Lex Humana

Revista do Programa de Pós-Graduação em Direito da UCP

ISSN(e) 2175-0947

Universidade Católica de Petrópolis
Rua Benjamin Constant, 213 - Petrópolis - Centro
CEP 25610-130
Tel: (24) 2244-4000
E-mail: lexhumana@ucp.br
ENFORCED DISAPPEARANCE OF PERSONS UNDER INTERNATIONAL CRIMINAL LAW: THE CASE “GUERRILHA DO ARAGUAIA” IN BRAZIL

Angela Pires Pinto

Resumo: O caso “Guerrilha do Araguaia” é conhecido no Brasil pelos desaparecimentos forçados de opositores do regime militar no período entre 1972 e 1974 na região’Araguaia’. Apesar dos esforços das famílias das vítimas visando responsabilização e reparação, pouco progresso foi feito. Em 1995, o Brasil reconheceu suas responsabilidades pelas mortes e criou uma Comissão para promover compensação às famílias das vítimas. A Lei de Anistia impediu que o Estado iniciasse os procedimentos criminais relacionados às responsabilidades dos envolvidos nos desaparecimentos, tortura e assassinatos. Em dezembro de 2010, a Corte Interamericana de Direitos Humanos decidiu que o Brasil é responsável pelos desaparecimentos forçados na região do Araguaia e, seguindo sua jurisprudência anterior, determinou que o Estado iniciasse investigações adequadas e procedimentos criminais relacionados aos fatos que representam crimes contra a humanidade. Visando a determinação das responsabilidades criminais no caso “Guerrilha do Araguaia”, esse artigo examinará as bases da responsabilidade criminal dos supostos ofensores, a partir do direito internacional criminal assim como da legislação Brasileira, analisando as limitações apresentadas por ambas jurisdições.

Palavras-chave: Desaparecimento forçado; Direito Internacional Criminal; Anistia; Crimes contra a humanidade; Direitos Humanos.

Abstract: The case “Guerrilha do Araguaia” is well known in Brazil in the view of the disappearances of opponents to the military regime occurred between 1972 and 1974, in the region known as Araguaia. Despite the efforts made by the families of the victims to seek responsibility and redress, few progress has been done. In 1995, Brazil recognized its responsibilities for the deaths and established a Commission to provide compensation to the families of the victims. The Amnesty Law prevented the State to initiate the criminal proceedings related to the responsibilities of those involved in the disappearances, torture and killings. On December 2010, the Inter-American Court of Human Rights decided that Brazil is responsible for the enforced disappearances in the Araguaia’s region and, following its previous jurisprudence, determined that the State initiate adequate investigation and criminal proceedings related to the facts that amount to crimes against the humanity. In the view of the
determination of criminal responsibilities on the “Guerrilha do Araguaia”’s case, this article will examine the grounds of criminal liability of the alleged offenders under the international criminal law as well as under the Brazilian domestic law, analysing the limitations that arise from both jurisdictions.

**Keywords**: Enforced disappearance; International Criminal Law; Amnesty; Crimes against the humanity; Human Rights.

1. Introduction

In 1964, after a coup d’etat, the Army took the power in Brazil and began a twenty years period of dictatorship. While enforcing several military missions to ensure national security\(^3\), torture, enforced disappearances, unlawful arrests and other sorts of persecution against opponents were systematic practices\(^4\).

In 1966, a group of civilians, formed by members of the Communist Party, started to get organized to fight against the authoritarian regime. This group was based in the north of Brazil, in the Araguaia’s riverbank. For this reason, the group and the incident that occurred in that place between 1972 and 1974 are known as “Guerrilha do Araguaia”.

While in the first military operations the order was to identify the members of the “Guerrilha”, from 1973, the orders were to “eliminate” those who were captured. By the end of 1974, the Guerrilha do Araguaia was extinct. The information suggests that their bodies were removed from the original places where they were initially buried, burned and threw into the river\(^5\).

With the end of the dictatorship, a Catholic Church publication called “Brasil: Nunca Mais”\(^6\) reported hundreds of cases of torture, murderers and enforced disappearances occurred in the period. Furthermore, initiatives of victims’ families and civil society

---


\(^4\) Brasil Nunca Mais (Petrópolis, Vozes,1985).


\(^6\) Supra.

[http://seer.ucp.br/seer/index.php/LexHumana](http://seer.ucp.br/seer/index.php/LexHumana)