

GOMES LUND ET AL. (“GUERRILHA DO ARAGUAIA”) V. BRAZIL & CASE OF HERZOG ET AL. V. BRAZIL

- **Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil** (Preliminary Objections, Merits, Reparations, and Costs) Inter-American Court of Human Rights Series C No 219 (24 November 2010) and **Case of Herzog et al. v. Brazil** (Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 353 (15 March 2018).
- **Legalities involved:** international human rights law and Brazilian Amnesty Law.
- **Tools to deal with inter-legality:** Articles 1 and 2 of the American Convention on Human Rights.

SUMMARY

Both cases deal with incompatibility of the Brazilian Amnesty Law of 1979 with the American Convention on Human Rights. In the first case, the IACtHR decided that the Brazilian Amnesty Law of 1979 that allowed not to investigate and try the individuals responsible for the violations committed before 1979 was incompatible with the American Convention. Instead, the Court emphasized that the State should conduct a criminal investigation to punish those criminally responsible. In the second case – which was decided after the declaration of constitutionality of the Amnesty Law by the Brazilian Supreme Court in 2010 - the IACtHR concluded that the Supreme Court wrongly ruled on the legality of the Amnesty Law without considering Brazil’s international obligations. It concluded that by applying the 1979 Amnesty Law, Brazil violated not only the American Convention on Human Rights but also the Inter-American Convention to Prevent and Punish Torture.

- *“The Court (...) concludes that Brazil has breached its obligation to adapt its internal law to the [Inter-American] Convention, contained in article 2 of the same, in relation to articles 8.1, 25 and 1.1 of the same treaty and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture under the application of Amnesty Law No. 6683/79 and other excuses prohibited by international law in cases of crimes against humanity” (p. 84, free translation).*