



The criminal public security policy adopted by the state of Rio de Janeiro after the end of the 2016 olympics

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ABSTRACT

Violent confrontations, between representatives of the State and criminals, demand an apprenticeship in constitutional parameters of the protection of fundamental social rights of public security, so essential to the socially vulnerable. This is at the heart of the problem presented here, contextualized in the scenario of Rio de Janeiro, having broad significance for the law and citizens of Rio. This paper aims to explore the main aspects of the fundamental social security right and to briefly report on the development of criminal public security policies in the country and, more specifically, in the state of RJ. Finally, an alleged divergence of ideas between the employment of human rights and police action will be addressed.

Keywords: Public security, Criminal Policy, Human rights.

1 INTRODUCTION

Currently, public security is one of the serious problems that affect the large urban centers of the main cities, generating violence in the peripheries. The theme of the criminal public security policy adopted by the state of Rio de Janeiro after the end of the 2016 Olympics was chosen as the object of this scientific article due to the various clashes that occurred between police and criminals in poor communities, including the latter carrying weapons used in several world conflicts, with the production of fatal victims in more disadvantaged locations.

In the course of the acquisition of knowledge, now proposed, it will be sought to gather contents, judicial decisions, legislation, in order to reach the essential foundations in order to obtain an answer to the following research question: Is there the objectification of the human being in the course of police action in poor communities of RJ, disrespecting the fundamental social right to public security?

The general objective of this work is to study the fundamental right of public security according to the view of the doctrine and the legal system, as well as to examine the jurisprudence of higher courts. In a more peculiar sense, it is intended to verify the policy of preservation of legal assets adopted in the state of Rio de Janeiro. In addition, it is intended to investigate an apparent discussion between respect for human rights and the effectiveness of state protection for citizens.

The issue has immense prominence for Rio de Janeiro's law and society, since, in recent years, the rates of armed violence have remained high, particularly in poor communities, which are more vulnerable, due to frequent conflicts between police agents and criminals.

In the course of the elaboration of the current scientific work, with a theoretical focus, the deductive method was used, through a documentary research of primary sources (legislation and jurisprudence) and



bibliographic in books and articles. In addition, the research portrays a multidisciplinary view of constitutional law, with regard to fundamental social rights, human rights and criminal policy.

2 DEVELOPMENT

2.1 CONCEPT OF PUBLIC SAFETY

The word security originates from Latin with the meaning of not having anguish (FILOCRE, 2010). The interpretation of the word security, according to Portuguese Aurélio's online dictionary, is the distancing from any and all inconveniences, a circumstance in remaining protected. In addition, it can be said as a moment of tranquility, warmth, stability, such as being in the residence in a protected way (NUCCI, 2016).

The expression public security, on the other hand, is defined as living in harmony with one's peers in society, without any kind of problem (NUCCI, 2016). Likewise, there are the actions coming from the State, through its police agents, with the purpose of combating the alarming indicators of delinquency, providing citizens with the exercise of fundamental rights and guarantees, especially freedom (FILOCRE, 2010).

Thus, it is the provision of a public service by the State exclusively with the purpose of inhibiting criminal actions or ascertaining the materiality and authorship of attempted or consummated crimes. The exercise of this public function by governments will lead to the maintenance of public order and social peace in the community, so desired by the Brazilian population.

2.2 THE CONSTITUTIONAL BASIS

Public security has the constitutional provision, initially, in Article 6, integrating the catalogue of fundamental social rights expressed. Subsequently, the constituent legislator established in the caput of Article 144 that the State shall provide guarantees for the maintenance of public stability and the integrity of people and property, in addition to constituting a right and responsibility of the entire Brazilian society (BRASIL, 1988).

The caput of Article 5 mentions the fundamental individual right to security, which is directly associated with legal relationships, residence, personal communications, criminal and tax matters (MORAES, 2017). Thus, it is characterized by a different interpretation from that provided for in the list of examples of social rights. On the other hand, Article 6, when mentioning the term security, is linked to the meaning of achieving coexistence among people in a peaceful way and that they can freely exercise their rights (SILVA, 2009).

It is worth highlighting the topographical prerogative given to fundamental rights, both individual and social, established at the beginning of the constitutional text, unlike the previous Charters. Moreover,



these privileges are stony clauses, that is, it is not possible to suppress them from the text due to their intangible nature, not even through a proposed amendment to the Constitution.

In this way, the principle of public security, as a social right and part of the hard core of the Magna Carta, establishes an instrument of institutional protection in order to preserve or resurrect public order and social peace. The role of government authority is essential to configure the protection of the people's right to freedom (ALEXY, 2015). The maintenance of stability in the community will be a function of sentinel, prudence and correction of criminal behaviors (SILVA, 2013).

2.3 ORGANIZATION OF PUBLIC SECURITY

The Federal Constitution establishes an exhaustive list of existing bodies in the national territory, with the purpose of ensuring harmony among citizens in society and contributing to the reduction of violence rates. Mainly, crimes committed by individuals belonging to criminal organizations linked to drug trafficking.

The police are divided into two types, the first of which carries out an administrative, preventive or ostensive activity aimed at ensuring public order and social peace. The second is related to the repressive or judicial or investigative practice with the aim of investigating and restoring tranquility in the community.

Currently, there are seven public agencies in charge of ensuring public security in the extensive national territory, the last of which was added to the Constitution through Constitutional Amendment No. 104, of 2019 (BRASIL, 2019). They are the Federal Police, the Federal Highway Police, the Federal Railway Police, the Civil Police, the Military Police, the Fire Brigade and the Federal, State and District Criminal Police, with their respective functions outlined in the paragraphs of Article 144 of the Magna Carta. The intention of the constituent legislator in establishing several police corporations was to satisfy the wishes of the population, as well as to distance members of the armed forces from an eventual participation in the domestic scenario related to public security (MORAES, 2017).

It is not only up to the Union to provide for the protection and ostensible maintenance of the community, as there is a division of competences and obligations stipulated among the state entities provided for in the Constitution, considering the specificities of the administrative areas and respect for the principle of the federative pact (SILVA, 2008).

With regard to the governments of the municipalities, §8 of Article 144 of the Federal Constitution authorized the formation of local guards for the purpose of protecting goods, services and facilities (BRASIL, 1988). The original constituent did not entrust these municipal institutions with the ostensible surveillance and clarification of criminal offenses (SILVA, 2008). In this sense, an excerpt from the decision in Criminal Appeal No. 0017575-41.2017.8.26.0320 of the TJSP (SÃO PAULO, 2017) can be cited:



The Municipal Guard is not responsible for preventive and overt police services. However, this is not to say that the Municipal Guard can stop giving voice of arrest to anyone who is committing a crime. How can anyone act like that.

However, the Plenary of the STF, in the judgment of ADPF 995 this year, decided that municipal guards are covered by the Public Security System, operating public security attributions (BRASIL, 2023).

It should be noted that in 2004 Decree No. 5,289 was issued, which developed the federative cooperation program called the National Public Security Force (BRASIL, 2004). It exercises functions in order to preserve public order and the safety of people and property. Subsequently, Law 11.473/07 authorizes the Federal Government to draw up agreements with the States and the Federal District to perform acts that are essential to the preservation of order in society (BRASIL, 2007).

Finally, there is a particularity regarding public agents, including non-military ones, who are members of public security agencies with regard to the prohibition of exercising the right to strike. This position was confirmed in the judgment of the Federal Supreme Court in Complaint No. 6568/SP, of the rapporteurship of former Justice Eros Grau (BRASIL, 2009), as shown in the following explicit passage: "Public services developed by armed groups: the activities carried out by the civil police are analogous, for this purpose, to those of the military, in relation to which the Constitution expressly prohibits strikes [art. 142, § 3, IV]."

2.4 COMPANY PARTICIPATION

The cruelty that afflicts the entire community through various criminal offenses such as homicides, robberies, kidnappings, rapes, drug trafficking and others, unfortunately, are part of the reality of the main Brazilian urban centers. However, this very serious problem is not only the duty of the State.

The caput of Article 144 of the Federal Constitution clearly indicates the duty of the State to provide public security, as well as the responsibility of society as a whole (BRASIL, 1988). The government has a monopoly on the use of force, progressively, when necessary, but citizens have the right to participate by contributing to the federative entities regarding the issue of public security.

Popular cooperation in government campaigns and public hearings will probably help with the presentation of suggestions as well as in the elaboration and development of new projects for the protection of the community. The constitutional system adopted the interpretation of the First Cycle of Studies on Security when it assumed the need for a nationwide debate involving all sectors of the nation (SILVA, 2008).

In this way, the participation of the people associated with public administration, in an issue of fundamental importance and complexity such as public security, for any country, strengthens and legitimizes the spirit and principle of the democratic rule of law. In addition, working together will



safeguard the essential legal assets of the national legislation and provide the materialization of human dignity.

2.5 CRIMINAL PUBLIC SECURITY POLICIES

In the period after the promulgation of the Citizen Constitution, in 1988, the first National Public Security Plan (PNSP) was prepared by the government in 2000. The intention was to coordinate efforts among various sectors of public administration, including the presence of civil society, against the considerable increase in violence throughout the country.

Subsequently, in 2003, some conditions were stipulated for how the distribution of funds among state entities would occur, through the National Secretariat of Public Security (SENASP), for the conservation of the PNSP. It should be noted that SENASP was established by Decree No. 2,315, of September 4, 1997 (now repealed), with several powers aimed at assisting the Ministry of Justice in the field and combating violence and crime (BRASIL, 1997).

Subsequently, Provisional Measure No. 384 was enacted, converted into Law No. 11,530 of 2007, establishing the National Program for Public Security with Citizenship (PRONASCI) with the purpose of coordinating public security activities for the prevention, control and repression of criminal offenses, in order to incorporate social policies and actions to protect victims (BRASIL, 2007).

This program was implemented to act in the face of crime as well as its reasons, especially with regard to the union of forces between the police and the community. Preventive actions were provided by the State through urbanization, education, leisure and sports projects, community policing and several others.

A new reformulation took place in 2018, through Law No. 13,675/18, with the creation of the National Policy for Public Security and Social Defense (PNSPDS) and the institution of the Unified Public Security System (SUSP) (BRASIL, 2018). The preservation of public order, the safety of people and property was chosen as a priority goal through the coordinated and integrated performance of public security and social defense institutions of the federative entities as well as society.

In the same year, the head of the executive branch contemplated a new body at the top of the administrative structure, the Extraordinary Ministry of Public Security, according to Law No. 13,690/18, with the purpose, in the exercise of its main competence, of coordinating and promoting the integration of public security throughout the national territory (BRASIL, 2007).

The "Em Frente, Brasil" program was developed by the federal government in August 2019, interested in combating violent marginality with actions in the areas of education, health, justice and public safety, citizenship, family, drug prevention, urban space and infrastructure, economy, work and income. The purpose is to carry out a joint work involving the federative entities, with the inclusion of measures in



the area of public security and the realization of preventive social activities.

It should be noted that, at the end of 2019, Law No. 13,964, the Anti-Crime Package, was approved by the people's representatives in the National Congress and sanctioned by the President of the Republic, improving the criminal legal system and criminal procedure in the face of the fight against corruption, criminal organization and violence (BRASIL, 2019).

In the specific case of the state of Rio de Janeiro, after years of domination in the poorest areas by criminals associated with drug trafficking, establishing true "parallel states". In November 2008, the State Secretariat of Security implemented the first Pacifying Police Unit (UPP) in the poor community of Santa Marta.

The UPPs aimed to promote the end of the control of vulnerable areas by criminal factions, which carried weapons of the caliber of the Armed Forces and used in the main armed conflicts of today. By 2015, thirty-eight UPPs had been installed, according to the report Balance of Pacification Policy Indicators (2007-2015) (BALANÇO 2015), produced by the Public Security Institute (ISP).

After the repressive action of the Rio de Janeiro government provided by the creation and installation of UPPs in poor communities, the Social UPP (UPP) scheme was also implemented by the city of Rio de Janeiro and coordinated by the Pereira Passos Institute (IPP) in collaboration with the UN – Habitat (UN), Project for Human Settlements, in order to establish urban, social and economic advancement. Some projects were carried out by the municipal administration: Morar Carioca, Family Health and Education.

Unfortunately, the implementation of the UPP and UPP Social programs has not reached all poor areas dominated by criminals linked to drug trafficking. In addition, in some disadvantaged localities that were awarded the programs, the provision of public service was not effective, either due to the poor quality or slowness of state action, or due to the lack of execution of public service. Thus, there was no integration of the most needy areas with the other locations in the state of RJ, nor did it provide citizenship to the underprivileged people.

After the Olympics were held in Rio de Janeiro in 2016, there was a need to activate the Armed Forces, in July 2017, in the Operations to Guarantee Law and Order due to the high level of violence that affected the citizens of Rio de Janeiro. At the beginning of the following year, Decree No. 9,288 was issued, establishing a federal intervention in the state of Rio de Janeiro, occurring simultaneously with the Law and Order Guarantee Operations, to promote the end of the serious compromise of public order (BRASIL, 2018).

The federal intervention continued until December 31, 2018. The results presented by the website of the Federal Intervention Office (RESULTADOS, 2018) were positive, with a reduction in several types of penalties that plagued the state of Rio de Janeiro, as well as providing investments in the areas of public



security, with the acquisition of new equipment, and a reformulation in personnel management. However, the participation of the Federal military was not enough to solve all the problems related to violence in Rio de Janeiro and, according to the *G1 website*, there was an increase in the number of deaths during police actions (ALVES, 2018).

In January 2019, Mr. Wilson Witzel took office as governor of the state of Rio de Janeiro, adopting a zero-tolerance policy in the fight against crime. The governor has repeatedly said in interviews that criminals carrying rifles would be shot in the head by a sniper. Mr. Witzel's comments may spur violent and illegal action by law enforcement officials.

Due to the statements made, the Socialism and Freedom Party (PSOL) filed the Allegation of Non-Compliance with a Fundamental Precept (ADPF) No. 594, in the STF, with Minister Edson Fachin as the rapporteur, alleging that the public security policy used legitimizes and encourages the violent conduct of police officers and violates constitutional principles such as legality, proportionality, prevention and others (BRASIL, 2019).

Subsequently, it was the turn of the Brazilian Socialist Party (PSB) to petition ADPF No. 635 in the Supreme Court, Justice Edson Fachin is also the rapporteur, in view of the same issue as the previous constitutional action as well as the violation of the fundamental rights of the residents of poor localities when they are exposed to the clash between police and criminals, especially on the occasions that they are used by those helicopters as platforms for firing firearms (BRASIL, 2019).

The two lawsuits filed in the country's high court by two political parties show the irresponsible behavior of Governor Witzel that encourages violent and truculent police actions in the poorest communities. The Rio de Janeiro government's conduct characterizes human rights violations, placing innocent residents in the middle of a confrontation between police and criminals.

In August 2020, then-Governor Wilson Witzel was removed by the STJ on suspicion of corruption in the government of the state of Rio de Janeiro. In April 2021, he was deposed by an impeachment process conducted by the TJRJ, with his deputy Cláudio Castro, who is the current governor of the state of Rio de Janeiro, after reelection in 2022.

Currently, as a result of ADPF 635, police actions in poor communities are limited depending on judicial authorization. Other measures were adopted in order to reduce police lethality, such as the adoption of body cameras on security agents during operations; installation of GPS and audio and video recording equipment in vehicles; elaboration of protocols for the use of helicopters, drones, etc.; improve coping and increase the effectiveness of intelligence activities, etc.

2.6 HUMAN RIGHTS VS. PUBLIC SAFETY

Regrettably, the exorbitant levels of violence afflict the country's main urban centers. The conflict



between human rights and public security arises spontaneously in society, one side makes negative evaluations of the criminal public security policy adopted by the State as well as the performance of police agents, the other side condemns human rights groups for defending criminals and supports stricter changes in criminal legislation, especially with increased penalties. Often, after the disclosure of serious crimes that shake society, there are discussions in order to increase repression through the elaboration of more severe criminal legislation. (DELMAS-MARTY, 2014).

Human rights are a collection of minimum and essential benefits for man to live and prosper in society (SERRANO, 2016). This set of privileges has the role of limiting the State, inhibiting arbitrariness, just as it is intended for all people, even those who commit a criminal offense will have their rights protected.

The fundamental social right of public security is provided by the State, a duty exercised through its police agents. They must always act in accordance with the legal system for the preservation of public order and the safety of people and property. It should be stressed that the responsibility for the safety of citizens lies not only with the police, but with the entire population.

Thus, it is noteworthy to affirm that there is no conflict between the two rights, but on the contrary, since they are integrated for the protection of the human being. The conduct of dishonest and inept police officers is influenced by human rights, as they violate the legal system. However, dignified, technically and materially qualified law enforcement agents who act in accordance with the norm do not suffer external interference (NUCCI, 2016).

The application of the principle of human dignity, which is one of the foundations of the Federative Republic of Brazil, in a specific case can generate an absolute or relative character. There will be occasions when both adverse parties will allege as a defense thesis the violation of human dignity, and the intervention of the judiciary will be necessary, which will weigh the rights in collision to reach a decision (BARROSO, 2014).

The national reality reflects an aggressive and authoritarian police action towards the population, especially in relation to the poorest and those excluded from society. Public security institutions, especially in large cities, have several problems such as bribery, lack of adequate equipment, negligible salary amounts, low level of training and others. These adversities facilitate misconduct by police officers, including the use of shady means to investigate crimes (BEZERRA, 2008).

Consulting the data, since 2016, presented on the website of the Public Security Institute (ISP), it is possible to verify a gradual increase in the number of deaths due to interventions by police agents in the state of Rio de Janeiro until the year 2019. In 2020, there was a considerable decrease and in the following two, 2021 and 2022, there was a small increase, as can be seen in the following table.



Table 1: Number of deaths resulting from police action.

Year	Number of deaths
2016	925
2017	1.127
2018	1.534
2019	1.814
	1.244
2020	1.355
	1.329
2021	
2022	
Total	9.328

Source: *Official ISP data.*

In addition, the Network of Security Observatories¹ released data that there was an increase in deaths during police operations between April and May of this year compared to 2019, in the middle of the pandemic, in Rio de Janeiro (REDE). Regrettably, there is an increase in lethality on the part of the state security forces.

Judge Fernando Foch of the 3rd Civil Chamber of the Judiciary of the State of Rio de Janeiro, in the judgment of Civil Appeal 0015288-05.2008.8.19.0001 which dealt with the strict civil liability of the Rio de Janeiro government, reported in his vote that the policy of confrontation, characterized by intense shooting, against members of the drug trade violates the Federal Constitution, essentially, human dignity as well as the rights to life. to the safety and health of residents of the poorest communities (RIO DE JANEIRO, 2018).

It can also consider the existence of marginalisation of residents of the most deprived localities. Some professionals from various sectors of society, since the beginning of the last century, assumed that only dishonest people, women of life and lazy people would live in the 'favelas' (LEITE, 2012). There is a complexity in the fulfillment of the preservation of the guarantees made available to human beings (BOBBIO, 2004).

Analyzing the information above, it is possible to verify that the model of criminal public security policy adopted by the state of Rio de Janeiro presents some evidence of violations of the human rights of socially vulnerable cariocas, reducing them to any commodity.

3 CONCLUSION

The unfolding of the work aimed to provide an effective perception of the concept of public security, presenting the constitutional support and its organization, as well as the participation of society and policies

¹ A group formed by academic institutions and civil society with the aim of monitoring public policies on security and crime in the states of Bahia, Ceará, Pernambuco, Rio de Janeiro and São Paulo.



aimed at the protection of citizens. In addition, it can highlight a supposed contention between human rights and the fundamental social right of public security.

The content covered is very current since, in recent years, there has been an increase in the rates of violence and lethality of police action in the state of Rio de Janeiro. It is necessary to implement effective measures aimed at the safety of all cariocas, not putting at risk innocent people who reside in humble areas.

In view of the above, it is evident that some police officers have disrespected the rights of some residents in poor communities, who are not involved in crime. The former are equated with an object or a thing, unimportant that they can be victims of the State itself acting with excesses and abuses, instead of effecting the well-being of the entire population.

Thus, the State, due to its omissive or excessive behavior, is unable to enforce rights enshrined internationally through treaties ratified or adhered to by the country and nationally with affirmation in the national legal system. Finally, in relation to the questioning presented at the beginning of the work, unfortunately, in the state of Rio de Janeiro, the objectification of residents in the most vulnerable locations of the Marvelous City occurs during police operations.



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