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# THE LIMITS OF THE USE OF FORCE IN POLICE STOPS: THE JUDICIAL GUIDELINES OF THE SUPERIOR COURT OF JUSTICE (STJ)

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## ABSTRACT

The police is formed by the main mechanism found by the modern State to ensure the maintenance of law and order, it has as its prerogative the regulation of social relations through physical force as a legitimate and constitutive act of its function. In this way, at the same time that it represents the authority to intervene when necessary, it can also be materialized as a powerful instrument for violating citizens' rights when it makes abusive use of force, especially lethal force. The objective of the study was to analyze how police authorities in Brazil can guarantee the physical integrity of the approached, maintaining the effectiveness of police actions in situations of well-founded suspicion, based on the jurisprudence of the Superior Court of Justice (STJ) and the legal foundations. For data collection, the research was bibliographical. Therefore, relevant legal documents were analyzed, including case law of the Superior Court of Justice (STJ) on the use of force in police stops, highlighting the precedents that guarantee the physical integrity of the approached. According to the results achieved, it was clear that the challenge continues to be to ensure active internal affairs departments, but that show the population their power of action, generating public reports with the results of the cases analyzed, referrals given to the cases, and strengthening the transparency of police institutions. In view of the STJ's understanding, it is clear that the progressive use of force establishes that police stops must begin with a mild form and the use of lethal weapons occurs only as a last resort, when there is a significant risk to the safety of police officers and civilians. It is concluded that Brazil needs to make greater investments in public security through more transparent actions, positive assertions and strategic planning determined for the current scenario to be in fact changed, as it is still nebulous and the insecurity that has been installed within Brazilian society continues to be difficult to resolve.

**Keywords:** Use of Force. Strength Levels. Police. Society. Superior Court of Justice.

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## INTRODUCTION

Law is a social fact, and as such, it only makes sense when it is inserted in a society. There would be no reason to delimit people's behavior if they lived in isolation. Hence, the emergence of rules of conduct was essential for these societies to be able to organize and develop in a balanced way. This is because, thanks to the rules, each one knows that their performance is limited by the well-being of the collectivity.

Thus, as a rule, in all human societies there are certain values that are defended by that society through the imposition of rules, written or not, that determine the limits to individual behavior. But the norms emerge to the extent that it is perceived that a certain social fact needs control.

The police power has a negative function, limiting the individual sphere of citizens. This is because for the good of the whole community each one cannot be allowed to act as he pleases.

Throughout the historical and social process, there were several means of police approach, and it is necessary to directly evolve these methods towards people who end up going through some type of police approach, and the use of force also has to be fully taken into account, and it will also be necessary a legal analysis of how far the ostensible body that produces this type of action can go.

These types of police stops become commonplace throughout the daily life of society, because the police, if in case of well-founded suspicion may approach any civilian, based on a question in which it is based on a distrust of a certain person, or individual that may end up generating a "risk" to the social order, but it should be noted that when approaching any citizen must the authority at the moment,  Be extremely cautious, because what leads to reach this point will be a direct motivation of the police officer.

The relevance of the theme directly involves society, which can go through any police approach at any time, and also involves issues related to Criminal Law, which studies these types of phenomena, and also to what extent it can reach the authority in which this type of "circumstance" is practiced. It should also be noted that people from different social classes can go through this type of situation more or less often, depending on their social and financial condition.

In order to attract attention, the present work shows provisions present in the criminal process that aim to regulate the issue of police stops, and consequently, compare it with the method of approach of other countries and also demonstrate which means would be more humanized and which method will be more effective and that does not lead to the injury of the person's human rights.

The problem of the present study is to discover how the police authorities in Brazil can guarantee the physical integrity of the approached, while maintaining the effectiveness of the police action in situations of well-founded suspicion, in the light of the jurisprudence of the STJ and the current legal foundations?

The objective of this study was to analyze how police authorities in Brazil can guarantee the physical integrity of the approached, maintaining the effectiveness of police actions in situations of well-founded suspicion, based on the jurisprudence of the Superior Court of Justice (STJ) and on legal foundations. And the specific ones were: to map and analyze the Brazilian legal norms that regulate the use of force in police stops, highlighting their interaction with the principles of human rights; investigate the practices and methods of police stops that seek to balance the physical integrity of the approached and the effectiveness of police action; analyze the case law of the Superior Court of Justice (STJ) of the years 2018-2023 on the use of force in police stops, highlighting the precedents that guarantee the physical integrity of the approached.

## METHODOLOGY

Regarding the methodology used, the research was qualitative and exploratory in nature. The qualitative approach can allow for a deep understanding of the nuances and contexts related to the use of force in police stops. The research involved the analysis of federal jurisdiction laws and judgments of the Superior Court of Justice (STJ) from the years 2018-2023. The exploratory nature aims to identify patterns and new perspectives on the subject.

## RESULTS

Before entering into the legal issues about police stops, it is necessary to have an understanding of what police authority and public security are within the Brazilian legal system and its legal provisions. The first point is to know, what is the police and their function before the State?

According to Bandeira (2015, p. 9) the police officer is the public agent who, representing the State, promotes and guarantees public security and the law in our society, protecting people and their assets, and its basis is within the principle of the supremacy of the public interest over the private, and the State, through the police power, authorizes its agents to make use of the police power-duty, which consists of a mitigation of individual rights in favor of the collectivity.

Public security has its concept within article 144 of the Constitution of the Federative Republic of Brazil and brings the following concepts:

> Article 144. Public security, a duty of the State, a right and responsibility of all, is exercised for the preservation of public order and the safety of people and property (BRASIL, 1988).

Within the Brazilian legal system, there are still the components of public security that are still present in the legal provision mentioned above, which will be: a) Federal Police; b) Federal Highway Police; c) Federal Railway Police; d) Civil Police; e) Military police and military fire brigades; f) federal, state and district criminal police.

It is also necessary to understand what the function of the police is, which according to the author Dominique Monjardet exemplifies the following functions:

> The work of the police has three objectives: I) To reduce and combat crime; II) To ensure public safety; and III) To preserve the political order. As much as the initial objectives are similar, the first is related to the issue of protecting goods and people, while the second is concerned with maintaining public peace, promoting respect for the rules that enable good social coexistence (OLIVEIRA apud MONJARDET, 2021, p.18).

The police power has a negative function, limiting the individual sphere of citizens. This is because for the good of the whole community each one cannot be allowed to act as he pleases. According to Mazza, one can speak of police power in two senses: broad and restricted. According to the author, therefore:

> a) police power in the broad sense: includes any state limitation on private freedom and property, encompassing legislative restrictions and administrative limitations. Thus, for example, the provisions of the City Statute (Law No. 10,257/2001), which condition the regular use of urban property to the fulfillment of its social function, constitute police power in the broad sense. However, the excessive breadth of this concept reduces its practical usefulness, and there is no record of its use in public tenders;
> b) Police power in the strict sense: more used by the doctrine, the concept of police power in the strict sense includes only administrative limitations on private freedom and property, leaving out the restrictions imposed by legal provisions. Examples: health surveillance and traffic police. Basically, the strict notion of police power involves administrative activities of inspection and conditioning of the private sphere of interest, in favor of the community (MAZZA, 2013, p. 267).

Precisely, due to these differences between the strict and the broad sense, when talking about the police, the majority of the population immediately has in mind that it is the judicial police, with its agents, who work in uniform, repressing crimes, etc.

However, according to Araújo (2014, p.18), the term police comes from the Greek "politia" and both in Greece and in Rome, it served to refer to activities carried out by the city-states, as a state activity and in this context it was not separated from "politics", a term that was even derived from this same etymological root.

According to the author, in the absolutist State (Police State), there is a state conformation in which it holds all power, limiting the sphere of freedom of citizens and exercising its police power in a sovereign and absolute manner; which is very far from the current Rule of Law, in which the State not only uses the law to limit the freedom of the citizen, but this also limits him, and, in both cases, the objective aimed at is always the common good.

In this sense, according to Araújo (2014, p.20), many authors prefer not to use the term "Police Power", given that the Police State was characterized by the excessive use of force, which is not consistent with all the values that are defended by the Federal Constitution of 1988, through the rights and guarantees established therein. This is also what Mazza says. According to the author:

> The police power [...] represents a state activity that restricts private interests, limiting freedom and individual property in favor of the public interest. Due to its origin linked to the abuses committed in the Middle Ages, in the period known as the Police State, marked by the absence of subordination of rulers to the rules of law, the term "police power" has been abandoned by the most modern doctrine in the face of the authoritarian bias that its history carries (MAZZA, 2013, p. 266).

Thus, the very term "Police Power" seems to tend to disappear, as "paternal power" – which gave way to "family power" – and so many other terms that, little by little, came to be seen as incompatible with the democratic, free, fair and solidary society that was intended to be built.

Furthermore, it is interesting to observe, as Mazza states, that the "Police Power restricts private interests, limits the freedom of the subject and his property in favor of the public interest". The same can be said about the traffic police.

However, before dealing with the Police Power in traffic, it is important to differentiate it from the judicial police. According to Cretella Júnior, apud Araújo:

> In 1795, the expressions were legally coined in France, by the Law of 3 Brumaire, year IV, in its articles 19 and 20 [...]:
> Art.19 - The administrative police has as its objective the habitual maintenance of public order in each place and in each part of the General Administration. It tends mainly to prevent crimes.
> Art.20 - The judicial police investigates crimes that the administrative police are unable to prevent from being committed, gathers the respective evidence and delivers the perpetrators to the courts charged by law with punishing them.
> Thus, while the administrative police is preventive and acts before the harmful effect, limiting the activity of citizens, through inspection, etc., the judicial police has a repressive character, and acts after the occurrence of the accident, to punish those responsible for it. (ARAÚJO, 2014, p.25)

Within the scope of the Administrative Police Power, which is of interest to the present work, using only the expression "Police Power", in view of the redundancy of the

former, the state limitations will be sought in reference to traffic, the object of study of the research.

In the Brazilian legal system, the concept of Police Power is brought in the CTN (National Traffic Code), Law No. 5172/66 in its article 78, with wording given by Complementary Act No. 31, of 12/28/1966. According to the letter of the Law:

> Article 78. Police power is considered to be an activity of the public administration that, by limiting or disciplining a right, interest or freedom, regulates the practice of an act or abstention in fact, due to public interest concerning safety, hygiene, order, customs, the discipline of production and the market, the exercise of economic activities dependent on concession or authorization by the Public Power, public tranquility or respect for property and individual or collective rights.
> Sole Paragraph. The exercise of police power is considered to be regular when it is performed by the competent body within the limits of the applicable law, in compliance with the legal process and, in the case of an activity that the law considers discretionary, without abuse or misuse of power (CURIA, 2017, p. 129).

Since this power gives rise to a series of sanctions, most of them of a pecuniary nature, it is natural that the legislator wanted to determine right away in the National Tax Code what this power would be.

It is interesting to highlight, however, what the doctrinaires say about the subject. Mazza makes a short summary of what several scholars say on the subject. According to the author:

> Hely Lopes Meirelles: "police power is the faculty available to the Public Administration to condition and restrict the use and enjoyment of goods, activities and individual rights, for the benefit of the community or the State itself".
> Celso Antônio Bandeira de Mello: "the activity of the Public Administration, expressed in normative or concrete acts, to condition, based on its general supremacy and in the form of the law, the freedom and property of individuals, through action that is sometimes inspecting, sometimes preventive, sometimes repressive, coercively imposing on individuals a duty of abstention in order to conform their behaviors to the social interests enshrined in the normative system".
> Maria Sylvia Zanella Di Pietro: "activity of the State consisting in limiting the exercise of individual rights for the benefit of the public interest".
> José dos Santos Carvalho Filho: "prerogative of public law that, based on the law, authorizes the Public Administration to restrict the use and enjoyment of freedom and property in favor of the interest of the collectivity". (MAZZA, 2013, p. 268)

What can be inferred from all these authors, cited by Mazza, when conceptualizing police power is the idea of restriction, conditioning or limitation of freedom and property, with the fulcrum of the Law and aiming at the public interest.

The approach consists of a police action that displeases, if not all, but a good part of the people who have this experience. It seems impossible to imagine someone thanking a police officer when he finishes an approach. This is an understandable attitude, because no one likes to have their rights curtailed and their privacy invaded, even if it is for a few minutes and even if it is by authorities.

The following definition is presented for the police approach: "it is an encounter between the police and the public whose procedures vary according to the circumstances and the evaluation made by the police officer about the person with whom he interacts, which may or may not be related to the crime" (PINC, 2007, p. 12).

Having presented the concepts related to public security and the functions and competencies of the police in Brazil, it is necessary to understand what the police approach consists of, as well as its legal foundations based on the national legal system.

According to Santos (2020, p.18), the police approach is a preventive activity and aims to locate, through searches, illicit objects and/or people who have committed or would commit some type of criminal offense, and this approach, when successful, will result in the seizure, that is, the constriction of a certain object or person.

Regarding the issue of police stops on a female person, the Code of Criminal Procedure establishes in its article 249, the following provision: "the search of a woman will be carried out by another woman, if it does not result in delay or prejudice to the diligence (BRASIL, 1941).

Therefore, this issue of the police approach is an exercise of the State Police Power that the public administration has, where it is supported within the principle of the supremacy of the public interest over the private, in addition to the police being protected by the aforementioned principle, he is also protected by the exclusion of illegality of the strict compliance with legal duty that is provided for in Art. 23,  of the Brazilian Penal Code.

An item that is intrinsically linked to the police approach is the issue of the personal search, where the author Rogério Sanches explains the following thesis about the personal search: "The personal search, or personal search that will be carried out on the person's body, aims to find some weapon or objects directly related to the criminal offense (SANTOS apud SANCHES,  2020, p.19).

The Code of Criminal Procedure brought this concern with the issue of personal searches, so much so that within the legal provision there is a provision about personal searches carried out by police officers, which states the following:

> Article 244. The personal search will not depend on a warrant, in the case of arrest when there is a well-founded suspicion that the person is in possession of a prohibited weapon or objects or papers that constitute a corpus delicto, or when the measure is determined in the course of the house search (BRASIL, 1941).

Another point to be taken into consideration refers to the issue of well-founded suspicion, where the author Aloísio Henrique Gomes Dos Santos states the following on the issue of well-founded suspicion:

> It is inferred that the search (unfolding of the approach) must be motivated by well-founded suspicion, that is, there must be a situation that leads the police officer to interpret a behavior as suspicious, in a factual context. Therefore, well-founded suspicion is a guiding element with regard to the police approach (SANTOS, 2020, p. 20).

Therefore, the police approach has to be intrinsically linked to the elements of the personal search and the well-founded suspicion to take place, and between these two elements there is the issue of prevention and of basing the approach on the issue of preventing public order.

## DISCUSSION

The use of force by the police is a sensitive issue both in the legal and social spheres, as the methods end up generating controversies and debates in these aforementioned media, and throughout the historical process, it has been a constant challenge, where everyone seeks a way to solve these debates.

According to Santos (2020, p.23), force by the police has to be used in a moderate manner, proportional to the seriousness of the violation identified and with an intensity strictly necessary to meet the objective that must be achieved.

The use of force by the police is regulated within arts. 284 and 292, both of the Brazilian Code of Criminal Procedure, where these provisions will bring the following legal provision:

> Article 284. The use of force will not be allowed, except in the case of resistance or an attempt to escape by the prisoner; Art.292. If there is, even on the part of third parties, resistance to arrest in flagrante delicto or to that determined by a competent authority, the executor and the persons who assist him may use the necessary means to defend themselves or to overcome the resistance, of which all the record will be drawn up and signed by two witnesses (BRASIL, 1941).

According to Costa (2015, p.22) in case of resistance on the part of the citizen approached, the police officer must make an analysis, to know how long he can use physical force, or sometimes, if he needs to use the firearm depending on the reaction of the offender, and the strength of the law enforcer has to be proportional to the resistance of the citizen approached, in this case, the so-called moderate physical force, so that they avoid committing excesses or abuses and also consequently avoid crimes of disobedience or resistance, thus causing inconvenience to both parties.

Still in relation to the use of force by the police, the Code of Military Criminal Procedure states in its article 234, the following thesis on the use of force:

> Article 234. The use of force is only allowed, when indispensable, in the case of disobedience, resistance or attempted escape. If there is resistance on the part of

> third parties, the necessary means may be used to overcome it or to defend its executors and assistants, including the arrest of the offender. The act signed by the executor and two witnesses will be washed away from everything (BRASIL, 1969).

On the other hand, José Cretella Júnior apud José dos Santos Carvalho Filho (2009, p. 79) argues that "the repressive faculty is not, however, unlimited, being subject to legal limits: citizen's rights, individual prerogatives and public freedoms guaranteed in the Constitution and in the laws."

Still on the same fact, Cretella ponders:

> Just as individual rights are relative, so is the police power, which, far from being omnipotent and uncontrollable, is circumscribed, and can never endanger liberty and property. Importing, as a general rule, the police power, restrictions on individual rights, its use should not be excessive or unnecessary, so that the abuse of power is not configured. It is not enough that the law allows the coercive action of the authority to justify the police act. It is also necessary to aim at material conditions that request or recommend its innovation. (CRETELA JÚNIOR, 2009, p. 31-32).

It is essential to point out that there is a great discrepancy between the law and reality, in which public administration agents are observed exercising their power in an abusive way, even causing damage to the community, thus creating conflict between their duties and their actions.

A parallel when talking about the use of police force is the issue of the use of handcuffs by law enforcers. Handcuffs are a mechanism that the police officer has to restrain an individual who is in a state of resistance, and this topic is also widely discussed within the legal environment and society, the discussions on the subject were so many, that it led the Federal Supreme Court to issue Binding Precedent number 11, which deals with the following:

> Binding Precedent 11: The use of handcuffs is only lawful in cases of resistance and well-founded fear of escape or danger to one's own physical integrity or that of others, by the prisoner or third parties, justified in writing, under penalty of civil or criminal liability of the agent or authority and nullity of the arrest and the procedural act to which it refers, without prejudice to the civil liability of the State (STF, 2008).

Still on the legal provision for the use of handcuffs, within Law 7.210 of 1984 in its article 199, it regulates that the use of handcuffs will be regulated by federal decree (BRASIL, 1984).

The author Francisco Walter Oliveira Bandeira, thinks the following about the use of handcuffs by police authorities:

> The use of handcuffs would be a way of instrumentalizing the use of force by the police, as a guarantee of security for society, but within all the legal precepts referred to here, especially the dignity of the human person. This is the proposal of the STF precedent. It so happens that the aforementioned precedent did not

> mitigate the discretion of the act, as its application is made difficult by the fact that it obliges the agents to substantiate in writing the reasons for proceeding with the use of handcuffs, due to the immense number of arrests made throughout the country (BANDEIRA, 2015, p. 48).

In the case of abuse or deviation, which may be reprehensible by the majority, there is the Abuse of Authority Law, to curb certain infractions that go beyond the duty of that authority. The aforementioned law covers the public administration as a whole, but there are legal provisions that cover the police, such as article 13, II, of Law 13,869 of December 5, 2019, which states the following:

> Art.13. To constrain the prisoner or detainee, by means of violence, serious threat, or reduction of his capacity for resistance, to:
> II- Submitting to a vexatious situation or embarrassment not authorized by law (BRASIL, 2019).

However, it can be observed that the aspects of the police approach go beyond what is provided for in the legal provisions, as this element generates discussions in the legal and social environment.

The first comparison to be made will be with the North American legislation, because according to Mendonça; Dantas (2016, p.2) the North American police have a military appearance for the most part, valuing respect, having a different aspect of police approach from the Brazilian one.

However, it is necessary to take into account that in the country mentioned there was a case that ended up changing the issue of police stops, which was the George Floyd case, where Soares et al (2023, p. 3) show that there is a video of the police stop, where it clearly shows a police officer with his knee on the victim's neck, where he begged saying that he could not breathe and still asked for water, and his last request was that they not kill him, and he still begged for his mother.

Another case of repercussion that deals with police stops was the case of Prieto and Tumbiero vs. Argentina, which according to Valente (2020, p.1), in the condemnation by the Inter-American Court of Human Rights, the two plaintiffs had their rights violated in the police action and that the arrests were illegal, and that they were made without a court order or flagrante delicto.

The police agent, in the attribution of ensuring the order and security of the population, seeking at all times to meet the public interest, carries out procedures that lead to restrictions on the rights of individuals, such as the right to locomotion, intimacy, private life, interfering in the usual routine of individuals, aiming at the inhibition of illicit acts, such as narcotics and related drugs, firearms, smuggling, etc. or in the identification of criminals.

Thus, it is required that the police officer be cautious in the execution of acts so as not to go beyond what the law determines, since individual rights are also protected by the Constitution.

As much as the private individual may be able to argue about the security of his individual rights in the Federal Constitution, as an example of those listed in article 5, regarding the inviolability of the intimacy, honor and image of people, the personal search is based on our legal system, expressly contained in the Code of Criminal Procedure, in its chapter XI:

> Article 240. The search will be home or personal.
> § 1 A house search shall be carried out, when there are well-founded reasons to authorize it, in order to:
> a) arrest criminals;
> b) seize things found or obtained by criminal means;
> c) seize counterfeit or counterfeit instruments and counterfeit or counterfeit objects;
> d) seize weapons and ammunition, instruments used in the commission of a crime or intended for a criminal purpose;
> e) discover objects necessary for the proof of infraction or for the defendant's defense;
> f) seize letters, open or not, addressed to the accused or in his possession, when there is suspicion that knowledge of their content may be useful to elucidate the fact;
> g) apprehend persons who are victims of crimes;
> h) gather any element of conviction.
> § 2 A personal search shall be carried out when there is a well-founded suspicion that someone is concealing a prohibited weapon or objects mentioned in letters b to f and letter h of the previous paragraph.
> [...]
> Article 244. The personal search will not depend on a warrant, in the case of arrest or when there is a well-founded suspicion that the person is in possession of a prohibited weapon or objects or papers that constitute a corpus delicto, or when the measure is determined in the course of a house search.
> [...]
> Article 249. The search of a woman will be carried out by another woman, if there is no delay or prejudice to the diligence.

Some authors, such as Antônio Alberto Machado (2012) believe that the carrying out of checkpoints, inspections at variable points carried out by ostensive police forces with the purpose of inspecting traffic, in addition to combating crimes, especially drug trafficking and those related to firearms, is an evident demonstration of arbitrariness. In this way, the renowned author ends up prevailing the individual right to the detriment of the common good. Let's see:

> [...] It will not be admissible to suppose that the preservation of public order may be threatened on a daily basis, to the point of justifying at any time any type of police intervention, especially those carried out systematically with serious risk to the constitutional rights of the citizen. And this is very much the case of the checkpoints, carried out by the Military Police, with the purpose of subjecting people to the embarrassment of personal searches, indiscriminately and without cause, under the ill-fated argument that public order needs to be maintained at all costs.

However, the majority doctrine has a justifying view of such acts, as it defends the superiority of collective rights over individual rights. Let us see what Paulo Rangel (2010, p. 161) says about the blitz:

> The blitz is part of the administration's discretionary power to limit, within the law, individual freedoms in favor of the public interest. In other words, it is the exercise of the police power of the public administration. However, this repressive power is not unlimited, being subject to legal delimitations imposed by the constitutional order: citizen's rights, individual prerogatives and public freedoms guaranteed in the Constitution and in infra-constitutional legislation. Thus, we cannot confuse discretion with arbitrariness in carrying out the aforementioned blitz. Agents who exceed in the exercise of their police duties will be liable for the excess they practice. However, the act itself carried out (personal search in a private car) is strictly legal. It is necessary that there is a well-founded suspicion, as we have said above, so that the search is legitimate and within strictly legal limits.

There is a legal provision for the practice of such acts, thus, if the agent acts in accordance with the law and within the limits, the individual cannot claim the restriction of his individual rights, even momentarily, because there is no arbitrariness. The Superior Court of Justice has already ruled on this understanding, as can be seen in Habeas Corpus Appeal No. 1833/AL:

> RHC - CRIMINAL - PREVENTIVE HABEAS CORPUS - POLICE APPROACH - ILLEGAL CONSTRAINT - The police power (not to be confused with the police power) consists, in compliance with the principle of legality, of imposing restrictions on the exercise of rights, aiming at the well-being of the community. The request for vehicle ownership documents, proof of qualification to drive them, in principle, does not denote any illegality. No illegal coercion, no abuse or misuse of power. Rapporteur: Justice Luiz Vicente Cernicchiaro. DJ 06/04/2020 p. 4510.

The author Júlio Fabbrini Mirabete (2006, p. 323) also defines personal search:

> [...] inspection of someone's body and clothing to seize these things. It also includes the entire sphere of custody of the person, such as bags, suitcases, briefcases, packages, etc., including the vehicles in their possession (cars, motorcycles, boats, etc.). For the location of the things to be seized, the use of any lawful means (mechanical, radioscopic, use of animals, etc.) is allowed. The personal search warrant must contain the requirements already mentioned (previous item), but it may be carried out regardless of the written order in the following cases mentioned in article 244: in the case of arrest; when there is a well-founded suspicion that the person is in possession of a prohibited weapon or objects or papers that constitute a corpus delicto; or when the measure is determined in the course of a house search.

In short, the personal search can be carried out in the individual's clothes, in the objects they bring with them, in addition to the vehicle. The personal search can be carried out in several ways, such as ocular, tactile, or by means of mechanical devices, as in the case of X-rays.

The police officer must exercise his duties, especially the personal search, so that the principles that govern the Public Administration are faithfully observed, such as legality, impersonality, morality, proportionality, etc.

It can be seen that the well-founded suspicion is shown to be a legal requirement for the personal search. Suspicion can be understood as a slight distrust or suspicion of something, however, the legislation determines that the suspicion is well-founded, and the opinion of the public agent is not enough, as it would give a very wide margin of freedom to the agent, but there must be a causal link between the suspicion and the reality of the facts.

Due to all the complexity given to the case, the Federal Supreme Court ruled on the need for an objective requirement in the well-founded suspicion, according to the habeas corpus judgment No. 81305:

> SUMMARY: HABEAS CORPUS. DETAILED STATEMENT OF OCCURRENCE DRAWN UP AGAINST THE PATIENT. REFUSAL TO BE SUBJECTED TO A PERSONAL SEARCH. JUST CAUSE FOR THE CRIMINAL ACTION RECOGNIZED BY THE APPELLATE PANEL OF THE SPECIAL COURT. Competence of the STF for the deed already recognized by this Panel in HC No. 78,317. A term that, under penalty of excessive formalism, cannot be considered null and void because it does not record the patient's statements, nor contain his signature, requirements not required by law. The "well-founded suspicion", provided for in article 244 of the CPP, cannot be based on solely subjective parameters, requiring concrete elements that indicate the need for the search, in view of the embarrassment it causes. Absence, in this case, of elements of this nature, which cannot be considered as configured in the allegation that the patient was wearing a "jacket" capable of hiding a weapon, at the risk of referenda to arbitrary conducts offensive to individual rights and guarantees and characterizing abuse of power. Habeas corpus granted to determine the archiving of the Term. Rapporteur: Justice Ilmar Galvão. DJ 22/02/2022 p. 35.

The range of possibilities of well-founded suspicion is diverse, ranging from information or denunciation of people about characteristics that identify the suspect, or his vehicle to an unusual reaction or fact of the approached citizen that raises suspicions. It is essential that the existence of the objective and sensitive nature of the well-founded suspicion may vary from each concrete case, so that the motivation of the administrative act performed by the agent can be integrated.

## CONCLUSION

The use of police force, when exercising administrative police power, aims to ensure the rights of the population. In view of this, it restricts and limits individual activities that may generate some conflict with the collectivity. In these situations, there is the progressive use of force, at which time the public agent analyzes the fact that occurred and, thus, determines the level of force that should be used.

Thus, the police force needs to be connected to the principle of proportionality of means to ends. This means that the public agent does not have the power to act disproportionately to the seriousness of the violation identified. Any action performed outside the dictates of this principle must be considered illegal.

However, even though the function of agents imbued with police power is to ensure public safety, there are situations in which they exercise police power with deviation of purpose or excess of exaction, thus constituting an abuse of power susceptible to sanctions, under the terms of Law No. 13,869/2019 and other governing legislation.

The study found that the great challenge is to ensure active internal affairs departments, but that show the population their power of action, generating public reports with the results of the cases analyzed, referrals given to the cases, and strengthening the transparency of police institutions.

It is concluded that Brazil needs to make greater investments in public security through more transparent actions, positive assertions and strategic planning determined for the current scenario to be in fact changed, as it is still nebulous and the insecurity that has been installed within Brazilian society continues to be difficult to resolve.

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To God and my family.

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