



BRAZILIAN FEDERAL SUPREME COURT

STF BULLETIN

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STF BULLETIN

EDITION 5 - 2023 | FEBRUARY

The STF Bulletin provides cases in English chosen from the “*Informativo STF*”, the Court’s weekly digest, aiming at disclosing them to the international community. Edition 5 offers decisions from “*Informativo STF*” 1071 to 1079.



ADDITIONAL
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FEDERAL SUPREME COURT, 2023

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JUSTICE

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Deputy Chief Justice

JUSTICE

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JUSTICE

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JUSTICE

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JUSTICE

LUIZ FUX

JUSTICE

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A municipal law that institutes free access for seniors to movie theatres, from Monday to Friday, is unconstitutional, since it deals with a matter that concerns economic law and contradicts the norms already foreseen in the federal law that protects this fraction of the population. | Page 20

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AUDIO

UN SUSTAINABLE DEVELOPMENT GOALS

8 Decent work and economic growth

16 Peace, justice and strong institutions

Royalties are part of the branch of Civil Law, which is why the contested state norm is formally unconstitutional, as it affronts the Union's exclusive competence to rule on the subject. There are new hypotheses of patrimonial limitation, not foreseen in Federal Law 9,610 of 1998 (Copyright Law), which is the specific federal legislation on the subject, that must not be altered by state or municipal norms.

In addition, the contested state law also suffers from material unconstitutionality, because (I) it interferes with the proper functioning of the Central Office of Collection and Distribution, which is characterized as a civil association that exercises, with exclusivity, the collection and distribution of rights to authors, due to the public performance of musical works throughout the national territory; as well as (II) deprives authors of their economic gains, in clear violation of the fundamental right to dispose, exclusively, on their productions and, with them, obtain financial profit.

Based on these understandings, the Full Court, unanimously, upheld the request made in a direct action of unconstitutionality.

Justice Edson Fachin, [ADI 6151](#), decided on October 7, 2022.

FUNDAMENTAL RIGHTS

Replacement of plastic bags with others made of biodegradable materials

A municipal law that imposes the replacement of plastic bags with those made of biodegradable materials is constitutional.

AUDIO

UN SUSTAINABLE DEVELOPMENT GOALS

- 11 Sustainable cities and communities
- 12 Responsible consumption and production
- 14 Life below water
- 15 Life on land

Environmental protection is, at the same time, an administrative competence common to all federative entities, and of concurrent legislative competence to the Union, the states and the Federal District. Furthermore, when the matter is of predominantly local interest and demands urgent action, the municipal entity can legislate, establishing specific norms and, if applicable, also general norms, whenever necessary for the exercise of its competence.

In this context, the restriction on the circulation of plastic bags conforms to the requirements for the supplementary competence of the municipalities, given the severity of the environmental impacts and the greater ease in bringing together the agents of the plastic production chain.

In addition, the municipal legislator privileged the principle of balanced environmental protection, in regulation of the maximum enjoyment of the legal freedom of individuals and the free exploration of economic activities. Therefore, the restrictive nature of the contested legislation proves to be necessary, adequate and proportionate, in order to enable the same development of business and economic activity in a more protective manner for the environment. It is also about standardization that strengthens, at the local level, the guidelines of the National Solid Waste Policy.

Based on these understandings, the Full Court, unanimously, granted the extraordinary appeal to settle the constitutionality of the municipal law, and, by a majority, modulated the effects of the decision, granting a period of 12 months, counting from the publication of the drafts of this trial, so that public bodies and private agents affected by the rule can make the necessary adaptations.

Justice Luiz Fux, RE 732686, decided on October 19, 2022.

FUNDAMENTAL RIGHTS

Reservation of special seats for obese people

A state law that foresees the reservation of special seats to be used by obese people, corresponding to 3% of the seats in projection rooms, theatres and cultural spaces located in its territory; and at least two seats in each municipal and intercity collective transport vehicle, is constitutional.

AUDIO

UN SUSTAINABLE DEVELOPMENT GOALS

10 Reduced inequalities

11 Sustainable cities and communities

The object of the contested state norm is the promotion of equality, with the purpose of providing access, in a dignified manner, to means of public transport and projection rooms, theaters, and cultural spaces. There is no relationship with the Union's exclusive competence regarding the regulation of traffic and transportation, so that the adopted inclusion policy falls within the concurrent competence of the Union, states and municipalities to promote the access to culture, sport and leisure.

Regarding the material aspect of the norm, the number of seats reserved by the state law establishes a reasonable percentage, in line with the Brazilian reality, and guarantees a dignified and comfortable space for obese people, in addition to providing adequate, necessary and proportional protection for this part of the population. In addition, the measure foreseen in the law does not invalidate the contents of the principles of the social value of work, free initiative, equality and protection of the economic order, but, on the contrary, balances them with the principle of the dignity of the human person.

Based on these understandings, the Full Court, unanimously, dismissed the requests made in direct actions of unconstitutionality.

Justice Roberto Barroso, ADI 2477, decided on October 21, 2022.

Justice Roberto Barroso, ADI 2572, decided on October 21, 2022.

FUNDAMENTAL RIGHTS

Initial term of maternity leave and maternity salary

In cases of postpartum hospitalizations that last more than two weeks, the initial term of the maternity leave and maternity salary is based on the hospital's discharge of the mother or the new-born, whichever occurs last. Both benefits being extended for as long as the hospitalization occurs, since they cannot be unreasonably reduced, in which case there would be conflict with the social right to motherhood and childhood protection.

AUDIO

UN SUSTAINABLE DEVELOPMENT GOALS

- 1 No poverty
- 3 Good health and well-being
- 5 Gender equality
- 8 Decent work and economic growth
- 10 Reduced inequalities

The protection of maternity and childhood is characterized as a true positive freedom, of mandatory observance in a society whose purposes are the improvement of the living conditions of the non-sufficient and the achievement of social equality.

In this context, and given the high number of premature births and health complications after childbirth, there is a relative unconstitutional omission in the federal norms regarding the subject, since children, or their mothers, hospitalized after childbirth, are unevenly deprived of the period intended for their initial coexistence.

Furthermore, there is no mention of the absence of a funding source for the implementation of the measure, since the benefit and its source already exist. Social Security must be understood in its entirety as a social protection system comprised of an integrated set of initiatives taken by the public authorities and society, aimed at ensuring rights related to health, social security and social assistance.

Based on this understanding, the Full Court, unanimously, granted the request made in a direct action of unconstitutionality, in order to consider as the initial term of the maternity leave and the respective maternity salary the hospital discharge of the newborn and/or the mother, whichever occurs last, extending the benefit throughout the entire period, when hospitalization exceeds two weeks.

Justice Edson Fachin, **ADI 6327**, decided on October 21, 2022.

FUNDAMENTAL RIGHTS

Superior Electoral Court resolution and tackling misinformation in the electoral process

The Superior Electoral Court resolution, which foresees mechanisms that deal with misinformation that undermines the integrity of the electoral process, does not exceed the scope of its normative competence, nor does it impose censorship or restriction on the means of communication or editorial lines of printed and electronic media.

AUDIO

UN SUSTAINABLE DEVELOPMENT GOALS

16 Peace, justice and strong institutions

The normative competence of the Electoral Court was exercised within the limits of its institutional mission and its police power, considering, above all, the absence of normative provision contained in the General Elections Act of 1997, in relation to the recognized proliferation of fake news, with the ability to contaminate the public space and unduly influence the will of voters.

In this context, the right to freedom of expression can be undermined, specifically because it is used to erode public trust and the legitimacy of political-electoral fairness. It is a specific exception, analyzed in the light of the concrete violation of electoral rules, and not prior censorship.

Any restriction applies only to a speech that, due to its patent falsehood, lack of control and massive circulation, seriously affects the electoral process.

Based on this understanding, the Full Court, by a majority, dismissed the request made in a direct action of unconstitutionality.

Justice Edson Fachin, **ADI 7261 MC**, decided on October 25, 2022.

FUNDAMENTAL RIGHTS

Mandatory employee participation in an agreement decided in the context of a public civil action

The interests of employees directly affected by an agreement signed within the scope of collective actions must be defended by the union that represents the category, and it is not essential to summon each employee for the formation of the passive joinder.

AUDIO

UN SUSTAINABLE DEVELOPMENT GOALS

8 Decent work and economic growth

16 Peace, justice and strong institutions

The claim to include all individuals occasionally reached by the agreement proves to be incompatible with the structure of the collective process, especially as it compromises procedural effectiveness and speed.

Based on this understanding, the Full Court, by a majority, partially granted the extraordinary appeal.

Justice Alexandre de Moraes, **RE 629647**, decided on October 28, 2022.

FUNDAMENTAL RIGHTS

COVID-19: Resumption of repossession actions suspended due to the pandemic

In view of the reduction of the effects of the COVID-19 pandemic, it is necessary to adopt a transitional regime for the resumption of repossessions suspended because of the virus, through which the courts must install commissions to mediate any evictions before any judicial decision, in order to reduce housing and humanitarian impacts in cases of collective eviction.

AUDIO

UN SUSTAINABLE DEVELOPMENT GOALS

- 1 No poverty
- 3 Good health and well-being
- 11 Sustainable cities and communities

In the context of the changing epidemiological scenario in Brazil, the resumption of repossessions suspended due to the pandemic must be carried out responsibly, cautiously and with respect for the fundamental rights at stake. The simultaneous execution of thousands of eviction orders, which involve thousands of vulnerable families, would create the risk of social upheaval. Therefore, it is necessary to establish a transitional regime for the progressive resumption of repossessions.

Based on this understanding, the Full Court, by a majority, determined the adoption of a transitional regime for the resumption of the execution of suspended decisions in the present action, in the following terms: (a) The Courts of Justice and the Federal Regional Courts must immediately set up land dispute commissions that can serve as operational support for the judges and, especially in this first moment, prepare the strategy for resuming the execution of decisions suspended by the present action, in a gradual and progressive manner; (b) Judicial inspections and mediation hearings must be carried out by land dispute commissions, as a previous and necessary step for collective eviction orders, including those whose warrants have already been issued. Hearings must have the participation of the District Attorney and the Public Defender's Office in the places where it is structured, as well as, when applicable, the bodies responsible for agrarian and urban policy of the Union, states, and Federal District in municipalities where the disputed area is located; (c) Administrative measures that may result in collective removals of vulnerable people must: (i) be carried out upon prior knowledge and hearing of representatives of the affected communities; (ii) be preceded by a reasonable minimum period for vacating by the population involved; (iii) guarantee the referral of people in a situation of social vulnerability to public shelters (or a place with decent conditions) or adopt another effective measure to safeguard the right to housing, prohibiting, in any case, the separation of members of the same family. Finally, the Court also determined the immediate resumption of the legal regime for vacating urban property in eviction actions.

Justice Roberto Barroso, [ADPF 828 TPI-QUARTA-REF](#), decided on November 2, 2022.

FUNDAMENTAL RIGHTS

Update of the list of procedures and events in supplementary health

The deadlines for completing the administrative procedures for updating the list of procedures and events in supplementary health are constitutional, as there is no incompatibility between its definition and the urgency of patients in getting a treatment.

AUDIO

UN SUSTAINABLE DEVELOPMENT GOALS

3 Good health and well-being

Indeed, the necessary assessment for the decision to incorporate new treatments requires the fulfillment of steps such as research, study of evidence, holding technical meetings and hearing the interested parties, so that the deadlines signed for concluding the evaluation of the proposals do not seem unreasonable.

The format adopted for the composition of the Commission for Updating the List of Procedures and Events in Supplementary Health does not violate the Federal Constitution, given the absence of the alleged exclusion of participants using health plans or discrimination of any kind.

In fact, Normative Resolution 474/2021, which defines the composition of this body, guarantees the presence of representatives of consumer protection entities, associations of health plan members and bodies protecting the interests of people with disabilities and special pathologies.

It should be noted that the requirement that the appointed members have training that allows them to understand the scientific evidence presented, stems from the technical nature of the procedure for updating the list.

The criteria considered in the report prepared by the aforementioned Commission are constitutional, since the right to health is not subject to economic and financial interests.

The economic evaluation contained in the process of updating the list by the National Supplementary Health Agency and the analysis of the financial impact arising from the incorporation of the demanded treatments are necessary to guarantee the maintenance of the economic-financial sustainability of the health plan sector.

Furthermore, it is not a question of subjecting the right to health to economic and financial interests, but rather of considering such aspects to ensure that members of private plans continue to have access to the service and the medical benefits it provides.

Based on these understandings, the Full Court, by a majority, dismissed the requests made in direct actions of unconstitutionality.

Justice Roberto Barroso, **ADI 7088**, decided on November 9, 2022.

Justice Roberto Barroso, **ADI 7183**, decided on November 9, 2022.

FUNDAMENTAL RIGHTS

Interstate collective transport: zero fare and fare reduction for low-income youth

Since it does not offend the right to property and the principles of the economic order and the economic-financial balance of administrative contracts, a federal law that determines the reservation, per vehicle, of two free spaces and, after these are occupied, of two spaces with a fare reduced by at least 50%, to be used by low-income young people in the interstate collective passenger transport system, is constitutional.

AUDIO

UN SUSTAINABLE DEVELOPMENT GOALS

- 10 Reduced inequalities
- 11 Sustainable cities and communities
- 16 Peace, justice and strong institutions
- 17 Partnerships for the goals

The contested norm fulfills the right to transport to an economically vulnerable group, which is constitutionally protected, attributing to the regulatory power the definition of procedures and criteria for the exercise of this protection. In this context, the fare reduction of interstate passenger transport for the underprivileged ensures them freedom of movement, an instrumental mechanism for achieving access to other basic rights, in addition to positive externalities in the social sphere, such as greater national integration and regional development.

Furthermore, the Federal Constitution stipulates that free initiative and private property must be reconciled with the objective of reducing regional and social inequalities, in order to ensure a dignified existence for all, in accordance with social justice. Indeed, the State — as long as it does not impose excessive burdens on the private sector, especially in the case of administrative contracts — can intervene in the economic order to ensure the enjoyment of fundamental rights by people in conditions of economic and social fragility, implementing public policies that establish means for achieving equal opportunities and the humanization of social relations, and giving concrete form to the values of citizenship and the dignity of the human person.

In this case, the reservation of legally established fare benefits does not imply a disproportionate burden on the companies providing the public service of public interstate passenger transport, considering that the normative set related to the matter includes mechanisms for correcting any economic-financial imbalance of the contracts.

Based on these understandings, the Full Court, unanimously, dismissed the request made in a direct action of unconstitutionality.

Justice Luiz Fux, **ADI 5657**, decided on November 16 and 17, 2022.

FUNDAMENTAL RIGHTS

Investigative Police: framework as an exercise of essential attribution to the jurisdictional function of the State and the defence of the legal order

A rule of the State Constitution that establishes the legal nature of the Investigative Police as an essential function for the State's jurisdictional activity and the defence of the legal order, as well as assigning to the Police Chiefs the guarantee of functional independence, is not compatible with the Federal Constitution.

AUDIO

UN SUSTAINABLE DEVELOPMENT GOALS

16 Peace, justice and strong institutions

The head of the Executive Branch — the highest leader of the Public Administration — has the prerogative and responsibility for the structuring and operational planning of local public security bodies, as well as the definition of priority government programs and actions based on the budgetary framework of the federal entity.

On the subject, this Court reiterated the understanding that the Federal Constitution establishes a link of hierarchical subordination of the Investigative Police to the state governor, so that the attribution of autonomy to the body or of functional independence to its leader, the Chief of Police, is unconstitutional.

In addition, the police investigation is a procedure of an administrative and inquisitorial nature, intended to collect evidence that supports the exercise of criminal action by the District Attorney. In this context, its conductor, the Chief of Police, despite performing activities with a legal content, does not integrate a properly legal career, since, if that were the case, it would make the external control and requisitioning power exercised by the *Parquet* unfeasible.

Based on these understandings, the Full Court, unanimously, upheld the request made in a direct action of unconstitutionality.

Justice Nunes Marques, **ADI 5517**, decided on November 21, 2022.

FUNDAMENTAL RIGHTS

Change of criteria for a waiver of environmental licensing through a state norm

Due to invasion of the general legislative competence of the Union and violation of the right to an ecologically balanced environment, a state norm that creates a waiver of environmental licensing for activities that can cause significant degradation of the environment is unconstitutional.

AUDIO

UN SUSTAINABLE DEVELOPMENT GOALS

13 Climate action

In this case, the state legislation exceeded the limits expressly established by the federal legislation for the treatment of the matter, promoting undue innovation by foreseeing the increase in the minimum primary energy source suitable for creating a presumption of significant environmental degradation, as well as by inserting a different requirement for licensing, consistent with the extent of the flooded area.

On the other hand, the state regulatory action, by disregarding the minimum level established for the configuration of a potentially polluting activity, violated the fundamental right to an ecologically balanced environment and confronted the mandatory intervention of the State in environmental matters. Furthermore, as undertakings and economic activities are only considered lawful and constitutional when subordinated to the rule of environmental protection, the contested rule, precisely because it represents insufficient protection, fails to observe the principles of prohibition of retrogression in socio-environmental matters, prevention and precaution.

Based on these understandings, the Full Court, by a majority, upheld the request made in a direct action of unconstitutionality.

Justice Rosa Weber, [ADI 4529](#), decided on November 21, 2022.

FUNDAMENTAL RIGHTS

Exercise of common competence for the protection of the environment

The distribution of common competences, through a prior and static attribution of administrative competences of environmental inspection to the federated entities, meets the requirements of the principle of subsidiarity and the cooperative profile of the Federation model, whose purpose is to confer effectiveness in the constitutional rules for the protection of fundamental values and rights.

AUDIO

UN SUSTAINABLE DEVELOPMENT GOALS

15 Life on land

This legislative choice imprints rationality and efficiency in the administrative organization of the environmental police power, as it removes the simultaneous and overlapping action of the various environmental agencies of the federative entities for the same procedure or act. In addition, the principle of subsidiarity — as an expression of the value of democracy and the fundamental duties of protection — is duly observed, since the federative model favors the primary role of the political entity closest to reality and to society, leaving to the greater political entity a supplementary performance.

In this case, there is no need to talk about replacing common competence with exclusive competence, because this static dimension of administrative competences is articulated with the dynamic dimension, performed by supplementary and subsidiary actions.

In addition, the provision of institutional cooperation instruments between federative entities — such as the voluntary delegation of attributions and the execution of administrative actions, within the limits of legislative provision, with an indefinite term — strengthens the cooperative bias idealized by the contested legislation, since it authorizes and encourages the institutional conversation for the rearrangement of federative competences, be it licensing, control or inspection.

A rule that authorizes automatic extension of environmental licenses for an undetermined period is unconstitutional.

The legislator was insufficient in its regulation since it did not discipline any consequence for the hypothesis of omission or reasonless and disproportionate delay of the environmental agency in the face of the request for renewal of the environmental license. The same normative result foreseen for the hypothesis of omission of administrative action in the licensing process must apply, since the legislator offered an adequate response, consistent with the supplementary action of another federal entity.

In the exercise of administrative cooperation, supplementary action — albeit non-conflicting — is incumbent on the Union with that of state and municipal bodies.

In this context, the criterion of prevalence of the notice of infraction issued by the licensing body does not respond to the fundamental duties of protection, in situations of omission or failure of that body to act in the inspection activity and sanction, due to insufficiency or inadequacy of the measure adopted to prevent or repair a situation of illegality or environmental damage.

Based on these understandings, the Full Court, unanimously, partially upheld the request made in a direct action of unconstitutionality.

Justice Rosa Weber, **ADI 4757**, decided on December 12, 2022.

GENERAL PRINCIPLES

GENERAL PRINCIPLES

State law: healthcare plans and limitation of treatment for people with disabilities

A state law that prohibits healthcare plan operators from limiting consultations and sessions for the treatment of people with disabilities is unconstitutional, as it offends the exclusive competence of the Union to legislate on Civil Law and insurance policies.

AUDIO

UN SUSTAINABLE DEVELOPMENT GOALS

3 Good health and well-being

Obligations relating to medical and hospital assistance services are governed by contracts of a private nature, which is why they are matters relating to Civil Law and insurance policies.

According to the federal rules on this matter, to which healthcare plan operators are subject, the healthcare service provided by the private sector is subject to the rules and supervision of the National Health Agency.

Furthermore, concurrent legislative competence in terms of consumer protection does not authorize states to issue norms on the subject, not even on a supplementary basis.

Based on this understanding, the Full Court upheld the request made in a direct action of unconstitutionality.

Justice Carmen Lúcia, **ADI 7172**, decided on October 17, 2022.

GENERAL PRINCIPLES

Provisional Executive Order and resources destined to the promotion of culture and events

The effects of Provisional Executive Order 1,135/2022 should be suspended, since, when dealing with a topic already deliberated by the Legislative Power, it changed the mandatory delivery of financial resources destined for the culture and events sector to a mere authorization of the transfer of funds from the Union to the states, Federal District and municipalities, subject to budgetary and financial availability.

AUDIO

UN SUSTAINABLE DEVELOPMENT GOALS

16 Peace, justice and strong institutions

In the case, it can be stated that the aforementioned Provisional Executive Order did not satisfy the requirements of urgency and relevance, was enforced with misuse of purpose and abuse of power, in addition to invading matters reserved for complementary law.

Provisional Measure 1,135/2022 voided the purpose of Laws 14,399/2022 and 14,148/2021 and LC 195/2022, which foresee emergency actions directed at the cultural sector; circumvented the free action of Parliament, which had overthrown the presidential vetoes set in the aforementioned legal diplomas; and made use of an extraordinary instrument for creating norms, to reestablish the will of the Executive Branch over the deliberation of the Legislative Branch.

Based on this understanding, the Full Court, by a majority, suspended the effects of Provisional Executive Order 1,135/2022, maintaining its regular course in the National Congress, as a bill.

Justice Cármen Lúcia, **ADI 7232 MC-REF**, decided on November 8, 2022.

GENERAL PRINCIPLES

Free access to movie theatres for seniors

A municipal law that institutes free access for seniors to movie theatres, from Monday to Friday, is unconstitutional, since it deals with a matter that concerns economic law and contradicts the norms already foreseen in the federal law that protects this fraction of the population.

AUDIO

UN SUSTAINABLE DEVELOPMENT GOALS

10 Reduced inequalities

The Supreme Court, on the occasions in which it analyzed the constitutionality of state laws that granted the right to half price in entertainment, sport, culture and leisure establishments, decided that the competence to legislate on economic law is concurrent between the Union, the states and the Federal District, and that, in the absence of federal legislation on the subject, the municipality can use its full competence.

The municipal legislative power has competence to supplement federal and state legislation as appropriate. However, some element of locality related to the legislative discipline is required in order to invoke such competence, which is not seen in the analyzed case.

In this context, it is clear that the municipal legislature, when enacting the discussed law, dealt with matters already foreseen in the federal law, not in order to complement it, but to replace it.

Based on this understanding, the Second Panel, by a majority, sustained the state Court decision which declared the unconstitutionality of the municipal law.

Justice Gilmar Mendes, ARE 1307028 AGR, decided on November 22, 2022.