Meaning, Forms and Purpose of Amnesty

Meaning and Forms

Meaning

The word amnesty is derived from the Greek word amnestia or amnesis, which means forgetfulness, oblivion, or to lose memory. It is an act of sovereign power designed to apply the principle of tabula rasa to past offences, usually committed against the State, in order to end proceedings already initiated or that are to be initiated, or verdicts that have already been pronounced. In this sense, the Black’s Law Dictionary defines amnesty as:

A sovereign act of forgiveness of past acts, granted by a government to all persons (or to certain classes of persons) who have been guilty of crime or delict, generally political offences,—treason, sedition, rebellion, draft evasion,—and often conditioned upon their return to obedience and duty within a prescribed time. […] Included in the concept of pardon is ‘amnesty’, which is similar in all respects to a full pardon, insofar as when it is granted both the crime and punishment are abrogated.

Thus, offences to which amnesty generally applies include political delicts such as treason, sedition or rebellion, draft evasion. In this regard, amnesty is to be distinguished from another term to which it is closely related, namely pardon.

1 See N. Weisman “A history and discussion of amnesty” 4 Columbia Human Rights Law Revue 1 (1972) at 529; see also N.J. Kritz, chap. I, n. 3 at 551.
Pardon is defined as:

An executive action that mitigates or sets aside punishment for a crime. An act of grace from governing power which mitigates the punishment the law demands for the offence and restores the rights and privileges forfeited on account of the offence. […] A pardon releases offender from entire punishment prescribed for offence and from disabilities consequent on his convictions; it reinstates his civil liberties.4

Although both amnesty and pardon grew out of the general pardoning power of the governing authority of the State, they have different origins and purposes.5 The decision to grant amnesty is usually a legislative act while a pardon is an executive act granted by the Head of State.6 As stated earlier, amnesty deals with offences of a military or political nature which are generally committed against the State, while pardon is usually granted to individuals who have been convicted of an infraction (generally common crimes) against the peace and security of the State.7 If this approach is correct, then it can be argued that the main difference between amnesty and pardon is that the former may be granted before any conviction or punishment has been pronounced, whereas the latter only takes place after the benefactor has already been convicted and punished. Nevertheless, as will be demonstrated later in this chapter, amnesty overlooks the offence and prevents the beneficiary from being punished. Pardon, on the contrary, does not overlook the offence; it is usually granted after the punishment has been meted out, and aims at either remitting such punishment, or putting an end to the execution of a penalty, though in other respects the effects of the conviction remain in existence.8 Amnesty promotes peace or reconciliation while pardon provides a discretionary mechanism for sidestepping the court. It usually involves obtaining something useful from the beneficiary of the pardon, or preventing or correcting a mistake in the conviction of an innocent person.9 Amnesty has its origin in early attempts to re-establish peace between warring States or between the State and rebels, and to ensure lasting victory over conquered territory. Pardon originates in the absolute power of sovereigns.10

A more complete picture of the distinction between amnesty and pardon is expressed in the thoughts of the Count of Peyronnet, Minister of Charles X, King of France. He once stated that:

Amnesty is abolition, forgiveness. Pardon is indulgency, piety. […] When Thrasylulus overturned the thirty tyrants, he established a law that the Athenians christened with the title of amnesty, which means forgiveness. It was ordered in it that nobody should

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4 Id. at 1113.
7 N. Weisman, n. 1 at 530.
8 C. Pilloud, n. 6 at 1402.
9 See A. O’Shea, n. 5 at 2–3.
10 Id. at 3.