




CREATION AND REGULATION OF A PRISON UNIT IN THE STRUCTURE OF THE MILITARY POLICE OF THE STATE OF TOCANTINS

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ABSTRACT

The article discusses the need to create and regulate a prison unit in the structure of the Military Police of the State of Tocantins (PMTO). The study contextualizes the situation of prisons in Brazil, highlighting the deficiencies in the PMTO's facilities for guarding military personnel, who do not have an adequate structure to ensure compliance with legal and human rights standards. The main problem addressed is the lack of a regulated prison unit for military personnel in the state, which results in the inadequate custody of military prisoners in precarious jails. The objective of the work is to demonstrate the legal feasibility of creating a specific prison unit for the PMTO, allowing the fulfillment of the legal requirements for the custody of the military. The results indicate that only 16% of the PMTO units have the capacity to hold military prisoners, but these facilities are inadequate and do not comply with the legal requirements for segregation of prisoners according to their nature and regime. In addition, the military prison population is growing, reinforcing the need for new facilities. The conclusion highlights the urgency of creating this prison unit to ensure compliance with the rules and guarantee the dignity, security and rights of military personnel in custody, also proposing changes in current legislation to enable the implementation of a military prison unit in the organizational structure of the PMTO.

Keywords: Military Police. Prison Unit. Custody. Stuck.

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INTRODUCTION

The situation of Brazilian prisons has been the subject of frequent concern, not only due to the inefficiency of their physical structures, security conditions, and the outbreak of rebellions, but also due to the growing rivalry between criminal factions and, mainly, the disrespect for fundamental rights and human rights in the treatment of inmates (CARVALHO and BANTIM, 2019).

In this scenario, military corporations, which are based on two essential pillars — hierarchy and discipline — based on strict laws and regulations, have the obligation to prevent and curb inappropriate actions by their members, especially those that violate their internal rules or constitute crimes of a military or common nature. These infractions can result in sanctions that deprive the military of their liberty, and corporations must be properly prepared to deal with these situations (DIAS; MELO JÚNIOR, 2024).

This work is relevant when dealing with the Military Prison System, focusing on its legal aspects and the custody system of the Military Police of the State of Tocantins. The study focuses on the conditions of the physical structures, the capacity for custody, compliance with national standards and human rights, in addition to exploring the experiences of other military police forces in the federation, seeking to support future changes in the organizational structure of the institution (CARVALHO; DIAS, 2022).

The objective of this study was to demonstrate the legal feasibility of changing the legislation that governs the basic organization of the Military Police of Tocantins, proposing the creation of a specific prison unit. This proposal aims to ensure compliance with military norms, national laws and human rights, ensuring respect for the physical integrity and dignity of Tocantins military police officers who may be deprived of their liberty.

MATERIAL AND METHODS

The methodology used in this research was the bibliographic type, where the military and common criminal and criminal procedural legislation, the doctrinal framework existing in the Military Police of the State of Tocantins, as well as in other Military Police of the federation, were consulted in order to elucidate the main theoretical aspects on the subject.

The research was also based on the deductive method, that is, qualitative with quantitative aspects, in which exploratory research techniques were worked on in the main bibliographic references that deal with the theme of prison units of a military nature in Brazil.

Finally, a survey of information was also carried out with the General Internal Affairs Office of the Military Police of the State of Tocantins, with the objective of obtaining data on their prison number, as well as on the places intended for the execution of the prison

sentence in the various units of the Corporation, whether due to the commission of disciplinary transgression or crimes of a common or military nature.

DEPRIVATION OF LIBERTY IN THE MILITARY SPHERE

For a better understanding of the deprivation of liberty in the sphere of military administration, it is necessary, initially, to analyze the constitutional provision that authorizes the decree of the imprisonment of any person within the scope of the Brazilian legal system, namely, Article 5, items LXI and LXVII, of our Magna Carta (BRASIL, 1988). This legal provision clearly establishes the situations in which the military can be deprived of his liberty, namely: arrest in flagrante delicto, imprisonment by court order, which can be criminal or civil for debt of alimony, imprisonment for the commission of a properly military crime and imprisonment for the practice of disciplinary transgression. It should be noted that only the last two hypotheses of imprisonment are specific to the military regime (MORAES, 2023).

With regard to the deprivation of liberty of the military in flagrante delicto, this can occur both in the ordinary and military spheres, and in the military sphere, it finds legal support in the provisions of the Code of Military Criminal Procedure, especially in article 244, which defines the hypotheses that characterize the state of flagrancy. In relation to arrest by written and reasoned order of a competent judicial authority, which refers to preventive detention, one of the types of precautionary detention, it is also regulated in the Code of Military Criminal Procedure, in articles 254 and 255, which establish the competent authorities for its decree and the requirements for its imposition, respectively (LIMA, 2022).

In addition to these forms of imprisonment, the military criminal procedural legislation also provides that, during the Military Police Inquiry, the accused may be detained for up to thirty (30) days, extendable for another twenty (20) days, as provided for in the caput of Article 18 of the Code of Military Criminal Procedure:

"Article 18 - Regardless of flagrante delicto, the accused may be detained during police investigations for up to thirty days, and the detention shall be communicated to the competent judicial authority. This period may be extended, for another twenty days, by the commander of the Region, Naval District or Air Zone, upon reasoned request of the person in charge of the investigation and through hierarchical channels." (BRAZIL, 1969)

Also in the context of deprivation of liberty in the military sphere, this can occur in cases of disciplinary transgressions, aiming to safeguard and preserve the fundamental values of military corporations, such as hierarchy and discipline (MORAES, 2023). In addition to being provided for in the Federal Constitution of 1988, this extreme measure of

deprivation of liberty was also ratified by Law 6.880/1980, which provides for the status of military personnel in the Armed Forces:

Article 47. The disciplinary regulations of the Armed Forces shall specify and classify misdemeanors or disciplinary transgressions and shall establish the rules relating to the scope and application of disciplinary penalties, the classification of military behavior and the filing of appeals against disciplinary penalties. Paragraph 1 - The disciplinary penalties of impediment, detention or imprisonment may not exceed thirty (30) days." (BRASIL, 1980, emphasis added)

In this context, the Military Police of the State of Tocantins, in accordance with the Federal Constitution and the Statute of the Military of the Armed Forces, regulated the deprivation of liberty due to the imposition of disciplinary sanctions of arrest or detention for disciplinary transgressions committed by its members, according to Article 13, paragraph 6, I, of Law No. 2,578/2012, determining that the time limit should not exceed 30 days. (TOCANTINS, 2012).

MILITARY PRISON SYSTEM: LEGAL BASIS

Brazilian military personnel, members of the Armed Forces (Navy, Army and Air Force), as well as of the Auxiliary Forces – Military Police and Military Fire Brigades – enjoy a special legal regime, constitutionally based and regulated by criminal and administrative rules. Faced with this reality, the military is imposed the duty to protect the homeland and society, even with the sacrifice of their own lives, if necessary. On the other hand, they are granted prerogatives for the correct performance of their constitutional mission (MORAES, 2023).

In this sense, the normative framework that governs military activity, whether federal or state, established that, whenever a military member is subjected to a deprivation of liberty sanction by a competent authority, whether for disciplinary transgression, military or common crime, or for maintenance debt, he must be imprisoned in a military organization of the respective force, provided that his military status is maintained (DIAS; VAZ JÚNIOR, 2024).

The military from Tocantins, whether or not they fulfill their constitutional mission – the fight against crime through ostensive, preventive and repressive policing – is also subject to sanctions for criminal or administrative infractions, whether of a military or common nature, or even for alimony debt. Imputing to a military offender the fulfillment of a sentence in a common prison, given the context of his activity, is not reasonable (DIAS; VAZ JÚNIOR, 2024).

Considering that the Military Police are, by constitutional force, auxiliary and reserve forces of the Brazilian Army, it is necessary to observe the legal commandments contained in Law No. 6,880, of December 9, 1980, which provides for the Statute of the Military of the Armed Forces. This law establishes, in the sole paragraph, paragraph "c" of Article 73, that the military must serve prison sentences or detention only in a military organization of the respective Force, as indicated:

Article 73. The prerogatives of the military are constituted by the honors, dignities and distinctions due to hierarchical degrees and positions. Sole Paragraph. The prerogatives of the military are: [...] c) serving a prison sentence or detention only in a military organization of the respective Force whose commander, chief or director has hierarchical precedence over the prisoner, or, if it is impossible to comply with this provision, in a military organization of another Force whose commander, chief or director has the necessary precedence; and d) trial in special forum, in military crimes." (BRASIL, 1980, emphasis added).

Similarly, the Military Police of the State of Tocantins, through Law No. 2,578/2012, which provides for the Statute of Military Police and Military Firefighters of the State of Tocantins, also establishes, in item III of the sole paragraph of Article 101, the prerogative that the military of Tocantins serves arrest or detention only in a military organization:

Article 101. The prerogatives of the military are constituted by the honors, dignities and distinctions due to hierarchical degrees and positions. Sole Paragraph. The prerogatives of the state military are: [...] III - the execution of a prison sentence or detention only in a military organization whose Commander, Chief or Director has hierarchical precedence over the prisoner or detainee, in accordance with the legislation in force. (TOCANTINS, 2012, emphasis added).

The legal provisions are clear in determining that the military officer, when subjected to a custodial sanction, must serve such sanction in a military organization and not in a common prison establishment (DIAS; VAZ JÚNIOR, 2024). The concept of "military organization of the respective Force" is clarified by Article 300, sole paragraph, of the Code of Common Criminal Procedure, which provides that the military arrested in flagrante delicto must be taken to a barracks of the institution to which he belongs:

Article 300. Persons provisionally detained will be separated from those who have already been definitively convicted, under the terms of the penal execution law. Sole Paragraph. The military arrested in flagrante delicto, after the drawing up of legal procedures, will be taken to the barracks of the institution to which he belongs, where he will be imprisoned at the disposal of the competent authorities. (BRASIL, 1969, emphasis added).

Thus, it is understood that when the legislation mentions "military organization", it refers to "barracks", which are the most common forms of military organizations, although

there are also others, such as military colleges, military hospitals and ships (DIAS; VAZ JÚNIOR, 2024).

Still on this prerogative, the Military Police of Tocantins, through Normative Instruction No. 002/2019 – General Internal Affairs of the Military Police of the State of Tocantins, established that the military must comply with the disciplinary punishment of imprisonment in a place determined by the Commander of the Unit, as provided for in Article 3 of said instruction *"Art. 3 The military must serve the disciplinary punishment of imprisonment in a place determined by the Commander of the Unit in which he will serve the sanction, and the following aspects must be observed: [...]"* (TOCANTINS, 2019, emphasis added).

Thus, it is evident that the Military Police of Tocantins needs to have an adequate place to comply with these sanctions, since the legislation is clear in determining that the custody of military personnel must take place in a military organization and not in a common prison. The Military Prison System has as its main recipients the members of the military corporations, and this prerogative is extinguished with the end of the link with the military administration, applying only to active military personnel, paid reserve and retired (CARVALHO; DIAS, 2024).

On the subject, Kuehne (2014, p. 51) states that, as long as there is no declaration of loss of graduation, military personnel cannot be taken to civilian establishments to serve their sentence. The recognition of this prerogative derives from the risks inherent in keeping military personnel, who fight crime, in the same environment in which those who were the object of their repressive activities are imprisoned. This aims to safeguard their safety, physical integrity and life, in the face of the possibility of reprisals by organized crime in common prison establishments.

THE PRISON SYSTEM IN OTHER MILITARY POLICE FORCES

The evolution of society has promoted significant changes in the world order and, consequently, established guidelines for the creation of constitutional bases in several countries (ANTONUCCI, 2021). This led to the emergence of broad rights and guarantees, individual and collective, which, in Brazil, began to require the Military Police and other public security agencies to adapt to the doctrinal aspects of citizen protection, including those who are incarcerated (CARVALHO; DIAS, 2024).

In this context, the Military Police of the State of Maranhão, recognizing the need to preserve the constitutional rights of prisoners and comply with national legislation without neglecting internal security and the community that uses its services, regulated, through

Ordinance No. 010/2013 – GCG, of 02/21/2013, the Prison Pavilion already existing in its organizational structure, headquartered at the General Command Headquarters.

Similarly, the Military Police of the State of Goiás maintains a prison unit in the 1st Military Police Battalion, in the state capital, with a capacity for 80 prisoners. To improve the conditions of this unit, the Government of Goiás signed a Conduct Adjustment Agreement (TAC) with the Public Prosecutor's Office, committing to build a new Military Prison with capacity for 141 prisoners.

The Military Brigade of the State of Rio Grande do Sul also has a Military Police Prison (PPM), subordinated to the Guard Police Battalion. This unit is intended for the fulfillment of sentences restricting liberty by active duty soldiers, paid reserve and retirees, covering temporary, preventive and flagrant arrests, in the closed, semi-open and open regimes (DIAS; VAZ JÚNIOR, 2024).

The Military Police of Minas Gerais, although it does not have a formal military prison, has jails in the Regionalized Policing Commands to guard its prisoners. Likewise, the Military Police of the State of Rio de Janeiro custody its military and former military personnel in the Special Prison Battalion (BEP), an exclusively prison unit.

In 2015, the Military Police of the State of Alagoas inaugurated the Major PM João Kyllderis Cardoso Moreira Military Prison, in the prison complex of the Tabuleiro dos Martins neighborhood, in Maceió. With an area of 800 square meters and the capacity to hold 52 military personnel, it became the second state Military Prison in Brazil.

Finally, the Military Police of the State of São Paulo was a pioneer in the custody of prisoners in establishments with prison characteristics. In 1949, he provisionally inaugurated the Romão Gomes Military Prison, which was definitively installed in 1954 through Decree No. 28,653. This prison unit is exclusive for military and ex-military police officers, and includes the fulfillment of provisional, definitive and administrative sentences for military police officers of both sexes, being considered the first prison belonging to a state militia (DIAS; VAZ JÚNIOR, 2024).

THE PRISON SYSTEM IN THE MILITARY POLICE OF THE STATE OF TOCANTINS

According to Carvalho and Dias (2022), the Military Police of the State of Tocantins (PMTO) currently has only three Military Police Units (UPMs) with the capacity to hold military prisoners, out of a total of 12 Military Police Battalions and six Independent Military Police Companies, in addition to the General Command Headquarters. Specifically, these units are: the 1st Military Police Battalion, headquartered in Palmas, capital of Tocantins, which has two cells, with capacity for two prisoners in each; the 6th Military Police Battalion,

located in Taquaralto, in the metropolitan region of Palmas, which has a cell for six prisoners; and the 2nd Military Police Battalion, in Araguaína, with a cell for two prisoners.

From this information, it is clear that the PMTO does not have a prison unit exclusively dedicated to the custody of military personnel deprived of their liberty, whether for crimes of a military or common nature, or for disciplinary transgressions. Custody has been carried out in a precarious way in the prisons of these three units, whose structure was designed, in principle, only to guard military personnel who are administratively imprisoned.

Another highlight is the limited capacity of these operational units, which do not have an adequate structure to comply with criminal sanctions, as required by legislation, which determines the separation of disciplinary, common and military prisoners. In addition, it is essential to maintain the separation between convicted prisoners and precautionary prisoners, as well as between Officers and Soldiers.

Another recurring problem is the use of these jails to guard civilian prisoners, especially political authorities in precautionary detention, a situation for which the PMTO does not have adequate structure. In many cases, it is necessary to adapt accommodation or rooms, which compromises the proper functioning of the units.

The lack of adequate infrastructure also affects the safety of military prisoners and those who serve in the units, since the lack of appropriate prison facilities can increase the risk of escapes, as recently occurred in the 1st Military Police Battalion.

Although the PMTO does not have a formal military prison, the Corporation is responsible for the custody of its military personnel deprived of liberty, in accordance with constitutional, penal, and criminal procedural norms, both military and common. The execution of the penalty is under the responsibility of the Commander of the unit where the military is imprisoned. However, this activity is hampered by the absence of formal regulations that designate the Commander as Director of the prison system and by the lack of specific rules that regulate the execution of military penalties within the PMTO.

Serving the deprivation of liberty measure in a military organization is a prerogative of the military, which must be accompanied by all the rights conferred on any prisoner, such as access to an adequate and humanized physical structure, with areas for sunbathing, intimate visits, consultations with lawyers, in addition to guaranteeing the physical integrity and safety of the detainee.

Given this scenario, it is evident that there is a need for the PMTO to implement a prison unit suitable for the custody of military personnel deprived of their liberty, whether for

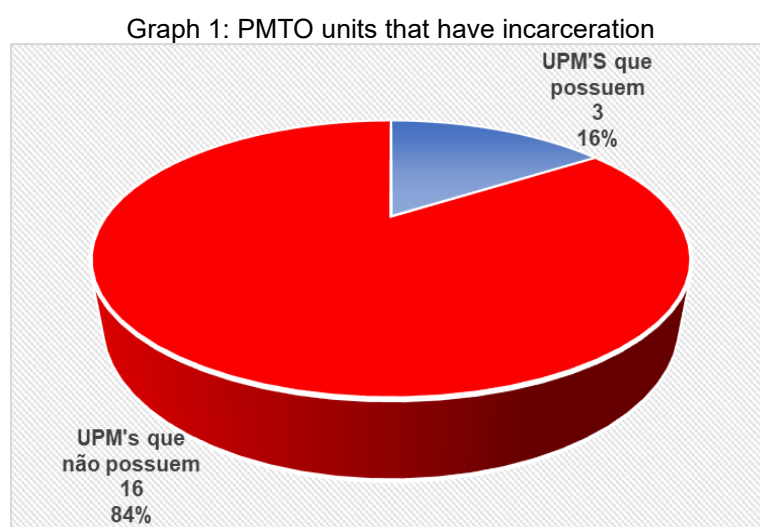
military or common crimes, or for disciplinary transgressions, in accordance with legal dictates.

RESULTS AND DISCUSSION

In order to strengthen the discussion of the theme about the need and importance of creating a prison unit in the structure of the Military Police of the State of Tocantins, it was sought through the collection of information from the General Internal Affairs Office of the institution, data that pointed to the following results.

NUMBER OF PMTO UNITS THAT HAVE INCARCERATION

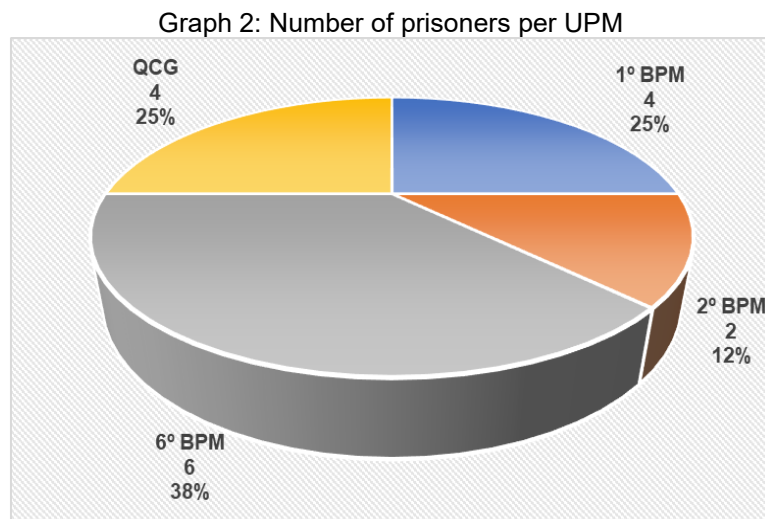
According to the survey carried out with the General Internal Affairs Office of the Military Police of the State of Tocantins, the number of units that have incarceration for the fulfillment of the segregatory measure of deprivation of liberty of the military, whether of a procedural or administrative nature, was verified, which are distributed in the following graph, expressed in absolute numbers and percentages.



Source: (PMTO General Internal Affairs, 2019)

Analyzing the data presented in Graph 1, it is visible and notorious that the number of PMTO units that have a prison for the fulfillment of the segregatory measure of imprisonment imposed on the military, either due to the commission of a crime of a military or common nature, or even due to the practice of disciplinary transgression, is totally insufficient and points out that only 16%, approximately, of the entire structure of the Tocantins militia corporation, has the capacity to execute this sanction, even if in a precarious way, since these prisons do not have the physical structure necessary for faithful obedience to what is established by the military legal regulation that regulates the matter.

Through the research carried out with the Internal Affairs Office, it was also possible to quantify the total prison population of the Military Police of the State of Tocantins today, as well as to identify in which units it is distributed, and in what percentages, as shown in the graph below.



Source: (PMTO General Internal Affairs, 2019)

Regarding the prison population under the responsibility of the PMTO, it is quite volatile, but growing, and in the current situation it has a total number of 16 (sixteen) custodians, classified between military and civilian, and distributed in only 04 (four) units of the 19 (nineteen) that make up the organizational structure of the Corporation, one of which is the General Command Headquarters, an administrative unit that does not even have cells to house prisoners, and there is a need to adapt accommodations or rooms for the execution of this measure.

Still on the prison population of the Corporation, it has the following characteristics: 03 (three) military personnel are serving imprisonment due to the commission of a military crime, 04 (four) military personnel are serving imprisonment due to common crime, 01 (one) military personnel are serving imprisonment due to a final and unappealable conviction for the practice of a common crime, 04 (four) prisoners are former military personnel excluded through administrative disciplinary proceedings and 04 (four) prisoners are civilians, who were held in custody at the General Command Headquarters by order of the Common Justice.

In view of this scenario, it is clear that there is a need for the PMTO to create and regulate a prison unit in its organizational structure, with all the characteristics and physical conditions necessary for the execution of the custody of its prisoners, so that it can adapt

and respect the legal norms regarding this activity, as well as promote security and dignity to the military deprived of their liberty.

FINAL CONSIDERATIONS

It is concluded that the Brazilian legal system, especially the rules of criminal law and military and common criminal procedure, as well as the statutory legislation, clearly establish that the military, whether federal or state, has the prerogative to be in custody in a military organization, as long as he maintains his condition of military, when deprived of his liberty due to military crimes, common or default of civil obligations, such as alimony debts.

The objective of this study was to demonstrate the feasibility and necessity of creating and regulating a prison unit within the scope of the Military Police of the State of Tocantins (PMTO), capable of meeting the legal and human rights requirements for the custody of military personnel. The analysis revealed that the current structure of the PMTO is insufficient and inadequate to guarantee the appropriate custody of military personnel deprived of their liberty, whether for crimes or disciplinary sanctions, putting the safety, dignity, and rights of these detainees at risk.

Based on the data obtained, it was evident that only three police units of the PMTO have minimal facilities for the custody of military prisoners, and even these prisons are precariously adapted. The absence of a clear regulation for military penal execution and the lack of formal designation of Commanders as directly responsible for prison management reinforce the urgency of structural reform.

Therefore, the creation and regulation of a specific Military Prison for the PMTO, as proposed, is essential. This measure will allow the corporation to meet legal requirements, respecting human rights and military prerogatives, in addition to providing more humanized, safe, and efficient custody. In addition, this initiative would ensure compliance with legal obligations and the full protection of the physical and moral integrity and dignity of military personnel deprived of liberty.

Thus, this work proposes an amendment to Complementary Law No. 128/2021, in order to include the creation and regulation of a Military Prison in the organizational structure of the PMTO, which will contribute to the improvement of custody and penal management conditions within the corporation, in line with constitutional principles and current legislation.

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