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RESEARCH ARTICLE

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THE INSERTION OF FORMER DETAINEES IN THE LABOUR MARKET

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ABSTRACT

The citizen who enters the penitentiary system, even after the completion of your sentence, established by the judiciary, will face an uphill battle, with the taint of being a former student of the prison system, will load in your heart the bitter taste of discrimination and prejudice. With this stigma, it's very difficult succeed in the labour market and the much longed-for social reintegration. This article brings a social vision and the reintegration of normative prison graduates society, as well as a reflection of public policies for social inclusion of these ex-cons into the labour market. In this way are analyzed social behaviors and the intention of the legislator with regard to the social reintegration of ex-cons. During the search are presented statistical data that prove the difficulty of reintegration of such persons and the problems that such hardship brings, not only to the former detainees but society itself that the reject. In addition the research presents new terms, still little discussed in the Brazilian legal means and brings to light and explanatory. Finally try yourself to find a definitive solution to the problem of criminal recidivism in most cases occurs due to lack of opportunities for prison graduates

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INTRODUCTION

The Brazilian criminal order has the precept of re-socializing the criminal. The penalty in our country has a resocializing and educational character, and the detainee must be punished for the crime committed and at the same time be educated so that he does not come to commit other criminal acts. Resocialization in the context that interests us here, is the process of re-educating an inmate for the new life in society after serving the sentence designated by the Justice, due to the fact that he has broken the laws and committed some crime (MENDONÇA E PESSOA, 2008). The basic purpose of resocialization is to provide, even while serving the sentence, a basis for professional education, civic notions and psychological support, as provided for in the Law on Penal Executions (Law No. 7,210, of July 11, 1984). Policies for the insertion of prisoners in society have been provided for in the Brazilian legal system since 1984 by Law No. 7,210, of July

11, 1984, in addition to this, there is also Decree No. 6,049, of February 27, 2007, both deal with serving sentences in the country's prison system and understand that there is a need for the State to be in favor of those who have completed the prison phase, since it is possible to perceive great social prejudice in relation to ex-prisoners who try to to reintegrate into life in society. The integration of the ex-detainee into society and social functions is essential for this objective to be achieved, especially the reinsertion of the prisoner in the labor market. It is the responsibility of society and the State to promote the social reintegration of ex-detainees with the social life from which they were isolated during the sentence. However, in practice, the reality of ex-prisoners in Brazil is very cruel. There is a huge barrier to their return to the job market due to several factors. This article aims to analyze the entry of former detainees into the labor market in the country, as well as rules that encourage their hiring, in view of the role of the State in guaranteeing the dignity of the human person as a

constitutional principle. However, it will also be analyzed how the State contributes to the social reintegration of prisoners who are still in their sentence. At the end, current state actions in relation to the topic will be considered and possible measures to resolve the problem of the reintegration of the ex-prisoner into the labor market will be considered, seeking to resolve both legislative flaws and cultural standards that act in disfavor for prisoners who seek prisoners. reintegration into the labor market.

METHODOLOGY

This is a bibliographic search using the online databases LILACS, SciELO, BDENF. Thus, a search was initially carried out on the production of knowledge regarding the detention of prisoners in the labor market, with the objective of identifying authors' conception of ex-inmates entering the labor market, referred to in national journals, through a literature review on the topic. In the initial search, the titles and abstracts of the articles were considered for the broad selection of probable works of interest, with the abstracts and the full texts of the articles being highlighted, using as keywords the term ex-prisoner, job market and insertion in the labor market by ex-inmates. Recent articles and the constitution were sought to discuss the article. Thus, few articles were found that addressed the topic, only 37 articles referring to the work proposal. At the end, 10 works were selected, contact with legislation and articles.

RESULTS AND DISCUSSION

Legal forecasts for the insertion of prison graduates in the labor market

The reinsertion of prison egress into society was established for the first time in the Brazilian legal system by Law No. 7,210, of July 11, 1984. Since then, the concept of social reinsertion of the ex-detainee has been closely linked to his allocation in the labor market, what is visible in articles 25 and 27 of that law:

Art. 25. Assistance for graduates consists of:

- I - in guidance and support to reintegrate him into life in freedom;
- II - in the granting, if necessary, of accommodation and food, in an appropriate establishment, for a period of 2 (two) months.

Single paragraph. The period established in item II may be extended only once, as evidenced by the declaration of the social worker, the commitment to obtain employment. It is then clear that the legislator is concerned with obtaining a place in the labor market by prisoners who have been discharged, believing that such an achievement would depend on their interest and dedication. Notwithstanding this, the law still contains in its article 27 the following text: "The social assistance service will collaborate with the graduate to obtain work". Such stipulation in law tries to supply the needs of ex-detainees in search of a job, since after the completion of the sentence the difficulties in entering the labor market increase a lot, for reasons that will be dealt with shortly. The major flaw in the attempt at social reintegration of prisoners by law is the lack of objectivity, since the law does not stipulate how social assistance should be given to this portion of the population, which in 2011 reached almost 500 thousand people and even if

the legal provision stipulates conditions of support for those who were released definitively or conditionally, aiming to guarantee their dignity and trying to avoid recidivism in crime, about 70% of these people commit crimes again and, consequently, go to the penitentiary establishment, according to the data exposed by the National Council of Justice (CNJ) in 2011. Despite the Penal Execution Law, which determines the creation of means by the State to reinsert former inmates into the market, dating from 1984 was only in 2002 that the first bill to regulate the matter in Rio de Janeiro emerged, but the same never was put into practice. Lately the National Council of Justice (CNJ) has developed a fundamental role in the insertion of social graduates in the labor market, Minayo and Constantino (2015, p. 225) "Since 2009, several state governments and city halls, following guidelines of the National Council of Justice, passed laws that compel or encourage companies hired by the government to have a quota of 2% to 10% of ex-detainees among their employees".

The Social Impact Of Criminal Background: The yearning for freedom is a reality of most inmates in the Brazilian prison system, the dream of freedom is a goal for many who idealize serving their sentences and reintegrating into society. However, reintegration is a difficult task, since the individual fulfills the penalty, his status as ex-prisoners plagues him for the rest of his life, even the secrecy of his criminal record or even the rehabilitation provided for by the Code of Criminal Procedure are not capable of change social prejudice about past convictions. The fact is that society fears prisoners and that fear leads to a wrong response to the situation to discrimination, which in turn reduces the chances of a former prisoner to reintegrate into society, since his chances of hiring are greatly reduced. In a survey carried out in 2010 by the Perseu Abramo Foundation, he pointed out that 21% of Brazilians would not like to have contact with ex-prisoners since they do not cause them good feelings, for 5% of this portion the feeling is of disgust or hatred, antipathy in 16% and indifference in 56% of the interviewees who avoid contact with prisoners. Thus, freedom becomes a storm, individuals are seen with bad eyes, and as a result they are excluded from the labor market. Usually companies do not want to hire employees with a criminal record based on the possibility that graduates may commit crimes again and even worse in their work environment, since civil liability in the case of legal entities is objective, it becomes a fear reasonable.

The side effects of discrimination: As already mentioned, the exclusion of prisoners from the labor market results from social discrimination regarding their conditions as ex-prisoners, all of this generated by fear of recurrence in crime. It is a fact that individuals who have just achieved freedom and are adapting to society are more likely to commit crimes. In 2011, during a speech, the then president of the STF and CNJ Cezar Peluso stated that "The rate of recidivism in our country reaches 70%. This means that seven out of ten freedmen return to crime. It is one of the largest indexes in the world ". Thus, it is necessary to analyze what leads prisoners to such high rates of recidivism. At this moment, the calculations become controversial, since if the exclusion of ex-prisoners from the labor market is the result of social discrimination due to criminal background, which generate thoughts that such individuals are more easily or predisposed to commit crimes, the which is expressed and based on the recidivism data presented by the CNJ. However, the biggest factor that leads to recidivism is precisely this exclusion from the labor market

due to prejudice and discrimination, since the individual is unable to reinsert himself in the labor market he seeks other means to survive, thus returning to crime. Ultimately, discrimination only causes harm to society, as it is visible that it is based on the fear of recurrence, which in turn is aggravated by this feeling present in a large part of society.

Life imprisonment in fact

In Brazil today, there is no real possibility of life imprisonment, the current Federal Constitution states in its Article 5, item XLVIII, item "b" that in Brazil there will be no life sentence. This norm of the Constitutional Charter is considered to be a stone clause and cannot be changed during the term of the current constitution. Bitencourt (São Paulo, 1993) believed that such immutability conferred on that part of the constitutional text was based on the principles of the presumption of innocence, due legal process, the contradictory, of the broad defense and human dignity, according to him:

Indeed, a state that wants to be democratic in law is incompatible with a functioning criminal law that ignores the fundamental freedoms and guarantees of the citizen. In fact, the Federal Constitution itself adopts subjective criminal responsibility, the presumption of innocence, due legal process, the adversary and the broad defense, including preserving human dignity (art. 5, III, CF). Brazilian Magna expressly prohibits perpetual, capital, cruel and degrading sanctions and elevated these guarantees to the condition of stone clauses (art. 60, § 4, inc. IV, CF) In other words, these guarantees cannot be suppressed or revised, not even through constitutional amendments.

Clearly, life in the Brazilian legal system is prohibited by the constitution, but recently the term life imprisonment has in fact gained more space among legal discussions, in 2010 the then senator Marisa Serrano (PSDB-MS) presented a bill that aimed to encourage insertion of the prison egress in the job market, during the speech the senator affirmed that despite the constitutional prohibition, life imprisonment was real in the life of the ex-prisoners, since after serving their sentences they would face difficulties of social reintegration, which according to her could be considered a second penalty. In addition to Marisa Serrano, ex-senator Geraldo Mesquita Júnior (PMDB-AC) also took a stand on the theme, according to him "although there is no provision for an explicit sentence in life, the condemnation of these people is for life". According to him, this vicious cycle of recidivism caused by discrimination on the part of society can be considered as a type of life imprisonment in fact. Therefore, it is observed that life imprisonment is in fact linked not only to the treatment given by society to ex-prisoners, which can be considered a form of punishment even worse than incarceration, but also the fact that they are induced to recidivism. criminal, by excluding them from the labor market due to discrimination.

Measures to be adopted to promote social inclusion of ex-detents

The National Council of Justice (CNJ) and the Supreme Federal Court (STF), through Resolution No. 96 of 10/27/2009, launched the "Start Again" campaign within the scope of the Judiciary, and instituted the Opportunities Portal, as the scope of sensitizing the population to the need to

relocate, in the labor market and in society, the prisoner released after serving the sentence.

The objectives of the program, in verbis:

Art. 1 The Start Again Project is instituted within the scope of the Judiciary, with the objective of promoting actions for the social reintegration of prisoners, ex-prisoners and those who comply with alternative measures and penalties. (emphasis added)

Art. 2 The Start Again Project consists of a set of educational actions, professional training and reintegration into the labor market, to be guided by the Project Plan attached to this Resolution.

§ 1 The Project will be implemented with the participation of the Social Reinsertion Network, made up of all the organs of the Judiciary and by public and private entities, including Employers, Community Councils, universities and elementary, high school and technical-professional institutions;

Paragraph 2. The Courts of Justice shall enter into partnerships with the institutions referred to in the previous paragraph to implement the Project within their jurisdiction, with a copy of the instrument being sent to the National Council of Justice.

Paragraph 3. The other courts that have criminal jurisdiction, must promote reinsertion actions compatible with the penalties they execute.

§ 4 All other courts, even if they do not have criminal jurisdiction, may also promote reintegration actions, especially with regard to hiring prisoners, ex-offenders and observers of alternative measures and penalties based on Recommendation No. 21, of the National Council of Justice.

Art. 3 The National Council of Justice will be able to recognize the good practices and the participation of the members of the Social Reinsertion Network, through certification to be defined by an act of the Presidency of the National Council of Justice. However, according to data from the National Council of Justice (CNJ), only 15% of the vacancies were filled. In some states, vacancies have emerged, however they have not been filled. In order for this project to be effective, it is necessary to train and qualify the prison system graduates, so that they can successfully fulfill the requirements demanded by the job or profession. Prison institutions through government partnerships must develop projects that can qualify the convict for the current and future requirements of the market. In this sense, the National Labor Policy (PNAT) was recently instituted on July 24, 2018, under the Prison System, aimed at expanding and qualifying job vacancies, entrepreneurship and to the professional training of prisoners and egresses of the prison system, and regulates § 5 of art. 40 of Law 8,666, of June 21, 1993, which regulates the provisions of item XXI of the caput of art. 37 of the Constitution and institutes rules for public tenders and contracts signed by the federal executive branch. In verbis:

Art. 1 The National Labor Policy is established within the scope of the Prison System - Pnat to allow the insertion of persons deprived of liberty and those who have left the prison system in the world of work and income generation. (emphasis added)

§ 1 Pnat is intended for pre-trial detainees, for persons deprived of their liberty while serving sentences in the closed, semi-open and open regime and for people who have left the prison system.

§ 2 The Pnat will be implemented by the Union in cooperation with States, the Federal District and Municipalities.

Paragraph 3. For the execution of the Pnat, agreements or instruments of technical cooperation of the Union may be signed with the Judiciary, Public Prosecutor's Office, international organizations, union federations, unions, civil society organizations and other entities and private companies.

§ 4 The articulation and integration of Pnat with similar policies, programs and projects of the Union, the States, the Federal District and the Municipalities will be promoted.

According to the decree, companies hired by the federal public administration will have to reserve 3% to 6% of the workforce for prisoners or ex-prisoners. The percentage will vary according to the number of people needed to provide the service: *In verbis*:

Art. 6 For the purposes of the provisions of art. 5, the company must hire, for each contract that it signs, people arrested, serving a sentence in a closed, semi-open or open regime, or who have left the prison system, in the following proportions:

I - three percent of vacancies, when the execution of the contract requires two hundred or less employees;

II - four percent of vacancies, when the execution of the contract requires two hundred and one to five hundred employees;

III - five percent of vacancies, when the execution of the contract requires five hundred and one to one thousand employees; or

IV - six percent of vacancies, when the execution of the contract requires more than a thousand employees.

The purpose of the national labor policy within the prison system is to encourage and expand the re-socialization of prisoners and ex-detainees in the labor market.

Final Considerations

From the perspective of this study, it is noted that the great difficulty of the social reintegration of the ex-prisoners is social prejudice. Despite the legislator's efforts to try to integrate these individuals into the labor market, discrimination on the basis of criminal records ends up excluding them from labor relations. It is worth mentioning that in fact all ex-convicts have had their records clean, thus proving that crimes are committed by ordinary people, not necessarily the attribute of prison egress makes them predisposed to crime, quite the contrary, some reports indicate that the desire to changing lives makes workers who have faced custodial sentences more committed to their jobs.

However, the fact that strong discrimination does not allow them to prove their desire for reintegration, narrows their options to criminality, which, as already mentioned, further increases the burden of society in relation to such individuals. It is crucial to understand that and companies usually have problems with their employees, both due to illegalities and behavioral issues, which are factors already provided for in their bylaws. Not only the economic sphere, society itself should treat prejudice in relation to ex-prisoners like any other type of discrimination. After all, the imprint left by the prison system is a taboo that must be broken and the safest way to do this is through the law, only then can dignity and other constitutional principles be guaranteed to these people marginalized by society.

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