

The Lula Case

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Abstract: *Il caso Lula* – Brazil is undergoing a troubled phase of radicalization of political discourse, aggravated by the conviction and arrest of former president Luís Ignácio Lula da Silva and the proximity of the elections. But it is not possible to qualify this period, initiated with the impeachment of the then president Dilma, like state of exception, as well as the ex-president Lula like political prisoner. The powers of the Republic are functioning regularly, under the aegis of the democratic Constitution of 1988.

Keywords: Anti-corruption; Jet washer operation; Condemnation of former President Lula; Democratic rule of law; Due process of law.

The former president of the Federative Republic of Brazil, Luiz Inacio Lula da Silva, was convicted of corruption, for passive corruption and money laundering, by a court of first instance, a decision confirmed by the Federal Regional Court, and by unanimous vote.

As a result of this conviction, which may still be contested on the superior courts in case of violation of the law or the constitution, and once denied habeas corpus petitions filed before the Superior Court of Justice and the Federal Supreme Court, the former president was arrested, commencing the execution of the sentence in dependencies of the headquarters of the federal police of Curitiba. Not in a cell common to the other prisoners, and without contact with them, in the face of his status as former Head of State.

As one of the most popular presidents in Brazilian history, who held the presidency for two consecutive terms, for a total of eight years, and with a high approval rate, his conviction and commencement, especially in the election year, caused national and international repercussions.

Jurists of renown, from Brazil and abroad, have manifested themselves, and several of them in the sense that Lula has been the victim of exceptional measures, and can be considered, strictly speaking, political prisoner.

The discussions and controversies regarding the conviction and imprisonment of the former president have occurred in an atmosphere of outcropping of political-partisan passions that are, in our view, harming the desirable rationality and exemption of the contenders. The radicalization between those who defend and accuse the former president is compromising the argument, tainted by politics and ideology.

We, particularly, as scholars of law, and committed to the search for truth, are only interested in rational arguments, and in terms of the legal order in force.

According to this attitude, we agree, for example, with criticisms of some abuses committed, especially regarding the coercive conduct imposed on Lula without a first regular invitation to appear before a competent police authority, and without prior notice with the designation of the day, place and time to be heard.

On the other hand, it is also certain that these coercive conduct types has been determined as a general rule, not only in relation to the former president, and, well or ill-justified, these acts have not merited censorship from the Judiciary.

In our opinion, there are also fair criticisms of the starting the execution phase of a deprivation of liberty sentence after a conviction in second instance, without having exhausted the appropriate remedies. Before the final and unappealable decision of a criminal conviction, innocence shall be presumed. Presumption of innocence *jure et de jure*, absolute, in face of the provisions of art. 5th, LVII, of the Brazilian Constitution.

But the legality of the imprisonment, as a stage of execution of the sentence, after a conviction in second instance, before, therefore, a final decision, is the guidance, still in force, established by the Federal Supreme Court in 2016 by a majority of votes. From this orientation we disagree, in the light of positive law. But it is not a measure of exception. It is an orientation set by the Federal Supreme Court, with general repercussions.

It has also been stated that Lula's conviction occurred without having been proved the crimes charged on him. However, this has been refuted by the prosecution and the court of first and second instance. Lula responded to the proceedings before the competent judicial authority, there was the probative phase, observing the contradictory and ample defense, and the Judiciary considered, until now, that what has been proved was enough for conclusions regarding the materiality of the facts, the authorship and the adequacy criminal law, considering the normative elements of the type.

Defense lawyers are not satisfied with the decision, which they claim is contrary to the evidence in the case, and that there are procedural nullities. However, that was not the view of the Court that judged Lula's appeal.

Another argument that has been developed by supporters of the former president is that Lula has been the victim of political persecution. Federal police, public prosecutors and magistrates, all under irresistible pressure from the media in general, committed to the reactionary right, would be set against the former president.

It is also said that public demonstrations in favor of the so-called jet wash operation, which was launched just over four years ago to combat corruption, would reflect, in fact, not the sentiment of the Brazilian people, but of the middle class, especially the higher middle class, as a reaction contrary to the social inclusion policies of the Lula and Dilma governments. Both former presidents would have deeply troubled the middle class by promoting the social ascent of three or four tens of millions of poor and miserable.

In fact, Lula has held for eight consecutive years, from 2003 to 2010, the Presidency of the Republic. His election and re-election, like that of Dilma for her first term, was possible only with alliances with parties also center and right, such as the party of the current President Michel Temer. Thanks to the support of significant sectors of the middle class, which number more than sixty percent of the Brazilian population, Lula and Dilma were elected and re-elected.

Lula, since the first year of his first term, developed broad policies of social inclusion. He completed his two terms with high approval of the Brazilian people. So much so that he elected and reelected his successor, who had never before held an elective office. Therefore, they did not fall into disgrace due to their policies of social inclusion, even because they were carried out with a significant general increase in profits, including the economic and financial elite.

In fact, what happened was the discovery, at the end of Dilma's first term, of a fantastic system of institutionalized corruption, especially in Brazil's largest state-owned company, and one of the world's oil giants Petrobras. Other sources of corruption and spurious relations with contractors and other economic groups were also discovered, which confessed the practice of corruption of billions of reais.

All this scandal, added to the inflation with economic recession, gigantic public deficit and unemployment of more than twelve million people, made up the picture that led the middle class, and not only it, to the disenchantment and disappointment with the government. The deception gave way to outrage and revolt, with grandiose street demonstrations.

This state of affairs - damage to the public patrimony and compromise of the social advances of the recent past - resulted in the impeachment of Dilma for crimes of responsibility, decreed by the Senate after regular process, and in a judgment presided over by the then President of the Supreme Federal Court, that arrived at the Supreme Court named exactly by Lula.

The fight against corruption has intensified, culminating in the filing of numerous criminal actions, including against Lula, already convicted, as we know, in the first and second instances.

Due process of law has been observed, with the demands of the natural judgment, the contradictory and ample defense, with the means and resources inherent to it.

It should be noted that the Supreme Court itself denied a request for habeas corpus in Lula's favor. And it is worth mentioning that seven of the eleven ministers who make up the Federal Supreme Court, with all the constitutional guarantees, were nominated by Lula and Dilma, among them the Minister Rapporteur of the proceedings arising from the jet wash operation, which resulted in the conviction of Lula, and the actual president of the Supreme Federal Court, Carmen Lúcia Antunes Rocha. And both, among others, unassailable, thanks to their proficiency and honorability, as well as deep democratic convictions.

Therefore, notwithstanding the existing controversies, the fact is that we are not, in Brazil, in a state of exception.

Our institutions function regularly and the democratic Constitution of 1988 is in full force.

Definitely, Lula is not a political prisoner, and criminal prosecution has reached the mandates of public administrators of various political parties, left, center and right.

Representatives of the country's economic elite have also been reached by the Justice which, since the beginning of the so-called "jet wash operation", has already condemned more than 150 (one hundred and fifty) defendants.

We live in a troubled phase of our history, marked by radicalism and the spread of hatred, but within a democratic order that more radical sectors have no interest in preserving, even for unconfessable reasons.

But democracy among us, conquered by a high price, will triumph.