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The legal effectiveness of public security in first world countries: analysis comparison with the Brazilian model

The legal effectiveness of public security in first world countries: comparative analysis with the Brazilian model

Roberto Goncalves1

Summary

Public security is a fundamental pillar of the Democratic State of Law, going beyond the control of public order by guaranteeing fundamental rights, social peace and justice. In developed countries, it is treated as an integrated legal policy, with a solid normative basis, effective institutional control and alignment with international human rights treaties, strengthening stability and trust in public institutions.

Keywords: Public Security, Democratic Rule of Law, Human Rights

Abstract

Public safety is a fundamental pillar of the Democratic Rule of Law, going beyond the control of public order to guarantee fundamental rights, social peace and justice. In developed countries, it is treated as an integrated legal policy, with a solid normative basis, effective institutional control and alignment with international human rights treaties, strengthening stability and trust in public institutions.

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1. Introduction

Public safety constitutes one of the essential pillars of the legal organization of a State Democratic Law. Its configuration goes beyond the mere control of public order, involving the guarantee of fundamental rights, the maintenance of social peace and the promotion of justice. In first world countries, public safety is treated as a legal policy integrated, with a strong normative base, efficient institutional control and full compliance with the international human rights treaties. This framework contributes directly to the institutional stability and to strengthen confidence in public institutions.

In Brazil, although the Federal Constitution of 1988 establishes in its article 144 that the public safety is the duty of the State, the right and responsibility of all, the implementation of this precept encounters various obstacles. The fragmentation of the police system, the absence of a cycle complete criminal prosecution and the constant violation of human rights by agents of the State reveal a flawed legal-institutional model. Such a model not only compromises the

[1] Graduated in Law from CEUMA University

efficiency of public security, but also weakens the legal protection of citizens, especially the most vulnerable population.

The absence of a structured legal approach to public safety compromises the role transformative that this service could have on society. In developed countries, the apparatus legal not only prevents illegal practices but also promotes the resocialization of the offender, monitoring abuses by the State and guaranteeing human dignity. The criminal and procedural legislation is constantly updated to reflect the principles of guarantees, strict legality and effective judicial control, ensuring greater predictability and citizen protection.

In turn, Brazil remains stuck with an outdated legal structure, inherited from periods authoritarian and marked by a repressive logic. The criminal legislation still in force — such as the Penal Code of 1940 and the Code of Criminal Procedure of 1941 — reflects a paradigm of security based on social containment and punishment, not on the promotion of rights. Despite specific advances, such as the creation of custody hearings, the Brazilian legal framework remains outdated in the face of the demands of a modern criminal justice system and constitutionally adequate.

In view of this scenario, this article aims to analyze, from a legal perspective, the legal structures of public security in first world countries and compare them with the Brazilian model. The aim is to demonstrate that the difference in results between these countries and Brazil is directly related to normative effectiveness, institutional control and adherence to Rule of Law. The proposal is to present elements that justify the need for reforms deep legal and institutional structures in Brazil, in order to guarantee public safety legally effective, which promotes justice and not just repression.

2. **Legal Basis of Public Security**

Public security, from a legal point of view, constitutes a state function of a non-delegable and is expressly provided for in modern constitutions as a right fundamental right of all and duty of the State. In countries with a consolidated democratic tradition, the public security is legally structured based on principles such as legality, proportionality, efficiency and respect for human rights. Recognition of this function is not limited to the repression of crime, but includes the protection of life, physical integrity and morals and assets of citizens. In legal terms, these countries guarantee the population the presence of effective control mechanisms over security institutions, which increases the levels of social trust in the legal system.

In Germany, for example, public safety is covered by Article 1 of the Grundgesetz.
(German Federal Constitution, 1949), which states that “the dignity of the human person is inviolable”
and that public authorities must respect and protect it. This principle is the interpretative basis of
the entire legal system, including the actions of the police forces and the penal system. The
German criminal law (Strafgesetzbuch) is guided by procedural and criminal guarantees aimed at
protection of fundamental rights, so that state repression can only occur within
strict legal limits and under constant judicial supervision.

Thus, the German model demonstrates the centrality of legality and proportionality as
legal foundations of security.

Another relevant example is Norway, whose Penal Code (Straffeloven, 2005) and its system of
criminal execution prioritize the social reintegration of the offender. The legal basis of the
Norwegian public security is not focused on punishment, but rather on crime prevention and
reinsertion of the individual into society. Police action, in turn, is regulated by legislation
specific that clearly defines the limits of the use of force and requires action accordingly
with human rights. This legal logic promotes an environment in which public safety
is at the service of justice and social peace, not indiscriminate repression.

In Canada, public safety is governed by the RCMP Act (Royal Canadian Mounted Police).
Act, 1985) and the Canadian Charter of Rights and Freedoms (1982), which has status
constitutional and guarantees broad protection of individual rights against State action. The law
establishes strict legal criteria for the actions of security forces, such as
mandatory judicial warrant for search and seizure, the prohibition of illicit evidence and the
holding agents accountable for any abuses. The Canadian legal system also imposes
independent review and audit mechanisms of the security forces, ensuring the
compatibility of police action with the parameters of the Rule of Law.

In contrast, in Brazil, although article 144 of the 1988 Federal Constitution recognizes the
public safety as “the duty of the State, the right and responsibility of all”, the effectiveness
legal implementation of this precept encounters serious obstacles. Brazilian public safety suffers from the
absence of federal legislation that unifies criteria for the actions of civil and military police,
as well as the institutional fragmentation of the criminal prosecution cycle. Criminal norms and
current procedural frameworks are still based on authoritarian paradigms, compromising their
adaptation to contemporary constitutional principles. The result is the perpetuation of
violent and inefficient practices, marked by abuse of authority, lethality and selectivity
criminal.

Therefore, the comparison between the legal foundations of public security reveals that, in
first world countries, there is a constant concern to align state action with the framework

legal protection of fundamental rights, with broad monitoring and institutional accountability. In the Brazil, the gap between constitutional provisions and practice reveals a serious deficit of effective normativity, which compromises the transformative function of public security in the State Democratic Law. Strengthening the legal basis of public security in the country requires profound legislative reforms, capable of ensuring respect for fundamental guarantees and realization of the right to security with dignity.

3. Legal Models of Public Security in Developed Countries

In first world countries, legal models of public security are structured in in order to guarantee not only the qualified repression of crime, but mainly the unrestricted respect for fundamental rights. This perspective arises from the understanding that the Rule of law cannot be compromised in the name of supposed punitive efficiency. The The actions of the security forces are strictly guided by legal regulations and subject to independent, administrative and judicial controls. This reflects a mature legal conception, in which security and legality go hand in hand in building public order.

The British model is a classic example of this approach. In the UK, the system of Common Law ensures that all police action is subordinate to the Judiciary, so that the actions of the security forces can be easily challenged in court. legislation governing police action, such as the Police and Criminal Evidence Act (PACE, 1984), establishes strict criteria for searches, seizures and detentions, always requiring justifications clear legal frameworks. The existence of institutions such as the Independent Office for Police Conduct (IOPC) reinforces the legal culture of accountability, an essential element for control of legality in public safety.

In France, the legal model also stands out for its balance between security and rights individual. The actions of the police forces are governed by the Code de la Sécurité Intérieure and the Code Pénal, both updated regularly to ensure compliance with the principles of European Convention on Human Rights. The European Court of Human Rights, based in Strasbourg plays a fundamental role as a supranational body for reviewing practices security of Member States. In 2017, for example, France was condemned by the Court for excessive surveillance practices, reinforcing the importance of judicial supervision over public security instruments (ECHR, Zakharov v. France case, 2017).

In the United States, despite a conflicting history regarding public safety and civil rights, the current legal model imposes significant restrictions on police actions. The Supreme The Court plays a prominent role in this process, as evidenced in the landmark decisions in the cases Miranda v. Arizona (1966), which established the rights of the detainee, and Mapp v. Ohio (1961), which

prohibited the use of illegally obtained evidence. The Fourth Amendment of the U.S. Constitution protects citizens from unreasonable searches and seizures by requiring warrants specific judicial measures, based on probable cause. These legal guarantees demonstrate that, Even in more rigorous systems, there is a commitment to due process.

These models reveal a common characteristic: the institutionalization of legal mechanisms that prevent abuse by the State and guarantee predictability in the actions of the security forces security. Clear laws, external supervision and the strengthening of the Judiciary as an authority protective are legal pillars that give legitimacy and effectiveness to public safety in developed countries. Thus, more than repressive policies, what differentiates these nations is the legal maturity that underpins its security systems — a maturity that still needs to be fully achieved in Brazil.

4. **Public Security in Brazil and its Structural Legal Obstacles**

Brazilian public security, despite being constitutionally defined as a duty of the State and right of all (CF/88, art. 144), faces serious legal and institutional limitations that compromise its effectiveness. One of the main obstacles is the duality between the military police and civil, which make up a fragmented and inefficient system. The absence of a complete cycle of criminal prosecution in each institution generates overlapping functions and undermines responsibility objective. As highlighted by Silva Sánchez (2001, Barcelona, *La expansión del Derecho penal),* the Modern public security requires a systemic rationality that the Brazilian model does not can achieve due to its normative disorganization.

Another relevant legal factor is the anachronism of the main Brazilian criminal and procedural laws. The Penal Code (Decree-Law No. 2,848/1940) and the Code of Criminal Procedure (Decree-Law No. 3,689/1941) were created during the Estado Novo, in an authoritarian context, and remain, largely unchanged. Although specific reforms have been made, these laws still carry a repressive, inquisitorial and punitive logic, far from the standards international human rights protection standards. The result is the application of criminal standards frequently incompatible with the principles of due process, full defense and dignity of the human person, all provided for in the 1988 Constitution.

Furthermore, external control of police activity, a prerogative of the Public Prosecutor's Office (art. 129, VII, CF/88), faces severe practical limitations. There is a lack of structure, resources and political will for effective oversight. The National Council of the Public Prosecutor's Office (CNMP), although it is a control body, has restricted action with regard to holding agents accountable security audiences. According to a study by the Sou da Paz Institute (2021, São Paulo), more than 70%

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of police lethality investigations do not result in criminal liability or administrative. This impunity is legally worrying and feeds a culture of exception within the democratic state.

Another legal obstacle is criminal selectivity, which disproportionately affects young black people. and poor. This selectivity is expressed both in the actions of the security forces and in judicial decisions. The Public Defender's Office of the State of Rio de Janeiro (2020, RJ) identified that, in more than 80% of the arrests in flagrante converted into preventive arrests, the defendant did not have criminal record or concrete evidence of the crime. This reality exposes a deformation in the use of provisional arrests and violates the principle of presumption of innocence, provided for in art. 5, section LVII of the Constitution. This is a discrepancy between the letter of the law and practice. judicial, which compromises the guarantee system.

Finally, the absence of integrated legislative policies that promote safety stands out. public in a systemic and rational way. The lack of a National Public Security Plan with force of law, articulated with the States, prevents the country from implementing lasting legal solutions. Initiatives such as the Unified Public Security System (SUSP), established by Law No. 13,675/2018, still lack infra-constitutional regulations and legal mechanisms for monitoring. The lack of legal predictability, normative integration and policies public policies structured from the perspective of Law generate a scenario of legal uncertainty and institutional. As Zaffaroni (2011, Buenos Aires, *In Search of Lost Feathers) points out,* without solid legal basis, public security becomes an instrument of oppression, not of justice.

5. **Comparative Analysis between International and Brazilian Legal Models**

Comparative analysis between the legal models of public security adopted by countries of first world and the Brazilian model reveal a significant structural distance, especially in which concerns the articulation between legality, efficiency and guarantee of fundamental rights. In developed countries, the regulatory framework for public security is built on clear foundations and coherent, with integration between different bodies, updated legislation and systems of effective institutional oversight. These elements ensure that state action in security does not compromise the rule of law, as evidenced by the Canadian model analyzed previously, in which the Fourth Amendment and the Canadian Charter of Rights and Freedoms legally limit the use of the State's coercive power (Charter of Rights, 1982, Canada).

In Brazil, the 1988 Constitution, although modern and full of guarantees in its text, comes up against outdated infra-constitutional legal devices, such as the Penal Code of 1940 and the Code

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of Criminal Procedure of 1941. This normative gap prevents the consolidation of a model legal framework for public safety that is efficient and, at the same time, respectful of human rights fundamental. As pointed out by jurist Alexandre Moraes da Rosa (2015, Florianópolis, *Jurisdictionalization of the Criminal Process),* the country adopts a punitive model, focused on repression, and little concerned with qualified prevention and legal control of the activity police. In contrast, countries like Germany and France constantly update their criminal law, ensuring that it reflects constitutional principles and treaties international human rights standards.

Another point of divergence between the models is the autonomy of the supervisory institutions. In developed countries, bodies such as public defenders, ombudsmen and commissions parliamentarians have technical and budgetary independence to act impartially. In Brazil, despite the legal provision of the Public Defender's Office (art. 134, CF/88), its scope is restricted, especially in the most vulnerable regions. In addition, external control of police activity, attributed to the Public Prosecutor's Office, lacks effective legal instruments to hold accountable systematic abuses. This regulatory inefficiency perpetuates impunity and undermines social trust in the legality of public security institutions, as reported by the report of Human Rights Watch (2020, New York).

The comparison also reveals differences in the nature of the criminal prosecution cycle. While countries like the United Kingdom and Norway adopt integrated systems, in which the police performs investigative and preventive functions under judicial supervision and with legal training, the Brazil maintains a dual and hierarchical system, which separates investigative functions (Civil Police) and ostensive (Military Police). This split, besides being anachronistic, makes legal articulation difficult and operational aspects of police actions, favoring omissions and abuses. According to a study by the Forum Brazilian Public Security (2022, São Paulo), this fragmentation reduces efficiency investigative and increases the rate of unsolved crimes, violating the right to justice and security.

Finally, developed countries demonstrate a greater capacity to adapt their legislation criminal and procedural issues to contemporary challenges, such as combating terrorism, crimes cybersecurity and urban security. This occurs through constant review of regulatory frameworks, parliamentary debates and hearings from legal experts. In Brazil, legislative reforms often occur in response to media or populist pressures, without due analysis technical or normative impact. The absence of structured legal planning generates instability legal, legal uncertainty and discontinuity of public policies, preventing security public to fulfill its primary legal function: to guarantee, in a legitimate and legal manner, the fundamental rights of the population.

6. The Role of Law in Transforming Brazilian Public Security

The transformation of Brazilian public security inevitably involves the reconstruction of its legal foundations. Law plays a central role in this process, both as an instrument normative and as a mechanism for democratic control of state force. The Constitution Federal Law of 1988, in its article 144, already outlines the basic guidelines for public safety as duty of the State and right of all, but its implementation requires more than textual provision — demands legislative coherence, institutional structure and legal culture of respect for rights humans. The lack of regulatory updates and the fragmentation of police powers reveal a systemic dysfunction that needs to be addressed from a legal perspective.

It is essential that Brazilian Criminal Law ceases to operate as a symbolic instrument of immediate repression and begins to function as a rational tool for legal protection. As argues Zaffaroni (2011, Buenos Aires, *In search of lost sentences),* Criminal Law must be minimal, guarantor and focused on qualified prevention, avoiding mass incarceration and abusive practices. In Brazil, prison overcrowding, combined with penal selectivity, highlights a distorted application of norms, far from constitutional precepts. A transformation effective legal action requires review of custodial sentences, strengthening of penalties alternatives and appreciation of the principles of human dignity, legality and proportionality.

Furthermore, Administrative Law needs to evolve to ensure a disciplinary legal regime. police force. The current regulatory framework governing the accountability of police officers security is deficient, allowing loopholes for impunity. Countries such as the United Kingdom and Germany have clear, binding codes of conduct that are subject to judicial review. In Brazil, the multiplicity of internal ombudsman offices and the fragility of external ombudsman offices make accountability difficult. As the Igarapé Institute (2020, Rio de Janeiro) points out, less than 10% of police fatality cases investigated in the country result in sanctions. Strengthening the administrative and judicial accountability of state agents is a legal condition fundamental for the requalification of the security system.

Law must also play an integrating role between the various federative entities. The Constitution provided for a cooperative model of public security, but it has not yet been implemented in practice. Laws such as nº 13.675/2018, which establishes the Unified Public Security System (SUSP), need to be implemented with clear sub-legal regulations and a federative pact functional. The decentralization of public security requires standards of cooperation and division of responsibilities between the Union, States and Municipalities. As Di Pietro (2021, São Paulo,

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Administrative Law), decentralization only produces results when accompanied by standards clear technical, budgetary and operational guidelines, which are still lacking in the Brazilian legal framework. Finally, the role of the Judiciary and the Public Prosecutor's Office as guarantors of precise legality be expanded. It is not enough for these bodies to act reactively, they must exercise proactive control over police actions and public security policies. The creation of specialized centers in the Judiciary to judge crimes involving security agents and the continuous training of the Public Prosecutor's Office for external control are measures that depend of legal reforms. In countries like Portugal and the Netherlands, these bodies play a decisive role in promotion of legalistic, preventive and effective public security. In Brazil, it is up to the Law abandon the punitive paradigm and assume its transformative role, so that security public is, finally, an expression of democratic legality and social justice.

7. **Final Considerations and Legal Recommendations for the Future of Public Security in Brazil**

The analysis of Brazilian public security from a legal perspective reveals a system that, despite constitutionally modern, still operates with outdated legal foundations, practices ineffective institutional mechanisms and structural deficiencies that compromise its legitimacy. The comparison with first world countries shows that updated legal models, integrated and guided by democratic principles are essential to achieve peace social and trust in institutions. In Brazil, the disconnect between the Federal Constitution and 1988 and the infra-constitutional legislation makes the public security system legally contradictory, which prevents its effectiveness as a tool for justice and protection of rights.
The main recommendation is to reformulate the legal framework for public safety. This includes updating of the Penal Code and the Code of Criminal Procedure, the creation of a national statute of police forces with a full cycle of action and the review of accountability standards administrative. International experience shows that legal reforms are the first step towards institutional transformation. As Ferrajoli (2002, Rome, *Law and Reason) points out,* the Democratic State of Law requires that legality acts as a limit to punitive power, and not as its instrument of expansion. Without this legal transformation, public policies security will continue to reproduce inequalities and violence.
Another necessary legal measure is the strengthening of external control and oversight institutional. The creation of independent ombudsman offices, the autonomy of ombudsman offices and the performance The proactive nature of the Public Prosecutor's Office are pillars to prevent abuse and guarantee the legality of the actions police. Countries like Germany, for example, have autonomous civil bodies with

power of investigation and binding decision on illegal conduct of security agents. In Brazil, the normative strengthening of these mechanisms must be accompanied by changes in legal and institutional culture, promoting effective accountability and an end to impunity systemic. It is also essential to expand the legal training of security professionals public. Legal education for police officers should not be limited to technical courses, but should involve training in human rights, criminal proceedings, conflict mediation and legality control.

According to a study by the Getúlio Vargas Foundation (FGV, 2019, São Paulo), only 18% of police officers Brazilians receive continued training after joining the corporation. This reveals a serious gap in the application of the Law as an instrument for qualifying police action. The law, in this context, it must be understood as the moral and operational guide of police practice, and not as justification for acts of exception.

Finally, the construction of a new public security policy must be accompanied by a new legal doctrine focused on citizenship, legality and social justice. This doctrine must be built through dialogue between legal professionals, universities, legislators and civil society. It is necessary to abandon the logic of maximum Criminal Law and adopt the perspective of full protection of fundamental rights, including the right to security. As it concludes Zaffaroni (2011), Law that does not transform social reality is just a normative fiction.

The transformation of Brazilian public security necessarily involves reform deep, responsible legal practice committed to the Democratic Rule of Law.

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