RCMOS - Multidisciplinary Scientific Journal of Knowledge.
ISSN: 2675-9128. Sao Paulo-SP.

Year V, v.1, n.1, Jan/July 2025. | submission: 24/04/2025 | accepted: 26/04/2025 | publication:28/04/2025

Principle of individualization of punishment from the perspective of the disciplinary regime differentiated

Principle of individualization of the penalty under the focus of the differentiated disciplinary regime

Fabricio Jordan Girondi Dornelles1
Igor Ferretti Rodrigues2
Helinton André Lunardi3
Tatiele Bandeira Mello4
Claudiomiro Domingos Bueno5

SUMMARY

This article seeks to address the principle of individualization of punishment within its execution phase, but without forgetting that it unfolds in three distinct, yet interconnected, moments, which will only be referred to. The first concerns legislative individualization, the second judicial individualization, and the third individualization of the execution of the punishment, which is the object of this study. On the other hand, Law No. 10,792 of December 1, 2003, which amended art. 54 of the Penal Enforcement Law and included the Differentiated Disciplinary Regime (RDD) in the Brazilian prison system, a regime that consists of a disciplinary sanction applied to those who committed the offenses described in art. 52 of the LEP, or represent a risk to the order and security of the penal establishment or society, as well as to those who participate in criminal organizations. From this perspective, the issue to be addressed is whether, with the application of the RDD, one of the guiding principles of serving a sentence is not being violated and whether the (un)constitutionality of the aforementioned Regime is being addressed.

Keywords: Principle of Individualization of Punishment. Differentiated Disciplinary Regime. LAW Nº 10.792/03.

ABSTRACT

This article seeks to work on the principle of individualization of the penalty within its executory phase, but without forgetting that it unfolds in three distinct moments, however, interconnected, which will only be referenced. The first concerns legislative individualization, the second judicial individualization, the third, the individualization of the execution of the sentence,

which is the object of this study. On the other hand, Law No. 10,792 of December 1, 2003 emerges, which amended art. 54 of the Penal Execution Law and includes the Differentiated Disciplinary Regime (RDD) in the Brazilian prison system, a regime that consists of a disciplinary sanction applied to those who have

1 State public servant in the area of public security. Graduated in Law from IESA / 2012 (Santo Ângelo Higher Education Institute).
2 State public servant in the area of public safety. Graduated in Administration from URI / 2008 (Integrated Regional University of Alto Uruguai and Missões);
3 State public servant in the area of public safety. Graduated in Administration from IESA / 2013 (Santo Ângelo Higher Education Institute).
4 State public servant in the area of public security. Graduated in Law URI / 2012 (Integrated Regional University of Alto Uruguai and Missões);
5 State public servant in the area of public security. Graduated in Administration – Management and Agroindustrial Business from IESA/2007 (Santo Ângelo Higher Education Institute).

committed the infractions described in art. 52 of the LEP, or represents a risk to the order and security of the criminal establishment or society, as well as to those who participate in criminal organizations. From this point of view, the question that we want to work on is whether, with the application of the RDD, one of the guiding principles of the fulfillment of sentences is not violated, and to deal with the (un)constitutionality of the referred Regime.

Keywords: Principle of Individualization of Punishment. Differentiated Disciplinary Regime. LAW NO. 10,792/03.

INTRODUCTION

This article aims to present the main aspects related to the principle of individualization of punishment, in addition to the application of the Disciplinary Regime Differentiated by observing this principle, and its possible (un)constitutionality.

To this end, a brief analysis is prepared on each of the phases of individualization of punishment (legislative, judicial and executive), providing an overview general overview of the main factors affecting the aforementioned principle and delimiting its scope within criminal law.

We have to establish this principle, the penalty must be individualized, avoiding standardization of criminal sanctions. For each crime there is a penalty that varies according to the personality of the agent, the means of execution and other factors that will be taken into account account of the moment of application of the phases of the sentence.

Despite the non-full application of the principles guiding the execution penal – especially the individualization of punishment – arose with the advent of Law No. 10.792/03 art. 54 of the LEP, which innovated by bringing to the legislation for the execution of the sentence the Differentiated Disciplinary Regime, which was initially created to educate inmates and isolate leaders of criminal factions so that there would be no risks to the prison unit.

The same is applied from two angles: in disciplinary nature (sanction in cases of prisoners who commit an act considered criminal) and on a preventive basis (isolation of the detainee who poses a high risk to the prison unit, such as a leader of criminal faction).

Thus, considering the situation of the Brazilian penitentiary system – which all we know it is chaotic and that it does nothing to contribute to the resocialization of the prisoner -, the legislator understood that a regime was necessary to toughen the sentence enforcement system, bringing stricter rules for prisoners, such as incarceration individual and the restriction of visits (“sacred” for the prisoner). With this, it was intended to

nullify or diminish the power of the most dangerous criminals, thus aiming to end with violence both inside and outside prisons.

In this context, the Differentiated Disciplinary Regime began to receive severe criticism, given the strict way in which prisoners subject to him. Therefore, the (un)constitutionality of this regime began to be questioned, since that it began to be argued that the regime violates a series of principles listed in the Federal Constitution of 1988, such as, for example, the principle of the dignity of human person and principles of criminal execution, such as the individualization of punishment.

In order to achieve the objectives listed above, this scientific article was carried out through the use, above all, of reading doctrines and articles, which consists in the literature published around the topic under analysis, such as books, magazines, publications loose and written press.

1 INDIVIDUALIZATION OF PENALTY: GENERAL ASPECTS

Criminal law was built uniquely and basically on the pillars that support the Federal Constitution and its principles, guiding the criminal norms created and those that may come into existence. Thus, any and all legislation that violates such principles must be banned from the legal system.

The choice for the principle of individualization of punishment is made at this moment because enshrines material equality and allows the application of proportional penalties to those who commit crimes, all in exact proportion to the circumstances in which they occurred. In this way the Differentiated Disciplinary Regime violates this principle and leaves prisoners in situations that often go beyond the rules contained in the Federal Constitution.

The application of a criminal sentence can be conceptualized as the consequence legal consequence resulting from the criminal practice. Such consequence consists of a sanction imposed by the Judiciary and enforced by the State itself – the convict remains in the custody of the State -, which is imposed on the perpetrator of the crime after the conclusion of a judicial process marked by the adversarial system, broad defense and other constitutional guarantees and cool.

This is what Juarez Cirino dos Santos states, defining criminal punishment as:

RCMOS - Multidisciplinary Scientific Journal of Knowledge.
ISSN: 2675-9128. Sao Paulo-SP.

> "The legal consequence of the crime, and represents, by nature and intensity, the measure of the disapproval of imputable subjects, for the unjustified performance of a type of crime, in a situation of awareness of the unlawfulness (real or possible) and the demand for different conduct that defines the concept of punishable act." (SANTOS, 2008, p. 538-539)

In this area, the person who committed the crime has a penalty imposed on him/her and that must be complied with, as they are generally provided for in art. 5, XLVI, of the Federal Constitution of 1988, also known as the article that enshrines the Principle of Individualization of Punishment, which provides the following:

> "The law shall regulate the individualization of the penalty and shall adopt, among others, the following: a) deprivation or restriction of liberty; b) loss of assets; c) alternative social provision; d) suspension or prohibition of rights".

It remains to be clarified that such a principle enshrined in the Federal Constitution is substantiated so that there is no arbitrariness in the application of criminal law at the moment of the sentence, with the judge having the duty to limit himself to the basic principles of the Charter Magna and the penal system itself.

The process of individualizing the sentence, as prescribed by the doctrine majority, is marked by three distinct moments, namely: individualization legislative, judicial and executive, where all moments are interconnected and complement each other. That said, it is extremely important to study these three moments.

1.1 LEGISLATIVE INDIVIDUALIZATION

Where the penalties for the aforementioned criminal norms are described by the ordinary legislator, that is, adapting each criminal type to an appropriate punishment, taking into account the most diverse aspects, both social, economic, ideological, among others. The legislator takes into account the protected and safeguarded assets. Then it takes to analyze the valuation of these assets according to their importance, and then set the penalty corresponding. Human life, always of greater protection, has a greater value, thus, the greater the importance of the protected asset, the higher the reprimand will be.

Likewise the teaching of Rogério Greco:

> "This selective phase, carried out by criminal types in the abstract plan, is called commination. It is the phase in which it is up to the legislator, within a political criterion, to value the assets that are being protected by Criminal Law, individualizing the penalty for each criminal offense according to its importance and severity." (Greco, 2000, p.71)

At this legislative moment, the path for the judge of the case defines the sentence, that is, the sentencing is carried out, analyzing the steps taken by the aggressor until the actual commission of the crime. This phase has great importance in criminal proceedings as it directly affects the enforcement process of penalty – third moment of individualization of the penalty.

1.2 JUDICIAL INDIVIDUALIZATION

This phase is linked to the determination of the sentence in a specific case, that is, the State response to the commission of a typical and unlawful act by a culpable agent.

The basic rules, which guide judicial individualization, are provided for in article 59 of the Penal Code. First, the judge must choose the applicable penalty from among the combined ones; then, the amount of the penalty to be applied must be established, within the limits provided for; the initial regime for serving the custodial sentence; replacement of the custodial sentence applied, with another type of sentence, if applicable.

When the judge complies with what is stated in article 59 of the Penal Code, individualizing the penalty, it sets the exact proportion between the crime and the criminal sanction corresponding – and should fit like a glove. In this way, you are ensuring that no judge arbitrarily applies the sentence and that the convicted person has an exact notion of how you will serve your sentence.

When analyzing article 59 of the Penal Code, Mirabete writes:

> "[…] according to the device under study, the judge must take into account, on the one hand, the 'culpability', the 'background', the 'social conduct' and the 'personality of the agent', and, on the other, the circumstances relating to the context of the criminal act itself, such as the 'motives', the 'circumstances of the crime', as well as the 'behavior of the victim'. In view of these elements, which reproduce the moral biography of the convicted person on the one hand, and the particularities surrounding the criminal act on the other, the judge must choose the type and amount of the applicable sanction, according to what seems necessary and sufficient to meet the purposes of the sentence." (Mirabete, 2000, p.293)

It is at the end of this phase that the length of the sentence and the regime are taken into consideration. initial compliance. Likewise, aggravating and mitigating circumstances, as well as as the causes for increasing and decreasing the sentence, provided for both in the Penal Code and in scattered laws applicable to each specific case.

1.3 ENFORCEABLE INDIVIDUALIZATION

This is where the individualization of the sentence will take place during its fulfillment. In this phase has the convicted person the right to several guarantees defined both in the Constitution Federal and in the Penal Execution Law and which must be taken into consideration to achieve the purposes of criminal execution provided for in Law No. 7,210/84 in its art. 1, “provide conditions for the harmonious social integration of the convicted person and the hospitalized”.

Thus, criminal execution has three main objectives: the first of which is the character repressive and punitive, that is, when penalizing the agent, what would be expected is that repay him for the harm caused by the criminal practice. The second is to create effects in the agent intimidating and preventive, that is, ensuring that individuals who have already committed crimes or even potentially criminal individuals do not commit new offenses. And the third objective and the most talked about nowadays, is the social reintegration of individual, that is, the idea of “regeneration” of the prisoner, so that after fulfilling the penalty no longer commits new crimes and lives adequately in his social environment.

The punishment will then be a kind of regeneration of the criminal agent. The purpose The greatest part of the criminal execution procedure is that, in the end, there is an individual resocialized, away from crime and ready to live peacefully in society and with your family – a very important pillar at this time. But for this to become in reality, the individualization of the sentence is extremely important, and can no longer what has been seen in Brazilian prisons, where prisoners convicted of small crimes, are taking up space with dangerous convicts and even prisoners provisional.

In all these aspects, and in addition to the overcrowding of prisons, we have the Regime Differentiated Disciplinary which often does not guarantee the individualization of the penalty condemned, as it restricts numerous rights that are provided for in the Constitution

RCMOS – Multidisciplinary Scientific Journal of Knowledge.
ISSN: 2675-9128. Sao Paulo-SP.

Federal and in the Penal Execution Law, but of extreme importance to curb abuses and negative influences occurring within prisons.

2 THE DIFFERENTIATED DISCIPLINARY REGIME

The Differentiated Disciplinary Regime (RDD) is provided for in article 52 of the Law of Criminal Enforcement, as amended by Law 10,792 of December 1, 2003, stating that:

> "the practice of an act considered as a willful crime constitutes a serious offense and, when it results in a breach of internal order or discipline, subjects the provisional prisoner, or convicted person, without prejudice to the criminal sanction, to a differentiated disciplinary regime, with the following characteristics: I - maximum duration of three hundred and sixty days, without prejudice to the repetition of the sanction for a new serious offense of the same nature, up to the limit of one sixth of the sentence applied; II - confinement in an individual cell; III - weekly visits of two people, not counting children, lasting two hours; IV - the prisoner will have the right to leave the cell for two hours a day to sunbathe".

Such a measure was necessary after several rebellions that occurred in São Paulo during the year. of 2001, when major leaders of criminal organizations who were held in prisons promoted, creating even greater chaos than they already were and continue to be Brazilian prisons.

Thus, in addition to the rebellions, the deaths of two execution judges occurred. criminal cases, one in Rio de Janeiro and another in Espírito Santo, attributed to powerful leaders that maintain and organize organized crime inside and outside Brazilian prisons, terrorizing the entire society.

Therefore, in this context, Law No. 10,792/03 was approved, which instituted the RDD aiming to remove or reduce the power of large criminal organizations, thus increasing the safety of the community and prisoners incarcerated in prisons, and also serving as a kind of punishment for those prisoners who did not obey to the rules.

For now, it is important to clarify that after the introduction of RDD into the legal system Brazilian legal system, there were many criticisms from both the doctrine and defense agencies of human rights, due to the unconstitutionality of this Law, as it would violate principles implicit in the Federal Constitution and in the Penal Execution Law (LEP) itself.

RCMOS - Multidisciplinary Scientific Journal of Knowledge.
ISSN: 2675-9128. Sao Paulo-SP.

On the other hand, the justifications used for the elaboration and implementation of such device within the LEP and the maintenance of prisoners in this regime, was the principle of proportionality, since only those prisoners who do not knew how to comply with prison rules, thus maintaining order within prisons and the tranquility of society. The subject will be better addressed in a separate chapter.

2.1 HOW RDD WORKS

The Differentiated Disciplinary Regime made the deprivation of liberty more severe some prisoners who fit into their level of influence within the prisons. Despite Furthermore, it cannot be considered as a new form of serving a sentence – it must be treated as an exception to serving a sentence - since the Penal Code itself establishes, expressly, the regimes in which this will occur, namely the open regime, semi-open and closed. Thus, the RDD is, simply, a disciplinary sanction that is imposed on those individuals who have committed an act considered as a willful crime that causes the subversion of internal order and discipline, as provided for in art. 54 of the LEP. We move on to the articles that support the RDD.

Thus, article 52 of the LEP prescribes:

> Art. 52. The practice of an act defined as a willful crime constitutes a serious offense and, when it causes subversion of internal order or discipline, subjects the provisional prisoner, or convicted person, without prejudice to the criminal sanction, to a differentiated disciplinary regime, with the following characteristics:
>
> I - Maximum duration of three hundred and sixty days, without prejudice to repetition of the sanction for a new serious offense of the same nature, up to the limit of one sixth of the sentence applied; II - confinement in an individual cell; III - weekly visits of two people, not counting children, lasting two hours; IV - The prisoner will have the right to leave the cell for 2 hours a day to sunbathe.
>
> § 1 The differentiated disciplinary regime may also house provisional or convicted prisoners, national or foreign, who present a high risk to the order and security of the penal establishment or society.
>
> § 2. The provisional prisoner or the convicted person who is suspected of involvement or participation, in any capacity, in criminal organizations, gangs or bands will also be subject to the differentiated disciplinary regime.

The hypotheses for applying RDD to the prisoner are exhaustive, since that the article itself defines to whom the sanction will be applied: to prisoners, both convicted, as provisional, that is, it is not necessary for the prisoner to have a criminal sentence

conviction against you to be subject to the RDD, you just need to be in custody penal establishment.

Among the reasons that lead the prisoner to serve the RDD sanction are: a) practicing serious misconduct consisting of an act provided for by law as a willful crime, and the aforementioned conduct must cause subversion of internal order or discipline; b) or, further, if the prisoner present a high risk to the order or security of the prison system or society; c) or, finally, if there are well-founded suspicions that the prisoner is participating in or involved with gangs, criminal organizations or gangs.

It should be noted that it is not enough for the prisoner to commit a serious offense that consists of a fact foreseen as a willful crime, but rather that this fact is capable of causing subversion of order and discipline, that is, they are cumulative criteria.

From this perspective, we collected the criticism of Guilherme de Souza Nucci:

> "Prisoners who commit an act considered to be a willful crime **(note: an act considered to be a crime, because if this were the provision, the final judgment of the Judiciary would have to be awaited, due to the presumption of innocence, which would make the speed and security required by the regime unfeasible),** considered a serious offense, will be sent to this regime, provided that it causes subversion of internal order or discipline, without prejudice to the applicable criminal sanction." (Nucci, 2010, p. 121)

Thus, in the criticism made by Nucci, one should wait for the final judgment of the crime for which the prisoner is being accused, taking into account the principle of innocence. But there would be no point in waiting for the prisoner to be convicted, because by doing so there would be no would have reason to be for the introduction of the new Law. Facts that motivate the application of the RDD require immediate and swift reprimand. If we take into account that it should be awaiting conviction for the act committed, the disciplinary sanction would have lost its effect practical, that is, to remove from the prison environment, which is often overcrowded, a negative influence.

As for the paragraphs of the aforementioned article 52, two new hypotheses follow for the inclusion of the prisoner in the RDD. In these cases, it is not necessary for there to be a commission of an act defined as a crime, only that the prisoner represents a high risk to order and security of the prison establishment or of society or that there are well-founded suspicions of involvement in gangs, bands or criminal organizations.

Art. 54 of the LEP provides for the competent authority to determine the entry of the prisoner into the RDD:

> Art. 54. The sanctions in items I to IV of art. 53 will be applied by a reasoned act of the director of the establishment and those in item V, by prior and reasoned order of the competent judge.
>
> § 1 Authorization for the inclusion of a prisoner in a disciplinary regime will depend on a detailed request prepared by the director of the establishment or other administrative authority.
>
> § 2.–The judicial decision on including a prisoner in a disciplinary regime will be preceded by a statement from the Public Prosecutor's Office and the defense and issued within a maximum period of fifteen days.

From this perspective, it is clear that only the director of the prison establishment can request the Execution Court to include the prisoner in the disciplinary sanction. Neither the representative of the Public Prosecutor's Office has the legitimacy to request. It is at the discretion of the Judge the determination of inclusion in the RDD, always in a reasoned decision.

Regarding the inclusion of the prisoner, Renato Marcão clarifies the following:

> "The decision on the inclusion of the prisoner in the differentiated disciplinary regime is jurisdictional, falling within the jurisdiction of the criminal enforcement judge. The magistrate cannot order the inclusion ex officio, and the Public Prosecutor's Office does not have the legitimacy to request the inclusion in the RDD. The legitimacy to request the inclusion of the prisoner in the RDD lies with the director of the penal establishment, where the target provisional or convicted prisoner is being held, or another administrative authority (...). The request must always be detailed, that is, substantiated (art. 54, §1, of the LEP). Once the request for inclusion has been submitted, the Public Prosecutor's Office and the Defense must express their views on it.
> It will then be up to the execution judge to issue his decision within 15 days (art. 54, § 2, of the LEP)." (Marcão, 2010, p. 69)

It is therefore observed that the Differentiated Disciplinary Regime is a system quite strict and punishes the prisoner in a very severe way, and for that very reason it is understood by many scholars as unconstitutional.

3 THE (UN)CONSTITUTIONALITY OF THE DISCIPLINARY REGIME DIFFERENTIATED IN THE FACE OF THE PRINCIPLE OF INDIVIDUALIZATION OF PITY

As already explained above, the Differentiated Disciplinary Regime was created in a moment of great social outcry for security and in the face of numerous threats made by within prisons by negative leaders who exercised power. In addition to these facts, the enormous distrust of society towards the national penitentiary system, generated a large-scale public insecurity, which underpinned the inclusion of RDD in the LEP.

There are many criticisms made by most doctrinaires about the inclusion of art. 52 in the LEP, as it would be violating the basic and guiding principles of Federal Constitution. In addition, it would also include measures that are clearly contrary to the objectives of the LEP.

Understanding that the RDD is unconstitutional, Cezar Bitencourt argues that:

> "In fact, in light of the new legal diploma, it is clear that the control bodies do not care about what is done (criminal law of the fact), but rather who does it (criminal law of the perpetrator). In other words, punishment is not for the actual practice, but rather for the quality, personality or character of the perpetrator, in an authentic Criminal Law of the perpetrator. In this sense, it is worth highlighting the perceptive lesson of Paulo César Busato, verbatim: "...the fact that an amendment to the Penal Execution Law appears with characteristics that do not provide guarantees has roots that go far beyond the intention of controlling discipline within the prison and represent, in fact, obedience to a political-criminal model that violates not only the fundamental rights of man (especially of the man serving a sentence), but is also capable of disregarding the very consideration of the criminal as a human being and even capable of replacing a model of Criminal Law of the fact with a model of Criminal Law of the perpetrator". (Bitencourt, 2012, p. 16

Such a statement could be accepted if there were not a wave of insecurity that generates revolt among the population and the consequent disbelief in institutions constituted that should combat crime. All this fear generated by criminal organizations, made the creation of the RDD necessary and urgent, because this institute, in addition to protecting society in general, also protects prisoners who are exposed to reprisals and intimidation.

In this sense, Cléber Masson, also corroborating the constitutionality of the regime:

> "However, this does not seem to us to be the right path. The regime is severe, rigid, effective in combating organized crime, but never inhumane. Quite the contrary, the determination of isolation in an individual cell, before offending, ensures the physical and moral integrity of the prisoner, preventing violence, threats, sexual promiscuity and other evils that plague the penitentiary system." (Masson, 2012, p.596)

In the understanding of jurist Antônio Alberto Machado, the RDD is being criticized and pointed out as unconstitutional, because it violates constitutional principles and for violating the basic objectives of the LEP. For him the only problem that needs to be solved by the State, and which also deserves special attention, which:

> "No matter how serious and creative disciplinary measures may be in prisons, prison overcrowding will always end up conspiring against the effectiveness of such measures, making it difficult to maintain discipline and order in the prison system. It is likely that any regimes

> disciplinary measures, including the differentiated disciplinary regime, will always run the risk of failure until a set of measures is implemented in Brazil public policies aimed at combating crime, as well as authentic criminal and penitentiary policies with the aim of eliminating terror and violence from prisons, ensuring effective criminal execution carried out within the limits of legality". (MACHADO, 2010, p.810)

Public Prosecutor Gilmar Bortolotto, on the need for the regime differentiated highlights that:

> "The so-called "differentiated disciplinary regimes" should not be understood as a form of sanction, but rather as a set of rules applicable to individuals whose persistent and repeated criminal conduct, in addition to negative leadership exercised after incarceration, require different penal treatment from that given to other prisoners. They consist of the exercise of greater control by the State. They cannot suppress rights, which would make them unconstitutional or illegal, but they can discipline the exercise of the rights provided for, making it compatible with the social danger represented by the prisoner who must submit to them. Their implementation partially makes up for the State's historical omission in complying with the principles of equality and individualization in the execution of custodial sentences. (Differentiated regimes, equality and individualization (Bortolotto, 2003, p. 01)

Thus, given the insecurity experienced by the population, the scrapping of the system prison, without due attention from both the State and the Judiciary, the position that is adopted is that the Differentiated Disciplinary Regime cannot be considered unconstitutional, as collective security must be taken into account.

The adoption of a stricter system of punishments for leaders of organizations criminals who command crime from within prisons must be faced in a serious and effective. It is not possible for the entire population to be at the mercy of individuals who exercise negative influence within the penal system.

Furthermore, the other inmates who are not part of the organizations they command prisons also feel threatened, as do their families, with the RDD indispensable for establishing discipline and order.

CONCLUSION

From everything mentioned above, from the numerous readings on the subject, it can be concluded that the Differentiated Disciplinary Regime will still bring many discussions, both by those who understand it to be unconstitutional because it violates basic criminal principles, such as by those who believe that this system is one of the only means to try to curb negative influences within Brazilian prisons.

Given the climate of insecurity experienced more and more in society, the RDD was a legislative and governmental option to respond to the population, as it exists in the imagination that the greater the punishment, the greater the possibility of resocialization, when what if you notice it is just the opposite.

The principle of individualization of punishment, combined with other guiding principles of the penal system, plays a very important role from this perspective. Because it is he who has the power to bring along with the sentence, the corrective function, of resocializing the prisoner so that he can live in society. Next, a classification of the incarcerated regarding the seriousness of the crime committed, after all a dangerous criminal does not should stay with someone who has committed a minor crime, as this negative influence only would undermine one of the main objectives of the LEP.

However, the reality of the facts experienced is not enough to legitimize the RDD, or that is, it is also necessary that this regime does not violate constitutional norms, observing if always the principles that govern the legal system.

Thus, after analyzing the principles and rights involved in this study, it is possible to conclude that the RDD does not violate constitutional precepts, since it is a response proportional to the offense suffered by society. In this way, the RDD puts into practice the principle of individualization of penalties as it treats prisoners who have transgressed the rules differently, personalizing and particularizing their penalties, however without impose on them a cruel, inhuman or degrading punishment.

It is concluded that the RDD is constitutional, as it does not violate the constitutional text, being a proportional, effective and necessary measure in the fight against organized crime, providing society with a little more peace and tranquility, at least while the State does not adopt public policies to reduce crime and chaos is created in Brazilian prisons is overcome.

REFERENCES

BITENCOURT, Cezar Roberto. **Treatise on Criminal Law.** 17th ed. São Paulo: Saraiva, 2012.

BORTOLOTTO, Gilmar. 2014, **Differentiated Regime, Equality and Individualization.**
Available at: http://www.memorycmj.com.br/cnep/palestras/gilmar_bortolotto.pdf.
Accessed on: May 20, 2016.

BRAZIL. Law No. 7210/1984. Penal Enforcement Law. Available at: http://www.planalto.gov.br/ccivil_03/leis/L7210compilado.htm.

GRECO, Rogério. **Criminal Law:** Lessons. 2nd ed. Rio de Janeiro: Impetus, 2000.

MACHADO, Antonio Alberto. **Criminal Procedure Course.** 3rd Ed. Updated and expanded. São Paulo: Editora Atlas, 2010

MARCÃO, Renato. **Criminal enforcement course.** 8th ed. rev. and updated. São Paulo: Saraiva, 2010.

MASSON, Cleber Rogério. **Criminal Law Outlined.** 6th ed.

MIRABETE, Julio Fabbrini. **Manual of Criminal Law:** general part. 16th ed. São Paulo: Atlas, 2000.

NUCCI, Guilherme de Souza. **Commented Criminal and Procedural Laws. 5th** ed. rev., updated. and expanded. São Paulo: RT, 2010.

SANTOS, Juarez Cirino dos. **Criminal Law: General Part.** 3rd Ed. Curitiba: Editoria Lumen Juris, 2008.

The differentiated disciplinary regime: critical notes on the reform of the Brazilian punitive system. Salo de Carvalho and Christiane Russomano Freire

CARVALHO, Salo de (Coord.). **Criticism of criminal enforcement.** 2nd ed. Rio de Janeiro: Lumen Juris, 2007.