

120 - MILITARY QUOTATION IN DISCIPLINARY ETHICAL PROCEDURES: COMPLIANCE WITH COMPLIANCE WITH ARTICLE 358 OF THE CRIMINAL PROCEEDINGS, AVOIDING ARGUATION OF NARROWS IN CASE OF LARGE DEFENSE AND CONTRADICTORY

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INTRODUCCION

When conducting a search in history, we found a good milestone to characterize the lack of a fair trial, lack of bilaterality of the case (GRINOVER, 2010), containing the prosecution and presentation of the defense, contrary to the defendant's disfavour, and the decision, by those of right, who will take into consideration, especially what was contradicted; this moment is found in the Holy Bible of Christianity in Mark, Chapter 6, verses 14-29.

The plot to which it relates is due to the fact that Herodias' hatred of John the Baptist, son of Elizabeth, cousin of Jesus Christ, who was regarded as a Prophet, and in his speech said that Herod could not have married with Herodias, for she was the wife of his brother Philip. "So Herodias hated him and wanted to kill him. But he could not, 20 because Herod feared John and protected him, knowing that he was a righteous and holy man; and when he heard him, he was perplexed. Still, I liked to hear it." (BIBLEGATEWAY, 2019)

Because he was trapped and vulnerable, John never knew what was going on at Herod's feast; however, drunk, he promises his stepdaughter Salome, after her dance, that she could ask for anything she would give her. At once, the dancer goes to meet her mother (Herodias), asking what to ask, and without blinking, that one tells her, ask the head of John the Baptist, and so it is done, Salome, asks: "I wish you give me now even the head of John the Baptist on a plate." (BIBLEGATEWAY, 2019).

The judgment of John the Baptist is summary, not opportune for him, the Sacred Right of Defense; From this point of view, based on biblical history, we are faced with the Active Military and Military State, who exercise the Profession of Physical Education and if they are going to practice conduct typified in the Code of Ethics as an infraction, they must be notified under the Article 14, Paragraph 1 of Resolution CONFEF 264/2013 (CONFEF)

It should be noted that the Physical Education Professionals who are in the barracks, almost all, exercise this Profession on a supplementary basis, that is, they have an original provision (being federal or state military), and only a very small part, have their Profession, but independent, are part of the military genre.

Regarding their obedience, when exercising the Profession of Physical Education, the Code of Professional Ethics, before they are obedient to the rules "intra corporis", in exclusive dedication, let us see, then, the intelligence of art. 7 of the Armed Forces Military Status: "Article 7. The legal condition of the military is defined by the provisions of the Constitution applicable to them, by this Statute and by the law, which grant them rights and prerogatives and impose duties and obligations on them." (PLANALTO, 2019)

Note that the intelligence provided for in the retro paragraph is related to the organic provision, that is, to the physician, physical education professional, veterinarian who enters the FFAA, as a result of his technical qualification, and yet he must observe the provisions of the art. 7 of the Military Statute.

To these obligations is the strict fulfillment of the legal duty, and it is certain that the professional slip will also be subject to control by the Commanders to which it is subordinate, as this research hastens to point out the need for the installation of the Disciplinary Ethical Process (PED), for the fulfillment of art. 14, paragraph 1 of Resolution CONFEF 264/2013, to comply with art. 358 of the Code of Criminal Procedure, before fictional citations, as they will be null and void if the Complainant is considered revel.

These people (Federal and State Military), due to the need for the service, are constantly moved within their Corporations, sometimes without any warning, therefore, by the obligation to behave ethically inside and outside their Armed or Auxiliary Forces (Police and State Fire Department), the need to comply with the Notification provided for in Article 14, Paragraph 1 of Resolution CONFEF 264/2013, in accordance with the provisions of Article 358 of the Criminal Procedure that occurred in the Professional Exercise, will have a direct influence on his life in the barracks, given the supplementary character of this professional exercise, because the military's domicile is where to serve or is immediately subordinated, pursuant to Article 76 of the Civil Code: "Article 76. The incapable, the civil servant, the military man, the seaman and the prisoner have the necessary domicile. Single paragraph. The domicile of the incapable is that of his representative or assistant; that of the civil servant, the place in which he / she performs his / her duties permanently; the military, where to serve, and, being the Navy or the Air Force, the seat of command to which it is immediately subordinated; that of the seaman, where the ship is registered; and that of the prisoner, the place in which to serve the sentence." (JUSBRASIL, 2019)

This article was built with the experience of the main author, acting as Chairman of the Disciplinary Ethics Committee of the Regional Council of the 12th Region, seeking in the doctrinal literature and the laws in force in our country the theoretical basis, being a research explanatory-argumentative literature, which concludes by the need to carry out the personal citation of the Military Defendant (Federal or State), when this is the Complainant in Disciplinary Ethical Process, in his / her place of work. Reveal, in view of predictions in Law, thus avoiding the citation cited (by Edict), so that in the future, the acts performed by the Professional Ethics Commission are not considered null, for infringing the form, and curtail its constitutional right. of wide defense and contradictory.

CITATION / NOTIFICATION: THE FIRST TIME OF DEFENSE.

Unlike biblical times, as mentioned in the exordial part of this article, in the Republic, respect for the Law is its basic premise (MORAES, 2011), ie, the will of the people submits to the collective.

This collective needs to be known to everyone, and in the process, be it judicial or administrative, the "corollary of the broad and contradictory defense" (MORAES, 2011, p.113) has to be observed.

In the Disciplinary Ethical Process filed in the CONFEF / CREFs System is no different, this respect must prevail from the moment of the bilateral installation, ie, the Notification with citation character, and must contain in addition to who is judging, the minimum necessary facts that characterize the ethical infraction, requirement of art. 14, paragraph 1 of CONFEF Resolution 264/2013 (CONFEF), and in this sense, is also a constitutional obedience, under penalty of being considered inept: "Although there is no need for a strict typification that will rudely subsume the conduct of the norm, the capitulation of the administrative offense cannot be so open as to render the right of defense impossible, since no penalty can be imposed either in the judicial field or in the fields. administrative or disciplinary matters, without the necessary breadth of defense." (Emphasis added) (MORAES, 2011, p. 113)

However, in order for the Defendant to be able to defend himself, it is necessary that the summons be valid, so that the facts to which he is being accused by the suing Triad come to his knowledge.

In general, the address provided to the CONFEF / CREFs System is that of residence, not the workplace of the Physical Education Professional, and for this reason, in the case of the Military, correspondence is not received, leading the Municipality, wrongly, to make the Notification / Citation by notice, for example.

Aiming to reinforce this concern, in a counterpoint, is the case of the defendant arrested, vide art. 360 of the Criminal Procedure Code; the Pretorio Excelcior, in a summary decision, stated: "SUMMARY 351 - The citation by notice of defendant arrested in the same unit of the federation in which the judge exercises his jurisdiction is void." (DUPRET, 2019, p. 1295)

Let us note that there is a concern of the Judge State to ensure that from the valid summons, through legal dictates, that the summons is guaranteed, gets closer and closer to the personhood, that is with the prisoners, people who have been removed from society. Because they are in theory against the social pact of peaceful coexistence, this right will not be restricted to those who have the duty to care, the Military (State or Federal).

Under this condition, it is worth remembering that the exercise of Discretionary Power is only allowed in the maximum dictates of legal permission, without being allowed to do so, acting as administrator incurs at least abuse of power and can be achieved by abuse of authority. , (ARAUJO, 2007), so conversations by WhatsApp at the first moment of the citation should be abolished to characterize the notification. In the case of the Military even being a Professional of Physical Education, the obedience to the Castro norms are exhaustive, and in this case, some peculiarities must be observed, since besides the dispositions of the Art. 5, II c / caput of the Art. Federative Republic of Brazil (MORAES, 2011), owe the faithful observance to what art. 28, item IV, of its Statute, in the field of ethics: "Art. 28. The feeling of duty, the military pundonor and the decorum of the class impose upon each member of the Armed Forces irreproachable moral and professional conduct, with the observance of the following precepts of military ethics: IV - to fulfill and to enforce the laws, regulations, instructions and orders of the competent authorities;" (PLANALTO, 2019)

The Armed Forces or Military Corporations (Police and Fire Brigades) know, even if the movement was emergency (in the case of Brumadinho / MG, in the breach of the dams, or in the floods of Palmares / PE), where they are Military, and will have every interest in collaborating in the location and notification / citation of the Defendant, while exercising the respective control of the fact under the CONFEF / CREFs System, this is the teleology of art. 28 of the Military Statute.

FINAL CONSIDERATIONS

We must conclude that the Physical Education Professional's notification / quotation must and must be valid; Phone conversations, whatsapp messages, messages by other social media do not characterize the formation of the bilaterality of the dispute, for violating the Principle of Broad Defense and Contradictory (MORAES, 2011), given that in the Disciplinary Ethical Processes (PEDs), provided for in Resolution CONFEF No. 264/2013, "there is a contrary direction to the interests of the litigants" (GRINOVER, 2010, p. 295), "because the Defendant will assume an antithetical position to the plaintiff's claim." (GRINOVER, 2010, p. 295)

It is not too much the reminder that despite the commitment to the "Real Truth", the Defendant is guaranteed the right to defend himself, and this right begins with the installation of the dispute, that is, with the Notification in character. citation, in the form of article 14, and its §§, above all valid.

Military, whether from the Armed Forces (Navy, Army, Aeronautics and Military Police and Fire Brigades), and from the State Military Corporations (Military Police and Fire Brigades), have a life of exclusive dedication to service, and therefore They are often moved to accomplish missions in the various corners of our country, moving away from their families, all for the Public Interest.

A Disciplinary Ethical Process When instituted in detriment of any Reported, it is public, in spite of its confidentiality, we must not forget that the purpose for which it is intended is the exercise of disciplinary hierarchical control in the name of society, and being the Reported In PED, a Military, there is congruence of objectives between the CONFEF / CREFs System and the Institutions and Corporations to which they belong, that is, both want the conclusive unveiling of the fight.

Thus, not finding or even aware of the address of the residence of the Military Respondent, it is the duty of the Professional Ethics Committee, Notify, by way of Citation, the Head of the respective service, pursuant to the provisions of art. 358 of the Code of Criminal Procedure, as not finding him in his residence, to cite him, cannot be considered revel, and must exhaust this moment, so that the summons is valid, and thus avoid the argument of nullity, which may even be filed administratively, or by judicial means (see article 5, item XXXV of the Constitution of the Federative Republic of Brazil, claiming that the form was not observed to comply with the citation, given that the military's domicile is the place where he exercises his profession, based on his claim for invalidity, in Article 564, IV c / c with Article 5, item LV of the Constitution of the Federative Republic of Brazil, claiming that he had no opportunity to defend himself.

All this finds is set in our Brazilian Democratic State, instituted of a new constitutionalism (CANOTILHO, 2002), which brought up humanizing ideas, respectful of Human Rights, as stated in article 8 of the Covenant of San Jose Costa Rica, as Judicial guarantees, including the presumption of innocence and compliance with due process of law. (DUPRET, 2019, p. 719).

It is in this sense that the CONFEF / CREFs System founds its foundations, and offers us the tacit provision for compliance with articles 76 of the Civil Code c / c article 358 of the Criminal Procedure Code, through art. 14, §3 of Resolution CONFEF 264/2013, so that the Military (Federal or State) are notified / quoted in their place of work: "Art. 14 - Once the prosecution has been instituted and the requirements set forth in articles 6 and 8 of this Code are met, it shall be referred to the President of the CEP, who shall take the following steps: II - shall determine the summons of the Complainant for the presentation

of the defense. Paragraph 3 - The postal service will be effected with the delivery of the letter to one of the addresses contained in the Council archives or the one indicated by the Complainant. The citation letter will be forwarded to each of them successively, and the Respondent will be considered quoted upon the return of any Receipt Notices (AR) made and attached to the file." (CONFEE, 2019)

Finally, the specific legislation itself allows everyone to be quoted by post at an address indicated by him, and as there is legal compliance, imposed on everyone in the Republic, the provision in law of the articles of the diplomas invoked in the previous paragraph, requires its citation. in your workplace, because the Institution to which the Complainant belongs (Physical Education Professional), also undertakes to ensure the exemplary conduct of its Administrator, concluding, this is not just a legal possibility, but, In the case of military service, the citation must be at the workplace of the Complainant in the Disciplinary Ethical Process, and no fictitious citation is allowed if the AR returns, and it is not possible to do so at a location other than the quartering.

Failure to comply with the Military Service's citation at his place of work and to go for a flat citation will constitute a violation of the broad and contradictory defense, which will be the subject of an argument of nullity, either in the administrative or judicial sphere, for the violation of the Corollary of the Broad Defense and Contradictory.

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MILITARY QUOTATION IN DISCIPLINARY ETHICAL PROCEDURES: COMPLIANCE WITH COMPLIANCE WITH ARTICLE 358 OF THE CRIMINAL PROCEEDINGS, AVOIDING ARGUATION OF NARROWS IN CASE OF LARGE DEFENSE AND CONTRADICTORY.

This article offers the members of the various Ethics Commissions of the CONFEE / CREFs System, strict compliance with the Principle of Legality, when notifying cited Complainants in Disciplinary Ethical Processes (PEDs) when they are Military, and must be complied with. the precept of art. 358 of the Code of Criminal Procedure, in the future avoiding the nullity argument, especially if it is considered revel, given that the summons was sent to his residence and not to his domicile.

Keywords: Ethics, Citation, Nullity.

COTATION MILITAIRE DANS DES PROCÉDURES ÉTHIQUES DISCIPLINAIRES: RESPECT DE L'ARTICLE 358 DE LA PROCÉDURE PÉNALE, ÉVITANT D'ARGUER LES PETITES PROGRES EN CAS DE DÉFENSE LARGE ET DE CONTRADICTOIRE.

Cet article offre aux membres des différentes commissions d'éthique du système CONFEE / CREF le respect strict du principe de légalité, lors de la notification aux plaignants cités dans des processus éthiques disciplinaires (PED) lorsqu'ils sont militaires, et doivent être respectés. le précepte de l'art. 358 du code de procédure pénale, en évitant à l'avenir la thèse de la nullité, en particulier si elle est considérée comme un plaisir, étant donné que la convocation a été envoyée à son domicile et non à son domicile.

Mots-clés: Éthique, Citation, Nullité.

CITA MILITAR EN PROCEDIMIENTOS ÉTICOS DISCIPLINARIOS: CUMPLIMIENTO DEL CUMPLIMIENTO DEL ARTÍCULO 358 DE LOS PROCEDIMIENTOS PENALES, EVITANDO LA ARGUACIÓN DE LAS ESTRECHAS EN CASO DE GRAN DEFENSA Y CONTRADICTORIO.

Este artículo ofrece a los miembros de las diversas Comisiones de Ética del Sistema CONFEE / CREF, el estricto cumplimiento del Principio de Legalidad, al notificar a los Demandantes citados en Procesos Éticos Disciplinarios (PED) cuando son Militares, y deben cumplirse. El precepto del art. 358 del Código de Procedimiento Penal, en el futuro evitando el argumento de nulidad, especialmente si se considera juerga, dado que la citación fue enviada a su residencia y no a su domicilio.

Palabras clave: Ética, Citación, Nulidad.

RESUMO

O presente artigo oferta aos integrantes das diversas Comissões de Ética do Sistema CONFEE/CREFs, a observância estrita ao Princípio da Legalidade, quando da notificação em caráter de citação dos Denunciados em Processos Éticos Disciplinários (PEDs) quando esses forem Militares, devendo-se cumprir o preceito do art. 358 do Código de Processo Penal, evitando-se no futuro, a arguição de Nulidade, principalmente se for considerado revel, face a citação haver sido encaminhada a sua residência e não ao seu domicílio.

Palavras-chave: Ética, Citação, Nulidade.