

ADPF 153

Amnesty Law

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

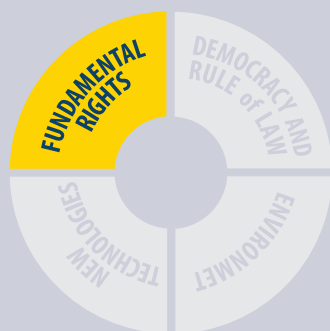
In-person

Rapporteur:

Justice Eros Grau

Decision Date:

April 29, 2010

Matter:


CASE SUMMARY

A Claim of Non-Compliance with a Fundamental Precept (ADPF) that requests the Amnesty Law (Law 6,683/1979) not to be accepted by the 1988 Federal Constitution in provisions that extend the amnesty for political crimes committed during the military regime to related crimes. The plaintiff claims the provisions give amnesty to offenses such as torture, homicide, and enforced disappearance, disregarding: (i) the government's duty not to conceal the truth about what happened during the authoritarian period; (ii) the principles of democracy and republicanism; and (iii) the principle of human dignity (article 1, head provision and item III of the 1988 Federal Constitution).

LEGAL REASONING

1. The Amnesty Law (Law 6,683/1979) granted pardons for political crimes and other related crimes committed for political reasons. In interpreting this law, one should consider its social and historical context in which it was enacted: a period of transition from the military regime to a Democratic Rule of Law. It was effectively a bilateral amnesty, granting pardons to actions performed during a regime of exception. However, the amnesty did not encompass the wrongful acts of terrorism, kidnapping, and personal attacks that had already resulted from final and unappealable decisions.
2. In a Democratic Rule of Law, the Judiciary does not have the power to change or rewrite a normative text. Modifying a law that offers amnesty is outside the purview of the Federal Supreme Court; the Court's role is exclusively to ascertain whether the law is compatible with the Constitution. The responsibility for revising the Amnesty Law falls within the scope of the Legislative Branch, if it finds it necessary. In fact, a review by the Supreme Court could jeopardize institutional stability and reopen past wounds, ultimately affecting democracy.

DECISION OF THE COURT

The Federal Supreme Court has ruled that the Amnesty Law (Law 6,683/79) is compatible with the 1988 Federal Constitution. The Court found that the amnesty granted by the Constitution was bilateral, broad, and general, covering crimes of any kind committed by agents of repression in the period between September 2, 1961 and August 15, 1979, given the context of a reconciled transition to democracy in which it was enacted.

ADDITIONAL NOTES

The case pends a final decision. The Supreme Court rejected the plaintiff's claim, who then proposed motions for clarification alleging that, according to international law, crimes associated with the political offenses carried out by agents of repression during the military regime are deemed crimes against humanity. Hence, the bilateral amnesty recognized by the Court implies a violation to the Inter-American Court of Human Rights' case law, to which Brazil has submitted itself. Based on these arguments, the plaintiff asked for the decision to be overturned and for the action to be upheld, in order to rule out amnesty for these crimes.



**AMICUS
CURIAE**



**Trial's
VIDEO**

part 1



**Trial's
VIDEO**

part 2



**Trial's
VIDEO**

part 3



**Trial's
VIDEO**

part 4



**Trial's
VIDEO**

part 5



**Trial's
VIDEO**

part 6



**Trial's
VIDEO**

part 7



**Trial's
VIDEO**

part 8



**Trial's
VIDEO**

part 9



**Trial's
VIDEO**

part 10



**Trial's
VIDEO**

part 11