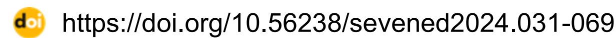
PHYSICIAN VULNERABILITY: THE PUBLIC DEFENDER'S OFFICE AS CUSTOS VULNERABILIS IN MEDICAL MALPRACTICE PROCEEDINGS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ABSTRACT

Vulnerability is present when one of the poles of the relationship becomes weaker and prone to influence and damage. In a doctor-patient relationship, the first deduction that presents itself is the patient as the vulnerable party in the relationship; Although there is a place in this note, since, in most cases, this is the most recurrent scenario, it is necessary to visualize the hidden backstage on stage: the doctor in the figure of vulnerable after a mistake, based on circumstances beyond his control. This point will flourish within the process, with the active participation of the Public Defender's Office, as *Custos Vulnerabilis*, if it is not a defense per se, demonstrating that, regardless of being requested to represent the passive pole, its presence as a verifier of the guarantees that weigh the vulnerability will be due, concomitantly.

Keywords: Vulnerability. Doctor. Legitimacy. Public Defender's Office. *Custos Vulnerabilis*.

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INTRODUCTION

CUSTOS VULNERABILIS

Discussions about transgressions of the law in the practice of medicine have grown, allowing a greater understanding and extension of the problem that permeates public health care and the need to punish certain practices that constitute criminal offenses. This provides a more dynamic understanding of the relationship between Law and Medicine, since, *prima facie*, they do not have a deductive and direct connection.

In this way, a profession that was previously untouchable, dominated by the bourgeoisie and feared for nurturing the power to save lives through in-depth studies of the human body, began to be more verified, especially by social demands. In the meantime, these new perceptions have brought discussions that expose behaviors and practices in the practice of Medicine, which, despite having a lawful origin within the legal parameters of saving human life, result in illicit actions that put the life of a patient at risk, who, undeniably, is an individual protected by constitutional guarantees to the life and dignity of the human person.

Before starting the discussion itself, it is indisputable that the patient is the most vulnerable party in the relationship, and should be treated with complexity and attention. However, one discussion does not cancel out the other, so that the objective of the present work is to demonstrate the existence of medical vulnerability in the performance of a criminal offense and, as a result, the legitimacy of the Public Defender's Office to act in these processes as *Custos Vulnerabilis*, with the scope of verifying whether the guarantees of the doctor, a mere citizen, are being protected. Thus, in order to present this vulnerable aspect, it is necessary to treat the lato sensu Vulnerability together with the Vulnerability sought *stricto sensu*.

That said, the resource of qualitative, doctrinal and jurisprudential research was used, with access to the Google Scholar and Scielo platforms, through the keywords 'vulnerability', 'doctor', 'legitimacy', 'Defender's Office', 'custos vulnerabilis', as well as the use of data provided by the National Council of Justice to analyze the criminal types within the exercise of health care.

This article, therefore, fosters discussions on a topic little observed by society and the legal environment, so that this investigation is at the level of both social and scientific relevance. While social relevance opens space for the understanding of a vulnerability that is little presented to common sense and, therefore, little recognized, scientific relevance allows the construction of new paths for the recognition of the countless paths of vulnerability.

METHODOLOGY

LEGITIMACY OF THE PUBLIC DEFENDER'S OFFICE AND THE CUSTUS VULNERABILIS

The Public Defender's Office is a permanent institution, essential to the State's jurisdictional function, and it is responsible [...] for the promotion of human rights and the defense [...] of individual and collective rights, in a comprehensive and free manner, to those in need[4]." This is the main function of this body, but it is necessary to analyze in more depth and caution the expressions used to formalize the concept of Public Defender's Office.

Well, when the 'needy' are mentioned[5], the scenario that is presented in the first place, as the most usual, is that of individuals in conditions of economic insufficiency, who, by using their income to pay for the processes, would directly affect their subsistence. However, the complexity of this agency for helping the vulnerable is more comprehensive than a minimalist and economic criterion.

The extension of the meaning of vulnerable, in turn, is due to the germination of the Renovatory Waves of access to justice[6] (CAPPELLETTI, Mauro; GARTH, Bryan, 1998). In a brief step, the *first wave of renovation* takes care of the more deductive view, that is, of the insufficiency of economic resources, in which the State must act as a defender, with the objective of removing the economic obstacles of the individual; the *second wave of renovation* opens space for diffuse rights, bringing issues that do not only permeate the will of two parties, the emergence of the figure of Collective Justice; Continuously, the *third wave of renewal* procedurally streamlines litigation, in order to make it faster (CASAS MAIA , 2020).

Still in a tight synthesis, extracted from the doctoral thesis *The legal cycle of vulnerability and the institutional legitimacy of the public defender's office*: constitutional limiter or amplifier of comprehensive legal assistance?, authored by the researcher, professor and Public Defender Maurílio de Casas Maia, and in order to understand the dynamism of the Public Defender's Office, the *fourth wave of renewal* it requires care to

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[4] (LC 80/94). "Article 1 The Public Defender's Office is a permanent institution, essential to the jurisdictional function of the State, and it is incumbent upon it, as an expression and instrument of the democratic regime, fundamentally, to provide legal guidance, the promotion of human rights and the defense, at all levels, judicial and extrajudicial, of individual and collective rights, in a full and free manner, to the needy, thus considered in the form of item LXXIV of article 5 of the Federal Constitution."

[5] Rightly, the Public Defender's Offices began to adapt their regulations, starting to protect the interests of individuals, regardless of the financial criterion. Money is not everything. The legal assistance provided by the Public Defender's Office should not be limited to objective criteria, nor to the analysis of its beneficiaries or their assets. (AMORIM, ANA, 2021).

[6] For a greater understanding of the classic renovatory waves. See: CAPPELLETTI, Mauro; GARTH, Bryant G.; NORTHFLEET, Ellen Gracie. Access to justice. Porto Alegre: Fabris, 1988

associate the educational environment with legal knowledge, with the objective of making the social sensation of justice intrinsic; the *fifth wave of renewal*, in the wake of the decisions of the UN, especially from the Universal Declaration of Human Rights, opened the way for international litigation in favor of the unassisted, persecuted, stateless, among other minorities/majorities who saw their basic rights violated; and the *sixth wave of renewal*, markedly technological, facilitated access to justice by the "mosaic people", as the author quoted above clarifies.

Now, what should be extracted from the study of the renovatory waves is the analysis of social needs, verifying that there are other paths of vulnerability. Thus, the Public Defender's Office, as *custos vulnerabilis*[7], has the duty and legitimacy to be present in issues in which the vulnerable aspect assumes a latent role, as we can see in the assertions below:

> [...] access to collective justice was enhanced (second wave of renewal of access) and the special institutional responsibility of the Public Defender's Office with vulnerable categories, in the condition of constitutional needs, was finally perceived. Thus, the process of consolidating the constitutional mission of the Public Defender's Office as an emancipator and guardian of the vulnerable is reinforced (CASAS MAIA; In: LIMA MARQUES, 2020).

And of the Brazilian Supreme Court, with regard to the expansion of the Public Defender's Office's activities, in the condition of vulnerable costs, as we can see from the wording of Justice André Luiz de Almeida Mendonça, when accepting the action of Allegation of Non-Compliance with a Fundamental Precept, filed by Maurílio Casas Maia:

> ADPF 709 ED/ DF, 2023. "The condition of custos vulnerabilis allows the Public Defender's Office to intervene in the facts, in its own name, but in the interest of the rights of the needy, in order to strengthen the defense of collective and diffuse interests of groups, which, under other conditions, would not have a voice. It is an institute closely related to its institutional attributions of defense of human rights (art. 134, FC). In concentrated control actions, such intervention confers even greater openness to debate, allowing different perspectives to be brought that would not be available in other circumstances. Precedents: (STF, Rcl n. 54.011, Rel. Min. André Mendonça, j. 29.06.2022; STJ, EDcl no REsp 1.712.163, Rel. Min. Moura Ribeiro, j. 25.09.2019.)

Considering, therefore, that this body has a multifocal space of action, it is peremptory to affirm that the classic conception of the technical defense of an individual or group in need has been overcome, extending the presence of the Public Defender's Office

[7] The term Custos Vulnerabilis had as one of the main creators the Public Defender of the State of Amazonas, Professor at the Federal University of Amazonas – UFAM, Maurílio Casas Maia, in a Doctoral Thesis, defended in the Graduate Program in Constitutional Law, at the Center for Legal Sciences - CCJ, at the University of Fortaleza – UNIFOR (2020).

in the process as the "guardian of the vulnerable", just like the Public Prosecutor's Office in its role of *custos legis*.

In the meantime, the remedy to remove the vulnerable character in the procedural sphere, which, in turn, has become normalized, considering that one of the parties, or both, in their due circumstances, are vulnerable, is the Public Defender's Office. It is the core of access to justice and, consequently, of overcoming vulnerability.

RESULTS

VULNERABILITY IN THE LEGAL CONTEXT

A priori, vulnerability, coming from the Latin *vulnerabilis*, rested on the meaning of "injury, cut or open wound, without healing, bloody wounds with serious risks of infection" (JUNIOR, Eudes, 2010)[8]. In this way, vulnerability represents the fragility of human life within society, and can therefore fall on any individual. Obviously, these circumstances do not affect everyone equally, since, even to be in a vulnerable situation, inequalities are present.

In this vein, for example, the vulnerability of a hyposufficient individual will not be the same as that experienced by a woman in a context of domestic violence, just as it will not have the same characteristics as a refugee[9]. This context makes it peremptory to recognize that there are several types of vulnerabilities within a society and that, frequently, the paths that inequality makes are not visualized, thus preventing the knowledge of certain vulnerabilities that escape the common gaze, since it is a *factual situation, that is, it must be analyzed according to the specific* concrete case, "since it would be impossible for the established norm to exhaustively foresee all cases, listing them" (NÓBREGA, Alice, 2021).

In the same sense, the Amazonian defender is right to advocate for an expansion of the competence of the Public Defender's Office, because to circumscribe it to a reason of

[8] Vulnerable, a term of Latin origin, **vulnerabilis,** in its origin comes to mean the injury, cut or open wound, without healing, bloody wounds with serious risks of infection[7]. HOUAISS[8], in turn, defines it as follows: that he can be physically injured; subject to being attacked, defeated, harmed or offended. It always demonstrates someone's incapacity or fragility, motivated by special circumstances. Greek mythology reports that Thetis, mother of Achilles, anointed her son's body with ambrosia and held it on fire. He then plunged him into the river Styx with the intention of making him invulnerable. But he held him by a heel that was not touched by the water, and so he was left unprotected. He was killed by Paris, who hit him with a closed heel vulnerable. (JUNIOR, Eudes Quintino de Oliveira. The concept of vulnerability in criminal law, 2010).

[9] Thus, the following groups were considered vulnerable, regardless of income criterion: women victims of domestic or family violence; Elderly; people with disabilities or with global developmental disorders; children or adolescents; indigenous populations; quilombolas; riverside dwellers or members of traditional communities; over-indebted consumers or in a situation of consumption accident; people who are victims of discrimination on the basis of ethnicity, color, gender; origin; race; religion or sexual orientation; people who are victims of torture; sexual abuse; trafficking in persons or other forms of serious human rights violations; LGBTQIA+ population; persons deprived of liberty due to imprisonment or internment; migrants and refugees; homeless people; drug users; collectors of recyclable materials and workers in situations of slavery. (AMORIM, Ana, 2021).

economic vulnerability and/or asymmetry between the parties is to limit access to justice and the improvement of the democratic system:

> Based on the assumption of the doctrinal and jurisprudential adoption of the broad concept of "needy" and "insufficiency of resources" as sufficient for the *transindividual legitimacy* of the Public Defender's Office, it is understood that the expression "needy" should not be limited to the economic-financial criterion. (CASAS MAIA, 2020, p. 72)

In this sense, the scope of the concept and competence of the Public Defender's Office would reach those professionals who, despite being categorized as economically sufficient in the general sense of the work scale and remuneration, can be inserted in a synchronic and diachronic context of vulnerability, as is the case of doctors.

THE VULNERABILITY OF THE PHYSICIAN

Secularly, the doctor is a notorious figure and, for a long time, was considered a differentiated professional from the others, recognized for his distinct worldview, due to his power to save lives. In the context in which the doctor was seen with a fearsome power, to adduce that he could have some aspect of vulnerability would be innocuous and almost immediately refuted. Confrontation with this figure, therefore, was rare. However, nowadays, with the dynamization of social relations, greater media freedom and a broad knowledge by the 'average man', that is, with more democratic access to scientific readings on digital platforms, the doctor is in a position where his acts can be glorious or declining.

It is not a deductive vulnerability, in which the situation is presented and then it is stated that there is a vulnerable aspect in the doctor. It so happens that, in the reflections of Meirelles, Ana, et al. (2022), each reality is unique and personal, vitaminized by a 'coefficient of subjectivity', so that the perception of characteristics and circumstances is not always directly measurable. Thus, '*one should not conceive the idea of vulnerability as a label or a hermetic and closed condition, but as a complex reality, endowed with different dimensions*.'

Furthermore, with the constitutionalization of all acts in society, whose scope is to enforce the good of life and the dignity of the human person, any action attributed to an individual can have criminal consequences, if Criminal Law is present as an *ultima ratio*. Thus, not incorrectly, if the doctor commits an attempt on human life, even in circumstances beyond his control, he will be transgressing the law, adapting to some conduct typified in the Penal Code, and due accountability, if verified, must be presented.

It turns out that, given this scenario, the doctor becomes, in the process, a totally vulnerable individual. In this sense, it is not a question of insufficient resources, since it is

expected that, at this point, the minimalist view that vulnerability is triggered only by economic hyposufficiency has been overcome. Vulnerability here refers to the fact that it is hostage to public opinions and media influence, a Fourth Estate, which, through small manifestations, can influence the course of a medical malpractice process, preventing the defense from using the appropriate procedural mechanisms and even interfering in the security of the jurisdictional provision. Hence the alignment of the Amazonian defender with two columnists, in scientific matters about the performance of the Defender's Office, with regard to human rights, whether collective, individual, gender, class or any other definition.

> [...] it is up to the Public Defender's Office to ensure the promotion of the Human Rights *of each and every person, whether they are economically needy or not*, to the extent that the guiding criterion of institutional action is no longer exclusive to financial condition, *but rather the existence of a fundamental right worthy of state protection.* (RAGAZZI and SILVA: in: CASAS MAIA, 2020, p. 119)

Furthermore, it is necessary to address another garment imposed on physicians as a result of their actions: villainization. Now, within a process, especially in scenarios of medical error, the patient, the active pole, and the physician, the passive pole, are not in a situation of equal parameterization. Despite the support needed to face the procedural way of the cross, the only supporting figure of the health professional, within the process, is the lawyer himself. Often, the latter, not having enough time to seek a scientific understanding of the physician's conduct, is unable to orchestrate good arguments that can contribute to the search for full justice.

Furthermore, it is important to expose the main fragility that, it is dare to say, sustains the entire structure of vulnerability that permeates the physician. This professional is often inserted in an environment in which the emotional load is constantly put to the test, and must deal not only with the vulnerability of the patient he is attending, dealing with the delicate bridge between life and death, but also with the family members, who, in their liquid and certain right, demand dignified care.

In this context, physicians must face the unhealthy workplace and the scarcity of equipment, seeking to balance these conditions with humanized care, in an environment where tragedies are routine and resources are scarce or precarious. Regardless of all these challenges, the doctor must respond objectively, valuing science and running the risk of suffering a lawsuit.

Thus, in the reflections of Mascarello and Bertoglio (2019), the physician still faces occupational risks, that is, the risk of being contaminated by biological materials or infectious diseases. Even with the use of Personal Protective Equipment in patient management, these risks can be more complex and difficult to eliminate completely,

especially in urgent and emergency cases. Finally, the umbilical relationship between these risks and the vulnerability of the physician in the exercise of the profession is clear.

THE MOST RELEVANT TYPES OF CRIME ARISING FROM THE PROVISION OF HEALTH CARE

Criminal offenses in Brazil occur for the commission of a crime or misdemeanor. The focus will be given to crime, which consists of "*any conscious and voluntary action or omission, which, being previously defined by law, creates a legally prohibited and relevant risk to legal assets considered fundamental for peace and social life*". To this end, the Tripartite Theory is adopted, in which the concomitant existence of a Typical, Illicit and Culpable Fact is verified[10].

On another level, it is known that, for the commission of an intentional crime, whether by action or omission, there must be the figure of *animus*, so that it encompasses the object desired by the active subject of the action, making evident the intent of the first degree, as well as the means chosen and the knowledge of the secondary consequences of this act, characterizing, in turn, second-degree intent (ESTEFAM, 2024, p. 880). On the other hand, there are some situations in which the agent did not aim for a certain result, which, even so, will affect the commission of a crime; At this point, the crime is exposed in the culpable modality.

When dealing with fault in isolation, the following elements must be present: a) voluntary conduct; b) typicality; c) result (involuntary); d) causal link; e) breach of the duty of objective care[11], due to recklessness, negligence or malpractice; f) objective predictability of

[10] "The tripartite or trichotomous current is the predominant one, not only in Brazil but also in foreign doctrine. Its adherents argue, among others, that there can be no crime in an action that does not deserve reproach. Culpability, therefore, must be an integral part of the concept. They also add that to consider it a prerequisite for punishment is to adjectivate it in a way that would serve any of the requirements of the crime; This is because, without a typical and anti-legal fact (as well as without culpability), there can be no imposition of penalty." (ESTEFAM, A.; LENZA, P.; GONÇALVES, V. E. R. Schematized® Criminal Law: 13. ed. São Paulo: Saraiva, 2024. E-book.)

[11] The duty of care consists of the imposition, provided for everyone, to act with caution on a daily basis, so as not to harm other people's property. This duty is determined objectively, that is, according to an average standard, based on what would be expected of a person of average prudence and discernment; hence the talk of "objective duty of care". The violation of this duty will be manifested through imprudence, negligence or malpractice. These modalities of guilt are, therefore, the ways of breaking the multi-cited element of the typical fact of culpable crimes.

The concrete determination of the breach of duty and, therefore, the finding of imprudence, negligence or malpractice require a hypothetical formulation, in which the agent's conduct is compared with that which would be expected of a person of average prudence and discernment, in the situation in which the individual found himself. Thus, for example, if someone drives a car on a public road at excessive speed and, in view of this, collides with another vehicle, injuring the driver, his conduct must be confronted with that of an average man, in the same situation in which he was. This comparison will reveal that the subject acted with recklessness, breaking the duty of objective care, because an averagely cautious person is expected to obey traffic rules at the wheel, something that the driver responsible for the accident did not do. (ESTEFAM, A.; LENZA, P.; GONÇALVES, V. E. R. Schematized® Criminal Law: 13. ed. São Paulo: Saraiva, 2024. E-book.)

the result; g) relationship of objective imputation. Usually, guilt manifests itself through recklessness, negligence or malpractice.

In the teachings of André Estefam (2024, p. 893), recklessness is a positive action, in which the agent acts "*without precaution, hasty, imponderable*"; Therefore, there is a willingness to act in this way, but the result is not expected. As for *negligence*, on the contrary, it is a negative, omissive action, in which "*the subject behaves without due caution*". Finally, malpractice occurs, as a rule, "in the exercise of the *profession, deriving from the practice of a certain activity, omissive or commissive*"; It is characterized by an individual who has no experience in a certain procedure, for example.

Thus, what can be concluded is that the doctor may suffer criminal liability for a conduct that, added to all the other elements, will be part of the analytical concept of crime. In this way, the presence of intent may be verified, in which the objective, from the beginning, was to characterize a fact considered unlawful, or guilty, in which the institutes of imprudence, negligence or malpractice will be present, scenarios that generally include medical conducts (MASCARELLO, Michel, 2019, p. 190).

THE MAIN OFFENSES COMMITTED BY PHYSICIANS IN THE EXERCISE OF THEIR PROFESSION

The practice of medicine involves the delicate bridge between life and death, so that one of the criminal responsibilities that can be imputed to a doctor is precisely homicide in its culpable modality, according to article 121, paragraph 3, of the Penal Code, with special attention to paragraph 4 of the same article, which deals with the non-observance of a technical rule of profession.

A doctor who submits a patient to an aesthetic procedure, for example, without the technical skills for such an intervention, is assuming the risk to the patient's health, becoming liable to punishment. This differs from the one who, even following the protocols described in the literature about a given disease, sees the patient die. To the former, the affairs of the law; to the latter, the understanding of the law. It is in this sense that we recall the studies below:

> One cannot confuse malpractice with the legal concept of professional error, synonymous with excusable diagnostic error (read: exempt from liability). Example: the doctor, when analyzing the patient, applied the technique that the medical books recommended. However, his diagnosis was wrong, because the person had contracted another disease, different from the one he imagined. The subject, in the face of the medications prescribed by the professional, has his process of deterioration of the organism accelerated and ends up dying. In this case, the doctor is not responsible for the result, not even as a fault. The fault was not his, because he acted according to the knowledge of his science, but of Medicine itself (so much

> so that any other averagely prepared professional would have made the same mistake). (ESTEFAM, A.; LENZA, P.; GONÇALVES, V. E. R. 2024)

In view of another aspect, still on the culpable modality, there is bodily injury, which the Penal Code addresses in its article 129, paragraph 6. In this sense, there is no need to speak of classification when it occurs by intent, whether in the light, serious or very serious forms, but only when caused by recklessness, negligence or malpractice. It is important to note that this crime will only be configured when there is the presence of "*manifest malpractice, negligence or imprudence*". Therefore, the liability of the doctor is excluded if he acts in accordance with the rules of practice. (MASCARELLO, Michel, 2019, p. 193).

At this point, when addressing an intentional perspective, the crime of omission of help is verified, provided for in article 135 of the Penal Code, which is configured when, in the field of health, the professional refuses to attend to a certain individual, under the pretext of being out of his specialty. As an example, this occurs when the patient dies because the seriousness and urgency of the situation are not considered. Continuing, another crime that can be found is the illegal practice of medicine, under the terms of article 282 of the Penal Code, when any individual acts without authorization or the doctor himself exceeds the limit of his training.

Furthermore, there is also a violation of professional secrecy, although less frequently due to the adoption of ethical principles in medicine, provided for in article 154 of the Penal Code, which consists of *revealing, without just cause, in the exercise of a ministry, office or profession, information that may cause damage to others*. On another level, it is possible to cite the falsity of a medical certificate, along the lines of article 302 of the Penal Code.

CONCLUSION

IN DUBIO PRO JUSTITIA SOCIALIS

Since the creation of the Public Defender's Office, its main aspect has been the defense of the vulnerable; prima facie, those who did not have sufficient resources to bear the costs of a lawsuit without jeopardizing their own livelihood. With the evolution of social claims, the concept of vulnerability accepted by the Public Defender's Office was reflected, making it evident that it was not restricted only to the financial aspect.

In this sense, it was found to be pertinent to defend those who are vulnerable in aspects other than the economic. What has been observed over the years is that the Public Defender's Office has the capacity not only to carry out a technical defense itself, but also to act as a guardian of the vulnerable.

With regard to vulnerability, it cannot be treated as an exhaustive list, in which there are only a limited number of social figures pertinent to this concept, and therefore the subjective character of each concrete case must be analyzed. Thus, the study of vulnerability is continuous, requiring an intermittent analysis of the deficits inherent to each situation that arises.

Thus, medical vulnerability wanders under the influence of the media in the specific case, as well as in the work environment itself, which is involved in several risks that make the medical profession challenging and prone to emotional destabilization. This environment constitutes a fertile and vulnerable soil, marked by the fragilities arising from the social, emotional and unhealthy pressure of the workplace. And, if even in the face of these factors there are still doubts about the vulnerability of this professional, the criterion in dubio pro *justitia socialis*, already enshrined in the higher courts, applies:

> The more democratic a society, the greater and freer must be the degree of access to the Courts that is expected to be guaranteed by the Constitution and the law to the person, individually or collectively. *2.* In the Public Civil Action*, in case of doubt* about the legitimacy to act of an intermediary subject – the Public Prosecutor*'s Office, the Public Defender*'s Office and associations, for example –, especially if the dignity of the human person is at stake, *the judge must choose to recognize it* and, thus, open the doors to the judicial solution of disputes that, if different, they would never see their day in court. […]. (STJ, REsp 931.513/RS, Rel. p/ Judgment Min. HERMAN BENJAMIN, S1, j. 25/11/2009, DJe 27/9/2010. In: CASAS MAIA, 2020, p. 213).

And also in the abundant literature on the subject:

> Therefore, if it is understood that legal legitimacy (*ope legis*) is not sufficient to confirm the legitimacy of the body, that is, if the theory of ope *iudicis control* of institutional legitimacy is adopted and there is *doubt* about ministerial or defender legitimacy, it is also interesting to probe the *social relevance* of the *sub judice* legal good, when in doubt, institutional legitimacy must be confirmed, adopting the criterion *in dubio pro justitia socialis* applied to the analysis of institutional legitimacy: in doubt, in favor of *access to Justice* and the search for the effectiveness of Social Justice. Thus, in the debate on access to social justice, the principle *in dubio pro justitia socialis* will guarantee the *prohibition of retrogression* – in a similar sense, DIDIER JR. and ZANETI JR. – on the issue of the institutional legitimation of public agents when it comes to *institutional presentation* regarding the defense of primary and collective public-institutional interests in a broad sense. (CASAS MAIA, 2020, p. 214).

Therefore, such circumstances denote the clear fragility and vulnerability of the physician, leaving the Public Defender's Office more than justifiable in the figure of Custos Vulnerabilis. This does not prevent, in turn, this same body from acting as a technical defense in situations, for example, of default or even hyposufficiency, depending on the analysis of the magistrate in the face of the concrete situation.

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