time close to his release (Martins; Schwabe, 2005)<sup>19</sup>.

Sarlet (2015)<sup>20</sup> argues that if the Lebach case were Brazilian, it would certainly find

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<sup>13</sup> SARLET, Ingo Wolfgang. From the Lebach case to the Google vs. Spanish Data Protection Agency case. **Legal Consultant**, São Paulo, SP, June 5, 2015. Available at: <https://www.conjur.com.br/2015-jun-05/direitos-fundamentais-lebach-google-vs-agencia-espanhola-protectao-dados-mario-gonzalez/>. Accessed on: 12 Dec. 2022.

<sup>14</sup> MARTINS, Leonardo; SCHWABE, Jürgen. **Fifty years of jurisprudence of the German Federal Constitutional Court**. Montevideo: Konrad Adenauer Foundation, 2005. p. 487.

<sup>15</sup> SARLET, Ingo Wolfgang. From the Lebach case to the Google vs. Spanish Data Protection Agency case. **Legal Consultant**, São Paulo, SP, June 5, 2015. Available at: <https://www.conjur.com.br/2015-jun-05/direitos-fundamentais-lebach-google-vs-agencia-espanhola-protectao-dados-mario-gonzalez/>. Accessed on: 12 Dec. 2022.

<sup>16</sup> MARTINS, Leonardo; SCHWABE, Jürgen. **Fifty years of jurisprudence of the German Federal Constitutional Court**. Montevideo: Konrad Adenauer Foundation, 2005. p. 487.

<sup>17</sup> The German expression means "art copyright laws", and the law was created on January 9, 1907.

<sup>18</sup> MARTINS, Leonardo; SCHWABE, Jürgen. **Fifty years of jurisprudence of the German Federal Constitutional Court**. Montevideo: Konrad Adenauer Foundation, 2005. p. 488.

<sup>19</sup> *Ibid.*, p. 486-494.

<sup>20</sup> SARLET, Ingo Wolfgang. From the Lebach case to the Google vs. Spanish Data Protection Agency case. **Legal**

a basis in the constitutional text exposed above, because even having been convicted of homicide, the defendant still has the right to honor inherent to all human beings.

For Alexy (2008, p. 102)<sup>21</sup> "[...] repeated news, not of current interest for information, about a serious crime, and which jeopardizes the rehabilitation of the perpetrator, is prohibited from the point of view of Fundamental Rights". For this reason, it is proposed to study the Richthofen case, since it is a crime that occurred more than 20 years ago and continues to be mediatised year after year.

In the question about Fundamental Rights, Olsen (2006)<sup>22</sup> clarifies that they are rules of a mainly principled nature, which determine obligations to provide something *prima facie*, which is why their practical application usually requires care and consideration with conflicting norms and interests, using the analysis of proportionality for decision making. Furthermore, by requesting material benefits from the State, they have an undeniable economic content and influence on their effectiveness, affirming that they are rights linked to the reservation of the possible.

At this point, it is emphasized that the main difference between rules and principles, according to the theory of principles, lies in the support of the rights that these norms guarantee. This is because, in the case of rules, definitive rights are assured, while in the case of principles, *prima facie rights are guaranteed*. Furthermore, in relation to the principles, what the norm requires is not fully realized, since there is a difference between what is *prima facie assured* and what is guaranteed/definitively imposed (Silva, 2006)<sup>23</sup>.

For Alexy (2008, p. 575)<sup>24</sup>, "Fundamental Rights, regardless of their more or less precise formulation, have the nature of principles and are commandments of optimization". The author argues that these rights conceived as a principle require full enforcement in view of the legal and factual conditions existing in the case (Alexy, 2008)<sup>25</sup>.

Consequently, with regard to the implementation of Fundamental Rights, these have been highlighted in the current legal field, since the crises in the country directly influence the

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**Consultant**, São Paulo, SP, June 5, 2015. Available at: <https://www.conjur.com.br/2015-jun-05/direitos-fundamentais-lebach-google-vs-agencia-espanhola-protectao-dados-mario-gonzalez/>. Accessed on: 12 Dec. 2022.

<sup>21</sup> ALEXY. Robert. **Theory of fundamental rights**. Translation: Luis Virgílio Afonso da Silva. São Paulo: Malheiros, 2008. p. 102.

<sup>22</sup> OLSEN, Ana Carolina Lopes. **The effectiveness of fundamental social rights in the face of the reservation of the possible**. 2006. Dissertation (Master's Degree in Law) - Federal University of Paraná, Curitiba, p. 05, 2006. Available at: <http://www.dominiopublico.gov.br/download/teste/arqs/cp007711.pdf>. Accessed on: 08 jan. 2023.

<sup>23</sup> SILVA, Virgílio Afonso da. The essential content of fundamental rights and the effectiveness of constitutional norms. **Revista de Direito do Estado**, Rio de Janeiro, v. 4, p. 27, 2006. Available at: [https://constitucional.direito.usp.br/wp-content/uploads/2006-RDE4-Conteudo\\_essencial.pdf](https://constitucional.direito.usp.br/wp-content/uploads/2006-RDE4-Conteudo_essencial.pdf). Accessed on: 18 Dec. 2022.

<sup>24</sup> ALEXY. Robert. **Theory of fundamental rights**. Translation: Luis Virgílio Afonso da Silva. São Paulo: Malheiros, 2008. p. 575.

<sup>25</sup> *Ibidem*.

realization of these rights (Gervasoni; Linhares, 2021)<sup>26</sup>. Thus, as Alexy (2008, p. 32)<sup>27</sup> teaches, "[...] to say that certain Fundamental Rights are valid means to say that the necessary structures and some of the possible structures have been realized".

In addition, it is important, however, to remember that Fundamental Rights are not absolute. The limit of the sphere of constitutional rights is demonstrated according to the perception of their essential content, which is why it is essential to analyze what is in fact protected by these norms (Gervasoni; Linhares, 2021)<sup>28</sup>.

Furthermore, it is important to remember that "the legal interest protected by the norms of Fundamental Rights is not always easy to identify, which demonstrates the existence of a semantic indeterminacy in the constitutional text" (Gervasoni; Linhares, 2021, p. 73)<sup>29</sup>.

Finally, the speech of Professor Fausto Morais (2022, p. 21)<sup>30</sup>, when he states that "the duty to protect Fundamental Rights must be understood as the characteristic feature of Constitutionalism that seeks the effectiveness of Fundamental Rights".

Regarding the case of the Brazilian prison system, Araújo and Fachin (2019)<sup>31</sup> recall the existence of countless fundamental violations, such as the principle of human dignity, degrading treatment, disrespect for physical and moral integrity and, above all, violation of the guarantee of the presumption of innocence. Therefore, although it is not the intention to discuss the subject endlessly, the violations of Fundamental Rights in the Brazilian prison environment are undeniable, since precarious prisons are common knowledge conditions to which the inmates are subjected.

In the Richthofen case, all the accused awaited the course of the process in prison, having their freedom granted for a few weeks before a new arrest order. For this reason, it is evident that the violations of Fundamental Rights occurred throughout the criminal process, and it is necessary to ascertain whether the disproportionate media coverage caused damage and, consequently, injured the Fundamental Rights of the main perpetrator of the crime under study.

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<sup>26</sup> GERVASONI, Tássia Aparecida; LINHARES, Rafaela Rovani. The duty of protection and the possibilities of restriction of fundamental rights: analysis of state action within the scope of ADI 5938. **Revista Paradigma**, Ribeirão Preto, SP, v. 30, n. 3, p. 69, set./dez. 2021. Available at: <https://revistas.unaerp.br/paradigma/article/view/1785>. Accessed on: 04 jan. 2023.

<sup>27</sup> ALEXY. Robert. **Theory of fundamental rights**. Translation: Luis Virgílio Afonso da Silva. São Paulo: Malheiros, 2008. p. 32.

<sup>28</sup> GERVASONI, Tássia Aparecida; LINHARES, Rafaela Rovani. The duty of protection and the possibilities of restriction of fundamental rights: analysis of state action within the scope of ADI 5938. **Revista Paradigma**, Ribeirão Preto, SP, v. 30, n. 3, p. 73, set./dez. 2021. Available at: <https://revistas.unaerp.br/paradigma/article/view/1785>. Accessed on: 04 jan. 2023.

<sup>29</sup> *Ibidem*.

<sup>30</sup> MORAIS, Fausto Santos de. **Weighting and arbitrariness**: the inadequate reception of Alexy by the STF. 3. ed. Salvador: Juspodivm, 2022. p. 21.

<sup>31</sup> ARAÚJO, Romulo de Aguiar; FACHIN, Zulmar. Unconstitutional state of affairs the excess of criminal execution and the offense to fundamental rights in the Brazilian prison system. **Revista Jurídica da Unifil**, [s.l.], v. 14, n. 14, p. 64, jun. 2019. Available at: <http://periodicos.unifil.br/index.php/rev-juridica/article/view/1062>. Accessed on: 14 Dec. 2022.

### 3.1 Moral panics

The media, in its various forms of representation, is considered one of the largest sources of information for the population, playing a prominent role in the dissemination of information to the public (Rocha, 2016)<sup>32</sup>. This is because the news itself is a tool for the production of social reality, through which the facts that will be disclosed and the importance that will be attributed to these events are chosen (Rocha, 2016)<sup>33</sup>.

In this sense, it is important to remember that "[...] Time is extremely rare on television. And if such precious minutes are used to say such futile things, it is because these futile things are in fact very important to the extent that they hide precious things" (Bourdieu, 1997, p. 23)<sup>34</sup>.

In addition, it is highlighted that the way the viewer receives the news, that is, the way the announcer passes on the information, "[...] distributes the time of speech, distributes the tone of the word, respectful or disdainful, attentive or impatient" (Bourdieu, 1997, p. 45)<sup>35</sup>, is an evident way of controlling the information, as well as the reach of the message it intends to convey.

The influence and impacts of the media on social, political and legal decision-making are not denied. However, in recent years, the creation of a tool by the media has been studied, a new field of criminological study in which the media is self-based, using excerpts from the information collected to defend its own positions, promoting its discourses and creating media realities through its own agents.

Zaffaroni (2012, p. 303)<sup>36</sup> defines this anti-scientific strand known as media criminology as "another criminology that attends to a creation of reality through information, underinformation and media disinformation, in convergence with prejudices and beliefs, which is based on a simple criminal etiology [...]".

Amaral and Swatek (2020)<sup>37</sup> point out that the main reason for the success of this anti-scientific strand is seen in the means adopted, which allow their representatives to expose ideas and opinions without restrictions, without evidence or responsibility for constitutional

<sup>32</sup> ROCHA, Álvaro Filipe Oxley da. State, journalism and the discourse of truth: a criminological approach. **Revista Jurídica Derecho y Cambio Social**, Lima, year 13, n. 44, p. 20, 01 May 2016. Available at: [http://www.derechocambiosocial.com/revista044/ESTADO\\_JORNALISMO\\_E\\_O\\_DISCURSO\\_DE\\_VERDADE.pdf](http://www.derechocambiosocial.com/revista044/ESTADO_JORNALISMO_E_O_DISCURSO_DE_VERDADE.pdf). Accessed on: 20 Dec. 2019.

<sup>33</sup> *Ibid.*, p. 10.

<sup>34</sup> BOURDIEU, Pierre. **About television**. Oeiras: Celta Editora, 1997. p. 23.

<sup>35</sup> *Ibid.*, p. 45.

<sup>36</sup> ZAFFARONI, Eugenio Raúl. **The word of the dead**: precautionary criminology conferences. São Paulo: Saraiva, 2012, p. 303.

<sup>37</sup> AMARAL, Augusto Jobim do; SWATEK, Tatiana das Neves. Media criminology: a study on the program "Cidade Alerta" (Rede Record de Televisão). **Electronic Journal of the Law Course at UFSM**, Santa Maria, RS, v. 15, n. 1, p. 21, Jan./Apr. 2020. Available at: <https://periodicos.ufsm.br/revistadireito/article/view/39072>. Accessed on: 12 Dec. 2022.

norms.

Understanding the theoretical contributions related to this criminological aspect of the media is relevant to the development of the present research, since, when it comes to the media and the creation of moral panics, it is necessary to differentiate the traditional critical criminological studies about the role and influence of the media in Brazilian society from the new developed media field.

The construction of a fictional reality created by media criminology is based on the careful organization of words, defined by the responsible team under economic criteria, aiming at maximum profitability in the reports. For this reason, Guilbert (2020)<sup>38</sup> argues that it is a mistake to separate the content of what is said from the way it was said/written.

In this way, the media present different possibilities of interpretation for the same piece of news, providing different ways of reacting to that information (Cohen, 2002)<sup>39</sup>. At this point, it is noted that social control<sup>40</sup> can be exercised by taking advantage of grammatical constructions and the promotion of media discourses.

Budó (2013, p. 239)<sup>41</sup> alludes that, if "only what is shown is seen, then the choices made daily by the media matter a lot in the understanding that one has of reality". Consequently, if there is mediatization only of what the media consider useful, also taking into account the cut of the content and its grammatical structure, a fictional reality develops that influences the choices and opinions of the public, which helps the media to maintain social control.

Bourdieu (1997)<sup>42</sup> explains that the image has the power to influence and produce what is known as "the effect of the real", an impact that directly interferes in the scenario produced, and can make the public see what interests the media, as well as make them believe in what they are seeing.

A distinction must also be made between "public interest", "public interest" and "private interest" itself, since freedom of the press itself is in the public interest. However, the mediatized material may be of mere interest to the public and with the potential to violate private rights and interests.

In this context, Silva (2000, p. 07)<sup>43</sup> conceptualizes that "[...] the public interest can

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<sup>38</sup> GUILBERT, Thierry. **The evidence of neoliberal discourse in the media**. Campinas, SP: Unicamp, 2020. p. 31.

<sup>39</sup> COHEN, Stanley. **Folk devils and moral panics**: the creation of the mods and rockers. 3rd ed. Abingdon, England: Routledge, 2002. p. 20.

<sup>40</sup> Social control is understood as a mechanism to control or influence the decisions of a significant part of society, a role that the media seek to exercise through the creation of information and promotion by its agents.

<sup>41</sup> BUDÓ, Marília de Nardin. **Media and discourses of power**: the discursive legitimization of the process of incarceration of poor youth in Brazil. 2013. Thesis (Doctorate in Law) – Federal University of Paraná, Curitiba, 2013. p. 239.

<sup>42</sup> BOURDIEU, Pierre. **About television**. Oeiras: Celta Editora, 1997. p. 28.

<sup>43</sup> SILVA, Danielle Souza de Andrade e. Public interest: necessity and possibility of its definition in Administrative Law. **Students: Caderno Acadêmico**, Recife, year 4, n. 6, p. 129-145, jan./jun. 2000. Available at: <https://>

be a general and total evaluative will in a community, but it does not necessarily have to be, it is enough to appear as the conscience of a majority".

Therefore, even if the mediated content is not illegal, it is noted that the media choices made in the Richthofen case have triggered moral panics, such as the excessive attention offered to Suzane Richthofen's temporary exits.

In this way, the media plays a double and hidden game, exposing the target audience to different types of interpretation, which trigger various reactions to the same information (Cohen, 2002)<sup>44</sup>. In this way, moral panics gain space with the emergence of feelings such as insecurity and fear.

Zaffaroni (2013)<sup>45</sup> informs that fear is a healthy and essential feeling for our survival, given that fearing being the target of a crime is natural when there is a real risk of this happening. However, this feeling, when fictitious, ends up being used as a tool of social control and, mainly, a reason for the expansion of state repressive measures. In summary, "the culture of fear linked to the news about crimes also provokes a criminal policy of fear" (Budó, 2013, p. 227)<sup>46</sup>.

These discourses are part of the so-called moral panics, which are based on the disproportionate reproduction of a chaotic scenario, in which one seeks to fight imaginary enemies at any and all costs created in the media. Cohen (2002, p. 01)<sup>47</sup> explains that "societies seem to be subject, from time to time, to periods of moral panic. A condition, episode, person, or group of people emerges to be defined as a threat to social and internal values."

This scenario of panic brings out the social anxieties for the incessant search for the punishment of crimes, with the occurrence of these moral panics occurring mainly "when four territories overlap: deviance, social problems, collective behavior and social movements"<sup>48</sup> (Goode; Ben-Yehuda, 2009, p. 48).

Crime is a moral component that makes up panic, given that behaviors considered criminal produce a sense of insecurity and terror in the population (Goode; Ben-Yehuda, 2009)<sup>49</sup>. The second pillar of moral panics is social problems, through which the media demonstrates disproportionate concern and popular awareness (Goode; Ben-Yehuda,

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[www.jfpe.jus.br/images/stories/docs\\_pdf/biblioteca/artigos\\_periodicos/DanielleSouzadeAndrade/InteressepublicoconecessidadeepossibilidadeEstudantescadernoacademicon62000.pdf](http://www.jfpe.jus.br/images/stories/docs_pdf/biblioteca/artigos_periodicos/DanielleSouzadeAndrade/InteressepublicoconecessidadeepossibilidadeEstudantescadernoacademicon62000.pdf). Accessed on: 13 Feb. 2023.

<sup>44</sup> COHEN, Stanley. **Folk devils and moral panics**: the creation of the mods and rockers. 3rd ed. Abingdon, England: Routledge, 2002.

<sup>45</sup> ZAFFARONI, Eugénio Raúl. **The criminal issue**. Rio de Janeiro: Revan, 2013.

<sup>46</sup> BUDÓ, Marília de Nardin. **Media and discourses of power**: the discursive legitimization of the process of incarceration of poor youth in Brazil. 2013. Thesis (Doctorate in Law) – Federal University of Paraná, Curitiba, 2013.

<sup>47</sup> COHEN, Stanley. **Folk devils and moral panics**: the creation of the mods and rockers. 3rd ed. Abingdon, England: Routledge, 2002.

<sup>48</sup> GOODE, Erich; BEN-YEHUDA, Nachman. **Moral panics**: the social construction of deviance. 2. ed. United Kingdom: John Wiley & Sons, Ltd., Publication, 2009.

<sup>49</sup> *Ibidem*.

2009)<sup>50</sup>.

It is mentioned as disproportionate because the public policies under development and developed to combat "crime" are not effective, in the same way that there is no investment in them by political representatives. That said, mediatizing the occurrence of crimes in a repetitive and disproportionate way without identifying the flaws of the same system that characterizes them as a crime, shows that these panics are used as mechanisms of social control.

Thus, the mutability of moral panics is directly linked to social behaviors, since the same behaviors are criminalized in some countries while in others they are decriminalized, making the fear and repulsion caused by these behaviors unstable (Goode; Ben-Yehuda, 2009)<sup>51</sup>.

Collective behaviors and social movements will not be discussed in this research, due to the page limitation that the article lacks. Despite this, it is possible to identify the reasons that arouse media and social interest in the Richthofen case.

In that case, it is the brutal murder of two people whose mastermind is his own daughter, as well as there is no way to ignore that this fact occurred in a prime area in the city of São Paulo/SP.

In addition to excessive mediatization, the case has been used as a political platform in the creation of laws inspired by the aforementioned crime, such as article 122, paragraph 2 of Law No. 13,964/2019, PL 7808/10 and PL 9/2017.

That said, in the next topic we will analyze the reports collected in the period from October 2015 to October 2022, aiming to understand whether the excessive mediatization of an old case violates Fundamental Rights and what these rights would be.

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## 4 Empirical analysis

In a first search, 92 reports on the criminal case were found, using the terms "case" and "Richthofen" in Google News, from which duplicates and those that were not directly related to the research were excluded, thus leaving 63 news items for study.

Around 30 reports addressed the "temporary outings" and decisions related to the progression of Suzane Von Richthofen's regime, that is, mostly the media interest focused on the benefit granted to prisoners in the semi-open regime who met the requirements required by law to be entitled to the benefit.

Another 23 articles exposed Suzane's love life, as well as false information found by the media, legislative change resulting from the Richthofen case, the author's religiosity and

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<sup>50</sup> *Ibidem*.

<sup>51</sup> GOODE, Erich; BEN-YEHUDA, Nachman. **Moral panics**: the social construction of deviance. 2. ed. United Kingdom: John Wiley & Sons, Ltd., Publication, 2009.

personal events in her life. Specifically, 10 articles addressed Suzane's academic life, alluding to her absences and challenges in higher education.

The first report that drew the most attention was from the online journalistic page UOL in 2016, in which reporters went to the place provided by Suzane to the criminal execution court, during one of her temporary exits, a situation in which they found that the inmate was not there (UOL, 2016)<sup>52</sup>.

After the verification, journalists informed the Secretariat of Penitentiary Administration that the inmate did not was at the scene, a fact that led to his search and arrest.

Other reports reported similar situations of non-compliance with temporary release requirements involving Suzane, in later years, in which the news did not provide details about the detainee's version, only limiting the content to the judicial decision and unofficial information from witnesses.

Among the matters analyzed, the denied requests for progression of the re-inmate's regime stand out, even if the objective requirements to enjoy such right are met.

In 2009, the magistrate in charge rejected Suzane's defense request on the grounds that, even if the objective requirement for regime progression was met, it would be necessary to carry out a criminological examination (Folha de São Paulo, 2009)<sup>53</sup>. Thus, it was only in October 2015 that the inmate was able to apply her right to regime progression, being transferred to the semi-open regime (Globo G1 Vale do Paraíba and Region, 2016)<sup>54</sup>. In addition, reports were found written exclusively to publicize the acts of Suzane Von Richthofen during her temporary exits, in which there is information on visits to ex-boyfriend's sites, participation in religious ceremonies, wedding parties, studies, etc. (Schiavon, 2022)<sup>55</sup>.

Therefore, the impact of the Richthofen case on the legislative environment is observed, since some reports mentioned the legal change brought about by the publication of the "Anticrime Law" (Law No. 13,964/19) in ceasing the possibility of temporary exits in the event of an intentional crime resulting in death. The reports linked to the online newspapers

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<sup>52</sup> UOL. Suzane von Richthofen lied to the courts to be able to get out of prison. **UOL**, São Paulo, 08 May 2016. Everyday. Available at: <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2016/05/08/suzane-von-richthofen-mentiu-para-a-policia-para-poder-sair-da-prisao.htm>. Accessed on: 20 Dec. 2022.

<sup>53</sup> FOLHA DE SÃO PAULO. Justice denies Suzane's semi-open request. **Folha**, São Paulo, 21 Oct. 2009. Cotidiano. Available at: <https://www1.folha.uol.com.br/fsp/cotidian/ff2110200920.htm>. Accessed on: 19 Dec. 2022.

<sup>54</sup> GLOBO G1 VALE DO PARAÍBA AND REGION. Suzane von Richthofen leaves prison for the first time on temporary release. **Globo G1 Vale do Paraíba and Region**, TV Vanguarda, São José dos Campos, SP, 11 mar. 2016. Available at: <https://g1.globo.com/sp/vale-do-paraiaba-regiao/noticia/2016/03/suzane-von-richthofen-deixa-prisao-pela-primeira-vez-em-saida-temporaria.html>. Accessed on: 18 Dec. 2022.

<sup>55</sup> SCHIAVON, Marcela. Study, love and faith: what does Suzane von Richthofen do when she gets out of jail? **UOL**, Santo André, SP, 26 Sept. 2022. Daily life. Available at: <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2022/09/26/o-que-suzane-von-richthofen-faz-quando-sai-da-cadeia.htm>. Accessed on: 16 Dec. 2022.

UOL/Jornal do Commercio (2019)<sup>56</sup> and Canal Ciências Criminais (Nolasco, 2020)<sup>57</sup> displayed titles in the reports such as: "Anticrime Law ends with 'outing' of prisoners like Suzane Von Richthofen" and "Temporary exits after the Anticrime Law: Richthofen and Mother's Day".

Finally, one of the reports in which Suzane obtains in court the right to prevent the publication of a book about her life, whose title was "Suzane – Murderer and Manipulator", is highlighted. The magistrate responsible for the decision considered that the publication of the book would be sensationalism, contributing only to the public revulsion of the inmate, making rehabilitation difficult, as well as argued that there was no public interest in the case and that the publication would represent irreparable damage to Suzane, since she did not want to give an interview to the author of the book (Globo G1 Vale do Paraíba and Region, 2019)<sup>58</sup>.

This argument is recalled in the Lebach case, in which the German justice system chose to protect the Fundamental Rights of the convicted person in the face of the supposed public interest/freedom of the press. In the Richthofen case, it is once again recalled that the case has lasted in the Brazilian media for more than 20 years, being constantly remembered and mediatized. Therefore, it is possible to identify, in addition to the media interest in the case, the way in which the media itself interfered in the outcome of Suzane Von Richthofen's regime progression, interpreting the role of judicial police and supervising the steps of the inmate, in order to produce content for new reports and, consequently, inflate popular spirits.

For this reason, it is possible to say that the excessive mediatization of an old criminal case, such as the Richthofen case, is not justified in the current interest of society, but puts at risk the rehabilitation of the re-educated, hurting Fundamental Rights such as Suzane's right to privacy, application of human dignity and the guarantee of the right to rehabilitation.

This last right is highlighted, in view of the fact that, on the eve of the end of this work, Suzane acquired the right to progression to the open regime, having left the penitentiary where she was on the 11th of January 2023. The news took over the Brazilian news, opening a wide debate on social networks and inflating social fears. The following day, the media information was that the Public Prosecutor's Office appealed the decision of the magistrate in charge, alleging that, although Suzane met the objective requirement of time lapse and had taken the criminological examination, there would be doubts about her suitability for regime

<sup>56</sup> JORNAL DO COMMERCI. Anti-crime law ends the 'outing' of prisoners like Suzane von Richthofen. **Jornal do Commercio**, Recife, PE, 25 dez. 2019. Justice. Available at: <https://jc.ne10.uol.com.br/canal/politica/nacional/noticia/2019/12/25/lei-anticrime-acaba-com-saidinha-de-presos-como-suzane-von-richthofen-395813.php>. Accessed on: 19 Dec. 2022.

<sup>57</sup> NOLASCO, Raphael Luiz de Oliveira. Temporary exits after the Anti-Crime Law: Richthofen and Mother's Day. **Criminal Sciences Channel**, Porto Alegre, May 7, 2020. Available at: <https://canalcienciascriminais.com.br/saidas-temporarias-apos-a-lei-anticrime-richthofen-e-o-dia-das-maes/>. Accessed on: 15 Dec. 2022.

<sup>58</sup> GLOBO G1 VALE DO PARAÍBA AND REGION. Justice prohibits publication of book about Suzane von Richthofen. **Globo G1 Vale do Paraíba and Region**, TV Vanguarda, São José dos Campos, SP, 21 nov. 2019. Available at: <https://g1.globo.com/sp/vale-do-paraiaba-regiao/noticia/2019/11/21/justica-prohibe-publicacion-de-libro-sobre-suzane-von-richthofen.ghtml>. Accessed on: 22 Dec. 2022.

progression (Globo G1 Vale do Paraíba and Region, 2023)<sup>59</sup>.

Therefore, the media influence on popular opinion is remarkable, as well as the interference in the rehabilitation of Suzane Von Richthofen, hurting the Fundamental Rights of the re-educating and impacting judicial and legislative decisions (even if indirectly).

## 5 Conclusion

This research was developed with the aim of analyzing the Richthofen case from the perspective of the study of Fundamental Rights, seeking to understand if the excessive disclosure of the case was putting at risk the rehabilitation of the main perpetrator of the crime, Suzane Von Richthofen and, consequently, hurting her Fundamental Rights. The chosen criminal case has been in the Brazilian media for more than 20 years, with every step and choice of those involved being reported, focusing mainly on Suzane.

For the development of the research, journalistic articles were selected on the Google News page, using as keywords for filtering the search: "case" and "Richthofen". In addition, the analysis of the reports was limited to the period from October 2015 to October 2022, since it was the initial date of the regime progression of the main perpetrator of the crime.

It was concluded, through the analysis of the materials found, that the morbid interest of the Brazilian media in the case influenced certain judicial and legislative decisions, since the subject of "temporary outing" was the main interest of the media in the case, and there was an investigation about the address offered by Suzane during her release for the celebration of Mother's Day.

Suzane's personal and religious life were also the subject of numerous articles analyzed, even being the subject of an exclusive report, which aimed to list the activities and attitudes of the inmate during her temporary releases.

Therefore, excessive mediatization can erode the rights of social reintegration of inmates, as evidenced by the significant number of journalistic articles about the temporary exits of the inmate, which were the target of public criticism and legislative changes brought about with the anti-crime package (Law No. 13,964/2019).

The question that moved the research focuses on the possible violation of fundamental rights and what these rights would be violated. From all the above, it is possible to affirm that there is a repeated violation of fundamental rights in the case of the excessive mediatization of the Richthofen case.

<sup>59</sup> GLOBO G1 VALE DO PARAÍBA AND REGION. The Public Prosecutor's Office appeals the decision that placed Suzane Von Richthofen in an open regime. **Globo G1 Vale do Paraíba and Region**, TV Vanguarda, São José dos Campos, SP, 13 jan. 2023. Available at: <https://g1.globo.com/sp/vale-do-paraioba-regiao/noticia/2023/01/13/prosecutor'soffice-appeal-of-the-decision-that-placed-suzane-von-richthofen-in-open-regime.ghml>. Accessed on: 13 jan. 2023.

Initially, it is verified that there is no public interest in the present case, being a private interest of the media themselves, since the content disseminated arouses the interest of the population, increasing views and clicks on social networks and, consequently, media profit.

Therefore, the real private interests of journalistic companies are camouflaged through the interest of the public. In this aspect, even though rehabilitation, that is, the relationship of the inmate with the penal system, is in good condition, it is noted that her reinsertion in the social sphere continues to arouse the fury of part of the population instigated by the news.

For this reason, there is an interest in studying the Richthofen case from the point of view of studies of fundamental rights and moral panics, given that the disproportionate mediatization of the case conveys the feeling of impunity and encourages the call for the expansion of punitive measures and stricter legislation.

It is necessary to protect the right of inmates to rehabilitation, as well as their rights to personality and privacy, applying the applicable criminal legislation to each case. To this end, it is necessary to discuss the abuses of rights practiced by the media and their consequences in contemporary society. The effectiveness of the Fundamental Rights guaranteed to prisoners must be preserved and guaranteed, as much as possible, aiming at success in the process of rehabilitation and reconstruction of the social life of prisoners, without the unjustified interference of the national media in these processes.

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