

THE BRAZILIAN PRISON SYSTEM AND THE RESOCIALIZATION OF THE SENIORS AS A FUNCTION OF THE CRIMINAL EXECUTION LAW

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Summary

This article is a bibliographical research on the Brazilian Prison System and the resocialization of inmates, highlighting the criminal execution law as a relevant standard to ensure the rights of prisoners. The general objective of this article is to understand the purpose of the Criminal Execution Law in relation to serving sentences in the Brazilian Prison System and the specific objectives are: to understand the definition of resocialization for Brazilian law; highlight the main functions of the Brazilian prison system and present Brazilian standards on the human rights of prisoners. The criminal execution law is the rule that determines the fulfillment of the prisoner's sentence, considering the dignity of the human person and ensuring the effectiveness of the criminal sentence.

Key words: Brazilian Prison System. Resocialization. Criminal Execution Law. Human rights.

1. Introduction

The Brazilian Prison System concerns the various prison establishments that exist in Brazil and is responsible for resocializing the individual and enabling re-education for common social life.

The criminal law and the criminal procedural law must be considered by prison managers, and especially the Criminal Execution Law, which provides compulsory guidelines on the implementation of compliance with the criminal decision.

The Criminal Execution Law determines measures for the convict to serve the sentence, highlighting respect for human dignity as the main measure for compliance with the sanction. What are the functions of the Brazilian Criminal Execution Law in relation to serving the sentence? The Criminal Execution Law has the responsibility of presenting a pedagogical character and reintegrating the convict into society with a view to ensuring favorable conditions to prevent new crimes.

The function of the criminal law is to provide the prisoner with a new vision and social perspective, educating the individual to recover their dignity as a subject of rights in Brazil. The general objective of this research is to understand the purpose of the Criminal Execution Law

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in relation to serving the sentence in the Brazilian Prison System and the specific objectives are: understand the definition of resocialization for Brazilian law; highlight the main functions of the Brazilian prison system and present Brazilian standards on the human rights of prisoners.

This study is relevant to the academic community as it enables the acquisition of knowledge about the Brazilian Prison System, discussing the main measures used to resocialize prisoners and is justified by the need to understand more about the subject.

The study is a bibliographical research, using authors such as Kallas (2019) and Vieira (2020) who helped to support the text. Thus, the theoretical foundation was enriched with sources used from texts researched in physical and digital materials, bringing reliability to the research.

2 Theoretical foundation

The Criminal Execution Law is a legal provision that establishes the functioning of criminal enforcement bodies, the rights and duties of those convicted and translates the manner in which the sentence is executed, effecting the determination of the criminal decision. The main objective of the LEP is to resocialize the individual through the implementation of prison policies.

The Penal Execution Law regulates the Brazilian Penitentiary System, having as its legal provision the form of serving sentences in addition to providing for the rights of the ex-prisoner to society. The State is the body that guarantees the realization of these rights, which, by failing to fulfill its social function, leads these individuals to criminal recidivism. (SOARES, *et. al.*, 2015, p.60).

The Brazilian Prison System is regulated by the Penal Execution Law and the responsibilities and responsibilities of the execution bodies are typified in the standard, as well as the rights of prisoners regarding education, recreation, sport, work and others.

The State is the institution responsible for the individual's imprisonment and is responsible for acting in the Prison System, guaranteeing the implementation of services related to the social and moral recovery of the prisoner.

The Criminal Execution Law is regulated by principles that guide its execution so that the condemned person's guarantee is respected and the process is carried out regularly. According to the doctrine, there are several principles that govern criminal execution and these must always be in compliance. in line with constitutional principles (MOREL, 2016, p.21).

The principles of the Criminal Execution Law are many and are correlated with constitutional principles. Thus, some basic principles that can be highlighted are:

principle of equality, the principle of legality, the principle of proportionality, the principle of humanity, the principle of individualization of punishment, and the re-education principle.

The principle of humanity ensures the physical and mental integrity of the convict to the extent that the dignity of the human person must be respected and cruel penalties are not accepted in the Brazilian legal system.

It is necessary to understand and emphasize that the offender, regardless of his crime, does not lose his rights, does not lose his condition as a human, therefore he must have his dignity and fundamental rights preserved no matter how much society does not conform to those who do not. respect the laws of coexistence. (KALLAS, 2019, p.74).

Convicts have their rights guaranteed especially under the Federal Constitution and the Criminal Execution Law. In this sense, there are a series of public policies to enable the subject's resocialization and provide new perspectives for their social insertion.

The principle of individualization of the sentence guarantees a fair sanction, enabling an appropriate dosimetry for each subject. In this sense, there is an analysis of the individual's profile, a background check and also a study to determine whether there are possibilities for committing new crimes.

The re-educational principle aims at the resocialization of the convict, reintegrating the subject into a common social life, awakening an awareness of the exercise of social practices unrelated to new crimes. In this way, the State must provide conditions for the recovery of the offender, therefore, the criminal execution law states that:

Art.10 Assistance to prisoners and internees is the duty of the State, aiming to prevent crime and guide their return to living in society.

Single paragraph. Assistance is extended to the egress.

Art.11. Assistance will be:

I-material;

II-health;

III- Legal;

IV- Educational;

V-social;

VI-religious. (BRASIL, 2019, p.199).

The Criminal Execution Law lists the types of assistance that convicts are entitled to, reaffirming its pedagogical nature to prevent new crimes. In this reasoning, it is understood that there are a series of measures carried out by the Penal State to resocialize individuals, but in practice they do not provide full satisfactory results.

The Federal Constitution is the first norm to be considered to understand the rights of the convicted person and also to understand the role of the State in relation to criminal acts.

Art.5° Everyone is equal before the law, without distinction of any kind, guaranteeing Brazilians and foreigners the inviolability of the right to life, liberty, equality, security and property under the following terms: LXI-Nobody will be arrested unless in flagrante delicto or by written and substantiated order from a competent judicial authority, except in cases of military transgression or strictly military crime, defined by law. (BRASIL, 2016, p.13-16).

The Federal Constitution clearly states the possibility of depriving a person of freedom, but considering legal requirements that must be strictly observed by the State so as not to result in an injustice against the citizen's freedom.

The Brazilian Prison System exposes many flaws and inmates are often susceptible to violence, unsanitary conditions and even end up considerably damaging their mental and/or physical health.

It is clear, therefore, that the Brazilian Penal System is a complex endowed with contradictions and problems that are unlikely to be resolved in the short term or with immediate measures. However, new paths have been proposed over the last few decades, especially with regard to penalties. alternatives that prioritize the convict's own social contact as a form of resocialization to the detriment of the deprivation of their freedom (FONSECA; RODRIGUES, 2017, p.42).

The Brazilian Prison System presents some structural deficiencies and in the implementation of resocialization policies such as unhealthy environments, lack of hygiene, crowded, inadequate and disproportionate cells. However, some measures are being taken to reduce the harm caused by incarceration, such as establishing alternative sentences.

In this context, it can be inferred that the Brazilian Prison System does present a series of shortcomings, but that the mobilization of public power, society and the conscious adoption of alternative sentences can contribute considerably to reducing prison problems, in addition to helping to application of beneficial measures for the resocialization of those who, due to having deviated from good conduct, ended up committing crimes, putting social well-being at risk. (SILVA, 2012, p.19).

Problems in the prison sphere can be reduced with legal actions that ensure compliance with the law and enable better results for the life of the convicted person and for society. There are some situations in which the jurisdictional State may opt for penalties other than deprivation of liberty, contributing to the reduction of prisoners and ensuring better possibilities for the recovery of the convict.

The sentence is served according to the complexity of the crime and considering the dosimetry of the sentence and may be in a penitentiary; agricultural, industrial or similar colony and Albergado houses. There are also specific concrete cases of individuals who do not have the necessary discernment to understand their role in criminal acts being sent to the hospital for custody and psychiatric treatment.

It is important to reiterate that it is the right of all citizens, even if they have committed a criminal act, to be treated with dignity and respect in order to alleviate deprivation

freedom and guarantee reintegration into social life. To this end, it is necessary to adopt policies that promote the recovery of prisoners, having as a basic tool the Criminal Execution Law and its two axes: punish and resocialize (MUNIZ *et. al.*, 2018, p.11).

Resocialization is the aim sought by the State when it executes an arrest, Brazilian legislators understand that the period in which the individual is deprived of freedom is the moment for them to reflect on the relevance of the right to come and go, to create an awareness of the importance of integrate into society through study and work.

The State aims to punish and enforce the criminal order by applying sanctions to correct the behavior of the convict, but the individual's reintegration into society in an integrated manner represents its biggest challenge.

It is known that only the deprivation of liberty alone and exclusively does not favor resocialization. The picture in which the Brazilian prison system is framed is completely inhumane and outside the acceptable limits of what is desired. Calling into question the structures and explanations considered unshakable, in addition to proposing alternatives for tackling the issue, are extremely important points from a perspective of change. Something that goes beyond the minimum rules is necessary for there to be a change in outlook. And Education presents itself as an adjunct to this transformation process (VIEIRA, 2020, p.23).

The practice of deprivation of liberty in itself does not lead to many satisfactory results for the life of the prisoner, it is essential to implement concrete prison policies that change the prisoner's reality, especially investing in the educational process in Brazilian prisons and enabling real integrative opportunities for inclusion the society.

The purpose of the Brazilian Criminal Execution Law is fundamentally to execute what was determined in the criminal sentence based on the resocialization of the convict, ensuring respect for their human dignity.

The Brazilian Prison System is responsible for receiving the offender and carrying out assistance actions in prison that guarantee their physical and mental integrity. In addition, it has the responsibility to present activities that offer opportunities for an effective change in the prisoner's life.

There is a social desire for justice that requires state measures to compensate for the damage inflicted on the victim and the moral offense caused to society. Prison is also a way for the State to respond to society's desire for justice, a means of disapproving unconventional behavior (KALLAS , 2019). Brazilian standards on human rights are basic legal provisions that guide and oblige the Brazilian State to treat prisoners with respect and dignity, highlighting the Criminal Execution Law itself, created to execute the jurisdictional determination. The quality of life of a Brazilian prisoner is unsatisfactory from a human point of view, the precarious conditions of the prisons, the overcrowding

in cells and the lack of services that enable basic assistance to the prisoner often make it impossible for the offender to recover, increasingly damaging the Brazilian prison system. (FONSECA; RODRIGUES, 2017).

Resocialization is a continuous process that aims to rescue the values of the dignity of the imprisoned individual and enable a different trajectory in their life. It is not an easy function for the State, but it is viable and necessary not only to improve the life of the prisoner, but also to transform social reality.

Final considerations

The Criminal Execution Law is the norm that typifies the State's actions in relation to the execution and compliance with criminal sentences. Therefore, this legal provision contains the forms of action of the enforcement bodies and the duties and limits of their activities.

The Criminal Execution Law deals with the rights and duties of Brazilian prisoners considering the constitutional principles and the principles listed in the law, essentially the principle of human dignity as the basic foundation of all actions by agents of the Brazilian Prison System.

The purpose of the Criminal Execution Law is to provide grounds for the implementation of the judicial decision and present the way in which the Brazilian Prison System should act in the process of recovering the offender.

It is the State's duty to provide material, educational, legal and social assistance to the convict, in addition, it must also take care of the offender's physical and mental health, all of these services must help to facilitate their social reintegration.

It is known that the Brazilian Prison System is deficient, having flaws in its structure and in the provision of services. In this sense, Brazilian prison policies need to be implemented effectively, enabling a real recovery of the imprisoned individual and providing social transformation.

Society longs for social justice and seeks exemplary punishment for the offender to reduce the damage caused to the victim, however, more than punishing the criminal execution standard, it aims to resocialize the offender and ensure his physical and mental integrity, enabling a new opportunity for their full social insertion.

The jurisdictional State is responsible for determining the deprivation of liberty of an individual and at the same time has the function of presenting measures that ensure dignity

human rights and the resocialization of the offender. Therefore, it is essential to implement the rights of convicts that were determined in the Federal Constitution and the LEP and guarantee a recovery process that makes their social recovery viable.

References

BRAZIL. **Basic Criminal Collection**. 9. ed. Brasília: Federal Senate, coordination of technical editions, 2019.

BRAZIL. **Constitution of the Federative Republic of Brazil**. Brasília: Federal Senate, coordination of technical editions, 2016.

FONSECA, CEP; RODRIGUES, JM Contexts of resocialization of those deprived of liberty in the current Brazilian Prison System. **Multitext magazine**, v. 5, no. 1, 2017. Available at: www.ead.unimontes.br. Accessed on: 13 Jan. 2021.

KALLAS, MR The bankruptcy of the Brazilian Prison System: a look at female incarceration. **Law in motion**, Rio de Janeiro, v.17, n.1, p.62-89, 2019. Available at: www.emerj.tjrj.jus.br. Accessed on: 13 Jan. 2021.

MOREL, Samantha de Moraes Gonçalves. **The implementation of the Criminal Execution Law in the Arroio do Meio/RS prison**. 108 f. (monograph). Univates University Center, Lajeado, 2016. Available at: www.univates.br. Accessed on: 13 Jan. 2021.

MUNIZ, K.C.C. *et. al.* Penitentiary public policies in Brazil: an analysis of the resocialization policy and the role of social workers in guaranteeing the rights of prisoners. *In: Proceedings of the 16th meeting of Researchers in Social Work, Ethics, Human Rights and Social Work*, 2018, Vitória, **Anais...** Vitória, ENPESS, 2018. Available at: periodicos.ufes.br. Accessed on: 14 Jan. 2021.

SILVA, PSR da. **Resocialization of the ex-prisoner in Brazil**. 50 f. (Specialization). AVM postgraduate, Rio de Janeiro, 2012. Available at: www.avm.edu.br. Accessed on: 14 Jan. 2021.

SOARES, A.M. *et. al.* Penal Execution Law (LEP) in Maximum Security Penitentiary for the resocialization of inmates: analysis of public policies. **Multitext magazine**, Montes Claros, vol. 5, n.1, jan/jun, 2015. Available at: www.ead.unimontes.br. Accessed on: 01/13/2021.

VIEIRA, YLD Education as a practice of resocialization from the perspective of those deprived of liberty at the Judge Hitler Cantalice medium security penitentiary. 53 f. (monograph). Federal University of Paraíba, **Education Center**, João Pessoa, 2020. Available at: repositorio.ufpb.br. Accessed on: 13 Jan. 2021.