

Scientific Journal of Applied Social and Clinical Science

NON-PROSECUTION AGREEMENT: THE IRRELEVANCE OF THE CONFESSION REQUIREMENT FOR THE FILING OF THE ANPP¹

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¹ This article is the result of a course conclusion work presented to ``Universidade Católica Dom Bosco``, under the methodological guidance of Prof. Me. José Manfroi and thematic orientation of Prof^a. Ma. Andrea Flores, as a partial requirement for obtaining a bachelor's degree in Law at: ``Universidade Católica Dom Bosco``.

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Abstract: This work on the formal and circumstantial confession, required from the investigated in order to enable the conclusion of the non-criminal prosecution agreement introduced by law 13,964/2019 in the dynamics of negotiated criminal justice, has the purpose of analyzing its main developments in the legal scenario in light to conclude that it is irrelevant to be addressed as a requirement in the text of article 28-A of the Code of Criminal Procedure, also possible and main consequences arising. To this end, the deductive method was used with bibliographical research in books, dissertations, monographs and articles provided via the internet. It was concluded that such a requirement in the legislation aims to benefit the State much more by obtaining a quick and risky punitive response, with no significant benefits for the investigated being seen, nor showing itself to be essential to the success of the agreement.

Keywords: 1: Non-Criminal Prosecution Agreement. 2. Law 13,964/2019. 3. Negotiable Criminal Justice. 4. Confession Requirement. 5. Relevance.

INTRODUCTION

The enacted law 13,964/19, called the Anti-Crime Package, brought with it controversial penal and criminal procedural reforms that are the result of debates between legal scholars and scholars to this day. Among those, there is the wording of article 28- The person responsible for introducing the non-criminal prosecution agreement into the Code of Criminal Procedure and, more specifically, within the scope of the so-called negotiated criminal justice, reputed for the characteristics of the agreements signed between the accusing body and the agent so that there is no proposition of a criminal action, so that the person being investigated receives, at the end of the stipulated period, a

benefit if they have complied with the terms set in court.

In this context, the present work aims to analyze the relevance of formal and circumstantial confession as a condition for the investigated person, who committed a criminal offense without violence or serious threat and with a minimum sentence of less than 4 (four) years, to receive the benefit of extinction of punishment assured in the content of § 13.

Thus, to study the topic, the deductive method will be used, through which the requirements of the non-criminal prosecution agreement and other so-called decriminalizing measures existing in the Special Criminal Court scenario will be analyzed, namely, the criminal transaction and suspension conditional of the process, in order to conclude about the irrelevance and dispensability of demanding that the person being investigated confess in a pre-procedural phase.

Thus, the first item is reserved for the analysis of the context in which the Anti-Crime Package was inserted, as well as the objective behind the promulgation of the respective law, and in an individualized way to expose the concept and legal nature of the non-criminal prosecution agreement.

The second item, in turn, is intended for comparative examination with other consensual institutes offered to those investigated within the scope of JECRIM, studying some of the similar and distinct points of both.

In the third item, the focus is brought to develop the main characteristics of the confession in light of interpreting it for its probative value in order to direct reflection on whether, in fact, it is relevant to proposing the agreement. Also, a brief overview of constitutional guarantees in the criminal process and their differences with the

dynamics of negotiated justice.

Finally, the fourth and final item is reserved to, after the entire line of development, clearly conclude that there is no reason to demand the confession of the person being investigated as a condition for proposing the ANPP, as well as briefly exposing the risk of agreements for those investigated, especially the innocent.

LAW 13,964/19: THE ADVENT OF THE ANTI-CRIME PACKAGE

Before delving into the concept, requirements, and nature of the main theme addressed here, it is important to briefly and succinctly highlight the context in which the non-criminal prosecution agreement was born, as well as what the main objective behind the promulgation of Law 13,964/19 that encompasses it.

From the birth of Law 13,964/19, in turn, commonly called the anti-crime package, Fabretti and Smanio (2021, p. 1-2) teach that the content of its text originated from the intention of harmonizing one of the bills drawn up in the so-called "Commission of Jurists" held on May 8, 2018, under the presidency of Minister Alexandre de Moraes, namely, PL 10.372/2018, and the subsequent bill registered under the number 882/2019, presented the following year by the Minister of Justice to the National Congress.

The matter presented in the respective bill of the aforementioned committee had the objective of introducing changes in criminal and criminal procedural legislation to improve the fight against organized crime, drug trafficking crimes, weapons trafficking and private militia, crimes committed with violence or serious threat and heinous crimes, as well as to streamline and modernize criminal investigation and criminal prosecution.

On the other hand, the Minister of Justice's project amended the Penal Code and the Code of Criminal Procedure in many aspects,

as well as other legislation, for example, the Criminal Execution Law, aiming to establish measures against corruption, organized crime and crimes committed with serious violence against a person.

In these terms, it is understood that both texts, although they had their divergences and agreements, needed unification in order to implement the planned reforms. Still based on the teachings of Fabretti and Smanio (2021, p. 2-3), based on the aforementioned assumption, a third text was created, coming from a report prepared by the so-called Working Group, formed by fifteen deputies appointed by Rodrigo Maia, former president of the Chamber of Deputies, to harmonize the proposals previously prepared.

Being sanctioned, despite twenty-four vetoes by the presidency that were later overturned, the matter of the so-called alternative report came into force on January 24, 2020, finally, under the number 13.964/19.

In this context, it can be stated that article 1 of the respective law reflects its main objective, albeit in a generic way, as it writes its purpose, which is to improve criminal and criminal procedural legislation, in verbis: "Article 1st This Law improves criminal and criminal procedural legislation".

CONCEPT AND LEGAL NATURE OF THE ANPP

Within the legislation presented above, the non-criminal prosecution agreement remained constituted in the content of article 3, responsible for determining changes within the Criminal Procedure Code. Thus, the drafting adds article 28-A and discusses the hypothesis, with the appropriate requirements to be fitted in each specific case, that will allow the ANPP to be proposed, with the following provisions being provided:

Article 28- A. If there is no case to be closed and the person being investigated has

formally and circumstantially confessed to committing a criminal offense without violence or serious threat and with a minimum sentence of less than 4 (four) years, the Public Prosecutor's Office may propose an agreement not to prosecute, provided that necessary and sufficient for the disapproval and prevention of crime, subject to the following conditions adjusted cumulatively and alternatively: [...]

This way, the non-criminal prosecution agreement establishes its concept in the microsystem of negotiated criminal justice, that is, an instrument inserted in the legal system to resolve criminal demands in a consensual way, where the parties can, in fact, negotiate and seek means of accused to serve his sentence without facing the traditional procedural process and, consequently, freeing up the Brazilian prison system.

From this perspective, Flavio da Silva Andrade (2019, p. 57) defines "It is a model of justice in which the solution is agreed between the parties, that is, the outcome for the criminal case is forged from the convergence of the will of the litigants, in accordance with the law".

In such a perspective, seeking to conceptualize the non-criminal prosecution agreement, in the words of Francisco Dirceu Barros (2021, p. 95):

The non-criminal prosecution agreement is an extra-procedural legal instrument that aims, in the wake of a criminal policy of decarceration, to reach bilateral agreements between the Public Prosecutor's Office and the perpetrator of criminal offenses so that the latter complies with certain adjusted measures without the need to suffer all the problems that the traditional criminal process can cause.

It is asserted that prior to its form as a bill within the scope of the Legislative Power, the non-criminal prosecution agreement was already provided for in article 18 of Resolution 181/2017 of the National Council of the

Public Ministry, which had as one of its main objectives to demand alternative solutions in the criminal process that would provide speed in the resolution of less serious cases, prioritizing the financial and human resources of the MP and the Judiciary to processing and judging the most serious cases, in addition to mitigating the harmful effects of a criminal sentence and the possibility of relieving prison systems.

In these terms, it is easy to understand that the non-criminal prosecution agreement is an institute like the others that debuted in criminal justice negotiated within the Brazilian legal system, namely, procedural sursis and criminal transaction. In effect, the legal nature of the ANPP stands out, since it is widely understood as having a mixed character, because introduced into the Code of Criminal Procedure, the agreement is undoubtedly found in the procedural standard, however, its text also expressly adduces substantive law.

However, each of the measures has its specificities and requirements, which are essential for a better understanding of the core of the issue discussed here. This is because, since these three decriminalizing measures have a similar structure, the reason that led to the introduction of the confession requirement is questionable, which has such great weight in the criminal sphere and is widely enshrined through principles in the Federal Constitution itself, only in one of the institutes, namely the ANPP.

Therefore, with the aforementioned point being the main problem of this work, a brief analysis of the conditions and requirements to which both procedural sursis and criminal transaction are subject is pertinent, aiming to question and elucidate whether, in fact, the Confession is relevant for proposing a non-criminal prosecution agreement.

COMPARISON BETWEEN OTHER DEPENALIZING MEASURES

Before delving into the comparison and peculiarities of the other institutes, it is necessary to scrutinize the requirements required by article 28-A of the Criminal Procedure Code. Literally, therefore, to the letter of the law, it is possible to point out four conditions to be observed case by case brought by the legislator, right in the caput, that will allow the ANPP to be proposed, they are: a) not being a case of archiving; b) the formal and circumstantial confession by the person being investigated of the illicit practice; c) the criminal offense must occur without violence or serious threat; d) have a minimum sentence of less than 4 (four) years.

Furthermore, it is important to highlight the hypotheses brought by § 2 which, in turn, deal with cases in which it will not be possible to take advantage of the agreement, as, once present, they are incompatible with the institute, in verbis:

§ 2º the provisions of the caput of this article do not apply in the following cases: (Included by Law Number: 13,964, of 2019) (Effective)

I - if a criminal transaction is applicable under the jurisdiction of the Special Criminal Courts, in accordance with the law; (Included by Law Number: 13,964, of 2019) (Effective)

II - if the person being investigated is a repeat offender or if there is evidence that indicates habitual, repeated or professional criminal conduct, unless past criminal offenses are insignificant; (Included by Law Number: 13,964, of 2019) (Effective)

III - having been the agent benefited in the 5 (five) years prior to the commission of the infraction, in an agreement of non-criminal prosecution, criminal settlement or conditional suspension of the process; and (Included by Law Number: 13,964, of 2019)

(Effective)

IV - in crimes committed within the scope of domestic or family violence, or committed against women for reasons of their female sex status, in favor of the aggressor. (Included by Law Number: 13,964, of 2019) (Effective)

Here, it is a mere transcription of the respective provision, since the greater detail of this work concerns only the confession.

ANPP X CRIMINAL TRANSACTION

Regarding the criminal transaction configured in article 76 of law 9,099/95 which provides for Special Criminal Courts, its concept is very similar to that of the non-criminal prosecution agreement, in the words of Fernando Capez (2005, p. 575) it consists of an agreement signed between the representative of the Public Ministry and the author of the fact, by which the first proposes to the second an alternative non-custodial sentence, eliminating the need to initiate proceedings.

Furthermore, as already discussed in a previous topic, the transcription of § 2 of article 28-A states in its section I expressly that, if a criminal transaction is applicable, it will not be the case to propose the ANPP, so that despite being institutes with similar means of execution, there is a growing and an order stipulated by legislation regarding When applying the benefits, however, it is important to emphasize that the intended result is the same, that is, to eliminate the punishability of the person being investigated.

In these terms, the main difference that stands out between the two is the penalty set for each infraction committed, therefore, the criminal transaction is applicable for crimes with less offensive potential, that is, for the Parquet member to be able to offer the benefit, it is essential that the offense is punishable by a maximum custodial sentence of 2 (two) years.

As for its effects, already seeking to

associate and bring it closer to the questioning of the relevance of the confession in the ANPP, professor Ada Pellegrini Grinover (2000, p. 156) highlights the reasoning that the decision that approves the criminal transaction cannot be considered as condemnatory, even if inappropriate, as there was no accusation and the acceptance of the imposition does not produce consequences in the criminal sphere, except to avoid new benefit within the period of five years. No guilt is admitted upon acceptance of the proposal. It will not appear on the criminal record and, therefore, will not generate recidivism.

ANPP X PROCEDURAL SURSIS

Procedural suspension or conditional suspension of the process also finds its provisions in the law of Special Criminal Courts with its hypotheses of application in article 89. This institute, in turn, with reference to its own name, will suspend the process for two to four years when the Public Prosecutor's Office, when filing the complaint, verifies that the offense committed has a minimum penalty of one year or less and, the other subjective requirements of the person being investigated that allow the benefit to be proposed are present, it will offer the person to comply with certain conditions established in court.

It is important to note that the criminal transaction does not require the perpetrator of the crime to confess his illegal practice, and the understanding of Professor Ada Pellegrini Grinover in the topic above can also be associated with the present institute, that is, guilt is not admitted.

Furthermore, at the end of the suspension period, having complied with the agreed terms, the result is the extinction of the punishment.

THE IMPACT OF CONFESSION ON THE PROMISE OF CRIMINAL ACTION

Having briefly demonstrated the relevant points for the present work of the three forms of negotiated criminal justice that seek to achieve the same end in the criminal procedural scope of the Brazilian legal system, it is time to enter into the most conflicting subjective requirement required by the legislator for proposing the ANPP, that is, confession.

CONCEPT AND CHARACTERISTICS OF CONFESSION IN THE ANPP SCENARIO

As already stated, the caput of article 28-A provides for the need for the person being investigated to have formally and circumstantially confessed to committing the offense to allow the Public Prosecutor's Office to propose the agreement. In these terms, it is essential to understand what, in fact, confession means in the legal context and its respective weight.

First, however, it is necessary to detail the "formal" and "circumstantial" qualities written in article 28-A. In such a perspective, from the understanding established by § 2 of article 18 of Resolution 181/2017 of the CNMP, the confession will be formal if recorded by audiovisual recording means or resources, intended to obtain greater fidelity of the information and the investigated person to be always accompanied by their defender.

As for the circumstantial characteristic, it is important to understand it according to the dictionary's own meaning, as it differs greatly from the meaning of "circumstantial" previously used in the text of Resolution 181/17. Thus, "Given its circumstantial nature, details are not required, a simple declaration of willingness to adhere to the agreement is sufficient, assuming, generally, the facts

narrated in the investigation or private investigation as true. Therefore, as it is a type of fictitious confession, there would be no need to talk about its reproduction in court, in light of the contradiction" (NICOLAI et al. 2022).

Well, in the writing of the Code of Civil Procedure, article 389, there is a confession, judicial or extrajudicial, when the party admits the truth of a fact contrary to its interest and favorable to that of the opponent.

Based on this premise, it is understood that the confession required in the non-criminal prosecution agreement has an extrajudicial characteristic. In the words of Capez, "The extrajudicial confession is one produced during the investigation or outside the criminal proceedings [...]" (2005, p. 308). Thus, as it is known that there is no offer of a complaint simultaneously with the proposal of the agreement, there is consequently a lack of criminal action, which highlights the act of confession produced outside the records.

Furthermore, it is relevant to reflect on the so-called optionality of the requirement in the non-criminal prosecution agreement, because it is widely argued that there is not exactly a requirement for the person being investigated to confess, but rather that he or she is free to choose. In the words of Marllon Sousa (2021, p. 211), agreements will only be accepted if the defendants evaluate the evidence and discuss with lawyers, identifying whether bargaining is the best choice for their situation.

However, this idea seems contradictory if analyzed in the context of the agreement, after all there is clearly a stimulus on the part of the Public Prosecutor's Office when it informs the person being investigated that the celebration of the benefit will only happen if all the conditions are met, including his confession, which could result in weights on the scale that are quite disproportionate, especially because, in most cases, the person being investigated is

apprehensive and fearful of the possibility of a conviction.

Finally, it must be noted that it has the characteristics of a simple confession, since one that has the attribute of qualified is characterized when followed by a cause that favors the individual. Based on the ideas of Rogério Sanches Cunha (2017, p. 417), in a qualified confession the defendant admits the authorship of the event, but alleges a fact that impedes or modifies the law (such as the presence of an exclusion of illegality or guilt).

Therefore, the confession would become incompatible with the requirements of the agreement, since, if there is an exclusionary reason, the immediate result is the shelving of the investigation.

THE PROBATIVE VALUE OF CONFESSION IN THE BRAZILIAN LEGAL SYSTEM

Firstly, it is evident that the value of the confession was greatly considered over time, so that its assessment in conjunction with other evidence contained in the process is essential, resulting in such an understanding of the law itself.

In these terms, article 197 of the Criminal Procedure Code:

Article 197. The value of the confession will be assessed by the criteria adopted for the other elements of evidence, and for its assessment the judge must compare it with the other evidence in the case, checking whether there is compatibility or agreement between it and these.

In light of comparison, it must be noted that in the past, its probative value was considered absolute, which resulted in a kind of hierarchy of evidence in which all others below the confession lost strength. According to the pertinent ideas of Távora and Araújo (2010, p. 269) “There was a time in the history of humanity when confession was known as the

queen of evidence, equivalent to saying that, once the confession was obtained, conviction was already allowed.”, because there is no one better than the accused himself to say whether or not he is guilty.”

However, as demonstrated by virtue of the law that incorporated this system of valuing evidence, it is possible to conclude, in the words of Lima (2011, p. 983) that the confession has the same probative value as other means of proof.

NON-COMPLIANCE WITH THE ANPP AND THE IMPACT ON THE INVESTIGATOR'S CONFESSION

In this topic, the consequence is pointed out to the detriment of the confessed investigator who does not comply with the conditions established by the terms of the non-criminal prosecution agreement. Initially, it is imperative to reiterate that, when the agreement is approved by the judge, there is still no complaint made by the Public Prosecutor's Office, despite the existence of signs of authorship and materiality, after all they are necessary for the case not to be closed.

Therefore, the main and immediate implication of non-compliance with the ANPP is the filing of the complaint by the ministerial representative, after communicating the court for the respective termination of the agreement. Therefore, if there is no longer any possibility of extinguishing the punishment, the person being investigated must submit to the criminal process so that all the instruction responsible for ascertaining whether, in fact, there will be a conviction, can take place.

With regard to the present scenario, it is pertinent to ask what the confession made by the previously investigated person is like. Well, Statement 27 of the National Council of Attorneys General of Justice established the understanding that, if there is non-compliance with the conditions of the ANPP,

the complaint that will then be offered can use the confession, voluntarily given at the conclusion of the agreement, as evidentiary support. In a similar way, it supports the doctrine of Renato Brasileiro de Lima (2020):

This complaint to be offered by the Public Prosecutor's Office may bring, as evidentiary support, including the formal and detailed confession of the person being investigated at the time of the conclusion of the agreement. Now, if the person being investigated himself gave rise to the termination of the agreement, failing to comply with the agreed obligations, it is completely clear that the elements of information provided by him cannot be ignored.

However, it is important to bring up the content of article 155 of the Code of Criminal Procedure, which guarantees, in verbis: "The judge will form his conviction through the free assessment of the evidence produced in judicial proceedings, and cannot base his decision exclusively on the information collected in the investigation, except for precautionary evidence, which cannot be repeated. and anticipated." (emphasis added).

Now, throughout the line of reasoning brought up here, it is clear that the confession made by the ANPP was not subjected to the scrutiny of judicial adversarial proceedings, especially because an attempt to defend the person being investigated would be completely in conflict with the need to assume guilt, so that even if used as evidentiary support in a future criminal action, obviously, the confession would lose its strength as a legitimate means of constituting evidence.

In this sense, in the judgment of Habeas Corpus, number: 756907/SP, the Sixth Panel of the Superior Court of Justice by the rapporteur Minister Rogerio Schietti Machado Cruz assured, in accordance with his vote, that: "If the sentence condemned the patient and recognized the criminal authorship exclusively based on elements produced in

the extrajudicial phase (statements given during the police investigation and to the Prosecutor, in addition to the confession of the ANPP celebrant), not reproduced during the criminal investigation and not subject to due contradiction, it is necessary to recognize the insufficiency of the evidentiary standard that would authorize the conviction." (BRAZIL, STJ 6th Panel, HC. 756907 – SP, 2022)

Thus, based on what has been stated in this topic, as well as in the previous one in which the probative value of confession within the Brazilian criminal process was explained, it is time to interpret its irrelevance as a condition brought to the proposition of the agreement, while it will highlight the dispensability and unnessariness of it. in all possible scenarios of ANPP dynamics.

GUARANTEES OF THE CRIMINAL PROCESS X CONSENSUAL CRIMINAL JUSTICE

First, however, it is important to highlight the importance of the basic rights guaranteed to the defendant who will face the procedural process, especially due to his lack of sufficiency in relation to the judiciary. In order to present a brief overview of the dynamics of traditional justice and the application of constitutional principles within it, we highlight the explanation by Oliveira and Feitosa in their text "The Limits of Consensual Justice in the Brazilian Legal-Penal System" (v. 14, n.01/Jan./Jul. 2022):

In short, due criminal process occurs as follows: the parquet, based on the elements of information collected in the investigative phase, exercises the power--duty to accuse, by offering the complaint. Soon after, the accused exercises his right to a contradictory and full defense, and immediately afterwards, the instructional phase begins, that is, the production of evidence. Finally, and after the final debates, the judge analyzes the evidence produced in

the process and delivers the sentence with due motivation. Thus, it is possible to state that, in the traditional model of conflictual justice, due process is marked by opposition between the Public Prosecutor's Office and the defendant. The advent of negotiated justice, however, broke with this "standard" and established in the Brazilian legal system what the doctrine has called consensual due legal process, since this model is based on a procedure that seeks consensus between the accusation and defense.

Pointing out now, in the words of the same authors mentioned above, the different dynamics of guarantees in the so-called consensual legal process:

It must be noted, for example, that the entire procedure for concluding the Criminal Non-Prosecution Agreement is satisfactorily established in article 28-A of the Criminal Procedure Code, so that there is no room for ambiguous interpretations. To this end, in criminal offenses in which the application of the institute is possible, the Public Prosecutor's Office and the accused, together with their defender, negotiate on the conditions to be met to avoid the start of the process and, shortly after, submit the agreement to the judiciary for approval. The judge, in turn, appoints a hearing in which he must verify the conscience and voluntariness in accepting the agreement by the accused. Only after these legal procedures will the judge approve (or not) the agreement. This way, the procedure, in addition to imposing limits on consensus between the parties, guarantees respect for due legal process and avoids possible excesses on the part of the accusing body, as the terms of the agreement must be related to proportionality and reasonableness, as may be comply with the provisions of article 28-A, item V, of the Criminal Procedure Code.

From this perspective, Cunha (2020) adds that "consensual due process, especially in the Criminal Non-Prosecution Agreement, is predominantly guided by the principles of autonomy and good intentions." Therefore, it is

possible to see that the scenario of consensual justice is different and must be based on principles other than those foreseen for the traditional process, with the interpretation that while in this process guarantees are essential for the very legality of procedural acts, in consensual justice, are more valid for controlling and imposing limits on the terms of negotiation.

This topic, therefore, is limited to clarifying that there is no unconstitutionality in the requirement for confession, however, it demonstrates that the person being investigated gives up many rights and procedural guarantees, including those defined as principles in the Federal Constitution itself (unless declaration of a person guilty until the criminal conviction becomes final, that is, the presumption of innocence; the right not to self-incriminate; full defense and contradictory, etc.), as is the case at the time of signing the agreement a support to the investigated only by minimum principles, as already mentioned, of proportionality and reasonableness, aiming no more than to protect it from excesses.

THE IRRELEVANCE OF CONFESSION

Firstly, as is known, the benefit in itself to be achieved by the non-criminal prosecution agreement is the extinction of the punishability of the person under investigation. This way, it is feasible to visualize the three possible scenarios from an ANPP approval hearing, namely: approval, in fact, with subsequent and full compliance with the terms by the party, at which point the desired benefit will be achieved; approval, but with subsequent non-compliance with the conditions, which would lead to the termination of the agreement and would allow the initiation of criminal proceedings; or non-approval by the magistrate at the hearing, likewise admitting

the filing of the complaint by the Public Prosecutor's Office.

Well, when analyzed from the perspective of the success of the agreement, from the outset, it is clear that the confession did not play any important role when it was demanded at the initial moment of the proposition, after all, the investigated person ends up free from having a record of bad records regarding the act that led to him. was imputed, that is, the State loses its right to impose any penalty on him and the guilt he assumed becomes completely irrelevant.

Furthermore, the interpretation in this same scenario leads to the understanding that the extinction of punishment comes as a consequence of full compliance with the terms previously approved, at the same time that there is no connection between the guilt assumed and the success of the agreement and the benefit that remains achieved, Proof of this is the dynamics of criminal justice negotiated within the scope of the other institutes previously presented, which do not require a confession.

On the other hand, regarding the scenarios of the occurrence of a criminal action, Carlos Otaviano Brenner de Moraes (2021) in his text "Agreement on non-criminal prosecution and the confession of the person being investigated. Some notes on this" mentions the idea that the confession required in the agreement is not a confession of guilt nor does it have a cognitive probative function, as its legal nature is not a means of obtaining evidence, it is not directed to the production of evidence, but to the elimination of the criminal process itself. Furthermore, he argues that the same sufficiency of evidence of authorship that serves to lead to the proposition of the agreement must also serve to support the complaint, with confession being essential for the criminal prosecution to begin.

In addition to its dispensable nature, it is

noteworthy that the legislator's requirement to sign the confession as a requirement for proposing the agreement, in a certain way, weakens the negotiated justice while encouraging an investigator to waive numerous procedural rights and guarantees and constitutional just to get rid of the process. Furthermore, it poses a great risk of provoking the confession of an innocent person, who sees the possibility of complying with less severe measures out of fear of the system.

This point of view can be interpreted together with the following understanding by Brandão and Moraes (2020) "[...] refusing the agreement can result in a sentence three times higher, to be **judged by a judiciary whose safety is often the target of criticism. Thus, the decision becomes more economic than legal. Just the fact of having to face criminal proceedings (and consequently having to pay higher legal fees)**, combined with the risk of being unfairly convicted, ends up being enough reason to make an innocent person confess." (emphasis added).

Thus, it has been demonstrated that demanding a formal and circumstantial confession of the crime from the person being investigated does not produce a more or less efficient result for the agreement, and as it results mainly in pressure and insecurity for the same, it clearly reveals itself as a dynamic that aims to benefit only the State, after all, is the one that will obtain an immediate punitive response, without so many resources and efforts, theoretically fulfilling its role and declaring someone guilty, but in practice doing so in a sudden and hasty way to relieve the system, at the same time that it is not possible to find any significant and relevant motivation of the legislator with this requirement in favor of the person being investigated.

CONCLUSION

The discussions included in this research

present a brief sample of the current dynamics of criminal justice negotiated in the Brazilian legal system. Furthermore, the

The development of the study made it possible to examine the understandings presented by scholars and scholars regarding confession and its insertion as a requirement for proposing the ANPP, as well as considerations about the context of constitutional guarantees in the pre-procedural phase in which the agreement is inserted. no criminal prosecution.

In general, the investigative process regarding the confession requirement required to propose the agreement involves multiple positions and controversial points, consequently making it unfeasible to present all the positions here. However, it was possible to demonstrate a satisfactory conclusion regarding the irrelevance in the requirement. there.

Data analysis in the progression of the research leads to the conclusion that confession in the article 28-A does not appear to be unconstitutional, but, interpreting it in the context of negotiated criminal justice that seeks, above all, to relieve the judiciary, it can be a cause of generating insecurity and imbalance at the time of the transaction.

In other words, at least at this moment, it is concluded that it is irrelevant to require the person being investigated to confess in order to be entitled to an agreement with the prosecution, as he is in an inappropriate and unfavorable position to measure the weights and clearly see the pros and the cons of the dynamics in order to enable safe and coherent decision-making to face, from the outset, less severe measures as guilty, or an entire arduous criminal process as innocent.

This way, and based on the positions already set out in this work, it is equally important to reflect on the greater objective with regard to the agreements brought to the

criminal process, mainly with the requirement of confession in the ANPP which, by a very fine line, can end in negative consequences that exceed the benefit desired through the agreement, as demonstrated, causing those investigated to give up procedural and constitutional guarantees and rights due to weaknesses in the system itself, which chose to judge “less serious” cases outside the procedural scope, in addition to innocent people at the mercy of assuming guilt for an offense they did not commit.

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