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THE NON-PROSECUTION AGREEMENT AND ITS EXTENSION TO CORRUPTION CRIMES

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SUMMARY

The general objective of this study is to explain the Non-Prosecution Agreement (ANPP), explaining the possibility of extending its application to the crime of corruption to better satisfy the parties involved in the dispute. It also intends to present the ANPP institute as an instrument at the service of consensual criminal justice, highlighting its origin and historical evolution, concept and assumptions of application, legal nature, legal provision in Brazilian law and applicable principles; to comparatively analyze the ANPP provided for in Brazilian legislation with other similar institutes existing in the legal system, with a view to tracing similarities, differences or models to follow; to study the ANPP institute, highlighting the requirements for its application, as well as the rules established for its exclusion, the legal conditions of the agreement, procedure, and requirements of existence, validity and effectiveness, specifically analyzing the possibility of using the maximum penalty in the abstract, in perspective or in concreto as a parameter for the ANPP to the detriment of the minimum penalty in the abstract, currently verified; to analyze the feasibility of expanding/expanding the ANPP to apply to the crime of corruption in view of the principle of prohibition of deficient protection of protected legal assets. Regarding the methodology, it is clear that the procedures adopted in the investigation process allow the research to be classified as exploratory, with the use of bibliographic and documentary survey techniques to collect data. To this end, scientific articles, dissertations, theses and books already published on the subject were used, as well as laws and other pertinent documents, which provided information considered relevant to the understanding of the institute's proposal. The method adopted during the preparation of the final text that is part of this dissertation was the investigative-deductive method, with critical analysis of the data and a qualitative approach to the problem.

Keywords: Criminal Law. Consensual Criminal Justice. Non-Prosecution Agreement. Corruption. Applicability.

ABSTRACT

This study has the general objective to make explicit about the Criminal Non-Prosecution Agreement, explaining the possibility of extending its scope to the crime of corruption for better satisfaction of the parties involved in the dispute. It is also intended to present the Criminal Non-Prosecution Agreement institute as an instrument at the service of criminal consensual justice, highlighting its origin and historical evolution, concept and application assumptions, legal nature, legal provision in Brazilian law and applicable principles; comparatively analyze the Criminal Non-Prosecution Agreement provided for in Brazilian legislation with other similar institutes existing in the legal system, with a view to tracing similarities, differences or models to be followed; study the Criminal Non-Prosecution Agreement institute, highlighting the requirements for its application, as well as the rules established for its exclusion, the legal conditions of the agreement, procedure, and requirements of existence, validity and effectiveness, specifically analyzing the possibility of using the maximum penalty in abstract, in perspective or in concrete as a parameter for the Criminal Non-Prosecution Agreement to the detriment of the minimum penalty in abstract, currently verified; analyze the feasibility of enlarging/expanding the Criminal Non-Prosecution Agreement for application to the crime of corruption in view of the principle of prohibition of poor protection of protected legal interests. Regarding the methodology, the procedures adopted in the investigation process allow classifying the research as exploratory, with the use of bibliographic and documentary survey techniques for data collection. To this end, scientific articles, dissertations, theses and books already published on the subject were used, as well as laws and other relevant documents, which brought information considered relevant to the understanding of the institute's proposal. The method adopted during the preparation of the final text of this dissertation was the investigative-deductive, with critical analysis of the data, and a qualitative approach to the problem.

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Keywords: Criminal Law. Criminal Consensual Justice. Criminal Non-Prosecution Agreement. Corruption. Applicability.

INTRODUCTION

In Brazil, Law No. 13,964 of December 24, 2019 (Anti-Crime Package) expressly introduced the Non-Prosecution Agreement (ANPP) into the Code of Criminal Procedure (CPP), which is now expressly provided for in Article 28-A of the aforementioned criminal procedural law. In short, this is a measure that seeks to prevent excessive incarceration, prioritizing dejudicialization, as long as the requirements established in the aforementioned provision are met. In fact, it is an excellent negotiating instrument and, as the name itself suggests, if it is a deal, there must be bilaterality, which allows for the adjustment of the wills of those involved, without losing sight of the imperative need to protect the legal assets protected by law.

Although this is a negotiation instrument arising from consensual criminal justice, some conditions are mandatory, such as the duty to repair the damage and the payment of a monetary benefit. At this precise point, the need arises to carry out a more accurate analysis from the perspective of economic criminal law, since criminal offenses of this nature are generally committed by businesspeople with high financial capacity.

Almost all crimes of an economic nature have a minimum sentence of less than 4 (four) years, thus allowing the application of the ANPP. Therefore, the conditions mentioned above (compensation for damage and pecuniary compensation) should not constitute obstacles to the acceptance of the ANPP by economically wealthy agents, which can be seen as a stimulus or incentive to repeat the crime – which, at first glance, would not be the objective of the institute in question.

Thus, what we have is that the ANPP does not have as its primary purpose to grant the accused or alleged perpetrator of the act an alternative procedure that hinders the initiation of a judicial process and, consequently, prevents the initiation of criminal proceedings and the consequent liability of the perpetrator of the act. On the contrary, from a constitutional perspective, the ANPP presents itself as a true fundamental right, insofar as article 5, § 2 of the Brazilian Federal Constitution of 1988 – CFB/1988 states that the rights and guarantees expressed in the Constitution do not exclude others arising from the regime and principles adopted by it. Therefore, if we consider that the ANPP is directly linked to the *status libertatis* of the author of the fact, there is no other conclusion than its recognition as a fundamental right, assuming, therefore, all the characteristics concerning it, such as inalienability, since it is effectively related to the realization of the dignity of the human person.

Therefore, based on what was mentioned above, the following guiding questions were developed for the present study, which reflect the problem now conceived:

If the ANPP has *status* of fundamental rights, could the proposal be offered based on the maximum penalty, whether concretely, in perspective or abstractly?

Since it is a more beneficial rule, could the principle of legality be mitigated in order to allow the application of the ANPP to perpetrators of crimes based on the maximum rather than the minimum penalty?

The hypotheses initially established as a response to the problem, to be confirmed or refuted with the present study, are the following:

H1 – The ANPP with a greater scope of illicit acts will relieve the Judiciary, making jurisdictional delivery faster and more economical;

H2 – The scope provided by the ANPP will benefit people who would be marginalized if they were arrested;

H3 – The Brazilian prison system is clearly failing, so that alternatives to incarceration are measures that are necessary, especially when analyzing the purpose of the sentence;

H4 – The expansion of the ANPP could generate significant savings for the public treasury, given that, in addition to seeking the recovery of assets, a financial penalty will be applied, a sanction that could be used as a resource for the implementation of public policies.

Considering the aspects related here, the general objective of the research was to explain the Non-Prosecution Agreement (ANPP), explaining the possibility of extending its application to the crime of corruption to better satisfy the parties involved in the dispute. To achieve this, the following specific objectives were established:

- Present the ANPP institute as an instrument at the service of justice

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criminal consensual law, highlighting its origin and historical evolution, concept and application assumptions, legal nature, legal provision in Brazilian law and applicable principles;

- Comparatively analyze the ANPP provided for in Brazilian legislation with other similar institutes existing in the legal system, with a view to outlining similarities, differences or models to follow;
- Study the ANPP institute, highlighting the requirements for its application, as well as the rules established for its exclusion, the legal conditions of the agreement, procedure, and requirements for existence, validity and effectiveness, specifically analyzing the possibility of using the maximum penalty in the abstract, in perspective or *in* concrete as a parameter for the ANPP to the detriment of the minimum penalty in the abstract, currently verified;
- Analyze the feasibility of extending/expanding the ANPP to apply to the crime of corruption in view of the principle of prohibition of deficient protection of protected legal assets.

The justification for choosing the theme and approach proposed here is based on the observation that a broader scope of the new decriminalization institute will not only reach a greater number of offenders through a negotiated justice system other than prison, but also, because it is an alternative solution to conflicts of criminal practices, it may help to avoid unnecessary and ineffective prison overload, an institution that has long been bankrupt. In addition, it will have a positive impact on the Judiciary, contributing to reducing the procedural flow, delivering greater speed and procedural economy to the State and the parties.

Furthermore, the expansion of mechanisms for consensual criminal resolution may contribute to savings for the state treasury, either by recovering economic losses resulting from criminal offenses or by applying the monetary amounts paid in the ANPP to the implementation of public policies that serve society. For this reason, it is understood that this is a topic and approach that is of interest not only to the academic-scientific community, but also to the State, society as a whole, and professionals working in the field of Criminal Law.

The methodology adopted in the investigation process allows the research to be classified as exploratory, using bibliographic and documentary survey techniques to collect data. To this end, scientific articles, dissertations, theses and books already published on the subject were used, as well as laws and other pertinent documents, which provided information considered relevant to understanding the institute's proposal. The method applied during the preparation of the final text that forms part of this dissertation was the investigative-deductive method, with critical analysis of the data following the Bardin protocol (2011), and a qualitative approach to the problem.

To provide a better understanding of the topic, it was decided to structure the development into sections, structured based on the specific objectives noted.

1 NON-PROSECUTION AGREEMENT: EVOLUTION, CONCEPT, NATURE LEGAL, APPLICABLE PRINCIPLES AND NEGOTIATED JUSTICE

In this chapter, the purpose is to make initial considerations about the object of this study, namely, the Non-Criminal Prosecution Agreement – ANPP, in order to situate the reader in light of the notes that will be made here later on about it.

To this end, it must be said that, historically, the criminal justice system has maintained an expansive behavioral habit of financial control, business management and cost/benefit management, which emphasizes efficiency, economy and effectiveness in the use of resources, with performance indicators. Over time, these new practices influenced not only the administration of institutions, but also their mission. The most notable aspect of this new entrepreneurial spirit was the speed applied to the commercialization and privatization process that took hold in the criminal justice system. This was reflected in the progressive attribution of specific criminal justice functions to private entities and other sectors of public administration, thus distancing itself from the sovereignty of the State in the exercise of the activity constitutionally entrusted exclusively to the Judiciary (BARROS; ROMANIUC, 2019).

On the other hand, it should not be forgotten that the criminal justice system presupposes the regeneration of

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criminals and their social reintegration, and should also, in a transversal manner, serve the interests of society and the victim. However, given the high workload of the entire criminal justice system and the high crime rates, as well as the State's recognition of its inability to deal with public safety issues, limitations have been established on government demands through various mechanisms that effectively seek to repress criminalization (GARCIA, 2019).

The effect of reducing access to the criminal justice system is achieved either by filtering out events that occur outside the system or by reducing the degree of criminalization and application of criminal sanctions to certain behaviors. This strategic adaptation is only possible due to the coincidence of concerns about cost containment with a criminological perception that saw the criminalization of minor crimes as necessarily counterproductive and stigmatizing (SOARES; BORRI; BATINI, 2020).

In this context, the use of alternative routes to formal prosecution, summary hearings for crimes previously subject to full trial, sentences set in negotiation records, the decriminalization of conduct that was usually referred to criminal justice, among others, are measures that have generated the practical effect of restricting criminalization, providing savings to the criminal justice system, creating selectivity for the state's punitive power. Among the alternative forms of formal prosecution are decriminalizing measures and, consequently, the Non-Prosecution Agreement - ANPP (VEC-CHI, 2020), the object of this study, which will be discussed in detail in this chapter.

1.1 EVOLUTION AND CONCEPT

White-collar crime gained due importance in criminological studies only after the work of Edwin Sutherland entitled "*White Collar Crime*", published in 1949, as a result of nineteen years of research on criminal practices in the business sphere. Adopting a sociological approach, Sutherland, explaining delinquent behavior as a consequence of the individual's social interactions and the communicative processes arising from the environment that surrounds him, was one of the main people responsible for the expansion of criticism of the criminal phenomenon, until then explained exclusively from etiological models (SHECAIRA, 2021).

According to the differential association theory, popularized by Sutherland, criminal behavior is not genetically determined, nor is it the product of poverty or personality problems. It is a learning process resulting from interaction with other people in the communication process, which includes not only the techniques for committing the crime, but also the rationalization of delinquent behavior (SHECAIRA, 2021).

According to Sutherland, the corporate form of business organization has the advantage of greater rationality in its actions. A corporate logic highlighted in three aspects: the first, the selection of crimes with a lower risk of discovery and victims less likely to contest; the second, the selection of crimes in which it is foreseen that it is more difficult to produce evidence; and the third, the adoption of solution mechanisms, thus contemplating remedial agreements. With this analysis, the author justifies the conclusion that crimes committed by companies are organized and deliberate, as a rule (SUTHERLAND, 2015).

By drawing attention to a type of crime previously ignored by the criminal justice system, revealing the organized and rational way in which white-collar crimes are committed, which includes their ability to neutralize controlling bodies, Sutherland contributed to denouncing the inequality in the punishment of some agents, helping to draw the attention of criminological studies to corporate delinquency, denouncing the different way in which criminal justice treats those who commit this type of crime (SHECAIRA, 2021).

In the 1960s, the emergence of Critical Criminology, in turn, demonstrated the need to promote a criminal policy aimed at redirecting punitive power towards historical sectors. theoretically foreign to the penal system:

> It is a matter of directing the mechanisms of institutional reaction to confront economic crime, major criminal deviations by State bodies and bodies, and major organized crime. At the same time, it is a matter of ensuring greater procedural representation in favor of collective interests (BARAT-TA, 2016, p. 202).

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In the following decades, several criminological studies on red-collar crime followed. white, without however representing major ruptures with the conclusions drawn from Sutherland's theory. Among them, the theory of rational choice stands out, developed in the 1970s, according to which criminal behavior is the result of a rational choice, in which the subject evaluates the cost/benefit relationship of criminal practice, rationally evaluating the difficulties and concessions associated with committing the crime (FERRAZ JUNIOR, 2017). This theory did not bring much news in relation to the theory of criminal association, which, a few decades earlier, already affirmed the idea that the individual is guided by the practice of a crime when "[...] the weight of favorable definitions exceeds the weight of unfavorable definitions" (SUTHERLAND, 2015, p. 351).

The great contribution of this theory, however, lies in its commitment to situational crime prevention. According to this thinking, crime could be better prevented in two main ways: first, through changes in the layout of the environment to reduce the opportunities that make crime favorable to the offender; second, by increasing the risks of criminal activity (FERRAZ JUNIOR, 2017, p. 122).

In this way, two major assumptions were constructed that guided studies on economic macrocriminality and corruption, which strongly influenced the treatment of these criminal modalities by criminal dogmatics: the impermeability of white-collar crimes in the face of formal control instances, pointing to the selectivity of criminal justice and hidden figures; and the need to create dissuasive incentives, favoring an essentially preventive approach (FERRAZ JUNIOR, 2017).

The criminal protection of the environment, public assets, administrative morality and the economic-financial order has always been the target of numerous criticisms. As a result, it was up to Criminal Dogmatics to denounce the inconsistencies that the increase in legal rigor and the creation of new criminal typologies to protect legal assets of an abstract and generalized nature provided, highlighting the causes and consequences resulting from such expansion (SHECAIRA, 2021).

If, therefore, on the one hand, new forms of danger and risk were created, especially through the process of globalization which, by promoting new possibilities for global security, diversified the threats that hang over human beings and their various forms of social interaction (GIDDENS, 1991), on the other hand, the simple expansion of Criminal Law for the purpose of protecting previously unknown interests has not proven effective in practice.

This is because, traditionally designed to protect specifically harmed legal assets, Criminal Law has expanded unbridledly to address even abstract risks, without any concern for the compatibility of these interests with the guiding principles of criminal dogma. As a result, expectations placed on the criminal prosecution model as an antidote to new problems are frustrated, overloading the system and making it even more inefficient in dealing with its old dilemmas (SHECAIRA, 2021).

Consequently, the ideal of protecting relevant legal assets and preventing risks has become mere fallacious discourse, a symbolic reaction by the legislator, so to speak, to modern and organized crime. This is what can be extracted from the words of Winfried Hassemer (2008), who asserts that the criminal justice system has never been, and is increasingly less, capable of delivering the expected results. He adds that, on the few occasions when it is activated, it acts in a costly and traumatic way, incurring costs, not only economic, but also social as a side effect, which sometimes even exceed the real damage or risk of damage caused by the cause under analysis (SOARES; BORRI; BATINI, 2020).

Given this panorama of overloading of the criminal justice system and misuse of its tools, the idea of a "[...] criminal policy guided by freedom" gains prominence, as Hassemer (2008, p. 300) argues. However, it should be emphasized that such a conception does not exactly mean giving up the penal instruments, which, for Hassemer (2008), are still necessary for application to the most severe cases serious. For Vecchi (2020), it means adopting new prevention and control mechanisms, less traumatic and more effective, with the capacity to better address current problems, producing results that Criminal Law, as it is still used, cannot achieve, or, when it does, it is through serious violations of fundamental rights and guarantees.

Especially with regard to economic macrocrime and corruption, which are the objects of study in this research, it is worth highlighting the existence of an evident practical and theoretical difficulty regarding the imposition of prison sentences. This is because these presuppose the application of individual imputation of criminal responsibility, which is not always possible when it comes to offenses committed in the performance of activities.

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corporate des, in which individual participation in crimes often cannot be measured and isolated (HASSEMER, 2008). This, in itself, would already reveal a contradiction, externalized in the finding that the penal system is adopted as a privileged mechanism for conflict resolution, although the conditions necessary for the imposition of sanctions restricting freedom and imprisonment itself are not compatible with most white-collar crimes (VECCHI, 2020).

Thus, it was found that the traditional prosecution model was not sufficient to combat macroeconomic crime and corruption, which should ideally be exercised in Brazil. Firstly, because this model prioritizes the repressive aspect, proving to be inefficient or not at all effective in preventing losses and fraud against the tax authorities. Secondly, because the judicial system itself is not effective in holding accountable those agents proven to be involved in acts of corruption, resulting in an undesirable feeling of impunity (SHECAIRA, 2021).

In order to improve formal control mechanisms and comply with commitments made to international organizations, Brazil has incorporated new tools to prevent and combat corruption. Law No. 12,846 of August 1, 2013, hereinafter referred to as the Anti-Corruption Law, for example, constitutes a milestone for the so-called “regulated self-regulation” in the field of corruption, allowing the stipulation of leniency agreements, favoring the establishment of integrity mechanisms and internal procedures (VECCHI, 2020).

Subsequently, in mid-2017, the National Council of the Public Prosecutor's Office - CNMP issued Resolution 181, which led, in addition to the controversial issue of the investigation carried out by the ministerial body, to the ANPP as a negotiated criminal justice method that involves not filing a lawsuit in some crimes, if the suspect confesses and has a restrictive measure of rights (PEREIRA; PARISE, 2020). This instrument was included in the scope of application of Law No. 13,964, of December 24, 2019, called the Anticrime Package, which promoted numerous changes aimed at improving the Brazilian procedural system, among which the provision for the celebration of the ANPP stands out, bringing Brazil closer to the American and Anglo-Saxon model of justice (SHECAIRA, 2021).

Therefore, the ANPP is currently regulated by Law No. 13,964/2019, and can still be considered a fundamental right of the accused, since, as provided in § 2 of article 5, § 2 of the CFB/1988, the list of rights and guarantees expressed in the Constitution does not exclude others arising from the regime and the principles adopted by it (SHECAIRA, 2021).

1.1.1 Legal nature of the Non-Prosecution Agreement

Regarding its legal nature, the ANPP must be considered as a pre-procedural legal transaction of an extrajudicial nature operated in the criminal sphere, through which a consensual end is sought, with a view to optimizing the criminal justice system with restriction of criminalization, as it is a sufficient and necessary measure for the disapproval and prevention of crime (VECCHIO, 2020).

For Shecaira (2021), it should not be understood as a subjective right of the alleged perpetrator of the act; rather, in his view, it reveals itself as a legal benefit. Its system includes its offer by the Public Prosecutor's Office (MP), which is the exclusive holder of the criminal action, if the legal requirements are met. However, it should be considered that, according to Pereira and Parise (2020), the MP is not obliged to make the ANPP proposal. This is because the ministerial body holds the discretionary power not to do so, if there is a reason for its position in the analysis of the sufficiency and need for the ANPP to prevent and condemn the crime. In this case, according to the authors, it will be up to the judge, in the exercise of his/her oversight judgment of the MP's activity, to forward the statement for the final scrutiny of the ministerial review instance.

Regarding this, consider that, according to the understanding established by the Federal Supreme Court – STF in the judgment of the Extraordinary Appeal – RE 795,567/PR, we would be faced with a case in which the principle of mandatory criminal action, set out in article 28 of the Criminal Procedure Code, would be mitigated. Under such tation, then, it is important to understand that we would, in fact, be faced with a power-duty to act of the MP, following the provision contained in article 129 of the CFB/1988, more precisely, in its item I, in which its institutional functions are listed. However, this will be discussed in more detail in the following subchapter, when other principles affecting the ANPP will also be analyzed.

1.2 PRINCIPLES RELATING TO THE NON-PROSECUTION AGREEMENT

The ANPP has as its scope the effectiveness and application of some principles, which will be presented

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and analyzed in this part of the study. The first of these is the principle of efficiency, provided for in the *caput* of article 37 of the CFB/1988, which constitutes one of the guiding principles of Public Administration, under which the constitution of the administrative legal regime in force in the country is based.

1.2.1 Principle of efficiency

According to Tilly (2013), a nation is in fact democratic when the political relations established between the State and its citizens provide equal, broad, mutually binding and protected consultations. Thus, for the author, the process of promoting democracy would be fundamentally linked to the State's capacity regarding "[...] the integration of trust networks, the insulation of decision-making arenas from categorical inequalities and the transformations of non-state power" (TILLY, 2013, p. 110), because in this way they "[...] produce between citizens and the State the broad, egalitarian, binding and protected relations that constitute democracy" (TILLY, 2013, p. 110).

The future, which is subsumed under the goals of the State and society, is a fundamental part of the 1988 Federal Constitution, as indicated in its Article 3, which, in turn, together with the legal system created by it at a given moment, are part of history. That is why, in order to properly understand a constitutional model or a Constitution, it is necessary to know those that preceded it. The natural inference from such a statement is that, from a historical perspective, Constitutions are changeable, as is the very essence of history (ZAGREBELSKY, 2011).

Public Administration is guided by constitutional principles that apply to it, which are the following: principle of legality, impersonality, morality, publicity and efficiency, all of which are provided for in the *caput* of article 37 of the CFB/1988. Of these, the one that is most interesting at this moment for the study is the principle of efficiency.

First, it must be stated that the duty of efficiency in Brazil was already sanctioned by Decree-Law No. 200/1967 as a duty of good administration. In the country's Constitution, however, it existed implicitly until 1998, when, with Constitutional Amendment No. 19, it was expressly included in the list of constitutional principles that the Public Administration must obey, together with legality, morality, publicity and impartiality. However, it must be pointed out that the provision of efficient services by the Public Administration is not just a whim, but a necessity of the State, which is assigned the duty to follow new trends, adapting to the provision of adequate services to the citizen (MELLO, 2021).

Therefore, it is not enough to simply adopt a possible solution; it is necessary to find the best solution for the specific case. In this context, the Public Administration has the duty to act quickly and accurately to make the most of a program to be implemented. For this to happen, however, the State must improve its action plan, optimizing the appropriate means to best meet the needs of the community (DI PIETRO, 2019).

On the other hand, it must also be considered that the principle of efficiency also requires that the Public Administration permanently pay attention to the standards of modern management, so that it is possible, by doing so, to overcome the bureaucratic burden, to obtain the best results in the provision of public services to the population in general - that is, to citizens (DI PIETRO, 2019). In view of such notes, efficiency can be contemplated, broadly speaking, as the idea of achieving the best possible result, expending the least effort (MELLO, 2021).

Therefore, it can be stated that the principle of efficiency encompasses the rational organization of behaviors and developments within the scope of Public Administration so that the primary public interest can be achieved in an easier, faster and simpler way, which corresponds to the interest of the entire community - of the people, holders of the original constituent power (DI PIETRO, 2019).

The ANPP touches on the principle of efficiency insofar as it deals with the efficiency of justice, the delivery of the result to the jurisdiction in the shortest possible time, and in the best way. In this sense, it should be remembered that, according to Mello (2021), this is a desire of everyone, so that the rapid resolution of controversies, in a more efficient way from the point of view of procedural economy, is an issue that stands out in contemporary society, especially in the last two decades, which have been marked by an intense and constant development and sophistication of the means of communication.

Regarding this, it should be remembered that, according to Di Pietro (2019), the majority doctrine in Brazil, although it does not confront the concepts of efficiency and economy, attributes to the former a greater scope of function, to weigh the results and social costs of the State's action. To the latter, however, it attributes the *status* of

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prescription in the sense that the State must spend as little as possible to carry out a given investment.

However, according to Mello (2021), the synergy established between the concepts of efficiency and economy is more evident when observing, for example, cases of requirement for observance, in the bidding process, of the principle of economy for the contracting of services or works, which contributes, according to the author, to promoting administrative efficiency.

Di Pietro (2019) identifies proportionality (in the strict sense) as a common feature of the concepts. For the author, the notion of benefits and costs that is common to both is related to the consideration that is made when discussing the application of the principle of proportionality. In this regard, according to the author, the Administration whose performance generates more losses than gains can be considered inefficient and uneconomic.

For Vecchio (2020), one of the ways to achieve compliance with constitutional efficiency would be the adoption of mechanisms arising from negotiated/consensual justice – among them, the ANPP, which is why the principle of efficiency is a corollary that concerns the instrument of negotiated justice analyzed here.

1.2.2 Principle of mandatory criminal action

Despite the understanding that it is mandatory in the country, there is no provision in the national legal system, whether in the Constitution or in infra-constitutional legislation, that establishes that criminal action is mandatory (SILVA, 2020).

In Brazil, the idea of unavailability is supposedly provided for in art. 24 of the Criminal Procedure Code, which determines that, in crimes of public action, this will be promoted by a complaint from the Public Prosecutor's Office, but will depend, when the law requires it, on a request from the Minister of Justice, or on representation by the offended party or by someone who has the capacity to represent him/her. Likewise, the supposed obligation would also be set out in article 100, § 1, of the Criminal Code - CP, which states that the public action is promoted by the Public Prosecutor's Office, depending, when the law requires it, on representation by the offended party or on a request by the Minister of Justice (MAÇALEI; REZENDE, 2021).

From reading the aforementioned legal provisions, together with article 129, item I, of the Federal Constitution, it is observed that these only establish that public action is the responsibility of the Public Prosecutor's Office, determining its institutional function, but do not impose the obligation to exercise it (SOUZA; LIMA; RI-BEIRO, 2022).

Thus, given the absence of an express legal provision to impose the mandatory nature of criminal action (SILVA, 2020), it can be seen that, despite the systematic unavailability prevailing in doctrine and jurisprudence, the Brazilian legal system does not provide for the mandatory nature of criminal action, unlike other foreign legal systems (SOUZA; LIMA; RIBEIRO, 2022).

In this sense, considering the legalistic and civil understanding that prevails in Brazil, due to our Roman-Germanic legal cultural heritage (SILVA, 2020), we will seek to deconstruct the myth of the unavailability of public criminal action, demonstrating that the ministerial body may exercise discretion in exercising the action, choosing not to report the criminal agent for reasons of personal convenience and criminal policy (MAÇALEI; REZENDE, 2021).

Going into more specifically the principle of mandatory criminal action, it is necessary that, in the accusatory procedural system, criminal jurisdiction demands to be provoked through the exercise of the right of action. In this system, the Public Prosecutor's Office, as *dominis litis*, performs the function of exercising the State's punitive power, triggering criminal action (SOUZA; LIMA; RIBEIRO, 2022).

Thus, through the Public Prosecutor's Office, the State assumes responsibility for criminal prosecution in court, without compromising impartiality and jurisdictional inertia, so that the three functions of the criminal process (defending, accusing and judging) are handed over to different subjects. In this sense, it is clear that the criminal process is, simultaneously, an instrument of criminal repression and also a tool for self-limitation of the state's jus puniendi (SILVA, 2020; SOUZA; LIMA; RIBEIRO, 2022).

However, it should be noted that, in a pre-1988 Constitution context, the Judiciary and the Public Prosecutor's Office, as well as Brazilian criminal (procedural) laws, emerged and evolved in a society whose values and precepts are very different from those of today. The Code of Criminal Procedure, created in 1941, in a dictatorial regime, remains in force to this day, despite the change in social paradigm brought about by the Citizen Constitution. When it was created, it was influenced by the dogma of the mandatory criminal action by the Public Prosecutor's Office (LIMA, 2023).

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This body, in turn, was a representative of the Government. Thus, with the promulgation of the Constitution, institution of the Federative Republic of Brazil in 1988, bringing the democratic principle, due process, the accusatory principle, among other principles that protect the individual, the reinterpretation of the 1941 CPP and, consequently, the principle of mandatory criminal action, are necessary. The CRFB/88, in addition to breaking with the inquisitorial paradigms, placed the Public Prosecutor's Office as the defender of society and also opened space for the special criminal court. Thus, it is necessary to analyze the constitutional compatibility of the institutes created by the ordinary legislator with the constitutional contours of the principle of mandatory criminal action (LIMA, 2023).

In this sense, it is necessary to understand that the unavailability of the action in the criminal sphere is traditionally conceptualized as the duty incumbent upon the Public Prosecutor's Office to promote all necessary and foreseen judicial measures for the application of a criminal sanction, whenever the practice of a typical, unlawful act and culpable agent is identified, with safe and sufficient evidence of authorship and materiality (MAÇALEI; REZENDE, 2021).

According to the principle of mandatory public criminal action, also called procedural legality, criminal prosecution bodies are not reserved any political or social utility criteria to decide whether or not to act. Thus, when faced with news of a criminal offense, in the same way that police authorities have the obligation to investigate the criminal act, the Public Prosecutor's Office is required to file a complaint if it sees evidence of information regarding the existence of a typical, unlawful and culpable act, in addition to the presence of the conditions for criminal action and just cause for the initiation of criminal proceedings (LIMA, 2023).

The rule of obligation is part of the support mechanisms of the Democratic State of Law itself, intended to prevent arbitrary and potestative analyses regarding the convenience of invoking criminal jurisdiction, bringing to society the certainty that the person responsible for committing a crime will be subject to the canon of due legal process (MAÇALEI; REZENDE, 2021).

However, according to Lima (2023), with the publication of Law No. 9,099/1995 in Brazil, the principle of mandatory nature was mitigated. It became possible to enter into a plea bargain in crimes of low potential harm and to propose a conditional suspension of the proceedings (articles 76 and 89). The offer of a plea bargain and the proposal of a conditional suspension of the proceedings are not optional.

The author also emphasizes that the member of the Public Prosecutor's Office does not have complete discretion to choose whether or not to apply the benefits. There is regulated discretion in which an analysis of its convenience and opportunity is carried out in light of the specific case. In a reasoned manner, the ministerial body may stop offering the benefits, but in accordance with legal criteria. (LIMA, 2023).

1.2.3 Principle of opportunity of criminal action

In the United States of America – USA, the country that adopts the system *common law*, there is an institute called *Plea Bargaining*. According to Pacelli and Fischer (2017), it is an agreement (bargain) made between the prosecution and the defense based on the defendant's confession (*guilty plea*) (OLIVÉ, 2018). In exchange, he is offered benefits by the prosecuting body, which include aspects related to the definition of the crime to be charged, the qualifiers considered, minimum and maximum penalties imposed, the possibility or not of parole and the sentence serving regime. According to Vasconcellos (2019), for the application of this institute, bargaining should be considered as the procedural instrument that results in the waiver of defense, through the acceptance (and possible collaboration) of the defendant to the accusation, generally assuming his confession, in exchange for some benefit (as a rule, a reduction in the sentence), negotiated and agreed between the parties or only expected by the accused.

One of the basic pillars of the system *common law* it is the principle of opportunity, according to which the prosecuting body has discretion, which allows it to decide with broad freedom about the beginning and continuity of the criminal proceedings, as well as negotiating with the defense the reduction or even exclusion of guilt. In Brazil, however, the principles of mandatory public criminal action and the unavailability of criminal action are in force, as briefly mentioned in item 1.2.2, which attribute to the prosecuting body the duty to seek punishment of the perpetrator of a criminal offense.

On this subject, Pacelli and Fischer (2017) assert that the Public Prosecutor's Office, as the holder of the public criminal action, has, in fact, a power-duty to exercise it, not reserving any discretionary judgment on the convenience and opportunity of the criminal action, nor being authorized to dispose of it, once it has initiated it, a model that, according to Vasconcellos (2019) is incompatible with the negotiation model, based

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in the principle of opportunity, a fundamental premise for the*plea bargaining*.

Lima (2023), in turn, when discussing the principle of legality in criminal proceedings, supported by a lesson from Siracusa, comments on the various solutions existing in comparative law, and notes that there are two political principles that inform, in this matter, the persecutory activity of the Public Prosecutor's Office: the principle of legality (*Legalitdtsprinzip*) and the opportunity principle (*Opportunitdtsprinzip*). According to the principle of legality, the Public Prosecutor's Office is obliged to file a criminal action, provided that it has knowledge of the crime and there are no obstacles preventing it from acting. According to the principle of opportunity, the aforementioned state body has the power, but not the duty or legal obligation, to file a criminal action when a criminal act has been committed. This power is exercised based on a discretionary estimate of the usefulness, from the point of view of the public interest, of filing a criminal action.

Let us look at what happens in Brazilian criminal procedural legislation. If, despite the existence of the prerequisites that would authorize or even require the filing of a public criminal action, the member of the Public Prosecutor's Office nevertheless violates the duty to act, the CPP allows the intervention of the judge, who may refuse the request to archive the police investigation or the information pieces and propose to the head of the prosecution that he review the archiving proposal formulated by the public prosecutor (article 28) (LIMA, 2023).

Thus, if the Public Prosecutor's Office identifies the existence of an injury in a case in which the IEI requires its action, it cannot claim convenience in not filing the action or not continuing to promote the cause, which is its duty, except when the law itself expressly allows it to make this judgment of convenience and opportunity. However, if, when investigating alleged facts that could serve as the basis for a public action, the Public Prosecutor's Office becomes convinced that these facts did not occur, or that the person under investigation is not responsible for them, or that these facts occurred but are not unlawful – in all these cases, the Public Prosecutor's Office may fail to act, without violating any functional duty.

1.2.4 Principle of minimum intervention

According to the principle of minimum intervention, criminal law must protect the most important legal assets. Thus, among the existing assets, the Law selects the most important ones, qualifying them
- them, as legal assets, and protecting them.

Currently, crime is seen as an injury or risk of injury to a legal asset; an asset is anything that has value and satisfies a human need. For Toledo (2012), legal assets are ethical-social values that the Law selects, with the aim of ensuring social peace, and places under its protection so that they are not exposed to the risk of attack or actual injuries.

Prado (2015), in turn, considers the legal asset as an instrument limiting state intervention, assuming, under this guise, four important functions:

> 1) guaranteeing function: which corresponds to the limitation of the State's right to punish. The legislator can only classify serious conduct that harms or endangers legal assets, limiting the legislator's activity when constructing criminal types;
> 2) teleological or interpretative function: the legal asset represents the core of the norm, functioning as an instrument of interpretation, allowing the nature of the type in question to be discovered;
> 3) individualizing function: this is a criterion used to determine the penalty, since, at this point, the severity of the injury to the legal asset is taken into consideration; and
> 4) systematic function: the legal asset is taken into account in the formation of groups of criminal types in the special part of the Penal Code.

1.2.5 Principle of proportionality

Criminal law is the branch of law that most negatively intervenes in the sphere of human freedom, so it is necessary that there are limits to this power in order to balance the guarantee of the common good with due, necessary and appropriate punishments.

The importance of the principle of proportionality arises from the fact that the severity of criminal intervention varies according to the degree of dignity of the legal asset and its impact, giving rise to the

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binomial merit of punishment/restriction of human freedom. It is due to this gravity of penal intervention that it is necessary to define the principle of proportionality and the imperative means to make it effective.

There are several concepts regarding the principle of penal proportionality. We will highlight some below, remembering that few scholars conceptualize it as a principle, while the majority, especially classical doctrine, discipline it when referring to penal sanctions. Regardless of the moment in which they are enacted, there is unanimous agreement on their necessity and their connection to the limits of penal sanctions.

In Beccaria, we find the conception of the prevalence of the idea of minimal intervention by the state in the freedom of the individual. For him, punishments that go beyond the need to maintain the deposit of public safety are unjust by their nature; and they will be all the more just the more sacred and inviolable the security and the greater the freedom that the sovereign provides to his subjects. Thus, in his view, the means that legislation uses to prevent crimes must, therefore, be stronger the more the crime is contrary to the public good and can become more frequent.

In the field of criminal law and criminal procedure, proportionality must be considered based on the criminal sanction, since it is an evil with which the legal system responds to the evil committed by the offender, it follows that it must be proportional to the gravity of the crime itself. It is for this reason that some authors treat it based on the principle of humanity, linking it to the same historical process from which the principle of legality, minimum intervention and even – from the perspective of social harm – the principle of harmfulness originated.

Under this conception, the proportionality of the penalty is revealed as a double-sided requirement, insofar as on the one hand it must reflect society's interest in imposing a penal measure "[...] necessary and sufficient for the reprobation and prevention of crime" (article 59 of the Penal Code); on the other, it must guarantee the convicted person the right not to suffer a punishment that exceeds the limit of the harm caused by the illicit act.

Thus, it can be assumed that, in criminal law, the application of the principle of proportionality means that the penalty must be proportionate or adequate to the intensity or magnitude of the harm to the legal asset represented by the crime and the security measure to the criminal dangerousness of the agent. In this context, criminal intervention in a Democratic State of Law must be clothed in proportionality, in a relationship of correspondence of degree between the harm caused by the crime and the harm caused by the penalty.

The principle gives rise to an idea of adequacy, suitability, acceptability, logic, equity, translating that which is not absurd, or simply that which is admissible. It is even argued that for common sense, what is proportional is also reasonable, although the reverse is not necessarily true, in addition to noting that in many uses of the term reasonableness, reference is being made to the principles of necessity and suitability, sub-principles of proportionality.

As for the lack of respect for proportionality between the penalty and the damage caused by the crime, some authors consider that this violation of fundamental rights causes more harm to society than the crime itself. The convicted person must feel that there is a balance between the damage he caused and the punishment that society inflicts on him, because otherwise the guilty person would become a victim and the creditor a debtor.

Regarding its application, it must be assumed that the principle of penal proportionality basically has two final recipients, namely, the Legislative Branch when creating the penal law, and the Judiciary Branch when applying the law to the specific case by the judge and regarding the control of constitutionality based on this principle.

Respect for this principle is a requirement for moderation of state power to prevail, which is a premise in a State of Law, thus guaranteeing the protection of individual rights and avoiding arbitrary actions that violate fundamental rights.

The abstract application of this principle is within the legislative scope, when defining criminal types, it is conceived when considering the need identified by the legislator for criminal intervention, after verifies whether this intervention is adequate to seek the ends sought by criminal protection, and finally, according to the value of the legal asset and the injury it typifies, it determines the minimum maximum limits of the penalty, also taking as a proportional reference, all other typified crimes.

On the other hand, the concrete application of this principle materializes when defining the quantum of the sentence, after the conviction of an accused. In order to help measure the proportion between the harm caused by the crime and the sentence to be applied, the judge has in his favor the elements of article 59 of the Penal Code and all other penal guarantee principles.

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1.2.6 Principle of reasonable duration of proceedings

The issue of the duration of the process is not a privilege of domestic law, but is a recurring theme in foreign law. The provision of jurisdiction within a reasonable and effective time frame was already provided for in international law. Under the *status* of fundamental human rights, Article 8, item 1, of the American Convention on Human Rights (Pact of San José, Costa Rica) provided that:

> Everyone has the right to be heard, with due guarantees and within a reasonable time, by a competent, independent and impartial judge or tribunal previously established by law, in the investigation of any criminal charge made against him, or in order to determine his rights or obligations of a civil, labor, tax or any other nature.

Still on the international level, it is worth noting the content of Article 6 of the European Convention for the Protection of Man and Fundamental Freedoms. Signed in Rome on November 4, 1950, it provides that:

> Everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which shall decide both the determination of his civil rights and obligations and the merits of any criminal charge against him.

In domestic law, it could be argued that the fundamental right to procedural speed already existed in our legal system as an offshoot of the clause *due process of law*, or even through the legal mandate enshrined in section XXXV, article 5, of the 1988 Constitution, which guarantees not only access to the judiciary, but also effective protection against any form of violation of rights.

Despite the provision of the right to a reasonable duration of the process at the international level, it was Constitutional Amendment No. 45, in 2004, that made the principle explicit in item LXXVIII, of article 5, of the CF/88. The inclusion, by the derived constituent legislator, of the principle of a reasonable duration of the process, aims to posit the need for jurisdictional provision in an effective and efficient manner.

1.2.7 Negotiated justice

In Negotiated Justice, which comes mainly from American law, the agent and the prosecuting authority agree on the consequences of the criminal act, which, obviously, presupposes the admission of guilt. This is called plea bargaining, which may consist of negotiations on the charge (charge bargaining), on the penalty and all the consequences of the crime, such as the loss of assets and compensation for damages (sentence bargaining), or on both. This freedom of accusation is not found in the Brazilian legal system, in which the Public Prosecutor's Office's actions are linked to the body of evidence resulting from the investigation, that is, the charge must be strictly related to the crime demonstrated. In addition, the penalty is applied by exclusive decision of the judge, with no possibility of direct influence by the prosecuting authority.

It is possible, still within the scope of Negotiated Justice, that the agent is benefited due to the relevance of his collaboration, as in the situation in which the component of a criminal organization points out other agents and reveals details of their criminal activities, allowing the dismantling of the structure, the recovery of goods and assets, the release of victims of kidnappings, etc. This system is applied in Brazil through several legal diplomas, among which Law No. 12,850/13 stands out.

2 THE NON-PROSECUTION AGREEMENT

The non-prosecution agreement is regulated by article 28 A of the Code of Criminal Procedure, created with the reform enacted by Law No. 13,964/19, which will henceforth be carefully discussed in

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next chapter.

On the other hand, the non-prosecution agreement should also be conceived as an explanation of the so-called Multi-Door Justice, whose jurisdictional activity of the State is not the only one, much less the main option given to the parties in the resolution of a conflict, given that other forms of social pacification are foreseen, such as the penal agreements mentioned above.

Lopes Jr (2021, p. 2020) concluded:

> If we were to think of a staggered negotiation structure, taking into account its requirements and imposed conditions, it would be arranged in the following order: 1st criminal settlement; 2nd non-prosecution agreement; 3rd conditional suspension of the proceedings; and 4th plea bargain agreement... If we study the types of crimes provided for in the Brazilian system and the impact of these negotiation instruments, it would not be surprising at all if the rate exceeded 70% of types of crimes subject to negotiation, in agreement. Therefore, all the conditions are present for a true “clearing” of the Brazilian criminal justice system, without falling into the perverse and dangerous opening of a plea bargaining without a sentence limit.

Finally, it is added that the non-prosecution agreement must be made in the pre-trial phase, however, others for the conclusion of said agreement will be discussed below.

2.1 REQUIREMENTS OF THE NON-PROSECUTION AGREEMENT

It refers to the requirements linked to the criminal act that will be the object of the non-prosecution agreement, such as the penalty imposed thereon; circumstances, that is, whether there is use of violence and serious threat and the need to fulfill its functions in terms of criminal policy.

In fact, when we talk about the aforementioned premise, it is certainly worth mentioning that the prohibitions on the possibility of entering into an agreement, as provided for by law, also include: not being a case for admissibility of a criminal transaction: crime within the scope of domestic, family violence or practiced against a woman for reasons of her gender in favor of her aggressor.

Concluding this point, it is necessary to state that the police investigation must be ready so that the accusation by the prosecuting body can be filed, therefore, there is no case for archiving the case.

3 CRIME OF CORRUPTION: CONCEPT AND EVOLUTION, ASPECTS DESCRIBED OF THE CORRUPTION CRUNE AND THE EXTENT OF THE APPLICABILITY OF THE NON-PROSECUTION AGREEMENT

In the 20th century, perspectives on corruption were organized around two main research agendas (FILGUEIRAS, 2008b). The first, predominant until the 1990s, is based on the modernization approach. In the case of the study of corruption in Brazil, this approach focuses on the concept of patrimonialism (FILGUEIRAS, 2009; BAPTISTA, 2015). The second, hegemonic since the rise of the reform program based on New Public Management, is related to the new institutional economy approach and has rent-seeking as the main concept for the study of corruption (FILGUEIRAS, 2008a; ROSE-ACKERMAN, 2010; CHAIA, 2015).

These perspectives mark paradigms about this phenomenon and result from the evolution of thinking about it, which, being historical, has been changing over time in relation to both the meanings attributed to it and the ideas about how to deal with it (CHAIA, 2015).

The importance of studying such perspectives lies in two points. The first relates to the malignancy attributed to corruption in Brazil and the consequent importance given to its analysis and combat. According to Baptista (2015), two surveys conducted in 2008 and 2009 indicated that Brazilian public opinion considers corruption to be one of the country's main ills and believes it is responsible for many of the problems that afflict our population. Even though it is a phenomenon that has already been widely debated, the elusive nature of the idea of corruption and the moralistic tendency of approaches to its causes, practices and effects demand more accurate studies aimed at understanding its extent and depth (FILGUEIRAS, 2009; BAPTISTA, 2015).

The second point is that there is a close relationship between the evolution of thinking about color

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rupture and the reform experiences experienced in Brazil. Analyzing the studies by Chaia (2015), it is clear that the two most significant experiences, initiated in the 1930s and 1990s, were based on theories related to such perspectives on corruption, accompanying them in their predominance in history.

Faoro (2000) presents the thesis that the various problems faced by Brazil, including corruption, would be the result of the prevalence of an institutional model based on “politically oriented capitalism”. This type of capitalism would have incorporated some of the characteristics of what would be “modern capitalism”, focused on rationality and impersonality, in which technique and industry are valued, and, mainly, in which individual freedoms and property are guaranteed, with the State being responsible for asserting such guarantees (FAORO, 2000).

In politically oriented capitalism, there would be the prominence of the estate, which would be formed from partially insulated political or bureaucratic cadres, who would direct the actions of the State, orienting them towards meeting their own interests to the detriment of the public interest, a situation that would represent social support for the invasion of the public by the private (FAORO, 2000).

Faoro (2000) highlights that this political community conducts, commands, and supervises business, as its own private business at the beginning, and as public business later, along lines that are gradually demarcated. The subject and society understand each other within the framework of an apparatus to be exploited, manipulated, and sheared in extreme cases. From this reality, a form of power is projected, in natural flourishing, institutionalized in a type of domination: patrimonialism, whose legitimacy is based on traditionalism.

– that’s how it is because it has always been

According to the patrimonialist thesis, based on the ideas of Faoro (2000), corruption in Brazil would be a result of Portuguese colonization, the result of which was the persistence of an institutional model in which social, political and economic relations would occur without a clear separation between the public and the private. It is assumed that the Brazilian political tradition does not respect the separation between the public and the private, and the Brazilian case is not an example of a modern State legitimized by impersonal and rational norms.

Filgueiras (2009) highlights that, in Holanda and Faoro's view, patrimonialism is the scourge of the construction of the Republic, in a way that it would not promote the separation between the means of administration and the employees and rulers, giving them privileged access to the exploitation of their positions and roles. Given the patrimonialism inherent in the construction of the Brazilian public scene, corruption is a type of everyday practice, even becoming legitimized and explicit within the scope of a traditional and estate-based tradition inherited from the Iberian world.

In his study on the main theories about the causes of corruption, Graaf (2007) presents a comparative study between such theories, considering the following dimensions of analysis: causal link, level of analysis of causes, level of analysis of corruption, context and most common research methods.

Graaf (2007) points out that such theories are predominantly used in studies on corruption in underdeveloped countries. Based on them, such a phenomenon is understood as resulting from the antagonism between public morality (macro) and private morality (micro).

Combating corruption from these bases would involve the establishment and application of codes of conduct, as well as the promotion of awareness-raising and ethical training, focusing on the elimination of clientelism and nepotism in public administration. For the literature based on this perspective, corruption would be commonly associated with underdevelopment, which would mean that the rhetoric about its eradication would be related to the rationalization of state-society relations as a means of seeking development (GRAAF, 2007).

Analyzing this position, Filgueiras (2008b) points out that such a perspective establishes the understanding of corruption based on dichotomous and evolutionary analyses, understanding that such a phenomenon is inherent to backward societies. Based on these bases, then, the fight against such a phenomenon would be oriented towards the implementation of reforms aimed at affirming the values of modern rationality, such as adoption of professional bureaucracy and meritocracy.

It should be noted that corruption is a very common practice in the country, a repetitive cycle that, in fact, needs to be better considered, as the State's financial and economic losses have been increasing for a long time due to the growing judicialization of demands related to these economic crimes.

Maria Fernanda Dias Mergulhão (2021, p. 71) argues:

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> Acts of corruption considered criminal offenses are assessed more strictly when they are elevated to this category. Through this mechanism, in democratic states, whose society assumes legality as a parameter of justice, criminal offenses related to corruption are subject to a state response imposed by coercion. It remains to be seen whether the Brazilian legal system, from the colonial period to the present day, has carried out the idealized social control that society conceived... It is worth noting that the behavior of Brazilian public representatives regarding the fight against corruption in current times is intriguing, since the so-called "anti-crime package" removed from the agenda, despite several previous projects, the classification of private corruption.

The idea proposed by the worthy author above draws our attention to this usual astonishment in our country, in this way, it is imagined that a bias of criminal persecution against these economic criminals should attack them directly in their pocket, since for them it will be the wound that will hurt the most in their body, because it is through it that we will satisfy the losses suffered by the victims, especially the State, the Public Administration, passive subject of Corruption.

Bordering the final margins, there will be a submersion into the opposite world of the prison.

In fact, prison does not rehabilitate, regenerate or resocialize anyone, on the contrary, it creates cynics, hypocrites, brutalizes, perverts, degrades, is the true school of criminality and industry of recidivism, therefore, it is thought that this obsolete institution of prison, long doomed to failure, leads us to maintain that for this crime or perhaps all those of the golden lineage or White Collar, it is thought that Prison cannot be the only or last solution, in fact, criminal law is the last form of intervention, here it seems that it does not sound very good for the financial health of these victims, to the exact extent that the golden criminal imprisoned will not compensate for the loss, it is also certain that it will be extremely difficult to make a survey of his laundered capital, therefore, it is necessary to use mechanisms other than prison, such as the use of the non-prosecution agreement and in its extensive form, especially with the primary condition of reparation of the damage to the victim, as well as through the payment of pecuniary fines. high, since it is seen that prisoners will be restricted, however, through other measures other than prison, with a criminal policy of direct combat in their finances, it is concluded that they will be punished with satisfactory benefit for the State and society.

Silva (2014, p.1) concludes:

> The criminal policy of our time must move towards the gradual elimination of prison sentences, by finding substitutes. To achieve this goal, decriminalization is advocated, that is, the removal from criminal laws of offenses that should no longer be classified as crimes, according to the customs of our time. Good examples are adultery and issuers of bad checks do not go to jail. Decriminalization – the application of sanctions other than prison sentences – is another important instrument that would be applied to crimes that are not very serious and do not violate the rules of social coexistence, as is the case with petty theft. It would also be necessary to dejudicialize, that is, remove from the jurisdiction of the criminal judiciary, actions that would be better resolved in the civil or administrative sphere, such as crimes of damage without violence. Prison would remain for the most serious crimes.

Certainly, the current non-prosecution agreement within its legal requirements covers crimes with an abstract penalty provided for by law of less than 4 years, however, many times the penalties for corruption crimes are increased by several factors, notably, these crimes are not normally unaccompanied by other economic offenses in criminal investigations, as a rule in competition, therefore, making a consensual resolution of conflicts unfeasible or even from the perspective of the sentence of the investigated party, which, given their conditions, could be higher than 04 (four) years, thus continuing to lead to incarceration without due compensation to the victim and the visible overwhelm of the judiciary, as well as further filling the bankrupt Brazilian prison system, in this regard, it is believed that the punitive-retributive criminal policy would not be an ineffective punishment for the species, the possibility of adhering to an increase in the agreement in the suitability of the non-prosecution agreement for greater effectiveness in criminal justice is being considered, meeting all the desires

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and aligned with the evolution of criminal policy thinking of our time.

CONCLUSION

The non-prosecution agreement was created with the aim of making criminal justice faster, more efficient and without bureaucracy, considering that the consensual model, in addition to these purposes, seeks to distance itself from the failed prison institute and stop the use of the process. Furthermore, it highlights the reparation of damage to victims, as we previously outlined at the beginning of this research.

Throughout this study, a walk through the different types of penal agreements was made to better understand and differentiate the decriminalizing and dejudicializing institutes, being certain that all of them preceded the non-criminal prosecution agreement, which portrays an evolution in criminological and criminal political thinking in the fight against crime.

This is because consensus has gained ground in Brazilian criminal justice, but also in civil proceedings, given that it is now possible to formalize a conduct adjustment agreement (TAC) made by the Public Prosecutor's Office.

On the other hand, criminal agreements have changed the ideal that no crime should go unpunished, a characteristic situation of criminal proceedings, since the principle of mandatory criminal proceedings has been mitigated. Thus, the current model of consensual justice has made justice more economical and much faster. More than that, it is in harmony with the principle of minimum intervention in our criminal system and also highlights the principle of opportunity.

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