Machine Translated by Google
RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VII, v.1 2026 | Submission: April 18, 2026 | Accepted: April 21, 2026 | Publication: April 24, 2026

The fundamental right to freedom of expression in the military context: an analysis of (Un)constitutionality of Article 166 of the Military Penal Code in light of the 1988 Constitution

The fundamental right to free expression of thought in the military sphere: an analysis of the (un)constitutionality of article 166 of the military penal code in the light of the 1988 constitution

The fundamental right to the free expression of thought in the military sphere: an analysis of it (in)constitutionality of article 166 of the Military Penal Code in light of the 1988 Constitution

Bernardo da Silva Lima Júnior1

Acsa Liliane Carvalho Brito Souza2

Summary

This article aims to demonstrate the unconstitutionality of article 166 of the Penal Code. Military practice viewed from the perspective of the fundamental right to freedom of expression. In this way, it analyzes- If freedom of expression is an essential guarantee of the Democratic Rule of Law, as provided for in The 1988 Federal Constitution, and its limitations in the context of military institutions, in which the Hierarchy and discipline play a structuring role. The study problematizes the compatibility of the aforementioned device with constitutional principles, especially the dignity of the person. human, proportionality and reasonableness, considering that the breadth of its wording may to impose excessive and undue restrictions on the exercise of freedom of expression. on the part of the military. Thus, the methodology adopted was a literature review, with an approach qualitative and exploratory in nature, based on the analysis of doctrine, legislation, and case law. relevant to the topic. The deductive method was adopted, based on constitutional principles, for the analysis of sub-constitutional norms, as well as the dialectical method, in order to examine the tensions. between preserving military discipline and realizing fundamental rights. In the end, it concludes- I understand that, although maintaining hierarchy and discipline is legitimate within the military context, such values They cannot justify disproportionate restrictions on freedom of expression, and it is necessary to interpretation of article 166 of the Military Penal Code in accordance with the Constitution, or even the recognition of its unconstitutionality in cases of abusive application.

Keywords: Freedom of expression; Military criminal law; Fundamental rights; Unconstitutionality; 1988 Constitution.

---

1 Law student. Article submitted to the Unisapiens Faculty of Porto Velho as a requirement for obtaining a Bachelor's degree in Law. Email:

2. Supervising Professor. Postgraduate degree in Labor Law and Procedure from Faculdade Damásio de Jesus (2013). Master's degree in Production Engineering from the Federal University of Amazonas - UFAM. Email: acsa.souza@gruposapiens.com.br

This is an open access article published under the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google
RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VII, v.1 2026 | Submission: April 18, 2026 | Accepted: April 21, 2026 | Publication: April 24, 2026

Abstract

The present article aims to demonstrate the unconstitutionality of Article 166 of the Military Penal Code from the perspective of the fundamental right to freedom of expression. Thus, it analyzes freedom of expression as an essential guarantee of the Democratic Rule of Law, as established in the 1988 Brazilian Constitution, and its limitations in the military context, where hierarchy and discipline play a structuring role. The study problematizes the compatibility of this legal provision with constitutional principles, especially human dignity, proportionality, and reasonableness, considering that the broad wording of the norm may lead to excessive and undue restrictions on the exercise of freedom of expression by military personnel.

Accordingly, the methodology adopted was a qualitative, exploratory literature review, based on the analysis of doctrine, legislation, and relevant case law. The deductive method was employed, starting from constitutional principles toward the analysis of the infra-constitutional norm, as well as the dialectical method, in order to examine the tensions between the preservation of military discipline and the effectiveness of fundamental rights. In conclusion, although the maintenance of hierarchy and discipline is legitimate within the military sphere, such values cannot justify disproportionate restrictions on freedom of expression, making it necessary to interpret Article 166 of the Military Penal Code in accordance with the Constitution, or even to recognize its unconstitutionality in cases of abusive application.

Keywords: Freedom of Expression; Military Law; Fundamental Rights; Unconstitutionality; Brazilian Constitution.

1. Introduction

Freedom of expression, as a fundamental right, is the result of a long process.
A history of social and political transformation, marked by the overcoming of authoritarian regimes and by Consolidation of democratic systems. In this context, the Constitution of the Federative Republic of Brazil's 1988 Constitution, in its Article 5, sections IV and IX, enshrines the freedom of expression of... thought, prohibiting anonymity, as well as ensuring the free expression of intellectual activity, artistic, scientific and communicational rights, establishing such guarantees as essential pillars of the State. Democratic Rule of Law (Brazil, 1988).

According to Bueno (2023), this constitutional provision stems directly from the process of Brazilian redemocratization, in which the aim was to strengthen the plurality of ideas and public debate. as indispensable instruments for the protection of other fundamental rights and the consolidation of

This is an open access article published under the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google
RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VII, v.1 2026 | Submission: April 18, 2026 | Accepted: April 21, 2026 | Publication: April 24, 2026

democratic institutions. In this scenario, freedom of expression takes on not only one dimension individual, but also a collective dimension, acting as a structuring mechanism of itself. democracy.

However, within military institutions, this fundamental right is subject to limitations. specific, justified by the need to preserve hierarchy and discipline, structuring values. of the military organization. This specificity finds support both in the constitutional order. both in sub-constitutional legislation, especially in the Military Penal Code (Decree-Law No. 1.001/1969), whose article 166 defines conduct related to undue criticism and the expression of thinking on the part of the military.

The legal controversy intensifies in light of the contemporary interpretation given by The Supreme Federal Court, notably in the judgment of ADPF 475, reaffirmed the validity. of the aforementioned device, provided that its limitations are applied in a justified and proportionate manner, aiming at the protection of hierarchy and discipline (NEVES, 2025). Even so, it remains... The central question guiding this study is: does Article 166 of the Military Penal Code violate the fundamental rights to freedom of expression and thought guaranteed by The 1988 Constitution?

The hypothesis is that Article 166 of the Military Penal Code has flaws in unconstitutionality, due to imposing excessive, generic and potentially disproportionate restrictions. to freedom of expression. It is argued that such limitations may violate principles. fundamental constitutional principles, such as the dignity of the human person, reasonableness, and proportionality, even if based on the legitimate purpose of preserving discipline and hierarchy within the military context.

Therefore, the objective of this research is to demonstrate the unconstitutionality. of article 166 of the Military Penal Code from the perspective of the fundamental right to free expression of thought, seeking, therefore, to understand the constitutional content of freedom of manifestation of thought and expression, with the identification of its foundations, scope and limits in light of the 1988 Constitution, as well as analyzing, from a historical and systematic perspective, the content and scope of the aforementioned legal provision, examining its normative structure, its Typical elements and their purpose in the context of preserving military discipline and hierarchy. In addition to examining case law and disciplinary practice, with an emphasis on Supreme Court decisions. Federal Court and Superior Military Court, in order to identify interpretative trends and to verify the occurrence of any disproportionate or unequal applications of the rule within the scope of military institutions.

This is an open access article published under the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google
RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VII, v.1 2026 | Submission: April 18, 2026 | Accepted: April 21, 2026 | Publication: April 24, 2026

The social relevance of this study is significantly demonstrated by its reach to a segment a significant portion of the Brazilian population, composed of members of the Armed Forces and the Police State military personnel and those from other institutions of a military nature. This is a topic that affects... directly related to fundamental rights such as individual freedom, human dignity, and citizenship. especially in institutional contexts marked by specific normative restrictions (Santos, 2024).

Regarding methodology, this research will be developed through a review. from the literature, encompassing the analysis of doctrine, legislation, and case law relevant to the topic. A qualitative approach is adopted, with an interpretative and critical focus, aimed at understanding. in-depth analysis of the compatibility between the norms of Military Criminal Law and the principles constitutional principles that guarantee freedom of expression.

The reasoning method used will be predominantly deductive, starting from the principles and values enshrined in the 1988 Federal Constitution, especially those related to dignity. from the human person, to freedom and citizenship, to examine the validity of the norms. infraconstitutional, especially article 166 of the Military Penal Code. In addition, it will be... employing the dialectical method, it allows for the analysis of tensions and contradictions between preservation. of military hierarchy and discipline and the realization of fundamental rights within the military institutions.

The sources used include the 1988 Federal Constitution, the Military Penal Code, specialized doctrines in constitutional, criminal and military law, as well as international treaties on Human rights related to freedom of expression will also be analyzed. Decisions will also be examined. relevant cases from the Supreme Federal Court and the Superior Military Court, with the aim of identifying Jurisprudential contributions to the balance between institutional discipline and guarantees. fundamental.

Thus, the methodology adopted allows for a critical, consistent, and... well-founded, contributing to the debate about the constitutionality and legitimacy of the norms. The military, in light of the democratic principles that guide the Brazilian State.

2 Freedom of expression as a fundamental right: foundations, limits and balancing in democratic rule of law

Freedom of speech and the right to express one's thoughts are fundamental rights. enshrined in Article 5, items IV and IX, of the 1988 Federal Constitution, constituting pillars of Democratic State of Law. These rights are essential for the development of citizenship.

This is an open access article published under the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google
RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VII, v.1 2026 | Submission: April 18, 2026 | Accepted: April 21, 2026 | Publication: April 24, 2026

of political pluralism and public debate, as highlighted by Barroso (2019) and Sarlet (2017). The guarantee of freedom of expression implies not only the permissibility of demonstrations, but also Protection against censorship and unjustified reprisals.

However, freedom of expression is not absolute and is subject to limitations. who seek to balance this right with other fundamental rights and with the legitimate interests of society. Alexy (2002) points out that the right to expression must be interpreted within the framework of a A system of weighing principles, ensuring that their application does not harm human dignity. nor public order. Thus, the need arises to weigh individual liberty and The collective interest, especially in environments such as the military.

Furthermore, an expression of thought in the public sphere, including social media, This requires an analysis that considers the social, political, and institutional impacts of this freedom. According to Magalhães (2020), in his thesis on freedom of expression and democracy, it is necessary to Harmonizing freedom of expression with the protection of speech that threatens stability. institutional, preserving democratic balance.

Therefore, exercising freedom of expression in a military setting requires a balance. careful balancing of individual rights and collective interests, considering the specific context of Armed Forces and other military institutions. The expression of thought in space. The public sphere, including on social media, should be evaluated not only from the perspective of the right to freedom. expression, but also considering its potential social, political, and institutional impacts. This The analysis aims to preserve institutional stability and order, which are fundamental to its functioning. harmonious functioning of the State, thus maintaining democratic balance and national security.

2.1 Constitutional Review of Military Criminal Laws

Constitutional review constitutes a fundamental mechanism for the protection of fundamental rights in relation to the exercise of legislative sovereignty, especially in the context of military criminal law. As highlighted by Mendes and Branco (2020), such control ensures that restrictive rules on the freedom of military personnel must comply with the principles constitutional principles, preventing the imposition of disproportionate or incompatible restrictions. Democratic Rule of Law. Within the scope of military criminal law, the application of the rules must... to observe the limits established by the Constitution, guaranteeing that rights are not unjustifiably violated. fundamental.

From this perspective, Mendes (2018) emphasizes that the control of constitutionality, in addition to As a technical-legal instrument, it plays an essential political role in ensuring supremacy.

This is an open access article published under the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google
RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VII, v.1 2026 | Submission: April 18, 2026 | Accepted: April 21, 2026 | Publication: April 24, 2026

of the Constitution and the protection of public freedoms, including in more institutional contexts restrictive, such as the military.

In a complementary way, Barroso (2024) emphasizes that constitutional interpretation Contemporary times demand an interpretation committed to the maximum effectiveness of rights. fundamental, which implies subjecting sub-constitutional norms, including those of a penal nature- military, subject to strict criteria of proportionality and reasonableness.

Along these lines, Streck (2016), when discussing constitutional hermeneutics that guarantees rights, argues that The interpretation of military criminal law should be guided by the principle of maximizing the effectiveness of rights. and individual guarantees, even when placed within a context marked by the need for preservation. of discipline and hierarchy. The author emphasizes that the control of constitutionality should act as an instrument to contain overly restrictive interpretations, ensuring the proportionality of the limitations imposed.

Still within the doctrinal field, Sarlet (2017) highlights that fundamental rights have effectiveness. immediate and direct applicability, including in the internal relations of the Public Administration and of military institutions, which reinforces the need to subject military criminal law to scrutiny by constitutionality. For the author, the dignity of the human person acts as a central parameter for the validity of state restrictions, including those justified by institutional discipline.

More recent studies, such as that of Castro (2021), analyze the effectiveness of controlling constitutionality in Brazilian military criminal law and identify practical challenges in its application. Article 166 of the Military Penal Code, especially regarding the criminalization of demonstrations. considered contrary to military discipline. The author points to the need to strengthen the mechanisms. judicial decisions, in order to guarantee interpretations compatible with the constitutional order and with the... fundamental rights.

Furthermore, Canotilho (2003) contributes by stating that the constitutional rule of law It imposes material limits on the legislator, prohibiting the creation of rules that compromise the core. Essential fundamental rights, even if under relevant institutional justifications. Understanding is particularly important in the military context, where tension exists between authority and Freedom manifests itself with greater intensity.

Thus, the control of constitutionality proves essential for the balance between protection of military institutions and respect for the dignity and rights of individuals who They are part of the Armed Forces, contributing to the legitimacy and effectiveness of the legal system. The military in a democratic state governed by the rule of law. Thus, the preservation of hierarchy and of... Discipline should not disproportionately override the fundamental guarantees ensured. constitutionally.

This is an open access article published under the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google
RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VII, v.1 2026 | Submission: April 18, 2026 | Accepted: April 21, 2026 | Publication: April 24, 2026

2.2 Article 166 of the Military Penal Code and its Constitutional Limits

Article 166 of the Military Penal Code (Decree-Law No. 1,001/1969) is part of a set of... rules designed to preserve hierarchy and discipline, core values of institutions. military personnel. The provision criminalizes conduct related to the public expression of thought by part of the military, especially when considered offensive to the institutional order or to authority. However, the breadth of its wording has given rise to debates regarding its compatibility with the fundamental rights guaranteed by the 1988 Constitution, notably the freedom of expression.

The specialized doctrine in military criminal law recognizes that discipline and hierarchy These are indispensable elements for the functioning of the Armed Forces, but he warns of the risks of excessive use of open-ended criminal types. In this sense, Célio Lobão (2011) highlights that the Law Military criminal law must be interpreted restrictively, otherwise it risks becoming an instrument of... undue repression of conduct that, in a democratic state governed by the rule of law, would be protected by Freedom of expression.

Similarly, Jorge César de Assis (2018) argues that the application of the norms Military criminal law must observe rigorous criteria of typicity and strict legality, avoiding broad interpretations that compromise the fundamental rights of the military while citizens. For the author, military status does not preclude the entitlement to fundamental rights, but It only authorizes proportionate and justified restrictions.

In the field of constitutional law applied to the military context, Flávia Piovesan (2020) emphasizes that fundamental rights are universal and must be respected, even in distinct institutional environments, allowing restrictions only when strictly necessary and compatible with international human rights standards. This understanding reinforces the need for compatibility between article 166 of the Military Penal Code and the treaties international treaties ratified by Brazil, especially those that guarantee freedom of expression.

Furthermore, André de Carvalho Ramos (2022) highlights that the interpretation of the norms Restrictive measures that infringe on rights must be guided by the principle of maximum protection of the human person. requiring that any limitations be analyzed in light of proportionality and necessity. In the case of article 166, this implies evaluating whether the criminalization of the expression of thought is, in fact, The least burdensome means of ensuring military discipline.

Another relevant point concerns technological evolution and the impact of social networks on expression of military thinking. In this context, authors such as Gustavo Badaró (2021) They warn of the need to reinterpret criminal offenses in light of new forms of communication.

This is an open access article published under the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google
RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VII, v.1 2026 | Submission: April 18, 2026 | Accepted: April 21, 2026 | Publication: April 24, 2026

preventing norms conceived in distinct historical contexts from being applied in a way that is inconsistent. automatic and decontextualized, which leads to undue restrictions on freedom of expression.

Thus, it can be observed that article 166 of the Military Penal Code, although it has the purpose legitimate, it presents potential constitutional problems arising from its broad wording and of the possibility of disproportionate application. The absence of clear objective criteria may favor interpretations that go beyond constitutional limits, compromising the balance between Preservation of military order and guarantee of the fundamental rights of its members.

Therefore, the analysis of the aforementioned provision requires a systematic and constitutionally sound reading. oriented, capable of harmonizing military institutional values with democratic principles, preventing discipline and hierarchy from being used as justifications for excessive restrictions. to freedom of expression.

3. Apparent conflict between constitutional and sub-constitutional norms.

The conflict between constitutional and sub-constitutional norms is especially evident in Military law, in which specific criminal norms may conflict with guaranteed fundamental rights. by the Constitution. Clève (2012) highlights that constitutional jurisdiction must act to resolve such conflicts, applying methods of normative harmonization that preserve constitutional supremacy, without disregarding the particularities of the military regime.

Barroso (2019) emphasizes that resolving these conflicts requires a balanced analysis that Consider the context and constitutional values of the game, avoiding solutions that pose a risk. Democracy or military discipline. The principle of the democratic rule of law establishes that such Conflicts should be resolved without nullifying essential rights.

Lenza (2020), in his work on constitutional law, emphasizes that the control of Constitutionality is not mere legal formalism, but an instrument to guarantee that norms Sub-constitutional provisions do not infringe upon the essential core of fundamental rights, especially when devices with the potential to impact freedom of expression are involved in the military context.

It is therefore important to highlight that the control of constitutionality is a legal instrument. indispensable for democratic protection within the framework of military criminal law, preventing undue Restricting fundamental rights and ensuring a coherent and harmonious legal system.

This is an open access article published under the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google
RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VII, v.1 2026 | Submission: April 18, 2026 | Accepted: April 21, 2026 | Publication: April 24, 2026

3.1 Proportionality and reasonableness as criteria for limiting rights

Proportionality and reasonableness are fundamental principles for restricting rights.
especially fundamental rights. Alexy (2002) states that any limitation must be
adequate, necessary and proportionate to the legitimate purpose it seeks to achieve, preventing arbitrariness and
abuses. These criteria ensure that restrictions do not suppress the essential content of the right.

The application of these principles in constitutional hermeneutics is highlighted by Sarlet (2017),
which considers reasonableness a filter to avoid excesses in legal and jurisprudential interpretation,
thus protecting the dignity of the human person. In the context of military criminal law, it is vital to guarantee
Respect for proportionality, given the potential conflict between military discipline and freedom of
expression.

Oliveira and Silva (2022) analyze practical cases from the perspective of proportionality, highlighting
that excessive measures limiting the freedom of expression of military personnel should be reevaluated.
to ensure compliance with the Constitution. The recent review by the Supreme Federal Court reinforces this guideline.
recommending detailed case-by-case analysis to avoid indirect biases.

Thus, recent investigations by the Supreme Federal Court reinforce this.
guidance, recommending a detailed case-by-case analysis to avoid obvious indirect errors and ensure
that the restrictions respect fundamental rights without compromising military discipline. This
Understanding contributes to strengthening the balance between institutional order and guarantees.
constitutional rights of individuals who are members of the Armed Forces.

3.2 Hierarchy and discipline in military institutions and their constitutional limits

Structure and discipline are the cornerstones of military institutions, essential to their functioning.
and to the efficiency of these corporations, as provided for in article 142, § 2, of the Federal Constitution.
(Brazil, 1988). Canotilho (2010) clarifies that military discipline must be exercised within the
constitutional limits, while respecting fundamental rights.

Lenza (2020) and Magalhães (2019), in their research, emphasize that the discipline cannot
to justify the arbitrary suppression of individual guarantees, especially with regard to
Freedom of expression. The hierarchical agreement finds constitutional limits both in law and in
jurisdiction of the Supreme Federal Court (STF) and the Superior Military Court (STM).

Studies by Almeida (2023), in his thesis on the constitutional limits of military discipline,
They emphasize that hierarchy must guarantee order without compromising the dignity of the military.
ensuring a minimally restrictive constitutional interpretation, avoiding abuses and preserving the
military citizenship.

This is an open access article published under the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google
IRCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VII, v.1 2026 | Submission: April 18, 2026 | Accepted: April 21, 2026 | Publication: April 24, 2026

4. Freedom of expression for military personnel on social media and contemporary challenges.

The expansion of digital technologies and the intensive use of social networks have transformed profoundly altering the ways in which thought is expressed, expanding its reach, speed, and... The impact of individual communications. In a military context, this phenomenon poses challenges. significant to the compatibility between freedom of expression and the institutional values of Hierarchy and discipline are the structural pillars of the Armed Forces and military institutions.

In this scenario, Castells (2015) highlights that the network society redefines the dynamics of power and communication, enabling individuals to exert significant influence in the public sphere. through digital platforms. This reality enhances the expression of thought on the part of of the military, but it also increases the institutional risks arising from demonstrations that may to be interpreted as incompatible with military discipline.

In a complementary way, Bucci (2021) argues that freedom of expression in the environment The digital age takes on an expanded, but not unlimited, character, demanding responsibility commensurate with it. The scope of the demonstrations. For the author, the digital environment intensifies the need for reflection. legal considerations regarding the limits of discourse, especially when it involves public officials or institutions.

state-owned companies.

In the legal field, Mendes (2020) emphasizes that the protection of fundamental rights in The digital environment demands a reinterpretation of traditional norms, given that social networks They exponentially amplify the effects of individual demonstrations. In the case of the military, this Expansion requires even more careful analysis, considering the institutional impact of its public demonstrations.

Brazilian jurisprudence has reinforced the need for a balance between freedom of The expression and protection of other fundamental rights. The Superior Court of Justice has The understanding that freedom of expression is not absolute and must be... has been consolidated. exercised in accordance with rights such as honor and image, thus legitimizing state intervention. only in cases of abuse. Along these lines, it's important to highlight that expressions of opinion on social media are only... They become unlawful when they exceed the limits of legitimate criticism, constituting an undue offense. or violation of third-party rights.

This understanding is also corroborated by the jurisprudence of state courts. In The decision of the Court of Justice of Minas Gerais established the position that the freedom of The expression can only be restricted when abuses or excesses are verified, and it is not permissible to... Removal of content limited to the regular exercise of the right to criticize. As stated. on the menu:

This is an open access article published under the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google
RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VII, v.1 2026 | Submission: April 18, 2026 | Accepted: April 21, 2026 | Publication: April 24, 2026

> Civil appeal seeking injunctive relief combined with urgent relief, exclusion of comments. On social media, simple criticism is freedom of expression. Freedom of Expression should only be limited when abuses are detected or Excesses on the part of users. It was not found that the content of Posts published on social media exceed the constitutional right to freedom. Freedom of expression and the right to criticize, there are no grounds for its withdrawal (TJ-MG, Civil Appeal No. 1000020-48.2020.8.13.0001, Rel. Des. Mônica Libânio, j. 16 Sept. 2020, pub. 18 Sept. 2020) (Brazil, 2020)

Furthermore, the Superior Court of Justice itself reaffirmed that state intervention in freedom of expression... It should be exceptional, ruling out measures that constitute prior censorship and recognizing the The centrality of this right in the Brazilian legal system. This understanding reinforces the need caution in applying restrictive rules, such as article 166 of the Military Penal Code, especially when used to limit expressions of interest in the digital environment.

In the doctrinal field, Lemos (2022) points out that contemporary digital law requires the overcoming automatic interpretations of traditional norms, under penalty of generating incompatibilities. with technological reality. According to the author, the application of legal devices conceived in Previous contexts must be adapted to new forms of communication, at the risk of restricting them. improperly violating fundamental rights.

Furthermore, Maranhão (2021) highlights the regulation of freedom of expression on the internet. It must observe criteria of proportionality and necessity, avoiding excessive restrictions that compromise public debate and the circulation of ideas. Such understanding is essential in this context. military, where the tension between authority and freedom manifests itself with greater intensity.

Thus, the expression of opinions by military personnel on social media highlights the need for a interpretation of Military Criminal Law, constitutionally guided, especially by article 166, in order to avoid disproportionate applications. The preservation of discipline and hierarchy cannot To justify the undue suppression of freedom of expression, it is essential to evaluate each case individually. Specifically, the content, the context, and the effects of the demonstration.

It can be concluded, therefore, that technological advancement imposes on Law the challenge of harmonizing the traditional values of military institutions combined with fundamental rights guaranteed by The 1988 Constitution guarantees the exercise of freedom of expression, even in an environment... Digital technology should not be unduly restricted, but it should also not become an instrument of violation. to the institutional order.

This is an open access article published under the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google
RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VII, v.1 2026 | Submission: April 18, 2026 | Accepted: April 21, 2026 | Publication: April 24, 2026

Final considerations

The purpose of this study was to analyze the compatibility of article 166 of the Code.
Military Penal Law, along with the fundamental right to freedom of expression, enshrined in
The 1988 Federal Constitution, in light of the structuring principles of the Democratic Rule of Law.
Throughout the research, it became evident that freedom of expression occupies a central position in
Brazilian constitutional order, constituting not only an individual right, but also
an essential instrument for the formation of citizenship, political pluralism and public debate.

However, it has been found that, within military institutions, this right is subject to restrictions.
specific values are necessary to preserve hierarchy and discipline.
Although legitimate and indispensable to the functioning of military organizations, they cannot be
understood as absolute, and must be harmonized with the fundamental rights of
individuals who comprise them.

An analysis of Article 166 of the Military Penal Code revealed that its wording presents a high degree of...
The degree of indeterminacy allows for broad and sometimes disproportionate interpretations.
The normative characteristic increases the risk of arbitrary application, especially when used
to restrict legitimate expressions of thought, including in contemporary settings.
such as social networks. In this sense, it was found that the application of the device, without due care, was problematic.
observing the principles of proportionality, reasonableness, and human dignity, it may
result in undue violations of fundamental rights.

Based on doctrinal and jurisprudential analysis, it was found that the understanding
The prevailing trend in the Brazilian legal system is moving towards recognizing the freedom of
expression as a rule, admitting its limitation only in exceptional cases, when
This constitutes abuse or violation of other fundamental rights. This guidance reinforces the need
of a constitutionally sound interpretation of article 166, preventing its application
exceed the legitimate limits of restriction.

Furthermore, the advancement of digital technologies and the increasing use of social networks have amplified
significantly alters the forms of expression of thought, requiring a reinterpretation of the norms.
military penal systems in light of this new reality. In this context, it becomes even more relevant to ensure
that control over military demonstrations does not become an instrument of censorship or of
This is not undue repression, but rather a legitimate mechanism for preserving institutional order, applied
in a proportionate and well-founded manner.

Given this scenario, it can be concluded that article 166 of the Military Penal Code presents evidence...
of unconstitutionality, especially when interpreted or applied in a broad and generic way,

This is an open access article published under the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google

Year VII, v.1 2026 | Submission: April 18, 2026 | Accepted: April 21, 2026 | Publication: April 24, 2026

without due regard for constitutional parameters. Thus, the need for a
an interpretation in accordance with the Constitution, which restricts its application to situations that are effectively harmful to
Discipline and hierarchy, or, in extreme cases, the recognition of its unconstitutionality.
Partial, when it is found that the essential core of freedom of expression has been compromised.

Finally, it should be noted that the consolidation of a democratic rule of law requires...
A constant balance between authority and freedom, including in the military sphere. The preservation of
Institutional discipline cannot disproportionately override fundamental rights.
It is essential that the Brazilian legal system continues to evolve to guarantee, also
For the military, the full exercise of citizenship and human dignity.

References

ALEXY, Roberto. **Theory of Fundamental Rights.** São Paulo: Malheiros, 2002.

ALMEIDA, Bruno. **Constitutional limits of military discipline: a critical analysis.** 2023.
Dissertation (Master's in Constitutional Law) – University of São Paulo, São Paulo, 2023.
Available at: https://teses.usp.br/teses/disponiveis/8/8131/tde-18022023-143015/ . Accessed on: 15
Oct. 2025.

ASSIS JÚNIOR, Carlos Pedro de. Special relations of subjection and fundamental rights: freedom
expression of military public agents as provided for in article 166 of the Military Penal Code. **Magazine**
Brazilian of Philosophy of Right, v.3, n.1, 2017. Available
Available at: https://repositorio.ufsc.br/handle/123456789/265873 . Accessed on: November 1, 2025.

ASSIS, Jorge César **de. Course on military criminal law: general part.** 3rd ed. Curitiba: Juruá, 2018.

BADARÓ, Gustavo Henrique. Criminal Procedure. 9th ed. São Paulo: Revista dos Tribunais, 2021.

BARROSO, Luís Roberto. **Democracy, social media and freedom of expression: hate, lies**
and the search for possible truth. Brazilian Journal of Fundamental Rights & Justice, v. 19, n. 49,
pp. 285–311, 2024.

BARROSO, Luís Roberto. **Fundamental rights and democracy.** Rio de Janeiro: Leite de Argila,
2019.

BRAZIL. **Constitution of the Federative Republic of Brazil,** 1988. Available
From: https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm . Accessed on: November 6, 2025.

BRAZIL. **Law No. 6,880, of December 9, 1980.** Statute of Military Personnel. Available
From: http://www.planalto.gov.br/ccivil_03/leis/l6880.htm . Accessed on: November 1, 2025.

BRAZIL. **Law No. 9,882, of December 12, 1999.** Provides for the Allegation of Non-Compliance.
Fundamental Precept. Available at: http://www.planalto.gov.br/ccivil_03/leis/l9882.htm .

This is an open access article published under the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google

Year VII, v.1 2026 | Submission: April 18, 2026 | Accepted: April 21, 2026 | Publication: April 24, 2026

Accessed on: November 1, 2025.

BRAZIL. **Supreme Federal Court. ADPF 475/DF.** Rapporteur Justice Dias Toffoli. Judgment.
in 2023. Available at: https://www.cognijus.com/blog/liberdade-de-expressao-e-proibicao-de-
public-demonstration-by-military-against-acts-of-superiors-or-government-resolutions-adpf-475df-
Supreme Federal Court (STF) . Accessed on: November 6, 2025.

BRAZIL. **Supreme Federal Court. Extraordinary Appeal** 151.462. Judgment in 2018.
Available at: https://buscadordizerodireito.com.br/jurisprudencia/6142/violam-a-cf88-os-atos-de-
search and seizure of election-related materials and suspension of campaign activities
ideas-in-public-and-private-universities . Accessed on: November 2, 2025.

BUCCI, Eugênio. **The Superindustry of the Imaginary: How Capital Transformed the Gaze into work and appropriated everything that is visible.** Belo Horizonte: Autêntica, 2021.

BUENO, Carlos Daniel de Almeida Prado. The freedom of expression of state military personnel: a Necessary study under the terms of the judgment of ADPF 475. **Journal of the Military Public Prosecutor's Office.** v. 41, 2023. Available at: https://revista.mpm.mp.br/rmpm/article/view/364 . Accessed on: Nov. 6. 2025.

CANOTILHO, JJ Gomes. **Constitutional Law and Theory of the Constitution.** São Paulo: Maltês, 2010.

CANOTILHO, José Joaquim Gomes. **Constitutional Law and Theory of the Constitution.** 7th ed. Coimbra: Almedina, 2003.

CASTELLS, Manuel. The Network Society. 6th ed. São Paulo: Paz e Terra, 2015.

CASTRO, Felipe R. **Application of constitutional review to military criminal law: Challenges and Perspectives.** 2021. Dissertation (Master's in Law) – Federal University of Minas Gerais Gerais, Belo Horizonte, 2021. Available at: https://repositorio.ufmg.br/handle/1843/36670 .

CLÈVE, Clémerson Merlin. **Course on Constitutional Law.** São Paulo: Atlanta, 2012.

Inter-American Court of Human Rights. **Case of Palamara Iribarne v. Chile.** Sentence of 2005. Available From: https://www.corteidh.or.cr/docs/casos/articulos/seriec_219_por.pdf . Accessed on: November 1, 2025.

LEMOS, Ronaldo. **Law, technology and culture.** São Paulo: FGV, 2022.

LENZA, Pedro. **Constitutional Law Outlined.** São Paulo: Método, 2020.

LOBÃO, **Célio. Military criminal law.** 5th ed. Brasília: Brasília Jurídica, 2011.

MAGALHÃES, Ana Paula. **Freedom of expression and democracy: limits and possibilities.** 2019. Thesis (Doctorate in Law) – University of Brasília, Brasília, 2019. Available at: https://repositorio.unb.br/handle/10482/37416 .

MARANHÃO, Juliano Souza de Albuquerque. **Internet regulation and freedom of expression.**

This is an open access article published under the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google

Year VII, v.1 2026 | Submission: April 18, 2026 | Accepted: April 21, 2026 | Publication: April 24, 2026

São Paulo: Thomson Reuters Brasil, 2021.

MARREIROS, Adriano Alves; FREITAS, Ricardo; ROCHA, Guilherme. **Military criminal law: theory critique and practice.** They are Paul: Method, 2015. Available available at: https://www.editorajuspodivm.com.br/media/juspodivm_material/material/file/JUS2401-Degustacao.pdf . Accessed on: October 30, 2025.

MENDES, Gilmar Ferreira. **Constitutional Jurisdiction.** 9th ed. São Paulo: Saraiva, 2018.

MENDES, Laura Schertel. **Privacy, data protection and consumer protection: general guidelines. of a new fundamental right.** São Paulo: Saraiva, 2020.

OLIVEIRA, Ricardo; Silva, João. Proportionality and freedom of expression: case analysis in Military Justice. **Law and Society Review,** v.19, n.36, p.455-475, 2022. Available From: https://enpejud.tjal.jus.br/index.php/exmpteste01/article/view/575/319 . Accessed on: November 6. 2025.

PEREIRA BUENO, Christian del Anhol. The freedom of expression of state military personnel: a study. necessary under the terms of the judgment in ADPF 475. **Revista do Ministério Público Militar,** v. 41, 2023. Available at: https://revista.mpm.mp.br/rmpm/article/view/364 . Accessed on: October 30, 2025.

PIOVESAN, **Flávia. Human rights and international constitutional law.** 19th ed. São Paulo: Saraiva, 2020.

RAMOS, André de Carvalho. Course **on human rights.** 9th ed. São Paulo: Saraiva, 2022.

SANTOS, Bhrenda Maria Ferreira dos. **Women in the Armed Forces: an analysis of The importance of social work in addressing violence against women in the military.** Work Final Course Project (Bachelor's Degree in Social Work) - School of Social Work, University Federal University of Rio de Janeiro, Rio de Janeiro, 2024. Available in: https://pantheon.ufrj.br/handle/11422/24902. Accessed on: October 22, 2025.

SARLET, Ingo Wolfgang. **Dignity of the human person and the effectiveness of fundamental rights.** Porto Alegre: Livraria do Advogado, 2017.

STM.Superior Military Court. **Decision on jurisdiction to judge demonstrations. disciplinary.** Brasília, 2025. Available at: https://www.stm.jus.br/informacao/agencia-de-news/item/14866-stm-maintains-jurisdiction-to-judge-reserve-colonel-accused-of-inciting-Breakdown of military hierarchy . Accessed on: November 1, 2025.

STRECK, Lênio. **Constitutional Hermeneutics with a Guarantee System.** São Paulo: RT, 2016.

This is an open access article published under the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.