



Chapter 55

Importance of the implementation of the Military Criminal Execution Regulation in the Tocantins Military Police – PMTO

  <https://doi.org/10.56238/methofocusinterv1-055>

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ABSTRACT

This study aimed to present a study on the importance of the implementation of the Military Criminal Execution Regulation of the Military Police of the State of Tocantins - PMTO. The research was based on a qualitative approach in theoretical and documentary references, as well as access to quantitative data of prisoners held in the Military Police Units - PMTO's UPM in 2019. The

bibliographic and documentary research required the methodology of scientific work, focusing on the analysis of the general aspects and concepts of the Military Criminal Execution. In addition, there were several doctrinal understandings regarding the application of the Criminal Execution Law – LEP in the Military Justice. The above, the data and information were listed, which were analyzed and discussed the institutional deficiencies and also proposed the implementation of the Military Criminal Execution Regulation as a legal mechanism to control the discipline of military and common prisoners who are custodied within the pmto prison units.

Keywords: Regulation, Execution, Penal, Police, Military.

1 INTRODUCTION

The Military Police of the State of Tocantins, as a military institution, has several legal and constitutional attributions. In this tuning point, it is verified that one of its duties is to comply with the Military Criminal Law and the Military Criminal Procedure related to the execution of the sentence. The institution is responsible for investigating military crimes and, consequently, after the conviction, the institution is responsible for the custody of military police prisoners.

In addition, the Military Police of the State of Tocantins s – PMTO has several prisoners, as presented in table 2 below, in Military Units, this has generated major problems to control discipline and impose sanctions on convicted and provisional custodians.

In this way, is it if the Military Police of the State of Tocantins has structure and regulations maintain the discipline of prisoners and military police detainees during the military criminal execution under the PMTO?

Faced with the questioning, it was found that the PMTO, today, does not have an internal regulation of military criminal execution that standardizes disciplinary actions and conduct of military prisoners within the scope of the military prisons of the PMTO.

Thus, the general objective of this work was to reflect on the creation and approval of the Military Criminal Execution Regulation of the Military Police of the State of Tocantins. For this purpose, the following specific objectives were listed:

- ✓ Analyze the Military Criminal Execution;
- ✓ Discuss the challenges encountered in this context of the applicability of the Military Criminal Execution Law in the context of military corporations;
- ✓ Discuss the results found in the research;
- ✓ Suggest the drafting of a specific Military Criminal Enforcement Regulation within the PMTO, to provide standards that subsidize unit commanders that have military prison sites.

First, we highlight the material and method adopted used to carry out the present study, through a quali-quantitative approach, through a theoretical and documentary survey with the PMTO.

Secondly, there is a takeon on military criminal execution, highlighting a discussion on the main rules dealing with military criminal execution. It discusses the legal basis to discipline the regulation of the application of disciplinary sanctions to prisoners in the course of criminal execution, in symmetry, to military prisoners.

Consequently, the real situation of the PMTO regarding the regulation and custody of prisoners internally is discussed. Next, the data collected from the Corporation are presented, demonstrating the absence of standardization, as well as institutional structural deficiency in the custody of military and ex-military prisoners in the Military Police Units - UPM. Finally, in the final considerations a general synthesis of the work was made, as well as the need and importance of implementing a Military Criminal Enforcement Regulation within the institution.

2 METHODOLOGY

This scientific article had in its methodology applied nature, considering that it provided news on the subject so that it can be applied in the Military Police of Tocantins.

The research was based on a qualitative-quantitative approach, as well as the exploratory research techniques were worked on the main theoretical references that deal with the theme of Military Criminal Execution, in order to elucidate the main bibliographic aspects about the subject.

Moreover, the deductive method was used, because according to Mazucato (2018) the research started from a general finding to verify private subjects, from broad subjects to reach the specific, in order to achieve a conclusive result.

In addition, this research was elaborated through bibliographic and documentary procedures, in which according to Fontana (2018) they were linked to the reading of books and scientific papers in general, in addition to processing the handling of documents of an institution.

In this tuning, information was collected with the Internal Affairs General of the Military Police of Tocantins, in order to obtain information about the number of prisons in the Military Police Institution, that is, in the various Units of the PMTO.

Finally, it was raised that the Military Police Corporation does not have any regulation about the disciplinary conduct of prisoners in the organizational scope. Such information was salutary for understanding the theme.

3 RESULTS

In Nucci's teachings (2017, p. 957), criminal execution is "the stage of criminal proceedings, in which the command contained in the criminal sentencing is enforceable, effectively imposing a custodial sentence, the restrictive penalty of rights or the pecuniary".

Military criminal execution is a legal institute that takes into account the nature of the defendant, which is the condition of military. In this sense, Art. 59 of the Military Penal Code - CPM has a central role in the execution of the sentence applied to the military (Brazil, 1969a).

The Military Penal Code requires that the custodial sentence (imprisonment or detention) up to two years is transformed into a simple prison sentence and fully served in barracks, based on hierarchy and discipline, in this case applicable when the military still maintains its condition.

In addition, Lamas & Assis (2009, p. 9) brings that the Military Penal Code imposes that custodial sentences of more than two years can be served in a military penitentiary if the sentenced maintains the condition of active military, and only in the absence of the military penitentiary will be transferred to the civil prison (art. 61 of the CPM), logical, if you are in the condition of civil. The Code of Military Criminal Procedure provides that:

Art. 595. The guide letter, drawn by the registrar and signed by the auditor, which shall initial all the sheets, shall be forwarded for the execution of the judgment: a) to the corresponding commander or authority of the unit or military establishment in which the penalty has to be served, if it does not exceed two years, imposed on military or similar; b) the director of the penitentiary in which the sentence must be served, when more than two years, imposed on military or similar or civilian. [...]
Art. 598. They will refer to the Penitentiary Council a copy of the guide letter and its additions, when the defendant has to serve time in a civil establishment (Brasil, 1969b).

In this, Rosseto (2015, p. 326) puts it that "the rule is harmonic with Art. 59, the military sentenced to more than two years of custodial sentence must be collected in a military penitentiary." Thus, it turns out that the criminal execution of military (Officers or Squares) convicted in military justice, whatever the penalty and, the military maintains the condition of military, it will be up to the Military Police to custodiate the military prisoners. Thus, if the sentence is less than 2 (two) years and converted into simple prison s, the sentence is served in *Quarteis*, and the Officers will serve in the establishment grounds (lodgings), and the squares in military penal establishment (chess of the military unit). Moreover, if the penalty is greater than 2 (two) years, the penalty must be served in military penitentiary (special military unit proper to the

execution of sentence), this is the rule under Art. 59 and 61 of the Military Penal Code.

In this sense, Neves and Streifinger (2015) reaffirms that Art. 61 of the Military Penal Code determines that if there is military prison, the military must comply in a military unit, if there is not, must comply in a common penitentiary. In this case, the implementing shall be subject to the rules laid down in the common criminal law. It is noteworthy that the device in comment also applies to the State Military Justice (Alves & Loureiro, 2019).

Roig (2018) states that jurisdiction in execution also applies to provisional prisoner and or convicted by electoral or military justice, when collected to establishments subject to ordinary justice with fulcrum in art. 2, sole paragraph of the Lei de Execution Penal - LEP.

In that same section, Marcão (2018, p. 48) states that in Summary 192 of the STJ: "It is up to the Court of Criminal Executions of the State to execute the penalties imposed on those sentenced by the Federal Court, Military or Electoral, when collected from establishments subject to state administration".

This understanding has legal support in the legislation in lep, Law No. 7,210, of July 11, 1984, will only be applied to the Military if I was subject to common prison custody (provided for in art. 61 of the Military Penal Code - CPM):

Art. 2 - The criminal jurisdiction of ordinary Judges or Courts of Justice, throughout the National Territory, shall be exercised, in the enforcement process, in accordance with this Law and the Code of Criminal Procedure.

Single paragraph. This Law will also apply to the provisional prisoner and to the convicted by the Electoral or Military Justice, when collected the establishment subject to ordinary jurisdiction (Brasil, 1984).

Therefore, it can be said that the Military Police will only be applied to LEP if the same loses the condition of military or is transferred to common penitentiary. Thus for Araújo (2016, p. 33), this "device, in the siss, denies those incarcerated in military justice the rights guaranteed and defined in that norm" and is a permanent justification of military justice not adopting lep.

It is noteworthy that military law does not have a specific criminal execution law, with this, ends up directing the aspects of execution of the penalty provided for in the Military Penal Code (CPM) and Code of Military Criminal Procedure (CPPM). However, according to Brito (2019, p. 140), although military criminal execution is regulated by CPPM, in the absence of any right, it should be used as a complement to the Criminal Execution Law, even if the military is serving time in a military establishment.

Similarly, Thier (2017, p. 11) understands that in relation to those convicted of military crime:

it is quite possible to apply lep with regard to the institute of regime progression, since the military inpenado holds constitutional guarantees in the same way as non-military apenado. The progression of the regime is a constitutional guarantee, since the institute is covered by the principle of individualization of the penalty. It is understood that it is possible to apply the provisions of Law No. 7,210/84 in the progression of the penalty regime in the military sphere, due to the legislative omission and the express provision of the Military Criminal Procedural Code of the application of the common criminal procedural legislation as a subsidiary source in cases of omission.

In this reasoning, the Law of Execution is perfectly applied in the absence of a standard, that is, that were not disciplined in the Code of Military Criminal Procedure. Article 6 of the CPPM itself has some exceptions that will not have such compliance with the procedural rules provided for in this Code:

Comply with the procedural rules provided for in this Code, in what are applicable, except for the organization of Justice, appeals and execution of judgment, the processes of the State Military Justice, in the crimes provided for in the Military Criminal Law to which the officers and squares of the Police and Fire Brigades, Military (Brasil, 1969b) respond.

Therefore, among these exceptions is the execution of sentence in military crimes committed by officers and squares of the Military Police and Military Fire Brigades. In this same thought, Oliveira & Ferreir (2021, p. 4) explain that "according to the procedural rule in question, for the military working in the State forces do not apply the rules related to the execution of the penalty provided for in the military diploma and, thus, the subsidiary application of the criminal execution law (Law 7.210/84) for the military of the States has been admitted".

As these situations are not pacified in doctrine and jurisprudence, Bill No. 660 of March 2, 2021, was proposed by Congresswoman Major Fabiana, in her menu "establishes the applicability of the Law of Criminal Execution to those convicted by the Military Justice, when there is no specific rule or when it is omitted" (Brazil, 2021).

The Military Criminal Law requires that the execution of military punishment, military as long as they maintain the condition of military, must be fulfilled in military organ. However, it turns out that there is currently no Military Penitentiary in the State of Tocantins. Moreover, it turns out that only some PMTO Units have chess (cell) the execution of sentence, although it is not always necessary to "jail" for the execution of custodial sentence of military.

Therefore, it is notorious that there is an omission of the State regarding the construction of a prison facility in the Barracks of the PMTO or a Prison Unit (Military Penitentiary), in order to comply with the legal provisions.

Regarding the disciplinary rule of prisoners in military units, it is verified that discipline in military institutions is one of the essential pillars for the proper functioning of the military system. Prisoners of military execution must have their own regulations to regulate disciplinary conduct in compliance with the Sentence, as provided by the Military Penal Code and Code of Military Criminal Procedure.

It is verified that in the PMTO Units have several Military Police in the condition of custody prisoners, it is noted that most are former military police officers sentenced to serve a sentence greater than 2 (two) years of imprisonment or detention. In this case there is the application of the Law of Criminal Enforcement.

With regard to the application of disciplinary sanctions to the prisoner, the Criminal Enforcement Act brings the following legal imposition:

Art. 45. There will be no lack or disciplinary sanction without express and prior legal or regulatory provision.

[...]

Art. 47. Disciplinary power in the execution of the custodial sentence shall be exercised by the administrative authority in accordance with regulatory provisions.

Art. 48. In the execution of restrictive penalties for rights, disciplinary power shall be exercised by the administrative authority to which the condemned person is subject (Brasil, 1984).

Extracting the essence of the standard, it can be said that law requires the administrative authority to lower regulations describing the rights, obligations, sanctions and procedures to be applied to custody prisoners.

Thus, the Military Police of the State of Tocantins, responsible for the custody of military or ex-military police prisoners, should prepare and approve the military criminal execution regulation, which currently does not exist, of scope for the entire corporation, in order to guarantee the rights of prisoners, as well as ensure the correct application of the disciplinary standard in the military criminal execution of military or common sentences, whether in prison sentence or in prisons.

Corroborating this understanding Lamas and dand Assisi highlightsm:

[...] before the absence of military prison can allocate a Unit for this purpose, structuring it and establishing disciplinary standards to be observed by the active military, reserve and retired, who will serve time there, typifying the reprehensible prison conduct and disciplinary prison sanctions to be applied in case of transgression of said standards. Likewise, standardize the procedure to be observed for the imposition of the aforementioned disciplinary penalties, specifying the rules for classifying prison behavior, to be observed in the military prison (Lamas & De Assis, 2009, p. 7).

Regarding the custody of prisoners currently in the PMTO, it is observed that the Military Police of the State of Tocantins, since its creation on 01/01/1989, has not lowered and has not elaborated any Military Criminal Execution Regulation. Therefore, there is a regulatory omission in order to discipline the behavior of prisoners in the execution of criminal imprisonment or military or common injunction. It is verified that it is left to the Commanders of Military Police Units - UPM, in order to regulate within their Units, General Standards of Action - NGA, so that they can guide the conduct of prisoners.

However, the competence is of the general scope of the Corporation, which is incumbent upon the Commander-General, pursuant to Art. 10, of Complementary Law 128, of April 14, 2021, to propose the draft of the Regulation, in order to be approved by Decree of the Governor of the State, pursuant to the State Constitution in its "Art. 40. It is privately incumbent upon the Governor: [...] II - sanction, promulgate and publish the laws and, for their faithful execution, issue decrees and regulations (Tocantins, 1989).

In this sense, it is feasible to study within the Corporation to present a proposal for its own regulation of Military Criminal Execution in the PMTO, in order to be implemented by Decree by the Head of the State Executive Power of the State of Tocantins.

In addition, the PMTO Corporation does not currently have a Military Penitentiary. A complex situation that requires reflection, given the growing demand for military prisoners, a total of 20 (twenty) in 2019. In addition, the PMTO, out of a total of 12 (twelve) Military Police Battalions and 06 (six)

Independent Military Police Companies and the Headquarters of the General Command, has only 03 (three) UPM with capacity to receive military prisoners from justice. This is a problem to be analyzed by the High Command of the Corporation, in order to develop proposals to solve the situation.

Therefore, it is imperative to point out that other Brazilian military corporations have already instituted their military criminal execution regulation, which can be mentioned: The Brazilian Navy, through Decree No. 59,394 of October 14, 1966 (Brazil, 1966), approved the regulation for the Navy Prison and the Military Police of São Paulo, through Resolution No. 009/2012 instituted the criminal execution regiment of the Military Penitentiary Romão Gomes (São Paulo, 2012). The importance of own regulation in military criminal execution is verified, given the peculiarities of prisoners and detainees.

Neto (2021, p. 25-26) corroborates, it is necessary that a standard establishes, for military prisons of the Army, the precepts of prison discipline, disciplinary absences, sanctions, rewards and disciplinary procedure. The RDE's punishments for those who are already in prison are of no use, but other types of sanctions are efficient, such as the restriction of rights, the suspension of perks or the isolation in the cell itself. In addition, the prison behavior, classified according to its own rules, could be informed to the court of execution with subsidies for decisions on regime progression and granting of benefits, motivating the prisoner to maintain good behavior.

4 DISCUSSION

In order to corroborate the theme on the importance of the creation and approval of the Military Criminal Execution Regulation of the PMTO, it was verified through surveys of information and data that pointed out the following results.

According to a survey, through a formal request for documents, with the Corregedoria General of the Military Corporation, the number of prison sites existing in its Units for the military prison execution within the corporation in 2019 was verified. According to Table 1 below:

Table 1: Quantitative of sites for military criminal execution

UNIT	PENITENTIARY	PRISON IN THE UPM
1º BPM	----	YES
2º BPM	----	YES
3º BPM	----	NO
4º BPM	----	NO
5º BPM	----	NO
6º BPM	----	YES
7º BPM	----	NO
8º BPM	----	NO
9º BPM	----	NO
BPMA	----	NO
BPMRED	----	NO
BPCHOQUE	----	NO
1ª CIPM	----	NO
2ª CIPM	----	NO
3ª CIPM	----	NO
4ª CIPM	----	NO
5ª CIPM	----	NO
6ª CIPM	----	NO
QCG	----	NO

Source: PMTO Internal Affairs, 2019.

It is observed that the number of Units that have *Prisão* is small for military criminal execution in the scope of the Military or Common State Justice. Currently, the Units do not have room for the correct compliance of military criminal or even common legal enforcement, since the military criminal law requires the separation of disciplinary prisoners (now extinguished the custodial and restrictive sentence of liberty for the state military, according to Law 13.967/2019) of ordinary prisoners and military prisoners. Moreover, it is emphasized that it is salutary and imperative to maintain the separation of convicted prisoners and injunctive prisoners, in addition to the separation of Officers and Squares in the execution of prison.

Regarding the number of prisoners after survey, it was found that the MUP strapped have a prison population shown in Table 2 below:

Table 2: Number of prisoners in the UPM/Prison Units.

UPM	MILITARY PRISONER ACTIVE AND INACTIVITY	COMMON PRISONER OR EX-MILITARY	CAUTIONARY PRISONER
1° BPM	03	01	03
2° BPM	03	----	02
6° BPM	02	02	02
8° BPM	----	01	----
QCG	----	01	----

Source: PMTO Internal Affairs, 2019.

It is emphasized that the data were collected from the control documents of the Internal Affairs General, after request from the agency, according to the specialized register. Among those arrested in the Military Police Units - UPM of pmt0 there are active and inactive military, belonging to PMTO and other Military Police Federation, in addition to prisoners of the Common Justice, which has generated a problem in custody, as is the case of the application of disciplinary sanctions specific to the system of criminal execution due to conduct of indiscipline of prisoners.

The number of prisoners in pmt0's UPM is volatile. Moreover, it turns out that there is a growing prison population that includes military prisoners, in prison sentence or injunctive, in addition to ordinary prisoners. Thus, it remains to be demonstrated that the structure of the Military Police is not adequate for the legal custody of prisoners and for the correct application of military criminal law, due to the structural deficiency of the MU as to the lack of chess (cells) in the majority and the insufficient amount in another for the execution of the sentence.

Moreover, it is lucid that the 1st Military Police Battalion - BPM has 04 (seven) custody prisoners, 2nd BPM has 3 (three) prisoners, the 6th BPM has 04 (four) custody prisoners, 8th BPM has 01 (one) arrested custody and, finally, the Headquarters of the General Command 01 (one) arrested custody. According to Table 2, it is emphasized that the 8th BPM and the QCG do not have a cell (chess) and the facilities for receiving prisoners are adapted.

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2nd BPM has 05 (five) prisoners, the 6th BPM has 06 (six) custody prisoners, 8th BPM has 01 (one) custody prisoner and, finally, the Headquarters of the General Command - QCG 01 (one) arrested custody. It should be emphasized that the 8th BPM and qcg do not have a cell (chess) and the facilities for receiving prisoners are adapted.

Based on these data, it is shown that the Institution has not placed this legal obligation as a priority, since in 33 years of existence, the PMTO has not sought to plan the correct adequacy of the UPM for the receipt of prisoners and their custody.

Moreover, the disciplinary regulation of prisoners has been left to the Commanders of UPM, who see themselves in a situation, to which they are obliged to issue General Standard of Action, regulating situations of prisoners without due legal instrument, that is, a Regulation in the Institution, instituted by the Governor through Decree.

Thus, the approval of the Military Criminal Enforcement Regulation will be a viable solution to minimize this problem, however, it must be accompanied by the training of officers for the exercise of the function and application of the Regulation of Criminal Enforcement under the PMTO.

5 FINAL CONSIDERATIONS

It is concluded that within the military police of the State of Tocantins that there is an omission in the legal aspect regarding the regulation for the discipline of prisoners.

Regarding the structure of the MUP for the custody of prisoners, it was found that it is insufficient and does not meet the legal demand, in today's context of the PMTO. Thus, it was concluded that it requires studies and planning for the construction of cells (chess) in the UPM, in order to correctly comply with the legal dictates.

Currently, the COMMANDERS of UPM are in uncertain legal situations regarding the execution of sentences in their units, placed in situations of difficult management in the discipline of prisoners.

Thus, the Military Criminal Enforcement Regulation will meet the legal dictates and provide better military criminal execution under the PMTO. In this way, there will be a standardization in military criminal execution in the UPM, providing the legal instrument to ensure legal certainty in the discipline of prisoners in these Units.

Therefore, due to the information and knowledge acquired in this study, the goal is to subsidize future work with themes in the area, as well as discussions related to the need for Military Criminal Execution Regulations in other Military Corporations in relation to the Military Criminal Execution Law, such as the Military Police of the State of São Paulo and the Brazilian Navy that has its specific military criminal execution regulations.

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