TRANSITIONAL JUSTICE PATHS: CORPORATE ACCOUNTABILITY FOR TERROR IN THE SOUTHERN CONE FACTORIES

CAMINHOS DA JUSTIÇA DE TRANSIÇÃO: A RESPONSABILIZAÇÃO EMPRESARIAL PELO TERROR NAS FÁBRICAS DO CONE SUL

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RESUMO: Como se desenvolveram e quais foram os caminhos percorridos até o momento para alcançar a responsabilização do setor empresarial por violações de direitos humanos de trabalhadores nas instalações das suas fábricas? A persecução penal de alguns dirigentes da Ford na Argentina (2013-2019) e o acordo de indenização monetária entre a Volkswagen e o Ministério Público no Brasil (2015-2020) constituem marcos históricos para a Justiça de Transição com desfechos contemporâneos e cuja repercussão regional será de suma importância para a construção de estratégias reparatórias que ao mesmo tempo preservem a estabilidade nas democracias incipientes do Cone Sul. O método de análise cruzada desses dois casos recentes viabiliza a compreensão das variantes que influenciaram em seus respectivos cursos. Remontar a divulgação midiática, por meios oficiais e alternativos, permite mensurar qual impacto social tiveram as espécies de medidas escolhidas na formação da opinião pública de cada país. Esperamos alcançar um panorama sobre os caminhos da Justiça de Transição no marco da responsabilização empresarial a partir de uma análise sobre a eficiência e o alcance das medidas adotadas, contribuindo para o aprimoramento das técnicas de reparação.

Palavras-chave: Terror. Fábricas. Responsabilização Empresarial. Justiça.

ABSTRACT: What paths have been taken and how have they developed to achieve accountability of the business sector for violations of workers' human rights on the premises of their plants? The penal persecution in Argentina of some of Ford’s directors and the first agreement by monetary indemnity between Volkswagen and Public Ministry in Brazil are a landmark for Transitional Justice with contemporary outcomes and whose regional repercussion will be of paramount importance for the construction of reparatory strategies, at the same time preserving stability in the fledgling democracies of the Southern Cone. The cross-analysis method of both recent cases makes

it possible to understand the variants that influenced their respective courses, as well as tracing the media dissemination, through official and alternative means, allows measuring the social impact of the kind of measures chosen in shaping public opinion in each country. We hope to achieve an overview of the Transitional Justice paths within the framework of corporate accountability from an analysis of the efficiency and scope of the measures adopted, contributing to the improvement of reparation techniques.

Keywords: Horror. Factories. Corporate Accountability. Justice.

SUMÁRIO: Introduction. 1. Ford's legal responsability for terror in Argentinian factories. 2. Volkswagen's extrajudicial accountability for terror in Brazilian factories. 3. Full repair or possible repair? The paths of transitional justice in the Southern Cone. Conclusions.

INTRODUCTION

In the Southern Cone of America, the search for reparation for violations perpetrated by state agents themselves in a recent past of democratic rupture has great relevance for the emancipation of the countries of this region before the international community. As they advance in the rescue of human rights, compromised during their experience with authoritarian regimes, they actively participate in the construction of meaning of universal values. Above all, overcoming the internal conflicts remaining with the states of exception contributes to the elimination of deep social inequalities, replacing state violence as a policy with culture of respect for due legal process, freedom, equality and access to justice.

However, the consolidation of democracy in these countries depends on the monitoring of transitional processes, dissemination of the progress made and removal of mistakes already made. The common past of painful human rights violations also involves similar difficulties to bypass obstacles to memory, truth, reparation for victims and, finally, to reach justice. For this reason, the constant study and sharing of the paths taken by each member country contribute to the collective advance.

On the path of the reconstitution of the past, considerable advances are already being made with the constitution of National Truth Commissions, the institution of time frames, monuments, museums, civil society organizations that mobilize in search of the interests of victims and their families, and many other initiatives that keep alive the struggle to rescue the perspectives suppressed by the official version of history. Without overlooking the importance of these steps, effective reparation is an indispensable advance to the horizons of transitional justice, but there are many obstacles to its implementation.

It turns out that the democratic reopening in the countries of the Southern Cone, after the civic-military dictatorships, took place in different intensities and forms. Some countries have

developed a "negotiated transition" (NEVES; LIEBEL, 2015), taking advantage of *National Reconciliation Plans* with a view to promoting a "slow and gradual" transition, whose measures of "*social pacification*" were based on amnesty and forgiveness of crimes committed during that period, such as Chilean Amnesty Law Decree nº. 2191/1978 (CHILE, 1978) and Brazilian Amnesty Law No. 6,683/1979 (BRASIL, 1979) where amnesty even reached related crimes. In other countries, however, such as Argentina, a "transition by rupture" or "transition by collapse" has developed in which the regime has not endured political and economic pressures, succumbing to institutional reactions that have led to accountability for the crimes that have occurred (NEVES; LIEBEL, 2015).

However, neither time nor legal exceptions were able to relegate to oblivion the necessary adjustment of accounts with the past. In this regard, civil society organizations play a crucial role, keeping alive the fight against impunity for atrocities committed under the mantle of the State. During the democratic transition in Argentina, the *Asociación de ex Detenidos Desaparecidos*[1] (1984), then the *Asociación de Hijos e Hijas por la Identidad y la Justicia contra el Olvido y el silencio– HIJOS* (1995)[2] and many others (MIRA, 2017) arose. In Brazil, we can mention the *Movimento Feminino pela Anistia* (1975)[3] and the *Associação Brasileira de Anistiados Políticos - ABAP* (1995)[4].

Thus, the victims themselves and family members have a central role in boosting investigations of the damage arising from State Terrorism in the Southern Cone. This activism has spurred investigations about the role of private and transnational capital companies in authoritarian regimes. Research shows that, in Argentina, these companies benefited materially from the destruction of union activism, increased productivity and the adjustment of the relationship between salary and greed, and that the collaboration between company owners and the military had got to the point its turn difficult concern between one and other (IZAGUIRRE; MILLÁN; ASCIUTTO, 2017).

[1] *Association of Former Missing Detainees* is a human rights organization created in 1984, made up of survivors of the concentration camps of the last military dictatorship that implanted terror in Argentina between 1976-1983 and by younger militants who searching Memory, Truth and Justice (AEDD, 2012).

[2] *Association of Sons and Daughters for Identity and Justice against Forgetfulness and Silence* is a group of sons and daughters of victims in order to fight for the trial and punishment of genocides that committed crimes against humanity, for criminal prosecution of Triple A and the terrorism of the last civic-military dictatorship in Argentina in 1976- 1983 (HIJOS, 1995).

[3] *Women's Movement for Amnesty (1975)* was the first organization to openly defend the amnesty inaugurated in Brazil by the former political prisoner Therezinha Zerbini, after her presentation at the Congress of the International Year of Women, held by the UN in Mexico City (LULA, 2015)

[4] *Brazilian Association of Political Amnesty (1995)* is a non-profit organization founded in May,1995 with the purpose of fighting for the rights of the persecuted and punished politicians during the Military Regime, but continues working today to improve the Amnesty laws, including using administrative processes that preserve the memory of political amnesty (ABAP, 2012).

The cooperation of the business sector with military regimes was a successful strategy for strengthening authoritarianism through the support of conservative sectors of the far-right, so the practice found resonance in the dictatorships from the 60s to 80s in the twentieth century (IZAGUIRRE; MILLÁN; ASCIUTTO, 2017).

Thus, the coups that inaugurated the military regimes, both in Argentina and in Brazil, occurred in a context where an antagonistic class struggle was already installed. From this symbiosis between state terrorism and part of civil society resulted the historical denomination of the authoritarian regimes of the time as *civic-military dictatorships,* an indication that the privileges obtained in this alliance determined the result of the class struggle and generated social, economic, legal and political consequences. For this very purpose, although it is not part of the focus of this research, it is important to reassemble and understand the motivations of the civil-military alliance, whose consequences attracted corporate responsibility in the reparation processes after democratic reopening.

It is also important to remember that Brazil and Argentina adhered to and ratified the *Inter-American Convention on Human Rights*, however, corporate accountability for the damages determined over the dictatorial period did not have uniform treatment in these countries, presenting different choices in institutional processing models, the participation of victims and even the resulting penalties, as we will see below.

1 THE JUDICIAL ACCOUNTABILITY OF FORD FOR TERROR IN ARGENTINE FACTORIES

In the Southern Cone of America, Argentina gained a place of prominence in the history of the defense of human rights due to pioneering initiatives for individual criminal prosecution of those involved in *crimes against humanity* committed during the dictatorship. It should be remembered *that the Comisión Nacional sobre la Desaparición de Personas* CONADEP[5] produced its report *Nunca Más* at the beginning of the democratic reopening (1984), material that came to support many other initiatives, including criminal prosecutions.

However, the long journey taken by the Argentines even precedes this report, and dates back to the *controversial Jucios a la Junta, o Causa 13,* (1983-1985) which consisted in the trial of the members of the Military Councils by a Civil Court, whose sentencing judgments were not

[5] *National Commission on the Disappearance of Persons* managed to collect numerous information about the kidnapping and final destination of the disappeared, which was published in the report entitled "*Never Again"* and established a regime of truth, that gave a new meaning to the dictatorial past (ROMANIN, 2013).

even executed due to the promulgation of the *Ley de Punto Final/1986*, *Ley de Obediencia Debida/1987*[6] and Decree nº. 2741/1990 (MIRA, 2017). These normative texts granted pardons and amnesties to the military for the crimes committed on behalf of the State during the dictatorship, consecrating the obedience due in the military hierarchy as an exclusion of responsibility.

Later, they became known as *"Leyes de Impunidad"*[6] due to the Argentine courts' recognition of its unconstitutionality patent, however, while in force they constituted real legal obstacles. As an alternative route, the *Juicios por la Verdad*[7] (from 1998) were developed, which consisted of oral investigative proceedings carried out within the Argentine judiciary, with a view to preserving memory and a legal reconstruction of the truth, given the impossibility of criminally pursuing those responsible for the crimes against humanity (ROMANIN, 2013).

This same scenario of impunity led to the exercise of extraterritorial jurisdiction by Italy, an initiative legally provided for in the Italian Penal Code, recounting the character of a continued crime of forced disappearance. The first trials of this species took place in 2000 *(Jucio Riveros y otros)* and followed to the famous *Jucios* ESMA (Caso *Acosta y otros),* from 2006 (MIRA, 2017). Italy was not the only one invoking universal jurisdiction to legitimize the sentencing of crimes against humanity that occurred at that time. Spain also exercised extraterritorial jurisdiction to convict former Argentine Navy member Adolfo Scilingo in 2005.

Simultaneously with the Italian and Spanish mobilization against the impunity of human rights violations in Argentina, the *Corte Suprema de Justicia de la Nación Argentina- CSJN* began the trial on the *constitutionality of the Leyes de Impunidad* (2003 to 2005), at the end of which declared the unconstitutionality of the laws of *Punto Final y Obediencia Debida*, creating a precedent that constituted a true releasing of justice.

This precedent led to the reopening of unfinished criminal proceedings *(Jucios a Las Junta),* but the *proximity to the ESMA Jucios* that were still underway in Italy gradually made the resumption of Argentine territorial jurisdiction. The Constitutional Reform of 1994, which attributed constitutional hierarchy to certain international human rights pacts by including item 22

[6] The application of *Law of Full Stop* - nº 23.492/1986- and *Law of Due Obedience* – nº 23.521/1987-, together with other pardon decrees, frustrated the possibility of prosecuting those responsible for human rights violations committed during the Argentine military dictatorship that lasted from 1976 to 1983. In the first years of Argentine democracy, these laws represented a real legal obstacle that forced human rights organizations to exploit different ways of accountability and production of evidence, reviving the national debate until the national courts and the Inter-American Court of Human Rights declared its invalidity (CELS, 2008).

[7] The *Trials for Truth* were a modality of transitional justice promoted by different human rights organizations in order to advance against impunity existing in Argentina in the ends-90s, in social and institutional contexts different locations, and their development generated and deepened tensions about how to deal with the recent past (ROMANIN, 2013).

to Art. 75, supported this resumption (MIRA, 2017).

The criminal prosecution resumed at that time were the object of the investigation of the individual responsibility of public officials for state terrorism. Despite the importance of reparations of this bias, these were not the only actors involved in the illicit acts, according to the report of CONADEP5, in which evidence of economic crimes was raised, with the participation of the private sector. Despite this, the investigative line on the corporate complicity of financial institutions and multinational companies only developed from the second decade of the 21st century (ARRASCAETA, 2017). In November 2002, Argentina's federal prosecutor's office set off criminal prosecutions against the occupants of senior Ford positions, promoting the investigation of the individual responsibility of its leaders.

The judicialization of the FORD case was immediately reported in the international media. A report promoted the confrontation between the version of Pedro Troiani, one of the victims who worked on the assembly line of the factory, and the statements of the company's spokesman at the time, Rolo Ceretti. The victim's report denounced the existence of a detention center at the General Pacheco Plant, a Ford factory where illegal arrests and torture took place, which was vehemently denied in statements to the mass media by the company at the time (ROHTER, 2002).

After a little more than 15 years of duration of the investigation phase, the trial was initiated before the Federal Oral Court No. 01 from San Martín. Once the complaint was admitted for the forced kidnapping, death, torture and dismissal of 24 workers of the Ford company, the evidential production began in contradictory, ensuring the broad defense of the accused, in order to verify the existence or not of the crimes, and possible delimitation of individual responsibilities. The accused were former manufacturing manager Pedro Müller, former head of security Héctor Sibilla and former labor relations manager Pedro Galagarra, but the case was closed for the latter due to his death. Then, the case was combined with another ongoing one in the face of the former holder of Military Institutes of the Army Santiago Omar Riveros, continuing in joint proceedings.

In December 2017, *the Centro de Estudios Legales Y Sociales*[8] charged the trial and expressed support for workers victimized by illegal government repression that the between capital and labor, a repressive resolution, was part of the business strategy to increase profits (CELS, 2017).

The technical defenses adopted, as main theses, the prescription of criminal actions *and the bis in idem* since the same facts supported simultaneously the particular parties, by representation of workers, and the party represented by the Secretariat of Human Rights of the

[8] Center for Legal and Social Studies (CELS, 2017).

Nation and the Province of Buenos Aires (SAN MARTIN, 2018). The defenses also raised the diction of Art. 7 of the Rome Statute did not admit civilian persons as perpetrators of the crimes of harm to humanity, so the conduct of Art. 30 of the same statute could not be attributed to them (SAN MARTIN, 2018).

The statute of limitations was dismissed on the basis of the understanding of the Inter-American Court of Human Rights. The grounds of the judgment highlight the *erga omnes* nature of the obligations imposed by the treaties and human rights conventions, so that the normative plan of the operational would be inseparable, therefore reaffirming the validity and cooperation of the relevant international criminal norms (SAN MARTIN, 2018). It was also recalled the backwater national jurisprudence that recognizes the existence of national legislation in force at the time of the facts that already prohibited the conduct practiced during the systematic political repression. By all these arguments, it removed the incidence of prescription.

The Federal Oral Court also rejected the claim that civilians cannot answer for crimes of harm to humanity, arguing that it is sufficient to have a link between individual criminal facts and a context of widespread or systematic attack to configure the crime against humanity. Therefore, in the Court's view, there is nothing to prevent a civilian person, even if unrelated to the state structure, from being held liable for crimes of this nature, and the constituent elements of the species are found (SAN MARTIN, 2018).

As for the allegation of invalidity of the proceedings for active illegitimacy of the workers who represented against the accused, the Court held that there was no concrete prejudice to the defense, whereas the crimes under analysis are of a multi-offensive legal nature, and because of the existence of the tender between the offences and which are part of the same delictive maneuver, attracting the need for uniform treatment by the Argentine jurisdiction (SAN MARTIN, 2018).

In addition, the allegation of bis in idem was rejected since the different complaints are grouped according to the causes of connection provided by law, that is, due to the person, the date of disappearance or the area in which the kidnapping occurred. Contrary to what the defense claimed, the Court held that it would not be possible to establish a general criterion for cumulation of cases, since in some cases cumulation could result in speed and in others in delay. Above all, the choice of existing legal criteria should comply with the scope of full justice, simply that it does not imply effective harm to the defense (SAN MARTIN, 2018).

With regard to evidential production, the decision makes it clear that due to the principles of oral proceedings, the value of the testimonies provided during the debate must prevail over any others (SAN MARTIN, 2018). In addition, the Court took into account the guidelines for interpretation and assessment of evidence established by the Inter-American Court of Human

Rights in cases investigating crimes of the scope of those judged there, considering that a policy of kidnapping and disappearance of people encamped by the State has as scope the cover-up and destruction of incriminating evidence, hindering or preventing investigations. Therefore, the need to accept indirect evidence, logical and contextualized inferences when it is not possible to prove the facts directly, provided that the systematized practice of violations is proven.

The body of evidence included the victims' personal testimony, testimonies from their families and other victims, documentary evidence, factory court inspections, and technical reports on historical and economic facts. The proven facts were organized and described in order to verify the extent of the damages and delimitation of the liability of each imputed on the legal sphere of each victim (SAN MARTIN, 2018). Without the intention of describing all the evidence produced, we began to highlight those related to the direct contributions of the victims and the accused to clarify the facts.

The evidence collection consisted of the direct testimony of the surviving victims, some of their families and corroborated by testimonies brought from other processes. Documentary evidence was produced from telegrams sent by Ford and intended for victims, through which they communicated to workers previously kidnapped to resume their functions in factories, under penalty of configuring job abandonment. The victims' functional records were also added.

The report of CONADEP[5] was also valued and analyzed, the Social Security Law that supported the unilateral breach of contracts of workers detained by national security agents, and an internal document of the Armed Forces entitled "Army Plan", a kind of manual with explanation about operations, the order of detention of people, the intelligence sector, definition of targets and forms of cover-up. This plan already provided for the possibility of prior agreements with companies with the aim of capturing and controlling their employees (SAN MARTIN, 2018).

Among the common facts related to the 24 victims aforementioned, it should be noted that all integrated intense union activities in the company before the events occurred. Thus, it was pointed out that among the 07,000 Ford employees, only the union delegates and those who had strong ties with these organizations were the target of kidnappings at that time. It was also proven the dismissal of all victims days after the kidnappings, as stated in the microfiche joined by Ford itself (SAN MARTIN, 2018).

It has also been proven that there was a significant increase in security forces at the FORD plant after the military coup on March 24, 1976. That Ford's military authorities and leaders maintained logistical cooperation and material resources for the purpose of producing the kidnappings. During the judicial inspection at the factory, the sites in the company for illegal detention and permanent accommodation of the military were identified, including that FORD

provided food for the military. Some witnesses in mandatory military service at the time stated that their only activity was the arrest of the subversive individuals and confirmed the consumption of high-quality food offered by the company (SAN MARTIN, 2018).

Beyond food, it was proven in the autos that the company Ford provided several supplies for military displacement, such as liters of fuel, small vehicles, cargo trucks and factory parts. Even the use of FORD trucks for the kidnappings of some victims is presented in the file.

The report of the assistant experts Silvio Feldman, Victoria Basualdo and Eduardo Basualdo mentioned the political and economic context in which the *Social Reorganization Plan* was inserted, thus corroborating the prospect of systematic and widespread attack of human rights in the dictatorial conjuncture of the Argentine military government. The very existence in the "*Plan Condór*"[9] is pointed out as part of the strategy of extermination and domination of the working class during the transition from the economic model of production to capitalism, then emerging in the Southern Cone of America.

Finally, the delimitation of the individual responsibility of the accused involved a distinction between authorship, complicity or instigation, according to the investigation of the control of the facts and the effective execution of acts.

At the time of the facts, Pedro Müller was an executive of the company's high hierarchy and worked at the assembly plant. There he in charge of the production and had full control over everything that happened to the workers under his command: controlled the entry and exit of personnel, visits, circulation of vehicles, among other things. He was sentenced to 10 years in prison for the illegal deprivation of liberty, committed with functional abuse and aggravated by the use of violence and threats and imposition of torments, aggravated by political persecution of the victims, all qualified as crimes against humanity (SAN MARTIN, 2018).

Hector Sibilla was a career military, but at the time of the facts he was head of security of the company and exercised a spatial domain over all plants and zones, especially the Pacheco Plant, where he controlled the flow of people, vehicles and solved any conflict, therefore, knew or should know the crimes investigated. There was no evidence that he carried out illegal arrests or kidnappings on his own hand, but facilitated the individualization and location of the people to be detained, and allowed the detention of some of them in the barracks of the factory itself, where they were subjected to torture.

[9] The report of the National Truth Commission in Brazil, volume 2, describes the Condor Plan as a clandestine operation of repressive connection between Brazil, Chile, Argentina, Uruguay, Paraguay and Bolivia, with adhesion also of Peru in the mid-1980s, its objective was to monitor, capture, or eliminate the persecuted politicians and exiles, reaching hundreds of refugees, including the military, some murdered (BRASIL, 2014).

Hector Sibilla was sentenced to 12 years in prison as a participant in the crimes of unlawful deprivation of liberty, committed with functional abuse, aggravated by the use of violence and threats; and imposition of torments aggravated by political persecution of the victim, classified as crimes against humanity (SAN MARTIN, 2018).

Finally, Santiago Riveros was sentenced to 15 years in prison as co-author of illegal break-in; unlawful deprivation of liberty, committed with functional abuse, doubly aggravated by the use of violence and threats and for a duration of more than one month; and imposition of torments aggravated by political persecution of the victim, classified as crimes against humanity (SAN MARTIN, 2018).

2 VOLKSVAGEN EXTRAJUDICIAL ACCOUNTABILITY FOR TERROR IN BRAZILIAN FACTORIES

The process of Brazilian democratic reopening was conducted by the military under the government of Ernesto Geisel (1974-1979), with a view to promoting strategies of "*national reconciliation*" in a society divided between supporters of the authoritarian government and those who claimed the return of direct elections. The Armed Forces themselves were divided, being called " *hard-line*" the *follow-up* that intended to maintain the authoritarian regime. Faced with growing social pressure for the resumption of direct elections, the "*slow, gradual and safe"* transition project was announced.

Therefore, what was called a democratic reopening was a slow retreat from military power. In this context of "*conciliated transition*", institutional acts (1978) were first repealed, and then Amnesty Law No. 6,683 (BRASIL,1979), whose project was commissioned by the team of João Figueiredo, Geisel's successor, providing forgiveness for the crimes that occurred in the dictatorship period broadly and generally, with the exception of those definitively convicted of acts of terrorism against the State. According to the President "their crime was not *strictly political, but against humanity, repelled by the universal community."* The enactment of restricted amnesty gave rise to various social mobilizations, especially the hunger strike of political prisoners in prisons throughout Brazil. Even with political support and media dissemination of the cause, the law was passed without amendments. (WESTIN, 2019).

The researcher and university professor at UFRJ, Carlos Fico, came to the conclusion in his research for the book "*Além do Golpe*"[10], that the debate about the scope of amnesty for prisoners by the military regime was a kind of smokescreen to relegate to the background the debate

[10] Beyond the Coup (FICO, 2004).

about the responsibility of the Armed Forces themselves and their collaborators (FICO, 2004).

Only after the first direct election (1985) and many debates the Federal Constitution of 1988 was promulgated, until today in force, known for its wide list of fundamental rights, due to what was named Citizen Constitution. The Brazilian acceptance to the Inter-American Convention on Human Rights followed soon after, in 1992, and the acceptance of the jurisdiction of the Inter-American Court in 1998.

In this interval between the signing of the main terms of access to the Inter-American human rights system, during the term of President Fernando Henrique Cardoso, the *Comissão Especial sobre Mortos e Desaparecidos Políticos - CEMDP (CFMDRP)*[11] was established, whose work culminated in the official recognition of the Brazilian State for the death of 136 people and the enactment of Law No. 9,140/1995, with a view to promoting financial reparations of their families, some symbolic reparations were also carried out, such as producing death certificates of the victims, all in the administrative sphere.

Meanwhile, in the judicial instances of Brazil there was a systematic refusal of the investigation and punishability of human rights violations that occurred during the Brazilian civic-military dictatorship, based on the validity of the Amnesty Law. As a secondary argument, the case-law also showed the claim of prescription or decay of common crimes. This interpretative line was corroborated by *the Supreme Court* on April/29, 2010, at the time of the trial of the Declaratory Action of Fundamental Precept - ADPF 153, initiative of the Brazilian Bar Association - OAB, which declared the constitutionality of the Amnesty Law, in contradiction of the understanding of the Inter-American system of human rights.

After 15 years of democratic reopening (1985-2010), in the face of the standardization of the legal understanding that prevented any reparatory initiative of victims by internal judicial means, sectors of organized civil society mobilized to bring complaint to the Inter-American Court of Human Rights – IACHR, embodied within the case *Gomes Lund and others x Brazil.* Although the object of this demand was limited to the crimes committed by state agents during the "Araguaia Guerrilla", the decision given in the case was an important precedent regarding the institutional responsibilities of the Brazilian State in clarifying the facts and reparation of victims for violence in the dictatorial period.

The Decision of the IACHR[12] (24.11.2010) recognized the responsibility of the Brazilian

[11] *Commission of Relatives of the Dead and Disappeared for Political Reasons* was created to meet the scope of Federal Law nº. 9.140 in order to recognize people declared missing during the Brazilian civic-military dictatorship, locate bodies and recognize others who disappeared for the same reason (BRASIL, 2018).

[12] Inter-American Court of Human Rights was installed in 1979, and is one of the institutions within the Inter-American System for the Protection of Human Rights together Inter-American Commission Human Rights (OAS, 2021).

State for crimes against humanity and established, among other obligations, the duty to promote the clarification of the facts that occurred at the time, location of the victims' remains, delimitation of responsibilities and effective reparation of damages. Incidentally, the Court reaffirmed its exclusive competence to define the interpretation of the Inter-American Convention on Human Rights, a guideline that should be followed by a letter by all Brazilian judicial bodies, from the bottom up.

Although the duties arising from the conviction were established during President Lula's second term (2003-2011), the most significant actions for its fulfillment were carried out during the term of President Dilma Rousseff (2011-2016). The initial milestone was 2011, with the sanction of Law No. 12,528, which instituted the National Truth Commission, and the Law of Access to Information No. 12,527. The report of the National Truth Commission was released on December 10, 2014, containing 03 volumes.

The Dilma government faced political reactions from several conservative fronts due to the establishment of the CNV. It is worth mentioning that until 2012 the Army maintained among its official commemorative dates the anniversary of the "Revolution of 1964", set on March 31. In that year of institution of the Commission, some parliamentarians in office extolled the date, and the then congressman Jair Bolsonaro and military reserve financed a commemorative banner exposed to the public on the date.

It should be remembered that Dilma Rousseff is the first woman in Brazil to be elected as President of the Republic, besides being one of the many victims of the dictatorship. So, the symbolism of the President's personal history certainly instigated the conservative political opposition sympathetic to the dictatorship. Her term was also marked by unique events that drew national and international attention, among which we can highlight the riots of June/2013 and the holding of the 2014 World Cup in Brazilian stadiums.

Even in the face of a scenario of great political and economic instability, the release of the CNV report (2014) revived the debate on Transitional Justice in Brazil. The facts found helped to substantiate the complaint brought to the attention of the Federal Public Prosecutor's Office in 2015 by workers who were exposed to state terrorism at Volkswagen’s factory in Brazil (MPT, 2016).

Incontinent, the German media, the country of origin of Volksvagen, reported that the company was willing to assume its responsibility for collaboration with the dictatorship in Brazil 1964-1985 (DW, 2015).

In the same year, President Dilma Rousseff was accused of a crime of fiscal responsibility and the National Congress began to formally analyze the impeachment of Rousseff’s term, culminating in her impediment in 2016, as well as her ineligibility. It is worth noting that the vote

on the subject in the House of Representatives registered the vote of, then Congressman, Jair Bolsonaro, in favor of the impediment of President Dilma Rousseff, with public tributes to the deeds of Colonel José Carlos Brilhante Ustra. Vice-President Michel Temer takes on the Presidency of the Republic on an interim basis, and in the following elections (2018) Jair Bolsonaro was elected, reportedly an admirer of the army's performance during the military dictatorship.

In 2017 the company funded a private survey on the facts contained in the accusations, conducted by German historian Christopher Kopper. The German press, which had exclusive access to the research report, accused Volksvagen of omitting the real scope of its involvement with the Brazilian dictatorship. The accused did not comment on the repercussions of the report in Germany, but in Brazil, the group president Pablo Di Si made a public statement lamenting the episodes that may have occurred at that historic moment, while inaugurating a plaque in honor of all victims of the dictatorship. At the event, one of the surviving victims Lucio Bellentani declared his dissatisfaction with the lack of documents supporting the Volksvagen funded report (STRUCK, 2017).

The work of the Federal Public Prosecutor's Office on the investigation of corporate responsibility for human rights violations was developed in the context of the administrative investigations of the institution, with very little disclosure regarding the content of the investigations.

The Brazilian legal system confers legitimacy to the Public Prosecutor's Office to represent the collective and diffuse interests that involve the denunciation of victims of human rights violations, without prejudice to the reparation of related individual rights. In the context of the investigation, there is no requirement for guarantees of broad defense or contradictory for those investigated, victims or whistleblowers. In fact, the actions of the parties involved in the complaint are not binding on institutional action. Nor, the investigated party is obliged to sign a term of adjustment of conduct. This instrument is provided for by the Public Civil Actions Law 7.347/85 and has the purpose of reaching out-of-court solutions, by adapting the conduct investigated to the legal requirements by conditions elaborated by the holder of the right of action that is the representative of the MPF.

Given the absence of mandatory extrajudicial settlement reached, the disclosure in September/2020 of the Conduct Adjustment Term – TAC already signed between Volksvagen and the Federal Public Ministry - MPF, the Public Ministry of Labor - MPT and the Public Ministry of the state of São Paulo - MPSP surprised everyone.

In the agreement, the obligation to disclose the facts established in the administrative investigations in newspapers of large circulation, the donation of R$ 09 million, also divided to the

Fund for the Defense of Diffuse Rights FDD and the Special Fund for The Expense of Reparation of Diffuse Interests Of FID, the donation of R$10.5 million to projects to promote memory and truth in relation to human rights violations that occurred in Brazil of Volkswagen's choice , without prejudice to the suggestion of the MPF, MPT and MPSP. It was also established that the homogeneous individual rights of former workers will be resolved exclusively in the context of civil investigations, in proceedings before the MPT, without prejudice to the measures defined in the TAC. Finally, there is a fine of 10 thousand reais per day that will be applied in case of non-compliance.

The motivation contained in the term is limited to the prevention of legal litigation, so that Volkswagen does not recognize any responsibility for the acts investigated, the company or its officers. The full content of the administrative investigations contained in the inquiry has not yet been disclosed, but the Guaracy Minardi Report (MPT, 2017) was published, the result of a survey subsidized by the Federal Public Prosecutor's Office on the performance of the investigated company since its installation in Brazil until the dictatorship.

The only amounts settled under the instrument sum up to 19.5 million, the quantity corresponds to reparations for funds or programmes aimed at reparation for victims' violations. The only mention of individual redress merely indicates that they will be resolved exclusively within the administrative scope of the MPT, in the investigations already opened and will be filed shortly thereafter. Despite this, the Brazilian media states that the total donations reach the amount of 36 million, so that the difference of 16.8 million will be destined to workers' associations (REUTERS, 2020).

In an interview in December/2020, regional prosecutor Eugenia Gonzaga, and former president of the Special Commission for The Political Dead and Missing, declares that the agreement with Volkswagen exceeded its expectations and will serve as a parameter for other affirmative actions in the same direction. According to the institutional vision of the MPF, the scope of the agreement would be to continue with investigations of events and conducts that the CNV failed to achieve, through a new means of obtaining information and counting on the financing of the agreed donations. Thus, the attorney believes that the contribution will be converted to greater effectiveness of the actions that already run-in court (RBA, 2020).

Finally, it should be noted that Brazilian television media promoted superficial coverage of the repair agreement signed with Volkswagen.

3 FULL REPAIR OR POSSIBLE REPAIR: THE PATHS OF TRANSITIONAL JUSTICE IN THE SOUTHERN CONE

The Transitional Justice comprises a complex of measures that aims to overcome drastic institutional disruptions that leave complex and multidimensional consequences and can last for generations within the societies in which they occur. Considering these aspects, transitional strategies cannot be constituted by isolated measures, under penalty of not reaching the scopes of memory restoration, truth, integral reparation and justice.

On the other hand, it is not always possible to maintain a uniform and constant pace in this transition, since the tensions inherent in incipient democracies undergo simultaneous intensification, and can jeopardize the stability already achieved. In the face of delicate social frameworks such as this, a long-term development plan is recommended, with gradual resolution measures, which can serve as preparation for each other. In this course, gradual progress is usually a reality that is required, however, it is unacceptable to give up recognizing and sanctioning abuses individually, because this choice would imply compromise with the past or maintain antagonism among opponents in the present, situations that would keep society stagnant (CROCKER, 2000).

From this perspective, the advances and setbacks in the paths of Transitional Justice can be analyzed according to the efficiency with which the measures chosen to make up the national strategies achieve the proposed objectives, within the social context to which they are intended. In addition to achieving intermediate goals, successful strategies really pave the way for the next approaches.

Along these lines, one cannot disregard the contribution of Italian criminal prosecutions to overcome the legal obstacles that helped maintain impunity in Argentina. All the public and legal debate fostered by the exercise of extraterritorial jurisdiction prepared Argentine society not only to regain judicial autonomy over related causes, but also to evolve on the path of full reparation. This is a clear example of the catalyzing function of universal jurisdiction that promotes a virtuous judicial circle by promoting debates on difficult topics (MIRA, 2017).

Currently, the delimitation of the responsibility and sanction for the violations that occurred during the Argentine dictatorship no longer only reaches the state agents who held command posts at the time of the events, but also encompasses the civil actors involved, such as the occupants of management positions of private companies. Thus, judicial reparations in Argentina establish a continuation, which expands and deepens the work carried out by CONADEP[5].

In Brazil, military manipulation of the transition of power not only legally shielded the Armed Forces against any immediate consequence of their acts, but also prevented for a long time that any investigative measures were initiated. The absence of simple public recognition of state terrorism practiced during military regime sank the Brazilian society into myths about a period of

"order and progress" very profitable to the nation, with the right to a commemorative milestone in the official calendars until the year 2012.

Obviously, this environment was fruitless to transitional advances. The stagnation of justice was only broken by the brave resistance of the victims, their families and supporters who managed to mobilize the executive branch to achieve pecuniary reparations through the administrative channel (Law 9.140/1995), and even the jurisdiction of the inter-American human rights system *(Caso Gomes Lund et al. x Brazil*).

The complaint that led to the administrative inquiry to investigate Volkswagen's corporate responsibility for human rights violations of workers on the premises of its factory in Brazil was no different, being from initiative of the victims, although represented in an extraordinary way by the Federal Prosecutor's Office.

However, the confidential bearing of the investigations did not contribute to the progress of the public debate about the facts. Without the construction of a collective memory about what happened, counting on the rescued non-legal versions of underground sources, it becomes very difficult for the national public opinion to reach a consensus about universal values and, therefore, indispensable. And, consequently, the social mobilization around the guidelines of Transitional Justice is the responsibility of only victims, family members and supporters.

Despite the filing of the investigation into Volkswagen's employer's conduct in Brazil, the pecuniary reparations resulting from the Conduct Adjustment Agreement promise to develop new independent investigative lines, with the potential for access to even broader information within the scope of corporate responsibility.

In view of future measures from these works, it will be necessary to create operational conditions to apply the necessary penalties to repair any damage found. In the Brazilian legal system, there is already the idea of objective liability of the legal entity for damage to collective rights in environmental, consumerist and administrative improbity issues. The collective defense of these rights finds procedural viability in the Public Civil Actions Law No. 7,347/1985, the same one that enabled the Conduct Adjustment Agreement with Volkswagen.

There are at least three arguments that support the application of objective responsibility in cases involving the support or reproduction by companies and corporations to the atrocities committed during the civic-military regime (SOARES; FECHER, 2014). The first is the preventive nature of the attribution of responsibility, functioning as a milestone of the end of impunity and avoiding the spread of risk (risk of spreading) in today's democracy (SOARES; FECHER, 2014); the second reason listed by the authors is the dissuasion and risk control of collaboration with measures that do not protect human rights and democratic values, impelling the private institution

to renew its social commitment; and the third argument is the protection of the expectations of the victim and Brazilian society regarding the reformulation of business practices in Brazil (SOARES; FECHER, 2014).

Thus, the Brazilian legal framework has the potential to promote collective reparations through objective business responsibility that aims to bring down the structures of power and complicity with authoritarian regimes built on repression in order to exterminate opponents of the dictatorship, but which is still present today, according to the reports already presented (SOARES; FECHER, 2014).

5 CONCLUSIONS

In the current phase of Argentine transition, the possibility of effective accountability of both state agents and civil agents in the business sector linked to state terrorism is already consolidated. However, the reparations carried out so far are very closely tied to the individual criminal sphere of those involved, where the ordinary criminal proceedings prevails. Nonetheless, this type of reparatory measure does not achieve institutional improvement with state terrorism, keeping the social image and the patrimony of the legal entity unharmed, constituted at the expense of serious injuries to human rights, as well as damage to labor and civil rights.

In addition to the difficulties that the course of time brings to corporate accountability for damages in the ordinary spheres (common crimes, civil and labor crimes), the in prescriptive of crimes against humanity raises individual criminal prosecution as an alternative to impunity, both in Brazil and in Argentina. However, the effective criminal conviction of, public or private agents, who violated the human rights, cannot end the horizons of justice, since they are limited to the trial of past conduct, without reshaping the role of businesses in today's society.

In Brazil, on the other hand, the idea of corporate responsibility for acts of complicity with state terrorism has not yet been introduced to mature the public and legal debate on the subject. This debate goes even further away from the Brazilian State, since there is no recognition of the scope of state responsibility for human rights violations that occurred during the civic-military dictatorship, despite the IACHR's pronouncement on the “Araguaia Guerrilla”.

However, the idea of objective responsibility for illicit acts that impact collective rights of high constitutional relevance (art. 170 c/c art. 216, 218, 219 and 225 of the Federal Constitution of 1988) the idea finds a broad legal debate in Brazil, in the context of environmental protection, consumerist and public patrimony, legal hermeneutics that have the potential to be replicated in the processes of collective reparation of damages for past violations, but achieving measures capable of reshaping business activity in society, committing to a future of more democratic practices.

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