



The remission of the sentence through work and/or study as an instrument of resocialization of prisoners

The remission of the penalty through work and/or study as an instrument for the resocialization of prisoners

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SUMMARY

This article addresses the issue of remission of sentence through work and/or study as an instrument for the resocialization of prisoners, limiting itself to the legal provision of this possibility in Brazilian legislation. The study's guiding question is: what is the legal provision for criminal remission in Brazil? The relevance of the study lies in the fact that the penalty has, among its purposes, the ideal of resocializing the prisoner, enabling his reintroduction into society as an individual aware of his rights and duties. One of the elements used to implement this penal function is redemption through work and/or study, so that society in general is interested in better understanding this institute, and its forms of application, as it represents a means of reinserting the detainee within a period shorter than the stipulated sentence to be served. The general objective of this study is to research in Brazilian legislation the aspects that permeate and define the remission of the sentence. To this end, a bibliographic methodology research was developed, based on national legislation, and scholars who discuss the subject. The research revealed that the remission of the sentence, in Brazil, can be through work, study and reading, in addition, it is understood that other artistic and cultural activities can also be recognized as means of remitting the sentence. **KEY WORDS:** Study. Pity. Redemption. Work.

ABSTRACT

This article deals with the subject of remission of the penalty through work and/or study as an instrument for the resocialization of prisoners, delimiting itself to the legal provision of this possibility in Brazilian legislation. The study has as its guiding question: what is the legal provision for criminal remission in Brazil? The relevance of the study lies in the question that the penalty has, among its purposes, the ideal of re-socializing the prisoner, enabling his reintroduction into society as an individual aware of his rights and duties. One of the elements used to carry out this penal function is redemption through work and/or study, so that society in general is interested in better understanding this institute and its forms of application, since it represents a means of reinserting the detainee within a period shorter than the stipulated sentence to be served. The general objective of this study is to investigate in the Brazilian legislation, the aspects that permeate and define the remission of the sentence. For that, a research of bibliographic methodology was developed, based on the legislation of the country, and doctrinaires who discuss the subject. The research revealed that the remission of the sentence, in Brazil, can be through work, study and reading, in addition, there is the understanding that other artistic and cultural activities can also be recognized as means of remitting the sentence. **KEYWORDS:** Study. Pity. Remission. Work.

1. INTRODUCTION

This article was developed on the topic of remission of sentences through work and/or study as an instrument for the resocialization of prisoners.

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The problem question that guided this study is: what is the legal provision for criminal remission in Brazil?

An empty mind can lead to numerous mental and physical problems, considering the context of those who are incarcerated. Going day after day, without the slightest prospect of the future. However, with work and study, invigorating effects arise for the individual, including self-esteem, desire for evolution, satisfaction, feeling useful, which makes them seek better living conditions. Considering these aspects, this study is relevant, given that measures aimed at the resocialization of inmates, such as work and study, are important, proving to be an efficient alternative to the prison problem with regard to the reinsertion of the prison population into prison. society.

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To carry out this research, the hypothetical-deductive approach method was adopted, using data collection in bibliographic sources available online in its design, presenting the results obtained through a descriptive text.

twoTHE REMISSION OF THE PENALTY THROUGH WORK AND/OR STUDY AS AN INSTRUMENT FOR THE RESOCIALIZATION OF PRISONERS

2.1 The institute of sentence remission

Brazilian Penitentiary Law provides for redemption, thus allowing the prisoner, whether provisional or convicted, regardless of the regime, closed, semi-open or open, to be able, through work and/or study, to reduce the time of incarceration that he was imprisoned for. initially attributed in the sentence (BRITO, 2022).

The institute of redemption aims at the resocialization of the individual, removing the incarcerated person from the idleness in which he finds himself, creating and generating values in society, previously forgotten by the prisoner. Remission is an institute created by the Penal Execution Law, it has a general nature, covering all convicts subject to it (BRASIL, 1984).

Law no. 7,210, of July 11, 1984, which establishes the Penal Execution Law (LEP), dealt with issues related to prison labor in Chapter III. According to art. 28 of the LEP: "The work of convicts, as a social duty and condition of human dignity, will have an educational and productive purpose." (BRAZIL, 1984). Therefore, the prisoner's work has resocialization and redemption as a priority.

The objective of the resocialization of the convicted person is to rescue the individual who broke a certain law. From these beginnings, the prison system seeks ways of socialization. In this sense, Marcão explains that from Law n. 12,433/2011, articles 126,127, and 128 of the Criminal Execution Law, now allow that, in addition to work, study is also a possibility of reducing the sentence, so that the sentenced person has the opportunity to redeem the amount penalty imposed on him in the criminal sentence, which can be concluded in a shorter time (MARCÃO, 2012). Subsequently, in 2013, Recommendation no. 44, added the possibility of remission of the sentence through reading (BRASIL, 2013).

Regarding redemption, Marcão explains that:

The institute of redemption is regulated in art. 126 of the Criminal Execution Law, according to which a convict serving a sentence in a closed or semi-open regime may redeem, through work, part of the time spent serving the sentence. Formal and regular study also allows sentence remission, and in this case, prisoners who are in closed, semi-open and open regimes, as well as conditionally released and precautionary prisoners, may benefit from remission. (MARCÃO, 2012, p. 79).

Considering that the remission of the sentence, currently in Brazil, can occur through work, study and reading, the next items in this article will address each of these possibilities.

2.2 Compensation for work

Work is a right that is available to everyone, including the convict, as the Criminal Execution Law in its art. 3rd states: "The convicted and interned will be guaranteed all rights not affected by the sentence or the law. The legal system must provide adequate instruments to ensure this." (BRAZIL, 1984).

Bitencourt explains that redemption "[...] through work originated in the Military Criminal Law of the Spanish civil war, in the 1930s." (BITENCOURT, 2017, p. 637).

The Minimum Rules for the Treatment of Prisoners of the United Nations, which is revealed as the set of guidelines that guide the actions of its member countries, when dealing with prison work, expressed in its Rule 96

"1. Convicted prisoners must have the opportunity to work and/or actively participate in their rehabilitation, being

two This activity is subject to determination by a physician or other qualified health care professional of your physical and mental fitness." (LANFREDI, 2016, p. 41).

Highlighting that the work must not be distressing in nature, as determined by Rule 97 "1. Prison work should not be stressful in nature." (LANFREDI, 2016, p. 41). In a similar sense, the Federal Constitution of 1988 already prohibited forced work, above the limits bearable by human capacity, which should not be confused with the requirement of work as a requirement for progression of the regime (BRASIL, 1988). And Rossetto (2014, p. 91) adds, stating that "the LEP and the CP encourage the work of incarcerated people as a means of resocialization and readaptation to social life, with the redemption of one day of sentence for every three days worked."

Brito (2022, p. 112) defines redemption as being “[...] the virtual fulfillment of the sentence due to work or study in a closed or semi-open regime, at the rate of one day of sentence more than the sentence served for three days of work or 12 hours of study.”

Law no. 7,210, of July 11, 1984, which establishes the Penal Execution Law (LEP), which deals with prison labor in Chapter III. According to art. 28 of the LEP: “The work of convicts, as a social duty and condition of human dignity, will have an educational and productive purpose.” (BRAZIL, 1984). Therefore, the prisoner's work has resocialization and redemption as a priority. According to article 28 of the Criminal Execution Law, prison work is a social duty.

Work activity positively influences the mental and physical health of the person in custody, thus the possibility of work is a right that should not be denied to a person deprived of liberty. Because as Rossetto (2014, p. 178) expresses, “The work of convicts, as a social duty and condition of human dignity, has educational and productive purposes, aims at the professional training of convicts and integrates resocializing treatment.”

It is worth mentioning that article 41 of the Criminal Execution Law also guarantees that the prisoner has the right to paid work and article 29 of this same legislation ensures that this value cannot be less than $\frac{3}{4}$ (three quarters) of the minimum wage (BRAZIL, 1984). Since Rossetto (2014, p. 178) clarifies that

The proceeds of the remuneration must cover compensation for damages caused by the crime, as long as they are determined judicially and not repaired by other means, assistance to the family, small personal expenses and reimbursement to the State for expenses incurred with the maintenance of the convicted person.

Law no. 9,867, of November 10, 1999, deals with the institution of social cooperatives to insert people with some disadvantage into the economic market through work, with the objective of promoting the dignity of the human person and the social integration of citizens. In its article 3, item IV, prison inmates are considered people who need help to obtain a job that can guarantee their livelihood and maintenance outside the prison and, from there, return to social life (SILVA, 2003).

Rossetto (2014, p. 178) explains that “Work prepares the convict for promotion to the open regime and conditional release.” Since the Criminal Execution Law in its art. 114, item I, conditions progression to the open-work regime or proof of being able to do so immediately. Therefore, it conditions the granting of some benefits to the provision of work. The art. 126 of the aforementioned law, the convict who serves his sentence in a closed or semi-open regime may redeem, through work, part of the time spent serving his sentence, at the rate of one day of sentence for three days of work (SILVA, 2003).

Redemption allows the convict subject to the closed or semi-open regime to reduce their sentence through work, at the rate of one day of sentence per three days of work (LEP, art. 126). (BRITO, 2022, p. 67).

Through redemption, a convict serving his sentence in a closed or semi-open regime will be able to reduce the length of his sentence, counting for every three days worked, one more day of sentence served. (BRITO, 2022, p. 67).

Brito highlights that:

Redemption refers to the work actually carried out, including salary payment. One cannot irresponsibly recognize redemption without activity, nor salary payment without active production. If, on the contrary, redemption was recognized indistinctly and randomly, the State would reward the condemned with paid leisure. (BRITO, 2022, p. 145).

The right continues to be counted even if the prisoner, by accident, is unable to continue working. From what can be seen from the wording of the Law, it is not just a discount on the imposed sentence, but a fictitious count of the sentence served, as the redeemed period may be counted for the purpose of granting conditional release and pardon. (BRITO, 2022, p. 67).

The administrative authority will send a copy of the record of all convicts who are working and the working days of each of them to the execution court on a monthly basis. Redemption will be declared by the executing judge, after hearing the Public Prosecutor's Office. The condemned person will be given a list of their redeemed days. (BRITO, 2022, p. 67).

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Brito wisely asserts that:

[...] if the convict suffers an accident at work that makes it impossible for him to work, the time he is away from work must be counted for the purposes of redemption. Upon recovery, he will return to work activities.

It should be noted that the work accident must not have been caused negligently or intentionally by the person himself.

convicted. The Criminal Execution Law recommends in its art. 50, IV, as serious misconduct “causing an accident at work”. (BRITO, 2022, p. 144).

According to Carvalho (2014, p. 72), work, in addition to producing goods and income, also “provides training and enables rehabilitation through activities”, also contributing to disciplining and organizing time, keeping prisoners busy. However, despite all these advantages that the work carried out by inmates entails, the author criticizes it, highlighting that “the structure and functioning of prisons do not contribute to the development of work activities with efficient production.” (CARVALHO, 2014, p. 74).

It is also interesting to comment that in the case of an Open Regime, which has as one of its requirements, the inmate's condition to work or prove the possibility of doing so immediately, indicates that, in this case, work is mandatory, however, it does not imply the benefit of redemption (art. 126 of the LEP). This being the interpretation of the STF, which understands that it was not changed by Law no. 12,433/2011 the wording of art. 126 of the LEP, which determines the right to remission of the sentence through work, only for the convict who serves his sentence in the closed and semi-open regime (ROSSETTO, 2014).

2.3 Redemption through study

Bitencourt (2017) informs that the redemption that was made on the basis of three days of work for one day of punishment was increased, in relation to the study, with the change of the LEP by Law no. 12,433/2011. And in this sense, Brito (2022, p. 146) comments that, “[...] the law did not admit the possibility of redemption through study. From the publication of Law no. 12,433, of June 29, 2011, this possibility was authorized.” Rossetto (2014, p. 179) informs that based on the changes promoted by Law no. 12,433, dated 06/29/2011, now

Anyone serving a prison sentence has the right to attend instructional or vocational courses. [...] the convict who serves his sentence in a closed or semi-open regime may redeem, through work or study, part of the time spent serving his sentence (art. 126) at the rate of 1 (one) day of sentence every 12 (twelve) hours of school attendance – primary, secondary, including vocational, or higher education activity, or professional requalification – divided into at least 3 (three) days (item I).

According to the content of article 126, inmates who are in a closed or semi-open regime have the right to study remission. However, paragraph 6 of this same legal diploma brings another possibility, by determining that the convict who serves his sentence in an open and semi-open regime or who enjoys parole will also be able to redeem, by attending a regular education or vocational education course, part of the time of the execution of the sentence or the period of probation. Furthermore, according to article 126, § 7, of the LEP, there is the possibility for the precautionary prisoner to redeem his sentence, giving the opportunity for redemption conditioned on a possible future conviction (BRASIL, 2011).

And Brito clarifies that “According to the legal provision, for every 12 hours of study, the prisoner will be able to redeem one day of his sentence. The quality of training can range from primary and secondary education to vocational training, higher education or professional requalification.” (BRITO, 2022, p. 146).

For every three days worked or 12 hours of study, the convict will have served one more sentence (art. 126, § 1, I and II). And the legislation even provides for the sum of work and study, so that, “if both are carried out, you will be entitled to two days’ compensation.” (BRITO, 2022, p. 144). Segnini (2017, p. 73) explains that:

It is possible to accumulate working and studying hours to redeem the sentence. Redemption can also occur for prisoners in semi-open and open regimes and for those who enjoy conditional release, with the days redeemed being counted in the probationary period.

Rossetto (2014, p. 179) explains that “The change allowed the accumulation, for redemption purposes, of daily working hours and study (art. 126, § 3).” And, Brito continues to clarify this possibility, stating:

[...] the day “reduced” is actually equivalent to a day actually served in prison. By working for three days you will have served four of your sentence. If, at the same time, during these three days you study 12 hours, you will have served five days of your sentence, and, for this to be possible, the law determines that timetables must be adopted in order to make the two institutes compatible (art. 126, § 3º). (BRITO, 2022, p. 144).

Regarding the issue of “difficulty in attending instructional or professional courses is overcome by the technological tool of distance education”, as explained by Rossetto (2014, p. 179). Regarding this aspect, Brito (2022, p. 146) highlights that the study can even be carried out non-face-to-face, that is, remotely. With this, in addition



Due to the ease of dissemination of this resource in penal establishments, through the use of the internet or satellite system, these options “[...] are more economical and practical, all they need is image projection equipment and the use of a single teacher to serve several establishments at the same time.”

Another aspect that Brito (2022, p. 146) highlights is “[...] the granting of a “bonus” of one third of redemption for completing the course to which the prisoner underwent in addition to the redemption already due to him. right for the hours of study.” And he explains this possibility, stating that, “[...] after calculating how many days the prisoner is entitled to redemption for his study, the judge must add 1/3 of the result of this operation to the total number of days that will be granted to him. redemption title.”

2.4 Redemption through reading

It is worth noting that on November 26, 2013, the president of the National Council of Justice presented Recommendation no. 44 to the Courts, providing for complementary educational activities for the purpose of remitting the penalty for studying and establishing criteria for admission through reading (BRASIL, 2013).

The remission of the sentence through reading appears to be an important alternative, as it contributes to the tightening of the Brazilian penal system, especially because access to literature and information integrates pedagogical conduct with the offer of other levels of education to those deprived of liberty. Thus, enabling the prisoner to acquire a comprehensive cultural education, through access to literary works, contributes to avoiding the intention of reoffending in crimes, promoting reintegration into community life and the essential guarantee of the individualization of the sentence; in addition to preparing for external assessments, including the Application of the Exam for certification in Teaching (ENCCEJA PPL) and the Application of the Exam for certification in Secondary Education (ENEM PPL), offered annually.

Recommendation no. 44, determines that prisoners will have the right to sentence remission after proving that they have read any literary work in the prison establishment's collection, through a report about the book. Each work read, after recognition by the Court, represents a reduction of four days in the sentence, considering the limit of 12 books read per year and, therefore, 48 days redeemed as the annual ceiling for this type of redemption (BRASIL, 2013).

In addition to the possibilities discussed so far, on November 8, 2017, it was published in the Youth Newsletter STJ ruling, Edition no. 613, a judgment that brings other possibilities for remission, based on the understanding that the text of art. 126 of the LEP allows the interpretation that the remission of the sentence may be based on other activities, as its list is not exhaustive, as it does not describe all activities that can contribute to remission of the sentence (BRASIL, 2017).

The decision of the Superior Court of Justice recognizes the practice of artistic and cultural activities as possibilities for remission of the sentence, since this type of activity has objectives similar to those of work and study, related to the re-education and reinsertion of the prisoner into society, to the job market and preventing them from reoffending.

CONCLUSIONS

The Criminal Execution Law Law no. 7210, of July 11, 1984, in its art. 1st seeks to guarantee harmonious conditions and social integration to all detainees and inmates, however, in practice, this norm is not implemented, and what happens in prisons is very far from what is expressed by this Law.

It is known that deprivation of liberty alone does nothing to detain inmates; it is vital to provide opportunities for the resocialization process to occur. Study and work are initial indicators for resocialization. Work and study have provided light for those who spend their days in a cold and lifeless place. Where prejudice exists from the first moment you enter this declared resocializing institution.

Resocialization is a process that is directly linked to re-education, so that the remission of the sentence through study is an alternative that needs to be encouraged and increasingly valued, as it provides the individual with a means of acquiring knowledge, completing levels of education, making be able to return to society, with dignity and equality with other citizens who are part of this society.

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It is important to highlight that the penalty is the loss of freedom, and not of fundamental and social rights, increasing distress not provided for by law is not justified in serving the sentence and does not add anything.

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