

THE COMPOSITION OF THE AMNESTY COMMISSION AS A PILLAR FOR THE DEVELOPMENT OF TRANSITIONAL JUSTICE IN BRAZIL

In order to understand the relevance of the composition of the commission as one of the elements of democratic transition, it is necessary to understand some premises: the first is that the policy of reparations was elected by the Constitution and relevant legislation as the guiding axis of transitional justice in Brazil, since it was developed in depth and responsible for the growth of the other pillars of the consolidation of democracy in the country.

It is also possible to observe that reparation is a complex system that can be divided into categories and that it does not only comprise financial reparation, and, furthermore, that among the Commissions responsible for conducting this policy, the Amnesty Commission is the one that has consolidated itself as the main developer of the transitional pillars and the State Commission responsible for conducting the actions of the State on the path to democratic transition.

Therefore, the work of the Amnesty Commission is extremely important for the development of the transitional policy, consolidated as a constitutional policy by article 8 of the ADCT. It is necessary to emphasize that when the Commission ceases to perform its function as initially envisioned or even starts to distort the paths already laid out by the Federal Constitution, the fundamental principles of the Republic are threatened, which includes a weakening of the structures of the democratic rule of law.

The reparation policy materializes in the judgments of the counselors of the Amnesty Commission and in the respective requests of the affected citizens. These trials gained amplitude through the promotion of amnesty caravans, which moved the commission to various locations in the country in order to judge the applications of local citizens and reveal to that community the history experienced during the dictatorial period (ABRÃO, 2009).

In addition, the Amnesty Commission shows how reparation policy is the driving force of transitional justice in Brazil, since it not only

develops in-depth the reparatory policy, as well as moves several other pillars of the Brazilian transition, such as memory/truth and prosecution of human rights violators.

In this sense, considering the peculiarities of the democratic transition in Brazil, it is possible to realize that, if the Amnesty Commission is responsible for conducting transitional justice in Brazil, its qualitative composition deserves a detailed analysis, since it is of utmost relevance for understanding the conducts of the State for the constitutional policy of reparation.

It should be noted that, in the Commission's analysis, this choice occurs because of its differentiating elements. This is because, by joining the body of advisors to the Amnesty Commission, the person does not participate in an administrative group, but rather in an arrangement composed to advise a Minister of State in decisions regarding the requests of other citizens who had their fundamental rights violated by the Brazilian State.

It is necessary to interpret the proposed Amnesty request through a human rights lens and with the perception that the State was responsible for direct and indirect violations of the fundamental rights of Brazilians. In addition, advisors need to be aware of the democratic transition they are conducting within the axes of reparation and memory.

Thus, when appointing councillors, the person responsible for the appointment - i.e. the minister responsible for the agenda - must assess the social integration ties of the individuals elected. Only then will it be possible to assemble a committee capable of acting in the proper manner and within the parameters proposed by the Federal Constitution.

Over the years of work since its creation, the commission has faced various institutional arrangements that were directly reflected in the group's practical work. It is possible to see that these formats are clearly linked to the place that this agenda occupied in successive federal governments and how the leaders conducted (or did not conduct) the policies of democratic transition.

Given the current scenario of the Commission since its move to the portfolio of the Ministry of Women, Family and Human Rights the members appointed to compose the Council are not able to form a scenario

ideal to the constitutional purposes designed for the democratic transition policy.

This element was clearly observed by the representatives of the Public Prosecutor's Office themselves, Ivan Cláudio Marx and Eliana Pires Rocha, who took legal action against the appointment of new advisors to the Amnesty Commission by the new minister responsible for the portfolio, Damares Alves. In their initials, the prosecutors so noted regarding the qualitative analysis of the members of the Amnesty Commission:

According to the evidence attached to the records of Civil Inquiry no. 1.16.000.000887/2018-58, which instruct this Initial, Ordinance No. 378 of March 27, 2019, by appointing 07 new military counselors of the Amnesty Commission in vacancies of free noemation, seriously violated constitutional provisions that ensure the democratic commitment to repair the victims of violations committed during the dictatorship, provided for in Article 8 of the Act of Transitional Constitutional Provisions - ADCT, making it extremely unfeasible to comply with Law No. 10.559, November 13, 2002, which regulated it. The Ordinance affronts arts. 1 and 3 of the FC, to the extent that it distances the organ from the foundations and objectives of the Federative Republic of Brazil and the Democratic State of Law, in addition to placing at risk the constitutional obligation to protect the collective memory of groups that make up Brazilian society (art. 216 of the FC).

From the evidence that accompanies this Petition, it can be seen that 07 members appointed to the new composition of the Amnesty Commission's Council are career agents or have a history and public posture that are INCOMPATIBLE with the function of the body, either because of their manifest opposition to the public policy of reparation for victims of the State or because of judicial actions contrary to the reparation policy, or because of their position contrary to the establishment of the National Truth Commission, or because they are part of the coercive forces of the State.

These statements appear as the central part of a judicial request for the annulment of the appointments and acts practiced by the councillors now appointed by the then Minister in charge. In addition, it is important to note that the plaintiffs are part of the justice system and, therefore, part of the Brazilian State. Part of this state recognizes the need to build a solid path to democratic transition, with structures in place to realize the relevance of the work performed by the State Commission responsible for conducting this process. On the other hand, another part of this State not only refuses to act according to the constitutional construction on the reparatory policy, but sometimes insists on saying that there was no period of repression and that this point needs to be overcome. This type of affirmation, in fact, makes it profoundly incoherent for any

person on the Council of the Commission, because if this person does not even recognize that there was a State of Exception in Brazil, he or she does not recognize the legitimacy and validity of the existence of the Amnesty Commission. Hence, one must conclude that the participation of such persons in the Council can only be to disqualify and diminish the role of the Amnesty Commission.

These reasons place us before a critical scenario for transitional justice, an internalized dismantling of the practices of the Amnesty Commission, and the designation of an empty composition for this commission is a subversion of the meaning of what is proposed, a truly unconstitutional act of a public agent. It is necessary to point out that the composition of the Commission does not refer to the nomination for public office, but to the election to compose part of a state policy established by the Federal Constitution of the Republic.