# Considerations About the (Abuse) Right to Defense of AGU in Lawsuits Proposed by Former Political Prisioners and/or by Relatives of Dead and Disappeared During Civil-Military Dictatorship: Is There Effectiveness in its Dimension of Justice?

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Submissão: 17.08.2015
Decisão Editorial: 27.08.2015
Comunicação ao autor: 27.08.2015

ABSTRACT: This paper proposes to examine the possible abuse of the right to defense committed by the Attorney General's Office (AGU) in lawsuits for damages brought by former political prisoners and / or family members of dead and missing civil-military dictatorship against Federal Union. For this purpose, it was used bibliographic and documentary research. On the first topic, it was presented the origins and some of the notes characterizing the rights to defense of the Federal Government. Then, it was commented about the evidence of abuse of the right of defense practiced by the Federal Government. Later, it remarked up on the case of actions for damages brought by former political prisoners and / or family members of dead and missing as abuse paradigm of the right to defense by the Federal Government, given the difficulties presented for displaying documents necessary to the proceeding procedural; the repeated proposed resources and the failure to comply with enforceable court orders. By the end, it was concluded that, mostly, the AGU has taken a recalcitrant attitude towards indemnity lawsuits filed by former political prisoners and / or family members of dead and missing. Also, it was found that in many cases, with a view of cooperation, the Federal Government could use their own statements of administrative overviews to facilitate the processing of reparatory lawsuits. Finally, it was suggested that in cases of political amnesty – given the magnitude of the damage already caused by the State applicants – a preview screening was used on the actual need for defense presentation, including the possibility of automatic transaction indicated by the AGU.

KEYWORDS: Abuse of the right of defense. Brazilian Attorney General's Office. Political Amnesty. Principle of Cooperation.

SUMMARY: Introduction; 1 Notes about the right to defense of the federal government; 2 Evidence of defense rights' abuse by AGU in cases of judicial requirements proposed for ex-political prisoners

and / or dead family and missing for civil-military dictatorship in face of federal union; 3 Considerations regarding the justiciability of judicial indemnities requested for ex-political prisoners and / or family of dead and missing for civil-military dictatorship and the (abuse of) right to defense of federal union; Conclusion; References.

## INTRODUCTION

There is no doubt that one of the pillars of the Brazilian Democratic State of Law lies in the fulfillment of the Due Legal Process, that is, the audi alteram partem principle, the right to file an action and the right to be heard by the Justice System[1]. This assumption, however, despite its almost ancient origins, is still controversial. It is said because many of those rights end up being exercised inappropriately or abusively, resulting in losses, instead of benefits to the litigants and/or, in some cases, to whole collectives, hurting not only aforementioned rights, but human dignity itself, one of the pillars of The Federative Republic of Brazil (article 1º, III, of the Brazilian Federal Constitution of 1988).

Starting from this hypothesis, the goal of this paper is to discuss the possible abuse of the right of defense by the Federal Government through the Attorney General's Office – in Portuguese, Advocacia-Geral da União (AGU) – an institution charged with advising, administratively and legally, the Executive Branch and representing the Federal Government in legal proceedings. This paper focuses mainly on those who are asking political amnesty, that is, those who, due to persecution, torture or kidnappings during the dictatorial military government established from March 31th of 1964 to 1985, suffered physical, psychological and/or monetary damage, either in their private or professional lives, and because of that deserve reparation from the Brazilian State. In numbers, such damages translate into about 50,000 people incarcerated during the first few months of 1964, 20,000 Brazilians subjected to torture and 434 citizens dead or gone missing[2].

It must be remembered that by the formal end of the dictatorial regime in 1985 and with the indirect election of the President, the people who were incarcerated and/or tortured, and family members of those who were killed or went missing, started to demand, legally and administratively, reparation claims, and the opening and exhibition of records and files of the military repression, in order to make the State show, to the whole Brazilian population, the truth about the serious human rights violations committed during the dictatorial

1 FERREIRA FILHO, Manoel Gonçalves. *Direitos humanos fundamentais.* São Paulo, 2008, p. 11.

2 BRASIL. Secretaria Especial dos Direitos Humanos da Presidência da República. Programa Nacional de Direitos Humanos. Brasília, 2010, p. 173.

government, and thus do justice to the individual and collective memory of the country, repairing symbolically and economically everyone hurt by the regime[3].

After almost thirty years, such claims have never been entirely granted. Among other factors, this inefficiency is due to various legal obstacles presented in the procedures of amnesty, mainly those lodged by the defense though the Attorney General's Office representatives, making difficult, if not impossible, the access to the reparations brought by the Federal Law nº 6.683/1979 (Amnesty Law), and later regulated by the Federal Law nº 10.559/2002, known as the Legal Regime of Politically Amnestied.

In that way, this text is organized in order to contemplate the general goal of the research, that is, to analyze the possible abuse of the right of defense perpetrated by the Attorney General's Office in contrast to the dimension of justice that should be inherent in all political amnesty lawsuits, due to the damages already caused. Also, an analysis of the origins and characterizing notes of the right of defense in the pertinent lawsuits has been done, in addition to exposing evidence of the abuse of the right of defense in the aforementioned lawsuits.

On the first topic, the paper presented the origins and the characterizing notes of the right of defense of the Federal Government, including in this presentation its formal and material prerogatives. Then, it discussed, in general lines, about the evidence of the abuse of right of defense committed by the Attorney General's Office when in charge of the representing the Federal Government in legal proceedings. On the third topic, specific cases of judicial requirements proposed by former political prisoners and / or family members of dead and missing political civil-military dictatorship to demonstrate the abuse of the right of defense, mainly due to the difficulty, if not impossibility, of obtaining documents essential to the proceedings and grating of reparation claims, in addition to the various appeals filed by the Attorney General's Office and the noncompliance of indemnity claims that were granted.

In the end, we concluded that, historically, the Attorney General's Office has taken a recalcitrant attitude both towards the administrative and legal reparation claims. Also, it was found that, in many cases, aiming to fulfill the principle of cooperation among the parties of a legal procedure, the Attorney General's Office could avail itself of its own set of administrative directives to allow the regular flow of judicial requirements proposed by former political prisoners and / or family members of dead and missing political civil-military dictatorship. Last, we suggested that, in cases of political amnesty – given the magnitude of the damage already caused by the State to the claimants – a previous

3 BRASIL. Comissão Nacional da Verdade. Relatório final da CNV. Brasília: CNV, 2014, p. 15-22.

triage should be performed, examining the necessity and reasonableness of the right of defense, including the possibility of automatic settlement initiated by the Attorney General's Office member.

## 1 NOTES ABOUT THE RIGHT TO DEFENSE OF THE FEDERAL GOVERNMENT

In general terms, the right of defense has its origins in the guarantee of Due Legal Process established in England by John, King of England, also known as John Lackland, through the Constitution of 1215[4].

In Brazil, the right of defense was instituted by nearly all Constitutions, with only a few limitations in the Federal Constitution of 1937 and again the one of 1967, because of the links with the dictatorial regime, active by then[5].

For its part, the audi alteram partem principle, as it is currently envisioned by courts, tribunals and public administration, can be understood as one of the characterizing and bonding elements of the Democratic Regime, to the extent that ensures that the rights of both parties of the action are protected, their claims heard and their arguments assessed, in order to, in the end, be given a supposedly free decision from interferences, and with legal foundation as article 93, IX of the Federal Constitution of 1988 requires.

However, if not properly exercised, the audi alteram partem guarantee – whether by abuse or misuse – can cause harm to the litigating parties and the Judiciary Branch itself, perpetuating the demands and creating procrastinatory expedients. This problem becomes more serious when the Federal Government, through the Attorney General's Office, avails itself of its legal prerogatives to postpone the proceedings and, often, their legal outcome.

It is important to remember that the Attorney General's Office, when instituted by the Federal Constitution of 1988, was conceived to advise and represent the Executive Branch in legal matters and actions, protecting, ultimately, the public interests and patrimony.

Thus, the Attorney General's Office – as envisioned by the constitutional legislator in the moment of its creation and, later, regulation by the Complementary Law nº 73 of February 10th of 1993 – has the mission of preventing legal actions, while guaranteeing the full defense of the Federal Government, taking into account the peculiarities of its function representing the Executive Branch, especially regarding the supremacy of public interest and patrimony over those of singular individuals.

4 FERREIRA FILHO, 2008, p. 11.

5 BONAVIDES, Paulo; ANDRADE, Paes de. *História constitucional do Brasil.* Brasília, 2002, p. 434- 485.

So as to, pursuant to article 4 of the Complementary Law nº 73/93, the follows attributions were entrusted to the Attorney General's Office, among others: waive, settle, agree and sign commitments in actions interesting to the Federal Government, set the interpretation of the Constitution, laws, treaties and other normative acts to be, uniformly, followed by agencies and entities of the Federal Administration; and write administrative directives based on the repeated decisions of the courts.

In the same way, in accordance with the articles 28 and 43 of the same Complementary Law nº 73/93, the Attorney General's Office was allowed to write legal directives that are mandatory to all agencies and entities listed in those articles, being forbidden to their members to disobey them, as well as their normative advice or technical guidance, in authentic display of administrative efficiency, based on the article 37, *caput*, of the Federal Constitution of 1988, that establishes the principle of efficiency as one of the corollaries of the Public Administration, which the Attorney General's Office is part.

In the field of Procedural Civil Law, different timeframes to answer or appeal were granted to the Attorney General's Office, as well as to the Public Prosecutors' Office of the States, Municipalities and Federal District in general (article 188 of the Procedural Civil Code), also based in the consolidated decisions of the superior courts, as it is the case stated in the directive nº 116 of the Superior Court of Justice.

It is important to stress, however, that the various prerogatives listed here should be understood as instruments or tools to guard the public patrimony – object of the consulting and advising of the Attorney General's Office. Thus, any other interpretation can be understood as abuse or misuse of power, and therefore, liable to punishment.

The analysis of this hypothesis, i.e., the possibility of punishment for abuse or misuse of the right, becomes more tangible when considering the specific case of the reparation claims proposed by former political prisoners and / or family members of dead and missing civil-military dictatorship against the Federal Union, both because of the proceedings' delays and the noncompliance with the decisions against the Federal Government.

## 2 EVIDENCE OF DEFENSE RIGHTS' ABUSE BY AGU IN CASES OF JUDICIAL REQUIREMENTS PROPOSED FOR EX-POLITICAL PRISONERS AND / OR DEAD FAMILY AND MISSING FOR CIVIL--MILITARY DICTATORSHIP IN FACE OF FEDERAL UNION

Initially, we must clarify that the legal claims proposed by former political prisoners and / or family members of dead and missing civil-military dictatorship against the Federal Union must be judged based on specific legal instruments

developed over the past three decades, with the firm intention of promoting truth, memory, justice and redress to those affected in their personal and / or professional life, because of the serious human rights violations to which they were subjected during the exception period established in 1964.

The first of these instruments lies in the Amnesty Law, written during the dictatorial government, and created to answer the clamor and claims of various segments of civilian society, especially of political prisoners and exiles, as well as the families of dead and missing, representatives of ecclesial base movements, student and trade unions.

About the Amnesty Law, it must be said that, despite the great impact of the movement for a broad, general and unrestricted political amnesty, the bill sent to the National Congress in June of 1979, and later approved, was highly restrictive. First of all, because Brazilian amnesty was conducted and approved by the civil-military dictatorship itself, the efforts of social movements against the military government that hoped for political freedom were thwarted, which made it impossible that "more incisive processes of rescue of the political memory could happen, in a similar way to what we saw, for example, both in Chile and in Argentina"[6]. Worse, amnesty was extended to the agents of the military government, who, on its behalf, committed serious human rights violations, all in the name of a pseudo reciprocity and bilateralism.

The second reason for the very Law nº 6.683/79 (Amnesty Law) to be considered restrictive lies in limiting its application to only those who committed crimes that were not understood as "crimes of blood"[7]. Therefore, the people who were excluded from amnesty "remained in prison until the reformulation of the National Security Law attenuated their sentence. They were released on parole, living like that for many years"[8].

In the same way, the law is understood as restrictive because it limited the beneficiaries, excluding from its roll the partners of the politically amnestied, a mistake only remedied with the advent of article 8 of the Temporary Constitutional Provisions Act of the Federal Constitution of 1988.

Therefore, note that the problems related to the effectiveness of the claims of political amnesty were originated during the legislative process, hampering the access of amnesty claims, reducing the number of beneficiaries and suppressing the rights of those who would claim it, acts that have impact to date, especially

6 MARTINS, Roberto Ribeiro. *Anistia*: ontem e hoje. São Paulo, 2010, p. 218.

7 BRASIL, Lei nº 6.683, de 28 de agosto de 1979. Concede anistia e dá outras providências, <http:// http://www.planalto.gov.br/ccivil_03/leis/L6683.htm> (last accessed on 6 July 2015).

8 LISBOA, Susana. Seria chover no molhado se o molhado não fosse sangue... in: Osvaldo Biz (ed.). *Sessenta e quatro*: para não esquecer, Porto Alegre, 2004, p. 162.

regarding the simple production of supporting documents necessary to start the procedure of political amnesty.

The mistake was resolved, in part, with the advent of the Law nº 9.140/1995, which created the Commission of the Dead and Missing Political Criminals and provided an opportunity for the search and recognition of dead and missing political criminals, fulfilling one of the most ancient rights of human beings, that is, the right to mourn and bury their dead[9].

Later, it should be emphasized, came the publication of the Federal Law nº 10.559/2002 (Legal Regime of Politically Amnestied) that installed the Amnesty Commission under the Ministry of Justice, regulating the art. 8 of the Temporary Constitutional Provisions Act of the Federal Constitution of 1988, and thus, creating the legal framework of political amnesty[10].

It must be point out that the establishment of this legal framework was indeed relevant to the former political prisoners and relatives of dead and missing civil-military dictatorship, because it brought in its wake the requirement for the actions and subsequent granting of amnesty, structured the processing of amnesty, gave more flexible timeframes and set its procedural limits.

Thus, it can be said that the greatest legacy brought by the Federal Law nº 10.559/2002 (Legal Regime of Politically Amnestied) was to set clearly the requirements for requesting and granting amnesty, but, above all, to formalize the political amnesty as a right embodied in the politics of the State, and not as a favor given by the Government or a particular political party.

In this regard, the publication of the Federal Law nº 12.527/2011 (Law of Access to Public Information), which regulated, set the limits and facilitated the access to information held by Public Administration, enabling the fundamental right to public information and, ultimately, the very construction of the collective memory in Brazil, should also be mentioned[11].

It seems, therefore, that the cases of political amnesty are regulated in the national legal order. And even if that was not the case, the acceptance of

9 BRASIL, Lei nº 9.140, de 4 de dezembro de 1995, Reconhece como mortas pessoas desaparecidas em razão de participação, ou acusação de participação, em atividades políticas, no período de 2 de setembro de 1961 a 15 de agosto de 1979, e dá outras providências, <http://www.planalto.gov.br/ccivil_03/leis/L9140compilada.htm> (last accessed on 12 June 2013).

10 BRASIL, Lei nº 10.559, de 13 de novembro de 2002, Regulamenta o art. 8º do Ato das Disposições Constitucionais Transitórias e dá outras providências, <http://www.planalto.gov.br/ccivil_03/leis/2002/L10559.htm> (last accessed on 12 June 2013).

11 BRASIL, Lei nº 12.527/2011, de 18 de novembro de 2011, Regula o acesso a informações previsto no inciso XXXIII do art. 5º, no inciso II do § 3º do art. 37 e no § 2º do art. 216 da Constituição Federal; altera a Lei nº 8.112, de 11 de dezembro de 1990; revoga a Lei nº 11.111, de 5 de maio de 2005, e dispositivos da Lei nº 8.159, de 8 de janeiro de 1991; e dá outras providências, <http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12527.htm> (last accessed on 12 June 2013).

the thesis of human rights violation perpetrated by the Brazilian State during the military government would be enough to recognize the responsibility of the State by the Attorney General's Office.

Despite all that, the cases of political amnesty continue to be subjected to long procedures, which confirms the thesis of the offending State. Now, not only in a material way – which can be characterized by the number of victims and their repressive network – but also in a formal, procedural way, in the extent that the Brazilian State continues to create obstacles to the procedures to request and grant rights related to political amnesty through the Attorney General's Office. The worst is that all the evidence of the abuse of the right of defense aforementioned comes from the very text of the law, which, in general terms, could grant legality, but never reasonableness[12].

Therefore, the Attorney General's Office avails itself of regular proceedings, however, endowed with highly dilatory purposes to prevent the processing and judgment of amnesty requests, for example, filing appeals to the Superior Court of Justice and the Federal Supreme Court against decisions given by the Federal Regional Courts that reject appeals against their decisions, but continue to be filed to delay, hinder or even prevent granting the claims of amnesty.

So, what can be observed is not something illegal, since the whole exercise of judicial and extrajudicial advocacy of the Attorney General's Office is guided by the constitutional permissive of the right of defense regulated in the art. 5, LV of the Federal Constitution of 1988, but the abuse perpetrated while exercising this right, because, according to Taruffo, "a rule can be object of abuse not only when it is formally violated, but when it is used for improper purposes, so there may be an abuse under the label of exercising a fundamental procedural right"[13].

Thus, we are not discussing the right of the Federal Government to challenge or appeal. Nor are we putting under the spotlight the procedural prerogatives regarding different timeframes, or even the possibility to pay its debits through court order requests or requests of small value, which would require its own research. This is undisputed. What we ponder is the reasonableness in the management of unnecessary responses and appeals that usually seek only to procrastinate and delay the legal outcome.

We reinforce that the problem reaches a greater magnitude in the reparatory requirements for purposes of political amnesty, given that here the State already caused problems to the psychical, mental and social well-

12 TARUFFO, Michele. Abuso de direitos processuais: padrões comparativos de lealdade processual, *Revista de Processo*, São Paulo, 34 (2009), p. 165.

13 Ibid. , p. 174

being of the claimers and admited responsibility through Laws nº 9.140/95 and nº 10.559/2002, however continues to harm them, as it does not allow access to their rights through legal, but unreasonable, procedures.

For all that, we conclude that the ideal would be not trim down the right of defense of the Federal Government, but to do a triage, either by a court, or by the Attorney General's Office itself, based on their set of administrative directives or normative regulations, of the need to file responses or appeals. Another possibility would be the request for a settlement based on the principle of cooperation and held so highly by the Attorney General's Office, which would guarantee budgetary control and efficiency in the proceedings of the actions that effectively needed a longer procedure, granting the Attorney General's Office equal opportunity to defend the interests of the Federal Government.

## 3 CONSIDERATIONS REGARDING THE JUSTICIABILITY OF JUDICIAL INDEMNITIES REQUESTED FOR EX-POLITICAL PRISONERS AND / OR FAMILY OF DEAD AND MISSING FOR CIVIL-MILITARY DICTATORSHIP AND THE (ABUSE OF) RIGHT TO DEFENSE OF FEDERAL UNION

We establish from now on that the concept of justiciability to be used in this extract is similar to the idea of possibility/potential to request/file in court a plausible right, or even, promote, through the Justice System, a reaction fair and equivalent to the illegal act perpetrated against oneself.

So, the pursuit of justice is not similar to the concept of revenge and does not seek to instill hatred or passions. In fact, with a potential demand to the Justice System one aims solely, in a democratic ambience with all rights and guarantees guarded to the parties, to promote a regular process that, in the end, grants an appropriate and proportional response to the crimes against humanity perpetrated during the Brazilian Civil-Military Dictatorship[14].

On the other hand, the sympathizers of the dictatorship regime persist in saying that there are no more issues to be accorded justice, since, formally, amnesty was already granted and the reparations are, as far as possible, being settled[15]. The question that arises, however, is that, according to the data presented by the Amnesty Commission, there is a much greater number of people who were imprisoned, tortured and killed by the Brazilian Civilian-Military Dictatorship Regime than the number of administrative and legal requests of amnesty. That alone shows the timidity of the claims – either through ignorance

14 RUDNICKI, Dani. Uma perspectiva sobre a justiça (restaurativa) e a memória das vítimas: do nazismo às ditaduras latino-americanas. In: Castor M. M. Bartolomé Ruiz (ed.). *Justiça e memória:* para uma crítica ética da violência, São Leopoldo, 2009, p. 179.

15 PAYNE, Leigh. A anistia na era da responsabilização: contexto global, comparativo e introdução ao caso brasileiro. In: Ministério da Justiça (ed.). *A anistia na era da responsabilização:* o Brasil em perspectiva internacional e comparada Brasília, 2011, p. 28-29.

of its requirements, or the lack of documents required for admission, or even discouragement of litigating against the Federal Government[16].

In a similar vein, it should be stressed that for the last two reasons mentioned above, the obstacle is caused by the Federal Government itself that, when it does not preclude the filing of administrative requests, it hinders its processing with delaying responses and unnecessary appeals and even unmotivated noncompliance with court decisions.

It should be noted that, when hindering the processing and/or the compliance with court orders related to political amnesty, the Federal Government hurts not just the individual victimized by the military regime, but humanity as a whole, extending the damage of the past and silencing the ones abused by the military regime[17].

In the Brazilian case, Justice is more than late; it is ineffective, since, to date "the torturers, the people who gave the orders and those responsible for the torture and murders have not been convicted, or even brought to trial or cited in the criminal lawsuits, and most remain anonymous to this day. Why were they amnestied? Not by the ruling of the law, but through an interpretation of it that would allow going back on the political opening if there was a revenge motivated stance from the opposition[18]".

According to Janaína Teles, the maximum of Justice that has been achieved was in the civil law branch, with a reparation action filed, in 1973, by Elizabeth Challup Soares, widow of Manoel Raimundo Soares, against the Federal Government, that was finally granted in 2005, that is, 32 years after being filed. In this case, the Federal Government, through AGU, filed at least five different appeals, all of them without any procedural reasonableness, aiming to postpone instead of seeking a possible reform and/or cancellation of the decision[19].

In the same way, it must be highlighted the lawsuit filed in 1976 by Clarice Herzog and his sons to investigate the responsibility of the Federal Government on the torture and death of her husband Vladimir Herzog, who was imprisoned in DOI – CODI São Paulo, on the date 25 October 1975. The sentence was published on October 27th., 1978, by the magistrate José Márcio de Moraes,

16 MEZAROBBA, Glenda. O processo de acerto de contas e a lógica do arbítrio. In: Edson Teles; Vladimir Safatle (eds.). *O que resta da ditadura*: a exceção brasileira. São Paulo, 2010, p. 116-117.

17 RUDNICKI, 2009, p. 179.

18 LISBOA, 2010, p. 160.

19 TELES, Janaína. Os familiares de mortos e desaparecidos políticos e a luta por "verdade e justiça" no Brasil. In: Edson Teles; Vladimir Safatle (eds.). *O que resta da ditadura*: a exceção brasileira, São Paulo, 2010, p. 275-277.

who granted the requirement of the Herzog's family, by understanding the responsibility of the Federal Government.

Similarly, emblematic was the action proposed by relatives of dead and missing in the "Guerrilha do Araguaia", in 1982, when it requested the location of the remains of their relatives and the shipment of their deaths seats. This process had been subjected to a series of elements and procedural resources committed by the Union, as their applications for purposes of extinction without judgment on the merits, judicial secrecy in progress and unavailability of evidence, which engendered its sentence only on March 2009[20] and, following a condemnation on 24 November 2010 by the InterAmerican Court of Human Rights[21].

Also, it should be mentioned the case of the Brazilian Air Force military men should be mentioned. In May of 1964, after be forcibly quartered for over 48 hours without a reason in Fortaleza's Air Force base, they "decided to address the commander of the unit and request an explanation about what happened during that time. The request for clarification was answered with imprisonments, punishments and lawsuits"[22].

The same military men were expelled from the Brazilian Air Force for insubordination in the same year and only returned to the Air Force ranks in the 1980s. With the advent of the Amnesty Law, they have been identified as potential beneficiaries of amnesty. Thus, they filed reparation claims against the Federal Government that, for the most part, were unsuccessful. In the late 1990s, their claims were gradually granted until, with the advent of the Federal Law nº 10.559/2002 (Legal Regime of Politically Amnestied), they became politically amnestied.

The fact is that, even after 50 years, these same military men are still waiting for the fulfillment of a reparation claim that was granted by the Justice System of the State of São Paulo in 2005 in the civil action nº 0057317-04.1999.4.03.6100 because of the irregular expulsion. The delay is due, especially, among other factors, to the different timeframes allowed to the Federal government and appeals filed by the Attorney General's Office, as well as the difficulty of access to documents that support the claims of amnesty.

Yet another emblematic case was the action filed by the Almeida Teles family in 2006 against Carlos Alberto Brilhante Ustra, also known as "Coronel Tibiriçá", which sought, and was granted, to declare the defendant a torturer while in charge of the Center for Internal Defense Operations, a Brazilian intelligence and repression agency during the military government. The decision

20 BRASIL, 2014, p. 952.
21 BRASIL, 2014, p. 715.
22 ARQUIDIOCESE DE SÃO PAULO. Brasil: nunca mais. Petrópolis, 2009, p. 120.

recognized his responsibility for the use of violence against the Almeida Teles family. The decision was unprecedented when it defined the Center for Internal Defense Operations as a "horror house"[23].

Therefore, given the cited examples, the access of the victims of the military regime to the Justice System is unreasonably diminished. This can be easily confirmed by the obstacles forged by the Amnesty Law against any intent to bring to justice the military agents and those responsible for the tortures, disappearances, kidnappings and murders during the dictatorial period.

These arguments can be reiterated by the interpretation given to the Amnesty Law by the Brazilian Supreme Court in the trial of the Breach of Fundamental Precept Action nº 153, that gave preference to the formalities of the self-amnesty process at the expense of a more just and proper observance of human dignity[24], based on its adequate control of conventionality.

Undoubtedly, however, remains demonstrated that the greatest obstacle to the fulfillment of reparatory claims is at the very Brazilian State, which, by AGU, makes use of various resources, in most cases without any legal basis, just to procrastinate the process or the effectiveness of its decisions. It also should be stressed the obstacles caused by difficulties in access to evidence of illegal arrests or torture perpetrated during the civil-military dictatorship.

Therefore, it must be emphasized that the major obstacle is not in the filing of the legal actions, since documents and files of the military regime have gradually become more accessible to substantiate the claims, especially after the publishing of the Law nº 12.527/2011. The biggest problem is due to the delay of the process promoted by the Federal Government, through the Attorney General's Office, that while availing itself of its right of defense, abuses timeframes, appeals and other legal remedies that are allowed to it, seeking nothing other than delaying the outcome, without any reasonableness and well below the standards required by the principle of collaboration and procedural cooperation.

Moreover, it should be said that the attitude of the Attorney General's Office indirectly violates the current legal system, to the extent that it disregards article 2, sole paragraph of the Law nº 10.559/2002, which gives to those politically amnestied the right to settle during the legal procedure, and it also allows the Attorney General's Office and the Prosecutor's Office of some Federal Agencies and Foundations to settle in claims against the Federal Government

23 TELES, 2010, p. 295-296.

24 MAZZUOLI, Valério Oliveira. *O controle jurisdicional da convencionalidade das leis*. São Paulo: RT, 2011, p. 161.

and its agencies, ultimately, hurting the reasonable duration of the procedures and its efficiency.

In this vein, political amnesty, in its dimension of justice, cannot be understood as endowed with effectiveness, since, despite of having the opportunity and the right to file amnesty claims, those victimized by the dictatorial military regime might get wild goose chase instead of a fair and equivalent answer to the crimes perpetrated against them by the Brazilian State.

First of all, the plaintiffs will struggle to exercise their right to amnesty due to the scarcity of evidence. Then, even if the victims have robust evidence of the damage perpetrated against them, they will have to endure almost a decade of procedures to maybe have their claim granted. Still, if they have their claim granted by a single judge, they will face several appeals and legal costs. In the end, if their claim is confirmed by the superior courts, ordering the a Federal Government to pay indemnity – the whole sum or in installments – they should be prepared to fight in court for several more years while the sentence is carried out, and that includes payments by court orders.

Overcoming all those stages, not to mention everything they endured since the 1960s, due to the atrocities promoted by the military government, the plaintiffs of those legal actions, even winning, will not feel that justice has been made. On the contrary, rather than pacified, they will feel outraged by all the procedural obstacles, the delays, and, most of all, the anguish caused by the State that should represent and protect its citizens.

On this matter, the following clarifications should not be forgotten: all this procedural entanglement could be quickly and effectively solved, if the Federal Government, through the Attorney General's Office, opted for a settlement, in the terms established by the Law nº 10.559/2002, or even decided to issue an administrative directive that recognized the right to amnesty to those who could undoubtedly prove through documents or witnesses their status of prisoner, victim of torture or exile, or that they have been harmed in any way by the dictatorial regime.

This would result in the implementation of a reasonable duration to the process, as well as the procedural cooperation and the right to the Due Legal Process, and, above all, it would take into account the dimension of justice, essential to the effectiveness of a genuine transitional justice in Brazil.

## CONCLUSION

Initially, it was described the historical context in which lies the almost ancient origins of the Due Process, as well as its main characterizing notes.

Then, it was found that the right to defense was incorporated in almost all Brazilian Constitutions, with only a few limitations in those of 1937 and 1967 because of their links to the dictatorial regime of the time.

It was observed that, if not properly exercised, the right to defense (audi alteram partem principle) – whether by abuse or misuse – can cause harm to the parties, as it was seen in the cases of administrative and legal requests of political amnesty.

In this context, it was verified that the Attorney General's Office should use its prerogatives listed by the article 73 of the Complementary Law nº 73, as tools to guard the National Patrimony, and also that any exercise of these prerogatives for different purpose can be understood as abuse or misuse of power, and therefore, liable of punishment.

Later, the set of legal remedies and procedures developed over the last three decades was presented – Law nº 6.683/1979, Law nº 9.140/1995, Law nº 10.559/2002 and Law nº 12.527/2011. This set has the goal to promote justice to those affected in their personal and/or professional lives due the persecution perpetrated by the civil-military dictatorship.

Despite the many existing legal instruments and all the changes brought by the Amnesty Law, there is still a significant difficulty as to its effectiveness, due to, among other reasons, the difficulty of access to documents attesting the tortures and losses during the dictatorship, and because of the persistency of the Attorney General's Office in filing various appeals, which are, for the most part, dismissed, but continue being filed to delay, hinder or even prevent the deferral of the claims.

A triage to determine the need of formal defense in the cases of political amnesty, by the judge or by the Attorney General's Office itself, was suggested. It is understood that this set of administrative directives and normative regulations of the Attorney General's Office should substantiate that triage.

In the same way, it was recommended the use of a settlement, in the terms of the article 20, sole paragraph of the Law nº 10.559/2002, promoted by the Attorney General's Office, which would ensure budget control in the payments of the reparation claims regarding political amnesty, and efficiency in the processing of those actions that actually needed a more complex procedure.

It was also found that the main obstacle is not in the filing of the legal actions, since documents and files of the civil-military dictatorship have gradually become more accessible to substantiate the claims, especially after the publishing of the Law nº 12.527/2011. The biggest problem is due to the delay of the process promoted by the Federal Government, through the Attorney General's Office, that while availing itself of its right of defense, abuses

timeframes, appeals and other legal remedies that are allowed to it, but are used to seek nothing other than delaying the outcome.

Finally, it was concluded that political amnesty, in its dimension of justice, cannot be understood as endowed with effectiveness, since, despite of having the opportunity and the right to file administrative and legal amnesty claims based in proper laws and processed through specific procedures, those victimized by the dictatorial military regime might not get a fair and equivalent response to the crimes perpetrated against them by the Brazilian State, because of procedural delay caused by the several appeals filed by the Attorney General's Office, the difficulty of accessing documentary evidence of their status as persons who are politically amnestied and negligence in compliance with decisions that grant amnesty – factors which, combined to the damage already perpetrated during the dictatorship, demonstrate the full abuse of the right of defense by the Federal Government.

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