

Economic Analysis of Law Review

Law and economics: Performance analysis of the third sector in the execution of prison sentences in semi-open and open regime in Ituiutaba

Direito e Economia: Análise de Desempenho do Terceiro Setor na Execução de Sentenças de Prisão em Regime Semiaberto e Aberto em Ituiutaba

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RESUMO

Este estudo se presta à análise da entrega da administração da execução das penas privativas de liberdade nos regimes aberto e semiaberto ao terceiro setor em Ituiutaba-MG sob a ótica da análise econômica do Direito. Passa pelo estudo do que estabelece o sistema normativo sobre quais devem ser as funções da pena do ponto de vista legal e teórico, passa pela verificação do melhor alcance dessas funções através da atuação da sociedade civil organizada e conclui que é eficiente a entrega de parte da administração penitenciária ao terceiro setor.

Palavras-chave: Sistema penitenciário; terceiro setor; análise econômica do direito.

JEL: K1, K14

ABSTRACT

This study provides an analysis of the conferment of the administration on the execution of custodial sentences in the open and semi-open regimes to the third sector in Ituiutaba-MG from the point of view of the law and economics. It goes through the study of normative system on what should be the goals of the punishment from a legal and theoretical points of view, verify the best reach of these functions through the performance of organized civil society and concludes that it is efficient to hand part of the punishment administration the third sector..

Keywords: Penitentiary system; third sector, law and economics.

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1. Introduction

It follows a superficial analysis of the Association of Protection and Assistance to the Convict actions in the Ituiutaba region. APAC³ was founded in Ituiutaba in mid-July 2006, in a public hearing at the local forum and then was legally constituted. Already in 2008 with acquisition of the land, the activities began with the presence of the convicts. Its inauguration took place on September 24, 2008, having as its associates its initial founders, members of the board and volunteers. It currently has about 90 (ninety) people assisted and has already assisted about 900 (nine hundred) convicts.

The association took control of the administration on part of the execution on custodial sentences in the semi-open regime in the region of Ituiutaba.

The main considerations regarding the delivery of part of the punitive system to the third sector as a public prison policy should take into account the financial costs. Here APAC is committed to maintaining the implementation of the semi-open regime without receiving public funds from the state and to operate only with the amount received as donations and their own income. These "donations", however, are usually the result of agreements made between alleged perpetrators of crimes of less offensive potential and the Public Prosecutor's Office as a criminal transaction for the extinction of their penalties for the pecuniary benefit to APAC. From this, it can also be deduced a social cost, since these amounts derived from financial benefits could be destined to other entities of the third sector, such as hospitals and nurseries. In addition, there is an inherent limitation to the associative nature, it is not possible to compel the APAC to receive all the convicts under Ituiutaba's region jurisdiction that are under the semi-open regime, the limitation in the number of convicts received can allow a subjective control of who will be submitted to the execution under care of the association.

On the other hand, the benefits can be measured by the recurrence rates among the APAC graduates (which in the last survey were about eight times lower than the average recidivism rates among the ex-convicts of the region).

If on the one hand, the association provides benefits to the convicts, treating them with humanity and providing a more satisfactory social integration to the egress, on the other hand, reducing recidivism among ex-convicts improves public safety and benefits the whole society. For all, through the economic analysis of law, it may be assumed that the delivery of the administration of the execution of part of the custodial sentences in execution in the semi-open regime to the third sector may be more effective than leaving it to the care of the Public Security State Secretariat.

2. Penalty And The Penal Execution Roles

The importance of studying better ways to make the punishment reach its ends has increased with the general concern for public safety and the guarantee of human rights. The so-called "bankruptcy of the penitentiary system" is notorious for exposing the degrading conditions to which inmates are subjected during small and large rebellions within the penitentiary system and with the very high rates of recidivism of the system egresses.

³Association of Protection and Assistance to the Convict initials in Portuguese.

The penitentiary is destined to the prisoner convicted by the closed prison regime (article 87 - LEP⁴), and the chain is destined to the assembly of provisional prisoners (article 102 - LEP).

With the excess of prisoners, the dignity of the human person, fundamental right guaranteed by the constitutional text, is in constant threat. The right to life, physical integrity, image and respect also runs the risk of being injured, given that, owing to the excessive number of prisoners, the rebellions become another obstacle to be overthrown by the state.

It's worth mentioning the first events of the year 2017, which unfortunately, further increased the prison crisis in Brazil. On January 1st and 2nd, one of the rival factions in the interior caused a rebellion in the Anísio Jobim Penitentiary Complex in Manaus, which ended with 56 (fifty-six) dead detainees, becoming the largest prison massacre in the country since 1992, when 111 (one hundred eleven) people were victims of homicide in the prison of Carandiru (São Paulo).

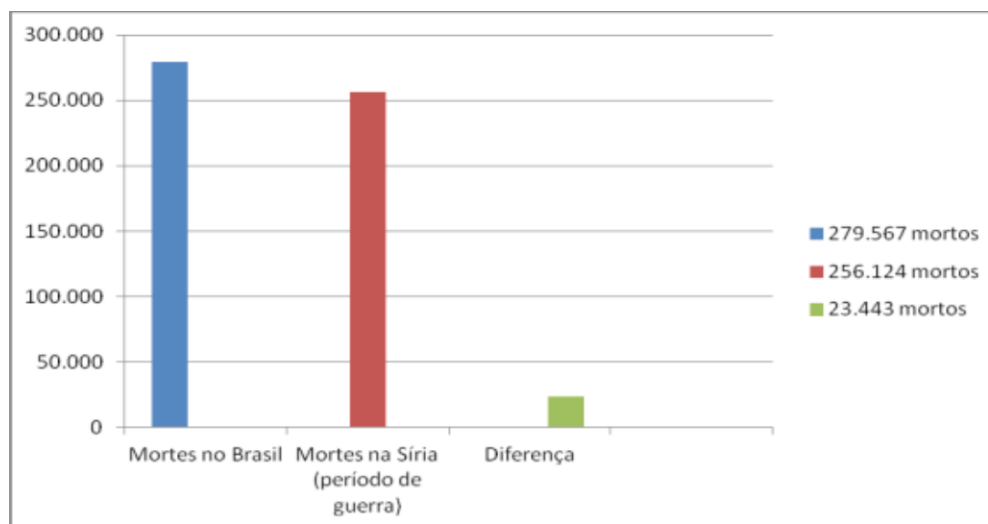
Also in 2017, on January 6th, in the Monte Cristo agricultural penitentiary in Boa Vista, Roraima, there was a rebellion where 33 (thirty-three) inmates were killed.

On 14 and 15 January, another rebellion resulted in the massacre of 26 (twenty-six) detainees in the prison of Alcaçuz, the largest prison in Rio Grande do Norte, and between 26 (twenty-six) victims, 15 (fifteen) of them were beheaded.

These rebellions and homicides further evidence the crisis that the prison system is undergoing. One of the causes all this crisis is the high crime rate that constantly grows.

It is important to highlight the indexes released during the 10th Brazilian Public Safety Yearbook, the 2016 magazine, which presents Public Safety in numbers⁵. In this magazine is shown that between the years 2011 and 2015, it was found that in Brazil there were more violent deaths than in Syria, which causes a certain astonishment, since Syria is at war. Let's see:

Picture 1



Source: Fórum Brasileiro de Segurança Pública – 10º Anuário de Segurança Pública.

⁴ Law of penal execution initials in portuguese.

⁵ FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. *Anuário de Segurança Pública 2016*. See Pix, São Paulo: 2016. Found in <http://www.forumseguranca.org.br/storage/10_anuario_site_18-11-2016-retificado.pdf>, accessed in 08.08.2017, p. 8.

In the same event (10th Annual Forum), it was announced that Brazil has 584,361 (five hundred eighty-four thousand three hundred sixty-one) inmates, however, 64% were already convicted and 36% are still on trial, which is equal to 212,178 (two hundred and twelve thousand one hundred seventy eight) provisional detainees.

The Brazilian Forum of Public Security updated the data of violent deaths from 2011 to 2015, which represents the following:

Picture 2 – Index of violent deaths in Brazil between 2011 and 2015



Source: Fórum Brasileiro de Segurança Pública – 10º Anuário de Segurança Pública⁶

Those responsible for public safety are also victims of violent deaths. The Brazilian Forum of Public Security conducted a survey in which it concluded that in Brazil there are more police officers deaths than in the United States, a place where laws are more severe and there is a higher degree of punishment than in Brazil, including the death penalty. The data were collected from the FBI by the FBSP, which shows that in the United States there were 344 (three hundred forty-four) deaths, while in Brazil there were 721 (seven hundred) deaths of police officers, in the period from 2009 to 2015⁷.

Another reason that raises the crime rate is the arms trade, which are used in crimes of robbery, murder and even crimes such as threats, personal injury and robbery followed by murder⁸.

Alternative motive for brutal crimes is the beatings that veteran prisoners commit on those charged with crimes against sexual freedom. It is notorious that the reception of these accused are violent and warm among the other prisoners, there being torture, beatings, mistreatments, injuries, that depending on the degree, may even cause the death of the detainee.

A share of these killings are committed within the prisons and jails, whether by beating or rebellion.

In a survey, it was found that the most updated data date from 2016. This survey was conducted by INFOPEN among the FBSP, it was found that the prison population reached

⁶ FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. Anuário de Segurança Pública 2016. See Pix, São Paulo: 2016. Found in <http://www.forumseguranca.org.br/storage/10_anuario_site_18-11-2016-retificado.pdf>, accessed in 08.08.2017, p. 20.

⁷ FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. Anuário de Segurança Pública 2016. See Pix, São Paulo: 2016. Found in <http://www.forumseguranca.org.br/storage/10_anuario_site_18-11-2016-retificado.pdf>, accessed in 08.08.2017, p. 27.

⁸ Idem, ibidem, p. 44-46.

622,202 (six hundred twenty-two thousand two hundred and two) prisoners in December 2014, 55% of whom are between 18 and 19 years old, 61.6% are black and 75.08% have complete elementary education. All these data are contained in the report of December 2014, published in April 2016⁹.

In spite of these data, Brazil has the fourth largest prison population in the world:

Table 1

Country	Incarcerated Population
United States of America	2,217,000
China	1.657.812
Russia	644.237
Brazil	622.202

Source: Ministry of Justice and Public Safety. *População carcerária brasileira chega a mais de 622 mil detentos*. Found in <<http://www.justica.gov.br/noticias/populacao-carceraria-brasileira-chega-a-mais-de-622-mil-detentos>>, accessed in 08.08.2017

What also strikes us is that, being the fourth country with the largest prison population, we have more police officers dead than the United States, which has the largest population in the world, as mentioned above.

In view of all these data, the rate of incarceration increases sharply, further aggravating the Brazilian prison crisis. In this way, overcrowding, lack of sanitary and hygienic conditions, and especially, internal violence among criminal factions, placing prisoners convicted of severe crimes among criminals who have committed lighter crimes, which also justifies the increase of crime, because the convicted person is more likely to improve in the “crime world” than to be re-educated in the semi-open regime, especially those who commit a lesser offense such as theft or robbery and in contact with other criminals such as homicides, traffickers, pedophiles and other criminals, come to live together and learn even more about the “crime world”. It is an obscure environment in which the petty criminal interacts with experienced criminals¹⁰.

All these circumstances lead to the search for alternatives that make the penitentiary system more effective. But first it is necessary to understand what the optimal point is, what is the purpose of the sentence within the legal limits imposed by the conception of a democratic State of law, of our constitution, and of the applied criminal rules.

The search for usefulness on the law application, starts on the purposes of the sentence contained in Article 1 of the Law on Criminal Executions and in Article 59 of our Penal Code, however, it must be reconciled with the individual rights constitutionally guaranteed.

From a plain reading of Article 1 of the Law on Criminal Executions and 59 of the Criminal Code, we can conclude that the purposes of the sentence sought by our legal system in case of conviction are: disapproval and crime prevention and harmonic social integration of the convicted.

⁹ Ministry of Justice and Public Safety. *População carcerária brasileira chega a mais de 622 mil detentos*. Found in <<http://www.justica.gov.br/noticias/populacao-carceraria-brasileira-chega-a-mais-de-622-mil-detentos>>, accessed in 08.08.2017.

¹⁰ APOLINÁRIO, Marcelo Nunes. As Penas Alternativas entre o Direito Penal Mínimo e Máximo. Disponível em: <<http://www.eumed.net/cursecon/ecolat/br/07/mna.htm>>. Accessed in jan 2017.

Otherwise it necessary to go through the theories of penalty, even if quickly, to know how the application of these functions fits better in our constitution.

For study purposes, it is customary to separate the proposals of explanation of what are or should be the purposes of the sentence between absolute and relative theories:

2.1. Absolute theories

Absolute theories always seek to justify the penalty based on the crime itself, based on the notion of retributive justice, observe the agent's conduct and punish him as if the crime itself justifies the interference of the State in the criminal individual right to freedom.

The great point of contact perceived is the preponderant reference to the past, without a goal directed to the future as main motor, that is, without the search to change the reality of the future¹¹

The idea that the penalty is an awkward revenge taken by the state that subrogates itself in place of the victim always seems unavoidable, from absolute theories. However, it is good to trace the foundations of these theories even so we may regard them as out of date.

The penalty here can be conceived, as it was in canon law as a form of atonement for crimes by the evildoer. Thus, punishment is not a wrong to the sufferer, but a way to purify your soul and restore your clear conscience.

On the other hand, Kant's conception to the penalty implies that there was moral and political justification. The criminal should be punished strictly in proportion to the crime, the penalty would be justified by disobedience to the categorical imperative contained in the law. In contrast criminal sanction is necessary for the maintenance of the state as a greater benefit and greater achievement of society.

Legal punishment (...) can never be applied as a simple means of obtaining another good, not even for the benefit of the guilty party or society; It must always be against the guilty party for the sole reason that he/she has committed delinquency; For a man can never be taken by one instrument of the designs of another, nor be counted in the number of things as an object of royal right; Your innate natural personality guards you against such outrage, ..¹²

This understanding is combatable because if the State exists to guarantee the good of all and cannot be an end in itself, then the idea of intranscendence and the necessity of a proportionality in the sentence remain, which are important penal legal principles.

Hegel, in turn, already conceives the sentence as a form of legal order reaffirmation. Crime, in this way, is a law denial and a penalty is the denial of that denial. So by denying a denial to the Right, the penalty is reinstating it¹³.

Every form is perceived the preponderance of the retribution before the culpability and consequently the penalty does not have the aimed legitimacy. The maintenance of the legal order

¹¹ Freely translated from JUNQUEIRA, Gustavo Octaviano Diniz. *Finalidades da pena*. Manole, São Paulo, 2004. p. 29.

¹² Freely translated from KANT, Emmanuel. *Fundamentos metafísicos dos costumes – Doutrina do Direito*. São Paulo: Ícone, 1993, p. 176.

¹³ Freely translated from JUNQUEIRA, Gustavo Octaviano Diniz. *Finalidades da pena*. Manole, São Paulo, 2004. p. 46.

and the State without a preponderant social purpose is not justified by the incompatibility with the idea of a created State to promote the well-being and the security of the individuals.

2.2. Relative theories

The relative theories seek with the punishment the prevention of crimes, thus directing the behavior of the individuals and preventing the triggering of new crimes. Not always the means employed, both in the theoretical point of view and in the judicial and legislative practice, reach the legitimacy to punish, so it is necessary, although very brief, a study about the main ideas of prevention as the purpose of the sentence.

2.2.1. *General negative prevention*

The general negative prevention function is constructed as state revenge under a preventive approach. Here the penalty is used as a means to sow terror in the social body and in the consciences of individuals.

The convicted person is punished with a severe and disproportionate penalty, as public as possible to serve as an example for the other social body members. The executioner state shows all his power in the face of the other people so that they do not fear similar conduct¹⁴ or that, simply, they fear the sovereign.

Even with all its disgust, the negative general preventive function has strong adepts among jurists, usually driven by the idea of revenge or, when more versed in criminal law, by Feuerbach's arguments¹⁵. Fortunately, jurisprudence is slowly moving towards abolishing this type of practice, whereas, on the contrary, the legislation seems to try to compensate for the lack of criminal law effectiveness due to the lack of state logistics and to meet momentary social pressures through excessively harsh punishments and the creation of abstract danger crimes.

The idea of general negative prevention does not overcome the argument that "one man can never be taken by one instrument of the designs of another"¹⁶.

2.2.2. *Reasoned general positive prevention*

The notion of reasoned general positive prevention gives the penalty the purpose of instilling in society obedience to the norms contained in Law through criminal sanction.

However, the 'end of guilt' concept is only one of the possible formulations of the dilemma way out: it is the formulation made under the concept of guilt. The solution can also be constructed from the perspective of the social order whose stabilization is concerned. It could be an order in which the principle of guilt is a condition of subsistence; In that case, maintaining that principle would be perfectly functional¹⁷.

¹⁴ "Execution acts on members of the collectivity in general because, on the one hand, by its intimidating force, it restrains criminal tendencies and, on the other hand, maintains the law, establishes and strengthens the citizens' legal sentiment." - Freely translated from LISZT, Franz von, *Tratado de Direito Penal alemão*. edição fac-similar do Conselho Editorial do Senado Federal e do Superior Tribunal de Justiça, Brasília, 2006. do original F. Brigueit & C. Editores. Rio de Janeiro, 1899. p. 99.

¹⁵ JUNQUEIRA, Gustavo Octaviano Diniz. *Finalidades da pena*. Manole, São Paulo, 2004. p. 61.

¹⁶ Freely translated from KANT, Emmanuel. *Fundamentos metafísicos dos costumes – Doutrina do Direito*. São Paulo: Ícone, 1993, p. 176

¹⁷ JAKOBS, Günther. *Fundamentos de direito penal*. São Paulo: RT, 2003. p. 13

The penalty functions to guide social behavior in accordance to the remote purposes of the criminal legal system directing the behavior according to the law in which it is inserted.

[...] such a practicable order does not have to consist responsibility for individual culpability. This is even unlikely; It is probably responsible for non-compliance with the standards of a particular role, but in any case, and this is the decisive one, on responsibility organized on the basis of rational rules¹⁸.

In this manner, the penalty becomes detached from the protection of the legal good to seek the direction of human behavior. The search for the maintenance of order seems to be a re-reading, within a relative penalty view, of the idea juridical order reaffirmation, already mentioned above.

2.2.3. *Limiting positive general prevention.*

The idea of limiting positive general prevention is closely linked to the notion of guilt and individual fundamental rights. The penalty is limited to the culpability of the agent which has repercussions in the social body, making clear the beacons of a tolerated criminal behavior. At the same time the penal sanction creates an idea of security in relation to the State will itself, since the limits of a possible interference in the victim's freedom are clear.

2.2.4. *Negative especial prevention*

The notion of special negative prevention, with strong media appeal, starts from the idea that the criminal, as a repulsive one, should be extirpated from the community as a disease.

Here, it is supposed that the best thing for the social body is the convict isolation so that, by innocuity, does not intervene in the juridical assets of the citizens.

2.2.5. *Positive especial prevention*

Criminal execution focused on positive special prevention is directed mainly towards a satisfactory reintegration of the individual into society, in a way that minimizes the possibility of recidivism and thus makes the maintenance of criminal legal assets more secure.

In several respects it is satisfactory and adequate to a law sustained on a constitution linked to the ideal of a democratic State of law. However, some caveats should be made:

In spite of being theoretically more justifiable, the execution directed to re-socialization cannot, under the argument of reeducation, promote any type of indoctrination of the individual incompatible with the right to a pluralistic society. The dignity of the human person, freedom of thought and democratic state are incompatible with a penal execution that promotes any type of brainwashing in the individual. For this reason, a true Democratic State cannot allow, for example, penalties of forced labor or linked to some type of religion.

Indeed, its most decisive advantage in relation to the theory of retribution lies in the fact that it is guided by the social function of punishment, rejecting any and all unnecessary punishment in the fight against crime in the name of that fight itself, and

¹⁸ Freely translated from JAKOBS, Günther. *Fundamentos de direito penal*. São Paulo: RT, 2003. p. 18.

claiming that punishment, when indispensable, has a configuration that aims to resocialize the agent and prevent recidivism¹⁹.

There are many possibilities to promote the addition of different understandings in the same way as their foundations are different within the theoretical universe. However, the mere addition of diverse ends in pursuit of legitimacy through the joining together the qualities of each theory also leads to the sum of its negative aspects and the critical points of each understanding. Through a dialectical conception, it is sought to harmonize the purposes proposed in the legislation and to compensate the problems arising from the adoption of this or that purpose for the prison public policies.

The dialectical unifying function of the sentence solves the problem of the points of conflict between the functions of the penalty present in the additive unification. Firstly, it should be borne in mind that state intervention is not justified if not to guarantee the welfare of individuals belonging to society. And the interference of the State in the individual freedoms cannot occur without being an absolutely intolerable conduct, otherwise the focus of that well-being will be lost.

In this ideological mat, in the democratic state of law there should be no legal violence other than the minimum necessary to prevent more serious and vexatious forms of illegal violence. It is worth mentioning that the violence of verdicts is only legitimate so far as it is capable of preventing greater violence produced by crimes and by the reactions to the crimes that would be committed in their absence. In the rule of law, its values consist not only in offering a criterion of criminal violence legitimation or justification but also a non-legitimization criterion of superfluous legal violence, whether criminal or non-criminal²⁰.

Thus, it will only be possible to intervene in criminal law for those conduct that damages legal rights constitutionally guaranteed by the State, since the guarantee of fundamental rights is the legitimate State primary purpose. Likewise, the guarantee of these juridical assets is not possible if there is a considerable obstacle to the assistance activities of the state, which, as fundamental rights of second and third dimension, legitimize, also, the intervention of criminal law that in this way can gain a subsidiary and fragmentary character.

Maintaining the fragmentary and subsidiary character of the penal norm and restricting this norm to the scope of its function of ensuring against fundamental injuries the fundamental rights can be said in general positive limiting prevention without suffering with the Kantian critique that one cannot punish someone aiming another²¹.

However, general prevention cannot come alone when the sentence is imposed, since the dignity of the human person treated as a thing for a social yes would be suppressed.

The penalty application will be justified if it is possible to harmonize its need for the legal community with the autonomy of the delinquent's personality, which the law has to guarantee²².

Now the penalty, by the time of its imposition, can show both the guarantee of legal goods by the State and the guarantee of these same rights towards the State, which prohibits the means

¹⁹ Freely translated from ROXIN, Claus; ARZT, Gunter; TIEDMANN, Klaus. *Introdução ao Direito Penal e ao Direito Processual Penal*. Belo Horizonte: Del Rey, 2007. p. 10.

²⁰ ZEIDAN, Rogério. *Ius puniendi e direitos fundamentais*. Porto Alegre: SAFE, 2002. p. 116.

²¹ As mentioned on item 1.1.

²² ROXIN, Claus. *Problemas fundamentais de Direito Penal*. Lisboa: Vega, 2004. p. 34.

that may deprive the individual of his free determination, such as polygraph use, Breathalyzer, torture etc ...

There is still the penalty limit problem. A problem that can be solved by imposing an inferior penalty sanction to the convict, and the penalty will remain legitimately imposed since it will be the minimum within the requirements of general prevention and will never exceed the measure of guilt of the victim.

But, convicted the defendant, there is the need to give the penalty a rational function. Now to remain legitimate the criminal enforcement, must be kept an eminently resocialization character. Respecting the previous precepts and the autonomy of the convict personality²³.

It's worth to be remembered that the application of these beacons does not break with the legislation laid down on the purposes of the penalty (Arts 59 of the Brazilian Penal Code and 1º of the Penal Execution Brazilian Law), since the provisions of the legal precept are respected, however with an application within a dialectical in Instead of an additive conception. And, far beyond, the unifying dialectical theory of punishment meets the demands of a Rational State, if not of a Democratic State of Right.

Knowing the benefits of the penalty, we must then verify its costs and the most efficient way to seek them.

3. Third Sector And The Penal Execution In Ituitaba

In Ituitaba²⁴ with the implementation of the Association of Protection and Assistance to the Convicted, non-profit civil association in charge of the execution of sentences in semi-open and open regime, part of the criminal execution is in charge of the third sector. The model initially has the potential to better integrate and give greater participation of civil society on criminal execution and with those convicted. It is shown *prima facie* that the APAC is able to withstand the refutation tests that make criticizing the prisons privatization initiatives. The implementation of this criminal enforcement by the third sector can provide solutions to the typical problems of criminal execution by the State and in this country and may also present new problems that have not yet been studied.

APAC - Association for the Protection and Assistance of the Convicted is a civil legal entity of private law, non-profit, having its own legal personality under the terms of article 45 of the Brazilian Civil Code, being one of the entities that are an integral part of the third sector. APAC works to assist the convict in formalizing the human rights and fundamental rights fixed in the Brazilian Republic Constitution.

In 1972, in the city of São José dos Campos, in the State of São Paulo, the first Association of Protection and Assistance to the Convict emerged, being considered the largest aid and efficacy entity within the Brazilian prison system. APAC was founded through inspiration on the intellect of Professor Mario Ottoboni, together with 15 other volunteers, in order to humanize fundamental rights and human rights, they decided to create the APAC method to assist inmates. A strike and demonstrations were held in the city of São José do Rio Preto, by moment when criminal law judge

²³ ROXIN, Claus. *Problemas fundamentais de Direito Penal*. Lisboa: Vega, 2004. p. 41.

²⁴ Ituitaba is a city located in the Triângulo Mineiro region of Minas Gerais with a little more than 100 thousand inhabitants. (<https://pt.wikipedia.org/wiki/Ituitaba>)

delivered some prisoners into the hands of the organization, who had no place to stay and were under the care of APAC in that City²⁵.

What distinguishes APAC's method from the method of the regular prison system is that the convicted / recovering person is responsible for his / her recovery, having medical, legal, psychological and spiritual care, all provided by the community. It is considered a micro prison, having a capacity for 100 to 180 recovering persons, which serves the remainder of its sentence, having preference to recover in its hometown, or where its relatives reside. The convicts participate in occupational courses, varied activities, avoiding idleness, which also entails the acquisition of knowledge that helps the recovering to find a job opening in the job market through said courses²⁶.

APAC aims to promote the humanization of prisons, without losing sight of the punitive purpose of the sentence. Its purpose is to prevent recidivism in crime and offer alternatives for the convict to recover. It has its philosophy inspired by the work of its idealizer, Mário Ottoboni, which consists in killing the criminal and saving the man. It is a restrictive interpretation, in the sense of killing the criminal who is part of the man, who finds himself inside the convict, arousing the humanized spirit, correct and pure, to put man in society, away from the perils of crime²⁷.

In 1986, APAC joined Prison Fellowship International (PFI), the UN advisory body for prison affairs. As of that date, the APAC Method was released worldwide through congresses and seminars²⁸.

It uses 12 fundamental elements to execute the sentence, elements that are linked to evangelization and fundamental law, consisting on community participation; Recovering helping the recovering; job; religion; Legal assistance; Health care; Human valorization; the family; The volunteer and his / her training; Center for Social Reintegration - CRS; merit; And, finally, a journey of liberation with Christ, dedicating only and exclusively to the reinsertion of the convict to society and aid in custodial sentences to the convict that, after compliance, hinders the automatic reinsertion of the convict into society.

APAC acts in partnership with the Judiciary and Executive Branch in the criminal execution and administration of the custodial sentences in the closed, semi-open and open regimes.

Each APAC headquarters is associated to the FBAC - Brazilian Fraternity Association, which is a legal entity under public law, being the inspector of the APAC method, whose function is to guide, assist and maintain the associations.

APAC has its operation stamped on 12 essential principles and fundamentals for its operation and its consequence effectiveness. Below we take from the TJMG booklet the meaning of the principles adopted by APAC:

1. Community participation: Apac can only exist with the participation of the organized community, because it is the APAC's great task the introduction of the method in prisons and gathering power from society in favor of the association ideals.

²⁵ BRASIL. Tribunal de Justiça do Estado de Minas Gerais. Programas novos rumos. Belo Horizonte: dezembro de 2011, 86 págs. Disponível em <http://ftp.tjmg.jus.br/presidencia/programanovosrumos/cartilha_apac.pdf> p. 28. Acesso em 11 out 2016.

²⁶ PEDROSO, Regina Célia. Utopias penitenciárias. Projetos jurídicos e realidade carcerária no Brasil. Jus Navigandi, Teresina, ano 9, n. 333, 5 jun. 2014. Disponível em: <<https://jus.com.br/revista/texto/5300>>. Acesso em: 15 out 2016.

²⁷ BRASIL. Tribunal de Justiça do Estado de Minas Gerais. Programas novos rumos, op. cit., p. 9.

²⁸ BRASIL. Tribunal de Justiça do Estado de Minas Gerais. Programas novos rumos, op. cit., p. 29.

2. Recovering by helping the recovering: The human being was born to live in community. For this reason, there is an imperative need for the prisoner to help the other prisoner in all that is possible, so that respect is established, promoting the environment harmony. It is through this mechanism that the recovering learns to respect the like.
3. Work: Work should be part of the context and the proposal, but it should not be the only fundamental element, since only it is not enough to recover the prisoner. If there is no recycling of values and improvement of self-esteem, so that the citizen who fulfills the penalty is discovered, knows himself and sees his merits, nothing will have meaning.
4. Religion: The importance of making the experience of God, having a religion, loving and being loved, without imposition of creeds, as long as guided by ethics, leading to the moral transformation of the recovering.
5. Legal assistance: It is known that 95% of the prison population does not meet the conditions to hire a lawyer, and the anxiety grows, especially in the sentence execution phase, when the prisoner becomes aware of the numerous benefits provided by law. Therefore, at all times, the recovering is worried to know about the progress of his process, to check the time remaining in prison.
6. Health care: Medical, psychological, dental and other assistance is offered in a humane and efficient manner, through the voluntary work of professionals dedicated to APAC's cause.
7. Human valorization: It is the basis of the Apac Method, since it seeks to put the human being first, and in this sense, all work is conducted in order to reformulate the self-image of the person who has made mistakes. In cell meetings, with the use of psychopedagogical methods, great effort is made to make the recovering to cherish himself; Convince him that he can be happy, that he is no worse than anyone else.
8. The family: In the Apac Method, the recovering family is very important, so there is a need for family members integration in all stages of prison life, as one of the convict recovery pillars.
9. The Volunteer and his Formation: APAC's work is based on gratuity, on the service of others, as a demonstration of love and affection for the recovering. In Apacs who administer CRSs, without police, the remuneration should be restricted only and prudently to the people assigned to work in the administrative sector. To develop your task, the volunteer needs to be well prepared.
10. Social reintegration center: Apac created the Social Reintegration Center and, in it, three pavilions - intended for closed, semi-open and open regimes -, thus not hindering the execution of the sentence. The establishment of the CRS offers to the recovering the opportunity to serve the penalty close to its affective nucleus: family and friends.
11. Merit: The prison life of the recovering person is meticulously observed, so that their merit is determined and, consequently, the progression of the regimes is defined.
12. The Day of Liberation with Christ consists of an annual meeting of lectures and meditations aimed at provoking the recovery the the adoption of a new life philosophy during four reflection and values interiorization days²⁹.

²⁹ BRASIL. Tribunal de Justiça do Estado de Minas Gerais. Programas novos rumos., op. cit, p. 31-38.

The APAC method has proved quite effective for society at large. "The most important fact that is happening today in the world, in prisons, is the Apacs movement in Brazil"³⁰. The reintegration of the convict into society has opened several ways for the recovered, has shown great effectiveness in the search for reinsertion in the labor market, removing the recovered from the world of crime, decreasing its index, helping society in general by touching on the reduction of crime index, as well as, rarely, generating jobs in the labor market, with foundations of companies.

4. APAC's Efficiency In Criminal Execution In Ituiutaba

In order to consider whether the delivery of the administration of the semi-open and open regimes of execution of custodial sentences to the third sector in Ituiutaba requires the use of economic analysis.

In general, jus-economists are concerned with trying to answer two basic questions: (i) what are the consequences of a given legal framework, that is, of a given rule; And (ii) what legal rule should be adopted³¹

Crime, according to Becker³², results from the rational maximization of the agents involved: State, delinquent and victim. The offender reacts to a chain of incentives, analyzing the costs and benefits to decide whether or not to commit the crime. In this sense, he would act based on the probability (p) and severity (f) of the punishment that he will eventually suffer as a result of criminal conduct.

Investment in ostensible politics and institutions such as the Public Prosecutor's Office increases the likelihood of the offender being convicted, as it means increasing the variable p . On the other hand, the investment in the construction of prisons with more cells and the increased duration of sentences represents an increase in the variable f , that is, in the severity of punishment.

Both policies, according to Felipe Azevedo Rodrigues³³, result costs that, in an ideal scenario, should be optimized to achieve a more efficient result.

On the other hand, according to Cooter and Ulen:

The central strand of economic analysis focuses on social costs, whose simple measure equals the sum of the cost of the harm from crime and its prevention. An act should be treated as a crime and punished if doing so reduces social costs. The severity of the punishment should be calibrated to minimize social costs³⁴.

³⁰ Freely translated from Ron Nickkel, diretor executivo da Prison Fellowship International (PFI) – órgão consultivo da Organização das Nações Unidas (ONU) para assuntos penitenciários. Declaração proferida durante o 6º Congresso Nacional das Apacs, realizado em Itaúna/MG, em julho de 2008.

³¹ Freely translated from: GICO JR, Ivot; RIBEIRO, Gustavo Ferreira. **O jurista que calculava**. Curitiba: CRV, 2013. p. 19,

³² BECKER, Gary Stanley. Crime and Punishment: An Economic Approach. Disponível em: <<http://www.ppge.ufrgs.br/giacomo/arquivos/ead/becker-1968.pdf>>, acesso em 21 de agosto de 2017.

³³ RODRIGUES, Felipe Azevedo. ANÁLISE ECONÔMICA DA EXECUÇÃO PENAL: RESSOCIALIZAÇÃO E REGIME SEMIABERTO. Revista Direito e Liberdade - ESMARN - v. 13, n. 2, p. 101 – 124 – jul/dez 2011

³⁴ COOTER, Robert and ULEN, Thomas. Law and Economics. 6th ed. Addison Wesley, 2011, p. 455.

Furthermore, criminal punishment intends to deter intentional harm, not to compensate for them³⁵.

Obviously, there are many social costs spent in penal execution, as shown by Boson³⁶:

Table 2 - Crime Costs: Category and victims.

Costs Category	Party the more directly bear the cost
Society's costs in response to crime	
12. Prevention Costs	
a) Prevention behavior	Citizens
b) Costs with alarms, dogs, etc	Citizens
13. Fear from crime	Citizens
14. Judicial law system	
a) Police and investigation costs	Society
b) Prosecutor's Office	Society
c) Courts	Society
d) Legal taxes	
- Public defenders	Society
- Private taxes	Victim
e) Prison Costs	Society
f) Other penalties costs	Society
g) Time spent by the victim/family	Victim/family

Source: Boson, 2014, p. 25.

Here, it's not taken to account many other costs directly related to the crime commitment and the victim's losses, it's merely related the costs the criminal prosecution and penalty execution take.

It is known that the doctrine³⁷ affirms that crime could not be totally eradicated from society, since investments to do so would be totally contrary to the "great" sought in law and economics theories.

The recovery of the criminal, therefore, is a cost that enters the accounting of the economic analysis of the crime. While the higher the cost to recover the offender, the greater the social cost of the crime (as shown above). Therefore, the cheaper (efficient) recovery of the criminal means

³⁵ COOTER, Robert and ULEN, Thomas. Law and Economics. 6th ed. Addison Wesley, 2011, p. 461.

³⁶ BOSON, Daniel Silva. *Custos Sociais do Crime*: reflexões para a política pública no Brasil. VI Congresso Anual da Associação Mineira de Direito e Economia Belo Horizonte – 26 e 27 de agosto de 2014.

³⁷ Vide GUIMARÃES (GUIMARÃES, Claudio Alberto Gabriel. Análise crítica às teorias econômicas do Direito Penal. In: *Âmbito Jurídico*, Rio Grande, X, n. 42, jun 2007. Disponível em: <http://www.ambito-juridico.com.br/site/index.php?n_link=revista_artigos_leitura&artigo_id=1810>. Acesso em ago 2017.) and POSNER (POSNER, Richard. El análisis económico del derecho. Fondo de Cultura Económico, Mexico D.F, 1998.)

the reduction of the social costs associated with the crimes, since the State should invest less resources to serve the penalty, obtaining better results.

On the other hand, when the rate of recidivism is analyzed, the lower the rate of recidivism, the lower will be the state investment in prevention as so the hiring and training of police officers, structure, investments in public prosecutors, criminal courts, judges and etc. Decreasing recidivism also means reducing the social costs of crime.

That's why these two factors are the main character in analyzing the APAC's efficiency in the criminal execution in Ituiutaba.

It is also verified the execution of the custodial sentence in said regimes outside the APAC's action due to its limitation of vacancies and based on these cases, we can establish how is the criminal execution administered directly by the State. This will give the paradigm and establish to = penitentiary administration without APAC.

It has already been verified that the purpose of the sentence execution is the harmonious social integration of the convict person. This information is very difficult to obtain in precise terms because it is rather subjective and prescriptive. But an objective component that can approximate the diagnosis of the convict's harmonic integration to the society is his absolute failure by the commitment of new crime by the clients of the prison system. It cannot be said that the recidivism rates reflect the convict's social integration because other important factors interfere in such indexes, nevertheless it is the most objective data with which one can work in the simplest way.

According to the CPI's final report of the prison system, the number of convicts in more than one sentence plus the number of repeat offenders in Brazil is 57.22%³⁸. Minas Gerais has a recurrence rate of around 51.4%³⁹.

There is no official information about the recidivism in the district of Ituiutaba among its recoverers⁴⁰. But since there is not even a suitable establishment in the city for the administration of prison sentences in semi-open and open regimes, it is possible to take from 50 to 60% in our country, based on the national and state indices.

The average cost to the public coffers of a prisoner in Minas Gerais is R\$ 1,700.00 (one thousand seven hundred Reais), but according to the own CPI of the prison system that produced the data:

There is no real reliable data or information on the cost of the prisoner in any of the Brazilian states, as there is no reliable information on the whole prison situation. It is known, however, that Brazilian society pays a very expensive price to maintain an intern within the national prison system as a whole⁴¹.

³⁸ Brasil. Congresso Nacional. Câmara dos Deputados. Comissão Parlamentar de Inquérito do Sistema Carcerário. CPI sistema carcerário. – Brasília: Câmara dos Deputados, Edições Câmara, 2009. p. 71.

³⁹ SANTOS, Roberta Fernandes. Fatores determinantes da reincidência criminal – dos percursos do crime após a prisão. 39º Encontro Anual da Anpocs SPG 07 – Estudos em Sociologia da Punição e Encarceramento: discutindo o sistema prisional e socioeducativo no Brasil. (<http://www.anpocs.org/index.php/papers-39-encontro/spg/spg07/9888-fatores-determinantes-da-reincidencia-criminal-dos-percursos-do-crime-apos-a-prisao/file> - acesso em 05/01/2017)

⁴⁰ CAETANO, Gabriel Pires Sene. Terceiro setor em Ituiutaba. Pesquisa realizada com fomento da Fundação de Amparo à Pesquisa do Estado de Minas Gerais – FAPEMIG entre 2014 e 2016. (Relatório final aguarda publicação)

⁴¹ Brasil. Congresso Nacional. Câmara dos Deputados. Comissão Parlamentar de Inquérito do Sistema Carcerário. CPI sistema carcerário. – Brasília: Câmara dos Deputados, Edições Câmara, 2009. p. 386.

As the survey was conducted in 2009 and how it does not take into account expenses such as escorts, health care, etc. One can work with a material cost not less than R\$ 2000.00 (two thousand Reais) per month with each convicted person in *It0*.

As said before, of course there is a social and political cost in administering the penitentiary system. The construction of penitentiary establishments interferes in the real estate market, it occupies several state resources that could be directed to other citizens. For example, in the absence of establishment for the administration of semi-open and open regimes there will be a greater demand for the work of the Military Police rather than prison officers, which may compromise the attendance of other occurrences in which citizens demand police action.

In these eight years by APAC-Ituiutaba have already passed more than 900 (nine hundred) assisted, of which 90 (ninety) recoverers are currently in criminal execution.

During the day these recoverers have a strict daily routine: First act of the day at 07:00AM in the morning (prayer, personal hygiene and organization of the dormitory), 08:00AM breakfast and daily cleaning. Morning class for the students enrolled in the morning. 11:00AM Lunch. 1:00PM return to activities. Afternoon class for the students enrolled in the afternoon. 2:30PM Afternoon snack and daily cleaning. 5:00PM bath, 6:00PM dinner. 7:00PM return to the dormitory. Tuesdays 7:30PM Rosary for Catholics. Thursdays 5:00PM Mass for Catholics. Thursdays 7:30PM Cult for evangelicals. 9:00PM snack night. During the week, group activities with trainees.

It has eleven employees, two trainees and one psychologist, as well as thirty-eight permanent volunteers.

In addition to gardens, APAC has a physical reintegration center with 06 (six) dormitories, with individual bathrooms and single beds, kitchen, dining room, two classrooms, a multipurpose auditorium, DVD library, living room Computer, laundry, suite for intimate visit, office and workshop.

It is assisted and supported by the Public Prosecutor's Office, the Court of Justice, the Public Defender's Office, the State University of Minas Gerais, the Federal University of Uberlândia, the Federal Institute of the Triângulo Mineiro and the Military Police. And it has partnerships with FIEMG / SESI / SENAI, SENAR, Minas Institute for Peace, AVSI Foundation, FBAC.

Again, there is no official figure on the return of APAC recoverers to Criminal Justice, but according to institution survey the recidivism remained below 9% (nine percent) in every year. Information that will go to *It1* = penitentiary administration with APAC⁴².

On the same side, the expenses of the association with each recovering do not exceed R \$ 900.00 (nine hundred Reais). APAC does not receive grants; it is kept with money from donations. These donations are generally not spontaneous but stem from criminal prosecution and the enforcement of rights-restrictive sentences. In the same way as with the information that made *It0* there is an imprecision here due to the difficulty in making up the total expenditure with each convicted person. Obviously, there is the use of resources in the execution beyond the expenses of the association itself, such as the use of prison guards in security. In addition, there is the social

⁴² CAETANO, Gabriel Pires Sene. Terceiro setor em Ituiutaba. Pesquisa realizada com fomento da Fundação de Amparo à Pesquisa do Estado de Minas Gerais – FAPEMIG entre 2014 e 2016. (Relatório final aguarda publicação)

cost that is difficult to pin down as a result of the non-use of the donations that maintain the association in other entities of the third sector, such as kindergartens, schools and charity hospitals.

Even so, it is already possible to design a very simplistic model of the delivery of the custodial sentences execution administration of open and semi open regime to the third sector in Ituiutaba.

5. Conclusion

The application of penalties arising from crimes, in its execution phase should seek the convict's harmonious social integration.

Although it is very difficult to measure the success of the execution of the sentence in promoting the harmonious social integration of the convicted person and the total cost of maintaining it, the following model can be produced with the data acquired in this research:

Table 3

	t0	t1
Cost ⁴³	≅R\$2000,00	≅R\$0,00 ⁴⁴
Recidivism ⁴⁵	≅>50% e <60%	≅<10%

Source: self-elaboration.

A more complete model requires more accurate data and the insertion of more variables, such as the APAC reflex in general crime rates. But, within the proposed limits, it can be concluded that it is efficient to deliver part of the prison administration to the third sector based on the experience of APAC de Ituiutaba.

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⁴³ Pagas diretamente com verbas públicas.

⁴⁴ Lembrando que as doações feitas para a manutenção da associação não são geralmente espontâneas e que gasta cerca de R\$900,00 com cada recuperando por mês.

⁴⁵ Entendida aqui tanto como dupla condenação, como a reincidência legal.

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