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The Jurisdiction of Criminal Investigation into Crimes Against Life Committed by Military personnel serving against civilians.

The Competence for Criminal Investigation of Crimes Against Life Committed by Military Personnel On Duty Against Civilians

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Summary

This project analyzes the jurisdiction for the criminal investigation of intentional crimes against life committed by state military personnel on duty against civilians, in light of the doctrinal and jurisprudential controversies that have existed since the enactment of Law No. 9,299/1996. The study demonstrates that, although the trial is directed to the Jury Court, the investigation remains constitutionally and legally attributed to the Military Judicial Police, through the Military Police Inquiry (IPM), according to the Military Penal Code, the Military Criminal Procedure Code, and repeated decisions of the Supreme Federal Court. It seeks to clarify the relationship between investigative jurisdiction, the legal nature of military crimes, external control by the Public Prosecutor's Office, and the prevention of institutional conflicts between the Civil Police and the Military Police. The research, of a theoretical, bibliographical, and documentary nature, argues that the IPM is the only valid procedure for the initial investigation of these crimes, guaranteeing legal certainty, respect for due process, and observance of the peculiarities of military life.

Keywords: Military Crime; Intentional Crimes Against Life; Military Police Investigation; Investigative Jurisdiction; Military Judicial Police; Jury Trial; State Military Justice.

Abstract

This project analyzes the investigative competence regarding intentional crimes against life committed by military police officers on duty against civilians, considering doctrinal and jurisprudential divergences intensified after Law nº 9.299/1996. The study demonstrates that, although trial jurisdiction belongs to the Jury Court, the investigative phase remains constitutionally and legally assigned to the Military Judicial Police through the Military Police Inquiry (IPM), as



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established by the Military Penal Code, the Military Code of Criminal Procedure, and consolidated precedents of the Brazilian Supreme Court. The research seeks to clarify the relationship between investigative competence, the military nature of the offense, external control by the Public Prosecutor's Office, and institutional conflicts between Civil and Military Police forces. This theoretical, bibliographical, and documentary study concludes that the IPM is the only legitimate investigative instrument for such crimes, ensuring legal certainty, due process, and respect for the specific characteristics of military service.

Keywords: Military Crime; Intentional Crimes Against Life; Military Police Inquiry; Investigative Jurisdiction; Military Judicial Police; Jury Trial; State Military Justice.

1. INTRODUCTION

There are frequent occurrences of homicides involving military police officers (Ribeiro, 2016).

Many of these occurrences are related to what is called "resistance to arrest," which is a...

nomenclature given to occurrences in which the public security agency in question had to use the

Legitimate self-defense to stop an unjust aggression. These occurrences are frequent during the provision of services.

of the military police service due to the typical function of the agency in carrying out policing.

preventive and overt.

The competence to investigate crimes against life committed by military personnel is something which causes divergence in both national doctrine and jurisprudence. Some say it's a police matter.

civil, however the objective is to demonstrate that the constitution elected the military judicial police and the

A scabina as a form of judgment by its own rites (Moura, 2018).

Criminal investigation is the process of determining which agency has the authority to...

to uncover crimes destined for military justice (Roth, 2023). In truth, the judicial police

The military acts in all crimes committed by military personnel on duty; however, a current rule has been created.

that the civil police investigate in parallel or exclusively to the detriment of the judicial police

Military violence, crimes against life committed by military personnel against civilians on duty.

The approach to be adopted in this research will be both qualitative and quantitative. These methods will be used.

approaches to seeking an interpretation of the phenomenon of mediation subsequent to the advent of the Resolution

CNJ Resolution No. 125/2010 (CNJ, 2010), so that its objectives will be observed, through the description,

understanding and interpreting legal doctrine and case law, where applicable, as well as

Use of numerical and statistical data, when available, especially government data.

It is worth noting that this research is primarily theoretical. The research methods will be...

Bibliographical and documentary. Bibliographical, because all publicly available bibliography will be analyzed.

especially books and magazines. And documentary, since cases that did not receive [recognition] will also be analyzed.

An analytical approach can be used, or the topics can be revisited according to the research objectives.

based on research in laws and case law, if available (Wainer, 2007).

The research methods will be bibliographic and documentary. Bibliographic, because we will analyze...



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All the bibliography that has been made public, from bulletins to books and magazines. And documentary, because...

Cases that have not received analytical treatment or that may be can also be analyzed.

The topics will be revisited according to the research objectives. The deductive methodology will be used.

Dialectical and historical. Deductive, since it is a generalized extension research, as it has as its

The objective is to analyze the specific case after the general overview; it is dialectical, as it will study the theses and antitheses.

whose main element is the discussion of which body should actually do the

Criminal investigation of crimes against life committed by military personnel against civilians on duty.

(Marconi and Lakatos, 2003).

2. The Jurisdiction for Criminal Investigations into Crimes Against Life Committed by Military Personnel Against the Lives of Civilians on Duty

To understand the topic at hand, it is necessary to define what constitutes an intentional crime. This is present in article 18, I , From the Penal Code (Brazil, 1940): "intentional, when the agent intended the result or assumed responsibility for it."

the risk of producing it (Decree-Law No. 2848/1940). With this in mind, the intentional crime against life, in

The sum occurs when the agent intended or assumed the risk. Still in the conceptual phase, it is relevant to emphasize

The crime against life is covered in the chapter on crimes against life, within chapter 1 of crimes against the person.

of the Penal Code (Brazil, 1940).

Crimes against life are known in the Penal Code (Brazil, 1940) as 1)

1) Homicide; 2) Inducing, instigating, or aiding suicide and self-harm; 3) Infanticide; 4) Abortion.

The object of study, at the moment, is more focused on understanding homicide, article 121 of the Code.

Penal (Brazil, 1940) and seek to discuss and analyze the complete criminal investigation of this crime when

committed by a member of the military against a civilian on duty.

To begin the discussion, it is highly relevant to address the aspect of research competence.

Regarding the topic of crimes against life committed by military personnel against civilians on duty. In this context

We are debating whether this falls under the jurisdiction of the military judicial police, the civil police, or both.

The Military Penal Code (Brazil, 1969) establishes that "military crimes in peacetime include:

Intentional crimes against life committed by military personnel against civilians will fall under the jurisdiction of...

"Jury trial (Decree-Law No. 1,001/1969)." Therefore, the idea that the crime is...

A crime against life committed by a member of the military against a civilian on duty is a military crime and will be tried by a jury.

It should be noted that the popular jury does not necessarily need to be judged and prosecuted by the popular court.

ordinary courts, with no clause preventing prosecution in those courts.

military.

The jury trial is not one of the jurisdictions enshrined in the Federal Constitution (Brazil,

1988), which infers five segments of justice: Federal, State, Military, Electoral, and Labor.



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However, it is common to see the trial being conducted by the ordinary state courts, which have been carrying out

Normally, the judgment of actions involving civilians. However, as already discussed, it is perfectly...

It is acceptable and legally permissible for the jury trial to be held in a military setting, as it is not a...

segment of justice, but merely a form of judgment chosen by the constituent, by

whether the feeling of justice or injustice that permeates a particular crime is judged in that way, the very

The people judging their peers, putting themselves in the place of that alleged person who broke the law.

In this same vein, the Military Criminal Procedure Code (Brazil, 1969) states that "it is the responsibility of

The military judicial police investigate military crimes, as well as those that, by special law, are subject to special jurisdiction.

to military jurisdiction and its authorship (Decree-Law No. 1,002/1969). Therefore, it is clear that this is a

A military crime against life, and being a military crime, must be investigated by military justice as such.

As mentioned above. Again, what is established is that the military crime against life takes the form of

The trial will be conducted according to the rites and practices of the Jury Court, and may be, as already mentioned...

demonstrated, done in military court, but it is being carried out by the common court because it has already been

routinely handling the trial of this type of crime involving civilians.

In this context, the Military Police Inquiry emerges, a document designed to clarify a crime.

military incident that occurred and that is investigated by the military judicial police. According to the Code of Procedure

Military Penal Code: (Brazil, 1969)

"The military police investigation is a summary inquiry into a fact that, according to the law, constitutes a military crime, and its authorship. It has the character of provisional instruction, whose primary purpose is to provide minimum elements for the filing of criminal charges (Decree-Law No. 1,002/1969)."

One can perceive the nature of a research notebook, just like the work carried out by

ordinary judicial police when discussing military crimes, intending this notebook to bring to light

authorship, materiality, as well as the context, circumstances surrounding the event, having all the

powers of the ordinary judicial police in this inquisitorial procedure to elucidate the facts that are of

its purpose is to clarify.

And lastly, but no less importantly, I cite article 82, § 2, of the Code of Civil Procedure.

Military Penal Code (Brazil, 1969), which states "In intentional crimes against life, committed against civilians, the

The military court will forward the records of the military police investigation to the ordinary court (Decree-Law).

No. 1.002/1969). Therefore, there is no other logical conclusion to be drawn than to confirm that the

The military judicial police are responsible for investigating crimes against life committed by military personnel against civilians.

and that after completing the process, it must be sent to the military court, which in turn will send it to the civilian court.

concluding the investigative phase and preparing for the trial phase by the single judge and

subsequently judged by the full court and the seven jurors.

Therefore, it became clear not only that the military judicial police have the authority to

to investigate intentional crimes against life committed by military personnel against civilians on duty, such as this one.

The task falls exclusively to the military judicial police, who must therefore carry out such actions in the proper manner.



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regulated in the Military Criminal Procedure Code (Brazil, 1969), through the police authority.

military, with the responsibility falling to the production of information, hearing of witnesses, as well as other elements to be included in the investigation file for possible filing of criminal charges led by

member of the Public Prosecutor's Office. It should be noted that there will be no prejudice to justice once

That all the acts and procedures that the ordinary judicial police carry out, the military investigation also performs.

Furthermore, there will be a benefit when the report is submitted; the military police authority will send it.

giving their opinion on the crime, having the expertise to analyze and comment on this crime given that

He also lives life in the barracks and understands the reality of military life, in accordance with article 22 of the Code of Military Criminal Procedure (Brazil, 1969):

"The inquiry will be concluded with a detailed report, in which the officer in charge will mention the steps taken, the people interviewed, and the results obtained, indicating the day, time, and place where the offense occurred. In conclusion, it will state whether there is a disciplinary infraction to be punished or evidence of a crime, and in the latter case, it will provide a justified opinion on the advisability of the suspect's preventive detention, in accordance with the law (Decree-Law No. 1,002/1969)."

Therefore, there is no doubt other than the understanding that it is a legal duty that

be investigated by the military judicial police, as is appropriate and convenient for the justice system,

In the context of public administration and the military, the investigation should take place in military facilities to ensure accuracy.

The investigation should be conducted by agents who live the military life, encompassing all its hardships and needs.

constants in a civil police investigation also present in the military investigation file.

3. Criminal Investigation and its Intricacies of Investigative Police in the Military Context of Military Life

In the context of crimes against life committed by military personnel against civilians, the following may arise:

There may be doubts about how this investigation will be conducted. However, it should be noted that the judicial police...

The military enjoys the same powers, prerogatives, and functional duties as the judicial police.

common and its agents and police authority. In this vein, article 12 of the Code of Criminal Procedure

The Brazilian Military (Brazil, 1969) lists the preliminary measures to be taken by the police authority.

A military officer, when faced with a military crime, this crime being a crime against life as it is already considered a military crime. addressed.

"As soon as the authority referred to in § 2 of article 10 becomes aware of the commission of a military criminal offense, verifiable at the time, it shall, if possible: a) go to the location, ensuring that the state and situation of things are not altered, as necessary; b) seize the instruments and all objects related to the fact; c) arrest the offender, observing the provisions of article 244; d) collect all evidence that serves to clarify the fact and its circumstances. (Decree-Law No. 1,002/1969)

It is then observed that preliminary investigations play a fundamental role and determine

the military police authority, or whoever is vested with such an obligation, shall take the necessary steps.



to preserve the crime scene and chain of custody.

Further on, it is up to the officer in charge of the military police investigation to report and document it in writing.

all the investigative apparatus brought to light in a context of military crime and especially committed

for military personnel against civilians on duty, see article 13 of the Military Criminal Procedure Code (Brazil,

1969):

a) take the measures foreseen in article 12, if they have not already been taken; b) hear the victim; c) hear the accused; d) hear witnesses; e) proceed with the identification of persons and things, and confrontations; f) determine, if applicable, that an examination be carried out of the corpus delicti and any other examinations and expert reports; g) to determine the evaluation and identification of the stolen, diverted, destroyed or damaged item, or of which there has been undue appropriation; h) to carry out searches and seizures, in accordance with articles 172 to 184 and 185 to 189; i) to take the necessary measures aimed at protecting witnesses, experts or the victim, when coerced or threatened with coercion that deprives them of the freedom to testify, or the independence to carry out expert reports or examinations. (Decree-Law No. 1,002/1969)".

Seeking to understand the role and how the investigation of a crime against the

The crime committed by a military officer against a civilian is reflected in the report and resolution of the inquiry.

Technical independence given to the officer in charge of the military police investigation, who will act in accordance with his...

Technical knowledge and convictions, see Military Criminal Procedure Code (Brazil, 1969).

"Article 22. The inquiry shall be concluded with a detailed report, in which the officer in charge shall mention the steps taken, the persons heard, and the results obtained, indicating the day, time, and place where the offense occurred. In conclusion, he shall state whether there is a disciplinary infraction to be punished or evidence of a crime, and in the latter case, shall pronounce, with justification, on the advisability of the preventive detention of the accused, in accordance with the law. Solution § 1 In the case of the attribution for opening the inquiry having been delegated, the officer in charge shall send it to the authority from whom he received the delegation, so that he may approve or not the solution, apply a penalty, in the case of a disciplinary infraction having been found, or order new investigations, if he deems them necessary. (Decree-Law No. 1,002/1969)"

The authority that delegated the act may reclaim it and provide a different solution, given that...

That police investigation was delegated to the officer in charge, but legally it will be linked to the authority that appointed it.

The delegate is responsible for taking the necessary steps and resolving that inquiry. Therefore, he may disagree and give...

either find a different solution or return the case and determine further steps.

In this discussion, it is also worth highlighting that the military judicial police, despite being an institution...

predominantly military, its investigative role is regulated by the Public Prosecutor's Office and the Judiciary.

Judiciary, with genuine control and sometimes limits on the investigative role given to

The military police authority, namely, the officer in charge. In this sense, the Military Criminal Procedure Code

(Brazil, 1969):

"Article 8. The Military Judicial Police is responsible for: a) investigating military crimes, as well as those that, by special law, are subject to military jurisdiction, and their authorship; b) providing the organs and judges of the Military Justice and the members of the Public Prosecutor's Office with the information necessary for the instruction and judgment of the proceedings, as well as carrying out the investigations requested by them; c) executing arrest warrants issued by the Military Justice; d) representing the military judicial authorities."



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Regarding preventive detention and the mental incapacity of the accused; e) to comply with the determinations of the Military Justice regarding prisoners under their custody and responsibility, as well as the other prescriptions of this Code in this regard; f) to request from civil authorities the information and measures they deem useful for the elucidation of criminal offenses under their responsibility; g) to request from the civil police and civil technical departments the research and examinations necessary to complement and support a military police investigation; h) to attend, in accordance with military regulations, to requests for the presentation of a military officer or employee of a military department to the competent civil authority, provided that the request is legal and justified.

Finally, in addition to the topic, an excerpt from Article 6 of the Military Criminal Procedure Code is included.

(Brazil, 1969), establishing the legislator's intention to also assign the function to the military police.

investigative work in which the armed forces are involved:

"The procedural rules set forth in this Code shall be followed, insofar as they are applicable, except with regard to the organization of the Judiciary, appeals, and the execution of sentences, in cases before the State Military Courts concerning crimes provided for in the Military Penal Law to which officers and enlisted personnel of the Military Police and Fire Departments are liable."

Therefore, the military police authority has powers, duties, and prerogatives specific to police work.

investigation in the context of military crime and especially military crime against life

committed by a member of the military against a civilian, there being no question of prejudice to the production of evidence or partiality in the investigation of these crimes, to be ratified in court under the scrutiny of the right to a full defense and of the adversarial process, gaining the status of evidence and ceasing to have the characteristic of an element of information (Brazil, 1969).

4. Crimes against life

Crimes against life were chosen by national legislation and the Federal Constitution (Brazil, 1988) to be tried in a jury trial. There is also another distinction, it is known that This work focuses solely on intentional crimes against life, and only these crimes are the subject of controversy. Legal framework for crimes against life dictates that negligent crimes should be judged by a single judge, not by a full court. People's court. The Federal Constitution (Brazil, 1988) stipulated in article 5, XXXVIII – "it is recognized the institution of the jury, with the organization that the law may provide, ensuring: a) the full right to defense; b) the secrecy of the votes; c) sovereignty of the verdicts; d) jurisdiction for judging crimes intentional crimes against life; (Federal Constitution/1988). As seen, the Jury Court, which judges crimes intentional crimes against life are the subject of discussion in this article.

The method of trial provided for in jury trials is also a subject of legal controversy. since the mixed-member constituency was the form chosen by the original constituent assembly (Brazil, 1988) for the trial of military personnel. However, the derivative constituent legislator subsequently provides for a possibility. different from the judgment for military personnel, ignoring the reason for the law. The Aldermen (Lacava Filho, (2014) was a guarantee given to the military, stipulating that military personnel would only be judged by their peers, given the peculiarities of life in the barracks and its difference from the civilian world, everything being



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This is ignored in the people's court, where he is judged by civilians, under circumstances related to military service.

without their judges having knowledge of the facts or the ability to understand the situation that

She is taken to the people's court.

Once this stage is overcome, crimes against life are covered in Title I, Chapter Crimes Against.

Life, a special part of the Penal Code (Brazil, 1940). This chapter covers Homicide, art.

121, Inducement, instigation, assistance to suicide or self-harm, art. 122, Infanticide, art. 123,

Abortion, art. 124. These crimes have their own specific legal process due to the peculiarities involved, having the

A citizen has the opportunity to condemn or acquit one of their own, given the circumstances of the specific case.

At the same time, the legislator granted citizens the guarantee of being judged by their own actions.

pairs when crimes against life exist because the average person has full capacity to

to be judged not by excessive technical rigor, but above all by the empathy of the judges towards

with the one sitting in the defendant's seat. Similarly, the Escabinato (Lacava Filho,

(2014) is a guarantee that military personnel will be judged by their peers for crimes related to

service, understanding the problems, context and what actually happens to the military operator in the face of

situations like these require the judgment of weapons to be based on the rules of law.

The term "escabinato" refers to the classic method of judging military personnel.

A mix of military and civilian personnel in the trial of a military lawsuit, but which, predominantly,

composed of military personnel. The composition of the cabinet is determined according to the rank or grade of the military, with a special council for officers and a permanent council for...

Military institutions' squares. According to the Law of Military Judicial Organization (Brazil, 1992), in

your article 16:

"There are two types of Councils of Justice: a) Special Council of Justice, composed of the Judge-Auditor and four military judges, presided over by one of the latter, a general officer or senior officer of higher rank than the other judges, or of greater seniority in case of equality; b) Permanent Council of Justice, composed of the Judge-Auditor, a senior officer who will be the president, and three officers of rank up to lieutenant commander or captain. I - Special Council of Justice, composed of the federal judge of the Military Justice or substitute federal judge of the Military Justice, who will preside over it, and by 4 (four) military judges, among whom 1 (one) general officer or senior officer; II - Permanent Council of Justice, composed of the federal judge of the Military Justice or substitute federal judge of the Military Justice, who will preside over it, and by 4 (four) military judges, among whom at least 1 (one) senior officer." Article 17. The Special and Permanent Councils shall operate at the headquarters of the Military Courts, except in special cases for relevant reasons of public order or interest of Justice and for the necessary time, by decision of the Superior Military Court. (La

Thus, the national political charter brought unequivocal interests regarding which forum should prevail.

of the trial of any crime involving the military, in accordance with Article 9 of the Penal Code

However, the Military Code (Brazil, 1969) foresaw a change including paragraph 1: "The crimes referred to in this article,

When intentional crimes against life are committed by military personnel against civilians, they will fall under the jurisdiction of the Court.

of the Jury. (Decree-Law 1.001/1969), bringing a true setback to the guarantee conferred on the military.



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with the advent of Law 13.491/2017 (Brazil, 2017).

So, the forum for trial, today it is ensured that it will be within the jury court, not if there is any impediment to the trial being held in military court with the procedures and formalities of the jury trial. However, it is also unanimously agreed, legally speaking, that the investigation of these intentional crimes against life committed by military personnel against civilians on duty, whether The competence of the military judicial police lies with its investigation and inquiry, based on the arguments cited. Elsewhere, because it would make no sense for the ordinary justice system to judge only a portion of the crimes. military or, more specifically, a Military Crime (Brazil, 1969).

5. Military Police Inquiry as the Only Method of Investigation FOR CRIMES AGAINST LIFE COMMITTED BY MILITARY PERSONNEL AGAINST CIVILIANS IN SERVICE

The military police investigation is the means of investigation by which the judicial police authority The military investigates military crimes under the Military Penal Code (Brazil, 1969), having the same purpose. from the police investigation carried out by the civil police, although the subject matter falls within the military sphere. In this context, one perceives an apparent legal controversy that, in fact, does not exist in the legislative sphere.

The military judicial police is the investigative police force within the military sphere that carries out the military police investigation and carries out the necessary inquiries, determinations and actions to resolve the case. Specifically within the corporation or armed force itself. Article 125, §4 of the Federal Constitution. (Brazil, 1988) states the following:

"It is the responsibility of the State Military Justice to prosecute and judge the military personnel of the States for military crimes defined by law and legal actions against military disciplinary acts, without prejudice to the jurisdiction of the jury when the victim is a civilian, with the competent court deciding on the loss of rank and patent of officers and the rank of enlisted personnel. (Federal Constitution/1988)."

Thus, the provision for the military judicial police is implicitly foreseen in addition to its...

This is expressly provided for in Article 8 of the Military Criminal Procedure Code (Brazil, 1988).

Furthermore, it is expressly provided for in Article 9 of the Military Criminal Procedure Code, (Brazil, 1969): "The military police investigation is the summary investigation of a fact, which, in legal terms, This constitutes a military crime, and its authorship. It has the character of provisional instruction, whose purpose is... The primary task is to provide the necessary elements for initiating criminal proceedings.

It is therefore clear that he has the foresight and competence to investigate military crimes, in accordance with... Article 8, I, of the Military Criminal Procedure Code (Brazil, 1969): "Article 8. The judicial police are responsible for..." military: a) to investigate military crimes, as well as those which, by special law, are subject to jurisdiction "military, and its authorship." The nature of the crime is military, however there is a legal determination that it be judged within the scope of the jury court by the Federal Constitution (Constitution, 1988).

According to Figueroa (Figueroa, 2002), military crime is a special offense:

"[...] In current doctrine there is a broad consensus that the crime



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military is a special crime that is integrated with the copulative elements that characterize

and distinguishes between common crimes: the military nature of the protected legal good, namely a military good of military character, and the military quality of the author, which infringes on their military debers, these are, those that correspond in so much memory to the strength of weapons"

Leaving aside the discussion of whether or not military crimes should be tried within the jurisdiction of the military court...

The question is whether a jury trial is a guarantee given to military personnel, or whether the jury trial should be held within the justice system itself.

military, the main discussion of this work is to demonstrate the only foreseen avenue of investigation,

ejecting others, under penalty of usurpation of public office foreseen by the common Penal Code.

(Brazil, 1940) in its article 328: "Usurping the exercise of a public function: Penalty - imprisonment, from two to five years, and a fine. (Decree-Law 2.848/1940). Usurpation of public office occurs when a

A person who holds or claims to hold a certain public office without possessing the necessary competence to perform it.

such acts. This penal situation could be directed at public security professionals who commit such acts.

Parallel investigations even in the face of an express legal provision in the Federal Constitution (Brazil,

1988) to be the only chosen path for military investigation, referring to a true takeover of the case.

and institutional prerogative.

In this sense, ADI 1494, reported by Minister Celso de Mello, discussed the

unconstitutionality of article 82 of the Military Criminal Procedure Code (Brazil, 1969), which states that

The following: "§ 2 In intentional crimes against life, committed against civilians, the Military Justice system shall have jurisdiction."

will forward the records of the military police investigation to the ordinary courts. (Decree-Law 1.002/69)". A

This action was brought by the association of police delegates of Brazil. In this judgment

Minister Carlos Velloso expressed his vote as follows (STF, 2001):

"That is to say, Law 9.299 of 1996 established that the Military Justice system will have the initial jurisdiction to examine the matter. In other words, the military justice system will determine, first, whether the crime is intentional or not; if intentional, it will forward the records of the military police investigation to the ordinary justice system. Note: it will forward the records of the military police investigation. It is the law, therefore, that desires that investigations be conducted, initially, by the military judicial police."

Therefore, what emerges is the obviousness of the law in defining the correct course of investigation to be followed.

Specifically, in military crimes against life committed by military personnel on duty against civilians.

The initial analysis will be conducted by the military justice system, within the framework of the military judicial police and the summary judgment, in this case, and the plenary hearing will be the responsibility of the ordinary justice system. This is the express will of the law.

in a clear and straightforward manner. Minister Carlos Velloso concluded his vote in this same vein.

same judgment with the consequent affirmation in ADI 1494 (STF, 2018):

"Given the question posed in these terms, it must be concluded that the civil police cannot initiate an investigation in this case. The investigation will be conducted by the military judicial police, through a military police inquiry. Once the inquiry is concluded, the Military Court will decide, forwarding the case to the ordinary courts, if it recognizes that it is a case of intentional crime committed against a civilian."

Similarly, the Supreme Court's ruling on the Extraordinary Appeal corroborates this view.

Federal Court case number 1146235/SP (STF, 2018), with Justice Edson as the reporting judge.



Fachin:

“(…) The appeal does not merit success. I note that the lower court decided simultaneously that: a) the state Military Justice is competent to exercise a preliminary judgment regarding the configuration or not of a willful crime committed by a military officer against the life of a civilian and, in the event of exercising a positive judgment (that is, understanding that there was a willful crime against the life of a civilian), to forward the case to the Jury Court; and b) the Military Judge, after concluding that there was no willful crime, may order the filing of the military police investigation, regardless of whether there is a request from the Public Prosecutor's Office to that effect. I observe, initially, that the appellant only challenges the second matter established in the appealed judgment, arguing that the indirect filing implied a violation of the constitutional attributions of the Public Prosecutor's Office. The Court, in turn, analyzed the issue in these terms: (...) As can be seen, the Court decided on the inapplicability of Article 28 of the CPP and Article 397 of the CPPM to In this case, refuting the prosecution's argument that the judge could not proceed with indirect dismissal based on the analogous application of the aforementioned provisions. Therefore, any divergence from the understanding adopted by the lower court would require a re-examination of the legislation applied to the case (CPP and CPPM), which makes the processing of the extraordinary appeal unfeasible, given the configuration of a reflexive offense to the Federal Constitution.

The constitutional guarantee for the military judicial police to conduct investigations directly was an attempt to protect and provide a truly effective means for military crimes to be gathered by professionals knowledgeable in the subject and in the military life of the Military Penal Code. (Brazil, 1969). And, before one speaks of self-protection by a sector of public security, one must understand how a civil investigation works, a police officer who may have committed a crime... A crime, that is, one investigated as such, will be investigated by a peer and the public prosecutor who... If a criminal charge is brought against you, you will see the state machinery move against you by a member of the... The public prosecutor's office of the same institution, therefore there is no question of directing the solution. from investigation or prosecution to favor potential lawbreakers.

The law stipulates that it will happen in that way, so the external control bodies, as is the case here, will be responsible. from the public prosecutor's office itself, carrying out external oversight of police activity and, above all, of military police investigation, as stated in the constitution in the article as an institutional function of the ministry. public see article 129, VII, of the Federal Constitution (Brazil, 1988) "VII - to exercise external control of police activity, in accordance with the supplementary law mentioned in the previous article; (Constitution) Federal/1988), therefore, it can be deduced from this article that investigative activity would not be without regulation or control, with existing criteria, internal corrective control and external control with ministerial oversight, as well as judicial control of the acts of the procedure, naturally inquisitorial.

Therefore, there is no other interpretation to be made other than the unique and unavoidable investigation. that it is the responsibility of the military judicial police, within the scope of the corporation itself, to investigate intentional crimes. Crimes against life committed by military personnel against civilians on duty due to a clear manifestation of legal instruments that govern the Brazilian legal system, whether of constitutional or constitutional scope. infraconstitutional (Brazil, 1969). The necessity and adequacy of the application of the law direct



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directly so that the criterion for establishing jurisdiction based on the person is respected, the

In the military, this criterion is forged and confirmed by the unique life experienced by the soldier, by his condition and service provided to society.

FINAL CONSIDERATIONS

The analysis developed in this study allows us to conclude that the controversy regarding jurisdiction for investigating intentional crimes against life committed by military personnel on duty. The conflict with civilians stems less from regulatory gaps and more from divergent interpretations between institutions of the public security system. From a legal-constitutional point of view, the Brazilian law clearly establishes that the investigation of these crimes must be conducted exclusively by the Military Judicial Police, through the Military Police Inquiry. (IPM), with the Military Justice responsible for making a preliminary judgment on the nature of the crime before its possible referral to the Jury Court.

Specialized literature, combined with legislative and jurisprudential examination, particularly The understandings reached by the Supreme Federal Court reinforce that there is no legal basis for the initiation of parallel investigations by the Civil Police, under penalty of violating the principle of Legality and usurpation of function. The IPM not only fulfills the investigative function, but also It caters to the specificities of military life, allowing the investigation to include elements structural aspects of military service that would be difficult for bodies outside the dynamics to understand. institutional.

Furthermore, investigations conducted through military channels do not compromise impartiality or control. external, since the Public Prosecutor's Office and the Judiciary maintain oversight mechanisms. and validation of the actions taken. Thus, the current model ensures both due observance legal process regarding the protection of society and the military themselves, guaranteeing legal security. to the investigative flow.

In summary, a proper understanding of investigative competence—based on constitutional and legal provisions, along with established case law, reveal the need to reaffirm the The role of the Military Judicial Police in investigating intentional crimes against life committed by Military personnel on duty against civilians. Such reaffirmation is essential to avoid institutional conflicts. to strengthen the coherence of the criminal justice system and ensure the effectiveness of criminal prosecution in in accordance with the Brazilian legal system.



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