ADI 6,887

The Appointed Position of Transportation and Security Advisor

Rapporteur
Justice Edson Fachin

Voting
By Majority (7x4)

Majority Opinion
Justice Alexandre de Moraes

Competent Court
Full Court

Decision Date
May 22, 2025

Format of the Session
In person

Facts

A constitutional action (Direct Action of Unconstitutionality) in which the Office of the Attorney General (PGR) questions the rules that created the commission office of Transportation and Security Advisor, an appointed position that makes up the administrative structure of the Accounting Court of the State of São Paulo (Articles 3 and 6, head provision, and Annexes I and II of Complementary Law 1,335/2018; and Articles 1 and 5 and Annex I, sub-annex 4, of Complementary Law 743/1993 of the State of São Paulo).

Commission offices are appointed positions exclusively for management, leadership, and advisory roles. Those appointed to these offices are considered civil servants but, unlike other civil servants, do not need to pass a civil-service examination. They may occupy the position as long as they keep a relationship of trust (article 37, item II and V, of the Constitution).

According to the Office of the Attorney General, the norms did not fulfil the constitutional requirements necessary for the creation of commission offices. This is because a Transportation and Security Advisor only has technical or bureaucratic duties, which do not demand a relationship of trust between the authority who appoints them and the appointed worker.

Legal Issues

1. Can the role of Transportation and Security Advisor be performed by civil servants who hold commission offices?

Legal Reasoning

1. The Constitution allows for the creation of commission offices exclusively for the roles of director, chief of staff, and assistant (article 37, items II and V).

2. By interpreting these norms, the Supreme Federal Court has determined that (i) there must be a relationship of trust between the appointed person and the authority who appoints them; (ii) the number of commission offices must be proportionate to the need of the public body and to the total of civil servants who passed a civil-service examination; and (iii) the roles of the office must be clearly stated in the law that created it (RE 1,041,210, Rapporteur Justice Dias Toffoli, decided on September 28, 2018, Topic 1,010, with general repercussion). 2. Apart from technical or operational duties, civil servants who hold the position of Transportation and Security Advisor in the Accounting Court of the State of São Paulo also drive vehicles. Their duties involve accompanying Commissioners of the Accounting Court in external inspection activities, which requires a relationship of trust between them and the authorities.

3. Similarly to what happens in other public bodies, such as the Federal Supreme Court and Federal Senate, drivers and security personnel that accompany authorities handle strategic information and perform duties that demand discretion, planning, and responsibility. Hence, they may be legitimately appointed to commission offices as long as they perform activities of security and direct assistance to the authority.

Voting and Decision

Decision by Majority

Majority Opinion: **Justice Alexandre de Moraes**

Dissenting Opinion(s): **Justice Edson Fachin** (Rapporteur)**, Justice Gilmar Mendes, Justice Luís Roberto Barroso, and Justice Cármen Lúcia.**

Decision of the Court

The Supreme Federal Court has validated the norm of the state of São Paulo that created commissioned positions for the activities of transportation and armed security in the Accounting Court of the State of São Paulo (TCE/SP).

By a majority of votes (7 to 4), the Supreme Court held it is constitutional to create the commission office for Transportation and Security Advisor, as the position requires a relationship of trust, with specific duties expressly prescribed by law. The person in this position is responsible for driving the authority and for their security. They know an authority's address and whereabouts, and undergo specific training.

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