

# An Analysis of First Appearance Hearings in Brazil under the Labeling Approach

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**Abstract.** This paper questioned the legitimization of the oppression experienced by arrested individuals in Brazil due to the loosening of their First Appearance hearings, based on concepts derived from criminological theories, especially the Labeling Approach. For the preparation of this paper, bibliographic and documentary research were used, with emphasis on official data provided by the Institute for the Defense of the Right to Defense – IDDD. It is concluded that the individuals held in custody, whose profile frequently is of poor and black young people, are labeled as deserving of blame, often for crimes for which there are no witnesses, and in the majority of the cases for crimes without violence, what legitimates the application of a stigmatizing sanction, as well as the occurrence of violence against these individuals, panorama that can be easily verified through the loosening of their First Appearance hearings.

**Keywords.** First Appearance Hearing, Brazil, Labeling Approach.

## 1. Introduction

The First Appearance Hearing, in Brazil, is the measure through which the person arrested in the act is presented to the Judge, who must verify the legality of the arrest and the need to determine a pre-trial detention, however, this process, still relatively recent in Brazilian Law, is often carried out in a way that violates legal dictates and principles, or is not carried out at all, which greatly affects the arrested individuals.

The Brazilian legal system, through International Treaties (American Convention on Human Rights and the International Covenant on Civil and Political Rights) [1] [2], provides for the First Appearance Hearing, which was also regulated by the National Council of Justice on 2015 [3] and by the Code of Criminal Procedure, as a result of the developments carried out by Law 13,964/2019 [4]. It is known that the purpose of this procedure is to reduce the number of provisional prisoners in the country, as well as to make it possible to investigate the occurrence of possible mistreatment in police action.

Impacts of not holding the First Appearance Hearing according to the legal guarantees on the rights of arrested individuals has been extensively studied by researchers in recent years. Nevertheless, there remains a need of a research that describes an alternative approach to visualize the violations suffered by the custodians, in order to understand if

these infringements are trivialized by the State, from the perspective of Criminology concepts, especially the Labeling Approach.

The Labeling Approach studies the formation of criminal identity and the agencies of social control, establishing that when society and the Public Power decide that a certain person is a delinquent, they legitimize actions against the person that would not be adopted normally.

This study investigated how the Labeling Approach can be useful in order to apprehend the First Appearance hearings held in Brazil, as well as to question if eventual violations are trivialized. The purpose of this paper is to verify the data regarding the holding of First Appearance hearings in Brazil to examine if they have been carried out properly and, if not, what is the general profile of the individuals whose rights are violated and how this can be read in the light of the Labeling Approach.

## 2. Methodology

This paper used bibliographic and documentary material to investigate how the Labeling Approach can be used to understand if the violations suffered by arrested individuals in Brazil, in the specific aspect of the loosening of their First Appearance hearings, are seriously considered or trivialized.

Bibliographic research was carried out with material relevant to the understanding of the question raised.

In addition, documentary research was executed to analyze official data made available by the Institute for the Defense of the Right to Defense – IDDD, which focused on detailed research on the holding of First Appearance hearings in recent years in Brazil.

### 3. Results

As said above, the central issue developed in this study was to correlate a possible trivialization of the violations suffered by arrested individuals in Brazil, specifically due to the loosening of their First Appearance hearings, to the Criminology concept of the Labeling Approach.

Therefore, bibliographic works were utilized to understand in depth the Labeling Approach and its practical implications, both worldwide and in Brazil, in addition to documentary data, with a thoroughly study of how First Appearance hearings have been carried out in recent years in Brazil.

From this study, it was reached the result that prejudices, considering the intersectionality between gender, color and socioeconomic condition, legitimate abuses caused by the State, being this perception perceived through the illegal loosening of First Appearance hearings in Brazil in recent years.

Criminology, more particularly the Labeling Approach, is able to apprehend the labeling process and the consequent naturalization of these arbitrariness, as it starts from the idea of legitimizing the stigmatizing penalties (in this case, these penalties are harsher due to the loosening of First Appearance hearings, and it does not seem that there is a great concern from the State or from the population in general that these procedures are not being held according to the legal dictates and principles).

The Labeling Approach demonstrates why there is little concern, based on the concept of designated criteria of criminality as a social status attributed to certain subjects, based on gender, race and socioeconomic condition.

#### 3.1 What is the Labeling Approach? Results from the bibliographic research

The Labeling Approach was a precursor theory in the study of the formation of deviant identity and the agencies of social control. As Vera Malaguti points out, Alessandro Baratta elucidates that, if the question of Positivism Criminology is “who is the criminal?”, the labeling one would be “who is defined as a criminal?” [5].

Thus, the Labeling Approach studies the stigmatizing effect of the activities of the police, the public prosecution agencies and the Criminal Justice [6], based on social and economic relations.

The Labeling Approach constituted an advance towards an integral theory of deviance [7],

establishing that criminality is a status attributed to certain individuals through a double process: the legal definition of crime, which attributes criminal character to the conduct, and the selection that labels and stigmatizes an author as a criminal among all those who practice such conduct [8].

As a result, the stigmatization produces deviance, which is not a quality of the act committed itself, but a consequence of the application by others of sanctions to an “offender” [9].

Therefore, the Labeling Approach establishes that criminality is a consequence of the intervention of the repressive state apparatus represented by the Police, the public prosecution agencies and even by Criminal Justice, for example [10]. Thereby, deviant behaviors seem to be fueled by the agencies designated to inhibit them [11].

According to this criminological approach, when society and the Public Power decide that a certain person is a delinquent, they legitimize actions against that person that would not be adopted with anyone, demonstrating rejection and humiliation in interpersonal contacts [11].

In this sense, the German reception of the Labeling Approach produced an expansion of the original theoretical-social foundation [7], in order to consider criminality as a status attributed through selective mechanisms structured on social stratification [7].

From this perspective, Critical Criminology suggests the need for further scientific and critical development of the labeling theory [7], so that it is carried out an identification of the criminalized conducts and individuals, based on a socio-structural analysis of the processes of economic inequality and political power in capitalist society [7].

For Critical Criminology, labeling acts as a derivation of a criminal justice that constitutes typical class justice, so that the judges (as well as legislators and criminal law enforcers in general) are drawn from the middle and upper classes and the defendants are from the lower classes [7]. In this sense, the class position determines the differentiated social distribution of criminal definitions, in a visible process of labeling [7].

In fact, statistics indicate that, in capitalist countries, the vast majority of the prison population is drawn from sectors of the subproletariat, and therefore from social zones that are already socially marginalized, which illustrates such a vicious cycle of the subaltern classes tending to be negatively selected by criminalization mechanisms [6].

In Brazilian society, the classism conjuncture is demonstrated in addition to racism. According to information from the National Survey of Penitentiary Information, in June 2017, 63.64% of people deprived of their liberties considered themselves black [12]. Furthermore, 79.3% of Brazilian prisoners had not completed high school, an indicator of low income [12].

These individuals tend to be more labeled not because they are more likely to commit crimes, but because they are more likely to be criminalized as delinquents. The possibilities of being labeled, therefore, with its serious implications, are distributed according to the laws of a second code, constituted especially by a stereotyped and prejudiced image of criminality [8].

### 3.2 First Appearances hearings in Brazil: Results from the documentary research

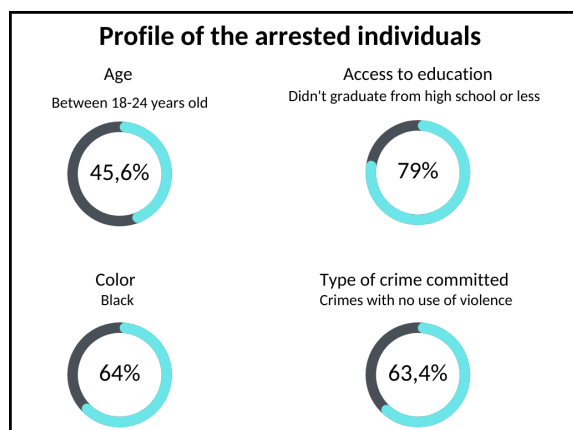
The results of this subsection refer, notably, to the official data collected by the Institute for the Defense of the Right to Defense - IDDD, a specialized institute that, in recent years, accompanied the holding of First Appearance hearings in Brazil.

From the in-depth study of this data, it is possible to extract some information about who are the arrested individuals, about the First Appearing hearings themselves and about what are the implications of the loosening of these procedures in general.

To start with the arrested individuals profile, their age is a fact that deserves attention due to the large number of young people between 18 and 24 years old: 45.56% of the total sample of cases [13].

Poor access to education in the arrested people was also evidenced by the monitoring of the First Appearance hearings by IDDD. In the general panorama of the cities surveyed, 79% of the arrested individuals hadn't graduated from high school or even less [13]. In reference to color, the general scenario is as follows: if we disregard the cases without information, blacks represent 64.1% of the individuals submitted to First Appearance hearings [13].

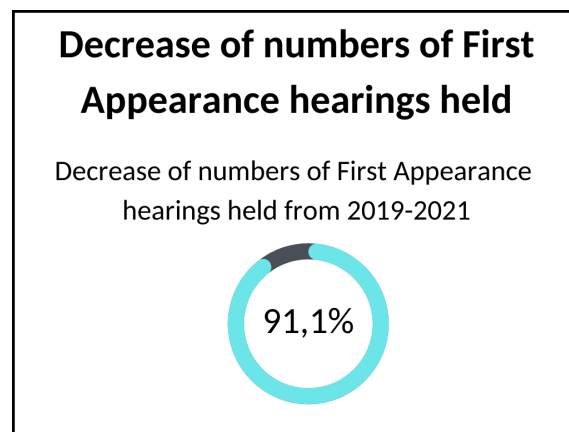
Finally, in 63.4% of cases, it is perceived that what reaches the First Appearance hearings are non-violent crimes [13].



**Fig. 1** - Profile of the arrested individuals in the First Appearance hearings.

Although the holding of the First Appearance hearing is mandatory by law, it appears that the number of First Appearance hearings held in Brazil has been

dropping dramatically in the last couple of years. The number dropped from 222,000 in 2019 to 66,000 in 2020, and 19,000 by June 2021. Many states are now restricted to reading the Record of the Arrest, a method used before the implementation of these hearings. Between April 2020 and May 2021, there were 203 thousand cases of custodians analyzed by papers [14].



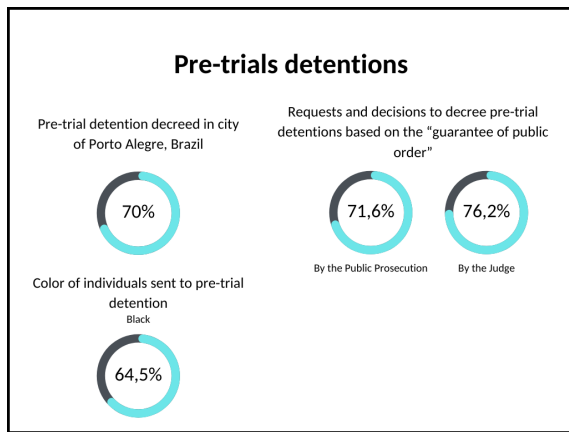
**Fig. 2** - Decrease of numbers of First Appearance hearings held 2019-2021.

Concerning the aspects of the First Appearance hearings themselves, it appears that they have been carried out in a way that does not make it possible to fully achieve one of their main objectives, which is to reduce the number of pre-trial detention decrees, which, according to Brazilian legislation, should be an exception.

However, according to the data collected, in the First Appearances hearings held in the city of Porto Alegre, for example, in 70% of the cases the pre-trial detention was decreed [13].

Analyzing the profile of people in custody with the highest incidence of pre-trial detention, it is possible to see the majority of individuals arrested after the First Appearance hearing is male (93.6%) and black (64.5%) [13]. Color, therefore, also manifests itself as a marker of inequality in the results of custody hearings.

Furthermore, in requests and decisions to decree pre-trial detentions, the generic argument of "guarantee of public order", perhaps due to its excessive conceptual breadth, appears as the main foundation in the vast majority of cases. The Public Prosecution invokes this criterion in 71.6% of the cases in which it requests pre-trial detention; the Judge mentions it in 76.2% of the decisions in which he decrees the arrest [13].



**Fig. 3** -Pre-trials detentions.

Holding First Appearance hearings without observing legal dictates and principles, or even not carrying them out at all, also directly affects another objective of this procedure: the investigation of the occurrence of possible mistreatment in police action during the arrests, including police brutality.

In 55.6% of the cases, the only witnesses during the arrests were the police officers themselves - a rate that rises to 90% in cases of drug trafficking [13].

According to the data, security agents were present in courtrooms in 96.3% of cases. In several locations, not just one, but two, three, four, or even more police officers were present throughout the entire hearing, including the moment when the custodian is given the chance to report how his/her arrest really occurred [13].

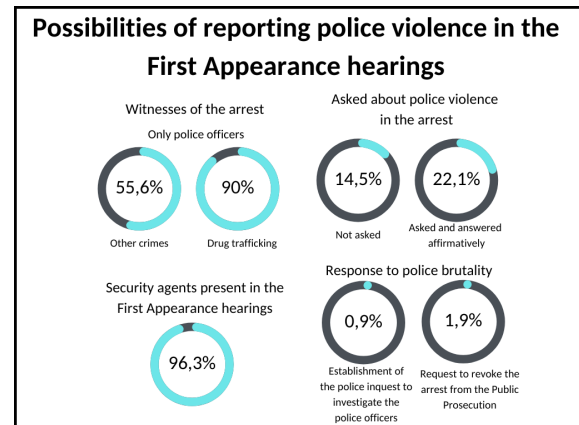
Regarding episodes of police violence, 14.5% of the people in custody were not asked by the Judge about it. Of those who were not asked, 11.3% spontaneously reported having suffered police violence at the time of the arrest. Of the 85.5% people in custody who were explicitly asked about the occurrence of police violence, 25.9% answered affirmatively. The results also indicate that many judges asked the questions in an unclear way, which could lead to underreporting of police violence [13].

Furthermore, from the cases in which the person taken to the First Appearance hearing reported having suffered police violence in the approach, in only 0.9% there was the establishment of the police inquest to investigate the police officers, and only in 1.9% there was a request to revoke the arrest of the custodian by the Public Prosecution [13].

During the peak of the Covid-19 pandemic, most First Appearance hearings, through all of Brazil, were carried out online. In the virtual audiences followed by IDDD, the internet was unstable, with the images frequently disappearing from screen [14].

However, even with all this improper loosening of the First Appearance hearing, its objective of fighting torture and police brutality is undeniable, which demonstrates why it is so important to give this procedure the correct attention. According to the Brazilian National Council of Justice, reports of ill-

treatment by police officers at the time of arrest have more than doubled since the implementation of First Appearance hearings, rising from 2.4% of cases in 2015 to 6.2% in 2019 [14].



**Fig. 4** - Possibilities of reporting police violence in the First Appearance hearings.

### 3.3 Possible implications from the results

It is important to bring up that the First Appearance hearing, despite being provided for many years by international treaties to which Brazil is a signatory, as well as having been regulated by the National Council of Justice in 2015, was only duly inserted into the Criminal Procedure Code in 2019, so that it has not yet been observed as it should by many judges, especially in the smaller cities.

Added to this is the fact that the Covid-19 pandemic has substantially affected the holding of these hearings, in a way that it was unduly allowed, in my understanding and that of many researchers in the field, that this procedure was carried out online, or even from the simple reading of the records of the arrests.

Such circumstances, which can be read as possible problems of these results, can also be understood as indicative of the non-observance of legal dictates and principles in the holding of First Appearance hearings, which can be related, in the light of the Labeling Approach, with the custodians profile. It is worth noting that, whereas the present research involves many subjective aspects, which cannot be quantified, the study of bibliographic material from the works of researchers, especially in the field of Law, Criminology, Sociology and Psychology, made it possible to read, in the light of the Labeling Approach, the data collected in the aforementioned official documents.

## 4. Discussion

As aforementioned, this paper brings an alternative approach to visualize the loosening of the First Appearance hearings, in order to understand if these infringements are trivialized by the State from the perspective of Criminology concepts, especially the Labeling Approach.

From what could be read from the results, the construction of a prejudiced image of criminality, which can be explained by the Labeling Approach, can also be perceived from the analysis of the profile of individuals held in custody in Brazil, mostly poor and black individuals.

The First Appearance hearing is intended to ensure respect for the fundamental rights of the person under arrest. It guarantees the physical presence of the person charged in the act before the judge, as well as his/her right to full and effective adversarial proceedings before the decision to convert the arrest into a pre-trial detention. With this, unnecessary arrests are avoided and it is possible to discover and take action in the face of possible cases of ill-treatment and torture by the police [14].

However, with the loosening of the First Appearance hearings, the labeling process is notable, particularly for individuals arrested in the act, since this procedure is not carried out in a way that effectively fulfill its goals, violating the fundamental rights of the custodians.

In fact, pre-trial detention is part of the tradition of Brazilian criminal procedure [15]. The mentality of Brazilian criminal judges remains inert, resulting in the imprisonment, for the most part, of poor and black individuals, illustrating the classism and structural racism present in Brazilian society.

Such a panorama is also easily visualized with the police officers' high discretion in the activity of approaching individuals and arresting offenders at the time of the crime [16]. In Brazil, Ramos and Musumesci [17] indicated how police officers in Rio de Janeiro build standards of policing oriented towards the detention of "suspicious elements", which are young, male, black and poor individuals. Subjects with this profile tend to be named by the Police as "camburão brakes", that is, when faced with this profile, police officers tend to stop immediately to approach them. This pattern of police operation helps to understand why black, poor and young people make up almost all of those arrested in the act and also of those killed in police actions. They are the ones who make up the social stereotype of the delinquent.

From this panorama, it can be deduced that, as most of the people in custody, as shown by the above-mentioned results, conform to the criminal stereotype, based on a reading of the Labeling Approach, their criminal identity is further reinforced by the agencies of social control, in order to make it easier for society and for the Criminal Justice to decide that this person is a delinquent and to legitimize actions against him/her that would not be normally adopted, bringing the stigmatized person to the control that will restrict their freedom.

Thus, from the verification of the undue loosening of the First Appearance hearings, an institute that should be considered, not only in theory, but also in practice, as a guarantee commandment, notably for

being internationally established and incorporated into national law, it appears that the criminalization process is directed towards the lower social class, in which criminal behavior is considered a normal phenomenon for the dominant ideology [7]. Such an understanding that illicit attitudes would be expected from those with low social status legitimizes the abuse perpetrated by the loosening (or even non-performance) of custody hearings.

Furthermore, the trivialization of not holding custody hearings properly ends up legitimizing police violence. During the Covid-19 pandemic, when the number of hearings held dropped, the number of people killed by police in the state of São Paulo increased considerably. Compared to 2019, in 2020 there was a 21% growth in the number of people killed by police officers [18]. At the same time, Defense attorneys emphasize the impossibility of investigating evidence of police aggression or torture without the correct holding of the First Appearance hearing [14].

According to a report of the Non-Governmental Organization Human Rights Watch [19], the First Appearance hearing present itself as an effort by Brazil to combat human rights violations. Nevertheless, there is a lack of concern in Brazilian society in combating such violations to people taxed as criminals, mostly black, with low income and not even accused of crimes with the use of violence.

We found that the stigmatizing treatment granted through arrests in the act, which have not been submitted to the correct evaluation through the First Appearance Hearings, is framed as a way of determining the criminal population, the culmination of the process of marginalization, legitimizing the abandonment of constitutional guarantees and procedures of protection of the citizen in the face of the punitive function of the State.

## 5. Conclusion

The subject under study is extremely relevant, as the frequency of the problem regarding systematic violations of fundamental rights within the scope of criminal justice is noted, with a focus on the illegal manner First Appearance hearings are being held. The legitimation of such violence illustrates the ease with which stigmatizing sanctions are applied to certain individuals, mainly due to criteria such as class, race and gender, alluding to the concept of the Labeling Approach.

Thus, the social prejudices (mostly classism and racism) that cause and legitimize the abuses practiced by the State, through the illegal loosening of the First Appearance hearings, motivates the search for theories, in the field of Criminology, that explain this process of classification and the consequent naturalization of arbitrariness.

The understanding of the Labeling Approach is the understanding of who has the power to criminalize and who is subject to criminalization. This panorama

portrays the idea of criminalized conduct that results in selectivity, stigmatization and criminalization of the poor individuals around the world, including in Brazil.

In conclusion, because the individuals held in custody, whose profile frequently is of poor and black young people, are labeled as deserving of blame, often for crimes for which there are no witnesses, and in the majority of the cases for crimes without violence, the application of a stigmatizing sanction is legitimized, as well as the occurrence of violence against these individuals, what can be easily verified through the loosening of their First Appearance hearings.

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