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THE IMPORTANCE OF PROVIDING A CIRCUMSTANCED TERMS OF OCCURRENCE-TCO BY THE MILITARY POLICE GUARD IN CRIMINAL OFFENSES OF LESS OFFENSIVE POTENTIAL

The importance of the preparation of the circumstantial term of occurrence-TCO by the military police before the criminal offenses of lesser offensive potential

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SUMMARY
The present study proposes to focus on the difficulty encountered by citizens who resort when they are threatened or suffer damage to their rights, and whose refuge in many situations is not attended to at the civil police station, which is sometimes full of more complex procedures, and/or even there are not enough personnel to meet social demands, thus making it difficult for citizens to exercise their right to reach justice. It should be noted that in many cases, drawing up this procedure at the scene of the incident by a qualified and trained police officer would greatly speed up the procedure, allowing the elucidation of the fact to flow more effectively and providing a response to the parties involved in the typical incident. This course conclusion work was returned not only to obtain a grade, but also to raise a discussion of the importance of preparing the Detailed Occurrence Term-TCO by the military police officer in the face of criminal offenses with less offensive potential, for the sole purpose of rationalizing and improve the work of the ostensible police, as well as subsidiarily provide speed in these criminal offenses, which often do not reach the State-Judge, thus not allowing the population to be at the mercy of a bureaucracy in the current situation because the Judiciary Police, very bureaucratic and deficient in human material to provide citizenship to the population. The aim is to discuss the matter so that there is no vanity about the problem that leads the population to distrust the work of the police and discredit the judiciary. A matter of this importance must be discussed with professionalism and a republican spirit, never treated with vanity; We want to deal with dynamics and above all competence for the effective elucidation of the illicit act committed, giving the population a feeling of effectiveness and efficiency in the police-judicial service. **Key words:**Detailed Term of Occurrence, Military Police of Amazonas.

ABSTRACT
The present study aims to guide the difficulty encountered by the citizen who resorts when he/she suffers a threat or suffers damage to his rights, and whose shelter in many situations is not attended to him in the civil police station, which is sometimes crammed with more complex procedures, and/or even there are not enough staff to meet the social demand, thus bringing difficulty for the citizen to exercise his right to come to justice. It is note point that in many cases the drafting of this procedure at the place of occurrence by a qualified and trained police officer would expedite the procedure, letting the elucidation of the fact flow more effectively and giving a response to the parties involved in the typical fact. This course conclusion work was returned not only to obtain a grade, but also to raise a discussion of the importance of the preparation of the Detailed Term of Occurrence-TCO by the military police officer in the face of criminal offenses of lesser offensive potential, for the purposes of rationalizing and improving the work of ostentatious police, as well as in support of providing speed of these criminal offenses, that often do not reach the State-Judge, not allowing this time the population to be at the mercy of a bureaucracy in the current conjuncture because the Judicial Police passes, very bureaucratic and deficient in human material to provide citizenship to the population. It is intended to discuss the subject so that there is no vanity about the problem that leads the population to distrust the work of the police and discredit the judiciary. Subject of this importance should be discussed with professionalism and republican spirit, never treated with vanity; we do want to deal with dynamic and above all competence for the effective elucidation of the illegal act committed, generating the population the feeling of effectiveness and efficiency in the police-judicial service. **Keywords:**Circumstantial Term of Occurrence, Amazon Military Police.

1. INTRODUCTION

The main objective of this article is to bring to debate the possibility or not of drawing up a Detailed Term of Occurrence – TCO, by the military police in the face of criminal offenses with less offensive potential.
It is worth clarifying that the definitions regarding the law that creates this procedure, law 9,099/95, Law creating special courts, will be clarified. Also guiding the difficulties faced by the civil police in most municipalities in the state

of Amazonas, especially with the recent decision of the Federal Supreme Court regarding the unconstitutionality of item VIII, § 3, of Law No. 3,514/2010, which provided for the possibility of the Military Police, within the scope of its jurisdiction, to prepare the Detailed Term of Occurrence-TCO, which invaded the competence of the Civil Police, provided for in art. 115 of the Constitution of the State of Amazonas, as well as dissociating the competence attributed to the Military Police contained in art. 116 of the State Charter.

One of the most important points of the study is the definition of Police Authority in light of Art. 60 of law 9,099/95, thus determining the exclusive competence of the Civil Police Delegate or sharing this and making the creation of the aforementioned procedure by the Military Police legitimate. .

And finally, it will deal with the jurisprudential and doctrinal understanding regarding the subject, drawing a parallel between the reality experienced in public security and what the legislation mentions, covering the legalities in this instrument, as well as the losses caused by this imbroglio, which may hinder the police work as a whole, especially justice.

2 CONSIDERATIONS ABOUT LE 9,099/95

In force from September 1995, Law no. 9,099 came to regulate art. 98, I of CF/88 (which provided for the creation of special courts), seeking conciliation through a concise, speedy process model that, above all, offered the citizen immediate judicial assistance.

In the criminal sphere, one must consider the words of the classic Beccaria, that "The certainty of punishment constitutes an indispensable factor for the respect and implementation of normative precepts" (BECCARIA, 2002.)

It is necessary to minimize the impunity that is currently being experienced. To this end, the alternatives proposed by Law 9,099/95, contribute to ensuring that offenders with less offensive potential do not go unpunished and commit more serious crimes, becoming another number in the already crowded penitentiaries that should, in theory, promote resocialization, but which further attack human dignity and end up generating new criminals.

In this sense, the legislator was concerned not only with favoring the victim through the restitution of damages, but also the offender, since he can choose to accept an agreement, so that he does not subject himself to the wear and tear of a process. Furthermore, he brought non-custodial measures of liberty and aimed to resolve the conflict between the parties, giving preference to compensation for the damage.

2.1 SPECIAL CRIMINAL COURT - JECRIM

The Special Criminal Court is guided by the principles of orality, informality, procedural economy and speed. It is precisely the speed that will be treated with more attention, as this will guide the possibility of drawing up the Detailed Term by the Military Police.

According to the principle of celerity, the procedure must be quick, especially because in crimes with less offensive potential there is no great social relevance, therefore avoiding lengthy processes that carry custodial sentences.

Therefore, through the application of JECRIM's guiding principles, especially that of speed, we seek, when possible, to repair the damage and immediately resolve conflicts of interest.

Regarding the objectives of JECRIM, it is clear that, as mentioned in the second part of art. 62, he seeks compensation for damages and the application of a non-custodial sentence.

> Art. 62. The process before the Special Court will be guided by the criteria of orality, informality, procedural economy and speed, aiming, whenever possible, to repair the damages suffered by the victim and the application of a non-custodial sentence.

Thus, the perpetrator of the act, instead of submitting to a slow process, which could lead to his conviction, will have the opportunity, in crimes with less offensive potential, to negotiate with the Public Prosecutor's Office an alternative solution, other than the deprivation of his freedom.

This time, it becomes clear that JECRIM seeks the satisfaction of all parties involved directly or indirectly with the fact. The offended party, who will have their damages repaired quickly; the author who will have to repair the damage or subject themselves to a measure that does not deprive their freedom and, above all, Society, which will have the satisfaction of seeing a dispute resolved quickly, therefore bringing credibility to state bodies.

2.2 CRIMINAL OFFENSES OF LESS OFFENSIVE POTENTIAL

It is provided for in art. 98, item I, of the 1988 Magna Carta, the obligation to create Special Criminal Courts for the conciliation, trial and execution of criminal offenses with less offensive potential.

Article 61 of Law No. 9,099/95 came to define misdemeanors as criminal offenses with less offensive potential.

penalties, provided for in decree law No. 3,688, of October 6, 1941. Article 61 of law 9,099/95 was amended, which governs:

> Art. 61. Criminal offenses of lesser offensive potential, for the purposes of this Law, are criminal misdemeanors and crimes for which the law imposes a maximum penalty of no more than 2 (two) years, whether or not combined with a fine. (As amended by Law No. 11,313, of 2006).

With the effective sanction and promulgation of Law No. 9,099, on September 26, 1995, what was done was to define the provisions of article 98, I, of the Greater Law. In effect, the 1988 Federal Constitution provided differentiated treatment for what it called "criminal offenses with less offensive potential".

Before Law No. 9,099/95 came into force, those who committed minor criminal offenses rarely received the appropriate state response. Many of the infractions were not even brought to the attention of the Public Prosecutor's Office and the Judiciary. Those typical conducts of small value that were conducted at the Police Stations seemed to "disappear", for various reasons, including the induction of civil police agents so that the parties could understand each other, that is, these agents played the role of justice, with this , it seemed that such disputes had repercussions on society as another criminal offense without a solution, which did not have its normal course, to be assessed by the State-Judge. This reality triggered two evils, the feeling of impunity that gripped these small offenders, and a complete disregard on the part of the State towards the people directly affected by these crimes.

After the enactment of Law 9,099, of September 26, 1995 (Law of Special Civil and Criminal Courts), victims of "trifle" crimes began to count on extremely rapid legislation, capable of providing them with fair compensation for the damage suffered, reducing these people's distrust of justice and attacking the feeling of impunity that surrounded the offender. The objective of the Law was to reduce bureaucracy and rationalize Criminal Justice, making the procedure more agile.

Regarding the Military Police, numerous changes were introduced and will be worth highlighting, as their members are, in the vast majority of cases, the first to become aware of the occurrence of criminal offenses with less offensive potential.

Therefore, with the exception of military criminal offenses (Law no. 9,099/95 - art. 90-A), criminal offenses with less offensive potential are those in which the law imposes a maximum penalty of no more than two years or a fine; as well as the crimes provided for in Law No. 10,741, of October 1, 2003 (Statute of the Elderly), to which a maximum sentence of no more than four years is attributed.

3 CONCEPT AND LEGAL PROVISION OF THE CIRCUMSTANCED TERM

The document prepared by the Bachelor of Law, as a rule, invested in the position of Police Chief in which details the order, events and consequences of a criminal act, is called a Detailed Statement of Occurrence or TCO.*in thesis*, occurred and has come to your attention, so that the appropriate measures can be taken. For BURILLE (2008):

> The Detailed Term is a type of more detailed police report, but without the formalities required in the police investigation, containing the news of a criminal offense with less offensive potential (*criminal news*). In other words, it is a succinct narration of the criminal event, with verified place and time, plus brief reports from the perpetrator, victim and witness(es), as well as, mentioning the seized object(s), related (s) the infraction, if any, and may also contain, depending on the crime, an indication of the expertise required by the police authority that committed it.

The Detailed Term of Occurrence is used as an alternative form of punishment provided for in Law 9,099/95, responsible for the creation of Special Criminal Courts, responsible for judging crimes with less offensive potential. The aforementioned law, through its article 69, states regarding the applicability in practice of the detailed term, namely:

> Art. 69. The police authority that becomes aware of the occurrence will draw up a Detailed Statement and forward it immediately to the Court, with the perpetrator and the victim, providing for the necessary expert examinations.

BURILLE (2008) also comments that:

> The Detailed Term is, therefore, not only an expedient that replaces the archaic police investigation, but also a pre-procedural mechanism that aims to meet all the guiding principles of Law No. 9,099/95, expressed in its art. 2nd (principles of orality, simplicity, informality, procedural economy and speed).
>
> It could also be said that the term is an instrument of citizenship, which seeks to reduce the suffering of the victim of a certain criminal offense, through a rapid state response,

which begins with the knowledge of the fact by the police authority and unfolds in some simple, quick measures, with few formalities, to then end before the State-judge, which will provide the solution of the criminal case, either through conciliation , criminal transaction, or, if this is not available, with the filing of a complaint or criminal complaint. This is the spirit of the law.

Granzotto (2008) highlights that TCO is a:

> [...] detailed, detailed record of the occurrence where the people involved qualify – perpetrator(s) of the incident(s), victim(s) and witness(es); a summary of its versions is made; the date, time and place of the incident are mentioned; the objects used in the crime (seized or not) are described; signatures are collected from the people involved; When the law determines, the representation of the offended party and other data necessary for a perfect typical adequacy of the fact by the Public Prosecutor's Office will be presented.

Still in the argument set out, Silva (2007):

> The Detailed Term cannot be attributed the quality of a mere police report. Let us imagine the situation in which the criminal composition (transaction) was not achieved in the Court. The thesis that the Public Prosecutor's Office would, in this case, be legitimized to file a complaint based on a mere police report, even in the case of a crime with less offensive potential, is inconceivable. The Public Prosecutor's Office needs more robust elements to do so, that is, minimum elements that serve as a substitute for the outbreak of the *actio poenalis,*under penalty of illegal constraint due to lack of just cause.

The term detailed is a document prepared by the police authority with the aim of replacing the arrest report in flagrante delicto, specifically, in incidents in which an infraction of minor offensive potential is found. For Grinover "the detailed term referred to in the device is nothing more than a slightly more detailed police report" (GRINOVER, 2002, p. 111).
Junior and Lopes also describe that:

> The detailed term of occurrence, or simply term of occurrence, is a document that does not need to be covered by special formalities and in which the police authority that becomes aware of a criminal offense of lesser offensive potential, with a previously identified perpetrator, will summarize in summary form the characteristics of the fact (JUNIOR, LOPES, 1997, p. 472.)

It can be seen, however, that this subject gave rise to persistent discussions, having as its core what is understood by police authority, placing on the agenda the competence to draw up the detailed term.

4 LEGAL COMPETENCE TO DRAW UP THE CIRCUMSTANCED TERM OF OCCURRENCE

It can be seen that the legislative provision regarding the ordinary competence attributed to the Bachelor of Laws, invested in the position of Police Chief, is in fact competent for the preparation of the Detailed Occurrence Term/TCO; However, it is questionable whether only he – the Police Chief – can preside over a TCO, especially since in some states of the Federation many military police officers have been carrying out this task.
We can also, coldly analyzing, that our security system, the system where the vast majority of criminal actions begin, has its problems and flaws; The duties relating to each sector, police or technical, are well detailed and listed in our Magna Carta.
As Oliveira comments (Jorge, 2002):

> §§ 1, IV, and 4, of article 144 of the Greater Law, give the police chief exclusive responsibility for directing judicial police acts and investigating criminal offenses. Therefore, the police authority is the only one competent to lead the investigation in order to determine the authorship, materiality and circumstances in which the criminal action or omission occurred.

In the same line of reasoning, comments TOURINHO FILHO apud JORGE:

> There is still a Civil Police, maintained by the States, and directed by Police Delegates, with the primary function of investigating criminal offenses and their respective perpetrators, except for the duties of the Federal Police and infractions under military jurisdiction. It is also responsible for the functions of the Judicial Police, consisting not only of those activities referred to in article 13 of the CPP, as well as

those listed in article 69 of the Law on Special Criminal Courts.

Given the great demand for cases that reach the Police Districts, and the small number of functional personnel, it is not difficult to imagine the reason why the Military Police ends up gaining the competence to prepare the Detailed Occurrence Statement.

However, based on the analysis of art.69 of Law 9,099/95 and, consequently drawing a parallel with the current Magna Carta, through its art.144, § 5, it is clear that the concept of "police authority" is restricted to the Police Chief. Thus, the constitutional provision is clear in dictating that the Military Police's actions must be carried out while preserving their ostensible and preventive nature, with the aim of seeking to maintain public peace. On the other hand, the Civil Police would have the role of Judicial Police, with an investigative character.

In this sense, § 5 of article 144 of the Federal Constitution delimits the competence of the Military Police as follows: "the military police are responsible for the overt police and the preservation of public order".

> Art.144 (...) CR/88
> **§ 5 - THE MILITARY POLICE ARE RESPONSIBLE FOR OSTENSIVE POLICE AND THE PRESERVATION OF PUBLIC ORDER**; Military fire departments, in addition to the duties defined by law, are responsible for carrying out civil defense activities. (OUR EMPHILIA).

Still in the same provision, in its § 4, the attribution of competence to the Civil Police is made available, providing that:

> Art.144 (...) CR/88
> **§ 4**"The civil police, led by career police officers, are responsible, subject to Union competence, for the functions of judicial police and the investigation of criminal offenses, except military ones".

Well, this argument only validates the opinion that the Military Police has restricted competence, and therefore an extensive interpretation of the term police authority cannot be carried out. For Silva (2007):

> It is worth saying, the Constituent was clear in outlining the role of each of the public security bodies, so that the functions of judicial police and the investigation of criminal offenses were the responsibility of the civil and federal police (judicial police), while in that the overt police and the preservation of public order were the responsibility of the military police (administrative police). The constituent itself excepted this rule, so that the investigation of crimes by the military police is restricted to military criminal offenses, commonly through the Military Police Inquiry. In other words, the military police act preventively (in the "Cosme and Damião" style), aiming to avoid, or discourage, the commission of crimes, while the federal and civil police act repressively, after the commission of crimes.

Well, defenders of the Military Police's competence in preparing the Detailed Occurrence Term, have arguments that seek in any way to expand the interpretation of the aforementioned term, this is what is called a teleological interpretation of it, provided for in article 69 of Law 9,099/ 95.

Positioning himself contrary to the subject, SILVA (2007) makes a relevant comment:

> If we interpret article 69 of Law 9,099/95 taking into account the manifest will of the Law (teleological interpretation), we will notice that only the Police Chief is a police authority for the purposes of this article.
> The caput of this article states that the police authority will arrange for the necessary expert examinations to be requested, and the sole paragraph of this rule states that no bail or arrest in the act will be imposed on the perpetrator of the act who appears immediately in court or undertakes to he attends.
> The Police Chief is the one who provides requests for the necessary expert examinations, imposes bail or prepares the arrest report in the act. Thus, it is clear that the Police Authority referred to in article 69 is exclusively the Police Chief.

Among the so-called consecrated scholars, the position of Prof. Damásio De Jesus (2002, p.43) to speak out about police activity. According to the author:

> The purpose of police activity does not distort the condition of those who carry it out. Authority arises from the fact that the agent is a police officer, civilian or military. [...] The military police officer, upon becoming aware of the commission of a criminal misdemeanor or a crime with less offensive potential, may record the occurrence in detail, with the indication and qualification of witnesses, and take the suspect directly to the Court Criminal Special. (JESUS. 2002,

p.43)

In his presentation, BURILLE (2008) presents a fragment of an opinion drawn up by the Santa Catarina State Attorney's Office. According to the opinion:

> The Military Police's main mission is to preserve public order [...]. The maintenance of public order, a mission constitutionally assigned to the military police, is too broad and complex, and the activity, in the current context of high crime rates and environmental problems that plague the country, cannot encounter 'infraconstitutional obstacles' that do not aim to meet to the common good. [...] This is why the Detailed Term must be drawn up at the location of the incident, by the police officer who responds to it, whether civilian or military, which will provide savings in human and material resources and, mainly, a more effective and faster provision. [...] In view of the above, after carefully weighing the present process, it must be recognized that the drawing up of the Detailed Term is not an act of judicial police, as it lacks the need to investigate the facts in the manner of a police investigation.

Conclusively, the opinion informs that the concept of police authority brought by article 69 of law 9,099/95 can be both civil and military police, therefore not delimiting a specific category.

Although there are many arguments that, at first glance, even appear congruent, in a positive sense to the competence of the Military Police in preparing the Detailed Term, there are two others that overturn any others that could be raised.

The first concerns the lack, on the part of the Military Police, of technical-legal knowledge to proceed with the preparation of the aforementioned document, nor for criminal classification.

It can be argued, however, the existence of Military Police officers graduated in Legal Sciences, however, there is no way to individualize duties according to the individual's qualifications, as it is a corporation, where everyone must be treated without distinction, in respect for the principle of equality.

It is, therefore, an intrinsic characteristic of the role of Police Chief, given that one of the conditions for investiture for the position under discussion is holding a Bachelor's degree in Law.

Concluding the reasoning, Jorge (2002) adds that:

> If for a law graduate, it is often difficult to differentiate between extortion and theft, threats and coercion, embezzlement and theft through fraud, misappropriation and theft, embezzlement and witchcraft, imagine for an individual without technical-legal knowledge.

Well, the second argument and, apparently stronger, is that, in the event that the Military Police's competence to prepare the TCO is recognized, it must be legal, that is, made available in law, which seems to still not exist today. .

Initially, proceeding with a systematic interpretation of law 9,099/95, we can see that the concept of police authority is only consistent with the figure of the Police Delegate, as that would require technical-scientific knowledge to perform such a function, bearing in mind that when drafting the Detailed Occurrence Term/TCO may provide requests for necessary expert examinations.

Only he, with his technical-scientific knowledge, will be able to clearly prepare a request for expertise, with questions relevant to the criminal act.

The police authority must have a law degree, with knowledge in forensic medicine, which, in addition to being part of the law school curriculum, is a subject required in competitions for the aforementioned position.

It should be noted that when a Detailed Statement of Occurrence/TCO is drawn up, the need to draw up a report of flagrant crime is dispensed with, releasing the perpetrator of the act upon assuming a commitment to appear before the criminal court.

This task requires in-depth knowledge of national legislation, and it is clear that the knowledge that the military police officer has to carry out an arrest and capture is simple basic notions of Law.

On the other hand, the classification of a crime is a matter related to investigative activity, and our Magna Carta made it clear, in its article 144, § 4 that this task is the responsibility of the civil police, which is directed by a Police Delegate career.

In this understanding, Júlio Fabbrini Mirabete speaks.

> “Only the police chief can dispense with action in flagrante delicto, in cases where such action can be avoided, or determine action when the perpetrator does not commit to appearing in court, arranging bail when appropriate. Only he will be able to determine the necessary steps to initiate criminal proceedings when evidence of the criminal offense was not collected at the time of the arrest in flagrante delicto. Thus, in a

> literal, logical and even legal interpretation, only the police chief can determine the drawing up of the detailed term referred to in art. 69. (...). In short, the law that deals with Special Courts in none of its provisions, even remotely, refers to public agents other than the police authority. It is concluded, therefore, that, in light of the Federal Constitution and the Brazilian legal system, police authority is only the police chief, and only he can prepare the detailed term referred to in art. 69. Therefore, public agents who make the arrest in the act must immediately refer the parties to the police authority of the police station in the respective district."

Therefore, the above argument does not succeed in the sense that the elaboration of the Detailed Occurrence Term/TCO be made at the location of the criminal offense itself, as the aforementioned speed would not be in line with efficiency, which is a constitutional principle that guides the Administration Public.

Finally, if there is a judicial controversy regarding the interpretation of the concept of police authority present in article 69 of Law 9,099/95, the interpretation mechanism in accordance with the Constitution must be used to consider the non-extension of the concept of police authority compatible with it. , in view of the competence established in article 144, as mentioned above.

5 THE LEGITIMATEITY OF THE CIRCUMSTANCED TERM CARRIED OUT BY THE MILITARY POLICE

Depending on the legality of the detailed term carried out by the military police, we must observe the following legal aspects that regulate this topic.

The legislator, in the case of law 9,099/95, had the clear intention of relieving the Judiciary Power, through a mechanism that treats crimes of lesser offensive potential differently from those of greater severity and which require greater diligence to instruct the court. The scope of Article 69, without defining the authorities that can draw up the Detailed Terms, created a dispute across the country for space between the administrative and judicial police. However, today the majority of jurists defend the creation and forwarding of the Detailed Occurrence Term/TCO by the military police, aiming to comply with the precepts that guide Law No. 9,099/95.

In accordance with the current infra-constitutional legislation, it was not possible to identify any device that would meet the aspirations of the Military Police in exercising its legitimate duty to prepare and properly forward the Detailed Occurrence Statement/TCO. However, in successive decisions, the STF ruled that the role of the Military Police in drawing up and forwarding the Detailed Occurrence Statement/TCO in some Military Police Forces is unconstitutional, although others still perform this function.

The lack of legal definition regarding the expression*police authority*, taking into consideration Law No. 9,099/1995, whose purpose of its creation was informality, speed and procedural economy, all to meet the desires of the citizen who is now involved in an infraction with less offensive potential, whether as perpetrator or victim , that is, it requires a faster response to your demand.

> Law No. 9,099/95, innovating the system in force until then, adopted the consensual model of jurisdiction, already existing in the legal system of the most developed countries, breaking with the traditional dogmas of conflictual jurisdiction followed by the CPP. Always seeking to speed up judicial provision for infractions with minimal offensive potential, it established new postulates, such as the supremacy of the autonomy of the will of the accused or suspect, over principles previously considered mandatory, such as those of defense and adversarial proceedings. In this new system, the principles now applicable are those of informality, speed and procedural economy, leading us to a reinterpretation of the expression ´´police authority``, for its specific purposes. The most faithful interpretation to the spirit of the law, its principles and its purpose, as well as the one extracted from the literal analysis of the text, is that ´´police authority`` for the strict purposes of the commented Law, includes any civil servant public that has the responsibilities of carrying out policing, preventive or repressive. If we interpret the new law from the perspective of the CPP, there is no doubt that the police authority is the Police Chief (articles 4, 6, 7, 13, 15, 16, 17, 23, 320, 322, etc.). If, however, we analyze it in light of the CF and the principles that inform it, we will find a broader concept, which meets the purpose of the new criminal system. (DAMÁSIO, 1996, p. 61)

This current understanding of the concept of police authority for the purposes of applying Law No. 9,099/95, covering civil police and military police, has been confirmed by the Judiciary, through provisions, statements from forums, meetings and congresses of Presidents of Courts of Justice and Judges, as well as in judicial decisions handed down in all instances. This understanding has also been ratified by the Public Ministry, through terms of cooperation, opinions, among other forms of positioning. Most of the doctrine itself

follows this understanding.

Recently, consolidating the scope and importance of drafting the detailed term by the Military Police, the Executive Branch itself in the States has been disciplining the procedures of its police bodies in this sense. As examples, the states of Rio Grande do Sul, Paraná, São Paulo, Mato Grosso do Sul and Santa Catarina can be cited.

5.1 JURISDICTIONAL, INSTITUTIONAL AND DOCTRINAL POSITIONS

It is extremely important to highlight that the possibility of drawing up the Detailed Term by the Military Police is a peaceful matter among the most prominent bodies and institutions involved in this process. Following this line, there is only one understanding as we will analyze the positions taken by the following bodies, jurisdictional, doctrinal and institutional.

These positions have the intention purely of giving to the procedure, according to the understanding of these bodies and scholars, the clear materialization of the guiding principles of Law No. 9,099/95, mainly the speed in carrying out the procedure analyzed at the time, thus giving the necessary legitimacy for the drawing up of the Detailed Term of Occurrence by the Military Police.

ADI 2862 - Direct Unconstitutionality Action filed by the Liberal Party (PL), currently the Republic Party (PR), against Provision no. 758 of the Superior Council of the Judiciary of SP and Resolution 403/2001 of the Public Security Secretariat of SP, which authorize the Military Police of São Paulo to prepare a Detailed Term, were judged UNFORCEED by the Federal Supreme Court by unanimous vote of the Ministers present.

> DIRECT ACTION FOR UNCONSTITUTIONALITY. STATE REGULATORY ACTS THAT GIVE THE MILITARY POLICE THE POSSIBILITY OF DEVELOPING CIRCUMSTANCED TERMS. PROVISION 758/2001, CONSOLIDATED BY PROVISION N. 806/2003, OF THE SUPERIOR COUNCIL OF THE JUDGE OF THE COURT OF JUSTICE OF SÃO PAULO, AND RESOLUTION SSP N. 403/2001, EXTENDED BY RESOLUTIONS SSP NS. 517/2002, 177/2003, 196/2003, 264/2003 AND 292/2003, FROM THE PUBLIC SECURITY SECRETARY OF THE STATE OF SÃO PAULO. SECONDARY REGULATORY ACTS. UNKNOWN ACTION.75880640351717719626429 21. The contested normative acts are secondary and serve to interpret the norm contained in art. 69 of Law no. 9,099/1995: indirect unconstitutionality.699.0992. The jurisprudence of the Federal Supreme Court is peaceful regarding the impossibility of recognizing a direct action of unconstitutionality against a secondary normative act. Precedents.3. Direct Unconstitutionality Action not known. (2862 SP, Rapporteur: CÁRMEN LÚCIA, Judgment Date: 03/25/2008, Full Court, Publication Date: DJe-083 DISCLOSURE 08-05-2008 PUBLIC 09- 05-2008 EMENT VOL-02318-01 PP-00020)

The Court of Justice of the State of Minas Gerais follows this direction

> PROVISION OF THE JUDICIAL POWER. SUMMARY: CRIMINAL WRIT OF SECURITY. NULLITY OF THE DECISION THAT GRANTED THE MILITARY POLICE THE POSSIBILITY OF EXERCISING PRIVATE ACTIVITIES OF THE JUDICIARY POLICE. OFFENSE TO ARTICLE 144, CAPUT, INC. IV EVE §§ 4TH AND 5TH, OF THE FEDERAL CONSTITUTION. STF PRECEDENTS. SECURITY GRANTED. 1. The Federal Constitution provides for the functional powers of the State's public security bodies. 2. Pursuant to article 144, § 4 of the Constitution of the Republic, the judicial police, headed by career delegates, are responsible for carrying out, exclusively, criminal investigation acts. 3. Any decision that assigns a body other than the judicial police to carry out acts of criminal investigation, including the drawing up of Commitment to Attendance and Police Reports, is null and void, as it violates the constitutional text. STF precedents. 4. Security Granted.
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> Writ of Mandamus – Cr No. 1.0000.11.052202-6/000 – DISTRICT OF Santa Bárbara – Petitioner(s): UNION OF CIVIL POLICE DELEGATES OF THE STATE OF MINAS GERAIS – Autorid Coator: JD COMARCA SANTA BARBARA – Interested party: MILITARY POLICE STATE OF MINAS GERAIS, STATE OF MINAS GERAIS, STATE OF MINAS GERAIS.
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> SUMMARY: CONSTITUTIONAL. ADMINISTRATIVE. DECREE N. 1,557/2003 OF THE STATE OF PARANÁ, WHICH ASSIGNS COMBATANT SUBTENENTS OR SERGEANTS TO SERVICE IN POLICE DELEGACIES, IN MUNICIPALITIES THAT DO NOT HAVE A CAREER SERVICE TO PERFORM THE FUNCTIONS OF POLICE DELEGATES. FUNCTION DESVIATION. OFFENSE ART. 144,

CAPUT, INC. IV EVE §§ 4TH AND 5TH, OF THE CONSTITUTION OF THE REPUBLIC. DIRECT ACTION JUDGED PROCEDURED. (ADI 3614, Rapporteur: Min. GILMAR MENDES, Rapporteur for Judgment: Min. CÁRMEN LÚCIA, Full Court, judged on 20/09/2007, DJe-147 DISCLOSURE 22-11-2007 PUBLIC 23- 11-2007 DJ 23-11-2007 PP-00020 EMENT VOL-02300-02 PP-00229 RTJ VOL-00204-02 PP-00682)

It is known that the decisions handed down by the Praetorian Excellency, in the context of concentrated constitutionality control, are, that is, effective against everyone and have a binding effect on other bodies of the Public Power, in accordance with § 2 of article 102 of the Magna Carta. :

§ 2 The definitive decisions on the merits, handed down by the Federal Supreme Court, in direct actions of unconstitutionality and in declaratory actions of constitutionality will produce effectiveness against everyone and a binding effect, in relation to the other bodies of the Judiciary and the direct and indirect public administration, in the spheres federal, state and municipal.

Therefore, the decision handed down by the learned judge of the District of Santa Bárbara violates constitutional precepts, since it attributes the role of judicial police to military police officers, which is expressly prohibited by the Federal Constitution in its article 144, §§ 4 and 5 .

In view of the foregoing, I GRANT SECURITY, ratifying the injunction granted, to declare the decision rendered by the r. Court of Law of the District of Santa Bárbara.

No charge. It's like voting.

Des. Cássio Salomé – According to the Rapporteur.

Des. Agostinho Gomes De Azevedo – According to the Rapporteur. Des.

Duarte de Paula

According to PROVISION No. 758/2001 of the Superior Council of the Judiciary. This regulates the preliminary phase of the Special Criminal Courts procedure.

THE SUPERIOR COUNCIL OF THE JUDGE, in the use of its legal powers, considering what was decided in Case CG-851/00; considering the guiding principles of the Special Criminal Court procedure, which are orality, simplicity, informality, procedural economy and speed, Resolve:

Article 1 – For the purposes set out in art. 69, of Law 9,099/95, the police authority, capable of taking notice of the occurrence, drawing up the detailed statement and forwarding it immediately to the Judiciary is understood as the Public Power agent legally invested to intervene in the person's life natural, acting in ostensible or investigative policing.

Article 2 – The Judge, responsible for the activities of the Court, is authorized to take note of the detailed terms drawn up by the military police officers, as long as they are simultaneously signed by a Military Police Officer.

Article 3 – If there is a need to carry out an urgent expert examination, the military police officer must refer the perpetrator or the victim to the competent body of the Technical-Scientific Police, which will provide it, sending the result to the court distributor at the location of the infraction.

Article 4 – The forwarding of detailed terms will respect the discipline drawn up by the court responsible for the activities of the Special Criminal Court in the area where the criminal offense occurred. Article 5 – This Provision will come into force on the date of its publication. São Paulo, August 23, 2001. (aa) Márcio Martins Bonilha, President of the Court of Justice, Álvaro Lazzarini, Vice-President of the Court of Justice, and Luís de Macedo, General Inspector of Justice.

According to the institutional position of the state secretariat of public security and social defense – SESED/RN, the carrying out of the procedure by the Military Police is appropriate, in the following form, as stated in ORDINANCE No. 311/2011–GS/ SESED Natal, June 28 2011.

ORDINANCE No. 311/2011–GS/SESED Natal, June 28, 2011. Establishes the adoption of measures aimed at complying with Recommendation No. 003/2011-19PJ/MPRN.

THE SECRETARY OF STATE FOR PUBLIC SECURITY AND SOCIAL DEFENSE, in the use of his legal duties provided for in items I and XIII, of article 4, of Complementary Law nº 163, of 02/05/1999 and, CONSIDERING the receipt of Recommendation nº 003/2011 -19PJ/ MPRN, which deals with “measures to ensure the continuity of essential judicial police activities and the investigation of criminal offenses in the face of the strike triggered by civil police officers”;

WHEREAS, “as decided by the Federal Supreme Court, in the Direct Action

of Unconstitutionality No. 2.862-6/SP, it is perfectly admissible to prepare police reports and detailed terms of occurrence by military police officers, with the following arguments being set out in the respective ruling, which ruled out the thesis of the exclusivity of the Civil Police in this area: Min . Ricardo Lewandowski: 'It's a mere verbal report reduced to term'; Min. Carlos Britto: 'And this pure and simple documentation does not mean any act of investigation, because, in investigation, one first investigates and then documents what was investigated'; and, finally, Min. Cezar Peluso: 'this is not an act of judicial police, but a typical act of the so-called overt police and the preservation of public order – which is dealt with in §5 of article 144 –, typical acts of the exercise of the military police's own competence, which is to draw up a police report and, in the event of an incident, refer the perpetrator and victims to the authority, be it police, when applicable, or judiciary, when the law provides for it', adding that 'Every military police officer must make this police report'", CONSIDERING that the main purpose of distributing tasks between police bodies and agents is the optimization of the service provided to the population, notably harmed due to the strike of Clerks and Agents of Civil Police,

RESOLVE:

Art. 1st. The Military Police of the State of Rio Grande do Norte is authorized to draw up a Police Report (BO) and a Detailed Occurrence Statement (TCO), referred to in art. 69, of Law No. 9,099, of September 26, 1995 – Law of Special Civil and Criminal Courts, which must also be signed by an official of the Corporation in which the registration takes place.

§ 1. The provisions of this article will be implemented, as a rule, in the operational units of the Military Police existing in each Municipality and, in particular, in the following listed:

I – Military Police Battalion (BPM):

The)1st BPM – East Zone of Natal;
B)2nd BPM – Mossoró;
w)3rd BPM – Parnamirim;
d)4th BPM – North Zone of Natal;
It is)5th BPM – South Zone of Natal;
f)6th PBM – Caicó;
g)7th BPM – Pau dos Ferros;
H)8th BPM – Nova Cruz;
i)9th BPM – West Zone of Natal;
j)10th BPM – Assu;
k)11th BPM – Macaíba.

II – Independent Military Police Company (CIPM):

The)1st CIPM – Macau;
B)2nd CIPM – João Câmara;
w)3rd CIPM – Currais Novos;
d)4th CIPM – Jardim de Piranhas.

§ 2. Copies of the BO's and TCO's must be sent, electronically and within 24 (twenty-four) hours, to the General Civil Police Station – DEGEPOL for the purpose of the provisions of art. 4th and to maintain the statistical records unit. Article 2. The TCO prepared by the Military Police will be sent directly to the Special Criminal Court competent to process and judge the incident, together with the perpetrator, the victim and the seized objects, if applicable.

Article 3. Requests for the necessary expert examinations relating to TCO's drawn up by the Military Police will be made directly by the Officer of the Corporation where the registration took place and sent directly to the Technical-Scientific Police Institute – ITEP.

Art. 4th. All measures determined by the Special Criminal Court will be carried out by the Civil Police, regardless of who drew up the TCO.

Art. 5th. In the event of preparing a TCO with an unknown author, the responsible military police officer will forward it, together with the seized objects, if any, to DEGEPOL for the execution of the judicial police acts necessary to clarify the crime.

Art. 6th. The General Commander of the Military Police is authorized to issue the acts necessary for the execution of the preceding articles of this Ordinance.

Art. 7th. This Ordinance comes into force on the date of its publication.
PUBLISH YOURSELF. REGISTER. FULFILL YOURSELF.
ALDAIR DA ROCHA
Secretary of State for Public Security and Social Defense

The institutional position of the Public Security Secretariat of the State of Rio Grande Do Sul has the following position.

MAURO HENRIQUE RENNER, Deputy Attorney General for Institutional Affairs.
CRIME OF LESS OFFENSIVE POTENTIAL. CIRCUMSTANCED TERM. MILLING BY THE MILITARY BRIGADE. POSSIBILITY.

DOCTRINE AND JURISPRUDENCE. ADDITIONAL COMPETENCE OF MEMBER STATES. Historically, the preparation of the police investigation constitutes one of the functions of the Judiciary Police, today called the Civil Police. This attribution was maintained with the Federal Constitution of 1988, which provides in its art. 144, §4º that "the civil police, led by career police officers, are responsible [...] for the functions of judicial police and the investigation of criminal offenses, except military ones". According to TOURINHO FILHO, "the Code of Procedure, in its art. 4th, makes this function very clear: 'The (civil) Judiciary Police will be exercised by the police authorities in the territory of their respective districts and will have to put an end to the investigation of criminal offenses and their authorship" TOURINHO FILHO, Fernando da Costa – Criminal Procedure
– 1st Volume – 19. Ed. Rev. And current. – São Paulo: Saraiva, 1997, p. 188. On the other hand, in the Chapter referring to the Judiciary, the Federal Constitution provides that the Union and the member States will create special courts competent for the conciliation, trial and execution of criminal offenses of lesser offensive potential, through oral and very briefly (CF, art. 98, I). Giving effect to this device, the legislator enacted Law No. 9,099, of September 26, 1995, recognizing that the police authority that becomes aware of the occurrence of a criminal act has the function of drawing up the respective detailed statement (art. 69). It is clear that the legislator in Law No. 9,099/95 used the expression police authority, in relation to the judicial police of the Code of Criminal Procedure. Clearly that expression is broader than this. For this reason, the specialized doctrine understood that "any police authority may be aware of the fact that could constitute, in theory, a criminal offense. Not only the federal and civil police, which have the institutional function of judicial police of the Union and States (art. 144, §1, item IV and §4), but also the military police." GRINOVER, Ada Pellegrini and others – Special Criminal Courts: Comments on Law 9,099, of 09/26/1995
– 3. Ed. Ver. And current. – Sâo Paulo: Editora magazine dos Tribunais, 1999, p. 107. This is also the position of NEREU JOSÉ GIACOMOLLI, for whom the Military Police can "[...] draw up the detailed statement and present those involved to the Court, directly, instead of taking them to the Police Station". Special Criminal Courts. Furthermore, one cannot lose sight of the fact that the detailed term is a pre-procedural procedure that falls within the sphere of criminal procedural law as a procedure, similar to what happens in relation to police investigations and civil investigations, the latter in relation to procedural law civil. Hence the possibility for Member States to legislate, concurrently (complementary competence), with the Union regarding procedures in procedural matters (CF, arts. 24, XI c/c 24, §2º), as "the Brazilian Constitution adopted the competence non-cumulative or vertical competitor, so that the Union's competence is limited to the establishment of general standards, with the States and the Federal District having to specify them, through their respective laws." MORAES, Alexandre de – Constitution of Brazil interpreted and constitutional legislation – 2. Ed. – São Paulo: Atlas, 2003, p. 697. Article 98, item I, of the Federal Constitution itself, when talking about procedures, also authorizes the States to legislate on special courts. Therefore, it is perfectly possible for a given Member State, in the use of its complementary (or supplementary) competence, to interpret the expression police authority, provided for in the general rule of art. 69, of Law No. 9,099/95, as the genus of which the civil and military police are species. In the State of Rio Grande do Sul, the Secretariat of Justice and Security issued Ordinance SJS no. 172, of November 16, 2000, resolving that "every police officer, civil or military, is competent to draw up the Detailed Term provided for in article 69 of Law No. 9,099, of September 26, 1995", and the drafting by Military Police will only occur in the Districts where there is an agreement between the State Police and the Public Prosecutor's Office, which remains adjusted through the Term of Cooperation No. 03, of January 22, 2001, signed between the State Government and the Public Ministry. Therefore, the general federal rule set out in article 69 of the Special Courts Law was complemented by Ordinance SJS no. 172 in conjunction with

> the term of cooperation. Once the possibility of the Military Brigade preparing the Detailed Term is admitted, it is logically up to it to instruct the action with the necessary documents to prove materiality, being able to request the expertise that is necessary (those who can do the most, can do the least). It is observed that, within the principles that guide Law No. 9,099/95 (speed, orality, informality, procedural economy), for the first phase of the summary procedure (preliminary phase) a formal expert report is required, which may be postponed due to the existence of another document that allows materiality to be assessed (Law no. 9,099/95, art. 77, §1). It would be inconceivable to grant the Military Brigade the power to prepare a Detailed Term and require that the expertise be carried out through a request from a Police Chief. It is concluded, therefore, that there is no conflict of attributions between the civil and military police, in view of the attribution granted to the Military Brigade for the creation of the Detailed Terms, in accordance with the dominant doctrinal and jurisprudential interpretation regarding the scope of the term "authority police" provided for in art. 69, of Law No. 9.0099/95, as well as because there is state legislation merely complementing the aforementioned general federal standard.

According to the theme, the doctrinal positions are clear and ratify the decisions. In view of this, it is worth highlighting the position of jurist Ada Pellegrini Grinover, member of the commission of jurists that prepared the draft of Law 9,099/95, pointing out that:

> Any police authority may report a fact that could constitute, in theory, a criminal offense. Not only the federal and civil police, which have the institutional function of judicial police of the Union and the States (art. 144, § 1, item IV, and § 4), but also the military police." (GRINOVER, 1995, p. 96/97).

For Cândido Rangel Dinamarco:

> It is necessary to interpret art. 69 in the sense that the term will only be drawn up and sent to the subjects of the courts, by the authority, civil or military, that first came into contact with the fact. There will be no interference from a Second police authority. The idea of immediacy, which is inherent to the system and is explicit in the law, requires that, once the incident is attended to by a police authority, it immediately provides knowledge of the case by the competent judicial authority: the use of the adverb immediacy in the text of art. 69, indicates that no person should mediate between the authority that became aware of the fact and the court to which the case will be taken. (DENMARK1995, p. 1).

Master Damásio E. de Jesus follows reasoning along the same lines as previously stated:

> The most faithful interpretation to the spirit of the law, to the principles and its purpose, as well as the one extracted from the literal analysis of the text, is that 'police authority', for the strict purposes of the commented Law, includes any public servant who has the responsibility to carry out policing, whether preventive or repressive. (DAMASIO, p. 61)

The Federal Supreme Court upheld ADI No. 3,614 - Direct Action of Unconstitutionality, of the State of Amazonas, which questioned item VIII, § 3, of Law 3,514/2010, approved by the Legislative Assembly of the State of Amazonas, which attributed to the Police Military of Amazonas to prepare the Detailed Term of Occurrence, in verbis: ADI nº 3,614 - Direct Action of Unconstitutionality filed by the State of Amazonas, through the Attorney General of Justice/PGE, against item VIII, § 3, of Law 3,514/2010 , from the State of Amazonas, which provides for the possibility of the Military Police, within the scope of its jurisdiction, to prepare a Detailed Statement of Occurrence, was judged PROCEDURE by the Federal Supreme Court.

> EXTRAORDINARY RESOURCES. DIRECT ACTION FOR UNCONSTITUTIONALITY BEFORE THE LOCAL COURT OF JUSTICE. STATE LAW No. 3,514/2010. MILITARY POLICE. PREPARATION OF A CIRCUMSTANCED TERM. IMPOSSIBILITY. USURPATION OF COMPETENCE. ASSIGNMENT OF THE JUDICIARY POLICE TO THE CIVIL POLICE. PRECEDENT. ADI No. 3,614. UNFEASIBILITY OF THE EXTRAORDINARY APPEAL.1. The general repercussion presupposes an admissible appeal subject to other constitutional and procedural admissibility requirements (art. 323 of the RISTF).2. Consequently, if the appeal is inadmissible for another reason, there is no way to claim that the general repercussion of the constitutional issues discussed in the case will be recognized (art. 102, III, § 3, of the CF).3. The Plenary of the Federal Supreme Court decided, when judging ADI nº 3,614, which had Minister Cármen as drafter of the ruling, pacified the understanding according to which the attribution of judicial police is the responsibility of the Civil Police, and the Detailed Term must be by

it was drawn up, under penalty of usurpation of function by the Military Police.4. In casu, the appealed judgment ruled: ADIN. STATE LAW. DRAWING UP OF A CIRCUMSTANCED TERM OF OCCURRENCE. COMPETENCE OF THE CIVIL POLICE. ASSIGNMENT TO THE MILITARY POLICE. FUNCTION DESVIATION. OFFENSES TO ARTS. 115 AND 116 OF THE STATE CONSTITUTION. DIRECT ACTION JUDGED PROCEDURES.- The legal provision that gives the Military Police the authority to prepare detailed terms of occurrence, under the terms of art. 69 of Law No. 9,099/1995, invades the competence of the Civil Police, provided for in art. 115 of the Constitution of the State of Amazonas, and dissociates itself from the competence attributed to the Military Police contained in art. 116 of the State Charter, both written in accordance with art. 144, §§ 4th and 5th, of the Federal Constitution.5. The appeal did not contradict the understanding of this Court.6. Extraordinary resources that are denied. Decision: These are extraordinary appeals filed by the GOVERNOR OF THE STATE OF AMAZONAS, BY THE ATTORNEY GENERAL OF THE STATE OF AMAZONAS and by the LEGISLATIVE ASSEMBLY OF THE STATE OF AMAZONAS, all based on the provisions of article 102, III, a, of the Federal Constitution, against judgment handed down by the Court of Justice of the State of Amazonas, as follows (page 158): ADIN. STATE LAW. DRAWING UP OF A CIRCUMSTANCED TERM OF OCCURRENCE. COMPETENT CIVIL POLICE. ASSIGNMENT TO THE MILITARY POLICE. FUNCTION DESVIATION. OFFENSES TO ARTS. 115 AND 116 OF THE STATE CONSTITUTION. DIRECT ACTION JUDGED PROCEDURED. - The legal provision that gives the Military Police the power to prepare detailed terms of occurrence, in accordance with art. 69 of Law No. 9,099/1995, invades the competence of the Civil Police, provided for in art. 115 of the Constitution of the State of Amazonas, and dissociates itself from the competence attributed to the Military Police contained in art. 116 of the State Charter, both written in accordance with art. 144, §§ 4th and 5th, of the Federal Constitution. In origin, the Attorney General of Justice filed a direct action of unconstitutionality whose object is item VIII, § 3, of Law 3,514/2010, of the State of Amazonas, which provides for the possibility of the Military Police, within the scope of its jurisdiction, to create Detailed Term of Occurrence. He asserted that the provisions contained in the aforementioned section violate the State Constitution, as when dealing with public security, as determined by the Magna Carta, it disciplined and organized the Civil and Military Police, exactly as set out in the Constitution. He maintained that "by assigning the Military Police the preparation of a Detailed Term, he invaded the sphere of competence of the Civil Police" (page 05). The request was upheld alleging the usurpation of jurisdiction, as per the abovementioned summary. Appeals for clarification were rejected. Subsequently, extraordinary appeals were filed. In the appeals of the Governor of the State of Amazonas, as well as the Attorney General of the State of Amazonas, the violation of article 144, §§ 4 is maintained,5th and 7th, of the Federal Constitution, on the basis that the preparation of a Detailed Term by the Military Police is not investigative work, but rather a simple record of facts. The Legislative Assembly of the State of Amazonas, in the reasons for the extreme appeal, points to a violation of article 144, §§ 4, 5 and 7, maintaining, in summary, that the Military Police are responsible for preserving public order, a broad competence that encompasses, including the specific competence of other police bodies" (page 273). It's the report. DECIDED. Ab initio, the general repercussion presupposes an admissible appeal under the scrutiny of other constitutional and procedural admissibility requirements (art. 323 of the RISTF). Consequently, when the offense is reflexive or even when the violation is constitutional, but the analysis of facts and evidence is necessary, there is no way to claim that the general repercussion of the constitutional issues discussed in the case will be recognized (art. 102, III, § 3, of the CF). The Plenary of the Federal Supreme Court, when judging ADI No. 3,614, which was drafted by Minister Cármen Lúcia, pacified the understanding according to which the attribution of judicial police is the responsibility of the Civil Police, and the Detailed Term must be drawn up by it. , under penalty of usurpation of function by the Military Police. At the time, the ruling was stated as follows: CONSTITUTIONAL. ADMINISTRATIVE. DECREE N. 1,557/2003 OF THE STATE OF PARANÁ, WHICH ASSIGNS COMBATANT SUBTENENTS OR SERGEANTS TO SERVICE IN POLICE DELEGACIES, IN MUNICIPALITIES THAT DO NOT HAVE A CAREER SERVICE TO PERFORM THE FUNCTIONS OF POLICE DELEGATES. FUNCTION DESVIATION. OFFENSE TO ART. 144, CAPUT, INC. IV EVE §§ 4TH AND 5TH, OF THE CONSTITUTION OF THE REPUBLIC. DIRECT ACTION JUDGED PROCEDURED. Specifically on the topic, excerpts from the ministers' votes are collected: The serious problem is that, before drawing up the detailed term, the military police officer has to make a legal judgment evaluating the facts that are exposed to him. ANDThe Plenary of the Federal Supreme Court, when judging ADI No. 3,614, which was drafted by Minister Cármen Lúcia, pacified the understanding according to which the attribution of judicial police is the responsibility of the Civil Police, and the Detailed Term must be drawn up by it. , under penalty of usurpation of function by the Military Police. At the time, the ruling was stated as follows: CONSTITUTIONAL. ADMINISTRATIVE. DECREE N. 1,557/2003 OF THE STATE OF PARANÁ, WHICH ASSIGNS COMBATANT SUBTENENTS OR SERGEANTS TO SERVICE IN POLICE DELEGACIES, IN MUNICIPALITIES THAT DO NOT HAVE A CAREER SERVICE TO PERFORM THE FUNCTIONS OF POLICE DELEGATES. FUNCTION DESVIATION. OFFENSE TO ART. 144, CAPUT, INC. IV EVE §§ 4TH AND 5TH, OF THE CONSTITUTION OF THE REPUBLIC. DIRECT ACTION JUDGED PROCEDURED. Specifically on the topic, excerpts from the ministers' votes are collected: The serious problem is that, before drawing up the detailed term, the military police officer has to make a legal judgment evaluating the facts that are exposed to him. ANDThe Plenary of the Federal Supreme Court, when judging ADI No. 3,614, which was drafted by Minister Cármen Lúcia, pacified the understanding according to which the attribution of judicial police is the responsibility of the Civil Police, and the Detailed Term must be drawn up by it. , under penalty of usurpation of function by the Military Police. At the time, the ruling was stated as follows: CONSTITUTIONAL. ADMINISTRATIVE. DECREE N. 1,557/2003 OF THE STATE OF PARANÁ, WHICH ASSIGNS COMBATANT SUBTENENTS OR SERGEANTS TO SERVICE IN POLICE DELEGACIES, IN MUNICIPALITIES THAT DO NOT HAVE A CAREER SERVICE TO PERFORM THE FUNCTIONS OF POLICE DELEGATES. FUNCTION DESVIATION. OFFENSE TO ART. 144, CAPUT, INC. IV EVE §§ 4TH AND 5TH, OF THE CONSTITUTION OF THE REPUBLIC. DIRECT ACTION JUDGED PROCEDURED. Specifically on the topic, excerpts from the ministers' votes are collected: The serious problem is that, before drawing up the detailed term, the military police officer has to make a legal judgment evaluating the facts that are exposed to him. AND

This is the most important thing in the case, not the material activity of farming. (Minister Cezar Peluso). In my opinion, the Decree, as it stands, clearly violates § 4 of article 144 of the Federal Constitution, because we are authorizing, through regulation, the establishment of a substitute to exercise the function of judicial police, even if the final responsibility to the delegate of the nearest District. This, on the contrary, in my opinion, constitutes a very serious exception in the constitutional discipline itself. (Minister Menezes Direito). It seems to me that he is attributing the role of judicial police to military police officers in a way that is absolutely prohibited by articles 144, §§ 4 and 5 of the Constitution. (Minister Ricardo Lewandowski). It should be noted that the appealed argument did not differ from the understanding of this Court. Ex positis, I DENY FOLLOWING the extraordinary appeals, based on article 21, § 1, of the RISTF. Get published. Brasília, August 28, 2012.Minister Luiz Fux. Rapporteur Digitally signed document.

FINAL CONSIDERATIONS

In view of the above, we can confirm, through this reflection on the Detailed Term of Occurrence/TCO carried out by the Military Police, that the discussion on legality or illegality has been launched, including the various interested actors are trying to persuade civil society through various public hearings throughout the national territory with the purpose of showing that this attitude on the part of the Military Police only contributes to the issue that so much afflicts those involved in infractions based on these qualifications, including mobilizing the Brazilian National Congress with Projects along these lines.

Bearing in mind that one of the biggest concerns of current Brazilian society is public security, it is seen that one of the biggest concerns with the most serious crimes is the impunity of infractions with less offensive potential. Following this reasoning, the drawing up of the Detailed Occurrence Term/TCO by the military police appears as a strong alternative, as it will only bring benefits to the population. The military police officer is, in most cases, the first state authority to arrive at the scene of the incident, reducing the response time in solving the problems of those who are in emergencies and taking criminal measures for those who are in a situation of fragrance. In this way, the speed witnessed in this procedure contributes to the appreciation of military police work by the community, strictly complying with the legal provisions already mentioned in art. 62 of law 9,099/95.

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