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Sentencing Guidelines and the Principle of Individualization in Brazilian Criminal Law: Constitutional Limits and Jurisprudential Parameters

The Dosimetry Of Punishment And The Principle Of Individualization In Brazilian Criminal Law: Constitutional Limits And Jurisprudential Parameters

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Summary

This article analyzes the principle of individualization of punishment as one of the fundamental pillars of the Democratic Rule of Law and as an instrument for the realization of criminal justice in the Brazilian legal system. Enshrined in Article 5, item XLVI, of the 1988 Federal Constitution, the principle ensures that the application of punishment takes into account the particularities of the specific case, the personal circumstances of the offender, and the gravity of the crime, avoiding generic and disproportionate decisions.

This study aims to examine the structure and criteria of sentencing in light of the doctrine and recent jurisprudence of the Supreme Federal Court and the Superior Court of Justice, highlighting its relevance to the realization of fundamental rights and guarantees. The methodology adopted was qualitative, exploratory in nature, based on a literature review and documentary analysis of judgments and classic and contemporary works of criminal law. The results indicate that rational justification and proportionality are indispensable conditions for the legitimacy of the sentence and for the preservation of human dignity. It concludes that the correct application of sentencing strengthens legal certainty, rationalizes punitive power, and reaffirms the commitment of the Brazilian penal system to substantive justice and constitutional values.

Keywords: Criminal Law. Individualization of punishment. Sentencing guidelines. Proportionality. Jurisprudence.

Abstract

This article analyzes the principle of individualization of punishment as one of the fundamental pillars of the Democratic Rule of Law and as an instrument for the realization of criminal justice in the Brazilian legal system. Enshrined in Article 5, item XLVI, of the 1988 Federal Constitution, the principle ensures that the application of punishment takes into account the particularities of the specific case, the personal conditions of the offender, and the gravity of the crime, avoiding generic and disproportionate decisions. The study aims to examine the structure and criteria of sentencing in light of the doctrine and recent jurisprudence of the Supreme Federal Court and the Superior Court of Justice, highlighting its relevance to the realization of fundamental rights and guarantees. The methodology adopted was qualitative, exploratory in nature, based on a bibliographic review and documentary analysis of judgments and classic and contemporary works of criminal law. The results indicate that rational justification and proportionality are indispensable conditions for the legitimacy of punishment and for the preservation of human dignity. It is concluded that the correct application of sentencing guidelines strengthens legal certainty, rationalizes punitive power, and reaffirms the commitment of the Brazilian penal system to substantive justice and constitutional values.

Keywords: Criminal Law. Individualization of punishment. Sentencing guidelines. Proportionality. Jurisprudence.

INTRODUCTION

Punishment, as an instrument of social control and protection of legal rights, constitutes an essential element of the penal system. However, the application of state sanctions must observe limits, constitutional and legal principles that ensure justice and proportionality in the response to the crime. In this context, the principle of individualization of punishment, provided for in article 5, item XLVI, of the Constitution.



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The Federal Constitution of 1988 assumes a central role in the realization of the Democratic Rule of Law, because it prevents the application of uniform sanctions to different situations and guarantees respect for the dignity of human being.

Individualizing the sentence represents the implementation of criminal justice in a specific case. to determine that the penalty should be set according to the particularities of the offender and the offense. In the event committed, the constituent assembly sought to harmonize the need to repress crime with the preservation of the environment of the fundamental rights of the convicted person. Thus, the sentencing process, by allowing for the adjustment of Depending on the circumstances of the act and the personal conditions of the defendant, the sanction becomes the main instrument of implementing this principle.

According to Bitencourt (2023) and Nucci (2022), dosimetry is the space in which the The magistrate exercises his technical judgment, observing the judicial circumstances foreseen in Article 59 of the Penal Code. This procedure, however, is not discretionary, but bound by... Objective criteria and rational justification. The absence of specific motivation or the use of Generic parameters violate due process and compromise the legitimacy of the sentence. In this sense, the higher courts have acted decisively in standardizing the criteria. interpretative, reaffirming the need for duly justified and proportionate decisions.

The relevance of this study stems from the need to understand the practical application of The principle of individualization of punishment and the reflections of recent Supreme Court jurisprudence. Federal (STF) and Superior Court of Justice (STJ) rulings on the subject. The overall objective is to to analyze the importance of sentencing guidelines as an instrument for achieving criminal justice, highlighting The theoretical foundations and normative parameters that guide its application.

Specifically, the aim is to examine the structure of the three-phase system for applying punishment. to identify the criteria used by the judge in setting the base sentence and to analyze the contribution The study adopts an approach based on jurisprudence in consolidating the principle of individualization. qualitative and exploratory, based on a literature review of doctrinal works. contemporary issues and the analysis of relevant judicial precedents.

Thus, this article aims to contribute to the academic and legal debate on the... rationalization of the penal response, reaffirming that the sentencing process, when exercised in a way Technically and soundly grounded, it not only achieves individual justice but also strengthens the pillars constitutional principles of the Democratic Rule of Law.



2. THEORETICAL FOUNDATION

2.1 The principle of individualization of punishment in the Brazilian legal system

The principle of individualization of punishment constitutes one of the most significant guarantees of a democratic state governed by the rule of law, ensuring that the state's punitive power is exercised in a manner... rational, proportionate and humane. As provided for in article 5, item XLVI, of the Federal Constitution of 1988, establishes that the law will regulate the types of punishment and their application in accordance with the peculiarities of the fact and the personal conditions of the agent. Thus, individualization is not merely a technique for applying sanctions, but an instrument for achieving criminal justice and respect for the dignity of the human person.

Bitencourt (2023) states that individualization "aims to prevent the application of sanctions that are uniformities for diverse behaviors, ensuring proportionality and fairness in the penal response." (p. 47). The author emphasizes that punishment should not result from a mechanical operation, but from a case-by-case and contextualized assessment that takes into account the objective circumstances of the crime and the subjective characteristics of the defendant. In this way, the principle acts as an ethical and legal brake on the punitive power of the State, preventing arbitrariness and punitive excesses.

Mirabete and Fabbrini (2022) explain that individualization has a threefold nature — legislative, judicial and executive — and that all its phases must observe constitutional limits of legality and proportionality. In the legislative phase, it is up to the legislator to define the criminal offenses and the abstract limits of the penalty; in judicial proceedings, the magistrate must determine the specific sanction according to the specific details of the case; and in the execution phase, the State must guarantee the progressive application of the sentence, respecting the fundamental rights of the convicted person. "Individualization is a three-part process, which unfolds in the legislative, judicial, and executive phases, each of which must respect the limits of constitutionality" (MIRABETE; FABBRINI, 2022, p. 76).

The judicial stage, materialized in the sentencing process, represents the most crucial moment. This is an expression of the principle, as the judge applies the criteria of Article 59 of the Penal Code. According to Capez (2021), "judicial individualization should not be confused with discretion, as the judge must base their decisions on objective and legal criteria" (p. 112). Thus, the dosimetry of a sentence cannot result from the mere will of the judge; it must reflect a logical operation, proportional and controllable.

The duty to provide reasons for decisions, as stipulated in article 93, item IX, of the Constitution. Federal, it is an indispensable element for the validity of individualization. Nucci (2022) observes that "the reasoning behind a criminal sentence is not a mere formality, but an expression of democratic control of punitive power, which prevents arbitrariness, ensuring transparency in the exercise of jurisdiction"



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(p. 89). Thus, concrete and rational motivation is a requirement for the legitimacy of the punishment, allowing for social and appellate review of the judicial decision.

Individualization is also closely linked to the principle of human dignity.

human, enshrined in article 1, item III, of the Federal Constitution. According to Nucci (2022), "the penalty,

In a constitutional state, it cannot be an instrument of revenge, but a mechanism of reaffirmation.

of the legal and moral value of the violated norm, with a view to the resocialization of the offender" (p. 90). In this

From this perspective, criminal sanctions must respect the convict's status as a subject of rights and seek to...

their social reintegration.

Greco (2023) reinforces this understanding by stating that "punishment is only legitimate when

applied in a manner proportional to the seriousness of the act and the personal circumstances of the perpetrator; otherwise,

"It becomes an act of state arbitrariness" (p. 56). The author associates the principle of individualization with the theory

of culpability as a limit to punishment, according to which the degree of reprehensibility of the agent must be the

maximum sanction parameter.

Contemporary doctrine also recognizes the guarantee-based nature of individualization.

especially in the face of the advancement of criminal policies aimed at harsher punishment. Bitencourt (2023)

He notes that "individualization constitutes a barrier against penal expansionism and ensures the

rationality of the system, avoiding decisions influenced by public outcry" (p. 49). Thus, the

The principle serves a dual purpose: protecting the individual from excessive punishment and preserving the

The coherence of the penal system in the face of the demands of substantive justice.

Historically, individualization emerged as a response to the fixed sentences of penal systems.

archaic. With the Enlightenment, especially with Beccaria, criminal law began to adopt the ideal of

proportionality between the crime and the sanction. Mirabete and Fabbrini (2022) highlight that "the

Individualization was a civilizational advance, resulting from overcoming corporal punishment and adopting...

a rational model of punishment" (p. 82). In Brazil, this progress was consolidated with the Penal Code.

from 1940 and its subsequent reforms, which reinforced the humanist character of punishment.

The jurisprudence of the STF (Supreme Federal Court) and STJ (Superior Court of Justice) has reaffirmed individualization as an entrenched clause.

whose violation implies the nullity of the sentence. The STF, in the judgment of *HC 126.292/SP*, established the

understanding that the lack of justification in setting the base sentence violates article 93, IX,

of the Constitution. The Superior Court of Justice (STJ), in turn, has reiterated that increasing the penalty is only legitimate when based on concrete and duly justified elements.

Finally, the principle of individualization of punishment must be understood as an expression of

The ideal of substantive justice, founded on human dignity and substantial equality. As summarized...

Bitencourt (2023, p. 61), "the individualization of punishment is the point of equilibrium between the law of the State

to punish and the individual's right to be treated according to their particularities; it is the realization of

"Criminal justice in its human and rational dimension."



2.2 Sentencing guidelines: structure and application criteria

Sentencing is one of the most important aspects of the sentencing process.

of the penal sanction, since it is at that moment that the magistrate concretizes the constitutional principle of

Individualization, transforming the abstract normative command into a concrete measure of punishment.

The function of sentencing guidelines is not limited to an arithmetic exercise; it is the embodiment of justice.

In criminal law, the aim is to reconcile the seriousness of the crime, the culpability of the perpetrator, and the ends...

preventive and resocializing aspects of punishment. According to Prado (2021), sentencing "is an exercise

rational consideration, in which the judge evaluates the elements of the specific case to adjust the

"Criminal sanction commensurate with the culpability and seriousness of the conduct" (p. 131). Thus, the

The individualization of punishment finds its practical expression in sentencing guidelines, where the following are combined

Technical skill, ethics, and judicial prudence.

The structure of sentencing in the Brazilian legal system follows a three-phase system,

provided for in Article 68 of the Penal Code. This method, established by legal scholars and case law,

determines that the judge sets the sentence in three successive stages: the first, relating to the determination of the

base sentence; the second, the application of aggravating and mitigating circumstances; and the third, the incidence of causes of

increase and decrease of sentence. For Mirabete and Fabbrini (2022), "the three-phase system has as

The objective is to ensure transparency, consistency, and control of the decision-making process, avoiding arbitrariness.

and ensuring review by higher authorities" (p. 142). This methodology, in organizing the

Judicial reasoning allows the judge to base each decision in a logical, objective and...

controllable, in accordance with article 93, item IX, of the Federal Constitution, which mandates that

The requirement for justification of judicial decisions.

The determination of the base sentence, in the first phase of sentencing, is considered the most important moment.

This is relevant because it establishes the starting point for the final calculation of the sentence. Article 59 of the Penal Code.

It determines that the judge, when establishing the sanction, must consider the culpability, the antecedents, and the

social conduct, the agent's personality, the motives, the circumstances, and the consequences of the crime,

as well as the victim's behavior. According to Estefam (2021), "it is in setting the base sentence

that the magistrate makes an individualized judgment of censure, and must justify each aspect.

"valued in a clear and specific way" (p. 94). The author emphasizes that standardized or generic decisions

These actions constitute a direct violation of the constitutional principles of motivation and individualization of punishment.

which may result in the sentence being declared null and void.

Guilt, as a central element of the base sentence, expresses the degree of social disapproval.

of the conduct committed and must reflect the intensity of awareness of the illegality and the requirement of

different behavior. Prado (2021) argues that culpability "is the ethical-legal parameter that

"It measures the criminal responsibility of the agent and delimits state intervention" (p. 139). Thus, regarding



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The more reprehensible the act, the greater the sanction that may be applied, provided that the Proportionality. However, background and social conduct require careful and distinct analysis.

As Nucci (2022) explains, “the antecedents relate to the agent’s prior criminal life, while social conduct refers to an individual’s behavior within their family environment and professional” (p. 101). This differentiation prevents double valuation and ensures due consideration. substantive legal process.

Another point that deserves attention is the assessment of the agent’s personality, an element that, According to Estefam (2021), it should be treated with caution, as “it cannot be measured based on subjective impressions of the judge, and should be based on concrete data extracted from the case file or from technical reports” (p. 98). The circumstances and consequences of the crime, in turn, must be considered only when they exceed the typical result foreseen in the criminal offense. Cunha (2023) It warns that “the consequences of the crime cannot be assessed in an abstract way, but only when they exceed the natural result of the infraction” (p. 213). The same reasoning applies to The victim’s behavior should only be taken into account if it has contributed significantly. for the purpose of committing the crime.

In the second phase of sentencing, the judge analyzes the aggravating and mitigating circumstances. as stipulated in articles 61 to 66 of the Penal Code. These factors do not alter the minimum and maximum limits. of the abstract penalty, but adjust its intensity within legal parameters. Nucci (2022) explains that “Aggravating and mitigating circumstances are instruments for the ethical correction of punishment, allowing for an appropriate response.” “criminality depends on the particularities of the agent and the act” (p. 102). The most common aggravating circumstances include Recidivism, frivolous or base motives, and abuse of power; among the mitigating circumstances, the following stand out: spontaneous confession and relative minority. The application of these circumstances must be duly justified, since any variation in the penalty directly affects the situation. legal defense of the convicted person. Mirabete and Fabbrini (2022) reinforce that “the lack of justification in The application of aggravating or mitigating circumstances implies a violation of the legality and reasoning of the sentence. penal” (p. 148).

The third and final phase of dosimetry comprises the analysis of the causes of increase and reduction of sentence, which apply to specific cases provided for in the General Part or in the Part Special provisions of the Penal Code and in extraordinary penal laws. Prado (2021) states that “the correct The application of aggravating and mitigating circumstances is crucial for the legitimacy of the sanction, as it ensures... that the final amount of the sentence corresponds to the real seriousness of the act and the participation of the agent” (p. 143). Thus, the three-phase system ensures that the sentence is set in a gradual, transparent, and controllable manner. avoiding arbitrary decisions and ensuring the right to appeal of judgments.

The motivation behind a judicial decision is an indispensable constitutional requirement. Article 93, paragraph... Article IX of the Federal Constitution determines that “all decisions of the Judiciary must be



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"justified, under penalty of nullity." In this sense, Estefam (2021) emphasizes that "the justification

It is not a mere formality; it is the means by which the judge demonstrates that his decision stems from the law and from the...

evidence, and not personal or moral judgments" (p. 99). The jurisprudence of the Superior Court of Justice

has reaffirmed the need for concrete justification in setting the base sentence, understanding that the

A simple generic mention of unfavorable circumstances is not sufficient to justify increasing the

penalty (HC 355.235/SP, Rel. Min. Ribeiro Dantas, 2016). Nucci (2022) adds that "the

A clear and objective justification for the base sentence is an expression of substantive due process, because

It allows the accused to understand the reason for the imposed sanction and to fully exercise the right to defense.

(p. 104).

In addition to the justification, the sentencing process must observe the principles of proportionality and...

reasonableness, which function as criteria for controlling jurisdictional activity. Prado (2021)

proportionality is defined as "the requirement that the punishment be balanced with the..."

"The seriousness of the act and the culpability of the agent" (p. 147). Reasonableness, in turn, according to Nucci

(2022), "requires the choice of the appropriate sanctioning measure for preventive purposes and

"rehabilitative aspects of punishment" (p. 107). These principles prevent punishment from becoming excessive or

unnecessary, ensuring that the sanction fulfills its function of punishing and preventing crime without violating

the dignity of the human person.

Cunha (2023) highlights that the principle of proportionality has a binary character, at the same time

Time limits and guarantees punitive power. "Disproportionate punishment violates the essential core of..."

"Human dignity, turning criminal law into an instrument of oppression, and not of legal protection."

(CUNHA, 2023, p. 218). This observation reveals the ethical nature of sentencing guidelines: punishing within the...

limits of necessity and justice. Mirabete and Fabbrini (2022) add that "the penalty must be

necessary and sufficient for the condemnation and prevention of crime, as provided for in Article 59 of the Code.

"Penal" (p. 152). The purpose is not only retributive, but also educational and preventive, guiding

the individual's return to social reintegration.

Contemporary penal guarantees reinforce this perspective by understanding punishment as

an instrument for protecting fundamental rights, and not as a means of state revenge. Cunha

(2023) observes that "punitive rationality requires that the penalty be individualized according

"Objective and verifiable parameters, under penalty of arbitrariness" (p. 221). The author argues that the

The legitimacy of the penal system depends on the predictability and consistency of judicial decisions, which

This is obtained through a technical and well-founded dosimetry. For Estefam (2021), the penalty should

to reflect "a model of criminal justice based on proportionality and legal rationality,

ensuring that the State intervenes only when necessary and in a legitimate manner" (p. 104).

In agreement, Prado (2021) summarizes that "punishment is the measure of guilt and the

expression of the ethical-legal judgment of the State; when fixed excessively, it becomes an injustice;



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"When it falls short of necessity, it frustrates the purpose of the penal norm" (p. 150). This statement reveals the essence of sentencing as an act of prudence and balance requires technical knowledge from the judge. A sense of justice and respect for the fundamental rights of the accused.

Therefore, sentencing should be understood as a rational and rights-based application process, founded on proportionality and justification. It is at this point that...

It concretizes criminal justice, since the judge, by considering all the elements of the case, achieves a synthesis between abstract legality and the equity of the specific case. When applied technically, well-founded and humane, sentencing guidelines ensure the legitimacy of criminal jurisdiction and reaffirm the State's commitment to justice, dignity, and legal security.

2.3 Sentencing guidelines in the jurisprudence of the Supreme Federal Court and the Superior Court of justice

The case law of the higher courts plays a fundamental role in the consolidation of interpretative criteria relating to sentencing guidelines, guiding the uniform application of the law. penal and guaranteeing the observance of the constitutional principles of legality and proportionality. and of individualization. In the Brazilian legal system, the Supreme Federal Court (STF) and the Superior Court of Justice (STJ) perform complementary functions. In this field: the first acts as guardian of the Constitution, ensuring the compatibility of judicial decisions with fundamental guarantees; the second, as an interpreter of the legislation. infra-constitutional, ensuring the correct application of the Penal Code and procedural rules. criminal.

Within the scope of the Supreme Federal Court (STF), the judgment of *Habeas Corpus* 126.292/SP consolidated a landmark relevant interpretation. In that case, the Court highlighted the need for justification. specific and concrete in setting the base sentence, recognizing that the absence of motivation violates the Article 93, item IX, of the Federal Constitution. The rapporteur, Minister Teori Zavascki, emphasized that the Generic motivation compromises the transparency and social control of the criminal decision, configuring Absolute nullity. This decision reaffirmed that sentencing is not a discretionary act, but a duty. A technician committed to upholding the law and protecting fundamental rights.

The Superior Court of Justice (STJ), in line with this understanding, has repeatedly ruled that the increase The base sentence must be duly justified based on concrete elements extracted from the case file. In the judgment of the *AgRg in REsp* 1.861.302/SP, reported by Minister Ribeiro Dantas (2019), the Court acknowledged that "the increase in the base sentence requires valid and proportionate justification, otherwise..." "Violation of the principle of individualization of punishment and offense against article 59 of the Penal Code." The precedent established the understanding that the penalty can only be aggravated when there are facts... concrete evidence demonstrating greater reprehensibility of the conduct is insufficient, as are vague references or



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generic.

According to Bitencourt (2023), "jurisprudence plays an essential role in the consolidation of the principle of individualization ensures that the sentencing process is the result of a... rational and transparent, and not based on judicial arbitrariness" (p. 67). The author argues that standardization of Case law guarantees legal certainty and predictability, values that are essential to the State. Democratic rule of law. In this context, the intervention of higher courts does not mean a violation of judicial independence, but as an instrument for correcting and harmonizing understandings, in such a way to preserve the coherence of the penal system.

According to Nucci (2022), the control exercised by the higher courts is a natural consequence from the constitutionalization of criminal law, which transformed sentencing into a topic of relevance constitutional. The author states that "the hermeneutical function of the Supreme Federal Court and the Superior Court of Justice is to guarantee unity of interpretive approach to criminal law, ensuring that individual liberty is protected against decisions disproportionate or lacking in justification" (p. 93). Thus, judicial review of Sentencing guidelines do not restrict the power of the natural judge, but reinforce the Judiciary's commitment to... Legality and equality in the application of criminal law.

The principle of reasoned decisions, enshrined in the Constitution, has been one of the pillars from recent criminal case law. In numerous rulings, the Supreme Federal Court has recognized that the absence of specific justification for determining the base sentence compromises substantive due process. Capez (2021) observes that "although the magistrate has a certain technical margin in setting the sentence. Unfortunately, this freedom is limited by the need for rational and transparent justification, which must be supported by objective legal criteria" (p. 112). The author warns that judicial arbitrariness is incompatible with the constitutional model of criminal jurisdiction, which requires justified decisions that are open to criticism. public.

Similarly, Greco (2023) argues that respect for individualization and the proportionality of the punishment constitutes a condition for the legitimacy of punitive power. The author states that "The absence of concrete justification in sentencing transforms punishment into an act of force, devoid of... of legal rationality" (p. 56). For him, sentencing should be understood as a process that is technical and logical, in which each factor that increases or reduces the penalty must be meticulously considered, analyzed and justified, otherwise the principle of legality in criminal law will be violated.

The jurisprudence of the Superior Court of Justice (STJ) has also consistently taken a position regarding the prohibition of the double valuation of circumstances, the so-called *bis in idem*. In several precedents, the Court acknowledged that the same fact cannot be used to aggravate the penalty in more than one phase of the process. Sentencing. This understanding aims to preserve the internal consistency of the penal calculation and avoid harsher punishments. disproportionate. Nucci (2022) reinforces this guideline by stating that "the sentencing guidelines must observe the principle of value unity, so that each circumstance is considered a



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only once, in its appropriate procedural phase" (p. 95). This technical care is fundamental to guarantee

The balance and legitimacy of criminal proceedings.

Another recurring point in case law concerns the fraction of increase or decrease.

applied due to special circumstances. The Superior Court of Justice (STJ) has consolidated the understanding that, in the absence of

For a fraction expressly provided for by law, the judge must adopt proportionality as a guiding criterion.

between the seriousness of the act and the number of unfavorable circumstances. In a paradigmatic decision,

The Court acknowledged that an increase exceeding one-sixth is only justified with proper justification.

specific and proportionate (REsp 1.342.230/RS, Rel. Min. Sebastião Reis Júnior, 2018). This

This understanding reinforces the rational and controllable nature of sentencing guidelines, preventing arbitrary variations.

that could compromise equality in the application of criminal law.

Bitencourt (2023) highlights that the intervention of higher courts should occur in a way

exceptional, only when there is manifest illegality, disproportionality, or absence of

rationale. For the author, "the purpose of judicial review of sentencing is not to replace the

the value judgment of the first-instance judge, but to correct any deviations that compromise the

"balance and fairness of the decision" (p. 70). This understanding preserves judicial autonomy and, at the same time

Over time, it ensures uniformity of interpretation, which is essential for the stability of the legal system.

The Brazilian Supreme Court (STF) has also recognized the importance of proportionality as a limit to action.

judicial decision in determining the sentence. In the judgment of *HC 118.533/SP*, the Court understood that the increase

The disproportionate base sentence violates Article 5, XLVI, of the Federal Constitution and Article 59 of the Penal Code.

In criminal law, the sanction needs to be adjusted to the specific circumstances of the case. This understanding reinforces the idea...

that the judge does not have absolute freedom in sentencing, but is bound by the parameters.

regulations and fundamental rights of the accused.

Similarly, Capez (2021) observes that "proportionality constitutes the core

ethical considerations regarding sentencing guidelines, as they prevent punishment from becoming an instrument of oppression and ensure its effectiveness.

The function of disapproving of and preventing crime within just limits" (p. 114). The author emphasizes that the

Intervention by higher courts is a mechanism for protecting citizens, guaranteeing respect.

to legality and substantive justice. Jurisprudential coherence, therefore, is an indispensable element to

Legal certainty, as it reduces arbitrariness and ensures that similar cases receive resolutions.

equivalent penalties.

In the contemporary context, the control of sentencing by jurisprudence also takes on...

relevance in the face of the phenomenon of penal expansion and the intensification of penalties. Greco (2023)

He warns that "modern criminal law risks losing its rationality if it does not maintain criteria."

"Technical and proportionate in setting sanctions" (p. 59). The author warns that the hardening

The punitive nature of the law, coupled with the absence of uniform criteria, can lead to selective prosecution and violation of...

Substantive equality among those subject to the law. Thus, jurisprudence acts as an element of



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restraint, preserving the balance between the state's duty to punish and the fundamental right not to be punished. punished excessively.

The Superior Court of Justice (STJ), on several occasions, has also reaffirmed the judge's duty to Individualizing the sentence at all its stages is mandatory, otherwise it will be null and void. In a recent precedent, the Court He stated that "setting the sentence without considering the judicial circumstances of Article 59 of the Penal Code implies..." direct affront to the principle of individualization" (HC 567.182/SP, Rel. Min. Laurita Vaz, decided in (2021). This position reinforces the understanding that punishment should be the result of a process. rational, dialogical and transparent, based on technical criteria and not on subjective perceptions.

According to Nucci (2022), the pedagogical function of jurisprudence is essential, as it guides judges. of the first instance and ensures the predictability of decisions. The author summarizes that "the consistency of Judicial decisions are a requirement of justice, as they ensure that citizens know what to expect from the actions of the court. "The State and trust in the legitimacy of institutions" (p. 99). The absence of this coherence weakens the It undermines the credibility of the penal system and fosters a sense of arbitrariness, which compromises its very foundation.

The purpose of punishment is to provide a positive general preventative measure.

In summary, the jurisprudence of the Supreme Federal Court and the Superior Court of Justice It has become established as an indispensable instrument for the realization of the principle of Individualization of punishment. Through the control of sentencing guidelines, the courts ensure that the exercise... the punitive function of the State occurs within the constitutional limits of legality, Proportionality and human dignity. This action, far from restricting autonomy. The judicial branch reaffirms its commitment to substantive justice and uniformity. interpretative. As Bitencourt (2023, p. 72) concludes, "criminal jurisprudence, by imposing rationality and consistency with sentencing guidelines, fulfills the civilizing function of law and preserves the legitimacy of "Penal system in a State governed by the rule of law."

FINAL CONSIDERATIONS

The analysis undertaken throughout this work made it possible to understand that the dosimetry of Punishment represents one of the most significant manifestations of the principle of individualization in law. Brazilian criminal law, functioning as an essential mechanism for the administration of justice and containment. of the state's punitive power. The process of applying criminal sanctions, when conducted in a manner Technically sound, rational, and properly substantiated, it fulfills the constitutional purpose of ensuring that the *right to punish* be exercised within the parameters of legality, proportionality, and... Respect for the dignity of the human person.

It was found that the Federal Constitution of 1988, when establishing in article 5, item XLVI, The duty to individualize punishment imposed a shared obligation between the legislator, the judge, and...



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prison administration. This threefold responsibility ensures that the penal response

corresponds in a balanced way to the seriousness of the crime and the personal circumstances of the perpetrator, allowing that the penal system operates in accordance with the fundamental values of justice and humanity.

As Bitencourt (2023) emphasizes, the individualization of punishment “is the point of equilibrium between

The State's right to punish and the individual's right to be treated according to their particularities” (p.

61).

The research showed that sentencing guidelines, as governed by Article 59 of the Penal Code, It constitutes the space for the practical materialization of the principle of individualization, because it is at this moment that the judge transforms the abstract limits of the law into a concrete sanction. This operation requires of magistrate conducts a rigorous analysis of the judicial circumstances — culpability, background, conduct. social, personality, motives, circumstances and consequences of the crime — in order to ensure that the punishment is necessary and sufficient for the condemnation and prevention of the crime. As Nucci (2022) points out, Individualization is a legal duty, not a mere option, and should always reflect the... proportionality between the act committed and the sanction imposed.

It was also observed that contemporary criminal law doctrine has insisted on the importance of justification as a central element of the legitimacy of punishment. Prado (2021) and Capez (2021) They point out that judicial reasoning must be clear, logical, and based on objective criteria, otherwise... to compromise the transparency and rationality of the penal system. This requirement stems from article 93, Article IX of the Federal Constitution, which imposes on the judge the duty to justify his decisions, allowing The social and appellate control of its foundations. The absence of specific motivation, or the use of The use of generic expressions constitutes a violation of due process and renders the judgment null and void, according to... repeatedly recognized by the higher courts.

In terms of case law, the Supreme Federal Court and the Superior Court of Justice have... played a decisive role in consolidating interpretative parameters that ensure uniformity. and the rationality of sentencing guidelines. The Supreme Federal Court, when judging *Habeas Corpus* 126.292/SP, reaffirmed that The determination of the base sentence must be based on concrete justification, prohibiting arbitrary increases. and disproportionate. The Superior Court of Justice (STJ), in decisions such as the *AgRg in REsp* 1.861.302/SP, reinforced that... An increase in the sentence is only legitimate when supported by objective elements extracted from the case file. This line of precedent demonstrates the commitment of the higher courts to the preservation of The principle of individualization and the rational control of the state's punitive power.

The research also demonstrated that the principle of individualization serves a function. A fundamental legal safeguard in contexts of expanding penal policies and intensifying punitive policies. Bitencourt (2023) warns that individualization acts as a barrier against penal populism and against decisions influenced by public outcry. By demanding technical justification and Proportionality, the principle protects citizens against the arbitrary use of the power to punish and ensures



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that the penal system maintains consistency with the constitutional values of freedom and equality.

It can be concluded, therefore, that sentencing cannot be treated as a mere operation. arithmetic or procedural formality. It is an exercise of judicial prudence, which requires A balance between technique and legal sensitivity, in order to guarantee that the punishment fulfills its purposes. retributive and preventive measures without violating the dignity of human beings. Greco (2023) highlights that “the penalty A just offense is one that condemns the crime within the limits of culpability, without transforming criminal law. as an instrument of oppression” (p. 59).

Thus, the correct application of sentencing guidelines strengthens the legitimacy of the State. Democratic rule of law and reaffirms the commitment of the Brazilian penal system to the values fundamental principles of justice, proportionality, and human dignity. Furthermore, the consolidation Case law on the subject has contributed to legal certainty and the predictability of decisions. criminal cases, ensuring that similar cases receive appropriate responses and avoiding arbitrariness. judicial.

Finally, it is understood that the continuous improvement of judicial practice, combined with Ethical and technical training of judges is the most effective way to ensure effectiveness. of the principle of individualization of punishment. Only through the careful and humane application of Dosimetry will make it possible to build a truly fair penal system, capable of reconciling the Protection of society with unconditional respect for the fundamental rights of each individual.

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