ATYPICAL CRIMINAL SANCTIONS WITHIN THE SCOPE OF PLEA BARGAINING: LEGALITY?

ORIGINAL ARTICLE

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ABSTRACT

This paper aims to analyze the possibility of establishing atypical criminal sanctions within the scope of plea agreements. In this context, the clash between legality and autonomy of will is debated in relation to the formulation of extralegal penalties, reflecting on the premise of whether or not there is a need to establish legal rationalization in order to set limits to the inherent discretion in the formalized agreement between the parties. Finally, after the decision-making process, the current jurisprudential position and the proposed conclusion will be presented.

Keywords: Plea Agreement, Atypical Sanctions, Autonomy of Will, Legality.

INTRODUCTION

There is a tendency, not only in the Brazilian scenario but also internationally, to expand consensus spaces[2] in criminal proceedings through the acceptance of agreements in criminal justice. This concept has been developed to address the crisis that hangs over criminal prosecution due to its inefficiency and lack of swiftness (FERNANDES, 2007, p. 55; VASCONCELLOS, 2015, p. 19).

The great dilemma of criminal proceedings is to coordinate the necessary respect for fundamental rights while also achieving a more efficient criminal system. However, efficiency does not mean ensuring stricter criminal sanctions or granting a greater

number of punishments; instead, it seeks a balance, ensuring a fair outcome within a reasonable time, simultaneously upholding the accused's rights (FERNANDES, 2009, p. 9-10).

Thus, the incentive (benefit) offered to the accused for their cooperation – "adopting cooperative stances with authorities" (LUAND, 2008, p. 47-48) – constitutes an effective instrument[3] to combat certain investigations involving criminal offenses lacking eyewitnesses (BOTTINO, 2016, p. 360). This approach benefits not only the parties involved but also improves the "quality of the produced evidentiary material" (MENDONÇA, 2013, p. 2).

In this context, Law No. 12.850/2013 regulated the procedural aspects of plea agreements, albeit in a very imprecise manner, raising doubts about practical formulations (VASCONCELOS, 2022, p. 21). The forensic practice of adopting the model of negotiated justice has often led to the granting of penalties without legal provisions (atypical) to escape the legal boundaries established, through the creation of criminal sanctions not even established by law.

In this context, the scope of this article is to analyze, based on concrete situations, the legal possibility of stipulating unprecedented penalties (devoid of legal provisions) based on autonomy of will or whether this is infeasible due to a conflict with the principle of legality. In other words, it investigates whether legality imposes filters and limits on the establishment of sanctions.

There is a significant practical impact in discussing this issue, as the approval of the plea agreement binds not only the parties to the agreed content but also the judicial authorities themselves (BOTTINO, 2016, p. 374).

In short, as Vinícius Vasconcelos states: "Are such attitudes contrary to legality acceptable?"(VASCONCELLOS, 2022, p. 21).

BENEFITS ESTABLISHED BY LAW (PRACTICAL EROSION):

According to the provisions of Law No. 12.850/2013, only the pre-established penalties that can be granted to the collaborator were stipulated, including: (i) granting of judicial pardon[4]; (ii) reduction of the custodial sentence by up to 2/3 (two-thirds); (iii) substitution for alternative sanctions; and (iv) after the sentence (execution phase), reduction of the sentence by half or progression of the regime, even in the absence of the objective requirements.

According to Guilherme de Souza Nucci, the "option should take into consideration the degree of cooperation of the informant, as the broader the benefit to the interests of the State, the greater their reward should be" (NUCCI, 2021, p. 76).

Concluding the legal possibilities reserved for specific cases, it is possible to grant procedural immunity, which implies not filing charges for an unknown criminal offense against public authorities, targeting a collaborator who is not the leader of the organization and is the first to provide effective cooperation (MENDONÇA, 2017, p. 74).

Another aspect to be considered is the possibility of granting other premial sanctions provided for in criminal law, which also regulate plea agreements. We adhere to the position that allows the application of benefits stipulated in other laws that regulate the same subject matter due to them also being subject to legality, forming what has been conventionally termed the "microsystem of plea agreements" (MENDONÇA, 2017, p. 76).[5]

From this perspective, for example, it would be possible to grant a more favorable initial regime (open or semi-open) than the initially provided under legal conditions, based on Law No. 9.613/1998.

Furthermore, we do not see any impediment to granting cumulative or simultaneous benefits to the same collaborator, such as reducing the sentence by 2/3 and subsequently replacing it with alternative sanctions, or "granting immunity for some of

the acts while providing the benefits prescribed for the remaining acts" (MENDONÇA, 2017, p. 76).

Although there is a contrary viewpoint arguing the potential risk of establishing "symbolic penalties" (NUCCI, 2021, p. 77), in our view, this represents a logical development of consensual justice, offering more room for the parties to compromise within the established legal parameters, as well as functioning as a greater incentive for prospective collaborators to contribute more effectively to the efficiency of the criminal process (MASSON, 2020, p. 189; GOMES; SILVA, 2015, p. 278).

However, despite the legislation precisely establishing premial sanctions, even within the concept of the microsystem of plea agreements, agreements have been reached, especially during the Lava Jato Operation, establishing penalties beyond legal limits and some of them lacking legal basis, thus not adhering to the rules established by law. This operation was initiated to investigate corruption and money laundering practices within the largest state-owned company in the country, Petrobras, through a cartel formed among construction companies that provided undue advantages to public officials in exchange for favoritism in public contracts. In this context, entrepreneurs, directors of construction companies, and even public officials entered into a series of plea agreements, establishing benefits that exceed legal boundaries, some of them devoid of legal basis, failing to observe the legal regulations, such as the determination of the *quantum* of the sentence in violation of the principle of individualization of punishment (a task to be performed exclusively by the judge in the sentence), to be served in different regimes and with contrary progression hypotheses to our legislation, impossibility of appeal, non-prosecution of relatives of informants, non-investigation of other crimes, exclusion of forfeiture of assets from illicit activities, etc. (CORDEIRO, 2020, p. 98).

As an example, we can mention clause 5, item I, subparagraphs b and c, of the agreement approved by the Brazilian Federal Supreme Court in Petition 5,210[6], which established the completion of the custodial sentence with a semi-open regime

within a range of zero to two years, with subsequent progression to an open regime until the total sentence is served.

In another case, deviating from legal contours, we have clause 5, paragraph 1, of the agreement approved by the Brazilian Federal Supreme Court in Petition 6,138[7], which defined the maximum sentence as twenty years to be served, regardless of compliance with articles 33 and 48 of the Brazilian Penal Code, two years and three months in a differentiated closed regime, and finally, nine months in a differentiated semi-open regime (VASCONCELLOS, 2022 p. 206).

With the approval of the Brazilian Federal Supreme Court, in the Habeas Corpus No. 127,483/PR, one of the extrapenal effects of the conviction regarding the forfeiture of assets resulting from crime was mitigated, allowing the use of assets by the informant's family members (armored vehicles and real estate), under the justification that the State would be relieving itself of the duty to provide material assistance to the collaborator and their family.[8]

WILL AUTONOMY VS. LEGALITY:

Despite plea agreements having the nature of a procedural legal transaction (Brazil 2013)[9], they are not subject to the broad contractual freedom to establish agreement terms as seen in the realm of private law. The inherent will autonomy of legal transactions is subject to normative limitations derived from the public nature of the agreement, conditioned by the legal limits imposed by the legal system itself (CORDEIRO, 2020, p. 97; CALLEGARI; LINHARES, 2021, p. 26).

According to Didier Júnior and Bomfim, "in no area of law can one speak of unbounded self-regulation; on the contrary, self-regulation presupposes a space allocated to the individual" (DIDIER; BOMFIM, 2016, p. 191). Therefore, the boundaries of the parties' actions in plea agreements must respect the strictly defined space in the law, and they cannot negotiate (or even invent) premial sanctions not provided for or allowed by the system.

As observed by way of example, the Lava Jato Operation created a series of extralegal sanctions that deviate from the regime established in the Penal Code and the Law of Penal Execution. However, this stance finds support in some rulings of the Brazilian Federal Supreme Court, such as in the Regimental Appeal in Inquiry No. 4,405/DF:

> O princípio da legalidade veda a imposição de penas mais graves do que as previstas em lei, por ser garantia instituída em favor do jurisdicionado em face do Estado. (...) não viola o princípio da legalidade a fixação de penas mais favorável (...) (BRASIL, 2018, p.2).

With all due respect, we cannot agree with the mentioned stance, as the principle of legality cannot be exceptioned to function as an escape valve to justify certain situations. Its application is mandatory and cannot be flexibilized to impose penalties not provided for by law, even if they are more favorable to the accused. The principle of legality dictates that a penalty must be established by law before the commission of the act, in order to provide awareness and prevent surprises at the time of its imposition. Thus, it prevents the creation of penalties without legal provision, even if established in favor of the accused for being more favorable, and symbolizes undue interference with the functions attributed to the Legislative Power, by allowing the Judiciary to create a new law.

The law functions as a limiter of state action, as emphasized by Guilherme de Souza Nucci, "exists to establish the fair measure of the state organ's action" (NUCCI, 2021, p. 78). Even though it grants a certain discretion to regulate the content of plea agreements, the freedom to act is confined to the limits set within the legal stipulation, preventing the choice of penalties not provided for by law, even under the eventual justification of benefiting the accused. In the same vein, Callegari and Linhares state: "The binding to legality is an unremovable requirement" (CALLEGARI; LINHARES, 2021, p. 159).

Despite the argument seeming appealing, the determination of the penalty has its delineation in prior law, deriving exclusively from that singular normative source. Thus, no other type of norm could impose penal sanctions, much less plea agreements.

Legality dictates the impossibility of applying a penal sanction other than that stipulated by law, whether it's innovative, improved, or favorable in nature.

There are authors who advocate for the flexibility of the accused's safeguards, including legality, arguing that they would not be fully applicable in the realm of consensual proceedings as they are geared towards scenarios where there's a conflict between parties. Therefore, they advocate for a differentiation between traditional and consensual proceedings, arguing that the latter would infringe upon those established rights (MENDONÇA, 2017, p. 68).

Although we recognize differences between traditional and consensual proceedings, we do not share this position. Even if they encompass different procedures, some of which involve the potential for the acceleration of penalties or even the transformation of an accused into a collaborator in exchange for benefits, fundamental guarantees cannot be flexibilized in any way, under penalty of "tendency to contaminate the entire system in opposition to traditional guarantees" (VASCONCELLOS, 2022, p. 48).

To curb the significant violation of fundamental guarantees and the systemic disregard for legality, the Anti-Crime Package, through Law No. 13,965/2019, inserted provisions into Law No. 12,850/2013 that limit negotiative autonomy, making it explicit that the discretion granted to agreements is subordinate to legality. Particularly concerning the possibility of stipulating atypical premial penalties, the legislative intent was clarified to prohibit the granting of benefits not stipulated by law, not signaling the possibility of creating other modalities, in order to "prevent the circumvention of current penal norms" (NUCCI, 2021, p. 78). According to Callegari and Linhares, "even less room was left for problematizing the definition of extralegal premial sanctions" (CALLEGARI; LINHARES, 2021, p. 159).

This legislative enactment directs the judge to exercise control over the legality of the sanctions provided for in the law and the clauses established within the plea agreement, deeming null those that violate the rules of the initial execution of the penalty, the regulations of the envisaged regimes (establishment of differentiated

regimes), and the requirements for the progression of regimes established in Law No. 12,850/2013.

It is important to emphasize that the motivation behind this legislative change sought to curb abuses seen in agreements entered into within the scope of the Lava Jato Operation (NUCCI, 2021, p. 78; CALLEGARI; LINHARES, 2021, p. 159). However, despite the clarity of the change brought about by the Legislative Power, in October 2022, the Superior Court of Justice's Special Court, in the judgment of Petition 13,974, circumvented the legal norm and allowed for the establishment of milder atypical penal sanctions in a plea agreement. According to its terms, a maximum sentence of twelve years of imprisonment was stipulated, as well as differentiated criteria for the execution regime (house arrest) and for regime progression (shorter periods than legally required).

Although initially the Rapporteur, Justice Nancy Andrighi, denied the approval of the plea agreement due to the violations of the Anti-Crime Package, the Special Court, in analyzing the Internal Appeal against the Rapporteur's decision, through the dissenting vote of Justice Og Fernandes, upheld the appellate challenge and returned the case to the Rapporteur for review and approval of the proposed agreement.

The judicial pronouncement was given by majority vote, six to five, based on the premise that legality cannot constitute a guarantee for the accused against the State, and cannot be used to their detriment. Based on this premise, the flexibility of the law to stipulate atypical penal sanctions, provided they are more favorable, was admitted.

The dissenting judges argued that the admission of atypical sanctions, as stipulated in the specific case, after the changes made by the Anti-Crime Package, would imply asserting that the law is no longer applicable or has lost its validity. In this context, Justice Maria Thereza de Assis Moura criticized:

> Assim, nós revogamos a lei ou vamos passar a entender que tudo pode, que não há nenhum limite e que portanto não precisamos da lei (CONSULTOR JURÍDICO, 2022).

In forensic practice, it is observed that the relevance of the matter addressed assumes great prominence in promoting the emptying of legality. Nonetheless, when addressing the subject, Virgilio Afonso da Silva warns that

> (..) importância de determinadas pautas não é razão suficiente para transferir ao STF uma competência decisória que ele não possui (SILVA, 2021, p. 147-148).

CONCLUSION

In this scenario, debating the subject still holds significant relevance, as even though an important precedent has been established by the Special Court of the Superior Court of Justice, the majority of its members do not comprise the Criminal Panels, a circumstance that will continue to spark much debate given the changes brought about by the Anticrime Package.

Under these circumstances, we advocate for the imperative need to establish filters and limitations on plea bargain agreements through legality checks, especially regarding the imposition of premial sanctions, in order to rationalize their applicability and provide a control mechanism for the inherent discretion of the institution.

Legal criteria cannot yield to autonomy of will, even under the pretext of benefiting the accused or making the agreement more attractive, to the extent of granting the faculty to create atypical penal sanctions. Collaboration, by removing the accused's position of resistance in criminal proceedings, must respect legality, so that there is a correspondence between the penalties, regimes, and conditions for progression provided by law and those stipulated in the agreement. The law dictates the limits and content of the negotiation autonomy.

Resorting to the theory of implied powers, based on the idea that he who can do more (grant judicial pardon) can also do less (impose minor sanctions lacking legal basis), disregards legal certainty by overlooking penalties previously set by law, and facilitates illegitimate actions by the Judiciary.

Although we share the concept of a microsystem of plea bargaining, with the possibility of granting benefits provided in other legislations, representing a greater incentive to encourage the agreement's realization and conferring negotiating discretion to the participating parties, even with the possibility of imposing cumulative and successive sanctions, they are all strictly subject to legality.

Thus, all premial sanctions are explicitly stipulated in the legal system, precluding the granting of extralegal benefits, due to the principle of legality, which prevents the judicial creation of penalties without legal basis, even if more advantageous to the accused, under the risk of invading the sphere of action of other constituted Powers.

The legal text represents an impassable limit for any discretion developed in plea bargaining. Certainly, the exercise of consensual justice does not turn the Judiciary into a creator of penalties without normative basis, but rather a guarantor of the Law itself created by the established Powers. In a democracy, all judges are placed "under the rule of law."

In short, the law constitutes the limit and scope of action for the public agent, and it cannot go beyond or fall short of what was strictly stipulated by the legal norm. In the context of Criminal Procedural Law, the autonomy of will cannot prevail over the criterion set by law, especially to create penalties not established by the Legislative Power, even if it is to favor the accused. Thus, negotiating autonomy is limited by the criteria defined in the law; even if it grants certain discretion, it cannot surpass the predefined boundaries. The penalty's only source is the law, only such a normative species can define it and set its enforcement contours, under the risk of granting the Judiciary the power to create a new law.

Therefore, by admitting only typical premial sanctions, it is incumbent upon the judge, during the homologation stage, to exercise legality control over the agreements between the parties, to recognize the nullity of clauses contrary to normative provisions and not endorse the agreement. Otherwise, if illegality is not recognized in due time, the negotiated provision will have to be applied during the trial.

REFERENCES

BRASIL. Decreto-lei nº 2.848, de 7 de dezembro de 1940. **Código Penal**. Disponível em: <https://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm>. Acesso em: 22 nov. 2022.

BRASIL. Lei nº 9.613, de 3 de março de 1998. **Dispõe sobre os crimes de "lavagem" ou ocultação de bens, direitos e valores; a prevenção da utilização do sistema financeiro para os ilícitos previstos nesta Lei; cria o Conselho de Controle de Atividades Financeiras - COAF, e dá outras providências.** Disponível em: <https://www.planalto.gov.br/ccivil_03/Leis/L9613.htm>. Acesso em: 22 nov. 2022.

BRASIL. Lei nº 12.850, de 2 de agosto de 2013. **Define organização criminosa e dispõe sobre a investigação criminal, os meios de obtenção da prova, infrações penais correlatas e o procedimento criminal**. Disponível em: <http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12850.htm>. Acesso em: 21 nov. 2022.

BRASIL. Lei nº 7.210, de 11 de julho de 1984. **Institui a Lei de Execução Penal**. Disponível em: <https://www.planalto.gov.br/ccivil_03/leis/l7210.htm>. Acesso em: 24 nov. 2022.

BRASIL. Lei nº 13.964, de 24 de dezembro de 2019. **Aperfeiçoa a legislação penal e processual penal**.. Disponível em: <https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/l13964.htm>. Acesso em: 25 nov. 2022.

BRASIL. Supremo Tribunal Federal – STF. **Habeas Corpus nº 127.483/PR**. Relator Ministro Dias Toffoli, Plenário, 27 de agosto de 2015. Disponível em: <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=10199666). Acesso em: 23 nov. 2022.

BRASIL. Supremo Tribunal Federal – STF. **Agravo Regimental no Inquérito nº 4.405/DF**. Relator Ministro Roberto Barroso, 27 de fevereiro de 2018. Disponível em: <https://peticionamento.stf.jus.br/api/peca/recuperarpdf/314043671>. Acesso em: 25 nov. 2022.

BRASIL. Ministério Público Federal. Procuradoria-Geral da República . **Termo de Acordo de Colaboração Premiada de José Sérgio Machado**, homologado em 25 de maio de 2016.. Disponível em: <https://www.conjur.com.br/dl/peca-pet-6138.pdf>. Acesso em: 22 nov. 2022.

BRASIL. Ministério Público Federal. Procuradoria-Geral da República. **Termo de Acordo de Colaboração Premiada de Paulo Roberto Costa**, homologado em 27 de agosto de 2014. Disponível em: <https://s.conjur.com.br/dl/acordo-delacao-premiada-paulo-roberto.pdf>. Acesso em: 22 nov. 2022.

BOTTINO, Thiago. **Colaboração Premiada e incentivos à cooperação no processo penal:** uma análise crítica dos acordos firmados na "Operação Lava Jato". São Paulo: Revista Brasileira de Ciências Criminais, v. 24, n. 112, ago. 2016.

CALLEGARI, André Luís; LINHARES, Raul Marques. **Colaboração premiada:** lições práticas e teóricas (de acordo com a jurisprudência do Supremo Tribunal Federal). 3. ed. Rio de Janeiro: Marcial Pons, 2021.

CAPEZ, RODRIGO. A sindicabilidade do acordo de colaboração premiada. In: MOURA, Maria Thereza de Assis; BOTTINI, Pierpaolo da Cruz (Coord.). **Colaboração premiada**. São Paulo: Revista dos Tribunais, 2017.

CARVALHO, Natalia Oliveira. **A delação premiada no Brasil**. Rio de Janeiro: Lumen Juris, 2009.

CAVALI, Marcelo Costenaro. Duas faces da colaboração premiada: visões "conservadora" e "arrojada" do instituto da lei 12.850/2013. In: MOURA, Maria Thereza de Assis; BOTTINI, Pierpaolo da Cruz (Coord.). **Colaboração premiada**. São Paulo: Revista dos Tribunais, 2017.

CORDEIRO, Nefi. **Colaboração premiada: caracteres, limites e controles**. Rio de Janeiro: Forense, 2020, E-book.

DIDIER JÚNIOR, Fredie; BOMFIM, Daniela. Colaboração premiada (Leo nº 12.850/2013): natureza jurídica e controle de validade por demanda autônoma - Um diálogo entre o Direito Processual Civil. In: CABRAL, Antônio do Passo; PACELLI, Eugênio; CRUZ, Rogério Schietti (Coord.) **Processo Penal (Repercussões do Novo CPC)**. Salvador: JusPodivm, 2016.

FERNANDES, Antonio Scarance. O equilíbrio na repressão ao crime organizado. In: FERNANDES, Antonio Scarance; ALMEIDA, José Raul Gavião; MORAES, Maurício Zanoide de (coord.). **Crime organizado: aspectos processuais**. São Paulo: Revista dos Tribunais, 2009.

FERNANDES, Antonio Scarance. **Processo penal constitucional**. 5.ed. São Paulo: Revista dos Tribunais, 2007.

GOMES, Luiz Flávio; SILVA, Marcelo Rodrigues da. **Organização criminosas e técnicas especiais de investigação – questões controvertidas, aspectos teóricos e práticos e análise da lei 12.850/2013**. Salvador: JusPodivm, 2015.

LAUAND, Mariana de Souza Lima. **O valor probatório da colaboração processual**. Dissertação (Mestrado em Direito) – Faculdade de Direito, Universidade de São Paulo, São Paulo, 2008.

MASSON, Cleber; MARÇAL, Vinicius. **Crime organizado.** 5. ed. Rio de Janeiro: Forense, 2020.

MENDONÇA, Andrey Borges. A colaboração premiada e a nova Lei do Crime Organizado (Lei 12.850/2013). **Revista Custos Legis**. Rio de Janeiro, v. 4, [s.n.], p. 1-38, 2013.

MENDONÇA, Andrey Borges. MOURA, Maria Thereza de Assis; BOTTINI, Pierpaolo da Cruz**.** Os benefícios possíveis na colaboração premiada: entre a legalidade e a autonomia da vontade. In: (Coord.). **Colaboração premiada**. São Paulo: Revista dos Tribunais, 2017.

NUCCI, Guilherme de Souza. **Organização Criminosa**. 5. ed. Rio de Janeiro: Forense, 2021.

PEREIRA, Frederico Valdez. **Delação premiada**. **Legitimidade e procedimento**. 3. ed. Curitiba: Juruá, 2016.

SILVA, Virgílio Afonso da. **Direito constitucional brasileiro**. 1. ed. São Paulo: Editora da Universidade de São Paulo, 2021.

VASCONCELLOS, Vinicius Gomes de. **Colaboração premiada no processo penal**. 5. ed. São Paulo: Revistas dos Tribunais, 2022, p. 206.

VASCONCELLOS, Vinicius Gomes de. **Barganha e justiça criminal negocial: análise das tendências de expansão dos espaços de consenso no processo penal**. São Paulo: Revista Brasileira de Ciências Criminais, 2015.

VITAL, DANILO. STJ valida acordo de colaboração premiada com sanções penais atípicas. **Revista Consultor Jurídico**, 6 de outubro de 2022. Disponível em: <https://www.conjur.com.br/2022-out-06/stj-valida-colaboracao-premiada-sancoes-penais atipicas>. Acesso em: 25 nov. 2022.

APPENDIX - FOOTNOTE REFERENCES

2. "(...) a model guided by the acceptance (consensus) of both parties – prosecution and defense – to a procedural collaboration agreement with the defendant stepping away from their position of resistance, generally imposing early closure, abbreviation, full or partial suppression of some phase of the process, primarily aimed at facilitating the imposition of some penal sanction with a certain percentage of reduction, which characterizes the benefit to the accused due to the waiver of the due course of the process with all inherent guarantees" *(VASCONCELLOS, Vinicius Gomes de. **Barganha e justiça criminal negocial: análise das tendências de expansão dos espaços de consenso no processo penal**. São Paulo: Revista Brasileira de Ciências Criminais, 2015, p. 55)*

3. "Its relevance is indisputable: through plea bargaining, the Federal Police and the Federal Public Prosecutor's Office have managed to comprehend, demonstrate, and prove the functioning of complex criminal corruption schemes that probably would never be unveiled through traditional means of investigation" *(CAVALI, Marcelo*

Costenaro. Duas faces da colaboração premiada: visões "conservadora" e "arrojada" do instituto da lei 12.850/2013. In: MOURA, Maria Thereza de Assis; BOTTINI, Pierpaolo da Cruz (Coord.). ***Colaboração premiada****. São Paulo: Revista dos Tribunais, 2017, p. 256).*

4. "(...) denaturation of the figure of judicial pardon, an extinction of punishment dissociated from premial connotation, but essentially linked to the impossibility of the penal sanction fulfilling any of its functions due to the greater pain suffered by the agent himself" *(CARVALHO, Natalia Oliveira.* ***A delação premiada no Brasil****. Rio de Janeiro: Lumen Juris, 2009, p. 106).*

5. In contrast: "The combination of laws is not viable, as a third law would emerge, never foreseen by Parliament" *(NUCCI, Guilherme de Souza.* ***Organização Criminosa****. 5. ed. Rio de Janeiro: Forense, 2021, p. 81).*

6. BRASIL. Ministério Público Federal. Procuradoria-Geral da República. ***Termo de Acordo de Colaboração Premiada de Paulo Roberto****, homologado em 27 de agosto de 2014. 2014. Disponível em: <https://s.conjur.com.br/dl/acordo-delacao-premiada-paulo-roberto.pdf>. Acesso em: 22 nov. 2022.*

7. BRASIL. Ministério Público Federal. Procuradoria-Geral da República. ***Termo de Acordo de Colaboração Premiada de José Sérgio Machado****, homologado em 25 de maio de 2016. 2016. Disponível em: <https://www.conjur.com.br/dl/peca-pet-6138.pdf>. Acesso em: 22 nov. 2022.*

8. "(...) some sort of concession in the financial realm can be admitted only in the case of granting judicial pardon, considering the nature of the sentence granting the extinction of punishment based on art. 107, inc. IX of the Penal Code"*(PEREIRA, Frederico Valdez.* ***Delação premiada****.* ***Legitimidade e procedimento****. 3. ed. Curitiba: Juruá, 2016, p. 151).*

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