

THE ABUSE OF AUTHORITY OF THE POLICE POWER AND THE STRICT FULFILLMENT OF LEGAL DUTY



<https://doi.org/10.56238/arev7n2-256>

Submitted on: 01/21/2025

Publication date: 02/21/2025

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ABSTRACT

In the present work, a study is developed about the conflicts between the abuse of authority of the police power and the strict fulfillment of the legal duty. This study is justified in the sense of demonstrating to the reader how much democracy itself and the guarantee of its effectiveness has part of its construction in the very performance of the professional at the service of the State, and thus allowing both society and the police themselves to perceive the importance of recognizing the existence of this conflict of paradigms and thus enabling the security professional himself to act more accurately in the guarantee the construction of citizenship and the common good. The methodology used for the elaboration of this study was the bibliographic research with the nature of a subject summary, which sought to structure the scientific knowledge of other authors regarding the proposed theme, with searches via the Internet, books and articles specialized in the subject. It is concluded that police activity is subject to the limits of the law, and its agents

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who unnecessarily exceed the established limits are subject to criminal and disciplinary proceedings. The abusive act practiced by the police forces brings as a consequence the obligation of the State to indemnify the private party for the damage suffered.

Keywords: Abuse of Authority. Legal Duty. Police Power.

INTRODUCTION

The performance of police power, exercised by public security agents, is fundamental for the maintenance of order, security and the protection of citizens' rights. However, the line between the legitimate exercise of authority and the abuse of power can be thin, which generates a constant conflict between the need to ensure compliance with the law and respect for individual rights (Meirelles, 2020).

The abuse of authority in the exercise of police power occurs when public security agents, in the performance of their duties, exceed the limits of the law, practicing actions that violate citizens' rights in an unnecessary or disproportionate manner. This practice can take many forms, from physical violence to arbitrary approach, detention without legal justification, or excessive use of force (Mello, 2020).

Such acts not only violate the rights of individuals directly affected, but also undermine society's trust in the institutions responsible for public security. On the other hand, strict compliance with legal duty requires agents to strictly adhere to the rules and procedures established by legislation, respecting the rights of citizens and avoiding arbitrariness (Di Pietro, 2020).

The central problem of this research, therefore, boils down to the following question: How is the abuse of authority by the police power configured in opposition to the strict fulfillment of legal duty, and what are the consequences of this action for society and the security agents themselves?

The general objective of this work is to understand the implications of the abuse of authority in the exercise of police power and the consequences of this behavior, both for the affected individuals and for the agents themselves. The specific objectives of this work include the analysis of the concept of abuse of authority in the context of police power, the evaluation of the causes that lead police officers to exceed legal limits, and the discussion of preventive and corrective measures that can be implemented to curb abuses.

The justification for carrying out this study is based on the growing concern with the performance of police agents in Brazil, especially with regard to the violation of fundamental rights and the occurrence of abuses of authority. Cases of excesses committed by police officers have been widely discussed in the media and have generated significant repercussions in the relationship between the population and public security institutions. In addition, the importance of ensuring compliance with the law in a fair and equitable manner is fundamental for maintaining democratic order. Thus, understanding the

boundaries between abuse and legal duty is essential for improving police practices and building a more just and egalitarian society.

The methodology used for this study is the bibliographic research, which seeks to analyze and interpret the contributions of several authors on the themes of abuse of authority, police power and strict compliance with legal duty. The research is based on books, academic articles, and jurisprudence, as well as legal sources that address police action and citizens' rights.

DEVELOPMENT

GENERAL ASPECTS OF THE POLICE AUTHORITY AND CURRENT LEGISLATION

The human community, in whatever part of the world or type of society it is presented, is composed of people with various characteristics, diverse social conditions, common or conflicting interests. Furthermore, as explained initially, the legal system of each country provides for the rights and duties of citizens, so that it is possible to live peacefully within the space that is delimited to them (Silva, 2018).

Despite this, in the twenty-first century, social specialists are not fully capable of defining the complexity that characterizes the modalities of human coexistence, nor the constant mutations that occur in individual relationships. There are those who claim that the child of today is born knowing, with differences from those of yesteryear, perhaps coming from conception itself. Development seems accelerated. There is a rush to reach mature age, so as not to lose position in an increasingly competitive society. And this became something natural (Silva, 2018).

Some very notable characteristics, such as the lack of regard for others, self-indulgence, alienation, can be considered peculiar to Western societies, especially in large cities. Through police authority, the State effectively exercises its vocation, acting in societies specifically by dimensioning those freedoms guaranteed by the constitution. The police authority has the prerogatives to effectively preserve the social environment, as it interferes in people's real interests, or conditions them, thus avoiding the occurrence of any damage to society (Nassaro, 2019).

The exercise of such freedoms and rights, which, in fact, concentrate so many constitutionally protected ones, cannot be left totally adrift to the free will of each individual, because conflicts would certainly arise, which would make human coexistence impossible. (Lazzarini, 2019).

The Administration evaluates such acts or wills, so that they do not cause, or cause, the least possible damage to the community. It is through the police authority that the State develops a series of measures that fall on the administered, guaranteeing their well-being, by policing all exorbitant and harmful conduct of each of the components of the group (Bastos, 2020).

The State is made up of three primordial elements, people, territory and sovereign government. In order for the State to perform its functions, it acts through the Powers of the State, which are the Legislative, the Executive and the Judiciary, independent and harmonious with each other, as stated in our Magna Carta (art. 2). The main function of the Legislative Branch is the drafting of laws (legislative function), the main function of the Executive Branch is the execution of laws (administrative function), while the main function of the Judiciary Branch is the application of laws to concrete cases (judicial function) (Meirelles, 2020).

The State is the entity that regulates social conditions; It was designated by man, through a social pact, to guarantee the rights and duties of the citizen and to develop daily relationships. For this reason, the state has the function of taking certain measures and intervening in the administrative and police sphere in a preventive, repressive, or coercive manner (Nassaro, 2019).

Thus, the Police Power is the coercive force with which the State is clothed to ensure the balance between the public interest and the individual interest. Thus, it is not allowed to confuse police power with police power, since the police power has administrative functions and regulates the power of the police; it can be said, therefore, that police power is the reason for police power to exist (Lazzarini, 2019).

The State must interact with society in a harmonious way, through cooperation, aiming at its organization, in which the population must participate and whose problems they must be aware of in order to be able to serve it better. It must be analyzed that the public is the only reason for the police corporation to exist and that is why it must be frank, with the agreement of good service, seeking to understand the difficulties of the citizen (Rosa, 2019).

For this structure to work, it is necessary for some individuals to represent the state, they are called public agents classified as follows according to Di Pietro (2020, p. 55):

Political agents at the first level of the Government - (President, Governor, Mayor, Deputy, etc.). Administrative agents - subject to the functional hierarchy and the

single legal regime, civil servants: civil servants: civil servants, commissioned and contracted;

Honorary agents - citizens summoned, designated or appointed to provide, temporarily, certain services to the State. (Juror, Electoral Clerk, Commissioner of Minors, etc.);

Delegated agents - Private individuals who are entrusted with the execution of a certain activity, at their own risk, (non-nationalized notary offices, auctioneers, translators, etc.);

Accredited Agents – to represent the Administration in certain acts or a certain specific activity, upon remuneration of the Public Power, (doctors, dentists, etc.).

In the understanding of Bastos (2020, p. 76):

So, for such attributions to materialize and enter the natural world, it is necessary to have the help of physical beings, preposed to the condition of agents. It is the will and action of these subjects that are, by law, directly imputed to the State (manifesting themselves through its organs), in such a way that, while they act in this capacity of agents, their will and action are received as the will and action of the organs that make up the State; therefore, of the State itself. In short, the will and action of the State (manifested by its organs, it should be repeated) are constituted in and by the will and action of the agents.

In Brazil, the matter is intimately and inextricably linked to the right of representation, a constitutional guarantee provided for in article 5, item XXXIV, "a", of the 1988 Constitution, which establishes as follows: "XXXIV – The right to petition the Public Authorities in defense of rights or against illegality or abuse of power is guaranteed to all, regardless of the payment of fees" (Mello, 2020, p. 46-47).

It is important to highlight that the police authority is not related to illegalities or crimes. It acts on activities considered lawful, guaranteed to people by the constitutional order itself. However, even these must be limited, when their exercise is contrary to the public interest. (Di Pietro, 2020).

Thus, police activity as a means of preventing and combating crime is exercised on a daily basis by the police forces of the states of the federation and the Union, in compliance with the constitutional precept regulated in its article 144 of the Constitution of the Federative Republic of Brazil (CRFB/1988), in the chapter referring to public security organs Among these bodies are the state military police – Art. 144, § 5 - who face various situations on a daily basis in the face of the mission of maintaining public order (Bastos, 2020).

The police forces play an important role in the preservation and maintenance of the Democratic Rule of Law, because, without them, harmonious and peaceful coexistence would not exist in a civilized society, which today is full of conflicts and diffuse interests. Therefore, for the exact fulfillment of his legal duties, the police officer may use the

weapons and equipment he carries with him, with the objective of neutralizing the action by the offender who resists arrest by means of physical aggression (punches, kicks, pushes) or by using a firearm against the law enforcement agent. (Di Pietro, 2020).

Thus, when a person or a social group disrespects the law, it is up to the State to repress such conduct based on the current legal regulation, imposing a sanction on the offender through its *jus puniendi*. Police agencies are responsible in the social context, referring to each area of competence exercised. A professional culture is required from the police officer, combined with physical and mental health, self-control, selflessness and respect for the dignity of the human person (Lazzarini, 2019).

For the broad exercise of their activities in the field of public security, the police officer has an authority that is attributed to him by virtue of the Federal Constitution, whether in ostensive policing, in the investigative area, or in the area of road policing. Police agencies have the means and techniques to act in cases where the law is violated (Bastos, 2020).

Police agencies have the means and techniques to act in cases where the law is violated. If the law is disrespected, the propter *officium police officer* will take the necessary measures for the offender to be detained and, immediately after due legal process, in which he is assured of a full defense and adversarial proceedings, he will receive a criminal sanction from the State, if he is found guilty (Di Pietro, 2020).

When the police officer is faced with a typical and unlawful act committed by a person, the duty and power to take action against the offender of the law soon arises, who must be detained and taken to the presence of the competent authority for the drawing up of the flagrante delicto, ex vi article 301 to 304, § 1 of the Brazilian Code of Criminal Procedure (CPP) (Greco, 2020).

While for the common citizen there is the power to arrest someone who is in flagrante delicto, for the police officer, who is a representative of the State, there is a duty, a functional obligation due to his status. This is what can be inferred from the reading of article 301 of the CPP, *in verbis*: "Any of the people may and the police authorities and their agents must arrest whoever is found in flagrante delicto" (g.n.). Almost identical wording, *mutatis mutandis*, is found in article 243 of the Brazilian Code of Military Criminal Procedure (CPPM) (Mello, 2020).

In the face of this behavior, it is up to law enforcement agents to respond to the legal opposition offered by the offender, as long as their actions pose a risk to the physical

integrity of the police officers in charge of making their arrest. The CPP itself in its article 284 prescribes that "the use of force will not be allowed, except in the case of resistance or attempted escape by the prisoner" (Tourinho Filho, 2021, p. 136).

The use of legal force for the execution of an arrest warrant – in flagrante delicto or written by the competent authority – may be triggered by the executing police officers, who may use the necessary means to repel resistance and defend themselves from aggressions perpetrated by the lawbreaker. Article 292 of the CPP provides as follows:

Article 292. If there is, even on the part of third parties, resistance to the 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 himself or to overcome the resistance, of which all will be self-signed also by two witnesses.

The CPPM in its article 234 provides in an identical way, with due regard to its peculiarities, for the use of legal force. It also brings in its paragraphs 1 and 2 of the cited article, the use of handcuffs and firearms, as exclusive resources to break the resistance of the lawbreaker. Such provisions were not clearly mentioned by the CPP (Greco, 2020).

A legal approach to police power

The police power consists of the faculty inserted in the Public Administration to restrict or condition the execution of services, the use and enjoyment of goods and services for the benefit of the community. However, despite configuring a braking mechanism used by administrators, they cannot use power with the intention of causing harm to the interest of others (Di Pietro, 2020).

The expression police power taken for its broad meaning encompasses both the acts of the executive and the legislative, reflecting as Celso Mello teaches us in his Course on Administrative Law (2020, p. 662) as: "measures of the state that delineate the legally protected sphere of freedom and property of citizens".

Regarding the Police Power, the doctrinaire Meirelles (2020) conceptualizes this institute "as the faculty available to the Public Administration to condition and restrict the use, enjoyment of goods, activities and individual rights, for the benefit of the community or the State itself". Also, regarding conceptualization, the Police Power configures the activity of the State consisting of setting limits to the exercise of individual rights in favor of the public interest.

It constitutes a true limitation on freedom and individual human rights, since it seeks to maintain collective interests, to the detriment of individual interests, in order to establish measures necessary to maintain order, morality, public health, morality or that guarantee and ensure individual freedom itself, public and private property and collective well-being. According to the ideas of Bastos (2020, p. 95):

The expression police power taken in its restricted sense "relates only to interventions, whether general or abstract (such as regulations) or concrete and specific (such as authorizations, licenses and injunctions) of the executive power, aimed at achieving the same purpose of preventing and impeding the development of particular activities that conflict with social interests.

It is the duty of the Public Administration to carry out activities aimed at meeting collective needs, using appropriate instruments constitutionally assigned to it, through the administrative powers that are conferred on public agents for the performance of the most varied purposes, which guarantees their decisions certain autonomy in the way they manage the treasury (Mello, 2020).

Based on the Sovereignty of the public interest over the private, among the other powers, the police power finds shelter, in order to justify the intervention of the State in private property, taking advantage of the attributes that are inherent to it. And its *raison d'être* rests precisely on the social interest based on the Constitution and its rules of public order, whose purpose is to protect the public interest, the superior merit of the community is the containment of private antisocial activities harmful to security, which justifies the preventive or repressive action of the Police Power, which can be Administrative or Judicial. For Meirelles (2020, p. 57):

What effectively separates the Administrative Police from the Judicial Police is that the former is only predisposed to prevent or paralyze antisocial activities, while the latter pre-ordains the responsibility of violators of the legal order.

In a different regard, Mafani (2018, p. 113) says:

Both police forces are also differentiated by the fact that the act based on the administrative police is exhausted in itself. Given an injunction, or an authorization issued, the respective acts are justified, and it is not necessary to seek their basis in any future act. The judicial police seeks their seat for reasons that are foreign to the very act they practice.

The Police Power was granted to the members of the Public Administration with the purpose that they can avoid collisions in the exercise of the individual rights of all

individuals in society, maintaining order and social well-being, having specific and peculiar attributes for its exercise that help in the control and maintenance of society, which are discretion, self-execution and coercibility (Mafani, 2018).

The public administration is given the power to make decisions covered by the mantle of self-execution, which means that it is independent in its decisions, it does not need judicial approval for the warrants to be carried out. Through this attribute, the administration directly imposes its will through measures or sanctions necessary to contain anti-social acts, aiming at the pacification of the system. (Lazzarini, 2019).

In turn, the law itself grants a margin of freedom to the Administration with regard to reviewing its decisions, analyzing separately from the judiciary some concrete situations. To this behavior conferred on the administration, we give the name of discretion, in these cases, in view of the gaps left by the legislator, the Administration itself will carry out the analysis and decide according to convenience and opportunity, decide the best means, moment and sanction applicable to the case (Di Pietro, 2020).

Regarding coercibility, we have that this is inseparable from self-enforceability. This police measure is endowed with coercive force, and can also be classified as a police power endowed with negative or positive activity. Also, in self-execution we can find the deferred adversarial procedure, in which the State first performs the act and only at a later time does it open the possibility or the right to the adversarial process, which is postponed, the obligation is resolved, the collective interest is guaranteed and the adversarial process is later (Bastos, 2020).

The police power enjoys imperativeness, that is, the public power has the power to impose obligations unilaterally imposed on private individuals. As a rule, the Police Power manifests itself through discretionary acts that give the police power a margin of choice in its exercise. However, in exceptional situations, police acts may be linked. Discretion is an attribute of police power, a characteristic (Creste-la, 2019).

However, administrative powers are not always used legitimately by public administrators. Abuse of power is the conduct of the public administrator tainted with illegality, which can manifest itself in different ways. One, due to the lack of legal competence; two, for the non-fulfillment of the public interest; and, three, by omission. (Lazzarini, 2019).

In the misuse of power, the authority acts within the limits of its competence, but the act does not serve the public interest, hurting the objectives set by the legal norm. It is an

illegal act that is dressed up as legality, which makes it difficult to prove, and the Judge must take into account the evidence present to consider the occurrence or not of the deviation of purpose (Creste-la, 2019).

The police power must not go beyond what is necessary to satisfy the public interest it aims to protect; Its purpose is not to destroy individual rights, but to ensure their exercise, conditioning it to social well-being, and it can only reduce them when they are in conflict with the greater interests of the community and to the extent strictly necessary to achieve the State's ends. (Mello, 2020).

The administrative Police Power has characteristics of repression, having as its object goods, rights and activities, being governed by administrative acts and rules. The administrative police aims to prevent any type of antisocial activity or action from happening, resulting in the disturbance of public order, manifesting itself through administrative acts practiced by all administrative bodies of all spheres of government (Di Pietro, 2020).

In the definitions of medalhar (2018, p.318) "The police power represents a state activity that restricts private interests, limiting freedom and individual property in favor of the public interest". According to Carvalho Filho (2011, p. 75-76) "The Administrative Police is an activity of the administration that is exhausted in itself, that is, it begins and completes itself within the scope of the administrative function. The administrative police is so by administrative bodies of a more supervisory nature".

The characteristic of prevention that falls on the police power of the administration is the guarantee that there will be no harmful facts to the community, avoiding the consummation of the social damage, guaranteeing the common good. Furthermore, we can say that the police power provides the Public Administration with the power to condition and restrict the use, enjoyment and enjoyment of goods, activities and individual rights, for the benefit of the community or the State itself. (Creste-la, 2019).

Still, it can be said that it is the power to curb the abuses of the rights of individuals in favor of the collectivity, directly interfering in the orbit of the public interest, culminating in the restriction of some individual rights. It is important to mention that in a broad sense, the police power will represent any and all restrictive actions of the State related to individual rights. In the strict sense, it will be the prerogative that is conferred on public administration agents, according to what is proclaimed by the law that authorizes the administration to restrict individual freedom for the benefit of society (Nassaro, 2019).

ABUSE OF AUTHORITY IN THE FACE OF THE EXCLUSION OF ILLEGALITIES

"Abuse of authority" is an expression of broad scope, and may encompass a whole universe of conducts related to the disproportionate exercise of the capacity, granted to a certain person, to influence the behavior of others. In its multifaceted aspect, it can therefore present itself in the form of the abuse of economic, religious, family power, etc., in short, making itself present in all fields of social life in which a certain power relationship is established. Abuse arises when there is some imbalance in the exercise of this power, when the limits imposed by the respective moral or legal rules are exceeded. (Di Pietro, 2020).

The abuse of authority punishable by law is any act of power that reflects against the individual rights and guarantees of man. In addition, it also constitutes an abuse of authority according to Mello (2020, p.117):

Any act of the power that consists of restriction of individual liberty without legal support or without legal formalities, such as not informing the judge of the arrest or detention of any person, not relaxing the judge of illegal arrest or detention that is communicated to him/her, leading to arrest and detaining in it anyone who proposes to pay bail permitted by law, to charge the jailer or agent of the police authority for imprisonment, costs, emoluments or any other expense, if the collection has no legal basis, either in terms of type or amount, to refuse the jailer or agent of the police authority receipt of the amount received as imprisonment, costs, emoluments or any other expense, and, finally, an act harmful to the honor or property of the individual or legal entity, when practiced with abuse or misuse of power or without legal competence, according to the list expressly established by articles 3 and 4, of Law No. 4,898, of December 9, 1965.

In the lesson of Bastos (2020), the deviation of purpose or abuse of authority occurs when the authority, although competent to perform the act, exceeds the limits of its attributions or deviates from administrative purposes. Like any illicit act, it takes different forms, sometimes it is presented with truculence, sometimes it is disguised and it still appears to be a legal act.

The abuse of authority arises when the public agent goes astray from the order of legality, roughly exceeds legal action, in such a way that your desire dispenses with the discernment of right and wrong and no longer contemplates reason, glimpsing a disheveled authoritarianism, disconnected from real necessity, despite a deviation of function imposed on him. (Cretella, 2019).

It is imperative to highlight the aspects of the discussions, about the nature of the unlawful act, only the public authority can act as an active subject? And when, being outside of your working hours, can you also actively mitigate? Issues like this have a very

relevant empathy in our society. As for the courts, the majority understanding has been established in the sense that the agent does not need to be on duty, to harbor the status of active subject in the crime of abuse of authority, it is perfectly conceivable to enter the sphere of illegality by invocation of the public condition, even if he is not in his remuneration period.

Police forces and individual rights

Public security is the duty of the State, the right and responsibility of all (art. 144, caput, of the Federal Constitution), and is essential for the development of society. The Federal Constitution guarantees Brazilians (born or naturalized) and foreigners residing in the country rights that cannot be subject to a Constitutional Amendment because they are stony clauses (art. 60, § 4, IV) (Mello, 2020).

The mission of police officers is to preserve public order and ensure the free exercise of the fundamental rights and guarantees of the citizen. To carry out their activities, agents are legitimized to use force, and when necessary to use weapons. The limits of the police forces are limited to the law, and the administered find in the police agents the necessary support to exercise the guarantees that are guaranteed to them by the instruments for the defense of individual and collective rights (Di Pietro, 2020).

The administered finds in the police the necessary support for the exercise of the rights and guarantees granted to him by the Federal Constitution. The police force must ensure the right to life, liberty, property, and security, through police officers prepared to perform their duties, respecting the citizen. (Cretella, 2019).

Security activity, due to its importance, must be carried out by trained police officers who respect the citizen. There are still agents in police corporations who move away from their constitutional missions, preferring the practice of abuse and disrespect for the law. The State is not responsible for legitimate acts, which are practiced for the preservation or reestablishment of order, but for the abuses of those who exceed the limits of the law and disrespect the dignity of the administered (Rosa, 2019).

The practice of abuse of authority subjects the offender (police officer) to criminal proceedings for having violated the provisions of Law No. 4,898, of December 9, 1965. The offending agent is also subject to an administrative proceeding in the form of the statute that governs the institution to which he belongs. If found guilty, the police officer will be

subject to a disciplinary sanction ranging from a reprimand to dismissal from public service (Nassaro, 2019).

The limits of abuse of police authority exercised by police forces are threefold: a) the rights of the citizen; b) individual prerogatives; c) the public freedoms provided for in constitutional provisions and laws¹⁶. Failure to observe the limits to which police power is subject, and the deviation from the mission reserved for police officers, leads to the practice of abuse of authority (Di Pietro, 2020).

Therefore, the crime of abuse of authority aims to protect the constitutional rights that are part of the citizenry against excesses by the authority or its agents. The State shall be liable to the person concerned for the damages suffered by them and which originated from the arbitrary acts committed by the police officer who exceeded his duties.

Excess of power

In the excess of authority power, the public agent acts without competence, either by his total absence, or by exceeding the limits of the competence that was legally attributed to him. The act may be considered valid up to the limit in which the competence has not been exceeded, unless the excess compromises it entirely. The act practiced with excess of power is tainted by the sin of illegality, due to the existence of a defect in one of its elements (Cretella, 2019).

According to the ideas of Mafani (2018), article 55 of Law No. 9,784/99, which deals with administrative proceedings at the federal level, expressly provides for the possibility of validation, by the Administration, of acts tainted with remediable defects, provided that this does not cause harm to the public interest or harm to third parties.

Ratification is not admitted in the case of competence attributed with exclusivity, either because exclusive competence is non-delegable, or due to the autonomy of state entities or, even, due to incompetence due to the subject matter. Excluding these cases, there may be ratification of the act performed with excess of power, correcting the defect of incompetence, and then one can speak of perfection of the administrative act. (Cretella, 2019).

Ratification may or may not be mandatory. In the case of a binding act, which is devoid of administrative merit, once the legal requirements are met, the competent authority will be compelled to ratify it, because the administrative will manifested is *ex lege*. If the act is discretionary, the ratification will be subject to the judgment of convenience and

opportunity of the competent authority, which may or may not agree with the subjective evaluation carried out by the incompetent authority. (Mello, 2020).

Misuse of power

The misuse of authority power, or misuse of purpose, is expressly provided for in the Popular Action Law (Law No. 4,717/65), which, in its article 2, "e", and sole paragraph, "e", deals with the misuse of purpose as the nullified defect of the administrative act harmful to public property, and considers it characterized when the agent performs the act aiming at a purpose other than that foreseen, explicitly or implicitly, in the rule of competence (Mello, 2020).

In the misuse of power, the authority acts within the limits of its competence, but the act does not serve the public interest, hurting the objectives set by the legal norm. It is an illegal act that is dressed in legality, which makes it difficult to prove, and the Judge must take into account the evidence present to consider the occurrence or not of the deviation of purpose (Rosa, 2019).

Also in the misuse of power there is a defect in one of the elements of the administrative act, that is, the purpose. The primary purpose of the Public Administration is always to serve the public interest, hence the impossibility of validating the defect related to the purpose of the act (Cretella, 2019).

Therefore, the act containing a defect as to the purpose cannot be used by the Public Administration. Thus, it is verified that the sanatorium is applicable in relation to the excess of power, as it refers to a defect of incompetence, while the misuse of power does not admit validation, as it deals with a defect of purpose. In both cases, it is irrelevant whether or not the administrator acted in good faith. In any case, the illegality of the act will be present. (Di Pietro, 2020).

The omission of the public administration

The omission of the Public Administration can also characterize the abuse of power. Here, it is necessary to distinguish between generic omission and specific omission of the Public Administration. In the first, the abuse of power does not arise, because it is a matter of choosing the most opportune moment to increase management policies, which do not have a fixed term. In the case of a specific omission, the Public Administration has the duty to act in the face of a given situation, and the law may or may not provide for a deadline for

this (in the latter case, what the doctrine calls a "reasonable period") must be considered (Lazzarini, 2019).

It is clear, therefore, that the specific omission characterizes the abuse of power by virtue of the power-duty of the Public Administration to act when the law so determines. It should be noted that the omission is not an administrative act, but rather the absence of manifestation of will by the public power. (Cretella, 2019).

Administrative consequences of abuse of authority

In several laws, administrative consequences can be found for the abuse of authority. Law No. 8,666/93, in its article 83, provides that the practice of the crimes described therein subjects the offender to the loss of office, job, function or elective mandate. Law No. 8,112/90 provides for civil, criminal, and administrative liability for the irregular exercise of the duties of the civil servant, with administrative liability arising from an omissive or commissive act practiced by him (arts. 121 and 124) (Mello, 2020).

One of the administrative penalties is dismissal based on administrative improbity (article 132, IV, of the aforementioned law), and this can be due to the abuse of power, as will be seen below. Law No. 4,898/65 establishes that abuse or misuse of authority characterizes abuse of authority (article 4, "h"), subjecting the offender to civil, administrative, and criminal sanctions (Di Pietro, 2020).

Law No. 8,429/92, in its article 11, I (Administrative Improbity Law), provides for conducts that may reflect the abuse of authority, such as the practice of an act aimed at a purpose prohibited by law or regulation (which characterizes the misuse of power), or the practice of an act other than that provided for in the rule of competence (which constitutes excess of power). Article 12, III, of the aforementioned law, brings the penalties of loss of public function and prohibition of contracting with the Government or receiving tax or credit benefits or incentives as administrative penalties (Meirelles, 2020).

Civil consequences of abuse of authority

The civil consequences concern, as a rule, the duty to indemnify for the damage caused to the Public Administration with the abuse of authority. Examples of the duty to indemnify are article 122, paragraphs 1 to 3 of Law No. 8,112/90; article 10, IV to XI, together with article 12, III, of Law No. 8,429/92; and article 37, paragraph 4, of the Constitution of the Republic. Also in article 6, paragraph 2, of Law No. 4,898/65, there is a

provision for a civil sanction, consisting of the payment of compensation in the event that it is impossible to fix the amount of the damage (Greco, 2020).

Regarding civil liability with regard to reimbursement to the Treasury (Law No. 8,429/92, article 12, III), it is worth noting that actions on this basis are not subject to statute of limitations, as provided for in article 37, paragraph 5, of the Constitution of the Republic, a provision that prevails over article 23 of Law No. 8,429/92. This law also provides for the application of a civil fine, in its article 12, III (Nassaro, 2019).

Law No. 9,504/97, which establishes rules for elections, describes in its article 73, I to VIII, several conducts that may characterize the abuse of power. Paragraph 7 of article 73 of the aforementioned law establishes that these conducts characterize administrative improbity, being subject to the penalties of article 12, III, of Law No. 8,429/92, and it is certain that the latter provision contains sanctions of a civil nature, such as full compensation for the damage and the payment of a civil fine (Di Pietro, 2020).

Abuse of power as a cause of action in constitutional actions

Abuse of authority can serve as the basis of the request in the so-called constitutional actions, or constitutional remedies. Article 5, LXVIII, of the Constitution of the Republic, establishes that habeas corpus will be granted "whenever someone suffers or is threatened with violence or coercion in his freedom of movement, due to illegality or abuse of authority". The hypothesis of the occurrence of abuse of power correctable by habeas corpus is that which concerns the control of the legality of military disciplinary detention (Greco, 2020).

The provision contained in article 142, paragraph 2, of the Magna Carta, concerns the prohibition of analysis, by the Judiciary, of the merits of disciplinary punishment, and not of the control of legality. Thus, if the military disciplinary punishment consisting of imprisonment is determined by someone who does not have the competence to do so, the act will be correctable through habeas corpus, because it is tainted with illegality due to the occurrence of abuse of power, more specifically the excess of authority (Bastos, 2020).

The abuse of authority may also give rise to the filing of habeas data (Constitution of the Republic, art. 5, LXXII; and Law No. 9,507/97). The purpose of habeas data is to obtain information, rectify it and contest or explain true but justifiable data that is pending judicial or amicable (cited law, article 7, III) (Silva, 2018).

A situation can be envisioned in which the public agent responsible for registering the information of a certain database of a government entity, due to personal animosity with a third party, registers information dissociated from the truth only to serve personal interest. It will be up to the correction of this annotation through habeas data, due to the occurrence of deviation of purpose. (Di Pietro, 2020).

As for the Writ of Injunction (Constitution of the Republic, art. 5 LXXI), as it refers to the omission of regulation of a constitutional rule, there is no need to speak of action or omission arising from administrative authority, but rather of inertia of the Legislative Branch. The act harmful to public property dealt with by the Popular Action (Magna Carta, art. 5, LXXIII; and Law No. 4,717/65) may be the result of abuse of power. The Popular Action Law, in its article 2, "a" and "e", expressly provides for the nullity of an act harmful to the assets of the entities mentioned in its article 1 due to incompetence (giving rise to excess of power) or misuse of purpose (characterizing misuse of power), among other cases (Cretella, 2019).

The sentence in the Popular Action will have civil consequences, and there may also be administrative and criminal consequences. This is due to the condemnation of those responsible for the act and those who benefited from it, according to Law No. 4,717/65, to the payment of losses and damages (art. 11); the payment due plus interest on arrears and legal or contractual fines, in the event of non-payment or exemption from payment (art.14, §1); the restitution of the debt plus default interest, in the case of fraudulent, simulated or unreal execution of contracts (art. 14, §2); and the possibility of sequestration and seizure of assets or values (art. 14, §4) (Cretella, 2019).

The administrative and criminal consequences are provided for in Article 15 of that law (determination and official letter, by the Judge, of sending a certified copy of the necessary documents to the authorities or administrators who are responsible for the application of criminal or administrative sanctions). Finally, the Writ of Mandamus (Constitution of the Republic, art. 5, LXIX and LXX; and Law No. 1,533/51) is another constitutional action that may also be based on the abuse of power. As for the preventive Writ of Mandamus, it should be noted that it is applicable when the subsumption has already occurred, that is, the incidence of the rule on the fact, but the injury has not yet occurred (Silva, 2018).

The liquid and certain right referred to in article 5, LXIX, of the Magna Carta, according to the doctrinal understanding, is the one whose existence is demonstrable by

documentary evidence produced when the initial petition is offered, regardless of the complexity of the issues debated. As a result, difficulty arises when basing the Writ of Mandamus on the deviation of purpose, given that it is usually presented with the appearance of legality, which is undone with the evidentiary instruction (Bastos, 2020).

FINAL CONSIDERATIONS

As observed in the course of this study, there are numerous collective interests encompassed by the police power, specifically when the range of fundamental rights listed in the national constitutional text is highlighted. From the moment that, with the promulgation of the Constitution of 1988, the exercise of popular participation in public affairs was expanded, it is to be assumed that there may be communion of interests between individuals and the acts of the Administration in this sense.

In Brazil, with several exceptions that have been solidifying, as citizens become aware of the expansion of their power of transformation, it is still common to observe a certain passivity in the face of undue disregard for the public interest. However, the tendency is to strengthen democratic institutions of participation, and the public/private dichotomy must be overturned, for the emergence of the unified duality between State and society.

On the other hand, it is not enough for the population to only grant powers to third parties, so that they represent it in all sectors of society. To exercise citizenship is to enjoy rights, to participate, to act directly, to supervise the city, to ensure that this complex administrative machine works effectively, for the benefit of all citizens who are part of it, without the exclusion of any.

Police activity is subject to the limits of the law, and its agents who unnecessarily exceed the established limits are subject to criminal and disciplinary proceedings. The abusive act practiced by the police forces brings as a consequence the obligation of the State to indemnify the private party for the damage suffered.

The police power of the Administration is translated, then, as a mechanism that aims to ensure the exercise of freedoms by offering conditions so that, within the legality and morality, public agents in the concrete case offer limits to these same freedoms when they escape from the situation of order necessary for healthy collective coexistence.

Thus, as individual rights enjoy relativity, in the same way the police power can never endanger assets protected throughout history as democratic achievements, under

penalty of its excessive use resulting in abuse of power. Therefore, the jurisdictional control of the police act remains.

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