

**XXVI NATIONAL MEETING OF
CONPEDI BRASÍLIA - DF**

**FUNDAMENTAL RIGHTS AND
GUARANTEES I**

ENEÁ DE STUTZ E ALMEIDA

ILTON GARCIA DA COSTA

LIVIA GAIGHER BOSIO CAMPELLO

All rights reserved and protected.

No part of this anal may be reproduced or transmitted by any means without the prior permission of the publishers.

Board of Directors - CONPEDI

President - Prof. Dr. Raymundo Juliano Feitosa - UNICAP

South Vice President - Prof. Dr. Ingo Wolfgang Sarlet - PUC - RS

Southeast Vice President - Prof. Dr. João Marcelo de Lima Assafim - UCAM

Vice-president Northeast - Profa. Dr. Maria dos Remédios Fontes Silva - UFRN

Vice-president North/Center - Profa. Dr. Julia Maurmann Ximenes - IDP

Executive Secretary - Prof. Dr. Orides Mezzaroba - UFSC

Assistant Secretary - Prof. Dr. Felipe Chiarello de Souza Pinto - Mackenzie

Student **Representative** - Doctoral Student Vivian de Almeida Gregori Torres - USP

Supervisory Board:

Prof. Msc. Caio Augusto Souza Lara - ESDH

Prof. Dr. José Querino Tavares Neto - UFG/PUC PR

Prof. Dr. Samyra Haydêe Dal Farra Napolini Sanches - UNINOVE Prof.

Dr. Lucas Gonçalves da Silva - UFS (alternate)

Prof. Dr. Fernando Antonio de Carvalho Dantas - UFG (alternate)

Secretariats:

Institutional Relations - Minister José Barroso Filho - IDP

Prof. Dr. Liton Lanes Pilau Sobrinho - UPF **Legal**

Education - Prof. Dr. Horácio Wanderlei Rodrigues - IMED/ABEDi **Eventos** -

Prof. Dr. Antônio Carlos Diniz Murta - FUMEC

Prof. Dr. Jose Luiz Quadros de Magalhaes - UFMG

Prof. Dr. Monica Herman Salem Caggiano - USP Prof.

Dr. Valter Moura do Carmo - UNIMAR

Prof. Dr. Viviane Coêlho de Séllos Knoerr - UNICURITIBA

Communication - Prof. Dr. Matheus Felipe de Castro - UNOESC

D597

Fundamental rights and guarantees I [Electronic resource on-line] CONPEDI organization

Coordinators: Eneá de Stutz e Almeida; Ilton Garcia Da Costa; Livia Gaigher Bosio Campello - Florianópolis: CONPEDI, 2017.

Includes bibliography

ISBN: 978-85-5505-445-7

Access mode: www.conpedi.org.br in publications

Topic: Inequality and Development: The role of Law in Public Policy

1. Law - Study and teaching (Post-graduation) - National Meetings. 2. Citizenship. 3. Plural Society.

4. Garantias. XXVI National Meeting of CONPEDI (26. : 2017 : Brasília, DF).

CDU: 34



XXVI NATIONAL MEETING OF CONPEDI BRASÍLIA - DF

FUNDAMENTAL RIGHTS AND GUARANTEES I

Presentation

It is with immense satisfaction that we present to the readers these Annals composed of articles defended with extreme competence, after rigorous selection, in the Working Group entitled Fundamental Rights and Guarantees I, during the XXVI CONPEDI National Meeting, in Brasília.

The works presented, of unquestionable relevance for legal research in Brazil, demonstrate notable technical rigor and a great capacity for reflection on current issues of Fundamental Rights. The search for the realization of fundamental rights depends directly on the realization of the notion of citizenship, enabling the full participation of the individual in society. In this sense, the themes addressed in these Annals reveal good reflections on fundamental rights, facing the current challenges and longings of society. They also demonstrate an attentive and questioning view of the current moment of the country, its problems and subtleties, hence the importance of the exercise of citizenship for the defense of a plural society, all in perfect accordance with the dictates of democracy.

We hope that from these Annals new researches may arise and advance in favor of an increasingly just law.

We wish everyone an excellent reading! Prof. Dr.

Ilton Garcia da Costa (UENP)

Prof. Dr. Livia Gaigher Bosio Campello (UFMS)

Prof. Dr. Eneá De Stutz E Almeida (UnB)

**OF FUNDAMENTAL RIGHTS AND GUARANTEES: THE CONSEQUENCES
OF THE ABSENCE OF INSTITUTIONAL REFORMS IN BRAZIL, IN
PARTICULAR CONCERNING WORKERS' RIGHTS AND THE TRADE
UNION MOVEMENT**

**OF FUNDAMENTAL RIGHTS AND GUARANTEES: THE CONSEQUENCES OF
THE ABSENCE OF INSTITUTIONAL REFORMS IN BRAZIL, ESPECIALLY
CONCERNING THE RIGHTS OF LABOR LAW AND THE TRADE UNION
MOVEMENT**

**Lahis Da Silva Rosa ¹
Eneá De Stutz E Almeida**

Summary

This article seeks to study how the lack of reform of institutions, in the context of Brazilian transitional justice, is responsible for the lack of effectiveness of fundamental rights, with scope to those that should be defended by the trade union movement. To this end, we bring a cut of the trajectory of this movement to identify how the dictatorship managed to empty the politicization of the union performance as a social movement and the pursuit of fundamental rights. Thus, the work is developed in the verification of the need for reformulation of this institution to break with structures left by authoritarianism, and consequently observe it as an exponent of defense of fundamental rights of workers

Keywords: Institutional reform, Transitional justice, Fundamental rights, Trade union movement

Abstract/Resumen/Résumé

This article intends to analyse the relationship between the absence of institutional reforms in transitional justice and the ineffectiveness of the fundamental rights and guarantees related to trade unions. To do so, I study how Brazilian trade unions have changed in the past 30 years and identify how the military period depoliticised them, undermining their role as advocates of fundamental rights. I argue that it is necessary to remove the structures created by the authoritarian government, enabling unions to regain their role of advocates of fundamental rights of workers.

Keywords/Palabras-claves/Mots-clés: Institution reform, Transition, Fundamental rights, Rights guarantees, Trade union movement

¹ Master's student in Law at the University of Brasilia - Unb. Graduated in Law from the Law School in Vitória - FDV

1 INTRODUCTION

The problem to be addressed here has as theoretical assumptions the studies on transitional justice in Brazil, with its pillars, namely: a) reparation to victims; b) memory and truth; c) justice, or judicial prosecution of human rights violators and d) reform of institutions. Here we will deal in particular with the reform of the institutions. We will attempt to demonstrate that the absence of important reforms in the almost thirty years of the 1988 Constitution is largely responsible for the lack of effectiveness of many fundamental rights and guarantees, especially those that should be defended by the labor movement.

The methodology used was primarily bibliographic-documentary - but the national filmography, publicly available on the world wide web, also serves as a reference for the reflections developed in this work.

The problem we face here may be summarized in the following way: to what extent the absence of institutional reforms contributes to the current state of penury of the Brazilian trade union movement? To answer this question we will make a first brief digression on the theme of reform of institutions, followed by an analysis, also brief, of some of the changes identified as necessary for the consolidation of the democratic rule of law in Brazil. Following, we will make an analysis of the rise and contradictions of the trade union movement in Brazil and, afterwards, we will point out how urgent is the institutional reform of trade unions, in order to defend the fundamental rights of workers.

2 THE REFORM OF INSTITUTIONS IN TRANSITIONAL JUSTICE

In the scope of analysis of transitional justice, it is necessary to observe the process in all its stages, treating them as complementary and continuous, since if one of them is not effective, democratization does not occur in fact, remaining traces of the authoritarian regime and the constant threat of its return.

This transition period, in short, consists of the time interval in which an authoritarian regime fades away and democracy is established in a given society, seeking to break with the structures left behind by that one, to ascertain the illegalities that occurred,

repair those affected and establish the social democratic pact (O'DONNELL; SCHMITTER, 1986, p. 6).

Thus, when we talk about breaking with inherited structures, we are talking about reforming institutions, that is, expurgating from governmental, normative and institutional structures all the traces left by the authoritarian regime and that reproduce them. It occurs that this process is not so simple that it is enough to substitute the legislation in force in the authoritarian period for legal texts more apt to figure in a democracy, since, when it is restricted to this point, the reforms do not succeed. This is because a mismatch will occur between the legal discourse and the action of public agents or institutional practices, since the authoritarian traces of the discourse imposed still surround them (AVRITZER, 1996, p. 136).

Thus, when we understand that transitional justice is the process that aims to overcome the conflict model and move towards the democratic rule of law - and the reform of institutions is one of the stages responsible for this transition -, we need to affiliate ourselves with the concept of democracy not only as a regime of political participation of society, but also as "the incorporation of a democratic culture by political actors and the insertion of democracy within the process of changing the repertoire of social action" (AVRITZER, 1996, p. 140).

Since, in this concept, we note that a post-authoritarian regime society that aims at democracy should not be restricted to the replacement of institutions or structural reformulations of public bodies and/or legislation for the implementation of a new political model, being necessary the direct action in social practices that reproduce non-democratic thoughts, in order to reach the conjugation of factors necessary for the consolidation of a solid democracy.

1. SOME OF THE INSTITUTIONAL REFORMS IDENTIFIED AS NECESSARY

Brazil has an authoritarian legacy that dates back to the colonial period and deepened after Independence. In the case of the most recent civil-military dictatorship, the institutions were widely taken over by authoritarian manifestations, which remain until the present moment in the structures of public power and are reproduced in social thought, which ends up becoming an obstacle to the consolidation of the democratic process in the country.

In this way, these elements must be identified in order for them to become the object of institutional reform. In the judiciary, for example, reformulation is extremely necessary, since it was, on many occasions, responsible for legitimising the authoritarian regime and underpinning its legal acts.

In this sense, the legacies of non-democratic thinking are rooted in this area, which allows that even today judicial decisions fail to properly protect the fundamental rights and guarantees assured in the Republican Constitution (MÉNDEZ, 2011, p. 198).

With this, not only is the effective protection of these guarantees undermined, but also the confidence of citizens in the Judiciary and its social democratic performance. This thought with authoritarian heritages also appears in the positivization of rights, in which, in the words of Leonardo Avritzer (1986, p. 161):

In these cases, civil rights are introduced to facilitate the institutionalization of a market economy; political rights, to facilitate the legitimization of the use of force by the political system; and social rights, to facilitate the establishment of a bureaucracy that establishes a relationship of control and concession with social movements.

Thus, it is evident that it is necessary to pay attention not only to the institutional structures of the judiciary, but also to the readjustment of the posture of the operators of law, widely rooted in authoritarian thinking.

Similarly, within the public security forces, especially the Armed Forces, institutional reform is even more urgent and necessary. Even because this institution was responsible for creating an apparatus to repress and control the main institutions of civil society, becoming the maintainer of the authoritarian regime in the country (CEJT UFMG, 2017, p. 250).

It happens that the public security forces themselves lose the opportunity to make a reflection and an institutional self-criticism, because any change that is presented fails to take into account the authoritarian legacy of the repressive period, and thus do not even recognize their own responsibility to the Brazilian State and in particular, to the Brazilian population, of the terrible acts practiced systematically affronting the fundamental rights of citizens. The Armed Forces in particular, by not recognising the interruption of the country's project that was underway at the beginning of the 1960s, only deepen the antidemocratic malaise that prevents institutional reform in order to democratise and thus guarantee basic fundamental rights for its members and the relationship with society

Brazilian. There are already reports, including easily accessible via the world wide web, such as the documentary produced by Silvio Tendler in 2014 entitled *The Military for Democracy*, which denounces a group of military personnel insurgent in the movement against the authoritarian and illegal orders they received during the dictatorship and were severely punished and expelled; while those who, on the contrary, often collaborated with abominable practices of kidnapping, torture and illegal imprisonment were promoted and decorated. And when the democratic opening finally took place, these names were carefully hidden, and remain so to this day.

This finding is also reflected in the institutions of public security, in which the culture of authoritarianism and torture were widely spread, given that those responsible for this security began to act as part of the support group for repression, acting against citizens (JÚNIOR, 2010, p. 122). It is noteworthy that these structures are clearly perceived in the action of these state agents in the present social moment. In this sense, the need for reform is glaring and necessary for the consolidation of democracy in Brazil.

In the same way, this authoritarian thought manifested itself in the educational field, with clear interventions in the formation of the citizen, with the alteration of the educational method in basic education, implanting the new Law of Directives and Bases in 1972 (Law 5692), and to try to present a social policy of inclusion, creating the Brazilian Literacy Movement (Mobral) for adult literacy, affirming, in a mistaken manner that in this Movement it used the Paulo Freire method. The difference between these, in short, consists in that:

For Paulo Freire, education is conscientization, social praxis, that is, a moment of radical, rigorous and comprehensive reflection on the reality in which one lives, from which will emerge the action project to be executed; for Mobral, education is adaptation, socioeconomic investment, preparing labor for the job market. [Paulo Freire built his pedagogy on the belief in the ontological equality of human beings as beings capable of criticism, authentic, finite, unfinished, historical. Mobral builds its pedagogical proposal based on the belief that the elite are able to elaborate projects, the best possible, which should be obediently executed by the people (JANUZZI, 1974, p. 65).

Thus, the Brazilian educational system abandoned the critical approach, perceptive of the role of the student in his social insertion, and began to value the economic and utilitarian aspect of the student for the economy of the country, aiming only at the functional aspect of literacy. In other words, by depoliticizing the Paulo Freire method, Mobral and the LDB destroyed the method and caused irreparable damage to the generations that we see today taking to the streets with

demands empty of meaning and disconnected agendas, such as the demands of "we want to clean up Brazil", "out corrupt", "we want a better Brazil".

Similar reforms were noted in higher education, when critical teaching was replaced by a massification of knowledge, which gained strength and government incentives for private institutions that turned higher education courses into an industry for the reserve army at the service of the market. It is noteworthy that in the field of Law, this manifestation had serious consequences, since the professionals did not become more intellectuals who thought about the Law and society; thus, in the faculties, only manuals were reproduced without any critical view of this field - which is perceived to a large extent until the present moment in our country (AGUIAR; COSTA, 2015, p. 393).

Besides these modifications, the attempts to empty the movements that represented the students were innumerable, some normatized by the government, such as Decree 477, with the objective of disappearing their combative character and once more annihilate the critical capacity of the students.

Although only these perceptions have been highlighted here, several other areas were (and still remain) under the influence of authoritarian behaviors inherited from the dictatorial period, resulting in a real multiplication of movements and groups that threaten the democratic rule of law in Brazil, and, in this direction, hinder the effectiveness of fundamental rights and guarantees in the country.

The same happens with the labor movement, which suffered harsh interventions during the military period, interventions that reorganized its internal structure and continue until today, making it difficult for the movement to act fully for the social construction of the country.

It is important to highlight at this point that in the period before the coup of 1964, the workers were the main responsible for supporting the social reforms needed in the country, acting nationally through their unifying body (the General Workers Command, created in 1962 to act on behalf of the interests of the working class). Thus, the social movement of the workers sought claims to rights related to the labor contract, but above all they acted in search of a better quality of life for citizens, committed to building a fairer society (CNV, 2014, p.58).

For these facts, in the military period, the employees were targeted by the oppressive government, especially the organizations that moved the workers' struggles and disseminated ideals against authoritarianism. Thus, in this period the repression to the union movement started with the cooperation of employers that provided information of their employees to the government and allowed infiltrators to install themselves in the

Thus, any subject called subversive was forbidden among them, and even discussions of political opinions could not occur in the workplace, starting there the political emptying of the thinking of the members of the central unions.

In this same period, legal measures were taken to prevent demonstrations by means of strikes, with the government issuing law no. 4330/64, which made it practically impossible to organize legal strikes, which was responsible for the decrease in strike movements between 1964 and 1978 (MOREIRA ALVES, 1984, p. 108).

Measures to weaken the trade union movement were also established, as Celso Frederico points out:

After the first outbreak of repression, the dictatorship adopted some measures aiming to weaken the Brazilian unionism. Among them, the modification of the wage policy that transferred to the government the power to set the annual wage adjustment index stands out. With this, the unions lost the legal conditions to pressure the employers and the Labor Court had its normative power suppressed. The dictatorship's wage policy was consolidated through Decrees 54.018/84, Laws 4.725/65 and 4.903/65, and Decree-laws 15/66 and 17/66 (1987, p.17).

This regulation placed the wage policy in the hands of the Government, which impedes the negotiation with employers and makes it even more difficult for unions to act. Thus, the union movement is losing its strength and realizing that its action was impracticable. Among other measures, the important edition of Law nr. 5107/66, which regulated the FGTS and removed the stability of the employees, stands out. With this, the risk of dismissal became greater, which drove the employees even further away from the union movements.

It is important to conclude at this point that the military government's interventions were responsible for not only weakening but also marginalizing the union movement. The employees associated to the unions were blacklisted by the companies, a list handed to the instruments of repression. Consequently, little by little, the social trade union movement organized to act in the construction of a more just society, besides the defense of the fundamental rights and guarantees of working citizens, was being emptied and losing strength, being widely repressed and observing the depoliticization of its struggles.

3- THE TRAJECTORY OF SOCIAL MOBILIZATION OF THE TRADE UNION MOVEMENT FROM 1978 TO 1989

It is contextualized that the performance of the labor union movement in Brazil is initiated by immigrants who, arriving to work in the country, presented the thought of resistance already rooted in factories abroad in the period of industrial revolution (STEINKE, 2000, p. 3). This movement assumes in Brazil an important role in the social sphere, acting in the mobilization on behalf of the insertion of employees as citizens holders of rights, with flags that aimed at the extension of fundamental rights and guarantees to class members and even the decent social existence, counting also with the demands related to the labor relationship.

During the military period, the social trade union movements as members of political groups against authoritarianism that ravaged the country, were major centers of dissemination of the thought of resistance and unity against military oppression, being the target of acts of dictatorship, which caused its emptying, for circumstances already narrated.

In the following moment, in an unstable economic scenario, the unions reappear with a great volume of claims, after almost 15 years of the authoritarian government in Brazil, when the democratic opening is initiated with João Figueiredo, the last military to occupy the power (NORONHA, 1991, p. 28). However, these claims are all related only to issues concerning the specificities of labor relations, without much relation with the social context of the country, indicating a depoliticized and weakened social movement in its remarkable performance in the construction of democracy. That is, the unions were structured only with the banners resulting from labor relations, demands of extreme importance, but without any political and social action of the union movement, since the structures left by the military period exterminated this participation of the centrals.

At that time, the national economy was taken over by uncontrollable inflation and the worsening of the foreign debt, which channeled in massive damage to the working class.

Such context caused, initially, the outbreak of 118 strikes in the country in 1978, which progressed with the remarkable performance of the union organization and culminated in the mark of 3.943 strikes in the country, counting with 4 general strikes mobilized for the maintenance of workers dignity (NORONHA, 1994, P.116).

Among these, some deserve to be highlighted for their social achievements and their influence on the democratic consolidation process. The first of these is the strike that took place in the ABC Paulista in 1978, organized in a systemic way, with the creation of groups within the companies that were responsible for giving unity to the movement. The claims of this

were strictly related to the working conditions of the workers represented and to wage increases. As the strike was of large proportions and very organized, the demands were met in full, since employers had no preparation to deal with the breadth of the movement. This organization served as a basis for the unleashing of other movements in Brazil (ANTUNES, 1991, p. 17).

It is important to highlight that in this strike, there was a differentiation from other movements, since from this strike union leaders emerged who became big names in the political struggle in defense of workers' rights. Moreover, as already mentioned, the organizational model of this strike served as a basis for other strike movements that emerged in Brazil.

Then, in 1979, the metalworkers of São Bernardo and Diadema went through a 60-day strike, with federal intervention in the union, declaration of illegality of the strike and harsh state repression. As a result, this strike got a 44% salary readjustment declared by the judiciary (ANTUNES, 1988, p.49). In this same year, there was an act of May 1st with more than 150 thousand workers, which entered the history of the organization of the union movement in the country.

In 1980, the main para-dictatorial movement was the strike of the ABCD metalworkers, a strike with intervention of the still authoritarian government, suspension of the union board and that lasted 32 days, counting on the resistance organization of the workers and their union base, reacting even to the cut of working days with the strike fund. This moment is important because it counts with the imprisonment of several union leaders, including Lula, exponent of the workers' struggle at the time (ALVES, 1984, p.242).

In the same year, the Workers' Party was created, which would be a source of mobilization of labor demands and the initial attempt to repoliticize the struggle for workers' rights, aiming at social transformation and defense of democratic society (PT, 1980, p.03).

In 1983, another grassroots organization of the union movement was founded: the Central Única dos Trabalhadores (CUT), which arose to act in the search for unification of the various central unions and also to defend workers' rights as a guarantee of the maintenance of democratic order.

In the scope of the general strikes, we had four strong union movements. The first of them, in 1986, against the wage squeeze, with around 3 million workers (ANTUNES, 1988, p.64).

In the same year, with the launch of the Cruzado Plan II, the movement of 10 million workers stopped the country, followed in the following year by an attempt of general strike against the Bresser Plan (1987) that did not count with so much adhesion of the various classes. In 1989, a unification movement reached the general strike of two days that counted with about 20 million workers (ANTUNES, 1988, p.65).

In the same sense, the organized performance of the union movement was also responsible for several benefits ensured by the Constitution, registering guarantees to the labor contract now provided in the Constitution. Likewise, the unions achieved freedom of action and the guarantee of the union tax, source of survival of many of them. In addition, the social value of work had been as a value of the Republic, which registers an official commitment of the country to ensure the maintenance of these rights in society.

With this, it is demonstrated that the union action, although of great volume, was associated only with the interests of the working class, without direct linkage with the social political moment of the country, that is, the movements were solely focused on the establishment or reestablishment of rights related to the labor contract of the class. This fact reflects an emptying of the meaning of existence of the social unionist movement, leaving aside the political origin of the movement and continuing with an isolated performance and with little repercussion in the social construction of the country.

4- THE TRAJECTORY OF DEMOBILIZATION AND INSTITUTIONALIZATION OF THE TRADE UNION MOVEMENT FROM 1990 TO THE PRESENT DAY:

With the detailed analysis of the historical period, it is noted that from 1990 to 2002, the implementation of major economic reforms reached a social context of reduction of formal jobs and the implementation of decentralizing models of production, such as outsourcing.

Thus, the class mobilization, before already without any political sense, gradually lost strength, also counting on external influences such as the defeat of Luiz Inácio Lula da Silva in the second round of the 1989 presidential elections, and the end of the USSR socialist bloc in 1991.

In this period, the union demonstrations were marked by severe repression and even the punishment of paretist movements with millionaire fines to unions, such as the strike of oil workers in 1990, which on the same day it began, had been considered illegal and fined the unions in millionaire compensation. From this year on the movement was increasingly more fragmented and less political, apathetic to government reforms and social setbacks that followed in the country (Venturini, 2006, p. 11).

It happens that with the rise of the largest representative of the Workers' Party to the presidency of the republic in 2003, the hope of resumption of the full protection of workers' rights and the search for public policies in this direction is rekindled in the country, enabling the action of class movements.

However, the left-wing government not only fails to achieve the objectives of the trade union movement, but also shows itself averse to them. This is because it was evident during the entire four-year term of the government that:

The CUT became the union arm of the government and assumed the role of the main instrument of class collaboration between labor and capital, adopting the strategy of defending employment and "economic development" in order to guarantee work and income and make social peace possible (MAYER, 2013, p. 8)

Thus, in addition to co-opting the CUT to act as its ally, the government established guidelines to institutionalize the central unions (2008), which generated great demobilization in the sphere of the social movement of trade unions. With this disorganization of unions as a social movement and the absorption of an institutional mask by these, revealed a unprotected working class, with a decreasing record of strikes and struggles for defense of rights.

Thus, the movement, which had been losing strength since 1990, finds itself abandoned by its current major centralizing reference point (the CUT), which generates oppositions within the movement itself.

However, it should be noted that this weakening process is notorious from the moment that the authoritarian regime in the country dominates the central unions and empties its sense of social action. Now, as already highlighted, before the military period the workers' movements happened on behalf of the improvement of the conditions and life of the citizen, always observing that the worker is a citizen and deserves to be treated with dignity not only in employment relations, but also in their daily lives.

It happens that the emptying of the political thought of the trade union movement and the marginalization of its performance is responsible for the withdrawal of the movement's voice, since the unions start to act only as workers' associations, no longer taking a stand against social setbacks and restricting themselves to a local performance often without any minimum repercussion.

As an example, the current labor reform proposals that affront the social rights of the value of labor foreseen in the constitutional instrument do not find any barrier from the union movement, which manifests itself exclusively in relation to the withdrawal of the union tax, without organizing against the return of the proposed legislation, without debating the proposal of non-mandatory participation of unions in the elaboration of collective agreement, without any political position in relation to the reforms and with distancing of the social context that these modifications will impose to the Brazilian society.

It is evident that the union movement ceases to be a social movement, which impairs the defense of labor rights as fundamental rights and guarantees provided in the Federal Constitution. It is important to highlight that the employee, as an individual being, expects in their collective entities a political and social performance in order to face the harsh proposals that seek the devaluation of labor power, not only dealing with the relationship that occurs within the employment contract, but the existence of the appreciation of the working man as a human being and citizen holder of rights for his dignified existence.

CONCLUDING REMARKS

As narrated in this article, the trade union movement faced several struggles during the military period, going from exponent of the fight against authoritarianism, to the center of the repressions of this government, acting influentially in the preparation of the Magna Carta of 1988.

However, with the interventions of the military government, the trade union centrals were depoliticized, lost strength, adherence and credibility. Thus, the class entities began to act in a very simplified way and without much relevance in the context of social claims in general, achieving some achievements in labor issues, but not having repercussions in the national and social sphere.

Observing these facts, it is clear that, in fact, "we need to eradicate the metastases of the dictatorship that still linger" (DIAS, 2017, p. 2), since, otherwise, the state will not achieve consolidated democracy and based on the values of the Republic, capable of ensuring citizens the full enjoyment of their rights and fundamental guarantees.

Now, one cannot organize a democratic society without disorganizing the structures left by the authoritarian government that until today seeks to ramify its values, one of these ramifications being the demobilization, marginalization and depoliticization of the trade union movement.

In fact, when this paper analyzes the country's transition structure with a focus on reforming institutions, it seeks to realize how the non-occurrence of these reforms is a way to ensure that fundamental rights and guarantees are less and less perceived in the Democratic Rule of Law in Brazil and routinely violated.

In the words of Roberto Cunha de Oliveira (2012, p. 333):

When discussing the reform of institutions, it is also necessary to discuss the urgency of decolonizing thought and the production of knowledge, because institutions, before being mechanisms, are places directed by men and ideas. This implies a range of actions and strategies that guide in different societies which ethical sense of democracy is desired to build, because violence does not stop with the only formal transformation of power structures.

That is, even if there is the replacement of legal acts, of organizational structures that provide the ventilation of authoritarian thinking, it is necessary to discuss the thinking behind these state institutions, empowering state agents and the society that dialogues with them for the dissemination of a democratic thinking and aware of the previously existing structures. It is noteworthy that this last point only occurs with the dissemination of information, valorization of memory and truth, and only then society will be able to identify the elements that should not integrate the democratic thought. In other words, in the case of the labor movement, it is necessary to keep memory that this existing structure is an inheritance from the authoritarian government.

Similarly, it is necessary to purge the agents who demonstrably acted in the military period, so that there is no room for their actions and a new perpetuation of violence. Even because institutional reforms have as one of their fundamental scopes the protection of the guarantee of fundamental rights of individuals and defense of the thought

democratic society in a concise and solid manner. This process involves some mechanisms, summarized by Flávia Piovesan (2014) as follows:

In the context of institutional reforms, it is essential to remove public officials committed to the authoritarian regime and perpetrators of rights violations; develop a detailed analysis of the failures of the security and justice apparatus with a view to reforming it; expand and promote access to justice; promote reforms to strengthen judicial independence; strengthen democratic institutions; make victims more visible by expanding participation mechanisms; and raise public awareness about the importance of the *rule of law* (PIOVESAN, 2014, p. 642).

In this sense, it is possible to see some trails capable of consolidating a path of social construction, transforming democracy into a process that goes beyond political model and integrates with the collective thought that emerges from society for democratic consolidation. It cannot be forgotten that the reform of institutions is another stage that makes up the period of transition and has a degree of importance similar to the others. Thus, once the authoritarian thinking is abandoned, it is important that society goes through a path to then ensure its subjects the free enjoyment of rights and fundamental guarantees guaranteed by the Constitution.

For the foregoing, it is of utmost importance to analyze the structures of the trade union movement, its trajectory in Brazil, since only then will it be possible to see how in this path its weakening was promoted not only by the authoritarian institutions in the military period, but also by the traces left by these in the democratic period.

In the same way, with such an analysis it is possible to identify the factors that demobilized the movement and break with them, inaugurating a new moment of defense of fundamental rights of workers, without any relationship with authoritarian structures and committed to the promotion of the social value of work and the maintenance of democracy in the country.

In this sense, observing the trajectory narrated so far, it is identified that the Brazilian labor movement had great performance and demonstrated mobilization and social organization in the final period of the military government and at a time concomitant to the formulation and promulgation of the Republican Constitution of 1988. However, this performance was strictly linked to labor relation issues, without any repercussion of the social sphere in which Brazil was inserted, demonstrating that the trade union movement was apolitical and, still with the idea

The idea implanted in it that one could not think about the political moment, left aside important issues for the maintenance of the living conditions of workers and stuck to the modifications of employment relationship issues.

In the same way, with the beginning of the 1990s and the continuity of the harsh repression by the federal government, already illustrated here, the strike movement lost even more the adhesion of the workers and strength to continue. At this time, the labor reforms and sentences to pay significant compensation to the unions are examples of the authoritarian government actions that played a special role in demobilizing the movement.

Likewise, at a later moment, with the arrival of the Workers' Party to power, the central responsible for the unification of union acts, the CUT, is integrated as part of the Federal Government, which generates a feeling of discredit among union members, used to reprehend any political action of the movement, heritage of the military period. However, this position fails to realize the importance of a governmental action, since it is in this space that projects that affect the lives of working citizens can be widely debated.

No different from this, the current period of labor reforms does not find resistance from the trade union movement, passing freely in the houses without an incisive action of the trade union centrals, which at this moment are only concerned with the withdrawal of the tax due to them.

In this context, it is more than evident that it is necessary to break with the institutional elements inherited by the labor movement and that prevent it from continuing in full defense of workers' rights. This is because, at the time this movement arises, it presents as a guiding sense the fundamental rights and guarantees of the working man, and for this it launches several strategies of action, mobilizing on behalf of social welfare. However, for several times the transformation of the social trade union movement in a simple formal institution led to the loss of its existential function.

Thus, in the course of the text, it is demonstrated that the harsh repressions of the military government were responsible for emptying the political and critical thinking of the trade union centers, restricting to them the role of debating certain issues on labor rights, without realizing that these rights are inscribed in the republican Constitution and are fundamental to the guarantee of the construction of an egalitarian society.

This weakening is harmful to the consolidation of democracy, since labor rights are advances won by social movements that have dedicated years of struggle to guarantee minimum conditions for workers in Brazil. As a result, the movements

The reform of the union structure for the resumption of the fight for much broader issues and that are not limited only to labor relations, are reflected in the social life of the worker who is a citizen holder of rights and is not represented by any other body other than the collectives that represent them as men, workers and citizens in search of a more just and equal democratic society.

Democracy is destroyed the moment the instruments that make it possible disappear, and one of these is the guarantee of fundamental rights for workers, since this ensures these citizens basic social, individual and political rights, building a democratic society. However, the resistance to the maintenance of these rights needs an exponent, since the working class is massacred by the owners of the means of production and all the time trampled in the base of the social pyramid. Thus, at the moment that the union movement perceives itself without political action and critical resistance in the basic discussions of society construction, it is necessary to broaden the field of vision to see the need for institutional reform and elimination of the structures inherited from the history of the country, assuming its role as representative of the banners of the organized social movement for better living conditions to the citizen and the guarantee of democracy.

REFERENCES

ALVES, Giovanni. Trabalho e Sindicalismo no Brasil: Um Balanço crítico da "década neoliberal" (1990-2000). In: Dossiê Globalização, Revista de Sociologia e Política, Curitiba, UFPR, nº 19, nov, 2002.

ANTUNES, Ricardo. *O novo sindicalismo*. São Paulo: Brasil Urgente, 1991.

AVRITZER, Leonardo. Political culture, social actors and democratization: a critique of the theories of transition to democracy. In: Avritzer, Leonardo. *A moralidade da democracia*, São Paulo/Belo Horizonte: Perspectiva/UFMG, 1996.

UFMG, CENTER FOR STUDIES ON TRANSITIONAL JUSTICE. Glossary on transitional justice transition in Brazil and Latin America. In: MEYER, Emilio Peluso Neder (Org). Justiça de transição em perspectiva transnacional; Belo Horizonte: UFMG Center for Transitional Justice Studies, Secretariat of the Latin American Network for Transitional Justice and Initia Via, 2017

NATIONAL COMMISSION ON TRUTH IN BRAZIL. August 2014. Available at < www.cnv.gov.br >. Accessed on 12 May 2017.

COSTA, Alexandre Bernardino; AGUIAR, Roberto Armando Ramos. The legacy of the dictatorship for Brazilian legal education. In: JÚNIOR, José Geraldo de Sousa et al. O direito achado na rua: introdução crítica à justiça de transição na América Latina. 1st ed. Brasília, DF: UnB, 2015.

DIAS, José Carlos. We need to extirpate the metastases of the dictatorship. In: The Huffington, Jan 2017. Available at: http://www.huffpostbrasil.com/jose-carlos-dias/precisamos-extirpar-as-metastases-da-ditadura_b_5052473.html. Accessed May 20, 2017.

FREDERICO, Celso. A esquerda e o movimento operário - 1964-1984. v.1. São Paulo: Novos Rumos, 1987, p. 17.

JANNUZZI, Gilberta Martino. *Confronto pedagógico: Paulo Freire e MOBREAL*. São Paulo: Cortez, Moraes, 1979.

JÚNIOR, José Maria Pereira da Nóbrega. A militarização da Segurança Pública: um entrave para a democracia brasileira. In: Revista de Sociologia Política, Curitiba, v. 18, n. 35, p. 119-130, fev. 2010.

JUSTICE OF TRANSITION IN THE 25 YEARS OF THE 1988 CONSTITUTION/ Emílio Peluso Neder

Meyer, Marcelo Andrade Cattoni de Oliveira (organization). Belo Horizonte: Initia Via, 2014.

PIOSEVAN, Flávia. Justiça de transição, reformas institucionais e consolidação do Estado Democrático de Direito: o caso brasileiro. In MEYER, Emílio Peluso Neder; OLIVEIRA, Marcelo Andrade Cattoni de. Justiça de transição nos 25 anos da Constituição de 1988. Rev. Fac. Direito UFMG, Belo Horizonte, n. 64, pp. 643 - 670, jan./jun. 2014.

MAYER, Victor. A Retrospective of the Trade Union Movement. 2013. Available at: <<http://centrovictormeyer.org.br/wp-content/uploads/2013/12/RETROSPECTIVA-DO-MOVIMENTO-SINDICAL-NO-BRASIL.pdf>>. Accessed on: 18 May 2017.

MÉNDEZ, J. E. Responsabilização por abusos do passado. In: REÁ- TEGUI, F. (Org.). Justiça de transição: manual para América Latina. Brasília: Amnesty Commission, Ministry of Justice; New York: International Center for Transitional Justice, 2011.

MEZZAROBA, Glenda. Between reparations, half truths and impunity: the difficult break with the legacy of the dictatorship in Brazil. International Journal of Human Rights. São Paulo. 2004. p. 9

MILITARY OF DEMOCRACY. Direction: Silvio Tendler. Production: Ana Rosa Tendler. Brazil, 2014.

MOREIRA ALVES, Maria Helena. State and opposition in Brazil (1964-1984). Petrópolis: Vozes, 1984.

NORONHA, E.. The explosion of strikes in the 80s. In : BOITO JR., A. O sindicalismo brasileiro nos anos 90. Rio de Janeiro: Paz e Terra. 1991

O'DONNELL, Guillermo; SCHMITTER, Philippe. Transitions from Authoritarian Rule. London: The Johns Hopkins Univ. Press, 1986.

OLIVEIRA, Roberto Cunha. Between permanence and rupture: the authoritarian legacy in the conduct of Brazilian political institutions and transitional justice. In: Justiça de transição no Brasil : violência, justiça e segurança [recurso eletrônico] / José Carlos Moreira da Silva Filho, org. - Porto Alegre: EDIPUCRS, 2012.

WORKERS' PARTY. Founding manifesto. 1980. Available at < <http://www.pt.org.br/wp-content/uploads/2014/04/manifestodefundacaopt.pdf>>. Accessed on 8 May 2017.

SANTOS, Rogério Dutra dos. A lógica do "inimigo interno" nas Forças Armadas e nas Polícias Militares e sua impermeabilidade aos direitos fundamentais: elementos para uma emenda constitucional. In: JÚNIOR, José Geraldo de Sousa et al. O direito achado na rua: introdução crítica à justiça de transição na América Latina. 1st ed. Brasília, DF: UnB, 2015.

STEINKE, Adriane Lemos. O sindicalismo no Brasil. In: **Âmbito Jurídico**, Rio Grande, I, n. 0, fev 2000. Disponível em:< http://www.ambito-juridico.com.br/site/index.php?n_link=revista_artigos_leitura&artigo_id=5017>. Accessed May 2017.

TUMOLO, Paulo Sérgio. Da contestação à conformação: a formação sindical da CUT e a reestruturação capitalista. 1. ed. Campinas: Unicamp, 2002.