



## DETENTION MEASURE'S LEGAL NATURE: A LOOK INTO CASE PALMAS

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### ABSTRACT

The present study aims the analysis of Socio-educative Measure, whose impact on the developing person is much larger because it extirpates her freedom. What was found was why it could say or not that the legal nature of the Detention measure would be educative-pedagogical. For the problem, it was adopted as a hypothesis, the position that the legal nature proposed to the detention measure, applied in CASE Palmas, would be achieved if in its implementation were presents the Structure Dimension, to the disadvantage of setting a prison environment; the Citizenship Dimension by monitoring the formation of the developing human being, namely, the vision of self, of others and the elaboration of his life project and the Opportunity Dimension, which also would favor the life project, for inserts in detention environment the use of the downtime with professionalization programs. After the research and after the data properly tabulated and transcribed the interviews, met result, in some small terms of the legal nature were found, but insufficient. It was realized that, the institution being studied, until date the end of the research, is far away from the educative-pedagogical legal nature proposed. However, in the field of ideas, is in the process of reach.

**Keywords:** educative-pedagogical; Detention measure; legal nature

### NATUREZA JURÍDICA DA MEDIDA DE INTERNAÇÃO: UM OLHAR NO CASE PALMAS<sup>3</sup>

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## RESUMO

O presente estudo objetivou a análise da Medida socioeducativa de internação, cujo impacto sob a pessoa em desenvolvimento é muito maior, por extirpa-lhe a liberdade. O que se verificou foi se poderia dizer ou não que a natureza jurídica da Medida de internação no CASE Palmas é educativo pedagógica. Para a problemática, adotou-se como hipótese, o posicionamento de que a natureza jurídica proposta à Medida de internação, aplicada no CASE Palmas, seria alcançada, se na sua execução estivessem presentes a dimensão da estrutura, ao desfavorecer a configuração do ambiente de prisão; a dimensão da cidadania, pelo acompanhamento da formação do ser em desenvolvimento, qual seja, a visão de si, dos outros e a elaboração do projeto de vida; e a dimensão da oportunidade, que favoreceria o projeto de vida, pois embute no ambiente de internação o aproveitamento do tempo ocioso com programas de profissionalização. Terminada a pesquisa e após os dados devidamente tabulados e entrevistas decupadas, encontrou-se resultado, em que alguns pequenos termos da natureza jurídica proposta foram encontrados, mas insuficientes. Percebeu-se estar a instituição pesquisada, até a data do fim da pesquisa, afastada do proposto como natureza jurídica educativo-pedagógica. Contudo, no campo das ideias, encontra-se em vias de alcance.

**Palavras-chave:** educativo-pedagógico; Medida de internação; natureza jurídica.

### I. Introduction.

The consolidation of the full protection doctrine that arouse with the enactment of Law No. 8.069/90, or most widely known as the Adolescent and Children Statute (hereinafter “Statute”), has brought significant advances to the adolescent, at least in theory, by conferring him the status of a subject of law (*sujeito de direito*).

When speaking of adolescent whose behavior is in conflict with the law and the full protection doctrine and the rights that arise out of it, i.e. the basic rights provided for in the Constitution as well as the ones provided for in the Statute, one will not be in disagreement of the repressive attitude one must take in light of the infringement act.

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<sup>3</sup> The data of the survey submitted were raised outside of the affiliation of the authors, namely the Centre for Socio-Educational Services of the Municipality of Palmas-TO. This study was approved by the Ethics Committee on Human Research of the UFT, whose opinion is the available to the evaluators.



The behavior of the Young adult must be reprehended and that is why the Statute provides for what has been called Socio-educative measures.

The present study focuses on these socio-educative measures, particularly the Detention, whose impact on the developing person is much greater given the restrictions on their liberty. Hence, we will investigate to ascertain if the socio-educative measures adopted in the Palmas` Socio-Educative Assistance Center, in its reference CASE in Portuguese, has the legal nature of a socio-educative measure. The question we intend to answer is if the legal nature of the socio-educative measures adopted in the CASE of Palmas are effectively educative-pedagogic.

In this case, the submission to these measures would be “inclusive” for it allows the return of the young’s social position, by, in one side, respecting such principles as brevity, exceptionality and the respect for the peculiar position of a developing person, and, on the other side, assuring respect for the rights provided for in the Constitution and in the Statute. But the submission to these measures would also be “re-inclusive” to the point that it assures access to these measures even after the developing young is set free, structuring the triangle family-work-school.

## **II. The applicable rules, the adolescent in conflict with the law and the nature of the socio-educative detention measures.**

### **2.1. The socio-educative measures of detention: its legal aspects and its legal nature.**

The doctrine of the full protection is based “in the system of the triple guaranty”, as put forth by REIS (online), being the Assistance Policy, Protective Measures and Socio-Educative Measures, which will be analyzed ahead. The Statute, under its article 2, classifies a “child” as the person up to 12 years of age incomplete, in other words, until the last day of its 11<sup>th</sup> birthday. From that date until 18 years of age the statute classifies



the person as an “adolescent”. In light of these characteristics, the present study will focus mainly in the adolescent, but shall point, when considered necessary to the full understanding of the discussion, to the prevailing understanding with respect to the “child”.

Having dealt with the full protection theory that places the adolescent as a person under the peculiar condition of development, we shall analyze of the socio-educative measure of detention, its legal peculiarities, such as the principle that apply to it under the Statute and the legal nature.

The adolescent that breaks the law may receive protective measures and also socio-educative measures, as provided for exhaustively under article 112 of the Statute. These measures consist, in short, on a warning, which is defined simply as a verbal exercise, that is brought to writing; the obligation to repair the damages it caused for such acts that actually impact assets; community service, with maximum term of 6 months; assisted liberty; and, finally, detention.

The detention, recurrently referred to in this study, means a “measure” as opposed to a “penalty” restriction of liberty. This measure is governed by three principles: brevity, exceptionality and respect to the peculiar condition of developing person.

Having described the legal aspects of the socio-educative detention measures, as well as the proceedings of jurisdiction and appraisal of the act in breach of law, we will debate the legal nature, which is proposed is a educative-pedagogic, but which will also discuss different positions, as mentioned elsewhere.

It stems from that that the main function of the State and the society is (or should be) the efficient resolution of problems that are spread out the socio-educative system since it proposes itself to guarantee to the adolescents in conflict with society (law) the opportunity for development and the eventual reconstruction of its social compatibility.



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[The discussion of the role of the State and its social groups, as well as of its instrumentalities installed to deal with the young in conflict with society and that is currently undergoing a detention measure must depart from a theory that considers these measures educative-pedagogic. In support of this position, we may point to the SINASE, whose promotion represents such nature.]

Within the Introduction to the study of Law, in the initial phase of Law School, we learn that the legal nature is the essence of any institute, as has been put forward by SMITH (online) when quoting Maria Helena Diniz, who has said that the legal nature is the “affinity that a given institute has in a number characteristics with a larger legal category, making it able to be classified as such.” “It is the institute as a whole or its essence”, meaning that it is the knowledge that it contains in itself, its structure, and by that its most basic characteristic, so that it may be applied in its entirety. Bringing this into the debate of the socio-educative measures, the Statute restricts itself to list these measures and the situations in which they apply, but is absolutely silent as to its legal nature.

Grounded on the full protection doctrine, what the present study intends is to explain the reason why the measures applied to the many adolescents in Palmas may be characterized (or not) as the legal nature of a detention measure.

The conclusion we have reached from our study of juvenile delinquency and of detention measures characteristics and also of the principle of absolute priority and respect to the peculiar condition of a developing person, is that the legal nature of a detention measure (and why not of the socio-educative measures) is *sui generis*, deserving an interdisciplinary approach, above a purely legal asception. It would then have an educative-pedagogic legal nature, term put forward by Ramidoff in his study about the rights of children and adolescent.



But why? We have analyzed that the detention measure has the objective to reeducate the adolescent and not punish him. Departing from that, we shall argue that the **educative** aspect, which encompasses the re-inclusive trio, school-work-family, is based, first, on the fact that school offers to the adolescent in conflict with the law (whom may not had the opportunity to benefit from it) the opportunity to interact with individuals his same age group, under the supervision of someone who has (or should have) lightness of spirit to deal with that phase. Second, work assists the adolescent in construing a path for his life, a project. The creation of a profession within the controlled environment of the detention would alleviate the nervousness and expectations of the young when he will be set free. Finally, as we have said, family serves to offer the adolescent emotion and physical support, as they have the right to accompany the detention from the outset, giving him support.

The situations set out above are, of course, idealized so as to demonstrate what one should expect from the educative characteristic of these measures. Reality, however, differs. One will see, for example, that in many circumstances the family does not provide for the emotional support necessary and many times they reject the adolescent that is in conflict with the law and the society as a whole. The responsibility to suppress such need would then fall in the hands of the State and in the educational facility in which the measure is being served.

But the detention measure also serves an **pedagogic** aspect, whereby he peculiarities o the specific condition of an adolescent is taken care when deciding on the individuals who will surround him throughout his detention. As stated by LISITA (online), pedagogy is the science of education. In other words, the study of the nature of the different educative practices and as such must be applied.

What the reader must ask is the reason for repeating the education and pedagogy because for professionals with different background these terms are synonymous. However, in the pedagogic theory, one will see that it desiccates the term education.



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Hence, since we have stated that the legal nature of a given institute is its essence, we believe that the educative-pedagogic position to be the true substance that should derive from the compliance with the detention measure.

Notwithstanding, one should not forget is that such characteristic should obey certain parameters put forward by the dialectic pedagogy as presented by Gadotti (2006), for it is social, as focused in the social man, but also looking to the future. Exactly the notion that is intended to be passed to these adolescents whose paths have been interrupt by crime.

The critical spirit of such proposition (which is aimed to be investigated herein) is the connection between the construction of an education that assists in forming a human being both professionally and socially as materialization of the full protection doctrine as means to re-integrate the young while he develops himself, with the successful living and without repeating the wrong doings.

Clearly, what is intended to analyze is the confirmation of what some scholars, such as Baratta, present that the sanction must not be seen as an compensation on behalf of society for the damages caused, but as an opportunity, supervised by the State, to submit a person with rights and obligations in need to have the values of society attributed to him, as well as the required social conditions to survive and endure in his return to society.

Notwithstanding, when speaking of the young, where development has not yet finished, there is no alternative than to offer a critical and professional education, with a powerful and transforming pedagogy. Well, if a legal nature may be defined as the essence of a given institute and insertion in an adequate category, to adopt the figure of Baratta, the Detention Measure, in most part, a non-sanction, is adequate to the pedagogy category. It is worth noting that we do not disagree that such a measure is exemplary since it offers to young the feeling that the wrongful act he practice is socially condemned.





We note that restrictions on liberty to which these adolescents are submitted to, in a comparative analysis as to what has been put forward by Baratta, does not reeducate, re-socialize nor re-integrate. "Education promotes the feeling of liberty and spontaneity of an individual: life in prison, as an disciplinary universe, denotes a repressive and uniformity characteristic." (2002, p. 184) The effectiveness of the verbs provided above, i.e. educate, re-socialize and reintegrate, is not given simply by restrictions on their liberty, but through opportunities that are offered to these adolescents during the detention period. There is no other term to describe the detention measure than to characterize it as a educative-pedagogic.

One may therefore understand that even if such a detention measure may be characterized as a sanction, since there is a judicial responsibility/condemnation of the adolescents, including legal restrictions, there is a strong educative-pedagogic nature given that its enforcement is conditioned to assuring respect for their rights and to developing "educative actions the aim at developing citizenship".

So as to avoid comparison, it is said to exist a theory defended by RAMIDOFF (2010, p. 100), that defends that the socio-educative measures have a educative-pedagogic characteristic. Notwithstanding, that theory negates any negative content in the relationship between the adolescent and the law. RAMIDOFF states that "considering the educative-pedagogic characteristic, one may legitimately say that the socio-educative measure does not constitute a sanction, it is worth mentioning, it does not have a characteristic, essence or even a sanction content (...)".

Well, isn't the restrictions on liberty of the adolescent already proof of the condemnation character of the sanction, even if complied with before an educational establishment? The current study agrees with the existence of an sanction, but in the sense of opportunity creation and not as a punishment, but as an opportunity for the adolescent to develop a critical-reflexive thought admitting to his wrongdoings.





In addition to the Ramidoff position, which is partially adopted in the present study, since it upholds the position that the detention measures have a educative-pedagogic legal nature, but not leaving behind the condemnation characteristic in its opportunity creating alternative, we reference to different legal theories that give support to other issues chosen herein.

FRASSETO (online) in his brief study on the enforcement of the socio-educative measures defends its sanctionatory nature, in the sense that it represents a "State response that incorporates coercion and is directed at a young person that has breached the law", but it also has an objective as a "special prevention, that is, it inhibits the recurrence". Well, one may not deny that the measure in study, i.e. detention, constitutes a State response to the wrongdoing practiced by the adolescent, but in terms of the principle of the peculiar condition of a developing person, herein presented as an interpretation parameter, it is denied that it must have a coercitive nature, but as an educational didactic, under a development psychology.

Yet another position that is contrary to what is defended in the present paper, we may make reference to Toledo (online) that presents a punitive nature to the measures, with a special criminal characteristic. One may read that Toledo is almost in agreement with Frasseto for he also advocates the idea of a consideration to society for the adolescent's wrongdoing. He reveals that the objective of the socio-educative would be to "defend society of the criminal acts by means of a general prevention and education and re-socialization of the offender. Although he happily cites the need of education in the process of enforcement of such measures, he refers to the term used by the old doctrine of irregular situation adopted in the former Code of the Underage offenders that has already been surpassed. He very little adds to the discussion when he mentions a special characteristic of the of the treatment directed at the adolescent that is in conflict with the law, but only with respect to the criminal impunity of the adolescent, without even



making reference to the fact that it is a person under a special condition (development) or even to the full protection doctrine.

Following, one may also discuss a more interesting theory among those that oppose the legal nature of the socio-educative measures and, consequently, of the detention. Tonial (online), in its consideration as to the application of educational measures, advocates a hybrid legal nature, i.e. a pedagogical and sanctionatory legal nature. The author argues that the character as sanction of the socio-educative measure or punishment, as he reiterates, is evident because of the disapproval of the conduct practiced by adolescents. However, he further concludes that this statement is a half-truth, since this character is legitimate when strictly necessary to an educational activity, which would be the foundation of sanctions-pedagogical nature.

Indeed, the conduct practiced by these adolescents is reprehensible, but otherwise we would not be discussing any socio-educative measure. However, as stated, since the legal nature is the essence of a particular institute, its fundamental characteristic. Consequently, a sanctionary function is not in the essence of the socio-educative measure, specifically the detention. The Statute, in art. 113, states that the provisions of art. 99 and 100 of the same statute applies educational measures. Well, turns out that art. 100 states that "the implementation of the measures will take into account the pedagogical needs, and is preferred to those aimed at strengthening family and community ties," in addition to providing the principles governing its application.

As it can be seen, there is no mention that the measure has a sanctionary aspect. As stated, there is an agreement as to the presence - not essence - of a sanctioning content, even because the pedagogy is the way that education is studied and practiced and the establishment where the detention is enforced is, pursuant to art. 112, VI, of the Statute, said to be educational. The measure itself is socio-educative, not socio-punitive or socio-educative. What leads us to the conclusion that no other conclusion can be accept except that the legal nature of the detention is educative-pedagogic.



Having presented the different and opposing theories, it remains essential to discuss the role of the ignored subject many times interpreted by adolescents in compliance situation of the detention. This placement completes what has been presented so far on the legal nature of the issue by attempting to further open the reader's eyes to the impressions of the field, as proposed here to see why one could state that the legal nature of the detention in CASE Palmas can be educative-pedagogic or not.

Thus, we may point to the fact that throughout the field work, we witnessed a number of heated arguments between the crew of the CASE Palmas as to the offenses committed by inmates. Some, in defense of the most humanizing position, argued that certain negative conditions could have been responsible for the diversion of the young, whether of family, financial or emotional nature. Other under standardizing vision, disagreed, stating that many adolescents had the same problems, but that did not relate to criminal practices. However, even scholars have disagreements about the essence of the measure studied, so one can only imagine those called socio-educators.

We may make reference to the theory of "strangers" from Bauman, whose idea is to consider these adolescents as "violators of social norms." They are then called strangers, precisely because they stand out of what is laid to be ideal. Hence, so as not to proliferate the absurd behavior, preserving the security of the rest of the body (society) these strangers are then gathered and depending on the social group to which they belong, treated in various ways.

One was anthropophagic: annihilating the strangers by devouring them and then metabolically transforming them into an indistinguishable fabric from what was there before. This was the strategy of assimilation: making the differences similar; [...]. The other strategy was to anthropoemic: vomit the strangers, banishing them from the bounds of orderly world and keep them from all communication with the inside. That was the strategy of exclusion [...]. (Bauman, 1997, p.28-29).



The above position is far from revealing the intent to permeate this study with ramblings about the existence or not of what Bauman argues to be postmodernism. What unfolds is simply against social relevance for the explanation of the author, as a sociologist, what would become the treatments offered to violators of social norms.

We then see in the short discussion that has just been raised as synonymous with justice, and in comparison with the current criminal system, the option of the social group under discussion by anthropoemic form, i.e. the strategy of exclusion, the option to ban those offenders from cohabitating, without offering them the opportunity of assimilation.

Thus, there is nothing left to the childcare system, within the detention environment than to nod to the legal nature of this measure as educative- pedagogic, for purposes of granting these adolescents, a chance of becoming a successful adult, socially and personally.

### **III. Forms and Methods: a description of the field work.**

The current study aims to present the supporting data in order to verify the scientific reliability of our proposal. Thus, the research was set up as to allow for the legitimization and explanation. To obtain the expected results, we chose a series of investigative modules, such as literature, documentary and field research.

The bibliography was limited to the positions that were already consolidated academically, which would demonstrate a given agreement to the proposed theme. On the same point, we attempted to realize a study that would give an interdisciplinary overview since the object of study is not strictly legal. Journals were used, such as academic journals, organizational or articles published from scientific meetings, all with the objective to arrive at the latest doctrinal position possible, given the instability of the positions we currently have in the legal system. In more detail, we benefited from the data base of the National Council for Research and Graduate Studies in Law - CONPEDI,



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in addition to different journals and books available in the National Council for the Rights of Children and Adolescents - CONANDA and Special Secretariat for Human rights - SEDH websites, among others. The books consulted followed a chronological order of publication, since it is basically a recent topic of research. The legislation was used as a bibliographic reference as for the verification of the subject of the study.

When data had been collected, we searched for the supporting documents. Such documents as made available during the on-site survey, had the objective to construe the profile of the inmate under the CASE, whose data were organized by age, offense committed, number of attempts of evasion, among others relevant to understanding and addressing of the problem. Making use of information obtained through the search and the chosen sources, we could develop the questionnaires as well as an outline for the interviews.

The type of research adopted in achieving the results in order to answer to the question that was presented was the direct search, although the documentary research was not rejected from the outset. The documentary research was used always when necessary for the enrichment of the final considerations of the work, as well as on the inductive method because it is believed to be more compatible with field research.

The inductive method is based on four steps, which in the case of this research, can be divided into:

1. Observation and registration of facts: visit to the Palmas CASE, with the intention of registering facts arising from the application of the socio-educative measures of detention and register the supporting reasons why this could (or could not) be defined as an educative-pedagogical legal nature.
2. Analysis and classification of data: We analyzed the day-to-day activities of the inmates, the structure offered and the opportunities of



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professionalization granted, classifying such data under the idea of a legal nature.

3. Inductive transformation of the data into a general theory: an attempt to illustrate, at least in theory, the educative-pedagogical legal nature that may be achieved by any institution or any kind of socio-educational measures that arises out of the full protection doctrine.

4. Findings as to the legal theory: Conclusion as to the non-confirmation of the hypothesis, based on the information gathered throughout the survey, we understood that the Palmas' CASE does not fit into the intended legal nature.

As field of action, due to the empathy that the researcher had with criminal law, with an emphasis on youth, we decided to adopt the CASE in the city of Palmas - TO, Taquari sector, whose observations were made in the second half of 2011. Moreover, the Palmas' CASE was elected due to its proximity to where the researcher lives, which would facilitate the search field and make it make it less costly.

The total population of interns (temporary or not) in the CASE then recorded was of up to 39 male adolescents, between the age of 12 and 21. Due to a huge turnover of inmates, we adopted the statistics of the date on which the questionnaires were administered, i.e. October 26. From those, only 37 agreed to participate.

A survey was utilized. The questionnaire comprised of 11 closed/open questions, whose language, it is believed, was accessible to the participants given their background. This questionnaire, used as a source of obtaining results, aimed to inquire the defined population on the information of the research object.

The developed and applied questionnaire comprised a total of eleven (11) questions, 10 (ten) being direct and objective questions, interspersing the possibility of choosing



between a YES or NO answer, as the choice of the surveyed and one (1) open question as to provide freedom to the surveyed.

It is worth mentioning that the participation in the survey was a free choice of the interviewee or the internal, upon the by signature of a Term of Free and Known Consent - TCLE, by which the participants were offered the freedom to refuse participation, without prejudice to its continues participation in any phase of the research.

In addition to the interviews with the technicians, we also underwent semi-structured interviews with the staff of the Palmas` CASE which we considered more enriching, but also it ensured the maximum possible information. For these interviews, we set up a script with general questions, complementing with different questions with characteristics inherent in their respective areas depending on the participating professional. The number of questions was no more than 20, leaving almost no topic that we intended to address.

The data collected and used in the research were drawn based on information provided by the participants of the interviews and the questionnaires after the execution of the Term of Consent with the agreement of person being addressed or his or her guardian, but also the literature and analysis conducted in the collected documents.

The procedures adopted in this study met the criteria of Ethics in Human Research, as provided under the Resolution No. 196/96 of the National Health Council (CNS) and has as its references the respect for the human dignity of the subjects directly involved, besides the formalities of signing the consent form, in which case, after consultation with the Federation of the University of Tocantins Ethics Committee, were signed by the representative of the CEIP - Centre for Provisional Admission, the person at that statutory time responsible for them. It should be made clear, however, that the TCLE was the same for both groups, but in the case of the adolescents, were executed by the aforementioned supervisor.





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The search lasted eight months, namely from April to November 2011, including the period of academic research and the successful drafting and application of the survey. At other times, we established communication with several professionals of the CEIP, for the reasons already stated.

To obtain the necessary tools to obtain the research results, we used the so-called descriptive statistics, which is "(...) a set of techniques that aim to describe, analyze and interpret numerical data of a population or sample." (Martins, 1996, p. 101). Thus, knowing the composition of the sample we must then perform a calculation of reliability, to check for viability in the scientific study. For this, we used the following formula:

$$n = \frac{Z^2 \cdot \hat{p} \cdot \hat{q} \cdot N}{d^2(N-1) + Z^2 \cdot \hat{p} \cdot \hat{q}}$$

Whereas:

n= size of research participants

N= size of population

Z = abscissa of the standard normal curve, set a confidence level

d = sampling error

$\hat{p}$  = Estimate of the true ratio of the levels of the chosen variable

$\hat{q} = 1 - \hat{p}$

We considered the total population (N = 39), assuming sampling error of 5.5% (p = 0.055). This sampling error is the risk assumed by the researcher that the number may not represent the margin of reliability obtained. With these data in hand, we reached the value of "e" equal to 0.5, with a coefficient such value preset by the doctrine.

The statistical theory established a reliable coefficients. According to MARTINS (1996, p.178): "if the level is 95.5%, Z = 2; if the level is 95%, Z = 1.96; and if the level is 99%, Z = 2,57". For the work in question, we adopted the average of 95% reliability, lying:



$$n = \frac{(1,96)^2 \cdot 0,5 \cdot 0,5 \cdot 39}{(0,055)^2 (39 - 1) + (1,96)^2 \cdot 0,5 \cdot 0,5} \quad n = 35$$

As is apparent, the number of questionnaires answered (37) exceeds the size of the sample established by the formula, making it scientifically reliable since it obtained a margin greater than 95%. Once collected, the data was properly tabulated and arranged in number of responses per their alternative. We used the numbers for making graphs in order to didactically illustrate the results.

#### **IV. Embodied Analysis: Inferences from the Palmas` Case**

The dimension of citizenship is directly linked to the so called “youth leadership”, which consists of the participation and interaction within the adolescents within the community there are inserted, that is, with the socio-educators or their fellow inmates. As the first constitutive pillar of the legal nature studied, the dimension of citizenship, presented here with fulcrum on impressions gathered in the field, brings together the issues of creating re-socialized individual, namely the individuals own perspective as to themselves, its relationship with other individuals and society, beyond the aspects to developing your life plan.

The function of the detention unit, regardless of what one may think of a repressive unit, makes it contain programs for the reconstruction of the adolescent, which are in a situation, sometimes of personal rejection, revolt, and more important an incongruous perspective of what they are doing there.

Among these important reforms, we may point to the obligation to work with the adolescent called 'perspective of self', i.e. the representation of the idea that a person has



of itself, a term directly linked to self-esteem. Within this coexistence of the internal environments in Palmas` CASE, we have found the so-called thermometer of the situation in an interview with a Professional of the Center, here called EMPLOYEE CASE 02:

RESEARCHER: How could the problems encountered in the re-inclusion of the adolescent be solved?

CIVIL CASE 02: More attention of the Secretariat and implementing courses to occupy the boys head. It's complicated because the family themselves, sometimes, do not to visit these young, they have been absent. We call and some people say "it's one less here at home," "I do not want this misery here." As of today, we have 6 boys that are ready to leave, but they do not have that chance. They need the family. ( g.n )

RESEARCHER: Do they (interns) express any prospect of future for when they leave? If so, which? If not, how could this be resolved?

CIVIL CASE 01: Virtually everyone. Most of them are to continue to study and work to help the family income. That is precisely the reason why we put in place the PIA Family, because in certain cases some have not seen their families for 4 months. The family has to walk along with them. Often, we realize that it is the family that reinforces the inappropriate behavior.

Furthermore, it is concluded that as to the dimension of citizenship, taking into account the above presented, going beyond the finality of forming adults with a social self and that this dimension is an integral part of what is expected from an institution that holds the legal nature advocated, i.e. educative-pedagogical, the Palmas` CASE did not produce these concepts, making it impossible to approve it. Also taking into account the doctrine of full protection, which grants it the power of guardian of the adolescents in conflict with the law, reference is incomplete in the dimension of the Palmas` CASE, at least until the end of this research.

With regards to the dimension of structure, it is said that the place of complying with the measure is a relevant point to characterize it its legal nature. The Brazilian Constitution, in its article 225, gives to all alike the right to a balanced environment. This right could well be expanded to illustrate the importance of the place in which one lives, especially if there is reference to adolescents in conflict with the law.



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In the Palmas` CASE, place in which the research was taken, or better, the CEIP, in which the observations actually took place, when we performed a small description of the physical structure, we conclude that the structure is quite small compared to the CASE. A large blue gate gives entry to a space from which you may go right or left, through the dormitories where the interns stay when they are not performing any activity or when they are asleep. In the middle, in front of the entrance gate, is the administrative center, namely, coordinators and the direction of the school. In the same space, when you enter, to the left, is the hospital. In the following hall, locked from the outside, are four classrooms in which they are taught in two shifts, with the total number of inmates divided by two (each group in a turn) and then divided by four (a group in each room).

As for their free time, the interns have the possibility, supposedly for a certain time, only a small field on land that they use to play soccer. There is no cafeteria, as are all interns at the CEIP awaiting release to the CASE, where the meals are delivered in the form of 'tins' to the dormitories where the meals are served. The professional body itself has no proper maintenance of dining venue, performing them in the improvised administrative hall. Given these facts, it is unclear whether they are like that because of the situation of the CASE undergoing refurbishment as determined by the CNJ - National Council of Justice, but not all structural requirements, dictated by the SINASE to detention institutions, are present, as could be confirmed.

In order to ratify the situation found during the search, as well as give a more technical view for this study, we make reference to the report of the CNJ, presented after its visit the Palmas` CASE and CEIP, as well as other centers in the state. Analyzing the report, we obtained information exclusively on the Palmas CASE because that is the object of this study.

Among the structural requirements, the CNJ stated:

The performance of the crew is present. As seen in the field research, professional staff at the Palmas` CASE has reasonable knowledge of the interns and treat them amicably, including generating certain personal relationship. The PIA is not performed. What we found, perhaps through the publication of the CNJ report, now that you have the PPC - Educational Plan in Context awaiting for approval, which contemplates the installation of the PIA and the PIA Family,



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which are plans of social and psychological care for the interns and their families, for the sake of drawing more accurate profile of the phase in which they are re-education.

The separation of adolescents occurs only in terms of their physical attributes. As mentioned, article 123 of the Statute, provides that the separation of adolescents is made strictly by "criteria of age, physique and seriousness of the offense." However, we noticed many condemned/sentenced interns being allocated alongside with temporary interns.

Adolescents are offered the basic education, but do not receive any professional workshops. An unfortunate, but verified fact since to allocate the detention measure as the educative-pedagogical legal nature, the three requisites should be present: education-family-work.

An interview clearly showed that the professionals are distant from the competent authorities of the childcare system and, more precisely, of the detention environment. The CNJ report ratifies such conclusion: "the staff proved to be demotivated due to the lack of support and the low priority given to the childcare system by the State Executive Body."

It is noted the inexistence of girls in the CEIP, being the Palmas` CASE limited to male interns, although there are different dormitories. In the research, we concluded that there were no girl in the institution. As explained above, the CASE was temporarily deactivated, having part of its interns transferred to the CEIP, which stood for an interim detention. From the information we received, it is said that this is the reason for the lack of girls.

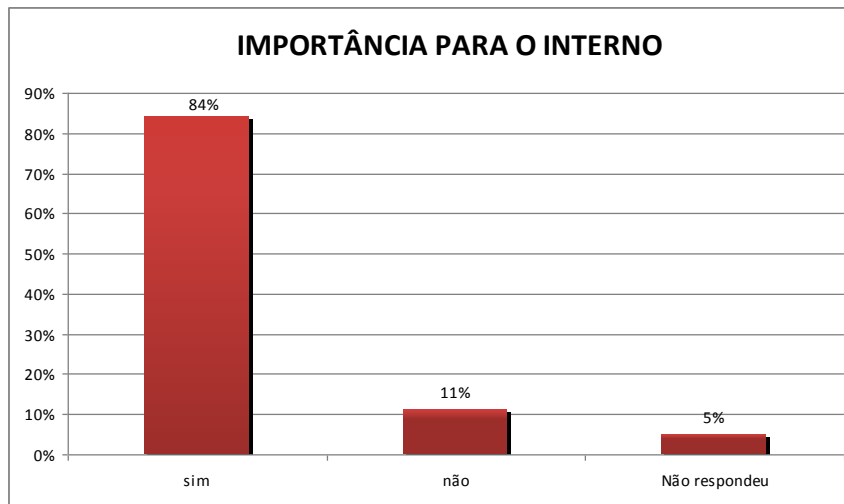
Finally, what the researchers concluded is that with the ongoing reform, the institution is seeking to remedy the deficiencies found by the CNJ, whose report dates of April 2011.

Within the essential tripod in achieving the educative-pedagogic nature of the detention measure, the dimension of opportunity has been justified to be one as to how childcare system works or should work. Objectively, we propose for the professionalization of the interns so as to enable him to have prospect for the future.

Much like the scholar education, humanistic education and family support, professional education is a right of the adolescents that are in conflict with the law. By accepting such a



statement, one should ensure the professional education is linked to the basic education, with a focus on the market, with a view to develop the so-called "workability", as provided for in Articles 68 and 69 of the Statute.



**Figure 1. Graph to show the importance of the professional development through the execution of the detention measure.**

The following quotation is believed to summarize what is absent:

RESEARCHER: What are the main obstacles in the implementation of an educational and professional project within a Centre of Socio-Educational Services?

CIVIL CASE 02: The first is to execute the Convention and then is the resistance of some adolescents. But there is no problem with those who want to learn. The staff is very good. To establish the program of the course, the team of professionals meet, we have even done a research to know which course they wanted, but we have just not been able to deploy. They end up just taking the courses that happen.

It is thought, as Paulo Freire has stated, that in face of restriction on their liberty, the oppressed develop a desire, even unintentional, to be inserted in a humanizing community, leaving nothing but the execution of the educative-pedagogic measures, namely, personal development, through education, family and work. "Only when the oppressed clearly discovers the oppressor, that they engage in an organized struggle for their liberation, and begin believing in themselves, thereby overcoming his "conivence" with the oppressive regime. [ ... ]" (Freire , 1987, p. 52) The law is laid, but the legal technique is nothing without the social side it purports.



In the recommendations of CONANDA - National Council for the Rights of Children and Adolescents and SEDH - Special Secretariat for Human Rights, the re-inclusive tripod school-family-work should emerge, through public policy or "social solidarity" when considering answers to these adolescents in conflict with the law.

## **V. CONCLUSION**

Having observed the trajectory of the government's participation and of the solidary initiative within the community, it is seen that what is theoretically correct is not applicable in practice, because it is extremely very difficult to find concrete initiatives that converge satisfactorily in favor of the presented three dimensions, setting up an educative-pedagogical nature of the detention measure.

Regarding the citizenship perspective, which has close links with the 'youth leadership', which consists in the participation and interaction of the adolescent within the social center, be it with their teachers or with their colleagues and inmates, it is concluded that the Palmas` CASE does not reach the necessary requirements of the educative-pedagogical legal nature, although the relationship between the interns and the professionals is good in terms of what was presented. There is no available Service Plan, be it individual or family, that proposes the required formation of the individual, namely the vision of his own person, though work with self-esteem, which is important to show that his presence in society is important; nor does it stimulate the relationship of the adolescent with other individuals and the community, in which it would be worked the notions of tolerance of differences, social rules, legality, among other factors; nor does it include a plan to assist these adolescents in defining and developing aspects of their life project, which is stimulated and proposed when the adolescent can have a perspective as to his own future, given the vocational programs that do not exist in the institution.





When analysing the size of the structure, one realizes that the Palmas` CASE is attempting to build a structure that is in line with the report presented by the CNJ. Hence, until the date of completion of fieldwork, this process was not fully completed. As to state the available opportunities, there is no other conclusion that can be withdrawn then to present the absence of programs or vocational training projects.

Although it has been demonstrated based both in theory and on the interviews undertaken, that the legal nature of the detention measure is the educative-pedagogical, fact is that until the completion of the study there was not enough available evidence to claim that the Palmas` Case was, in fact, that. It is considered, therefore, that the proposed question must be answered negatively.

The question to be answered was thus if the legal nature of the detention measure offered in the Palmas` CASE was educative-pedagogic. First, as stated, the legal nature of the Palmas` CASE detention measures is not educative-pedagogic, justified by the absence of the re-inclusive school-family-work base, not only in a literal sense, but through an in-depth exploration of the term, namely: offer emotional and physical support, by assuring the formation of the human being through education and the chance to project a future.

Finally, one may conclude after the present study that the socio-educational measures must at the same time imply a disapproval of society to the offenses committed by the adolescents, but simultaneously contribute to their development as a human being, that is through the offering of the re-inclusive requirements of school, family and work. The essence of the legal nature.

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