

Federal Prosecutor's Office publishes Technical Note favorable to the Criminal Agreement presented by the Minister of Justice and Public Security

By means of a joint Technical Note #105/2019, the Second Coordination and Revision Chamber (Criminal) was in favor of the new legislative initiative presented by the Minister of Justice and Public Security, Sérgio Moro, which he intends to add to our legal system the possibility of a **Criminal Agreement**, which will be similar to the American Plea Bargain model.

In a brief analysis, the Federal Public Prosecutor's Office pointed out that the Brazilian legal system has already become familiar with institutes from the Consensual Criminal Law, such as the **Criminal Transaction** and **Conditional Suspension of the Process (Federal Brazilian Law #9.999/1995)**, that are considered to be an outspread from a Consensual Justice and a decriminalized measures.

Along the same line, the Federal Prosecutor's Office refers to **Law# 12.850/ 2013**, which already regulates an **award-winning collaboration institute**, presenting a collaborative justice to those involved in criminal activities willing to effectively and voluntarily to collaborate with the authorities about an ongoing criminal investigation. And, further extending the Brazilian consensual model, in the scope of public law, the **Leniency Agreement (Law #12.846 /2013)** authorizes the public entity to celebrate a leniency agreement with legal companies guilty of the practices of the acts envisaged in the Law, since they collaborate effectively during the investigations and with the administrative process (Article 16).

The procedures already used in the Brazilian legal system cluster, until now, major advances in the area of a criminal proceedings consensus, pointing to the need and convenience of the legislative initiative presented by the Minister of Justice.

It is already in process inside The House of Representatives, a new Bill for Criminal Procedures Code (CPP), where - in the words of the Federal Public Prosecutor's Office - "there is a fast procedure in which the Public Prosecution Office (prosecution) and accused (defense) may jointly request an early judgment of merit and the immediate application of punishment in crimes that are not subject to the special procedures and which does not presents maximum penalty more than eight years (Article 308 of the Bill Replacement).

The Federal Prosecutor's Office also affirms that "... consensual justice is already a reality in Brazil", as various tools for the resolution of conflicts by the legal system are being encouraged as an alternative of criminal policy, ending the thinking of criminal procedure merely conflicting and adopting of a more consensual criminal procedure. The document emphasizes that the growth of spaces of consensus for an early analysis of the procedures will gain force in the legal scene as an alternative way of solving the criminal conflicts and thus allowing more time for criminal Judges to devote themselves to most serious, complex and organized crimes, resulting in great benefit to society.

It's also pointed that should not be forgotten that **criminal agreements** are conducted by the Public Prosecutor's Office due to the accusatory system present in the Brazilian Constitution, since the Public Prosecutor's Office holds the monopoly of the public criminal action (article 129, I, CF), also having the discretionary power to agree on adjustments in exchange for the non-outbreak of the criminal action or its withdrawal, which will be evaluated by the Judiciary.

Lastly, there is a great importance that the legislative Bill on the Criminal Agreement appreciates a few points: a) crimes that will be covered by the possibility of a criminal agreement; b)

adjustment in relation to the quantum of restriction of freedom to be fulfilled; c) allocation of the amounts collected in the agreements; d) possible allocation of amounts for payment of legal counsel for those defendants who cannot afford the cost of a private lawyer and in the locality does not have a Public Defender's Office; and (d) setting up of centers for monitoring compliance with agreements.

The Mattos Engelberg Advogados Corporate Criminal Team remains available for any clarification.