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The Application of Diffuse Constitutional Review by the Military Police Officer of Amazonas: Analysis of Legal Viability

The Application of Diffuse Constitutional Review by an Officer of the Military Police of Amazonas: An Analysis of its Legal Viability

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Summary

This article analyzes the legal possibility of Amazonas Military Police officers, when appointed as military judges in the Councils of Justice, exercising diffuse control of constitutionality in specific cases. The research discusses the jurisdictional role of the officers, the nature of the State Military Justice system, the foundations of diffuse control, and the theory of implied powers, demonstrating that there is no constitutional impediment for the officer-judge to disregard the application of norms incompatible with the Constitution. The study uses a qualitative, bibliographic, and documentary approach. It concludes that the judicial action of the officers legitimizes and authorizes the full exercise of jurisdiction, including the incidental declaration of unconstitutionality.

Keywords: Diffuse control. State Military Justice. PMAM officer. Constitutionality. Scabinatum.

Abstract

This article examines the legal possibility that Military Police Officers of the State of Amazonas, when acting as military judges within the Councils of Justice, may exercise diffuse judicial review.

The study discusses the judicial nature of military officers, the structure of State Military Justice, the foundations of diffuse review, and the doctrine of implicit powers. A qualitative and bibliographic approach is used. The research concludes that military officers, while performing judicial duties, hold the authority to refuse the application of infraconstitutional norms that conflict with the Constitution in concrete cases.

Keywords: Diffuse judicial review. Military Justice. Amazonas Military Police. Constitutionality.

INTRODUCTION

Military justice emerged with the purpose of judging individuals subject to a legal regime. distinctive, marked by special duties, strict discipline and constant exposure to situations of



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high risk — essential factors for the preservation of democratic institutions.

This is a specialized branch of the Judiciary, whose jurisdiction is divided into two.

spheres: the Military Justice of the Union, responsible for members of the Armed Forces, and the Military Justice State-level authority responsible for prosecuting and judging military police officers and firefighters within the scope of the states.

The 1988 Federal Constitution (Brazil, 1988) conferred upon the Military Justice of the States a role essential in the trial of military crimes committed by military police and firefighters (art. 125,

Sections 3 to 5), which provides:

"§ 3 The state law may create, upon proposal of the Court of Justice, the state Military Justice system, constituted, in the first instance, by the judges of law and by the Councils of Justice and, in the second instance, by the Court of Justice itself, or by a Military Court of Justice in the States where the military force exceeds twenty thousand members."

Given this context, it is observed that the Original Constituent Power ensured to the States- members have the autonomy to organize and regulate their own Military Justice system, within the scope of their constitutional powers.

In the State of Amazonas, the structure of the State Military Justice system is regulated by Law. Complementary Law No. 17/1997 (AMAZONAS, 1997). Article 3 of the aforementioned normative instrument. It establishes that the state Judiciary is exercised, among other bodies, by the Councils of Justice. and by the Military Audit Office, which states that: "Article 3 – The Judiciary Power is exercised by the following bodies: (...) VI – Councils of Justice and Military Auditing" (AMAZONAS, 1997), which shows, unequivocally, the jurisdictional nature of these instances within the scope of military justice.

The Amazonas Military Police Officer is part of the mixed-gender body, forming the Council of Justice (CJ) — whether the Permanent Council of Justice (CPJ) or the Special Council of Justice (CEJ) — according to the hierarchical position of the accused within the military institution. In the CPJ, intended In the trial of enlisted personnel, officers remain assigned for a determined period, acting as Military judges serve continuously during the quarter or period established by law. The CEJ, on the other hand, is... specifically constituted for the trial of officers, its members must hold the rank of officer. superior to that of the accused, in observance of the principle of military hierarchy.

These officers perform a public *duty* of a jurisdictional nature, participating in the conduct of The process, from the analysis of evidence to the voting in the trial. As Roth (2023, p. 4) states, "as soon as If a Military Officer is selected to serve in the Military Justice system as a Military Judge, they must check the list. of the responsibilities that will fall to him/her." This role requires impartial, well-founded, and aligned performance. to constitutional guarantees.

It is observed that the selected officer assumes jurisdictional functions, participating in all phases. of the process, including interrogations, deliberations, and voting on the merits. Thus, in composing the In the case of a judge in a judiciary, the officer plays a decisive role in shaping the conviction of the panel. contributing to the preservation of discipline and hierarchy, fundamental pillars of institutions.



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state military personnel.

The State of Amazonas has a single jurisdictional unit designated for processing and Judgment of military claims: the Military Audit Court, located in the capital, Manaus, in Minister Henocho Reis Forum. This court concentrates all the jurisdiction of the State Military Justice in first instance, bringing together all military proceedings involving police officers and firefighters. State military personnel.

This study aims to analyze the legal and constitutional possibility of exercising... diffuse control of constitutionality by the Military Police Officer of Amazonas (PMAM) in the role of Military Judge, seeking to examine the jurisdictional nature of the actions of officers in Councils of Justice, understanding the Brazilian model of constitutional review, identifying The grounds that authorize the use of diffuse control by the military judge and to evaluate, in light of the theory of the implied powers, the extent of the judicial function performed by him.

In this context, the central question that guides this study emerges: would it be possible for the Officer of PMAM, when invested in the role of military judge, exercises diffuse control of constitutionality. within the scope of the Councils of Justice, with the purpose of safeguarding constitutional integrity, to ensure the protection of human rights and the preservation of the constitutional pillars of discipline and hierarchy. military?

Therefore, a qualitative, descriptive, and exploratory research approach is adopted, making use of- This is based on bibliographic research, with analysis of doctrine, scientific articles, legislation, and regulations. constitutional, as well as documentary research, through the examination of laws, regulations, and decisions. and institutional documents, using normative, doctrinal and analytical procedures institutional framework of Military Justice and the exercise of the jurisdictional function by officers, in order to To understand the fundamentals and limitations of the military judge's role in the context of diffuse judicial review. constitutionality.

2. Constitutional Review - Concept, Origin, and Evolution

Constitutional review is a fundamental mechanism of the legal system. intended to ensure the supremacy of the Constitution and the compatibility of norms Sub-constitutional laws with their principles and rules. As Barroso states, it is an instrument aimed at "preserving the normative hierarchy and, above all, the supremacy of the Constitution" (BARROSO, 2020), thus protecting fundamental rights and the integrity of the Democratic State of Law.

Historically, the institute has its roots in 18th-century constitutionalism. Its landmark The first instance occurred in the United States, with the famous case of Marbury v. Madison (1803), in which the



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The Supreme Court, under the leadership of John Marshall, stated that it is the duty of the Judiciary to "say what is the law," recognizing the authority of judges to declare laws contrary to the Constitution null and void. This precedent consolidated the diffuse model of control.

In Europe, a different path was followed, inspired by the theoretical conception of Hans Kelsen, which He advocated for the creation of specialized constitutional courts. The Austrian Constitution of 1920 He established the world's first Constitutional Court, inaugurating the centralized model. characterized by the exclusive competence of a body to declare unconstitutionality with general effects (*erga omnes*). Kelsen's thesis was based on constitutional supremacy and on The need for a specialized guardian of the Constitution.

In Brazil, the control of constitutionality was initially introduced by the Constitution of In 1891, it adopted the diffuse model inspired by the United States. With the evolution of In Brazilian constitutionalism, elements of the European model began to be incorporated. especially from the 1934 Constitution onwards and, more markedly, with the Amendment. Constitutional Amendment No. 16/1965, which assigned to the Supreme Federal Court (STF) the competence to to judge the Representation of Unconstitutionality (Rp), evidencing a tendency towards "expansion of The role of concentrated and abstract constitutional jurisdiction" (BARROSO, 2020).

The 1988 Federal Constitution (BRAZIL, 1988) consolidated this arrangement by establishing a A mixed system of constitutional review, combining diffuse and concentrated mechanisms and significantly expanding the instruments for monitoring constitutional supremacy. In the words of (NÁPOLI, 2023) "It is possible to affirm that in Brazil the control of constitutionality is of "It is a mixed type of jurisdiction, since it encompasses both diffuse and concentrated control."

Abstract control — exercised by the Supreme Federal Court (STF) and the Courts of Justice — is a modality focused on the analysis of the norm in theory, with decisions endowed with *erga omnes* effectiveness. *omnes* and binding effect. Actions such as the Direct Action of fall under this model. Unconstitutionality (ADI), Declaratory Action of Constitutionality (ADC) and Argument of Non-compliance with a Fundamental Precept (ADPF). According to José Afonso da Silva (2019), the Constitution It should guide all legislative and administrative activity of the State, justifying its existence. instruments capable of preventing the enforcement of rules incompatible with their structure.

It differs from diffuse control, which is exercised by any judge or court in the judgment of In this specific case, the effects of which are limited to the parties involved in the proceedings (*inter partes*). Both, however, have as their purpose... The purpose is to preserve the Constitution and the democratic system. As Barroso (2020) points out, control A constitutional review is essential for the defense of fundamental rights and the pact itself. constitutional.

The practice of abstract review by the Supreme Federal Court has generated debates about judicial activism; however, regardless of the criticisms, its function remains indispensable to



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Institutional stability and the protection of fundamental rights. The maturity of the legal system.

The success of Brazilian constitutionalism can be measured, in part, by the effectiveness of the constitutional review process, which
It strengthens social trust in institutions and the integrity of the democratic order.

3. Diffuse Constitutional Review in Brazil

The diffuse control of constitutionality in Brazil was introduced by the Constitution of 1891. the first republican Constitution, heavily influenced by the American *common law* model *law*, enshrined in the case of *Marbury v. Madison* (1803), based on the decision rendered by the Chief of Justice John Marshall, who refused to consider the *writ*, recognizing that the law that granted it... The competence to resolve the conflict was incompatible with the Constitution. The Constitutional Charter of The 1891 law established that any judge or court could declare a law unconstitutional. during the trial of a case, provided the issue was raised by the parties. In this model, The analysis takes place within the context of a specific dispute, generally producing effects only *between the parties involved*. restricted to those involved in the process.

In this sense, diffuse control consists of verifying the compatibility of standards. infraconstitutional aspects in relation to the Constitution, allowing any jurisdictional body to set aside the The application of a regulatory provision deemed unconstitutional when assessing a specific case. Such This mechanism aims to ensure the supremacy of the Constitution and the protection of fundamental rights.

Its relevance stems from its scope and reach, enabling discussion of constitutionality in all instances of the Judiciary, including the State Military Courts, reinforcing democratic access to constitutional protection. As Luís Roberto Barroso observes, “a The structure of diffuse control confers upon each judge the responsibility of being a guardian of Constitution” (BARROSO, 2020), which highlights its decentralizing and democratizing function.

Diffuse control is widely applied in everyday forensic practice, allowing judges to declare The unconstitutionality of norms due to their incompatibility with the Constitution. This analysis This can occur in different types of actions, such as writs of *mandamus*, public civil actions, defenses. criminal or civil claims in general, expanding the possibilities for protecting rights. fundamental. However, their decisions are not binding or applicable *to all*, being limited to... to the parties involved in the process.

It plays an essential role in revitalizing the Constitution, insofar as it enables It allows for multiple interpretations and fosters ongoing legal debate, keeping pace with transformations. social issues. Criticisms of this model generally focus on the potential for legal uncertainty. resulting from the diversity of interpretations among judges and courts.

Unlike concentrated control, where judgment is restricted to the Supreme Federal Court or the Courts.



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In the case of a state-level ADI (Direct Action of Unconstitutionality), diffuse control allows for broad participation of judges in the...

Constitutional interpretation applied to specific cases.

The effects of diffuse control reinforce a culture of respect for the Constitution and contribute to the consolidation of the Democratic Rule of Law.

4. OF SPECIAL MILITARY/CAMPRE JUSTICE IN BRAZIL

The Military Justice system in Brazil is one of the oldest in the country, having been officially established. Established with the arrival of the royal family in 1808, this specialized court operates in both the general and legal spheres. federal, with the Armed Forces, and at the state level, with the Police and Fire Departments. Military. Its structure is composed of a collegiate body that includes both civilian judges and judges. military personnel, the latter being officers selected by lot from their respective corps and serving on a temporary basis. as judges.

This peculiar form of trial is called a mixed court. In the Brazilian Military Justice system, It is used in the Councils of Justice, where professional judges (judges of law) try military crimes. alongside military judges (officers from the Armed Forces or Military Police and Corps of Military firefighters who are temporarily assigned to serve as judges.

The 1988 Federal Constitution (Brazil, 1988) dedicates a specific chapter to the organization. of the Judiciary, and Military Justice is mentioned in articles 122 to 124, with details about its composition and competence (Brazil, 1988).

Article 122 establishes that the Military Justice system is composed of the Superior Military Court (STM). and by the Military Courts and Judges. The STM is the highest body of the Military Justice of the Union and has jurisdiction to judge, on appeal, military crimes defined by law (Brazil, 1988).

In addition to the Federal Military Courts, the Constitution also provides for State Military Courts. (art. 125, § 4º), which has jurisdiction to judge military crimes committed by members of the Police Military and Military Fire Departments. This justice system is composed of the Military Courts of Justice. and military judges (Brazil, 1988).

In the United States, as mentioned above, military judges are composed of a a mix of career judges and conscripted military judges, who are officers of the Military Police and Military Firefighters. They operate within the State Military Justice system. in accordance with the Federal Constitution, the State Constitution, and the Organic Law of the Court of Justice of each Member State.

According to Coelho (2018, p. 28), "there is still a differentiation in the judgment of crimes military personnel at the state level, which may be prosecuted individually or collectively; the former will occur when military crimes are committed against civilians, and in other cases, the crimes will be...



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Military personnel are tried by courts of justice. It is also emphasized that the jurisdiction of the...

"Jury trial in cases involving civilian victims."

In the states, trials for military crimes under state jurisdiction are conducted by Councils of Justice, which are formed by a civilian judge and military judges, according to the local legislation and the defendant's patent.

The Councils of Justice are collegiate bodies of the Military Justice system, composed of judges. career judges and military judges (officers of the Armed Forces or Military Police) and Military Fire Departments) responsible for judging military crimes. They are divided in the Permanent Council of Justice (CPJ) and the Special Council of Justice (CEJ), each with Specific jurisdiction and composition, according to the defendant's hierarchy and the type of crime being judged.

The Permanent Council of Justice is a collegiate body formed to prosecute and judge public servants. of the State Military Police and Military Fire Departments. It has a composition of 01 (one) Judge (judge of law) and 4 (four) Military Judges, who are officers drawn by lot from their corporation and superiors to the defendants. The Council is called "permanent" because it acts on behalf of a fixed period of three months (renewable), regardless of the cases to be judged. (AMAZONAS, 1997).

The Special Council of Justice is formed to judge officers (lieutenants, captains, majors, Lieutenant Colonels and Colonels). It has a composition of 01 (one) judge (judge of law) and 04 (four) Military Judges who are senior officers, all with ranks equal to or higher than that of the defendant. The CEJ judges military officers who are accused of committing military crimes. This council is assembled Specifically tailored to each case, and acted until the conclusion of the trial.

The Councils of Justice, both the Permanent and the Special, play a role. fundamental in Military Justice, bringing the experience of military personnel to the trials and guaranteeing that decisions be balanced and take into account the peculiarities of military life.

When serving as military judges, officers bring their experience and expertise from... corporations for judgments, being responsible for collegial decisions in cases involving State military crimes, such as abuse of authority, desertion, insubordination, among other crimes. defined by law.

The role of military judges is crucial, as they bring their expertise to the table. A military expert is appointed to judge cases. Their decisions are made collectively, which guarantees... Democracy in trials and the observance of principles such as the right to a full defense and due process. Legal. This Justice system stands out for its procedural speed, considered a fundamental virtue in its Functioning, in addition to guaranteeing fair and appropriate decisions for military realities.

In trial sessions before the Councils of Justice, military judges participate. actively participate in the decision-making process, being called upon to vote on both preliminary and other matters.



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Regarding the merits of the case. This dynamic is outlined in Article 435 of the Military Criminal Procedure Code, which governs the order of voting in the collegiate body: "Art. 435. The president of the Council of Justice will invite the judges to rule on the preliminary issues and the merits of the case, voting first the auditor; then the military judges, in reverse order of hierarchy, and finally the president" (BRAZIL, 1969).

The role of a military judge is broader than that of a simple adjudicator. During the process, He actively participates in various stages, such as gathering evidence, questioning the defendant, and... Decisions regarding pretrial detention or release. All of these functions require a deep understanding knowledge of military and legal procedures, and their decision must always be well-founded. explaining the reasons for the vote.

In this sense, ALVES (2023, p. 2151) highlights that:

"The reasoning behind the military judge's vote, as an integral part of the conviction or acquittal, is necessary. Therefore, the military judge must be prepared to express their opinion, possessing knowledge of the case file to form their conviction and present it in accordance with the law."

Furthermore, there is an important distinction between a military judge and a juror in a regular court. While the jury only participates in the trial, the military judge oversees all phases of the process, and Their decisions are public and must be justified.

Finally, the Military Justice system plays an essential role in society by ensuring that crimes... Military personnel should be judged by those who understand the particularities of life in the Armed Forces and in State Military Corporations. The actions of military judges, alongside civilian judges, ensure... that this specialized justice system be conducted in a fair and efficient manner, contributing to the Maintaining discipline, hierarchy, and order in military institutions.

5. OFFICER RANK OF THE MILITARY POLICE OF AMAZONAS (PMAM)

The officer corps of the Military Police of Amazonas (PMAM) is made up of the responsible officers. through the exercise of command, leadership, and management functions within the corporation, as provided for in Article 35 of Law No. 1,154, of December 9, 1975 (AMAZONAS, 1975). The aforementioned provision It establishes that: "Article 35 — The officer is prepared, throughout his career, for the exercise of Command, of the Leadership and Management of the Military Police Organizations" (AMAZONAS, 1975).

Thus, officers are responsible for coordinating, planning, and executing the actions of policing, in addition to managing teams and making strategic decisions in the fight against crime. They play a central role in institutional leadership and in fulfilling the mission.

The constitutional mandate of the Military Police consists of guaranteeing public safety and the preservation of Social order in the State of Amazonas.



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To become an officer in the Amazonas Military Police, it is necessary to pass the exam.

specific public competition for the Officer Training Course (CFO), aimed at preparing...

leaders and managers of the corporation. Unlike entry into the ranks, which requires a higher education degree.

In any field, the competition for officers requires a higher education degree in Law, given the complexity.

of the responsibilities and the need for technical-legal expertise.

It should be noted that, throughout the Officer Training Course (CFO), cadets have contact direct and continuous interaction with fundamental legal disciplines, such as Criminal Law, Criminal Procedure, Military Criminal Law, Military Criminal Procedure, Constitutional Law, and Administrative Law, among others.

others. This body of knowledge contributes to the legal and managerial training of the future.

official, preparing him to perform both administrative and operational functions as well as, when

appointed, in the exercise of the jurisdictional function as a military judge in the Councils of Justice.

Upon completing the course, graduates are declared Officer Candidates and undergo a probationary period, during which they perform supervised duties in the units.

PMAM operational officers. After this phase and the due performance evaluation, they are promoted to

holding the rank of 2nd Lieutenant, officially beginning his career as an officer in the Military Police.

Finally, once declared an official and the commission letter issued for the rank of 2nd Lieutenant, the military officer becomes eligible to be selected for positions of high responsibility, such as

Military Police Delegate, responsible for presiding over military police investigations, and Judge

Conscripted military personnel serving on the panel of judges of the Councils of Justice.

6. ORGANIZATIONAL STRUCTURE (MILITARY JUSTICE) OF THE COURT OF JUSTICE IN AMAZONAS

Military Justice is based on paragraph 3 of article 125 of the 1988 Federal Constitution (Brazil).

1988):

"§ 3 The state law may create, upon proposal of the Court of Justice, the state Military Justice system, constituted, in the first instance, by the judges of law and the Councils of Justice, and in the second instance, by the Court of Justice itself, or by a Military Court of Justice in the States where the military force exceeds twenty thousand members."

The Councils of Justice are made up of officials and are responsible for judging crimes.

military personnel. In cases before the Federal Military Courts, they are composed of officers from the Armed Forces,

while in the State Military Justice system, by officers of the Military Police or Fire Departments

Military.

Regarding jurisdiction, the Military Justice system is covered by paragraphs 4 and 5 of article 125 of...

The Federal Constitution (Brazil, 1988) establishes the authority to prosecute and judge police officers and firefighters.

military personnel for crimes defined by law, as well as legal actions against disciplinary acts, maintaining



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The jurisdiction of the jury when the victim is a civilian. The aforementioned provision establishes that:

"Article 125. The States shall organize their Judiciary, observing the principles established in this Constitution. (...)"

§ 4. 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.

§ 5. It is the responsibility of the judges of the military court to prosecute and judge, individually, military crimes committed against civilians and legal actions against military disciplinary acts, while the Council of Justice, presided over by a judge, is responsible for prosecuting and judging other military crimes.

In the State of Amazonas, the State Military Justice system is regulated by Complementary Law.

No. 17, of January 23, 1997 (AMAZONAS, 1997), which provides for the division and organization

The judicial branch of the State. At the first level, it is exercised by an auditor judge, a substitute auditor judge, and by the Military Justice Councils, with jurisdiction throughout the state. Decisions are subject to appeal to

Court of Justice (AMAZONAS, 1975). The aforementioned provision establishes that:

"Article 108 - The Military Justice of the State of Amazonas will be exercised in the first instance, with jurisdiction throughout the State, by the Judge Auditor, Substitute Judge Auditor and the Military Justice Councils."

Sole paragraph - Appeals against decisions of the Military Justice Councils and the Military Audit Office shall be made to the Court of Justice.

According to the Law on Judicial Organization, the Military Justice Councils in the State are organized into: the Special Council, the Permanent Council, and the Justice Council in the Units of Service. The Special Council judges officers and is composed of an auditor judge and four judges. military personnel, of equal or higher rank than the accused, presided over by the highest-ranking officer. or older. Each Council is formed individually for each case in which an officer is involved. accused of a military crime (AMAZONAS, 1997).

The Permanent Council, in turn, is composed of an auditor judge, a senior officer, and plus three officers (captains or lieutenants), for a period of three months, and processes cases that do not It involves officials. Unlike the Special Council, the Permanent Council judges all cases. presented on a quarterly basis.

In turn, the Justice Council in the Service Units, composed of a captain and two Lower-ranking officers are appointed by unit commanders in cases of desertion. squares. Although not currently in use, this advice could be a solution to improve The efficiency of the Military Justice system, since currently desertion cases are judged by... Permanent Councils.

The officers chosen to serve as military judges, although there is no formal requirement. Specifically, they generally come from the ranks of combatants who join the Military Police after The Officer Training Course – prepared with legal subjects throughout the bachelor's degree – in public safety area. This differs from officers in other fields, such as health professionals and specialists.



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and administrative staff, who undergo shorter training courses.

7. ON THE POSSIBILITY OF APPLYING DIFFUSE CONTROL BY THE OFFICER OF PMAM

The peculiarities of Military Justice, extensively explained above, give it a role. Essential in guaranteeing discipline and hierarchy within the military. In this context, the officer of The Military Police plays a unique role in achieving the goals of state military justice. (AMAZONAS, 1997).

The Officer's professional experience, combined with practical mastery of routine and... institutional specificities contribute decisively to a more technical assessment and It needs the cases submitted to the court. This circumstance becomes even more relevant when It is generally considered that judges (professional judges) have not had in-depth training in law. Military Criminal Law and Military Criminal Procedure during their undergraduate studies, which makes the participation of the Officer... essential for the proper adjudication of military claims.

In this vein, let us consider the commentary of Dr. André de Mourão Mota - Judge of the 4th Military Court of [Court Name]. TJMMG during the 1st Seminar on Military Law and Justice, promoted by the National Council National Council of Justice (CNJ) in 2021, (CNJ,2021):

"Military institutions have their own concepts and cultures that must be brought to the forefront of the interest in maintaining the fundamental principles of hierarchy and discipline," he observed. He emphasized that the council is composed of officers of various ranks, which ensures its democratic nature. "The legitimacy of the Council's composition stems not only from the Constitution, but also from society itself."

Furthermore, it is observed that the Notice of the National Judicial Selection Examination (ENAM) does not It includes content from Military Criminal Law or Military Criminal Procedure, as well as the official notices. of the competitions for the state judiciary (career substitute judge), which also do not require such subjects. The only exception occurs in specific competitions in the states of Minas Gerais, Rio The states of Rio Grande do Sul and São Paulo, which have State Military Courts of Justice, are the reason why... They include these subjects in their exams.

Given this scenario, it can be inferred that the Original Constituent Assembly of 1988, when establishing the The participation of the Military Police Officer as a member of the mixed court was attributed to him, even though... implicitly, full jurisdictional powers, inherent to the function of a Military Judge. This conclusion This stems from the application of the principle of implied powers, according to which the Constitution, in conferring It grants a competence, and also provides the necessary means for its full exercise.

In this sense, the officer summoned to perform the public *duty* of Military Judge becomes to possess prerogatives inherent to the Judiciary, and should also guide their conduct by the principles



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that govern the judicial career, especially the principle of impartiality, which imposes on the judge the duty to decide in a neutral, impartial manner, without favoritism, prejudice or personal influence.

Incidentally, the comment by Judge Fernando José Armando Ribeiro stands out.

President of the Military Court of Justice of Minas Gerais (TJMMG), delivered during the 1st Seminar on Military Law and Justice, promoted by the National Council of Justice (CNJ) in 2021

(CNJ, 2021):

“The democratic-constitutional legitimacy of the mixed-judge panel: a historical and conceptual overview of the judgment model that brings together the experience that military judges bring from the barracks and the legal knowledge of civilian magistrates. (...) the questions that point to the mixed-judge panel as a contradiction to judicial impartiality ignore that the law is revealed in the dimension of the application of the reinterpretation of the norm that the specific case requires.”

In short, there is no doubt that the Military Police Officer, when summoned

To become a member of any of the Councils of Justice, one begins to fully exercise the function.

jurisdiction proper to the Military Judge, to which the prerogatives, duties and responsibilities apply.

inherent to the Judiciary. It is a public duty of a high nature, the performance of which requires

strict observance of the constitutional principles governing judicial activity, notably the

impartiality, legality and the justification of decisions.

From this perspective, it becomes legally possible—and constitutionally legitimate—that

The Amazonas Military Police Officer, in the exercise of judicial function, shall proceed with the application of diffuse control of constitutionality in military criminal proceedings submitted for its consideration.

Finally, it can be concluded that the Military Police Officer plays an indisputable role.

relevance to the structure and functioning of the State Military Justice system, to the point of stating that

This specialized branch of the Judiciary would not have assumed its current form without the participation of...

qualified officer in the Councils of Justice. The possibility of the Officer, invested in the function

Military Judge, to hear incidents (by way of exception) through the exercise of diffuse control of

constitutionality demonstrates not only the institutional relevance of its actions, but also its

commitment to the effective protection of fundamental rights and the preservation of the integrity of

legal order within the scope of Military Justice.

FINAL CONSIDERATIONS

This research has demonstrated that the State Military Justice system, as conceived by the Power

The original Constituent Assembly of 1988, structured in the State of Amazonas by Complementary Law No.

17/1997 (AMAZONAS, 1997), plays an essential role in preserving the pillars.

constitutional principles of discipline and hierarchy, essential foundations of military institutions.

state-level. In this scenario, it became evident that the Military Police Officer, when summoned for



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To be part of the panel of judges of the Councils of Justice, one does not act as a mere technical advisor, but assumes, in its entirety, the status of Military Judge, invested with a jurisdictional *function* endowed with prerogatives, responsibilities and duties inherent to the Judiciary.

The doctrinal, historical, and normative analysis of constitutional review — both in its concentrated as well as diffuse modality — allowed us to verify that the Brazilian model, of a nature mixed, it grants all jurisdictional bodies, without distinction, the power to set aside rules unconstitutional in the judgment of specific cases. Thus, the military officer being invested formally in the judicial function, there is no legal basis that excludes him from the possibility of to exercise diffuse control of constitutionality, provided that it does so strictly within the scope of its jurisdiction. competence in the Council of Justice (cabinete).

It was also found that the technical and legal training of PMAM officers, especially due to the requirement of a law degree for entry into the officer corps and the robust legal content taught in the Officer Training Course, contributes to their competent performance and security is the role of judges. This formative framework, combined with practical experience in daily practice, military law offers the officer privileged conditions for the interpretation of criminal law and military procedural rules applied to the specific case.

Furthermore, it was found that the mixed-gender system constitutes a democratically legitimate model. combining legal technique and practical knowledge of the military world, which strengthens the rationality and quality of decisions. Such qualified collegiality ensures a more rational jurisdiction. sensitive to institutional realities and better suited to preserving the constitutional values that govern military life.

In this context, it can be concluded that it is entirely possible, legally and constitutionally, to... application of diffuse control of constitutionality by the Military Police Officer of Amazonas in exercise of military judicial duties. This prerogative stems not only from his position as a member of the adjudicating body, but also the very principle of implied powers, according to which the attribution The constitutional nature of a jurisdictional competence necessarily encompasses the appropriate means for its full performance.

Finally, it is reaffirmed that the Military Police Officer plays an unavoidable role in structure of the State Military Justice system. His work in the mixed court not only contributes to the implementing fairer decisions that are more in line with military realities, as well as It reinforces the protection of the fundamental rights of military personnel under its jurisdiction, safeguarding the integrity of... constitutional order and strengthening the democratic rule of law within institutions.

Military personnel from Amazonas.



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