



PUBLIC NOTICE

The Research Group "Transitional Justice in Brazil", of the Postgraduate Program in Law at the University of Brasilia (PPGD/UnB), was created in 2011. The purpose of the group is to research and disseminate scientific knowledge on the subject of Memory, Truth and Justice (MTJ), especially in the case of Brazil. The multidisciplinary studies developed within the scope of the Research Group have political amnesty as one of their guiding threads, going beyond the understanding of the Amnesty Law (Law No. 6.683/79) as being about memory and analyzing the authoritarian legacy from the perspective of defending democracy and human rights.

Over the years, the Research Group has been known for producing interdisciplinary knowledge on the subject and making rich material, the fruit of high-level academic studies and debates, available to all those who wish to debate the subject through a critical tradition. This research seeks to debate in depth the intricacies of building a solid democratic rule of law in Brazil, which will only be possible once we have made progress in the transitional process, as set out in the 1988 Constitution.

In the words of the coordinator of the Group, Prof. Dr. Eneá de Stutz e Almeida, the Federal Supreme Court is currently at a decisive moment when it comes to interpreting the institute of political amnesty in the country. The STF unanimously recognized the general repercussion on whether or not it is possible to grant amnesty for the crime of concealing a corpse during the military dictatorship.

This is a complaint filed by the Federal Public Prosecutor's Office in 2015 against lieutenant colonels Lício Augusto Ribeiro Maciel and Sebastião Curió Rodrigues de Moura, for the crimes of aggravated homicide and concealment of a corpse committed during the Araguaia guerrilla war.

Justice Flávio Dino, rapporteur of Extraordinary Appeal with Interlocutory Appeal (ARE) No. 1.501.674/PA, proposed the general repercussion. According to the rapporteur, since the crime of concealing a corpse continues to be carried out over time, in an uninterrupted manner, making it a permanent crime, there is the possibility of criminal liability and not the application of the Amnesty Law.

In his opinion, the Justice states that: *"The admission of the Convention on the Imprescriptibility of War Crimes and Crimes against Humanity as jus cogens cannot violate constitutional principles, and must therefore be harmonized with the national regulations. This conclusion does not show inattention to human rights, but rather compliance with the highest standards of our legal system, enshrined as constitutional principles, which also aim to protect the dignity of the human person, the main purpose of human rights."*

Beyond continuing crimes, we believe that there is no impediment to holding state agents responsible for crimes committed during the military dictatorship. This is because the Brazilian state implemented the 1979 Amnesty Law as a **law of memory** - in other words, a law that

erases convictions that occurred during a certain period. By extinguishing them, the function of the amnesty is to remember the injustices that occurred during the exception and to reverse the damage.

On the contrary, a law of oblivion, or self-amnesty, precedes conviction. Under the argument of pacification and reconciliation, crimes are extinguished even before any prosecution. In this case, the aim of the amnesty is different: to prevent accountability and the implementation of transitional justice.

This is the form of amnesty that has come up for debate in recent months, following the start of investigations into the attempted coup d'état and the anti-democratic acts of January 8, 2023. Jair Bolsonaro and the far right are calling for amnesty even before any conviction, so that the facts can be erased and forgotten. However, the consequences of these acts cannot be erased.

The hefty indictment filed by the PGR against former president Jair Bolsonaro, his deputy Braga Netto and six other people, including former ministers of the past government, for the crimes of violent abolition of the democratic rule of law, coup d'état and armed criminal organization touches on the debate about political amnesty in the country. The indictment describes plans to subvert the outcome of the 2022 elections, spread disinformation about the electoral system and even arrest and assassinate authorities, including President Lula and Supreme Court Justice Alexandre de Moraes.

The idea of "erasing the past", as former president Jair Bolsonaro put it, is precisely what we call an amnesty of oblivion (or self-amnesty), which was the same one carried out in relation to Brigadier João Paulo Burnier, who planned a coup against Jango, was amnestied, and took part in the military coup of 1964, even drawing up a plan to kidnap and throw overboard politicians, student leaders, left-wing activists and opposition figures, detonate bombs in Armed Forces installations and government buildings, and attribute these attacks to the opposition to the dictatorship.

We argue that an amnesty of forgetting is not compatible with the 1988 Federal Constitution. Therefore, the interpretation of Law No. 6.683/79 as a Law of Memory must be reinforced in the Supreme Court, since it is an amnesty for convictions during the period of exception of the military dictatorship, but not for conduct. In this way, those who were not convicted are not amnestied and can be held responsible for the crimes committed during that period.

That is why we believe it is the Supreme Court's duty to clearly state that the Federal Constitution does not authorize self-amnesty laws, but **only political amnesty laws of memory**. In this sense, Law 6.683/79 was accepted by the Constitution and is in force because it is a law of memory. Therefore, those who have not yet been convicted are not amnestied by it, and can be prosecuted, as in the cases currently before the STF and other instances of the Judiciary.

Therefore, considering that crimes against humanity are imprescriptible and cannot be amnestied, according to the Inter-American Court of Human Rights, to which Brazil is subordinate, any and all violators of human rights can and must be held accountable.

To find out more about the "Transitional Justice in Brazil" Research Group, visit our blog:
<http://justicadetransicao.org>