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PUBLIC SECURITY IN BRAZILIAN FEDERAL SPHERE

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ABSTRACT

Public Security in the constitutional sphere presented in this work aims to clarify the presence of the subject in the constitutional text, that is, in its entire body, especially in article 144, as well as in the preamble and article fifth, among others of the same legal diploma. It also brings the argumentation of security as everyone's duty, emphasizing the use of Community Policing, as a means of repressing violence and guarantor of public order, in addition to delimiting attributions of the constitutional division of Public Security bodies. It addresses the issue of Public Security also in the regional context, sectoring it to better assess and seek answers to find a path to a solution.

Keywords: Public Security, Community Police, Federal Constitution.

1. INTRODUCTION

The Constitution of the Federative Republic of Brazil, in the chapter dealing with public security (Article 144), prescribes that public security is the duty of the State, the right and responsibility of all, exercised for the preservation of public order and the safety of people and the patrimony. The seventh paragraph of this article prescribes that the Law will discipline the organization and operation of the bodies responsible for public security, in order to guarantee the efficiency of their activities. According to José Afonso da Silva (2003, p. 756), in relation to the state police, it is basically a state law, and, as for the federal police, it is a federal law.

It is thus observed that the aforementioned laws must be ordinary and not complementary laws, as required by the Constitution of the State of Rio de Janeiro, according to the understanding of the Federal Supreme Court in a preliminary injunction in Direct Action of Unconstitutionality No. 2.314-4. It should also be noted that in relation to the general rules of organization, troops, military material, guarantees, summoning and mobilization of the military police and fire brigades, the legislative competence is exclusive to the Union (CRFB, article 22, XXI) and that it is incumbent upon the Union, the States and the Federal District to legislate on the organization, guarantees, rights and duties of the civil police (CRFB, article 24, XVI).

Thus, some scholars on the subject understand that: public safety, together with public tranquility and public health, make up the notion of public order. In this way, it can be said that public safety is one of the three objects of public order. And he also teaches us that "public order is the absence of agitation, the absence of disorder, a notion that, by the way, as he warns, is expanding, as the jurisprudence seems to enshrine in view of the three elements mentioned by Louis Rolland, indicated above". Álvaro Lazzarini (1999, p. 53), citing Paul Bernard. Thus, public order is defined as a de facto situation in which there is no disorder or unrest in the social environment, culminating in an environment of tranquility, health and guaranteed public safety, including the preservation of the safety of people and property. The State should act for preservation, more precisely with regard to public security, which is seen as an anti-delinquent state.

From a simple reading of the article that deals with the subject of public safety, it can be seen that they are bodies: the Federal Police, the Federal Highway Police, the Federal Railway Police, the civil police, the military police and the military fire brigades.

However, there are discussions whether the Municipal Guard is part of this list, which has exhaustively listed the bodies that make up public security. This doubt arises from the moment the Municipal Guard is not in any item of article 144 of the Major Law, but is dealt with in paragraph 8 of this same article.

Currently, with public disorder and the situation of worsening violence, the issue of public security has been debated more frequently, in the search for effective means of repressing organized crime, among other forms of crime. Society accuses the State of being silent on this problem, and the Constitution states that public safety is, in addition to the State's duty, a responsibility of all. And it is in this context that Community Policing appears, aiming to fill some of the State's deficiencies.

2. LITERATURE REVIEW

Despite the existence of an ordinance on public security organs, one cannot speak of a police system. Police work is routinely carried out, coordination is lacking. A Social Security Secretariat could be the solution. The newly created Social Defense Secretariats show an exaggeration in the name, as they do not take care of social interaction, in charge of other Secretariats, which carry out their mission based on police power peculiar to the responsibility and mission of each one. If there was a system and coordination, the innocuous discussion of integration, fusion, and unification of police forces would be buried for good. We need reciprocal collaboration, police interaction, which is not the same as integration. With modern technological resources, one speaks to the world. It is not necessary for police institutions to share the same physical plan. It is insisted that police interaction should be promoted, through an effective social defense system. In passing, a reminder: integration, integration and interaction are different situations that, sometimes, erroneously, are used as synonyms.

Policing as everyone's responsibility, that is, community policing is, in a broad sense, an interaction between the police and the community, so that the community cooperates with the police apparatus and materializes the precept "duty and responsibility of all" of the article 144, caput. The origin of this policing comes from the American inner cities, where a policeman makes the liaison between the community and the police department. Therefore, it must be clear that the members of society will exercise a consultative role, where power will remain in the hands of the police institution.

This concept for most Brazilian police is a very incipient topic, which is resisted by traditional police officers.

The Federal Constitution of 1988 determined a new concept of public security with the expansion of its agents. Security came to be considered a duty of every citizen, theoretically undermining the exclusivity of police agencies in dealing with the matter. However, the repressive approach to violence and crime, due to the disastrous consequences of its growth, has prevailed in this society, even though it is considered democratic. The Federal Constitution of 1988 designated a specific chapter for the treatment of the matter. In Title V, article 144, enshrines the duty of the State, as well as the right and responsibility of all in matters relating to this guarantee; highlighting the exercise in favor of the preservation of public order and the safety of people and property, carried out by the federal, federal road, federal railway, civil, military and fire department police. Notwithstanding the absence of explicit considerations, its activities include the participation of the Judiciary, the Public Ministry and the Penitentiary System. In this way, the objective was, through the interaction of state bodies and the community, the prevention and control of the manifestations of violence, guaranteeing the exercise of citizenship, much more protected by the democratic system.

However, the independent management of each federative unit over its respective police force and the specific attributions of each agency requires extreme balance in the coordination of the various public policies inserted, in order to achieve the necessary interaction foreseen by the chosen approach. The failure to analyze this aspect contributed to the failure of the implemented projects, as well as the fomentation of demagogic discourses and empty rhetoric according to which police brutality means, above all, competence (SOARES, 2006).

The movement for public security innovation began in 1995, with Provisional Measure No. 813, which created the Secretariat for National Public Security Action Planning (SEPLANSEG), the first body directed at articulating national actions related to the subject. Soon after, in 1997, it was converted into the National Secretariat for Public Security (SENASP), having expanded powers and attributions.

It is incumbent upon the National Secretariat for Public Security, among other objectives, to implement, plan and evaluate Federal Government programs for the area; promoting the integration of public security agencies, the interface of actions with governmental and non-governmental bodies; encouraging and proposing plans to state agencies. The National Public Security Fund is responsible for supporting state, municipal and social projects to prevent violence, creating a system for distributing resources. Implicit in this legislation is the conception of a Single Public Security System, since it is possible to perceive the decentralized and shared coordination of public policy, through the articulation of funds from the three levels of government and the participation of different spheres of society. The elaboration of public security plans by the States is encouraged, given that the transfer of the resource requires joint presentation and assessment, together with the execution of the planned projects (PRONASCI, 2007).

The idea of citizen security constitutes the theoretical synthesis that underlies the public security policy presented, aiming at its compatibility with the democratic model. In this sense, it aims to rescue citizenship, solidarity and respect for human rights at the heart of Organs state bodies involved in the implementation of security, as well as throughout society. Its performance prioritizes actions that promote the valorization of human rights, mainly mobilizing education as an instrument for transforming and systematizing the knowledge of its participants.

It is important to note that the modern State is only constituted as such when it is structured on three great monopolies: the collection of taxes, the use of force and the administration of justice. However, in a democratic regime, the ultimate end of the state would be the public good. With the collection of taxes, public services for citizens are maintained. With the legitimate use of force, the State seeks to maintain national sovereignty in the face of external threats, through the Armed Forces, and the maintenance of public security, through the police. Based on the monopoly of the administration of justice, the State withdraws from the hands of individuals the possibility of repairing the damage through revenge and forms of administration of particular conflicts. Rather, preventing each person from operating according to their own sense of what is right or wrong and what should be avoided or allowed, making their will arbitrarily prevail over the will of others. The exercise of this monopoly is not a constitutive power of the State, but delegated to it. The State is authorized to act on behalf of the population in order to avoid the arbitrariness of excess power in the hands of a few.

The exercise of this power delegated by the people is now divided into three. The Legislative Branch is in charge of drafting laws, the Executive Branch administers in accordance with these laws, and the Judiciary Branch is in charge of administering justice. Harmony between the three powers should take place through legitimate interference by one power over another. We have already seen that the State was delegated the power to subjugate individual interests to collective wills. However, this delegation of power should be contained and limited, preventing the State from also using that power in an arbitrary way. Thus, the Constitutions began to be written, which aimed to recognize the Fundamental Rights of Man, guarantee individual rights vis-à-vis the State and, in general terms, describe the form of the State (way of exercising political power in the territory) and the form of Government (relationship between rulers and ruled) to be adopted.

The Constitution of the federative republic of Brazil, of October 1988, defines the federation as a form of State. Thus, we have different political powers coexisting in our territory: a local political power (Municipality), a regional political power (State), a central political power (Union) and a Federal District, which accumulates regional and local competences. In its territory, Brazil adopts a republican political regime, in which the Republic is characterized by the electiveness of its members (Executive and Legislative Powers) by the temporality in the exercise of power, by popular representation and by the responsibility of the ruler (duty of accountability). The government regime adopted in the country is still characterized by presidentialism, as the Head of State and Government are exercised by the same person: the President of the Republic. Thus, the difference between what the State is, as the administrative division of the country, and what the Government is, understood as the exercise of public administration management in a limited period of time, must be marked.

In this way, the government structure is subject to political decision, that is, it depends on the way in which government officials decide on how to manage public institutions. Below is a picture of the current structure of the federal government and, by way of example, the way in which the State Government of Rio de Janeiro is structured to deal with the issue of public safety. In addition, some security management possibilities at the municipal level are presented. We must emphasize, however, that with the exception of the institutions provided for in the Federal Constitution to act in the field of security, for each federated entity, the disposal of the bodies responsible for management is a provisional and vulnerable portrait to changes in Government.

3. METHODS

The work consisted of an exploratory bibliographic review and documentary and retrospective field through the collection, comparison and correlation of data published in indexed journals and in the classic legal literature. This research did not cover any type of intervention or direct data collection such as interviews, therefore, it did not offer any type of direct risk. Initially, the articles published were collected in the main databases with the descriptors "Public Safety, Community Police and Federal Constitution" through websites, books, databases and Google Scholar.

4. RESULTS AND CONCLUSION

In the search for a solution to crime, the use of force and repression has been increasingly ineffective, observing the alarming level of violence to which we are subject. Thus, after pointing out several situations, we see that public safety is necessary for the development of any human activity. And by the definition of public order, we see that this social tranquility is only reestablished with the use of organs aimed at the cause of social disturbance. For this, the Constitution of 1988 created five police bodies. Thus, in addition to the constitutional analysis of public security, the development of the community policing policy for an improvement in the quality of life in Brazil was addressed in this work.

The effectiveness of police activity will achieve better results if carried out in conjunction with the community, establishing a model of criminal prevention. The Police is the government cell that has the greatest contact with the community, so the police must be fixed in a strategic place, so that they can also be part of the recovery of living conditions in the neighborhood or city.

This requires modernity and goodwill on the part of the parties, as we still do not have a tradition in our country of community work in partnership with the government. But with everyone's good will, this new system could be very successful in controlling crime.

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