ADC 19[1]

Maria da Penha Law

Country:
Brazil

Court:
Federal Supreme Court

Competent Court:
Full Court

Format of the Session:
In-person

Rapporteur:
Justice Marco Aurélio

Decision Date:
February 9, 2012

Matter:

CASE SUMMARY

An Action for the Declaration of Constitutionality (ADC) about the constitutional character of the Maria da Penha Law (Law 11,340/2006), which introduces mechanisms to prevent and punish domestic and family violence against women. The petitioners claim the norm is not being applied to certain precedents under the justification that it violates the principle of equality by favoring women with special treatment. The petitioners argue the law is constitutional due to women's condition of vulnerability and the proportions of gender-based violence in Brazilian society.

LEGAL REASONING

1. The need for special protection for victims of domestic violence is justified by gender inequality, the historical vulnerability of women, and the continuous increase of domestic violence in Brazilian society. The different treatment given to men and women in this regard does not breach the principle of equality, as the means are legitimate, appropriate, and proportional to the protection of those in a vulnerable position.

2. Furthermore, the Maria da Penha Law (11,340/2006) is designed to fulfill the constitutional objective of providing families with State protection (article 226, paragraph 8 of the 1988 Federal Constitution). In this regard, the law realizes the State's duty to adopt mechanisms that deter and punish violence in the context of family relations.

3. Moreover, it aligns with the constitutional principle of prohibiting that fundamental rights have insufficient protection. By ensuring that battered women have effective access to redress, protection, and justice, the Maria da Penha Law breaks with the State's failure to enforce constitutional precepts effectively and inaugurates a new stage of affirmative action in favor of women in Brazilian society.

[1] The Court tried the case alongside ADI 4,424/DF, again with Justice Marco Aurélio as the case rapporteur. The Full Court determined that, in bodily injury offenses against women in a domestic environment (even if mild injuries), the Federal Prosecution Service may legitimately start criminal prosecution against the perpetrator, and the victim may do without representation.

4. Pondering on the severity of gender-based violence, the Court affirmed the impossibility of turning a conviction for crimes of violence against women in alternatives to imprisonment or benefits similar to those applied for lesser offenses.

DECISION OF THE COURT

The Federal Supreme Court declared the Maria da Penha Law (Law 11,340/2006) constitutional, recognizing the norm gives a proper and proportional response to the alarming figures of gender-based violence in Brazil.

ADDITIONAL NOTES

The Maria da Penha Law (Law 11,340/2006) was enacted following the Inter-American Commission on Human Rights' determination that the country had been negligent in its duty to effectively prosecute and convict Maria da Penha's perpetrator, her former husband, who had subjected her to 23 years of violence and attempted murder on two occasions, ultimately resulting in her paraplegia. The law represents a milestone in the protection of women, establishing organizations and tools to safeguard victims of domestic and family violence.

AMICUS CURIAE

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