

Francisco Schertel Mendes

Leniency Policies in the Prosecution of Economic Crimes and Corruption

Consensual Justice and Search for Truth in Brazilian
and German Law



Nomos

Schriften zum Internationalen und
Europäischen Strafrecht

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Band 48

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The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>

a.t.: Berlin, HU, Diss., 2020

ISBN 978-3-8487-7849-2 (Print)
 978-3-7489-2259-9 (ePDF)

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978-3-8487-7849-2 (Print)
 978-3-7489-2259-9 (ePDF)

Library of Congress Cataloging-in-Publication Data

Schertel Mendes, Francisco

Leniency Policies in the Prosecution of Economic Crimes and Corruption

Consensual Justice and Search for Truth in Brazilian and German Law

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345 pp.

Includes bibliographic references.

ISBN 978-3-8487-7849-2 (Print)
 978-3-7489-2259-9 (ePDF)

1st Edition 2021

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Published by

Nomos Verlagsgesellschaft mbH & Co. KG

Waldseestraße 3-5 | 76530 Baden-Baden

www.nomos.de

Production of the printed version:

Nomos Verlagsgesellschaft mbH & Co. KG

Waldseestraße 3-5 | 76530 Baden-Baden

ISBN (Print): 978-3-8487-7849-2

ISBN (ePDF): 978-3-7489-2259-9

DOI: <https://doi.org/10.5771/9783748922599>



Onlineversion
Nomos eLibrary



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To Rosa, for a lifetime of extraordinary lessons.

“To be free of an erroneous opinion (...) one must at some time have professed it.”
Jorge Luis Borges, Averroes' Search.

Preface

This book is the result of a doctoral research carried out before the Humboldt University of Berlin and the University of Brasilia between 2014 and 2018. After the defense of the thesis, in 2019, only minor terminological adjustments were made.

The research started as an inquiry into the possibilities of improvement and strengthening of leniency policies in the prosecution of economic offenses., a subject with which I have been occupied for some time. Between 2009 and 2014, I worked for the Brazilian Competition Authority, and there I had the opportunity to steer a wide policy reform to enhance the use of cooperating defendants in Brazilian anti-cartel enforcement. Coming from this background, the original research project had a narrow and inward-looking approach, as commonly found in the official discourse regarding leniency policies.

The research changed course when several aspects of the recent use of cooperating defendants in Brazilian criminal investigations proved, once analyzed from a comparative perspective, to be highly inventive and somewhat eccentric. I am extremely grateful to my supervisor, Professor Dr. Martin Heger, who gave solid advice for the development of a critical stance towards the subject. His enthusiasm and trust in the research played a pivotal role in the development of the thesis.

I am also thankful to Professor Dr. Luís Greco, who supported the research from the beginning and offered me the opportunity to discuss the thesis in the “Rechtsphilosophisches Donnerstag-Seminar,” at the Faculty of Law of Humboldt University. I am as well obliged to Professor Ana Frazão, who co-supervised the thesis and provided valuable guidance, and Professor Paulo Burnier, who contributed to the research in many ways. I also express my gratitude to my friends Robert Pest and Alaor Leite, who have always provided a safe harbor in Berlin.

This thesis has been written - over four years and sometimes under challenging circumstances - in Berlin, Brasília, and Maastricht. All along, the love and support of Lorena Coutinho transformed a rough challenge into an incredible journey, full of joy, warmth, and affection.

Francisco Schertel Mendes

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Abbreviations

German Courts

BGH – Bundesgerichtshof (Federal Court of Justice)

BVerfG – Bundesverfassungsgericht (Federal Constitutional Court)

Deutscher Bundestag – German Parliament

Brazilian Courts

JFDF – Federal Justice of the Federal District

JFPR – Federal Justice of the State of Paraná

STF – Supremo Tribunal Federal (Federal Supreme Court)

STJ – Superior Tribunal de Justiça (Superior Court of Justice)

TRF4 – Appeal Court of the 4th Circuit of the Federal Justice

MPF – Federal Public Prosecution Office

