

THE EMPLOYMENT OF  
ARMED FORCES  
IN OPERATIONS  
WARRANTY OF  
LAW AND ORDER  
IN THE STATE OF  
RIO DE JANEIRO:  
ASPECT  
LEGAL FACE  
ART 16-A CPPM.

THE USE OF THE  
ARMED FORCES IN  
LAW AND ORDER  
GUARANTEE AND  
OPERATIONS IN  
THE STATE OF RIO  
DE JANEIRO:  
LEGAL ASPECT  
UNDER ART 16-A  
CPPM.

PEREIRA, Luiz Fernando de  
Campos [1]

[1] Law - Faculty of Law Santo  
André - FADISA.

## SUMMARY

This work deals with the use of the Armed Forces in Law and Order Guarantee Operations and a discussion on article 142 of the Constitution of the Federative Republic of Brazil. Complementary Law nº 97, of June 9, 1999. This theme is extremely relevant in the legal and factual scenario, as, in addition to being a matter of preserving and promoting public safety in several facets, it is also a form of human and property protection collective, bearing in mind that the use of the Armed Forces includes the defense of the homeland, guarantee of constitutional powers, guarantee of compliance with law and order and national security. The objectives of this work are: to present the importance and relevance of the Armed Forces for the community; analyze article 124 of the Federal Constitution; demonstrate the situation of the state of Rio de Janeiro regarding public security. In this context, a problem was necessary that raised the following questions: Knowing that the guarantee of law and public order is fundamental for collective protection, how and when can Brazilian states enlist the support of the Armed Forces? What changed with the implementation of article 16-A of the Military Criminal Procedural Code? Thus, through a bibliographic review using analytical methods and data collection using the qualitative method, it was possible to present the Armed Forces, the constitutional mission carried out by them, presentation of concepts, demonstration of the applicability of federal intervention in the state of Rio. de Janeiro and the jurisdiction of the Military Justice following the insertion of article 16-A of the Military Criminal Procedural Code.

**Key words:** Security. Police. Society. Legality. Guarantee of Law and Order

## ABSTRACT

The present work deals with the employment of the Armed Forces in Law-and-Order Guarantee Operations, a discussion on Article 142. This topic is extremely relevant in the legal and factual

scenario, because, in addition to being a matter of preservation and promotion of public security in various facets, it is also a form of collective human and patrimonial protection, considering that the use of the Armed Forces comprises: the defense of the country, guarantee of constitutional powers, guarantee of compliance with law and order and national security. The objectives of this paper are: to present the importance and relevance of the Armed Forces to the community; analyze article 124 of the Federal Constitution; demonstrates the situation of the state of Rio de Janeiro with regard to public security. In that pitch, a problem was necessary that raised the following questions: Knowing that the guarantee of law and public order is fundamental for collective protection, how and when Brazilian states can elicit the support of the Armed Forces? What has changed with the implementation of Article 16-A of the Military Penal Code? Thus, through a bibliographic review using analytical methods and data collection using the qualitative method, it was possible to present to the Armed Forces, the constitutional mission performed by them, presentation of concepts, demonstration of the applicability of federal intervention in the state of Rio de Janeiro and the jurisdiction of the Military Justice after the insertion of article 16-A of the CPPM.

**Keywords:** Security. Police; Society. Legality. GLO.

## 1. INTRODUCTION

Studying the use of the Armed Forces in Law and Order Guarantee Operations and promoting a discussion on article 142 of the Federal Constitution, Complementary Law nº 97, of June 9, 1999, comprises a series of aspects and themes relevant to both the Law and for society. This is because there is a need for urban organization, especially in communities where the lack of state sovereignty leads to the dominance of factions and the promotion of chaos.

In this sense, the objectives of the work sought to present a relevant study of legal and social importance, so the objectives of the work were: to present the importance and relevance of the Armed Forces for the community; analyze article 124 of the Federal Constitution, which deals with the competence Military Justice; demonstrate the situation of the state of Rio de Janeiro regarding public security. Thus, through these it was possible to understand the importance of institutes such as: federal intervention provided for in article 34 of the Federal Constitution, Armed Forces, field operations, need to promote public security.

Studying a topic that involves public security and intervention by police forces is relevant because from it it is possible to address the urban organization of Communities, highlight the role of Law and Order Guarantee operations and present the main role played by Armed Forces in the National Territory. All these aspects are relevant in the

sense of presentation and understanding of the partnership that must be established between the Federal Union and the member states.

The following questions were raised to prepare this research: Knowing that the guarantee of law and public order is fundamental for collective protection but its activation must occur in cases of extreme need, how and when can Brazilian states enlist the support of the Armed Forces? What changed with the implementation of article 16-A of the Military Criminal Procedural Code?

Thus, the emergence of the Armed Forces was linked to the need for public security from the beginning and the importance of military organizations for consolidating the structure of the Armed Forces.

Constitutional provisions and classifications relevant to social rights, the provision of public security, analysis of the importance of public service, above all, the need for territorial and citizen protection promoted by the Armed Forces, are presented, in addition to addressing public security and urban organization, This is because one of the main places where there is no effectiveness of work related to public security is in communities and outskirts, places that suffer from effective public security, causing the need for state intervention.

The concept of federal intervention is discussed, as well as a brief analysis of the growth of crimes in communities in order to present the need for urban organization in communities as a way of promoting public safety. Finally, there is a presentation of article 16-A of the Military Criminal Procedural Code, which brought a circumstantial change in the performance of military justice in matters involving the guarantee of law and order.

Thus, the actions of the Armed Forces can be understood comprehensively from the points presented, playing a Constitutional role in protecting the Homeland, being of great legal and social relevance, where all police officers play an important role within their powers for the collective as provided for in article 144 of the Federal Constitution, in which the on-screen analysis was carried out, fundamental for professional and academic enrichment on the topic studied.

## 2 THEORETICAL FOUNDATION

### 2.1 ARMED FORCES

The emergence of the Armed Forces is based on a historical context that does not occur voluntarily by the state, but rather through a need to maintain public order through compliance with the Law since the time of colonization of Brazil, where the already existing Navy Portuguese, using their Armed Forces, were mainly responsible for organizing a new system of society that would be implemented by Portugal in Brazil.

When seeking to understand the legal history of the Armed Forces, their de facto existence stands out as maintainers of public order since imperial periods. In 1824, despite the existence of a Political Constitution of the Empire, composed of 179 articles, the terms Armed Forces were not used clearly, but mention was made of the imperial guards. On the other hand, only terminologies such as Commanders of the Land and Sea Force, in article 102 of this Constituent Assembly, who had the obligation to serve their nation (MATHIAS, GUZZI, 2009, p. 45).

In this aspect, the role of the Armed Forces is demonstrated throughout history, bearing in mind that in each period, the guard, politics and militancy were responsible for ensuring the quality of life and application of legal norms, taking into account the predominant political regime. What is currently happening through the connection between the armed forces and the State is no different.

The actions of the Armed Forces occur in an integrated manner by military personnel, this is because the military system is made up of several rules and principles, including hierarchy, discipline, respect and faithful attitudes towards their command, civility, such as respect and participation active in activities concerning the National Pavilion.

It is worth highlighting the existence of these principles in national civil standards, above all, the importance of this theme and its action. However, within the Armed Forces there is a hierarchical distribution based on the academic period, also consistent with the achievements and conduct of these members called military personnel of the country, and they still have ranks in the military field, as their military activities are distributed and respect above all the hierarchy. In this sense, when dealing with military activity it is necessary to evoke the notion of

that there are activities and agents in the most diverse categories, some subordinates and other subordinates, which must be properly staggered, following the regulations in a rigid vertical structure. It should be noted that the foundations applied to society are different from those applied to the military, as “[...] civil society is founded on freedom, military society is founded on obedience” (MATHIAS; GUZZI, 2009). It should be noted that those who are part of the Armed Forces are subjected to various circumstances to which a common citizen is not subject, where the risk of losing one's life is a demonstration of the existence of a sacrifice for the benefit of the Fatherland and the honor of serving. , that is, even if the Armed Forces member's own life is at risk, serving the country becomes something greater.

The work and responsibility of the Armed Forces demands a lot from its members, in which the Federal Constitution of 1998 provides several responsibilities to these agents in order to observe the most important thing, which is the defense of the homeland.

It is worth highlighting the art. 5th, XLVII of the Federal Constitution, which provides for the possibility of death in cases of declared war, see how the profession has risks. The risk of death, and the responsibility for killing in extreme cases, in police clashes must be taken into consideration, hence the importance of carrying out quality training and respecting positive standards regarding the Armed Forces.

The State of Defense must be decreed by the President of the Republic, after hearing the Council of the Republic and the National Defense Council, in addition to being approved by the National Congress, to preserve or promptly reestablish, in restricted and determined locations, public order or peace social situation threatened by serious and imminent institutional instability or affected by major natural calamities (NASCIMENTO, 2017, p. 49).

The duration of the state of defense is 30 days and can only be extended for the same period and only once. Unlike what happens in the State of Siege, its authorization depends on the authorization of the National Congress and the presidential decree, as long as the Council of the Republic and the National Defense Council are heard, this occurs in cases where there is a great commotion with repercussions. national.

A State of Siege may also be declared in cases of declaration of a State of War or response to foreign armed aggression, lasting as long as the war or foreign armed aggression continues. Federal Intervention, in turn, is an exceptional measure, that is, the Union will not intervene in the States or the Federal District, except to, among other hypotheses, repel invasion of one unit of the Federation in another, put an end to serious compromise of public order, or even guarantee the free exercise of any of the Powers in the units of the Federation (NASCIMENTO, 2017, p. 59)

Thus, the decree of the State of Siege is a measure of extreme urgency, and must be understood both in its role in maintaining the organization of the state and in protecting its citizens. Despite the severity of the measures, social peace and physical and national integrity are sought, considering the importance of the work carried out by the Armed Forces, not only for maintaining social peace, but for the balance of society.

The exercise of this profession is related to periods of calamity or war, however, most of the work carried out by the Armed Forces occurs in times of peace, whether for the maintenance of the civil organization or in the economic sense, and mainly in promoting the protection of interests national.

## 2.2 PUBLIC SECURITY AND URBAN ORGANIZATION

The prioritization of public security is a topic that has been debated over time, precisely because it is about preserving Brazilian society itself, having and providing good coexistence between members of society, being an essential function of the state, in which the Federal Constitution provides, in addition to other rights and guarantees, the issue of public security (CARVALHO; SILVA, 2011).

In this aspect, the State becomes responsible for the society occupying its territory, as well as for the organization of society through the legal system. Within the social organization, several factors need to be evaluated, among them the issue of education, health, public safety, A healthy society with a good quality of life needs protection and social cohesion mechanisms in order to be able to move around without any other problems.

Therefore, in order for a state figure to exist and be maintained, it is essential that the community exercises political power, that is, that society expresses itself through an organization, be it parliamentary, republican, socialist, in this aspect the current Constitutional Magna Carta of Brazil has democratic republican aspects<sup>1</sup>. In this sense, the Federal Constitution of 1988 (BRASIL, 1988) is considered the Magna Carta, that is, the guiding document for social relations established in society, in it we have several provisions regarding duties, guarantees, procedures, processes, it is a document in which are located

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<sup>1</sup>"the State comes into existence from the moment the people, aware of their nationality, organize themselves politically". SILVA, Lino Martins da. Government accounting: an administrative approach. 7. ed. São Paulo: Atlas, 2004.

the maximum and inviolable guidelines, which in fact organize the state entity, the provision of article 1 of the Federal Constitution stands out<sup>two</sup>. When analyzing the Brazilian guarantor perspective, the democratic distribution of law and the foundations of our constitution perceived a concern with the well-being of society in general, this is because with the preservation of sovereignty, citizenship and human dignity we were able to understand that the State seeks to preserve an organized society, with access to rights. With regard to article 1 of the 1988 Federal Constitution (BRASIL, 1988), Kohama (2008, p. 27), demonstrates that:

[...] the Union constitutes a person of internal public law, autonomous in relation to the States, with the mission of exercising the prerogatives of the sovereignty of the Brazilian State, as it is configured as a federal entity resulting from the meeting of Member States, Municipalities and of the Federal District. Consequently, the Member States are federative entities that make up the Union, endowed with autonomy and also constitute persons governed by internal public law.

Security becomes a fundamental right that must be offered to the community, so the State has the following basic purposes: "security, with the objective of maintaining political, economic and social order; and development, with the objective of promoting the common good" (SILVA, 2004, p. 21). In order to fulfill the purposes mentioned by the author in which the State performs multiple functions<sup>3</sup>. And these functions must be performed by public agents, each within their respective activities, because each body is responsible for executing a certain service.

The city is an essential set for the organization of today's society, in addition to buildings, assets, groups, relationships between individuals, social movements, social conflicts, among other characteristics that make it important for human development. In this sense, the figure of a place that must fulfill its social function of allowing the survival of a society, whether organized or not, must be highlighted in the foreground, respecting the sense of community and supporting the transformations that occur with evolution. of society and its most diverse social levels.

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<sup>two</sup>Art. 1st. The Federative Republic of Brazil, formed by the indissoluble union of States and Municipalities and the Federal District, constitutes a Democratic State of Law and its foundations are: I – sovereignty; II – citizenship; III – the dignity of the human person; IV – the social values of work and free enterprise; V – political pluralism. Single paragraph. All power emanates from the people, who exercise it through elected representatives or directly, under the terms of this Constitution. Federal Constitution of 1988.

<sup>3</sup>The State has the function of establishing and promoting a legal order (normative, ordering or legislative function); to comply with and enforce the rules specific to this order, resolving conflicts of interest (disciplinary or jurisdictional function); that of complying with this order, managing collective interests, managing public assets and meeting general needs (executive or administrative function).

The historical spatial segregation, which corresponds to a kind of ecology of social inequality, favored this aspect of international trafficking, related to retail trade for final consumption, having one of its channels concentrated in favelas, among other "peripheries". This redefined the public image of these territories and profoundly affected the collective understanding of their place in urban organization (VALLADARES, 2005, p. 45).

On the other hand, the inevitable urban violence that results from this organization causes the peaceful population to experience a feeling of insecurity, which in the second article demonstrated one of the main mechanisms used to combat violence, the repression brought by the UPP's (Pacifying Police Units in the State of Rio de Janeiro). Janeiro), which aims to reinforce security.

In this sense, it is possible to understand that both problems presented are issues that have similarities, such as, for example, the need for a more complex and refined form of civilization, but it is known that since the beginning, attempts at a civilized organization have been frustrated. due to the inappropriate or illicit conduct of individuals depending on the period.

The measures adopted in the Communities of Rio de Janeiro as a form of control, security and repression have stood out, as they are consequences of changes brought first by the Federal Forces, later passed on to the Army as in the case of Favela da Maré.

The effects on the issue of public security, as is easy to understand, are explosive. Before anything else, however, it is necessary to consider that, although it affects the entire population, they are not homogeneous. In territories of poverty, there is an inescapable spatial contiguity with "violent sociability", generating critical living conditions for the resident population. The wealthy classes have more resources (material and symbolic) to support themselves, in addition to already living in regions physically and socially further away from the "carriers" of "violent sociability". In the research that the group I coordinate is currently carrying out, we began to explore the idea of a "fortress sociability", suggested by Luis Fridman based on the well-known book by Caldeira (2000) about condominiums in São Paulo: it would be a reactive response, one of the possible variants of the grammar of *urban violence* (SILVA, 2010, p. 56).

Thus, as we have the problem surrounding the city, which despite being made up of a set of goods and inhabitants, for some it has such an important intrinsic value that the individual feels welcomed by the environment and is unable or unwilling to change it. if. In this context, we have the issue of community residents. They are said to be "community residents", as they live in places where the Armed Forces are constantly arriving and altering the social relations of these environments. Somehow the violence



brought about by this clash demonstrates that this process needs to be analyzed. For Isaac Asimov "Violence is the last refuge of the incompetent" (ASINOV, 2002, p 200).

Given this statement, we have an important question: how can the public administration, through its agents, combat the wave of violence in the Communities without using it? This question becomes similar to that raised in the context of the city where what makes and unmakes the permanent city? Both questions have answers that lead us to reflection from a philosophical, personal and intrinsic perspective of each individual. Therefore, there is a need to combat violence and for some the answer will be "an eye for an eye, a tooth for a tooth", for others when allowing citizens to be affected by this violence is unacceptable. Still for some, the city demonstrates the evolution of political processes that drive its existence, and for others it is just a real object necessary for human survival, which undergoes transformations that will later make it disappear.

Public security continues to be a complex issue, and despite the propaganda of its actions, a negative common sense has been created, as it does not correspond to the primary objective of designating UPP's to combat violence, where without their existence, urban coexistence would not be possible. .

In this way, the growth of the police force and the accelerated development of cities give citizens a feeling of fear and uncertainty, which have no immediate remedy. Only with the evolution of society and consequently of cities, with quality education, and adequate policing will we have a more sociable and even hostile society.

### 2.3 FEDERAL INTERVENTION

The Federal Constitution of 1988, which is responsible for disciplinary matters relating to intervention, is set out in articles 34 to 36<sup>4</sup>of the Magna Carta. The three articles

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<sup>4</sup>CHAPTER VI INTERVENTION Art. 34. The Union will not intervene in the States or the Federal District, except to: I - maintain national integrity; II - repel foreign invasion or invasion from one unit of the Federation into another; III - put an end to serious impairment of public order; IV - guarantee the free exercise of any of the Powers in the Federation units; V - reorganize the finances of the Federation unit that: a) suspends payment of the debt founded for more than two consecutive years, except for reasons of force majeure; b) fail to deliver tax revenues established in this Constitution to the Municipalities, within the deadlines established by law; VI - provide for the execution of federal law, order or court decision; VII - ensure compliance with the following constitutional principles: a) republican form, representative system and democratic regime; b) human rights; c) municipal autonomy; d) accountability of public administration, direct and indirect. e) application of the minimum required from the revenue resulting from state taxes, including that arising from transfers, in the maintenance

are able to present situations in which an intervention by the state figure in the civil organization is necessary, as long as there is a risk to the community or disrespect for the norm, finances, public assets, as the search for ensuring constitutional rights is a constant concern in the constitutional charter.

According to Cecilia de Almeida Silva (2006, p. 2) "Federal intervention is an institute foreseen in the scheme agreed on from federalism, of American origin, and constitutes an extreme measure for specific situations of major crisis", that is, directly linked the defense of the State, directly affecting the federative pact, given that there is an administrative organization and separation of powers and their respective functions, thus making federal intervention a mechanism that allows the interventional action of a power to the detriment from the other.

In this sense, from the reading of article 34 of the Federal Constitution it appears that "The Union will not intervene in the States or in the Federal District, **except for**" (BRASIL, 1988). It is possible to identify that the rule is non-intervention, since the exception within the constitutional charter serves to present an exhaustive list (as occurs in this legal provision), that is, intervention is considered as an exceptional measure, which can only be applied in cases specifically described in the constitutional order.

In these circumstances, there are risks to the integrity of the Federation, public order and morals, national security and compliance with the Constitution. Therefore, the Constitution authorizes the Union to act on behalf of the entire Federation and to intervene in the administrative management of

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and development of teaching and public health actions and services. Art. 35. The State will not intervene in its Municipalities, nor will the Union in the Municipalities located in Federal Territory, except when: I - the established debt fails to be paid, without reasons of force majeure, for two consecutive years; II - due accounts are not provided, in accordance with the law; III - the minimum required amount of municipal revenue has not been applied to the maintenance and development of education and public health actions and services; IV - the Court of Justice grants representation to ensure compliance with principles indicated in the State Constitution, or to provide for the execution of law, order or judicial decision. Art. 36. The decree of intervention will depend on: I - in the case of art. 34, IV, request from the coerced or prevented Legislative Branch or Executive Branch, or request from the Federal Supreme Court, if the coercion is exercised against the Judiciary Branch; II - in the case of disobedience to a court order or decision, request from the Federal Supreme Court, the Superior Court of Justice or the Superior Electoral Court; III - provision, by the Federal Supreme Court, of representation of the Attorney General of the Republic, in the hypothesis of art. 34, VII, and in the case of refusal to execute federal law. § 1 The intervention decree, which will specify the scope, term and conditions of execution and which, if applicable, will appoint the intervener, will be submitted for consideration by the National Congress or the State Legislative Assembly, within twenty-four hours. § 2 If the National Congress or the Legislative Assembly is not functioning, an extraordinary call will be made within the same twenty-four hour period. § 3º In the cases of art. 34, VI and VII, or art. 35, IV, without the need for consideration by the National Congress or the Legislative Assembly, the decree will be limited to suspending the execution of the contested act, if this measure is sufficient to restore normality. § 4 Once the reasons for the intervention have ceased, the authorities removed from their positions will return to them, unless legally prevented. Federal Constitution of 1988.

member states or the Federal District under any of the previous exceptions. In this vein, the requirements for the intervention act are presented, which according to Silva (2006, p. 4) can be divided between material and formal assumptions.

In the material assumptions, it is possible to see that the Constitution gives the Union the power to interfere in the administrative power of the member states and temporarily extinguishes their autonomy, thus limiting the possibility of interfering in the circumstances stipulated in its own text. These facts prove the rationality of the intervention and constitute the material basis for your request for intervention. Thus, items I to IV of article 34 of the Federal Constitution define the material assumptions for the occurrence of federal intervention.

On the other hand, the formal assumptions are demarcated by the existence of specific facts that can justify the intervention, the Constitution stipulates that it is necessary to comply with certain formal rules to guarantee the validity of the decree. These requirements are provided by article 36 of the Federal Constitution, which in its §1º stipulates that the intervention will be carried out in accordance with the decree of the President of the Republic and establishes the scope, deadline and conditions of its execution.

The National Assembly must deliberate on the intervention decree within 24 hours (SANTOS, 2009), and if the decree is on vacation, it will be called especially during the same period (SILVA, 2006, p. 5).

With the provision of the four sections of article 36 of the Federal Constitution, it is possible to understand that there are formal and material assumptions, as the primary purpose of this intervention will be to promote the guarantee of collective rights, application of law and order, and, above all, promotion of national public security.

It is important to mention that the use of federal intervention vehemently seeks to consolidate a standard of public security, as the cases in which it can be applied are directly linked to the lack of security, organization, order and disrespect for social and social rights. , especially collectives.

Another important aspect to highlight is the effects of a federal intervention, which may be different, depending on the reasons for the decree. If the intervention is motivated by non-compliance with federal laws, orders or judicial decisions, or by non-compliance with constitutional principles, the decree is limited to suspending the execution of the controversial act (article 36). That is, those who violate federal laws, court orders or violate constitutional principles. In this case, the presence of interventionists is also eliminated

federal government, with no need to remove the governor or the legislature. If the decree involves the executive power of the member states, the governor must be temporarily removed and then the governor must be replaced by a previously appointed intervenor. If it goes to the legislature, the deputy will be removed and his functions will be transferred to the governor, who will also exercise the state's legislative functions.

Once it is proven that the intervention order is justified and suspended, the abolished authority will resume its normal functions, unless it is legally prohibited from doing so (article 36, paragraph 4). However, the main effect of implementing the intervention measures was the temporary abolition of national autonomy, which was confirmed in the principles of self-organization, autonomy and legislation, with the federal union intervening in the administration of one of the member states or municipalities.

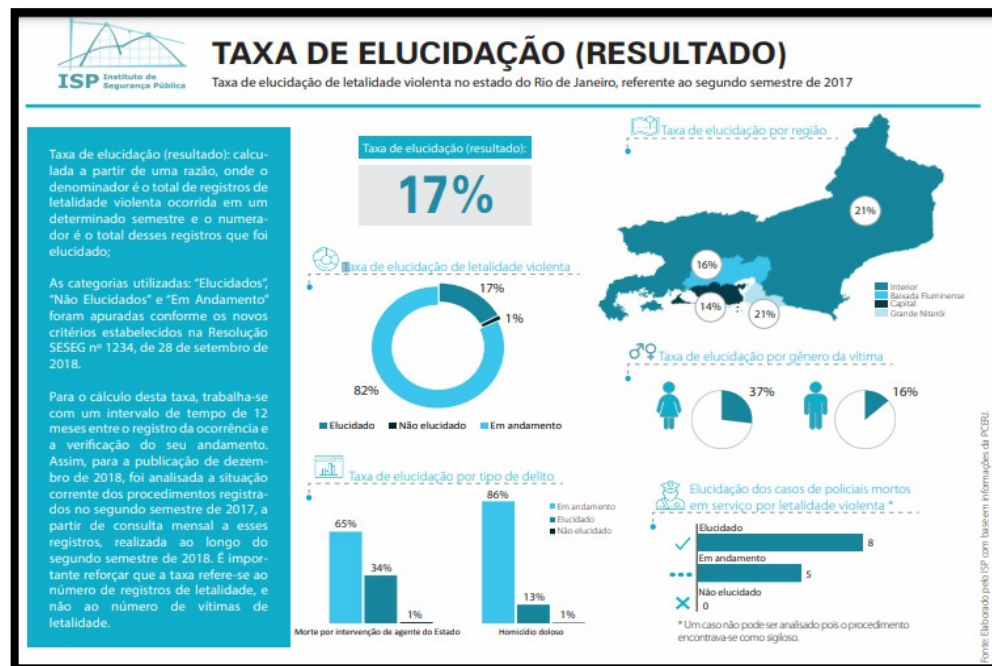
Thus, understanding that federal intervention is a mechanism for promoting social peace, we seek to present data regarding crime in the state of Rio de Janeiro before, during and after the establishment of a federal intervention. As is known, intervention requires the promulgation of a decree, the last decree related to the State of Rio de Janeiro was promulgated under no. 9,288 on February 16, 2018, valid until December 31, 2018.

Occasion in which public security ceased to be the responsibility of the then governor of the state and became the responsibility of Intervenor and General of the Army Walter Souza Braga Netto, responding directly for all public security bodies in the state, being subordinate only to the President of the Republic, failing to respond to state regulations, as well as being free to carry out actions that fulfilled the objective of the federal intervention "to put an end to the serious compromise of public order in the State of Rio de Janeiro" (2018).<sup>5</sup>In this sense, below are the comparative data:

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<sup>5</sup>DECREE No. 9,288, OF FEBRUARY 16, 2018 Decrees federal intervention in the State of Rio de Janeiro with the aim of putting an end to the serious compromise of public order. (Revoked by Decree No. 9,917, of 2019) THE PRESIDENT OF THE REPUBLIC, in the use of the attribution conferred on him by art. 84, caput, item the provisions of Chapter III of Title V of the Constitution and Title V of the Constitution of the State of Rio de Janeiro. § 2 The objective of the intervention is to put an end to the serious compromise of public order in the state of Rio de Janeiro. Art. 2 Army General Walter Souza Braga Netto is appointed to the position of Intervenor.

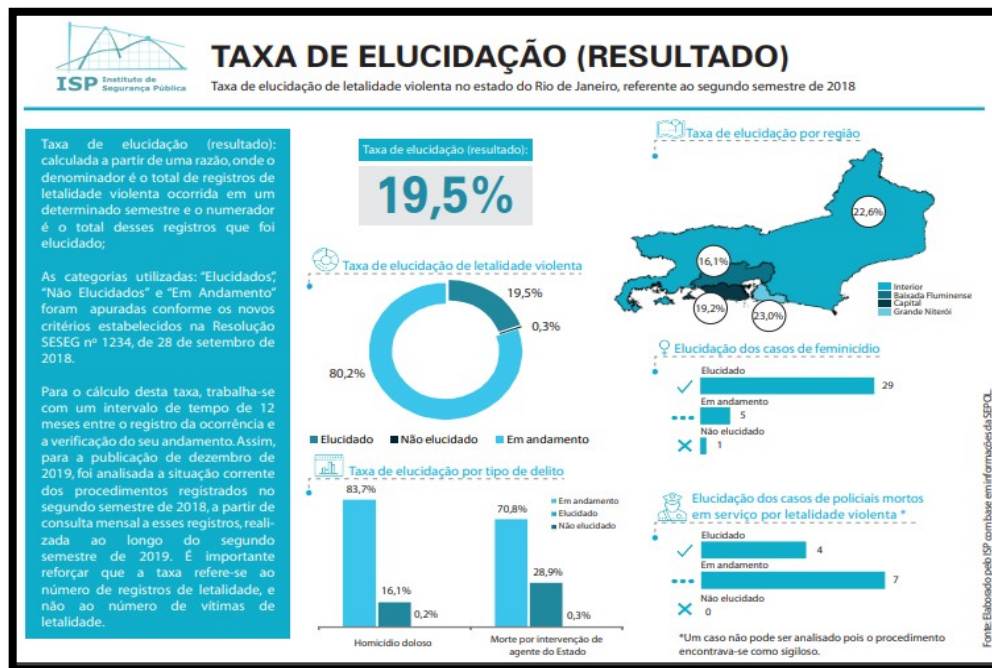
Figure 01: Case Elucidation Rate in 2017 in Rio de Janeiro



Source: Public Security Institute of Rio de Janeiro (2018) PUBLIC SECURITY INSTITUTE:  
Avenida Presidente Vargas, nº 817 - 16th floor - Center CEP: 20.071-004 - Rio de Janeiro/RJ. Head of Cabinet - 2332-9709 / Social Communication 2332-9690 / Community Safety Councils - CCS - 2332-9648 / 9693.

The data presented in the figure above demonstrate a rate of elucidation of cases involving lethal deaths in the State of Rio de Janeiro, concerning the period of 2017, a year in which the federal intervention decree had not yet been promulgated and came into effect. When analyzing the data presented, it is possible to see from the 17% rate that the violence expressed in the state was not resolved effectively, and that this slowness contributes to the increase and maintenance of violence rates.

Figure 02: Case elucidation rate in 2018 in the State of Rio de Janeiro.



(Source: Public Security Institute of Rio de Janeiro (2018) PUBLIC SECURITY INSTITUTE: Avenida Presidente Vargas, nº 817 - 16th floor - Center CEP: 20.071-004 - Rio de Janeiro/RJ. Head of Cabinet - 2332-9709 / Social Communication 2332-9690 / Community Safety Councils - CCS - 2332-9648 / 9693

After understanding the need to promote effectiveness both with regard to the investigative process and elucidation of crimes, as well as the need to reinforce and promote public security, so that order and law were complied with, during the period of investigation by the Public Security Institute of Rio de Janeiro, it was possible to see a 2.5% increase in the elucidation of intentional crimes against life with and without state intervention, as well as the investigation of the deaths of public agents on duty due to violent lethality.

In this sense, the effectiveness of the federal intervention in terms of the elucidating process was noticeable, with regard to the 2019 data, the institute has not yet published it.

6The Institute of Public Security, in accordance with the responsibilities provided for in Decree No. 36,872, of December 17, 2005, publishes, every six months, the consolidated table of the results of the investigative work of the State Secretariat of Civil Police (Sepol) of Rio de Janeiro, in procedures whose objects are the investigation of crimes that make up the "violent lethality" indicator (intentional homicide, death by intervention of a State agent, robbery followed by death and bodily injury followed by death). Public Security Institute of Rio de Janeiro (2018)

### 2.3.1 The growth of crimes in communities

A community was initially associated with different types of Brazilian plants. Over time, it acquired another meaning, starting to represent groups of urban households located in very precarious territories and with a peculiar history. It can also be understood as a response given the social and economic practices of the time, with the observation that the vast majority of people residing in the communities are from the lower or lower middle class.

In addition to the names, they also have physical similarities, since the structure in which the residences are located in the favela resembles the physical form of the plant from which its name derives. For Cruz (1941) the Communities are directly related to the Canudos War as described in the paragraph below.

The favela's toponymy is linked to the so-called "Canudos war". The fighting in the Bay had ended. The troops that had fought and extinguished Antônio Conselheiro's fanaticism returned. Many single soldiers came accompanied by "cabrochas". They wanted to see the Court. These soldiers had to find housing. They went to the old hill of S. Diogo and, there, set up their home. The "cabrochas" were native to a mountain called Favela, in the municipality of Monte Santo, in that State. They talked a lot, always about their Bay, their hill. And then there was the Favela in the lands of Rio. The barracks appeared, one by one. First, in Providência, a hill where a large population already lived; then, he went up, turned to the other side, towards Livramento. The Favela was born (CRUZ, 1941, p. 102).

With the frightening growth of housing in communities, great debates began to emerge regarding the structural issue of housing and the conditions offered by them, as there was no paving or sanitation in a large part of the communities, as they were built irregularly and with the appearance of of new homes every day. This made it even more difficult for the government to have greater control over the exact number of families that were living in the communities.

As the years go by, communities in the states grow in an admirable way even for those in power, demanding some political stance on housing conditions, public health and, above all, people's safety, taking into account given that a large part of the communities have turned into hills completely subject to fires (occurring due to clandestine electrical installation) or even landslides (due to the large volume of rain in certain seasons). Because of this fact, the state began to pay greater attention to citizens who lived in

communities, implemented some health posts to ensure a major epidemic or even the contraction of new diseases related to the environment in which they are located.

Due to the great difficulty of getting a job, more precisely due to the great demand for people, certain cases of crimes committed by people living in the communities began to occur, these crimes became more frequent, ranging from petty theft to even drug trafficking. The latter has gained prominence over the years, currently becoming the country's greatest public security challenge. With each passing day the number of crimes committed in or associated with communities is increasing, this is due to the difficulty of locating certain people within them, not only due to the difficult location of the communities but also because people living in certain communities do not report or cooperate with public authorities.<sup>7</sup>

This current conflict can be pointed out as a response to government actions taken against the poor during the 19th century, where they gradually created a separate state within the state of Rio de Janeiro, with houses, markets, an electricity system, telephone services, among others, regardless of state permission. These are no longer just structural problems, as they can be alleviated, they are a serious social and economic problem, which every day becomes even more complex to resolve (CARVALHO; SILVA, 2011).

Currently crime is the subtitle given to communities, for many in the community environment there are no other people other than criminals or people who are associated with them. However, the truth is that because it is an open environment, where everyone can come and

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<sup>7</sup>In yet another situational analysis of the municipality based on the study "Rio in perspective: a diagnosis of public choices", the FGV Public Policy Analysis Department updates the scenario of the Rio job market, based on recently released data from the National Household Sample Survey (Pnad) ongoing from the first quarter of 2017. Three years ago, unemployment in the municipality was around 4% of the economically active population. At the end of 2016, the situation was completely different, with 10.4% of the population unemployed. Reflecting the general behavior of the country's labor market in recent months, unemployment in the city of Rio de Janeiro reached 11.4% of the economically active population in the first quarter of 2017. It is the highest unemployment rate that the IBGE surveyed for the municipality since 2012, when Pnad began to be published using a new research methodology. Rates in the metropolitan region and the state remain at a significantly higher level, above 14% unemployment, exceeding the national figure (13.7%). Although lower, unemployment in the municipality is beginning to approach the national level. This picture is very different from mid-2015, when unemployment in the municipality reached half the national level and continued to fall for longer — six months — while unemployment rose in the country, in the state and in the metropolitan region. In the first quarter of 2017, there were a total of 382 thousand unemployed people, triple what was estimated in the second quarter of 2015, revealing the accelerated pace of deterioration in employment in the municipality in the last two years. Compared to the analysis carried out previously, there is an increase of 37 thousand unemployed people in the municipality. Available at: <http://dapp.fgv.br/o-rio-em-perspectiva-desemprego-ainda-crescente/>. FGV. 2018.



building their homes in communities had no way of opposing the criminals who over time came to dominate them. As in the beginning the government and public bodies did not care about them, criminals began to see communities as an opportunity to carry out their actions without being disturbed, there are cases in which criminals helped to structurally develop communities so they could carry out their activities. criminals in places that are difficult for public authorities to see or access in terms of public safety.<sup>8</sup>

Only when there was no longer any opportunity or way to contain the growth of communities and the criminal practices that occurred in them, did governments and public bodies start to worry about taking action. This late action cost and still costs the lives of many innocent people, since due to the territory occupied by communities it becomes almost impossible to have precise control of where a certain criminal is located and whether he still resides in such communities or not. Another frequently reported point is the geographical issue of the communities, with most of them having several alleys, which makes it impossible for military powers to travel by car.

In recent years, the number of confrontations between military personnel and criminals has increased, as has the number of victims due to the high rate of crimes committed in the state. To a large extent, these crimes are associated with communities or their residents, however we can point to this rate as something sown by the government itself and its late practices. It is up to the public authorities as well as governments to act quickly when a certain problem is identified, mainly social, as this is why crime in Rio de Janeiro became a social problem. Reaching a large part of the population residing in the state and leading Brazilians in general to question our country's military competence (CARVALHO, SILVA, 2011).

There are numerous complaints about the government and the measures adopted by it to prevent the community process from becoming increasingly larger, but for such a process to be inhibited or even combated, those in power needed more specific information on some points related to communities and its weaknesses. Only after becoming aware of this information, governments could take actions to combat or even reduce the disproportionate growth of communities within the

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<sup>8</sup>FGV. Getúlio Vargas Foundation. Rio in perspective: unemployment still rising. 2018. Available at: <http://dapp.fgv.br/o-rio-em-perspectiva-desemprego-ainda-crescente/>. Accessed on November 19th. 2020.

state (CARVALHO, SILVA, 2011). This is how the Census of communities emerged, being described by many as a way for the state government to obtain certain information from community residents without having to wait for the IBGE body.

Initially, the census was created to provide general views regarding the location, extent and number of inhabitants of the communities located in the state of Rio de Janeiro. It can be seen as a very useful tool to this day, as it transmits to political, military and economic representatives the real situation of the communities and people who live there.

By obtaining more specific information about certain communities, governments were able to carry out some actions, such as checking in which communities criminal actions were more constant, in which communities they could implement certain practices to help citizens residing there. In addition to providing an overview of how its growth was occurring and the main needs that the state needed to meet to prevent such growth from putting the state's situation at risk or in any way generating political and social discomfort.

Many of the tactics carried out by the police or army to combat drug trafficking within communities were organized by obtaining data, thus preventing the action to combat drug trafficking from affecting working citizens or even families who are not involved in such criminal actions.

Of course, information alone is not an efficient way of carrying out processes of combating or retaining communities. A deep analysis and study of everything that is presented as information is necessary, so that only then can the government or other bodies practice the which they consider to be the best solutions.

It must be emphasized that within communities there are good people, who often feel worthless, without help to improve their lives, and it is up to governments to think when carrying out the desired military practices. Criminals are infiltrated among citizens and need to be identified and arrested, but what we have constantly seen are the deaths of innocent people and a total lack of preparation on the part of the source organizing the military actions (REZENDE, 2009).

Crime in the state of Rio de Janeiro will only be contained in the communities when the same social and economic conditions are provided for all people, regardless of their family name or even the monetary value they have.

have. When equality is provided by the government, people who today live in houses at the top of the hill can have the necessary conditions to own a good house, within the standards necessary for their comfort, they no longer live in communities.

Seeking to apply security procedures, some states, such as Rio de Janeiro, used the Armed Forces to combat the main crime hotspots in the state, since the military power of the police was unable to meet the state's security needs. Over the years, it has become very common to use certain groups of the Armed Forces in regions with high crime rates, with governments seeking to provide all possible resources so that crime cases can be reduced or dealt with efficiently.

In some cases, the use of the Armed Forces in the field aims to generate greater stability in the security procedures applied within the state or region, mainly aiming to give citizens a feeling that all possible and applicable procedures on the part of those in power are being applied so that they have their security established.

It is worth mentioning that for the Armed Forces to act together with state military troops, governments need to present some documentation and obey certain procedures established by the Armed Forces regiments (SILVA, 2006, p. 2).

It can be seen in this way that the Armed Forces have become an important ally in a dangerous way in the fight against urban crime, especially because this is not part of public security, but of national defense, seeking to provide assistance to internal sources of security problems. , on many occasions it was used as a way to minimize the high numbers of crimes or attacks on public security.

Since this can be considered one of the most present national problems in several states across the country, governments began to see that only with the implementation of certain military partnerships could citizens become safer. Thus, criminals came to understand that their stances towards society would not be accepted by any security body in the country.

#### 2.4 COMPETENCE OF MILITARY JUSTICE IN GUARANTEEING LAW AND ORDER AND ARTICLE 16-A OF THE CPPM (*Code of Military Criminal Procedure*).

The jurisdiction of the Union's military justice system underwent an expansion process following the approval of Law No. 13,491 of 2017, so that it began to process and judge homicides committed by military personnel, thus resulting in a circumstantial change to the Military Criminal Procedural Code. . This time, the aforementioned law brought about the amendment of article 9 of the Military Penal Code, item II, §§ 1 and 2.

In these changes, it is possible to perceive the competence of military justice in judging actions involving illicit practices by members of the Armed Forces, especially when these actions occur during the fulfillment of actions commanded by the Minister of State and Defense and the President of the Republic, or also, when it involves the security of the military institution and when it is involved in peace operations, with a focus on guaranteeing Law and Order.

Before analyzing the legislative changes, remember that this article was amended in 1996 to establish that "the crimes referred to in this article, when intentional against life and committed against a civilian, will fall within the jurisdiction of the common justice system." (Article 9,299 / Changes made by Law nº 96). Knowing that there were these changes in jurisdiction in 2017, in the same year, according to the same law, art. 82 of the Military Criminal Procedure Law stipulates that although it is not a dedicated forum, military judges (federal or state, because no distinction is made) will not be able to prevail against the military's treatment of civilians when dealing with deliberate crimes (members of the police member states) or armed forces, no different).

Subsequently, the Military Penal Code underwent further changes. Article 9 reaffirms the power of the jury to judge military crimes that deliberately endanger life based on this article, but this time, except for crimes of military action under article 303 of the Brazilian Aeronautics Code Law. Therefore, in the circumstances mentioned, common crimes (decided by a jury) will no longer be considered common crimes, when they are carried out by members of the Brazilian Navy, Brazilian Army, Brazilian Air Force against civilians and deliberately attempt to harm human life. Thus, with the change in article 9 it is possible to see that military justice regains its competence.<sup>9</sup>

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<sup>9</sup>Thus, those committed by members of the Brazilian Navy, against civilians and criminal acts against life, in the cases of the aforementioned art. 303. In this

It should be noted that article 45 of the 2004 Constitutional Amendment, the so-called judicial reform (in fact, no reform was carried out, at least largely the opposite), Article 125, in its §4° of the Federal Constitution, relating to state courts and judges, now reads as follows:

The state Military Court is responsible for prosecuting and judging state military personnel in military crimes defined by law and legal actions against military disciplinary acts, except for the jurisdiction of the jury when the victim is a civilian, and the competent court is responsible for deciding on the loss of rank and the rank of officers and the rank of enlisted personnel (CONSTITUIÇÃO FEDERAL, 1988).

Although the "judicial reform" did not change articles 122 and 124 of the Constitution, which deal with the Union's military justice, the Military Penal Code in its article 9 is no longer a military crime and, therefore, no longer of this nature. Refers to any military personnel (state military police or armed forces), in military operations carried out in accordance with the provisions of this article except in practice. With the second revision of Law No. 12,432 / 11, article 303 of the Brazilian Aeronautics Code was established.

And, if they were no longer military crimes, obviously, the jurisdiction belonged to the Jury Court, observing the constitutional competence established in art. 5th., XXXVIII of the Federal Constitution.

Thus, objectively, it can be concluded that when it was an intentional crime against life committed by military personnel (obviously on duty) against civilians, the crime no longer had the nature of a military crime, and the trial must, therefore, be carried out by the Jury Court (except in the case of art. 303 of the Brazilian Aeronautics Code). On the other hand, if it were a homicide committed by a soldier against another soldier, both on duty, (conduct typified in article 205 of the Military Penal Code), the jurisdiction for the process and judgment would be the Military Court (state or federal, as appropriate). Here, obviously, the constitutional competence of the Jury Court was not violated, as the competence of the Military Justice to judge military crimes (as is the case in art. 205) also has a constitutional jurisdiction (arts. 124 and 125, §§ 3. and 4th, of the Constitution).

For example, this is the case in court due to the functional privileges provided for in the Federal Constitution (in this sense, see Opinion No. 721 of the Supreme Court Summary

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In this case, the Castro Court "recovered" its jurisdiction. It was the first setback! Now, you see, once again modify the sole paragraph of art. 9th. of the Penal Code. MOREIRA, Rômulo de Andrade. The law that made the Union Military Justice competent. Justifying. 2017.

Federal): the jury will not judge a federal agent or a member of the magistrate or the Public Ministry. Now, due to the new amendment, deliberately dangerous lives committed by members of the armed forces against civilians will be held accountable by coalition military judges, and the jury procedure will not apply.

For this reason, only members of the Navy, Air Force or Army are required to commit criminal offenses to perform the functions assigned to them by the President of the Republic or the Secretary of Defense or the Minister of Operations. It involves the security of military institutions or military missions (even if not militant), and even military personnel. The nature of activities, peacekeeping, security assurance or ancillary transfers are all in accordance with art. Article 142 of the Federal Constitution in the form of the Brazilian Aviation Law, Complementary Law No. 97/99 (which provides for the general rules for the organization, preparation and employment of the Armed Forces), the Military Criminal Procedure Law and the Electoral Law.

Therefore, when analyzing the new law from a constitutional point of view, it is necessary to ask whether the rule violates the Federal Constitution. But in a democratic legal system, at least in times of peace, military justice is not permitted; crimes that were found in common criminal law cannot be tried. Military justice can judge its own military crimes only and in exceptional circumstances, i.e. crimes specifically represented by special military legislation, which are obviously committed in time of war.

In any case, abstracting from the issue raised in the previous paragraph, Brazil's military justice system has a constitutional provision that includes rules, including those originating in the original constituent country, articles 124 and 125, §§3 and 4 of the Federal Constitution. Then, returning to the question raised, the question arises whether the Jury Court can lose its jurisdiction to judge intentional crimes against life committed by members of the Armed Forces with a civilian as the victim? Yes, that was precisely what happened with the change in the jurisdiction of military justice.

Note that the aforementioned "Judicial Reform" No. 45 of the 2004 Constitution Amendment did not bring any changes to art. In accordance with articles 122 to 124 of the Constitution, the organization, structure and responsibilities of the Federal Military Justice remain unchanged. For example, Article 124 stated from the beginning that (coalition) military justice

must prosecute and judge military crimes defined by law and committed by members of the Armed Forces.

The military police of the member states and the Federal District (including firefighters) will be judged by military justice in accordance with art. 125, §. Unlike paragraph 4 of the *Federal Constitution*, When the victim is a civilian and the crime (intentional bodily harm) is committed by a military police officer on duty, the aforementioned amendment to the Constitution clearly reserves the jurisdiction of the jury. According to Military Penal Law No. 9, deliberate crime against life committed by military personnel from Member States and the Federal District against civilians is removed from the jurisdiction of the jury.

Crimes of this nature committed by these soldiers (and in this case) have become military in nature (occurring before the 1996 amendment), and therefore trials must be handed down in the Castroist Federal court system as necessary. Perform art within the confines of the institution. Constitution 124. Here, the Constitution itself excludes the jurisdiction of the jury, as well as the holder of the privileged jurisdiction established by the Federal Constitution (recall of Precedent 721 of the Federal Supreme Court process). Given the clear technical terms, it will no longer be possible to make such changes when it comes to crimes within national military jurisdiction.

Thus, according to the new law, crimes committed by members of the armed forces are no longer considered military crimes, under the terms of article 9, §2° of the Military Penal Code, instead of crimes of military aspects, natural judges will be Council of Justice of the Military Justice of the Union. In relation to the Military Police, considering that the same applies to members of the Armed Forces (when criminal acts do not occur in these contexts), nothing has changed, that is, crimes that deliberately endanger life of civilians at risk are not military crimes, in federal, federal or state courts. In this sense, it is reiterated that this legislative change in the jurisdiction of military justice is not beneficial, as both the carrying out of the illicit act and the judgment are part of the same power with the same legal understanding, it is not an explicit benefit to the agents of the National Forces, but rather a setback regarding the institution and maintenance of the Democratic Rule of Law.

Another important aspect to be highlighted is article 16-A<sup>10</sup> of the Military Criminal Procedure Code, which was an inclusion arising from the Anti-Crime Package, which brought several aspects relevant to police action, as well as changing the competence of military justice, changing police self-defense, as well as other aspects relevant to the construction and modification of the criminal law.

The art. 16-A of the CPPM (*Military Criminal Procedure Code*), has six paragraphs, identical to 14-A, of the CPP, and, in the same way, there was a presidential veto of three paragraphs, §§ 3rd, 4th and 5th. The main difference between these articles (16-A CPPM and 14-A CPP) is the use of the expression civil servants linked to the institutions set out in art. 144 of the Federal Constitution, art. 16-A of the CPPM used the expression serving the military police and military fire departments. § 6 provides military personnel from the Armed Forces who are involved in operations to guarantee law and order with the same benefits established for agents of public security institutions and is subject to the same criticisms and observations.

Taking as a basis the broader expression "servants linked to the institutions set out in article 144 of the Federal Constitution", it can be stated that they will be members of the Federal Police, Federal Highway Police, Federal Railway Police, Civil Police, Military Police and Corps of Military Firefighters, federal, state and district Penal Police, as well as the Municipal Guards of the municipalities that have established them, governed today by Law 13,022, of 2014 - General Statute of Municipal Guards. Although the objective of this regulation is the protection of the military involved in the conflict, it should not be forgotten that this investigation may fail to comply with the constitutional principle of public administration efficiency, but its behavior goes beyond the necessary mode of action, this supervision is always carried out by the government, whether civil or military, so this norm is

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<sup>10</sup>Art. 16-A. In cases where employees of the military police and military fire departments appear to be investigated in military police investigations and other extrajudicial procedures, the purpose of which is the investigation of facts related to the use of lethal force carried out in the professional practice, in a consummated or attempted manner, including the situations set out in arts. 42 to 47 of decree-law 1,001/69 (Military Penal Code), the accused may become a defender. (Included by law 13,964/19). § 1 For the cases provided for in the caput of this article, the person being investigated must be summoned for the initiation of the investigative procedure, and may appoint a defender within a period of up to 48 (forty-eight) hours from receipt of the summons. (Included by Law No. 13,964 of 2019) § 2 Once the period set out in § 1 has expired and the investigator has not appointed a defender, the authority responsible for the investigation must summon the institution to which the investigated person was linked at the time the facts occurred, so that the latter, within 48 (forty-eight) hours, appoints a defender to represent the person being investigated. Military Criminal Procedure Code.



considered bizarre and even violates the principle of equality that guides all activities and any public servants.

## FINAL CONSIDERATIONS

The Armed Forces are fundamental within the legal and practical system because it is through their personnel that we maintain the defense of the homeland and guarantee the constituent powers, among many other competencies pertinent to the profession. It was possible to understand the concept and importance of the Armed Forces for the community, so that within the historical period they already carried out activities within society, with the integration of the police to promote a greater good and compliance with the law.

Public security was also discussed, as well as the need for an urban organization, as it must be taken into account that the guarantee of constitutional rights and the promotion of public security must be effective throughout the national territory, but this is not the case. which happens in practice, as in places such as favelas and outskirts there is a greater prevalence of crime than of state force.

However, the Brazilian states, mainly Rio de Janeiro, have not been able to successfully face these demands, which leads to Union interference, through federal intervention, responsible for sending police reinforcements to other locations in the national territory, especially with the pacification function. Rio de Janeiro is one of the states that has received the most Federal interventions over the last ten years, demonstrating that its police force and state organization are not successful in terms of public safety.

The growth of favelas was presented, making it possible to perceive the lack of state structure to promote the existential minimum, thus causing a population that lives in conditions where there is a lack of security, education, basic sanitation, in addition to the fact that the organization of favelas itself poses a risk to the population, whether due to the steep structure of the hills or the lack of structure in general. Thus, across all aspects, the competence of military justice to carry out judgments involving police parties acting in the Armed Forces was presented, as with the implementation of the anti-crime package there was the insertion of article 16A responsible for the change of competence that still reflects in the legal scenario with a primary focus on the issue of "privileged" judgment, that is, that the trial in military justice of military personnel would not obtain the necessary partiality for investigation and promotion of justice.

In this way, given the objectives raised in the work through the questions, it was possible to understand issues related to the competence, need, relevance and importance of police forces, as well as the discussion of legal and social aspects that involve the actions of police forces with a focus on promoting of national public security.

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