

ADC 12

Prohibition of Nepotism

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

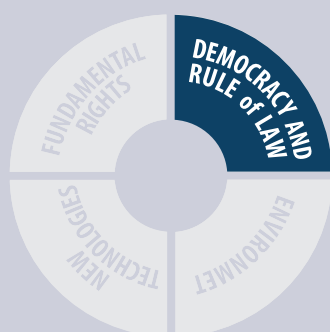
In-person

Rapporteur:

Justice Ayres Britto

Decision Date:

August 20, 2008

Matter:


CASE SUMMARY

An Action for the Declaration of Constitutionality (ADC) to affirm the constitutionality of a normative act of the National Council of Justice (CNJ), which prohibited the filling of positions, jobs, and roles of trust by relatives, spouses, and partners of judges and civil servants in management and advisory positions in the Judicial Branch (Resolution 7/2005), a practice known as nepotism. The plaintiff argues that the rule is constitutional, since the CNJ has administrative, disciplinary, and supervisory powers over the actions of courts, and that the prohibition stems from constitutional norms that ensure impersonality, equality, morality, and efficiency of the public administration.

LEGAL REASONING

1. Constitutional Amendment 45/2004 granted jurisdiction to the National Council of Justice, a central administrative and financial control authority, to supervise the acts of the Judicial Branch (article 103-B, paragraph 4, item I of the 1988 Federal Constitution).
2. In issuing Resolution 7/2015, the CNJ did not undermine the freedom to appoint and dismiss people to commission offices and positions of trust provided for in the Federal Constitution (article 37, items II and V), given that the interpretation of these provisions must follow the principles that guide public administration.
3. The restrictions imposed by the resolution regarding the filling of commission offices and positions of trust, in situations where the occupants have not entered the public service through a civil-service examination, are the same as those already imposed by the 1988 Federal Constitution, arising from the principles of impersonality, efficiency, equality, and administrative morality.
4. The prohibition also includes parents, grandparents, children, uncles and aunts, brothers and sisters, nephews and nieces, in-laws and brothers or sisters-in-law for positions of free appointment and discharge, as well as cross-hiring, that is, when one civil servant hires relatives of another.

DECISION OF THE COURT

The Federal Supreme Court declared Resolution 7/2015 of the National Council of Justice constitutional and upheld the prohibition of hiring relatives up to the third degree of judges and civil servants in positions of leadership and management for commission offices or positions with benefits, of free appointment and discharge, in all spheres of the Brazilian justice system.

ADDITIONAL NOTES

Binding Precedent 13¹

“A spouse, partner, first-degree relatives, collateral relatives or affinity relatives, including those of the third degree of the appointing authority or a civil servant from the same legal person invested in a management, leadership or advisory position cannot be appointed for a commission office or position of trust. This also includes positions with benefits in the public administration, directly or indirectly, in any of the powers of the Federal Government, the States, the Federal District, and the Municipalities. Therefore, engaging in reciprocal appointment violates the Federal Constitution.”



¹ The decision established in ADC 12 affected all spheres of justice, and the publication of the Binding Precedent 13 extended the prohibition on the practice of nepotism to the entire public administration, including the Executive and Legislative Branches.