OPINION

Suspension of Injunction nº 1326 - STF
Judge: 5th Federal Court of the Judiciary Section of the State of Rio Grande do Norte
Case No. 0802121-11.2020.4.05.8400 - Class Action
Plaintiff: Natália Bastos
Bonavides Defendants: Federal
Government and Others

Summary: Justice of Transition in Brazil. Memory and Truth. Commemorative Note on March 31, published on the website of the Ministry of Defense in 2020. Necessary Protagonism of the Judiciary.

> *On the background of this original chaos - a state of nature that is always threatening - it is up to the law to dictate the limits: to say who is who, who did what, who is responsible. To establish the facts, certify the acts, place the responsibilities. Remember the genealogical order, distribute the roles, separate the plaintiffs. To narrate the founding plot, to revive the collective values, to strengthen the consistency of the common language, the "institution of institutions" - the language of promises that the social body made to itself, the language of laws, thanks to which we have "words to say it", to say what binds us and what differentiates us, to say where the limit of the acceptable and the unacceptable passes.* (OST, 2005:47)

This is an opinion prepared by the *Transitional Justice* Research Group, of the Postgraduate Program in Law at the Law School of the University of Brasília (UnB), which aims to subsidize the understanding of the issues related to the theme of *Transitional Justice* present in the case at hand, as a contribution of academic research in such an important debate on the national scene.

This is not a simple case of different groups vying for the construction of

narratives. It is not, as it may seem at first sight, another judicialization of the

of ordinary daily life. On the contrary, it is a unique opportunity for the Judiciary to speak out, acting in its most significant role: to attribute meaning and temporalize Brazilian society (OST, 2005:13). This case is the opportunity that was missing for the Brazilian Judiciary, represented by its highest Court, the Constitutional Court, the Supreme Federal Court, to face our country's darkest and still unexplored recent years. It is a role yet to be played by the Brazilian Judiciary; for, as will be shown, the Legislature has already fulfilled its mission, in particular when it drafted and enacted the 1988 Constitution, and also with subsequent laws and especially in a solemn session in 2013, as will be seen. The Executive, although for most of the time it has not behaved as a Republican Power of State, but only as a government, has partly paid its debt by creating the National Truth Commission.

The Judiciary, until today, 56 years after 1964, has almost always neglected to address the issue; when called upon to do so, which has occurred on several occasions, it has prevaricated, sought to justify, explain and decide, without, however, delving into the deeper and more central issues in order to make sense of history and construct the national legal memory, a role that is reserved exclusively for it and that has not been exercised to this day. The result is that we have not achieved national reconciliation. And, we exhort here, it is possible that an even more harmful result may occur: social anomie.

Thus it is that, as the Supreme Court, this Court has with this case the opportunity to exercise the principal function of the juridical, which, in the words of Ost (2005:13):

> It is to contribute to the institution of the social: more than prohibitions and sanctions as was previously thought, or calculation and management as is often believed today, law is a performative discourse, **a fabric of operative fictions that redefine the meaning and value of life in society. To institute means, here, to tie the social bond and offer individuals the marks necessary for their identity and their autonomy.** (our emphasis).

The same Belgian author states (OST, 2005:49) that the oldest and most permanent of the functions of the juridical is to confer meaning to collective existence and individual destinies. This is because it institutes the past, certifies facts that have happened and guarantees the origin of titles, rules, people and things. Another name that can be given to this function is social memory. And, continues Ost (2005:50), "this mission of guardian of social memory has, at all times, been entrusted to jurists".

The Federal Supreme Court has, we reiterate, the opportunity and the duty to exercise the function of guardian of the Brazilian social memory. We are confident and certain that it will not shirk such an arduous and fundamental task. It is time for the Judiciary, through its highest Court, to face the issues of the so-called *Transitional Justice* and thus sediment the path of national pacification.

Transitional Justice in Brazil

As discussed elsewhere,[1] *Transitional Justice* is the set of tools for national states to make the transition between a situation of deep authoritarianism, armed conflict, social upheaval or a state of exception and the democratic rule of law. To this end, four interrelated and complementary dimensions of Transitional Justice were established, which should be promoted by the State itself, as supra-partisan public policies, aiming for national pacification after the troubled period.

These four dimensions are: 1) the binomial of *memory and truth*; 2) *reparation*; 3) *reform of institutions*; and 4) *justice* or *accountability*, which can also be

[1] DE STUTZ E ALMEIDA, Eneá (org) (2017). **Justiça de transição no Brasil - apontamentos.** Curitiba: CRV Editora.

made explicit in the expression *persecution of human rights violators*. There is no hierarchy between these dimensions.

In the case of Brazil, the Federal Constitution of 1988 itself chose reparation through political amnesty to be the structural axis of its transition, as enshrined in Article 8 ADCT. Nevertheless, that article took a long time to be regulated, and the paths of transition, which should have been traveled and faced, however painful, were repressed in our history. The choice of the Brazilian constituent was clear: there was a state of exception in Brazil starting in 1964, and that new constitutional text was intended to guarantee the non-repetition of the authoritarian period. Even more: it should make the transition to the Democratic State of Law and for that, several legislative, administrative and jurisdictional measures should be taken. Unfortunately, until today this choice has not been fully respected, and we have seen a "make-believe that nothing happened", in a negationist posture like few other places in the world. Do the republican authorities in Brazil have a vocation for negationism when they do not know how to lead the Nation? We would like to believe that this is not the case. Thus, we allow ourselves to trace a brief chronology in order to situate the debate.

The coup of 1964

Why talk about Transitional Justice in Brazil? What are the factual, theoretical and mainly legal foundations? It is very important to understand the milestones that build this history, with special attention to the legal ones.

This assumption is fundamental to this case, because one of two alternatives occurred in 1964: either there was a coup d'état, and thus it cannot be said that it was a "milestone of democracy"; or there was a liberation movement, and then yes, it would be possible to use the expression.

We use the constitutional assumption, that there was a coup d'état in 1964. If this were not so, why carry out any kind of transition? Why turn back the hourglass and determine amnesty? Why would the then President of the Chamber, Congressman Ulysses Guimarães, make a reference to his hatred and disgust of the dictatorship when promulgating the Constitution, on that historic and unforgettable 5th of October, 1988?

Precisely because one can affirm that there was a coup d'état in 1964. And if there was a coup, one cannot defend, simultaneously, that 1964 was a "milestone of democracy". On the contrary, it was the milestone of institutional and constitutional rupture. Unfortunately, since then, the fallacy of the need to maintain order and respect the laws is repeated. This fallacy, called "authoritarian legality" by British political scientist Anthony Wynne Pereira, can be translated as a series of different institutional maneuvers that authoritarian governments use to cover up abusive and illegal acts with a veneer of legality. In the words of Pereira (2010: 36):

> Most studies of authoritarianism assume that regimes, which come to power through force, cannot rely on law to keep society under control or to confer legitimacy on themselves. Their anti-constitutional origins are considered to make such an effort contradictory and impossible. [Indeed, it is very common for authoritarian regimes to use law and the courts to reinforce their power, so as to blur a simplistic distinction between de facto and constitutional (or de jure) regimes.)

In addition to the constitutional verification of transitional mechanisms, let us look at the chronology of the announced legal milestones, solely under the dogmatic aspect:

1- Formal sitting of the National Congress on April 2, 1964:

This session was presided over by Senator Auro de Moura Andrade, then president of the Senate and the National Congress, and declared the Presidency of the Republic vacant. It was this legal framework that allowed the removal from power of the then President of the Republic João Goulart. Briefly, let us recall that Jânio Quadros had been elected President and João Goulart elected Vice-President. Jânio resigned from the presidency and after a period of political crisis and parliamentary experience his Vice-President, João Goulart, assumed the presidency. Next in line of succession would be Ranieri Mazzilli, then President of the Chamber of Deputies (art. 79, §1 of CF46, as amended by Constitutional Amendment No. 6 of 1963). Upon declaring the Presidency of the Republic vacant, Mazzilli was sworn in as President of the Republic. However, this Presidency did not last long. On April 9, 1964, Institutional Act no. 1 was issued, which stated in its preamble that there was a new revolutionary Constituent Power that legitimized the National Congress and assumed control of the Nation through the self-proclaimed Supreme Command of the Revolution:

> It is thus clear that **the revolution does not seek to legitimize itself through Congress**. It is this Institutional Act, resulting from the exercise of the Constituent Power inherent in all revolutions, that legitimizes it. (emphasis added)

We thus realize that the legal steps were: declaration of vacancy of the Presidency; inauguration of Ranieri Mazzilli as President; self-proclamation of the Supreme Command of the Revolution as legitimizer of the National Congress and calling indirect elections for the Presidency of the Republic. Each step being an indispensable legal requirement for the next step. And the first step, let us reiterate, was the declaration of vacancy of the solemn session of April 2, 1964.

2- Amnesty Law (6683/79):

After intense debate in the National Congress, Law 6683 was enacted on August 28, 1979 to grant amnesty to those who were persecuted by the Brazilian State. There was a demand for amnesty that was broad, general and unrestricted, but the winning bill was the one that reserved exceptions for so-called "blood crimes". It was not possible to establish a broad, general and unrestricted amnesty, but it was possible to grant amnesty to most of those who were still persecuted by the State. We defend the position that only those who were persecuted by the State at the time were granted amnesty.

There was no future amnesty, that is, for those who might be prosecuted by a future Brazilian State. But we will not dwell on this merit here. [2] What is important for this analysis is that the legal framework of the Amnesty Law formally initiated the process of political opening towards redemocratization. Now, a political opening is only necessary to redemocratize a country that is not configured as democratic. It is precisely because we lived in a state of exception that there was a demand for a Democratic State of Law. The very existence of a Political Amnesty Law only makes legal sense if there are those to be politically amnestied, that is, the existence of the state of exception is a logical legal assumption for the drafting of a Political Amnesty Law.

[2] Cf. DE STUTZ E ALMEIDA, Eneá (org) (2017). **Justiça de transição no Brasil - apontamentos.** Curitiba: CRV Editora._____. *Direito à justiça: a questão dos civis que atuaram na dictadura brasileira*. *In* TOSI, Giuseppe *et alli* (orgs) (2014). **Justiça de transição: direito à justiça, à memória e à verdade.** João Pessoa: Editora da UFPB pp 195-212._____. *Polêmica dimensão da justiça no processo transicional brasileiro: uma ausência na opção constitucional*. *In* **Justiça de transição, direito à memória e à verdade: boas práticas** / 2ª Câmara de Coordenação e Revisão, Criminal ; 6ª Câmara de Coordenação e Revisão, Populações Indígenas e Comunidades Tradicionais ;
ProcuradoriaFederaldosDireitosdoCidadão.-Brasília:MPF,2018,pp146-168.http://www.mpf.mp.br/atuacao-tematica/ccr2/publicacoes/coletaneas-de-articles/07_18_coletanea_de_artigos_justica_de_transicao. Accessed on 20 May 2020.

3- Constitutional Amendment 26/85:

On 27 November 1985,[3] the National Congress convened, through Constitutional Amendment no. 26, a National Constituent Assembly. In Article 4 it determined "amnesty for all civilian public servants of the direct and indirect administration and military personnel punished by exceptional, institutional or complementary acts".

We highlight that it extended the amnesty to those that would have been "prosecuted and punished": "The amnesty encompasses those that were punished or prosecuted for the imputable acts foreseen in the *caput of* this article, practiced in the period between September 2, 1961 and August 15, 1979". With this direction, the constituent debate also used amnesty as an instrument to take the country out of the state of exception. Not amnesty as forgetfulness or amnesia, we register here, but as memory, as anamnesis. [4] In this sense, as could not be otherwise, it was assumed that there was a state of exception and it was necessary to repactuate the Brazilian State to begin the transition to the Democratic State of Law. This repactuation would occur with a new Federal Constitution.

4- Art. 8 ADCT:

Article 8 of the Transitory Constitutional Provisions Act (ADCT) is the best and most eloquent example that there was a state of exception inaugurated in 1964, precisely because it establishes that the Brazilian State must begin its transition to a Democratic State of Law starting with the Constitution:

[3] BRAZIL. Available at: < http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc_anterior1988/emc26-85.htm >. Accessed on: 23 mai. 2020.

[4] In this regard, see http://memorialanistia.org.br/anistia-e-jutica-de-transicao/. Accessed on 23 May 2020

> **Art.** Amnesty shall be granted to those who, in the period from 18 September 1946 to the date of promulgation **of** the Constitution, **were affected, as a result of an exclusively political motivation, by exceptional,** institutional or complementary **acts,** to those covered by Legislative Decree no. 18 of 15 December 1961, and to those affected by Decree-law no. 864 of 12 September 1969, The promotions are assured, in the inactivity, to the position, job, rank or graduation to which they would be entitled if they were in active service, obeying the terms of permanence in activity foreseen in the laws and regulations in force, respecting the characteristics and peculiarities of the careers of civil and military public servants and observing the respective legal regimes. (emphasis added)

For what reason would the Brazilian State undertake to assume the responsibility to repair, if it were not assuming that it was a state of exception? Responsibility can only be affirmed because one of the constitutional assumptions is that there was dictatorship, there was a state of exception, there was torture, there was death, there was suffering, there was persecution, all **caused by the Brazilian State!** We repeat: it is a constitutional assumption in Brazil that there was a state of exception after 1964!

This constitutional commandment was being complied with, but has suffered many setbacks, as has been demonstrated elsewhere. [5]

5- Law 9.140/95

This law, which created the Special Commission on Political Deaths and Disappearances is the first recognition of the Brazilian State's responsibility. From this

[5] DE STUTZ E ALMEIDA, Eneá. *A brief introduction to transitional justice in Brazil. In* DE STUTZ E ALMEIDA, Eneá. (org) (2017). **Justiça de transição no Brasil - apontamentos.** Curitiba: CRV Editora pp 13-34.

moment Brazil, with a delay of almost ten years, begins the fulfillment of the Brazilian transition effectively, by recognizing civil responsibility and compensating the families of the dead and disappeared, issuing death certificates and starting the arrangements for memory and truth, as well as reparation.

6- Law 10.559/02:

Finally, after fourteen years, article 8 is regulated and the Political Amnesty Commission is created to be a State organ with the primary purpose of directing the transitional process, having as its main (but not sole) task the full reparation of those politically persecuted by the dictatorial regime. Once again, the indispensable legal assumption is that there was a persecuting State, a state of exception. Episodically between 1946 and 1964, and permanently between 1964 and 1988. The period covered by the law extends from 18 September 1946 to 5 October 1988. The episodes of 1964, between March and April 9th (the date of AI 1) transformed the Brazilian state into a state of exception governed not by those who had been elected at the ballot box but by a Military Junta, as we have seen; illegitimate, as we shall see.

7- Law 12.528/11:

Seeking to investigate and clarify the serious human rights violations that occurred in Brazil between 18 September 1946 and 5 October 1988, the National Truth Commission (CNV) was created through Law 12.528/11, which had its mandate extended until December 2014, when the Final Report was delivered. With the public clarification and rescue of the memory and truth of the events of that period, the Brazilian people are given the opportunity to know their history, to build a collective memory, making the reflective resumption of the past in order not to repeat it (OST, 2015).

The realization of the right to memory and truth about human rights violations by agents of the Brazilian state aims to promote national reconciliation and also acts as a mechanism to prevent repetition. The late implementation of public policies of memory and truth in Brazil brings as a consequence acts of historical denialism and construction of narratives that weaken democratic institutions, as the case in question. Despite its slowness, the institution of the NTC reaffirmed the commitment to democratic values and the importance of memory and the truth of our historical past in maintaining the democratic rule of law.

8- Solemn session of the National Congress, which resulted in Resolution No. 4, 2013-CN:

Resolution No. 4 was published in the Official Gazette on November 29, 2013. This Resolution is so important that we have taken the liberty of reproducing it, in full, here:

> I hereby make known that the National Congress has approved, and I, Renan Calheiros, President of the Federal Senate, pursuant to the sole paragraph of art. 52 of the Common Rules of Procedure, promulgate the following
>
> RESOLUTION NO - 4, OF 2013-CN
>
> Makes null the declaration of vacancy of the Presidency of the Republic made by the President of the National Congress during the second joint session of April 2, 1964.
>
> Congress resolves:
>
> Art. 1 **Declare null the declaration of vacancy of the Presidency of the Republic issued by the President of the National Congress, Senator Auro de Moura Andrade, in the second joint session, of the fifth legislature of the National Congress, held on April 2, 1964**.
>
> Art. 2 This Resolution shall enter into force on the date of its
>
> publication. National Congress, on November 28, 2013.

(emphasis added)

We have already had occasion to comment, albeit briefly, on the legal consequences of this Resolution. [6] Nevertheless, it is appropriate here to be even more succinct: by declaring the session of 2 April 1964 to be null and void, the Legislative Power has confirmed the total juridical **nullity** of the deposition of the then President João Goulart, and dispelled any controversy, if any, about the (juridical) fact that in 1964 there was a coup d'état in Brazil. The authorities instituted from an act void in its own right had no legal legitimacy whatsoever. It was a coup d'état, even if the analysis is strictly juridical-dogmatic, as we have shown. Therefore, it is an affront to the Constitution to call it a "movement that established democracy". It is an even greater affront to call it a "milestone of democracy"!

On the need for the manifestation of the Judiciary

As Bauman ((2007:11) states, "the absence of justice is blocking the path to peace". Let us see: **there was a coup d'état in 1964, legally characterized by Resolution No. 4 of 2013 of the National Congress, which made the session that declared the vacancy of the Presidency of the Republic null and void, and, therefore, illegitimate those who assumed the Executive Power from that moment on.** The times that followed were of a state of exception, without a shadow of doubt, as affirmed by Law 6683/79, the EC 26/85 and especially the 1988 Federal Constitution, which determines a transitional process from the dimension of reparation and aiming at national reconciliation, that is, pacification.

It happens that the much dreamed of Democratic State of Law, in turn, has as its basic requirement a society founded on the social pact, on trust (OST, 2005). And this confidence can only be obtained if there is peace. Enough peace to ground the social pact. This is not the Brazilian reality. When the Constitution was promulgated in Brazil the

[6] http://justicadetransicao.org/houve-um-estado-de-excecao-no-brasil/

he world had already begun the processes of globalization (in a broad sense, not only economic). Until the phenomenon of globalization began, national states were called to their responsibility to provide the minimum conditions necessary for social life - as, incidentally, are the constitutional assumptions in our country. However, again resorting to the lessons of Bauman (2007: 15-20):

> Fear has now established itself, saturating our daily routines; (...)
>
> It's as if our fears have gained the ability to self-perpetuate and self-soothe; as if they have acquired a momentum of their own - and can continue to grow based solely on their own resources. (...)
>
> With the progressive dismantling of the defenses built and maintained by the State against existential tremors (...), it becomes the individual's task to seek, find and practice individual solutions to socially produced problems, as well as to attempt all this through individual, solitary actions, being equipped with tools and resources flagrantly inadequate for this task.

Fear is the opposite of trust. The Brazilian State unfortunately did not take advantage of a time when there was less fear and more trust to carry out its transitional process. If, after the promulgation of the Constitution, it had started to implement the transitional dimensions, perhaps it would have been possible to avoid any further debate on this topic. Unfortunately, this was not what occurred, as we have seen. Hence the feeling, for many, that the state of exception, the one that provokes fear and not trust, is still active. We know that this is not so. But, on the other hand, we also know that attention and vigilance for the maintenance of democracy must be permanent. Fear cannot be permanent. It has to be exceptional. The state of exception, by its very nature, when unfortunately it is implanted, can only be exceptional and not ordinary. Ordinary must be democracy.

In summary, and so that no controversy remains, it is important to establish the consensus we have in Brazil:

1- There was a state of exception from 1964 onwards (although there is no consensus on the exact initial and final terms)

2- Both the constitutional order and the Republican Powers and institutions, as well as the Brazilian population, wish Brazil to be a Democratic State of Law.

3- One cannot, under the pretext of freedom of expression or any other individual right, subvert the social memory of the Country, or even construct a new official version devoid of republican and democratic protocols, that is, by the simple imposition of the will of the ruler of the moment.

For all these reasons, it is still appropriate, and now more than ever, to talk about transitional justice in Brazil. This is because not only have we not carried out the transition as determined by the Constitution, but today we are experiencing a series of dangerous manifestations that must be promptly rejected, such as those of public agents exalting the figure of torturers (as in the case of Colonel Ustra, so declared by the STJ and STF),[7] requests or threats of a "new AI-5", posters in popular demonstrations and on social networks calling for the closure of the National Congress and the STF, among other possible examples. All this context, allegedly under the guise of "freedom of expression", as the MPF demonstrated so well in its opinion in the first instance.

In this sense, we resume the initial argument that the Legislative has played its part in the transitional process and the Executive, from time to time, has also acted. The Judiciary is now called upon to be the protagonist of the transitional constitutional policy. In a period in which the State has been dismantled and decharacterized as the protector

[7] STJ: REsp 1434498/SP and Ag 1228580/SP. STF: ARE 898963 and ARE 899006.

of minimum living conditions, and even more so at a time of pandemic, when it seems that the Federal Executive values death more than life and exalts conflict instead of seeking pacification, the judiciary is called upon to speak out in order to reverse the phrase quoted by Bauman: the presence of justice paves the way for peace.

It is not, thus, an excessive judicialization of routine, the normality of life, acts of minor importance and *interna corporis*. If the agenda was just a routine of that day in the barracks, without any publicity or assumption by the Federal Executive, it would already be complicated by the statement "milestone of democracy", as seen, because as demonstrated by the plaintiff in the initial and by the MPF in its opinion would be a disservice to the memory of the country. But it is worse, and so it is not a question here of judicialization of a routine *interna corporis*: the text published is a commemorative note of death, violence and fear! It is no longer an act inserted into the military routine to reveal the affirmation of the Brazilian State regarding the episode as a "milestone of democracy. Notwithstanding the fact that the same Executive has created by federal law a State Commission (National Truth Commission) to establish the official Brazilian truth about the period. This report states that the period was a state of exception.

Therefore, there is no interference of the Judiciary in the routine of military institutions, but the need to establish the justice that will pacify the Brazilian society, by confirming what the Executive and the Legislative have already confirmed: 1964 was the year of the beginning of the state of exception in Brazil. This cannot be forgotten nor misrepresented. As a *slogan of* the Brazilian Federal Executive itself already announced: "so that it will not be forgotten; so that it will never happen again".

As with other periods of authoritarianism and exception in the world, we must remember to avoid repetition! It is for this reason that museums exist, such as the Holocaust museum, among other monuments and memorials that tell and build the history of civilization. So that we do not return to barbarism.

The commemorative note is a mockery of the judiciary

Brazil has already been condemned by the Inter-American Court of Human Rights both in the Gomes Lund case and, more recently, in the Herzog case for its failure to take transitional measures, to hold violators of human rights accountable, to implement memory and truth actions, to reform its institutions and to leave aspects of full reparation incomplete. And the records also contain information on this, in the Opinion of the MPF. This note is, therefore, a real debauch of the judicial condemnation that the Brazilian State insists on not complying with.

We wish to point out here that the Inter-American Court was recognized by the STF itself as an integral part of Brazilian jurisdiction, and not a foreign Court, as noted on the STF's own website:

> Dialogue between public authorities and international bodies is an important tool for the realization of republican ideals. "The clear understanding of the existence of a sphere of jurisdiction attributed by Brazil and several other Latin American countries to bodies of the Inter-American human rights system makes these international entities integral bodies of the network of jurisdictional attributions to which our country has sovereignly decided to submit," he stressed. "We are not receiving a foreign Court here, but an organ that, in fact, integrates the set of institutions accredited by Brazil to act in the defense and promotion of human rights". (http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=253184). Accessed on 15 May 2020.[8]

Also, Justice Ricardo Levandowski, in his inauguration speech, on 10/09/2014:

[8] Statement by the then President of the STF, Joaquim Barbosa, on the occasion of the formal opening session of the 49th Extraordinary Session of the Inter-American Court of Human Rights, held in the Plenary of the STF, in Brasilia, on 11 November 2013.

It is also necessary that our magistrates have a greater interlocution with international organizations, such as the UN and the OAS, for example, especially with supranational courts regarding the application of treaties for the protection of fundamental rights, including compliance with the jurisprudence of these courts(pg7). (https://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/discursoMinistroRL.pdf). Accessed on 15 May 2020.

It is possible to affirm, therefore, that **the** STF has established that **the Inter-American Court of Human Rights is part of Brazilian jurisdiction**, and its jurisprudence should be observed by the entire judiciary. Obviously, the convictions handed down by Brazil at the Court must also be complied with. Thus, it cannot be forgotten that Brazil must be alert to any threat of weakening the foundations of the democratic rule of law. The Powers of the Republic must act immediately at the slightest sign of any attempt to enhance the state of exception, as is the case of the note from the Ministry of Defense. This is the time for the Judiciary to act!

Conclusion

The Brazilian State has never fully achieved the democratic rule of law, as it has not complied with the constitutional determination of the transitional process. And even worse: by insisting on an agenda contrary to transitional justice, it deepens distrust, fear, violence and intolerance. Furthermore, the current government does not have a comprehensive, satisfactory and democratic political project; on the contrary, it seems to invest in a broad and obscure social anomie. An example of this would be the non confrontation of the pandemic of covid-19 by the federal executive; an executive that until today insists on the ephemerality of disputes in social networks, disputes that amplify fear and insecurity in all aspects, and that does not even regret the thousands of

lives lost to disease, while valuing and praising the dictatorial period.

The Judiciary, in all certainty, is on the side of the protection of life in virtue of its condition as the guardian par excellence of the Federal Constitution and, consequently, in a posture diametrically opposed to the state of exception. It remains, therefore, to fulfill its duty of pacification to the Brazilian society and to determine that the Transitional Justice is fully and effectively realized. We are confident that the Federal Supreme Court will no longer shy away, because it is aware of its duties, attentive to the role of guardian of social memory in Brazil, and however arduous this task may be, we will have a direction and the longed-for national conciliation, from the decisions to be taken to solve this problem of paradigmatic nature.

Our opinion, is, therefore, in the sense that the immediate withdrawal of the order of March 31, 2020 from the electronic site of the Ministry of Defense and the abstention of any official manifestation or publication of commemorative announcement regarding the coup d'état practiced in 1964 on radio and television, internet or any means of written and spoken communication be determined. Today and always. So that it will not be forgotten, so that it will never happen again!

Brasilia, May 25, 2020

TRANSITIONAL JUSTICE RESEARCH GROUP
Postgraduate Program in Law at the University of Brasília School of Law (PPGD/FD/UnB)

References

BAUMAN, Zygmunt. **Tempos líquidos.** Rio de Janeiro: Jorge Zahar Ed, 2007.

DE STUTZ E ALMEIDA, Eneá (org). **Justiça de transição no Brasil - apontamentos.** Curitiba: CRV Editora, 2017.

OST, François. **The time of the right.** Bauru, SP: Edusc, 2005.

PEREIRA, Anthony Wynne. **Ditadura e repressão: o autoritarismo e o estado de direito no Brasil, no Chile e no Argentina.** SP: Paz e Terra, 2010.

TOSI, Giuseppe *et alli* (orgs). **Justiça de transição: direito à justiça, à memória e à verdade.** João Pessoa: Editora da UFPB, 2014.

http://justicadetransicao.org/houve-um-estado-de-excecao-no-brasil/

http://www.mpf.mp.br/atuacao-tematica/ccr2/publicacoes/coletaneas-de-articles/07_18_collection_of_articles_justice_transaction.

http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=253184

https://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/discursoMinistroRL.pdf

http://memorialanistia.org.br/anistia-e-jutica-de-transicao/