



Legal and criminal exemption from liability for the crime of theft against an ascendant committed by the descendant in the city of maputo: case of the 12th police station

Legal - criminal exemption from liability for the crime of theft against an ascendant committed by the descendant in the city of maputo: case of the 12th police station

Exemption from criminal liability for the crime of injury to an ascendant committed by the descendent in the city of Maputo: case of the 12th police commissioner

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1. SUMMARY

This article aims to address the Legal-Criminal Exemption from Liability for the Practice of Crime of Theft against an Ascendant committed by the Descendant in the City of Maputo: Case of the 12th Police Station. With the advent of crime, in recent times there has been a huge increase in criminal agents who steal goods assets of their ancestors to satisfy their wishes with the subsequent sale or exchange of such stolen goods, the offended party is prevented from demanding that the State hold this agent criminally liable because he is his descending, a fact that results from the law. In terms of methodology, it is an applied research, whose approach is qualitative-quantitative, data interpretation is through bibliographic, documentary and interview review and study of case with monographic method. It was concluded that there is no reasonableness in the provisions regarding exemption of criminal liability insofar as it encourages the dissipation of the family's assets, therefore, it has no social value. Furthermore, it constitutes the ascendant's own genuine will to see his descendant respond criminally for the damage caused, for having exhausted peaceful means of resolving family disputes and for seeing their heritage crumbling without anyone being able to do anything.

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KEYWORDS: Exemption
Descendant.

Legal - Criminal; Accountability; Ascending;

1. ABSTRACT

This article aims to address the Legal-Criminal Exemption from Liability for the Practice of the Crime of Theft against an Ascendant committed by the Descendant in the City of Maputo: Case of the 12th Police Station. With the advent of crime, in recent times there has been a huge increase in criminal agents who steal assets from their ancestors to satisfy their desires with the subsequent sale or exchange of such stolen assets, and the offended party is prevented from demanding that the State hold this agent criminally responsible because he is his descendant, a fact that results from the law. In terms of methodology, it is an applied research, whose approach is qualitative-quantitative, the interpretation of data is through bibliographic, documentary and interview review and case study with a monographic method. It was concluded that there is no reasonableness whatsoever in the provision regarding exemption from criminal liability, as it encourages the dissipation of the family's assets and therefore has no social value. Furthermore, it constitutes the ascendant's own genuine will to see his descendant criminally responsible for the damage caused, for having exhausted peaceful means of resolving family disputes and for seeing his assets collapse without being able to do anything.

KEYWORDS: Legal Exemption - Criminal; Accountability; Ascendant; Descendant.

1. SUMMARY

This article aims to address the Legal-Penal Exemption of Responsibility for the Practice of Crime de Hurto against an Ascendant committed by the Descendant in the City of Maputo: Case of the 12th Commission of Police. With the advent of delinquency, in recent times there has been an enormous increase in criminal agents who rob their ancestors to satisfy their desires with the later wind or exchange of stolen good words, preventing the offended party from demanding criminal responsibility from the State de dicho agent for being his descendant, I guess it results from the law. As for the methodology, it is a applied research, whose focus is qualitative-quantitative, the interpretation of data is through review bibliographic, documentary, interviews and case study with monographic method. If we concluded that there is no There is some reasonableness in the provision relating to the exoneration of criminal responsibility, which encourages disipación of family heritage and, therefore, has no social value. Furthermore, it constitutes the genuine will of the ancestor see his descendant criminally responsible for the damage caused, for having abandoned peaceful means of solving family conflicts and seeing your heritage crumble without being able to do anything.

KEYWORDS: Legal Exención - Penal; Responsibility; Ascending; Descendant.



2. INTRODUCTION

Life in society generates conflicts of interest due to the scarcity of goods that serve for satisfaction of Man's needs, for this reason, Law arises to regulate the life of Man in Society. The family is considered the fundamental element and the basis of all society, (see art. 119 of the CRM), with this, the Law regulates the lives of individuals from the base which is in the family from where each and every individual emerges even in society where it is observed the cluster of families.

Criminal Law has as its object of study crime and the legislative basis that serves study guide is the criminal law, which is drawn up by the State (Mozambican Parliament – Assembly of the Republic) to guarantee the essential legal assets for life in society.

Therefore, the violation of a criminal law norm is considered a crime and is punishable within the scope of criminal, applying to the agent a prison sentence or fine whose purpose is to protect the good third party legal system, repair the damage caused and prevent the repeated practice of this crime by the agent.

We can observe the different human behaviors that the State has selected for consider a crime in the second book that corresponds to the special part of the Penal Code, and that the The State assigns the respective legal terms to each behavior and its respective sanction, for example, we can observe the following behavior:

Subtraction of another person's movable property with the illegitimate intention of appropriation for oneself or for someone else, constitutes a legal type of crime called theft (legal term designated for this behavior) and the penalty is a prison sentence of up to 6 months and a fine of 1 month if the amount of the the stolen item does not exceed 10 national minimum wages (8,758.00 Mtn x 10 = 87,580.00 Mtn); imprisonment of up to 1 year and a fine of up to 2 months if the value of the stolen item does not exceed 40 minimum wages (8758.00Mtn x 40 = 350,320.00Mtn); imprisonment of up to 2 years and fine of up to 6 months if the value of the thing stolen does not exceed 125 minimum wages; imprisonment of 2 to 8 years with a fine of up to 1 year if not exceed 500 minimum wages (8758.00Mtn x 500 = 4,379,000.00Mtn); and, imprisonment of 8 to 12 years if it exceeds 500 minimum wages (see art. 270 of the CP).



In the above mentioned crime, the State intends to protect the heritage in general, which is the legal asset that must be protected to ensure good coexistence within the family and in Society. However, in the same criminal law we identify a paradox, because, when we observe the crime of theft whose agent is a descendant of the offended party, the same criminal law protects the agent exempting him from criminal action which is the corresponding step towards criminal liability of the same.

The Police of the Republic of Mozambique (PRM) is a State body created by Decree No. 85/2014, of December 31, amended and republished by Decree No. 58/2019, of June 1, with several functions, including ensuring respect for legality, guaranteeing order, public safety and tranquility (see paragraph a) of art. 2 of Decree No. 58/2019 of 1 June). Therefore, the general competence that the PRM has to guarantee legality implies ensuring the compliance with the laws, and exemption from criminal action in crimes of theft between ascendants and descendant results from the criminal law, specifically in subparagraph b) of art. 278 of the Criminal Code, thus, it was expected that the police would comply with this legal provision. This fact is not observed in the 12th Maputo City PRM Police Station due to the PRM's competence to guarantee order and public tranquility, for this reason, proceeds with the procedures relating to accountability criminal of the agent who commits the crime of theft against his Ascendant, violating paragraph b) of article 278 of the CP

The general objective of this article is to analyze the Legal-Criminal Exemption of Accountability for the Practice of the Crime of Theft against an Ascendant committed by Descendant in the City of Maputo: Case of the 12th Police Station. And, it has the following specific objectives: Describe the factors that dictate the violation of the provisions regarding exemption from liability criminal in crimes of theft by the Descendant against the Ascendant; Understand the reasons that dictated the legislation regarding the exemption from criminal action in the crimes of theft between descending and ascending; Compare the different ways of resolving this dispute in different countries belonging to the Roman-Germanic legal system and; Present a criminal proposal regarding the resolution of this dispute.

The human species is, by nature, free. Therefore, Criminal Law presents limitations regarding to the anarchic behavior of the human species, precisely to ensure in each human behavior, which does not violate the rights of third parties, thus ensuring a life

stable in society, since the conflicts that occur in society emerge from the lack of goods to satisfy the needs of individuals.

Criminal action is the procedural piece triggered to hold the violator accountable. criminal law, without which there is no criminal liability, and, consequently, there is no justice.

The topic is of greater social relevance since theft is an action punishable under the law. criminal in order to guarantee the heritage, even if this act is carried out by a Descendant, when not held accountable, he can dissipate the family's assets, thus creating forms instability in the family environment, and the Ascendant will not be able to do anything, since the State exempts the agent from criminal liability, which is not well-received in society Mozambican since ancestors are seen complaining about thefts in their homes by their own descendants and express the desire to hold them criminally responsible due to the fact that peaceful dispute resolution mechanisms have already been exhausted family members, and for this reason, they approach the State that holds the punitive power for a possible definitive and effective resolution.

It also has a personal relevance insofar as, with this research, the topic for discussion within the academic environment and that thanks to it, recommendations can be presented or even efficient solutions to the problem of exemption from criminal liability of the agent who steals assets from his ancestors.

It also has academic relevance as it can be used for consultation by researchers. upcoming, thus constituting a research tool for various institutions and general public. It may serve as a subsidy for the improvement of criminal law with regard to exemption from criminal action in crimes of theft involving descendants and ascendants.

Criminal law is punitive par excellence and the State is the one that holds the punitive power through its bodies to ensure good coexistence within society, since Criminal Law arises from need to safeguard essential rights for life in society and there is only one wrongdoing criminal when the essential or indispensable legal assets for life in society are at stake.

Therefore, they are legal assets that the legislating State intends to protect: life, property in general, public faith, public order and tranquility, and the security of the State. Since the heritage a legal asset, the offended party has the prerogative to demand from the State endowed with punitive power

the liability of the agent upon complaint due to the fact that theft is a crime of particular nature, the competent instances of justice, such as police stations, courts or prosecutors.

Mozambican criminal law obscures the will of the offended party in the crime of theft, in seeing the agent be held responsible when this is his descendant, and this results from paragraph b) of article 278 of the CP, moreover, the two main competences of the PRM, to ensure respect for legality and to guarantee public order and tranquility, come into conflict when the crime of theft between Descendant and Ascendant, agent and offended respectively, because, when the offended person approaches the police station to file a complaint, the Police cannot tell this offended that the law protects the criminal agent and because of this the Police can do nothing respect. Because, in this way, this Police will not be guaranteeing public order and tranquility, and strictly speaking, cannot hold the agent criminally liable due to the fact that he has to ensure respect for the law, and create terms to satisfy the will of the offended party that is to see your rights safeguarded without violating the provisions regarding the Exemption Legal - Criminal Liability for the Practice of the Crime of Theft against an Ascendant committed by the Descendant in Mozambique.

The offended parties (ascendants) in the crime of theft between descendant and ascendant, expect a effective solution due to the fact that they have exhausted peaceful means of resolving this conflict without success and they fear a resolution that would culminate in the practice of some crime on their part, for this reason they approach the police station for better resolution of this dispute, however, when the injured party (ascendant) is present at the 12th PRM Police Station to file a complaint about the fact, the Police, in turn, for not being able to apply both above mentioned competences, ignores the provisions regarding exemption from liability criminal, failing to comply with the competence to ensure legality and proceed with the procedures for the criminal liability of the agent (descendant), and this legal provision is not only ignored in this police instance as well as in courts and prosecutors' offices as prisoners are observed in Maputo Provincial and Preventive Penitentiary Establishments in preventive detention, others with final sentences, whose crime is theft from their descendants.



Therefore, the problem that led to the present study arises from the need to assess the relevance of the exemption from criminal liability of the agent who steals patrimonial assets to their ascendants, which results from criminal law, since this provision benefits the agent and allows him to dissipate the family's assets without his ascendants and the State can intervene coercively. In this context, the following arises: question:

• **What is the reasonableness of the Legal-Criminal Exemption from Liability for Practice of the Crime of Theft against an Ascendant committed by the Descendant in Mozambique?**

3. THEORETICAL BASIS

3.1 COMPARATIVE LAW

3.1.1 THEFT

Theft committed by a descendant against an ascendant is not only common in Mozambique but also in several countries whose legislation follows the same spirit of creation, based on the Roman-Germanic legal system, such as Brazil, Portugal and Spain.

In Brazil, despite the high rate of property theft from son to father for the purpose of to pay for their drug addictions, Brazilian criminal law exempts the agent from criminal liability for all crimes against property, including theft, among ascending and descending, in accordance with section II of article 181 of the CPB, which I will now quote:

Art. 181. Anyone who commits any of the crimes provided for in this title, to the detriment of:

ii – of ascendant or descendant, whether the relationship is legitimate or illegitimate, whether civil or natural.

However, this exemption from punishment is partial insofar as the same criminal law leaves room for criminal liability of the agent when the ascendant (injured party) is greater than or equal to 60 years old, as stated in section III of article 83, which I will now quote.

Art. 83. The provisions of the two previous articles do not apply:

iii – if the crime is committed against a person aged 60 (sixty) years or over.

In Portugal, the crime of theft committed between members of the same family, such as the case of descendant against ascendant, is called family theft, and is also exempt from criminal liability, under the terms of paragraph 2 of art. 303 of the CPPo., which I quote:

Article 303. ° - (family theft)

2 – The crimes referred to in the previous number (theft and abuse of property) are not equally punishable. trust) when committed by the ascendant to the detriment of the descendant or when committed by this to the detriment of the ascendant.

However, the same law opens up space for criminal liability when the value of the thing stolen is elevated, in accordance with paragraph 3 of art. 303 of the CPPo., which I quote:

Article 303. ° - (family theft)

3 – The crimes provided for in numbers 1 and 2 of this article will, however, be punishable when the damage caused is considerably high, however, the criminal proceedings remain complaint dependent.

In Spain, the crime of theft between descendants and ascendants is observed, whose criminal legislation classifies as *De los hurtos*, and the same legislation is criminally liable only when the value of the stolen item is greater than 400 euros in the case where it involves an ascendant and descendant, regardless of the age of the offended party, under the terms of art. 234 of the CPE, which I quote:

Article 234.

1. He who, with the spirit of profit, will take possession of the furniture items without his own will dueño will be punished, as a result of injury, with a prison sentence of six days months if the amount for the withdrawal exceeded 400 euros.

Whose interpretation to the Portuguese language becomes the following;



Anyone who, for profit, appropriates another person's movable property without the owner's consent owner will be punished, as a person convicted of theft, with a prison sentence of six to eighteen months if the value of the stolen item is more than 400 euros.

3.2 DEFINITION OF TERMS

3.2.1 CONCEPTS

For a better understanding of the phenomenon addressed, it is relevant to define the key concepts of this scientific research:

- Law;
- Criminal or Penal Law;
- Crime;
- Theft;
- Ascending and Descending;
- Penalty;
- Criminal liability;

3.2.1.1 LAW

Prof. Dr. Marcelo Rebelo de Sousa (200, page 10) defines Law as being “regulatory of human existence in society”. In other words, it is a set of norms that aims to regularize life in society.

Prof. Dr. João Martinelli (2008, p. 32) defines Law as “a contract instrument particular and effective social, as it is a set of standards supported by a sanction socially organized”.

3.2.1.2 CRIMINAL LAW OR PENAL LAW

We have often come across several manuals or loose texts that refer to *law* . *criminal* and others, *criminal law*, therefore, SOUSA (2012, p. 52) states that any of the terminologies for study purposes are not very relevant since the object of study is practically the same, and DIAS (2004, page 24) argues that Criminal Law fulfills a



special function of protecting the assets of a community, which are directly linked to the free realization of the ethical personality of man and the violation of which constitutes a crime.

Several authors have taken great care to clearly define the notion of criminal law taking into account two essential factors: regularization of life in society and punishment.

SOUSA (2012, page 57) defines criminal law as a science that regulates the relationship between the State and individuals, since the latter - the State - appears to be equipped with *ius puniendi*. Therefore, this science is public par excellence and indispensable to individuals. It also states that Criminal Law is a science directly linked to the Constitution of the Republic since This science governs the part of the essential rights of the human being, by which its violation can put the human species "*in extremis*" on the brink of extinction.

Among several doctrinal authors who were concerned with the notion of criminal law, such as case of Cesare Beccaria,

Pizarro Beleza, Eduardo Correia, all share the same idea that this is a set of a norm that regulates life in society whose punitive power over agents belongs to the State, as we can see, for example, in the definition given by the late professor CORREIA (2007, page 1) when he states that Criminal Law is a set of legal norms that establish assumptions for the application of certain legal reactions. Criminal reactions encompass the penalties and even security measures.

However, SOUSA (2012, p. 51) argues that the definition of criminal law leads to many dissenting, and states that today it is still a topic of discussion, which is why the authors have not yet managed to have a single definition of criminal law.

3.2.1.3 CRIME

We had seen that crime is everything that the legislator considers as such. However, according to with the formal concept of crime, crime is a typical, illicit, culpable and punishable action, BRITO and SILVA, (2018/2019, page 14). Law No. 24/2019, of December 24, Law on the Revision of the Law Penal Code establishes in its article 1 that "no fact, whether consisting of action or omission, can be judged



if a crime is committed without a law qualifying it as such at the time of its commission", therefore, it is defined as a crime any conduct manifested by action or omission described in criminal law substantive, in its second book referring to the special part.

3.2.1.3 THEFT COMMITTED BY DESCENDANT TO ASCEDENT

In the legal sphere, theft consists of the fraudulent subtraction, without the use of violence, of a thing. movable property. Therefore, in Mozambican criminal law, theft is defined as the act of removing movable property another person, with the illegitimate intention of appropriation for oneself or for another, in accordance with art. 270 of the CP For this reason, theft is a legal type of crime in the Mozambican legal system because it is typified in the special part of the CP

3.2.1.4 ASCENDING AND DESCENDING

Ascendant and descendant is a term widely used in the context of family law, when we want to designate a family bond between individuals who share the same parent, or still, that they descend from each other. CAMPOS (1997, p. 22,23) are relatives the people who descend from each other (kinship in a straight or direct line), or descend from a progenitor common (kinship in a transverse or collateral line), and the degree of kinship from son to father or from grandson to grandfather, for example, it is called ascendant, when it is from father to son, grandfather to grandson, refers to a descendant, in a straight or direct line (see art. 13 of the LF).

3.2.1.5 FEATHERS

Mozambican criminal law provides for the existence of two main penalties, where we have penalties imprisonment and fines, with additional penalties including the rule of conduct, loss of mandate or temporary ban on the exercise of public functions, suspension of the exercise of functions public, the prohibition of driving, the inhibition of the exercise of parental authority, guardianship or curatorship (see art. 80 of the Criminal Code). The penalty of a fine, the provision of socially useful work, the prohibition temporary rights are non-custodial penalties (see, art. 71 of the Criminal Code)



Criminal law also provides for security measures, under the terms of art. 95, where we have: hospitalization of non-imputable people, outpatient treatment of non-imputable people, hospitalization in open penitentiary center, supervised release and good conduct bond.

Under criminal law, the aforementioned penalties are intended, without prejudice to their reprehensible nature, the protection of legal assets, the repair of damages caused, the resocialization of the agent and prevention of recidivism (see no. 1 of art. 59 of the Criminal Code).

3.2.1.6 CRIMINAL LIABILITY

Criminal liability is the legal duty to answer for the criminal action that falls on the imputable agent, in this case, when the agent commits a crime, being imputable, it will be subjected to a penalty, and when the agent is unaccountable, he will be subjected to a measure security measure that is a substitute for the penalty of an assistance, preventive and recuperative.

In Mozambican criminal law, the criminal action is the procedural document triggered for the accountability of the criminal agent, this being a public action whose competence, under the terms of the CPP, is attributed to the Public Prosecutor's Office, however, in crimes whose criminal procedure depends on a complaint from the offended party or other people, the Public Prosecutor's Office has legitimacy as long as people inform him of the fact, so that he can promote the process (see art. 52, in conjunction with no. 1 of art. 55, both of the CPP).

4. METHODOLOGICAL PROCEDURE

4.1 METHODOLOGY

In this section, the procedures to be followed when carrying out the research are described. Its organization varies according to the peculiarities of each research. However, it is required to



presentation of information about some aspects, such as those presented below
(Gil 1999, p. 162).

4.2 TYPES OF RESEARCH

In order to carry out the analysis of what is the meaning of criminal irresponsibility in crimes of theft by descendant against ascendant in Mozambique, we embrace research exploratory, descriptive and finally explanatory.

• **Exploratory research** – explores a problem, looking for, through investigation, in-depth analysis, clarify it. It may involve bibliographical research, interviews with people related to/knowledgeable about the problem being researched.

4.3 RESEARCH TECHNIQUES

Technique is a set of precepts or processes used by a science or art; it is the ability to use these precepts or norms, the practical part. Every science uses numerous techniques in achieving their purposes (MARCONI and LOKATOS, 2003, page 173).

Therefore, to carry out this monograph, applied research and qualitative-quantitative approach.

4.4 BIBLIOGRAPHICAL RESEARCH

Bibliographic research, or secondary sources, covers all bibliography already made public, in relation to the topic of study, from individual publications, bulletins, newspapers, magazines, books, research, monographs, theses, cartographic material, even oral media: radio, magnetic tape recordings and audiovisual recordings: films and television. Their purpose is to place the researcher in direct contact with everything that has been written, said or filmed about a given subject, including conferences followed by debates that have been transcribed by some form, whether published or recorded (MARCONI and LAKATOS, 2003, page 183).

4.5 INTERVIEW

For GOODE and HATT (1969, p. 237), cited by MARCONI and LAKATOS (2003, p. 196), state that the interview consists of developing precision, focus, reliability and validity of a certain social act such as conversation.

An interview is a meeting between two people, so that one of them can obtain information about a certain subject, through a conversation of a professional nature. It is a procedure used in social research, for collecting data or to help in the diagnosis or treatment of a social problem (MARCONI and LOKATOS, 2003, p. 165).

For the research, semi-structured interviews were conducted with certain agents of the 12th Police Station of the City of Maputo, to the Judicial Magistrates and the Public Prosecutor's Office of Kamubukwana Judicial Court and Kamubukwana District Attorney's Office, respectively, and to the inmates of the Maputo Provincial Penitentiary Establishment, because the semi-structured interview is focused on a topic on which we have prepared a script with main questions, complemented by other questions inherent to the circumstances at the time of the interview. For the author, this type of interview can make information emerges more freely and the answers are not conditioned by a standardization of alternatives (MANZINI; 1990/1991, p. 154).

4.6 SAMPLING SELECTION

GIL (1999, p. 26), a sampling plan must answer the following questions: who to research (sampling unit), how many to research (sample size) and how to select (the sampling procedure), and the decision of who to research requires that the universe is defined so that a suitable sample can be selected, a since interviews conducted with the correct audience are basic factors for the validity of the study.

Therefore, taking into account that the study aims to analyze the reasonableness of irresponsibility criminal in crimes of theft by a descendant against an ascendant, the sample selection criterion selected PRM agents from the 12th Police Station of Maputo City from the department of



permanence, Judicial Magistrates and the Public Prosecutor's Office, and inmates of the Establishment Maputo Provincial Penitentiary.

As for the nature of the basic questions for this type of interview, TRIVIÑOS (1987, p. 150), makes a distinction based on the type of theoretical approach: phenomenological or historical-structural (dialectical). In the phenomenological theoretical line, the objective would be to achieve the maximum clarity in the descriptions of social phenomena. Thus, descriptive questions would have great importance for discovering the meanings of people's behaviors certain cultural means. In a historical-cultural (dialectical) line, the questions could be designated as explanatory or causal. The purpose of this type of question would be to determine immediate or mediate reasons for the social phenomenon. In effect, the study took into account consideration of the descriptive aspect.

Regarding the case study, FACHIN (2001, page 42) points out that this consists of the study deep and exhaustive study of one or a few objects, in a way that allows for their broad and detailed knowledge. It is characterized by being an intensive study, in which consideration is taken into account mainly and the understanding as a whole of the subject investigated. The author adds that When the study is intensive, relationships may even appear that would not otherwise be present. discoveries.

5. DATA ANALYSIS AND DISCUSSION

This chapter presents the results of the study based on individual interviews with different actors linked to different institutions.

From the study carried out, a total of 32 participants were interviewed, of which 56.25% were of the same gender. male and 43.75% female. Regarding academic level, they are graduates, students and middle technicians.

The data was collected from various State institutions that deal with criminal matters, where we illustrate based on the following table:

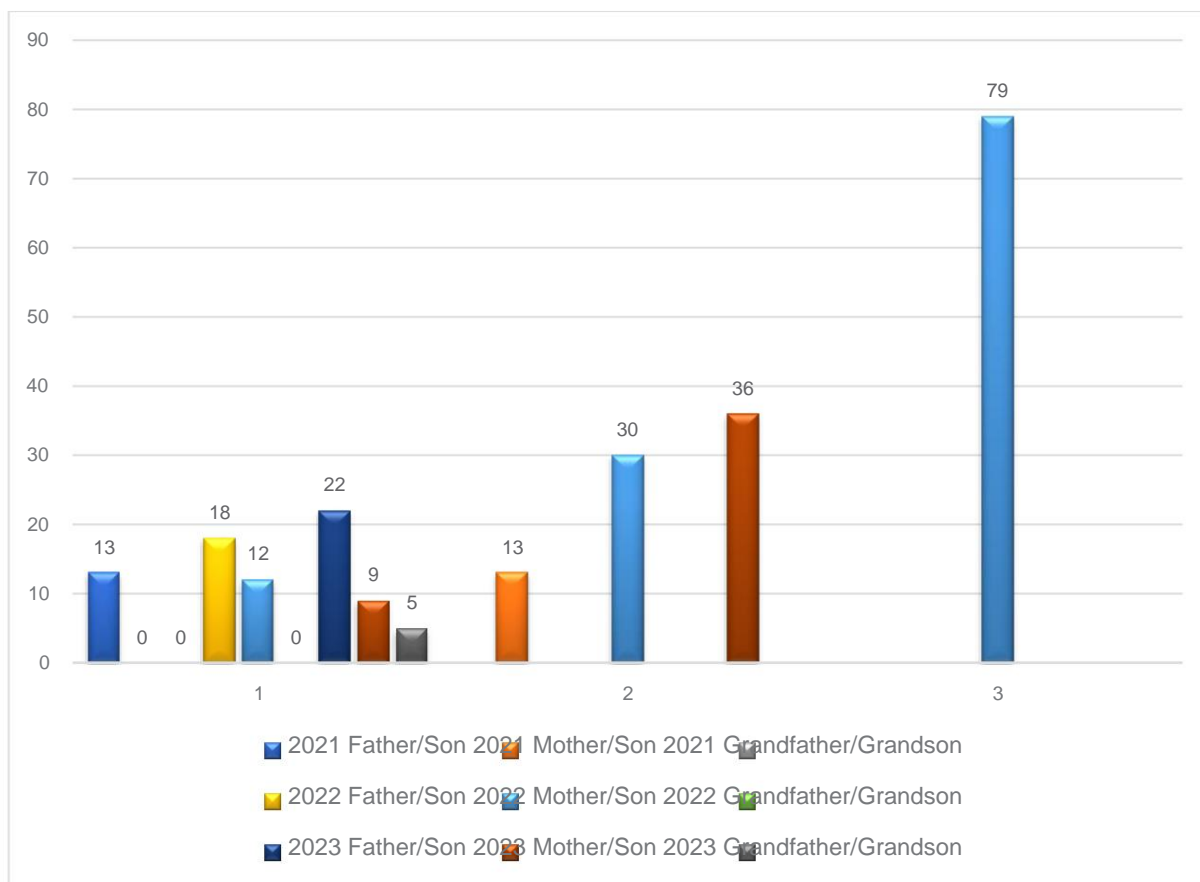
Table 1: Table illustrating the number of interviewees in each institution.

Institutions 12th	Squadron from the PRM of the City from Maputo		Attorney's Office District of Kamubukwana		Court Judicial of District of Kamubukwana		Establishment Penitentiary Provincial of Maputo		Assembly from the Republic		T the t the I
Genres HMHMH						MH		MHM			
Data number 4		4 2		3	3	2	5	0	4	5	
Total	4	4 2		3	3	2	5	0	4	5	
											3 2

According to those interviewed at the 12th Police Station, there are many cases of ascendants who file a complaint of theft by their descendants to hold these agents accountable, and cases tend to increase, as in 2021 there were around 13 complaints of theft among the of which 13 were from father to son, in 2022 there were around 30 complaints of theft among the which 18 cases from father to son, 12 from mother to son, and in 2023 there were about 36 complaints of theft, including 22 cases from father to son, 9 from mother to son and 5 from grandfather to grandson. As it is a family case, they choose to resolve the dispute in the family seat, only after deeming the attempt ineffective is what the police authorities opt for because they feel the pain of the thing stolen due to its high value or due to saturation due to the fact that the practice of theft is constant. The interviewees also believe it is important to hold criminally liable agents of theft crimes against their ancestors due to the risk that they will dissipate the assets of the family, as these interviewees claim that there is no reasonableness whatsoever in this legal provision.

The following graph illustrates the data collected at the 12th Police Station regarding the crime of theft with the appropriate forms of descendant and ascendant, in each year that corresponds the temporal delimitation of the present work.

Graph 1: Data collected at the 12th PRM Police Station in Maputo City.



Source: Authors.

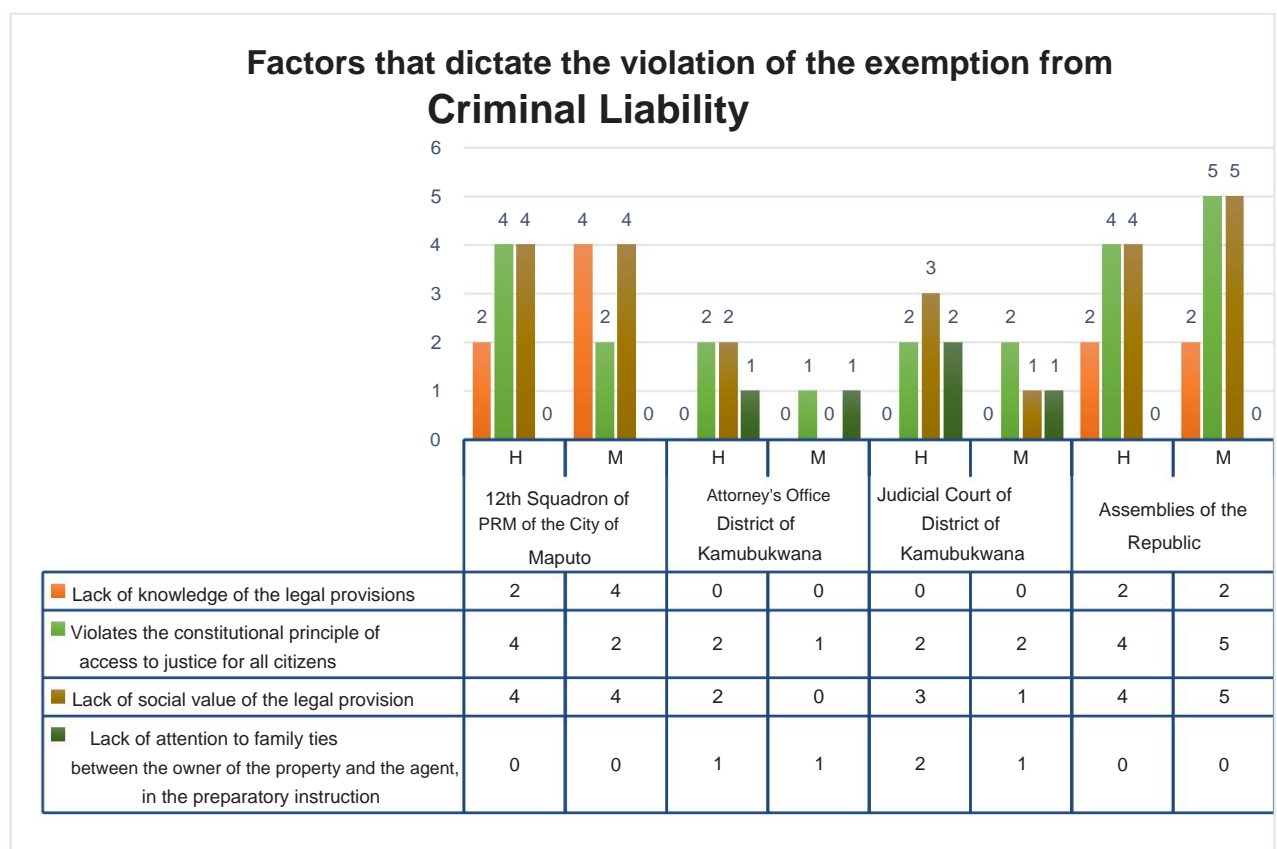
In the interview with judicial magistrates and public prosecutors, enforcers par excellence of the law, regarding the highlighted topic, it was found that the crime of theft between descendants and ascendant is rarely present in judicial instances and they share the same idea that there is no social value in this provision, since, in today's society, the upper class Young people lacking values and morals easily enter the world of drug use which is the reason that leads them to steal property from their homes, due to the fact these agents do not provide sufficient financial power to support their desires, a fact which leads to the extinction of the family's assets since the agents of this legal type of crime are exempt from criminal liability.

The interview was extended, in this context, to various State institutions, such as the 12th Police Station, Kamubukwana District Judicial Court, Kamubukwana District Prosecutor's Office and the Assembly of the Republic, and it was found that the reasons that dictate the violation of the provisions of exemption from criminal action in the crime of theft between descendants and ascendants are diverse. The

interviewees consider that there is a possibility of a lack of knowledge of this standard due to part of law enforcement, such as PRM agents, or even be removed due to lack of value social aspect of the same. They do not rule out the possibility of negligence or lack of attention on the part of the family bond between the agent and the offended party throughout the investigation process.

The following graph presents the opinion of respondents from different institutions regarding the factors that dictate the violation of this legal provision to the point of having prisoners prisoners indicted for committing the crime of theft, the stolen property belonging to their ascendants. The illustrated numbers are from respondents from each institution whose responses to the factors presented were positive.

Graph 2: Data relating to the responses presented about the factors that dictate violation of this legal provision.



Source: Authors.

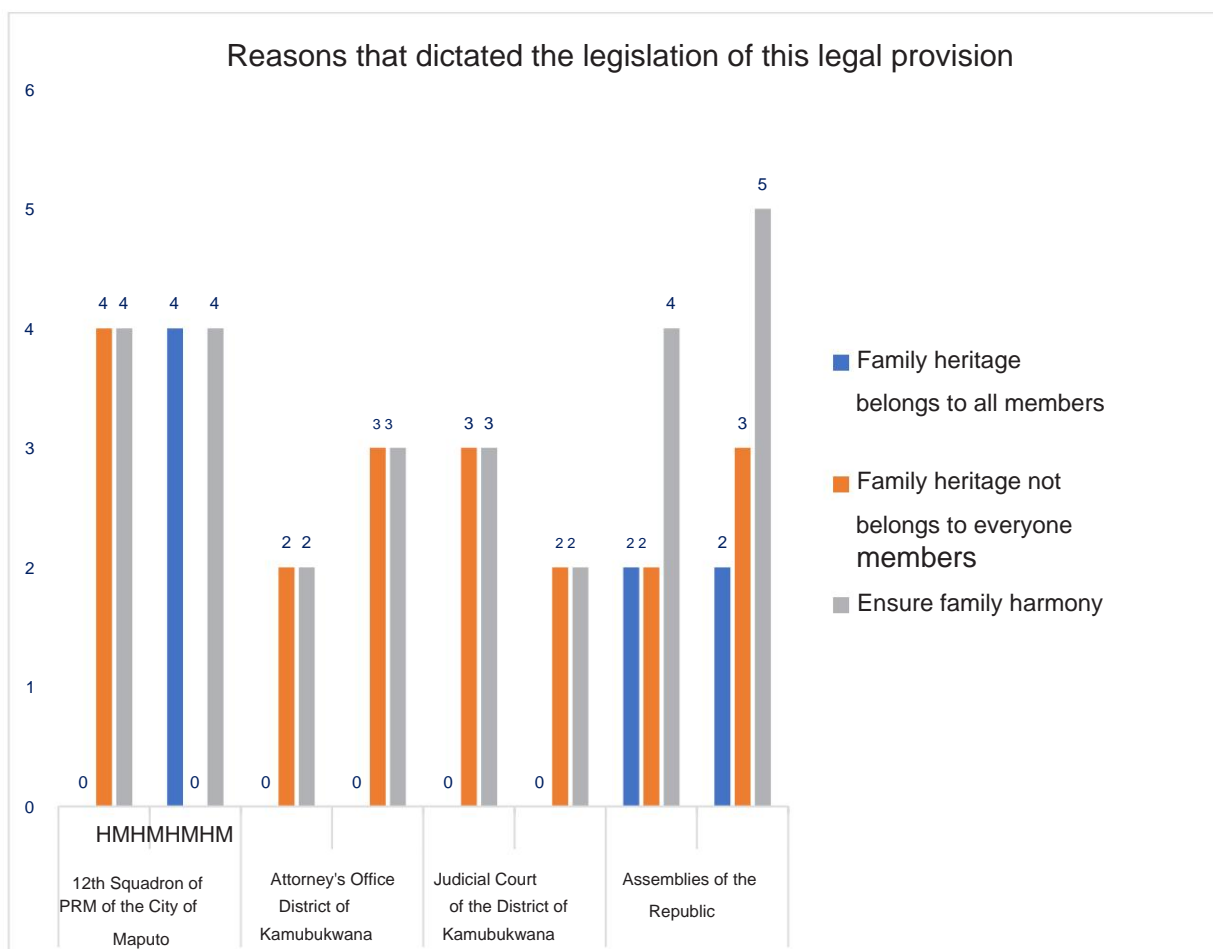


In the interview with the members of the legislative body who are, par excellence, responsible for the creation of laws to guarantee good coexistence in Mozambican society, it was found that the legal provision of exemption from criminal liability in the crime of theft between a descendant and ascendant was inspired by the need to ensure family harmony in society Mozambican, so that Mozambican families could resolve this type of dispute in a peaceful family environment. However, the deputies, throughout the interview, stated recognize that the same legal provision does not add any value in today's society to the extent that in which agents are generally driven by the desire to satisfy drug consumption and as a result, they can become drug addicts because they see their family heritage as financial means to support these desires and, making theft a repeated practice due to the lack of criminal liability, thus leading to the dissipation of assets of the family.

The same interview continued with the various State institutions that deal directly with criminal matters, in the same scope, to understand the reasons that dictated the legislation of the same legal provisions, it was found that for some interviewees, it is due to the fact that the assets of the family belongs to all the members that make it up, for this reason, there being some ligio that involve these members in relation to this heritage must be resolved as a conflict of family context. However, this position was not unanimous, as some interviewees understand that this arrangement does not allow for harmony because there are members who, even though were born and raised in the same family environment, with the same education, some present deviant behaviors that are difficult to repair through peaceful means of resolution litigation, and this provision overshadows the injured party's desire to see justice applied by virtue of the criminal agent is his descendant relative, and for this reason, an instability of the heart arises of the same family that once, with this provision, the State intended to safeguard harmony family.

The following table illustrates the opinion of respondents in different institutions, who deal with criminal matters, regarding the reasons that dictated the classification of the provision relating to exemption of criminal liability in the crime of theft between ascendants and descendants.

Chart 3: Reasons that led to the classification of the provision relating to exemption from liability criminal in the crime of theft between ascendants and descendants.



Source: Authors.

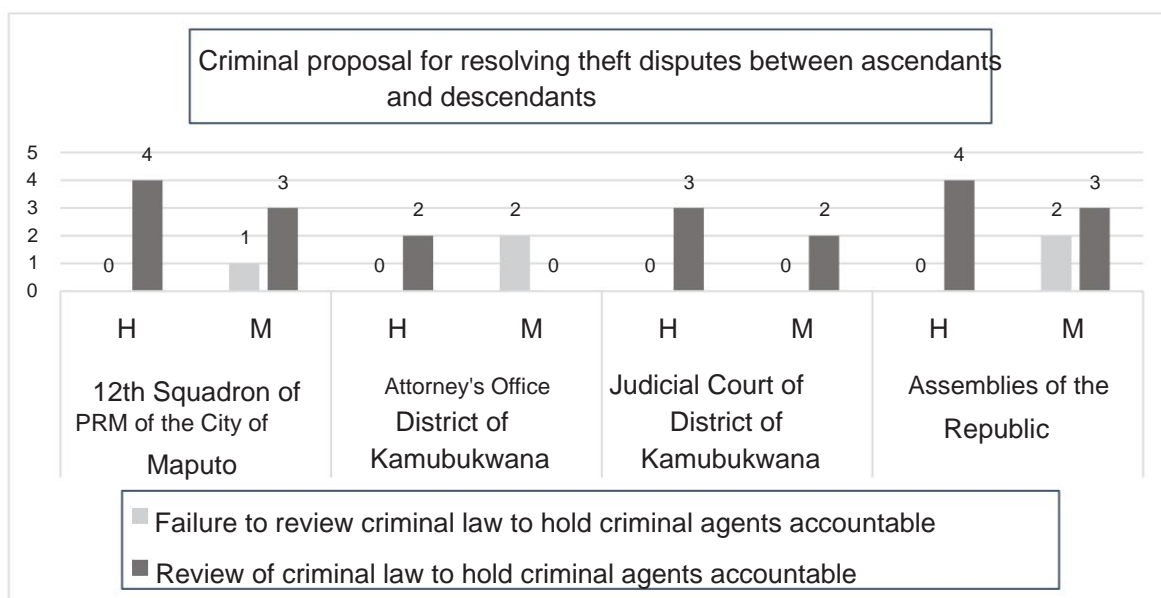
At the Maputo Provincial Penitentiary Establishment, during the interview, it was found that there are prisoners indicted for theft whose stolen goods belong to their parents. ascendants, and they claimed to steal goods to support their consumer desires of alcoholic beverages, cigarettes and other drugs. They also stated that they choose theft of property belonging to their parents because, most of the time, mothers consider and are afraid to file a complaint at the Police Station, unlike their parents. When asked, what they would do if their own children stole their (parents') property for the same purpose, they unanimously stated that they would take to boarding school so they could reflect and stop the desire to use drugs.

Throughout the interview at the different institutions mentioned above, the interviewees were asked about how to mitigate this family conflict that arises with the practice of theft by the descendant against the ascendant and presented different proposals for the resolution efficient of this type of family litigation, so that the will of the offended party is met. comes to file a complaint about having been robbed by his descendant and that the same proposal accommodate, also, the reprimanding spirit of the penalties.

The interviewees presented the review of the criminal law as a means of mitigating this conflict. way that would allow the criminal agent to be punished for the crime of theft, even if it is descendant of the offended party. However, some interviewees admit the possibility of be held criminally liable as long as a security measure is applied, such as internment in a penitentiary establishment open to the agent.

The following graph illustrates the proposals presented for efficient resolution of this type of problem. family litigation.

Graph 4: Data relating to proposals for resolving family disputes arising from practice of theft by a descendant against an ascendant.



Source: Authors.

6. CONCLUSION AND SUGGESTION



6.1 CONCLUSION

During the research, we found that agents who steal property from their ascendants are aged between 17 and 32 years old, they opt for goods that are easy to be transported for sale, which ultimately serves to buy cigarettes, alcoholic beverages and other drugs. First-degree ascendants in the straight line who suffer this type of crime by his descendants differ in their desire to hold him criminally responsible, being the man who presents this desire, the woman always and tirelessly guides by dialogue even if this results in absolutely nothing. Nevertheless, it has always been the first means which is chosen for the resolution of this type of family disputes, however, when the same is exhaustive and ineffective, the police route is chosen for possible criminal liability in gesture to prevent heritage from disappearing.

PRM and SERNIC agents are the first to contact the agents criminals, it was found that they do not have command of criminal law in matters of criminal irresponsibility, as they apply measures relating to criminal liability when encounter phenomena of this type, such as the case of detention.

Exemption from criminal liability in Mozambique is total, compared to Portugal, Brazil and Germany, therefore, the spirit of the Mozambican legislator when creating this law was to guarantee the harmony within Mozambican families, so that they could resolve disputes family members always at the family level. However, it happens that with globalization, societies Mozambicans suffer from phenomena that are observed in several countries, one of the cases is theft of patrimonial assets between descendants and ascendants, and as a result, the State Mozambicans must adjust their standards to the reality of this society.

In the Portuguese legal system, exemption from criminal liability for theft crimes between ascendant and descendant, it is called family theft and is partial because it is not observed when the value of the stolen item is high, to ensure, however, that the family's assets not be dissipated. The same limitation of application of exemption from criminal liability if observed in Brazil where it is removed when the offended party is greater than or equal to 60 years of age, in gesture to ensure that there are no possible health problems resulting from this practice, which means that, regardless of the value of the stolen item, when the ascendant is elderly



sixty (60) years of age or older, the perpetrator of the crime is indeed held responsible criminally.

In Spain, theft committed by a descendant against an ascendant is subject to exemption from criminal liability, however, this exemption is set aside when the value of the stolen item is greater than 400 euros, then the agent is punished as any agent of this crime would be punished who has no family ties with the offended party.

In the above mentioned countries, the criminal liability of the agent in the crime of theft against your ascendant, varies depending on the social reality of the same country, in this case, the problems social consequences that occur with the practice of this legal type of crime, as a way of mitigating and ensure social order and tranquility, family and justice.

Therefore, looking at this monographic analysis, it can be concluded that the exemption provision criminal liability in crimes of theft between descendants and ascendants, as defined in the Criminal Code in force in Mozambique, in its subparagraph b) of article 278, is not at all reasonable because it is an act that does not benefit society, only the agent, and does not create any conditions for there must be family harmony in Mozambican society.

Furthermore, it is a provision that allows the agent of this legal type of crime, when committed against their ancestors, dissipates the family's assets without the State, upon being called, can intervene within the scope of criminal liability, and also provides the drug addiction of the agent due to the impossible coercion of this practice, which becomes a paradox insofar as this State's function is to ensure good coexistence in society, creating efficient standards with which this good can be guaranteed coexistence, and prevent a possible practice that could create instability in society. Therefore, the exemption is not efficient, at most, it creates instability in society. heart of Mozambican families.

6.2 SUGGESTION

There being no reasonableness whatsoever in the provision of exemption from criminal liability in crimes of theft by the descendant against the ascendant, and to better correct this phenomenon



which significantly affects Mozambican society and families in particular,
the present study recommends the following:

- Review of the criminal law, in its subparagraph b) of article 278, in such a way as to allow for the liability criminal prosecution of the agent who steals property from his ancestors, when this feel significantly harmed and express the desire to see your descendant respond held criminally responsible;
- That a minimum value be set for the penalty of the descendant who steals his As-ascending, the value of 2 national minimum wages ($2 \times 8758.00\text{Mtn} = 17,516.00\text{Mtn}$), in order to hold the criminal agent (Descendant) accountable; and
- Training of PRM and SERNIC agents on criminal irresponsibility to theft crime agents, as they are the first to have contact with the criminal, in such a way as to avoid the application of criminal liability measures. minimal to agents exempt from criminal liability resulting from the law.

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