AR 2,876 QO

Resetting the deadline for relief from judgement based on a binding decision by the Federal Supreme Court

Rapporteur
Justice Gilmar Mendes

Voting
By Majority (8x3)

Majority Opinion
Justice Gilmar Mendes

Competent Court
Full Court

Decision Date
April 23, 2025

Format of the Session
In person

Facts

A point of order raised by Minister Gilmar Mendes (Rapporteur) in a motion for relief from judgement. There is a debate regarding the constitutionality of provisions of the Civil Procedure Code (CPC) that allow for resetting the deadline for relief from judgment against a final and unappealable court decision in which the Federal Supreme Court declares the law or interpretation that served as the basis for that decision to be unconstitutional (article 525, paragraph 15, and article 535, paragraph 8, of the CPC).

A point of order is a request that Justices may submit to resolve doubts about the progress of a case or the functioning of the Court itself. A motion for relief from judgement is the legal instrument that allows for the annulment of a final decision, against which no further appeals are possible (also known as res judicata). As a rule, this action must be filed within two (2) years after the final decision (two-year limitation period).

In the case at issue, the Federal Government filed a motion for relief from judgment to overturn a decision by the First Panel of the Supreme Court that had reinstated the political amnesty status of an Air Force corporal. The decision became res judicata in September 2018. However, in October 2019, the Full Court of the Supreme Court changed its position on the matter through a binding decision with general repercussion. The motion was filed in July 2021. Hence, more than two years after the First Panel's judgment became res judicata, but less than two years after the binding decision.

Before adjudication, the Rapporteur of the case proposed that the Justices decide whether the rule allowing the two-year time limit for relief from judgement was valid. In other words, the deadline would be set from the date of the Full Court's binding decision, rather than from the date on which the previous decision became res judicata.

Legal Issues

1. Is it constitutional for the Civil Procedure Code to allow the deadline for relief from judgment to be reset following a Supreme Court decision that deems the law or interpretation that established the res judicata to be unconstitutional?

Legal Reasoning

1. A motion for relief from judgment is a special lawsuit brought directly before appellate courts, which can only be used in cases expressly provided for by law. One of such cases occurs when a final decision is contradicted by a more recent binding decision of the Federal Supreme Court. In this case, the Civil Procedure Code provides that the deadline for filing the motion must be counted from the date of the Federal Supreme Court decision, even if this occurs more than two years after the decision sought to be annulled becomes res judicata. A binding decision is a ruling by a higher court (such as the Federal Supreme Court) that requires other judges and courts to follow the same understanding when handling similar cases.

2. On the one hand, this rule could weaken res judicata—that is, the guarantee that, once the legal deadline has passed, judicial decisions can no longer be changed. On the other hand, it ensures that binding decisions of the Federal Supreme Court are respected as widely as possible. To reconcile the protection of res judicata and the effectiveness of binding decisions, when rendering a new binding decision, the Supreme Court may expressly define its temporal effects and its repercussions on res judicata, and may restrict or prevent relief from judgment for reasons of legal certainty or public interest (article 525, paragraph 13; article 535, paragraph 6; and article 927, paragraph 3, of the Civil Procedure Code). Thus, the possibility of bringing such motion must be analyzed on a case-by-case basis, in accordance with the terms of the decision of the Federal Supreme Court.

3. If the Federal Supreme Court does not expressly define the scope of its decision, the motion may be filed within two years from the date the judgment became res judicata, as provided for in the Civil Procedure Code (articles 525, paragraph 15, and article 535, paragraph 8). However, if upheld, the annulment of the res judicata decision will only affect acts performed in the five years prior to the filing of the motion, and cannot be retroactive beyond that limit.

4. The understanding established by the Federal Supreme Court on this point of order will only apply to future cases, in particular, the limitation of the retroactive effects of the decision on the motion for relief from judgement.

Voting and Decision

Decision by Majority

Majority Opinion: **Justice Gilmar Mendes**

Dissenting Opinion(s): **Justice Dias Toffoli, Justice Luiz Fux, and Justice Edson Fachin.**

Decision of the Court

The Federal Supreme Court ruled that the retroactive effects of its decisions and the deadline for bringing motions for relief from judgment based on this decision may be defined on a case-by-case basis by the Court.

If there is no specific definition on this point, the retroactive application of the Supreme Court's decision may not exceed five years from the filing of the motion, provided that it is filed within the legal deadline of two years from the moment the Federal Supreme Court decision became res judicata.

The Court also ruled that judicial obligations based on rules or interpretations that have been deemed unconstitutional by the Federal Supreme Court can be waived upon request.

Rule Statement:

"Paragraph 15 of article 525 and paragraph 8 of article 535 of the Civil Procedure Code must be interpreted in conformity with the Constitution, with prospective effects, in the sense below, and paragraph 14 of article 525 and paragraph 7 of article 535 are declared unconstitutional:

1. In each case, the Federal Supreme Court may define the temporal effects of its binding decisions and their repercussions on res judicata, including establishing the extent of retroactivity in motions for relief from judgement or even is inapplicability in view of a serious potential harm to legal certainty or the public interest.

2. In the absence of an express statement by the Court, the retroactive effects of relief from judgement must not exceed five years from the motion's date of filing. The motion must be brought within two years from the res judicata decision of the Federal Supreme Court.

3. The interested party may claim the enforceable instrument is inapplicable, grounded on a legal provision or judicial interpretation deemed unconstitutional by the Federal Supreme Court, whether the decision was rendered before or after the decision became res judicata, except if the statute of limitations has passed (Civil Procedure Code, article 525, head provision, and article 535, head provision).

Type and Number: **AR 2,876 QO**

UN Agenda 2030



Versão: *V1_6ago_18h00*