RE 1,417,155 (Topic 1,282) and ADPFs 1,028 and 1,029

Constitutionality of state fees for firefighting and prevention

Rapporteur
Justice Dias Toffoli (RE 1,417,155)
Justice Edson Fachin (ADPFs 1,028 and 1,029)

Voting
Majority (9x2)

Majority Opinion
Justice Dias Toffoli (RE 1,417,155)
Justice Edson Fachin (ADPFs 1,028 and 1,029)

Competent Court
Full Court

Decision Date
March 26, 2025

Format of the Session
In Person

Facts

An Extraordinary Appeal with general repercussions (Topic 1,282) and two arguments of non-compliance with fundamental precepts (ADPFs). It discusses the constitutionality of state laws that establish the following fees: (i) for the provision of prevention and fighting of fire, search, rescue, and recovery services in buildings and vehicles, carried out by the Fire Department; (ii) for the analysis of projects and fire safety inspections in buildings and vehicles, also carried out by the Fire Department; and (iii) for the issuance of certificates and attestations to citizens.

In the Extraordinary Appeal, the Governor of the state of Rio Grande do Norte questions the state court's decision that declared the first of these fees unconstitutional, due to the lack of specificity and divisibility of the services. In the ADPFs, the Attorney General challenges laws of the states of Pernambuco (ADPF 1,028) and Rio de Janeiro (ADPF 1,029), which establish the three types of fees mentioned above.

Legal Issues

1. Does the 1988 Federal Constitution allow fees to be charged for the following activities: (i) fire prevention and fighting, search, rescue, and recovery in buildings and vehicles; (ii) project analysis and fire safety inspections in buildings and vehicles; and (iii) issuance of certificates and attestations to citizens?

Legal Reasoning

1. The 1988 Federal Constitution allows the collection of fees for the exercise of police power or the actual or potential use of specific and divisible public services (article 145, item II). This means that, for the collection to be valid, the activity must be individualizable and measurable in relation to each user. In addition, the fee can only be instituted by the entity that has administrative competence to provide or organize the corresponding service.

2. Fees for fire prevention and fighting, search, rescue, and recovery in buildings and vehicles. When aimed at protecting specific assets, such as buildings and vehicles, fire prevention and fighting, search, rescue, and recovery activities take on a specific and divisible character. The Fire Department, organized by the states, has administrative authority to carry out these activities (article 144, paragraph 5 of the 1988 Federal Constitution). Therefore, the state fee charged for these services is constitutional.

3. Fee for project analysis and fire safety inspection of buildings and vehicles. Project analysis and fire safety inspection are technical activities carried out at the request of the interested party and aimed at protecting specific assets. These are individualized and divisible services, which justifies the charging of a fee. In the case of properties, the competence to carry out these activities lies with the states, through the Fire Department (article 144, paragraph 5 of the 1988 Federal Constitution), which legitimizes the institution of the state fee. In the case of vehicles, however, the authority to regulate safety inspections—including fire prevention equipment—is exclusive to the federal government (article 22, item XI of the 1988 Federal Constitution). Delegating the task of inspecting vehicles to state agencies does not authorize the state to impose taxes related to this activity

4. Fee for issuing certificates and attestations. The issuance of certificates and attestations is a specific and divisible service provided directly to the applicant. States have the authority to organize and provide this service and, therefore, to establish the corresponding fee. However, the constitutional prohibition on charging fees for certificates necessary for the defense of rights or the clarification of personal situations (article 5, XXXIV, b) must be respected. Subject to this limitation, the charging of fees is constitutional.

Voting and Decision

Decision by Majority

Majority Opinion: **Dissenting Opinion: Justice Dias Toffoli** (rapporteur of RE 1,417,155) **and Justice Edson Fachin** (rapporteur of ADPFs 1,028 and 1,029)

Dissenting Opinion(s): **Justice Flávio Dino, Justice Cármen Lúcia, Justice Luiz Fux, Justice Alexandre de Moraes, Justice André Mendonça.**

Decision of the Court

By majority vote, the Full Court decided that state fees charged for the actual or potential use of public services for fire prevention and fighting, search, rescue, or recovery, provided to taxpayers or made available to them by military fire departments, are constitutional.

In the state of Pernambuco, the charge for vehicle inspection is no longer valid.

The fee for issuing personal certificates in Rio de Janeiro was maintained, but, based on the decision, it will not apply when the certificates are intended for the defense of rights or to clarify a situation of personal interest to the applicantf.

Type and Number: **RE 1,417,155, ADPF 1,028, and ADPF 1,029**

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