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THE CRIME OF TORTURE: YOUR HISTORY AND DELIMITATION IN HE ORDERING LEGAL BRAZILIAN

OR CRIME OF TORTURE: SUA HISTORY AND DELIMITATION NO ORDINANCE LEGAL BRAZILIAN

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SUMMARY

Torture, a practice we would like to consider abolished, is still present today, although strictly prohibited by international conventions. The act of torture has been carried out within the spheres of public power in several countries as an instrument to obtain confessions of crimes, or simply to punish the criminal for his actions. This document addresses the practice of torture, and to draw a starting point for the topic, we appropriate the visions and contributions of Beccaria (1738-1794) and Focault (1926-1984), in addition to constructing a brief history of human rights. human rights, focusing on how the Brazilian Legal System has reacted, in light of international conditions, to the lack of respect for fundamental guarantees regarding the practice of torture, and its commitment to inhibit this practice in Brazilian territory. . The Democratic State of Law, through organized civil society, has achieved significant progress in denouncing the practice of torture, focusing on understanding the importance of the constitutional device, whatever the Principle of the Dignity of the Human Person.
Keywords: Torture. Human rights. Brazilian Legal System.

SUMMARY

Torture, a practice that we would like to consider abolished, exists today and is strictly prohibited by international conventions. The act of torture has been practiced in the spheres of public power in various countries as an instrument to obtain the confession of crimes, or simply to punish the criminal for his illicit acts. This document deals with the practice of torture, and to draw a starting point for the topic, we appropriate the views and contributions of Beccaria (1738-1794) and Focault (1926-1984), in addition to constructing a brief history of human rights , focusing on how the Brazilian legal system is subject to change, in light of the international conditions, to the disregard of guarantees regarding the practice of torture and its commitments to inhibit such practice in the territory

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Brazilian. The democratic State of Direito, through organized civil society, has made significant advances in denouncing the practice of torture, focusing on understanding the importance of the constitutional device, which is the Principle of Dignity of Human People.

Keywords: Torture. Human Rights. Brazilian Legal System.

1. INTRODUCTION

The term "torture" indicates any type of imposition, physical or psychological pain or suffering, practiced by one person (called Torturer) to the detriment of another (called Tortured), through cruelty, punishment or intimidation, with the purpose of obtain some type of information, or confession, or to punish her for the presumption of an act committed, or, even, simply intimidate, for the pure pleasure of the torturer.

Meanwhile, although considered unacceptable today, torture was not always an object of repudiation in society. This practice was widely used as a legal means of proof, addressing the search for the “truth” in the process, or then, as a kind of cruel punishment imposed for certain crimes.

The practice of torture is unacceptable in a democratic rule of law, mainly when practiced by the bodies in charge of law enforcement that cannot act illegally.

The torture present in the History of Brazil was, for centuries, used in almost the entire world, as an exercise of revenge and dominion over the soul and body of those who inflicted the laws. In this way, it is important that, even briefly, we highlight how torture practices were present in our legal system and what consequences were left by the dictatorial period faced by the Brazilian Nation, in the period of the military dictatorship, which embrace the years 1964 to 1985, and how Brazil reacted to this period of violations of Fundamental Rights, subsequently ratifying International Treaties for the Protection of Torture and Human Rights.

Thus, the work has the primary objective of presenting a brief contextualization about the crime of torture and its historical milieux, as well as explaining how the Brazilian Legal System has reacted, in light of international conditions, to the lack of respect for the fundamental guarantees regarding the practice of torture, and its commitment to inhibit this practice in Brazilian territory.

In this context, a historical and sociological overview of the subject under study is presented, with its objective focused on the use of torture in Brazil and torture at

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light of Human Rights. Finally, the issue of torture was addressed from the perspective of International Treaties and Human Rights, permeating the issue with international devices that mention the topic. An attempt was also made to record how Brazil has acted against the problem, which is still widespread on Brazilian soil.

2 THEORETICAL FOUNDATION

2.1 TORTURE: HISTORICAL AND SOCIOLOGICAL ASPECTS

Torture is a complex topic and finds echo in several areas of knowledge. In this context, historical and sociological studies tell the history of the practice of torture, stating the reasons for its prohibition in Western society (FOUCAULT, 1987; OLIVEIRA, 1994). However, the historical approach, highlighting the legal conceptions existing in each era in relation to this phenomenon, is important to highlight how the crime of torture is inserted in the Brazilian legal system, combining with the historical and sociological analyzes that are important for explain the persistence of torture even after its abolition.

The theme of torture is also present in studies related to systems of punishment and police violence, not centrally, but as a consequence of a series of political, social and cultural factors. It is also highlighted that torture is described, by some, as a ritual of atonement, which establishes community limits against transgressors (LYRA, 2004).

Anthropological studies mention the use of violence during the colonization of America, torture being one of the components used for the control and submission of the natives by the colonizers (TODOROV, 1983; TAUSSING, 1993). Beyond this, the discussion of the meaning of torture in “primitive” societies is considered important, whose characteristic is not the infliction of pain as a form of corporal punishment or obtaining confessions and information, but as the practice of a ritual to mark the body of its members the laws that must be respected by all (CLASTRES, 1988; ANTAKI, 2007).

According to Oliveira (1994), there are few studies that carry out an analysis of the moral effects of torture, showing the fragility of the moral prohibition of it, since those who understand that its application is necessary relativize the moral terms.

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that accompany such practice. In this way, we can consider the discussions that direct the practice of torture as morally accepted, taking, within this model, the situations of war and confrontation with the enemy, to obtain information (SHUE, 1978; SUSSMAN, 2005). According to these studies, the relativization of torture is supported by the understanding that it is necessary and that its damage is justified, in the face of the enemy, to avoid some greater evil.

During the period of the inquisition, religious justice began to have control of the practice of torture, which was used for crimes of heresy as a way of obtaining the confession of the prisoner, since according to the thinking of the time, heresy had its genesis in the intimacy of the individual and, therefore, it was a crime that was difficult to discover, except through confession.

History records that, in the year 1252, Pope Innocent IV, through the bull*Ad extirpated*, I authorized torture as a way of not promoting differential treatment of heretics, from that already extended to the most serious common crimes. Meanwhile, its application required some criteria and, according to Gonzaga (1993), the conditions were that it could not put the life and physical integrity of the people subjected to such acts at risk and could only be used once. never repeatedly. Later, torture began to be approached as a natural practice by ecclesiastics, jurists, nobles and by the people themselves as an important practice in the protection of the common good.

Currently, controversies arise in relation to the issue with the arrival of "light torture" which includes drowning, sleep deprivation, isolation, humiliation, long exposures to extreme heat and cold, these forms of torture being considered acceptable by the United States government (2001-2009) for the confrontation of the so-called "war on terror." This practice, now adopted, defends that "light torture" is different from standard torture, because the latter is more violent and leaves mutilations on the body.

2.2 TORTURE IN THE VISION OF CESARE BECCARIA

Cesare Beccaria (1738-1794) is considered the main representative of Penal Enlightenment and, imbued with Enlightenment values and ideals, he became recognized for answering the sad condition of the punitive sphere of Law in Europe. In this context, Beccaria is presented as an important figure in the defense of the elimination of torture practices.

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to obtain a confession from the prisoner. The arguments found to defend their position in relation to the practice of torture are based on the fact that the practice was useful for the weak, but ended up absolving strong criminals, since the pain of torture often makes them To free himself from immediate suffering, the person opts for confession. So, "this is the sure means of acquitting criminals of resistant constitution and condemning the weak and weakened innocents." However, he complements with what the Federal Constitution of Brazil disciplines us today, in its article 5, section LXII that "a man cannot be guilty before the judge's sentence declares it so." In this case the crime would be based on two propositions as being certain and uncertain. In the first, the accused should be punished only with the sanction established in the Law and even if he is considered uncertain, he could not be subjected to torture for a crime for which he may be innocent, since his guilt was not proven. In Beccaria's view that the crime is certain or uncertain, he moves away from Focault's idea that there would be partial guilt.

Beccaria's conception is important because, according to him, the result of torture has no relation to the truth, but only indicates the physical resistance of the tormented.

Beccaria's work represents an entire intellectual movement that no longer accepts a system devoid of rationality. His book, "*Two Crimes and two Penalties*" (1995) was of utmost relevance to destructure the penal system then in force, it was a political work of great repercussion, in which it was demonstrated that the penal system must have utility as a criterion, denying all forms of institutional violence that are not useful and necessary.

> Beccaria rejects such a religious, mystical conception, always trying to impose rationality, through a logical argument. It is true that he does not abandon the emotion when mentioning torture, or punishment, using constant adjectives such as cruel and atrocious. Meanwhile, emotion serves to raise awareness about the suffering of the prisoners and reason serves to demonstrate the uselessness and lack of necessity of such pain. (ZAFFARONI, 1987, p. 91)

Thus, Beccaria combats torture by rationally demonstrating its uselessness, its ineffectiveness in obtaining the truth. Although he uses expressions in order to raise awareness, to move, the strength of this argument lies in its rationality, in understanding and demonstrating that, being ineffective, there is no way to maintain the cruel practice of torture.

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2.3 TORTURE, IN THE VISION OF MICHEL FOCAULT'S SUPLICES

Michel Focault (1926-1984) in his theories addresses the relationship between power and knowledge and how they are used as a form of social control through social institutions. The author, in his work "*Monitor and Punish*" (2005), is probably the only one to describe in detail the torture methods to which those accused of crimes were subjected in the Middle Ages, within a kind of punitive liturgy, exemplifying this torture with the case of DAMIENS, a condemned prisoner. in the year 1757, through which it was called**torture**.

> [Damiens was condemned, on March 2, 1757], to publicly ask for forgiveness in front of the main portal of the Church of Paris [where he was to be] taken and accompanied in a carriage, naked, in a chemise, carrying a lit torch of two pounds; [and followed], in said carriage, in the strike plaza, and on a scaffold that will be erected there, tied to the nipples, arms, thighs and belly of the legs, his right hand securing the sword with which he committed said parricide, burned with sulfur fire, and to the parts that will be gripped, melted lead, boiling oil, tar in fire, wax and sulfur melted together will be applied, and then his body will be pulled and dismembered by four horses and his limbs and body will be consumed in the fire, reduced to ashes, and their ashes thrown into the wind (FOUCAULT, 2005, p. 9).

In this case, the use of torture, as Foucault points out, was not excessive: "cruel, certainly, but not savage." On the contrary, there were a series of rules that detailed the torment, either stipulating the duration or defining the instruments used (FOCAULT, 1999). In short, it was not a massacre carried out without judgment by the executioner.

The confession made about torture would have to be ratified later for it to be valid. If the ratification were not made, the prisoner could be subjected to a new session of torture, two or three times, depending on the legislation (VALIENTE, 1994).

According to Foucault, there was a kind of adjustment between the tortured prisoner - called the patient - and the judge, in a kind of dispute: if the prisoner endured, the judge would not be able to make use of the evidence already obtained.

As an ordeal of truth, interrogation found its way. The confession was the complementary piece of written and secret information. But, it is worth noting that the interrogation was not a way to extract the truth at any price. It was cruel, but not savage, as Focault (2012, p. 42) mentioned, treating torture as a regulated practice that obeyed a defined procedure, with suffering, confrontation and truth linked to each other. Thus, torture was strongly inserted into judicial practice because it was a revealer of truth and an agent of power. Their practice allowed the crime to be

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reproduced and turned against the body of the criminal. Thus, the population was, without a doubt, the main character in the torture ceremonies. Attracted by the spectacle created to terrify them, they could alter the course of the punitive moment: preventing the execution, persecuting the executioners, creating a tumult against the sentence. The great murders became the silent game of the wise (FOUCAULT, 2012, p. 67).

Only after 1850 did a protest movement begin in Europe on the part of intellectuals, jurists and parliamentarians with the acquiescence of the people, against the punishments of torture, now considered tyranny and cruelty. It was sought to extinguish the duel between sovereign and accused. Criminal justice began to punish criminals and not to monitor their crimes, with the principle of proportionality between crime and punishment being inserted into the legal order.

2.4 LEGISLATIVE ASPECTS OF TORTURE

The UN Universal Declaration of Human Rights, dated 12/10/1948, establishes in its article V that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” In the same vein, the American Convention on Human Rights (Pact of San José de Costa Rica), of 1969, establishes in its article 5, No. 2, that “no one should be subjected to torture, punishment or treatment. cruel, inhuman or degrading. Every person deprived of liberty must be treated with the respect due to the inherent dignity of the human being.” The UN Convention, in its article 1, defines torture as:

> Any act by which acute physical or mental pain or suffering is intentionally inflicted on a person in order to obtain, from him or a third person, information or confessions, to punish him for an act that he or a third person has committed, or is suspected of having committed; to intimidate or coerce this person or other persons; or for any reason based on discrimination of any nature; when such pain or suffering is inflicted by, at the instigation of, or with the consent or acquiescence of, a public official or other person in the exercise of public functions.

In Brazil, since the Imperial Constitution of 1824, there has been a solemn declaration against torture and other inhuman treatment, disciplined in article 179, §19 of that diploma, which states: From now on, whippings, torture, branding are abolished. of hot iron, and all other cruel punishments.

Thus, the condemnation made explicit in the 1988 Federal Constitution, in article 5, III, XLIII, XLVII and XLIX, in reference to the practice of torture and other cruel, degrading or inhuman treatment or punishment was already provided for in previous constitutions. Although the

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Federal Constitution of 1988, has made mention of repudiation of torture, it was up to the ordinary legislator to determine what are the limits and the definition of the behaviors that represent the practice of torture and the violation of the fundamental rights of human beings.

It is recorded that the first manifestation of the ordinary national legislator on the classification of the crime of torture occurred with the promulgation of the Statute of Children and Adolescents - Law No. 8,069/90 which, in its article 223, establishes the act as a crime. of "subjecting the child or adolescent, under his or her authority, custody or supervision, to torture." However, the Law on Smelly Crimes – Law 8,072/90, immediately equated the crime of torture with the so-called stinking crimes, in full accordance with the constitutional device provided for in article 5, XLIII. c/c with articles 1 and 2 of law 8,072/90.

Finally, in 1997 Brazil introduced Law No. 9,455/97, called the Torture Law, which provides a specific crime for torture. The aforementioned law punishes the individual who commits torture and any person who has knowledge of the act and who has the duty to prevent it. Torture is, therefore, punishable by imprisonment, which is determined according to the circumstances of the case. Law No. 9,455/97 comes into force in the Brazilian Legal System as a regulatory instrument of the practice of Torture, providing for it as a crime without bail and not susceptible to pardon or amnesty, also disciplining that the person convicted of that crime will begin the serving the sentence, necessarily, in a closed regime.

In addition, by legitimately affirming the crime of torture, the law expressly revoked article 223 of the Statute of Children and Adolescents, through its article 4 and process to foresee the crime of torture through the provisions of its article 1, subsections, letters and paragraphs:

> Art. 1. – Constitutes the crime of torture:
> I – Forcing someone with the use of violence or serious threat, causing physical or mental suffering:
> a) In order to obtain information, statement or confession from the victim or a third person;
> b) To provoke action or omission of a criminal nature;
> c) Due to racial or religious discrimination;
> II – Subjecting someone, under your custody, power or authority, with the use of violence or serious threat, to intense physical or mental suffering, as a way of applying personal punishment or a preventive measure.
> **Grief**: confinement, from 2 (two) to 8 (eight) years.
> §1 - The same penalty is incurred by anyone who subjects a person imprisoned or subject to a security measure to physical or mental suffering, through the practice of an act not provided for by law or not resulting from a legal measure.

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It is highlighted that the aforementioned law also incorporates the United Nations Convention against Torture into Brazilian Domestic Law.

2.5 THE USE OF TORTURE IN BRAZIL: AN INTERPHASE WITH THE DICTATORIAL REGIME

The three Ordinances of the Portuguese Kingdom, which are: Manoelinas, Afonsinas and Philippines, had excessive rigor in the penalties, non-proportionality between the penalties and the punishments committed, being allowed from the lash to the brand of fire, with the purpose of imposing terror to the condemned, through the mutilation of their bodies.

It is highlighted that, among these Ordinances, the Philippine Ordinances were in force in Brazil, in the period from 1609 to 1830, a period in which the Criminal Code of the Empire came into force. It was established by the Ordinances that a Judge would be the figure who, in the face of evidence, could order that the individual be tortured until he confessed or betrayed his accomplices. In cruel death, life was ended slowly, interspersed with torture. Many times, the choice of the means to make the prisoner's pastime more difficult was beyond the control of the judge or the executioner (ZAFFARONI, 2002).

With the Constitution of 1824, in compliance with its article 179. XIX, torture penalties were abolished, in respect of the device that provided for the abolition of whipping, torture, the iron brand and all other cruel punishments.

The Penal Code of the Old Republic was in force from 1890 to 1941 and does not address the practice of torture, in congruence with the Constitutions of 1946 and 1967, which together with Constitutional Amendment No. 1 of 1969 have omitted texts regarding the practice of torture.

Under the excuse of temporality and under the pretext of protecting the country from the communist threat, the military regime was established on April 1, 1964 in Brazil. At that time, it was not favorable to the military that the 1946 Constitution continued in force, thus having the government legitimized by this Constitution and the rise of the military command. In this context, Institutional Act No. 5 arises. This set of regulations disrupted democracy, signed indirect elections for president, militarized the Presidency of the Republic, ended federalism, decreed the death penalty for national security crimes and restricted the worker's right to strike. Beyond this, it made legal the

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cassation of opposition politicians and citizens, put an end to the right of *habeas corpus,* It extinguished political parties, closed the National Congress and suspended constitutional rights.

Under the military regime, torture was used as a strategy to intimidate adversaries, destructuring the opposition. Torture was applied regardless of age, sex, moral, physical or psychological situation of the suspects. The purpose of the practice was to cause physical and psychological pain, breaking the emotional limits for the confession of information.

It should be noted that, beyond subjecting the nation itself to terror, Brazil exported its regime to various other Latin American dictatorships, through torture techniques, interrogation, the training of torturers and the figure of the disappeared politician (COIMBRA , 2001).

Even though there are conceptual differences about fundamental rights in terms of whether they are innate to man or not, it is true that their guaranteeing apex occurs with the Universal Declaration of Human Rights, approved in 1948 by the General Assembly of the United Nations. In this document, equality, political rights, the presumption of innocence, freedom of thought, assembly and association and the prohibition of discrimination on any basis and arbitrary prisons are stated as fundamental. In its article V, it further argues that "no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment" (UNITED NATIONS, 1948)

A new breath, regarding the repudiation of the practice of torture, comes with the Constitution of the Federative Republic of Brazil, of 1988 which, influenced by the Pact of San José of Costa Rica, prohibits the practice of torture and the treatments dehumanizing or degrading, considering them crimes without bail and not susceptible to pardon or amnesty (CONSTITUIÇÃO FEDERAL, ARTIGO 5º, XLIII).

2.6 TORTURE IN LIGHT OF INTERNATIONAL LAW AND HUMAN RIGHTS

The practice of torture is absolutely prohibited in International Law and cannot be justified under any circumstances. The United Nations Organization - UN considers torture as a denial of the purposes of its Charter and as a violation of Human Rights and fundamental freedoms proclaimed in the Declaration

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Universal Human Rights. The prohibition of torture is found in countless international human rights treaties and international humanitarian treaties, and is considered a general principle of International Law. The prohibition of torture follows, then, the norm of International Law "*jus cogens*which is a peremptory norm and which binds all States, even those that have not ratified a particular treaty. In this way, the precepts "*"jus cogens"*They cannot be repealed or contradicted by treaties or other precepts of International Law (FOLEY, 2011).

Brazil only ratified the two Human Rights Covenants well after they came into force at the international level, which, in itself, demonstrates the*deficit*Brazilian in relation to the knowledge and realization of human rights. The fact leads us to believe that in Brazil there is a theoretical and practical deficiency in the promotion of human rights (LEITE, 2014).

The American Convention on Human Rights, also called the Pact of San José de Costa Rica, came into force at the international level on November 22, 1969, but, unfortunately, it was only ratified by Brazil on November 6, 1992, through the Decree No. 678.

The recognition and protection of the dignity of the human person, then, were fruits, in large part, of intense violations of the physical and psychological integrity of large groups of human beings, barbarism being then the great driver of these conquests. In the words of Comparato (2010, p. 50:

> (...) At each great outbreak of violence, men recoil, horrified, at the sight of the ignominy that at the end opens clearly before their eyes; and remorse for the torture, for the mass mutilations, for the collective massacres and for the degrading exploitations gives rise to the demand for new rules of a more dignified life for all in the consciences, now purified.

In this understanding, the United Nations, since its creation in 1945, has made no effort to encourage and promote Human Rights for all. In this context, the General Assembly of the United Nations Organization, on December 10, 1948, adopted and proclaimed the Universal Declaration of Human Rights, which became the framework in the history of human rights. Thus, in accordance with what is advocated in the Declaration, torture is considered an unacceptable condition in all its forms.

In the same understanding, the European Convention for the Safeguarding of Human Rights of the UN, signed in Rome on November 4, 1950, in its article 3 that:

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"no one may be subjected to torture, or to inhuman or degrading punishment or treatment," this being incorporated into the internal laws of the member countries.

The committee against torture was created in accordance with the provisions of article 17 of the Convention against Torture and other Cruel, Dehuman or Degrading Treatment or Punishment, with the main objective of controlling the application, by the States Parties, of the provisions of Convention. Thus, the Committee has the power to establish investigations in case of well-founded suspicion of the systematic practice of torture in the territory of a State Party (article 20) and to analyze complaints presented by States Parties or individuals against a State that has recognized the competence of the Committee for this purpose (articles 21 and 22 of the Convention).

The Convention also establishes that no State party shall expel or extradite a person to another State when there are serious reasons to believe that he or she may be subjected to torture.

For the crime of torture, jurisdiction is compulsory and universal, in the terms of articles 5 to 8 of the Convention against Torture and other Cruel, Dehuman and Degrading Treatment or Punishment. It is compulsory because the States Parties are obliged to punish torturers, regardless of the territory in which the act occurred, the nationality of the perpetrator of the act and the victim. It is universal because the torturer, wherever he is, must be prosecuted (CASTILHO, 2013). The practice of torture is prohibited by most national legal systems in the world. Even if the specific crime of torture does not exist, in a given legal system, there are, normally, other laws by which perpetrators can be held accountable. In this way, even if a State has not ratified a certain treaty that prohibits torture, such country is in any way bound by virtue of General International Law, through the imperative force of the norm. " *"jus cogens"* (FOLEY, 2011).

Thus, the prohibition of torture is found in article 5 of the Universal Declaration of Human Rights (1948) and in several international and regional human rights treaties, the majority of States ratified treaties that contain provisions that prohibit torture and other forms of abuse. These regulations include the International Covenant on Civil and Political Rights (1966), the European Convention on Human Rights (1950), the American Convention on Human Rights (1978) and the African Charter on Human and Peoples' Rights (1981).

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2.7 THE PERSISTENCE OF TORTURE IN BRAZIL[1]

Despite its absolute prohibition, by regulatory instruments, torture in Brazil remains widely disseminated. One of the greatest concerns in relation to this abusive practice is directed at the excessive use of force by police and correctional officers, as well as prison conditions and overcrowding in prisons. In this context, international organizations declare themselves concerned with the culture of violence and impunity that prevails in Brazil, as a State Party.

The reports prepared on the Brazilian problem point out that the number of people murdered in custody is a serious problem, also observing that the frequency of rebellions and deaths in prisons is the result of a series of factors, among which we can mention: the overcrowding that causes the agitation of the inmates, the inability of prison officers to effectively prevent the entry of weapons and cell phone devices into the cells, the low level of education and few job opportunities, the failures in ensuring the prisoner and sentence progression regime, the delays in the transfer process combined with the violence of the agents and the precarious conditions of the prisons. The Human Rights Committee noted its concern with the widespread use of excessive force by law enforcement officials, with the extrajudicial execution of suspects, with the use of torture to extract confessions from suspects, with the ill-treatment of individuals under custody of the Police and with the various reports of threats and homicides of witnesses, surveillance of the Police and Judges. In this context, the Committee also observed that the conditions of detention in prisons are inhumane.

The Brazilian Government declared that it recognized the seriousness of the condition that the Nation faces, regarding the practice of torture in national territory, and in 2007, it reacted to the problem with an "Integrated Action Plan to Prevent and Combat Torture." ", based on the recommendations of the Special Rapporteur, Nigel Rodley, sent in 2001 to the UN Commission on Human Rights. Currently, 12 (twelve) Brazilian states have adhered to the Plan, creating State Committees with the objective of promoting, at the local level, the measures provided for in that instrument. Beyond this measure, there was the creation of the National Committee to Prevent and Combat Torture in Brazil, on June 26, 2006, and ratified

[1]Text adapted from FOLEY, C. Protecting Brazilians against torture: A manual for Judges, Promotors, Public Defenders and Advogados.

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the Optional Protocol to the UN Convention Against Torture in January 2007. The Brazilian Government, then, declared that measures are being taken for the construction of a national mechanism to prevent and combat torture, in response to the established commitments in the recently ratified Optional Protocol.

FINAL CONSIDERATIONS

From the study, it was observed that torture is considered, by the vast majority of the world's population, an inhumane treatment. Brazil, in turn, legally repudiates any act of torture that, when practiced, hurts Brazilian constitutional principles, such as, for example, the principle of the dignity of the human person.

In the context, the contributions of scholars such as Michel Foucault are important, who brilliantly and with a wealth of details elucidate the punitive nature, to the detriment of the investigative nature, of the practice of torture. His ideas brought humanization to both the criminal process and the application of the penalty itself, no longer serving as a reflection of the application of the law in the body of the victim. It is also worth highlighting the importance of Cesare Beccaria for the formation of world opinion regarding this controversial topic, since in his lessons he explains the negative aspects that torture brings to society, with the punishment of the innocent and the freedom of the truly guilty. , this becomes a means of impunity.

It is notorious that the practice of torture occurred parallel to the history of the people of humanity. Its observance comes from afar as a legitimate way to impose order and guarantee the absolute power of kings and the church. During the historical process of natural evolution that humanity has been achieving, much has been done in the sense of developing instruments that inhibit this violent and inhuman practice, now used to obtain evidence of any nature, now to obtain information or statements from subjects. , beyond taking care to prevent subjects in State custody from being subjected to such an atrocity.

The Brazilian State had, in its history, a dictatorial period that, as in any absolutist Government, greatly violated the fundamental rights and guarantees of its citizens. However, the reservations that were made in relation to the way of life of Brazilians, in this period, let us consider the violent practices of torture carried out, as well as the innumerable disappearances that occurred in the period in question. Even today, the Brazilian State,

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mainly in the figure of its military, it refuses to admit the atrocities that occurred during the period of the dictatorship, establishing a kind of "shut-up" among those involved, contributing to ensuring that no type of reparation, whether moral or financial assistance to the families of political dead and disappeared. Thus, the dictatorial period experienced by Brazil is largely confused with the narration of the tortures of Michel Focault.

Meanwhile, the Brazilian Government has been attentive in accompanying international protective instruments, in order to respond to Brazilian society, raising the expectation that such practices are on the path to being definitively abolished in our Democratic State of Law. A reality that may be utopian, and that does not exhaust the discussions at the moment, but the Conventions and Treaties, even ratified a short time ago by Brazil, instill in Brazilian citizens the feeling of respect and protection of their members by the Nation, accentuating the perspective of guaranteeing rights and fundamental guarantees.

With this, the Democratic State of Law, through organized civil society, has achieved significant progress in denouncing the practice of torture, respecting the dignity of the human person, in order to not constitute the citizen or the operators of the law in the position of vigilantes, leaving the burden of criminal sanction to justice, and only to it.

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