

ADC 41¹

Racial Quotas for Admission to Civil Service Examination

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

Rapporteur:

Justice Luís Roberto Barroso

Decision Date:

June 8, 2017

Matter:


CASE SUMMARY

An Action for the Declaration of Constitutionality (ADC) concerning the law that implemented affirmative public policies for the admission of Black people into the public service (Law 12,990/2014, known as the Law of Racial Quotas in the Public Service), through the reservation of 20% of vacancies in public examinations for the Federal Public Administration. The plaintiff defends the validity of affirmative action based on ethnic-racial criteria for access to permanent positions and public jobs as an instrument to promote the right to equality and as a policy of reparation in favor of a historically inferior group.

LEGAL REASONING

- 1.** The Law 12,990/2014 (Law of Racial Quotas in the Public Service) is based on the need to overcome structural and institutional racism in Brazil. It recognizes the Black population as a group exposed to situations of greater vulnerability, with fewer conditions for inclusion in Brazilian society, given the country's long history of enslavement. It is therefore an instrument of compensation.
- 2.** Affirmative action does not compromise merit in selection by civil service examination or the efficiency of public service. In fact, candidates benefiting from quotas must achieve sufficient marks to perform their duties properly and efficiently, which expresses the notion of merit. In addition, the inclusion of the "race" factor as a selection criterion contributes to representativeness in State decision-making, given that the majority of the Brazilian population is Black or Brown.
- 3.** In these terms, the reservation of a percentage of vacancies is a measure aimed at guaranteeing material equality among citizens. These measures even include those who have benefited from previous affirmative actions, such as those for admission to public universities. In this sense, it is understood that not all public positions in civil service examinations require a higher education degree; therefore, those who do not compete for such vacancies would be equally benefited. Furthermore, there are numerous other factors that prevent Black people from competing on equal terms, such as socioeconomic issues.

¹ In a recent decision (ADI 7,654), the Court upheld an injunction that extended the validity of the Law of Racial Quotas in civil service examinations until the National Congress approves a rule on the matter.

4. Fraud against the Law of Racial Quotas in the Public Service, on the part of candidates or the Public Administration, must be avoided, and (i) the use of hetero-identification criteria, in addition to self-declaration, to control abuses is legitimate, as long as human dignity is respected and the adversarial process and full defense are guaranteed; and (ii) it is necessary to respect parameters so that the policy is implemented without limiting its scope or distorting its objectives.

DECISION OF THE COURT

The Federal Supreme Court recognized the validity of the Law of Racial Quotas in the Public Service (Law 12,990/2014), which reserves for Black people 20% of vacancies in civil service examination for permanent positions and public jobs in the Federal Public Administration.

ADDITIONAL NOTES

Rule Statement: “The reservation of 20% of the vacancies offered in public examinations for filling permanent positions and public employment within the scope of direct and indirect Public Administration is constitutional. The use of subsidiary criteria for hetero-identification, in addition to self-declaration, is legitimate as long as human dignity is respected and the adversarial process and full defense are guaranteed.”

