

ADI 1,458 MC

Minimum Wage: Preserving Workers' Purchasing Power

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

Rapporteur:

Justice Celso de Mello

Decision Date:

May 23, 1996

Matter:


CASE SUMMARY

A Direct Action of Unconstitutionality by Omission (ADI) filed against Provisional Decree 1,415/1996, which sets the minimum wage. The plaintiffs allege that the minimum wage approved in the Provisional Decree infringes the constitutional right to a compensation that covers the basic needs of workers and their families, with regular adjustments to preserve its purchasing power (article 7, item IV of the 1988 Federal Constitution). In addition, they claim that the Federal Executive Branch adopted an inappropriate index to determine the minimum wage, failing to reflect workers' inflationary losses.¹

LEGAL REASONING

1. The 1988 Federal Constitution required the government to enact a law setting the minimum wage at a level that meets the basic needs of workers and their families in terms of housing, food, education, health, leisure, clothing, hygiene, transportation, and social security (article 7, item IV of the 1988 Federal Constitution). Furthermore, it demanded that the State adopt mechanisms to maintain the purchasing power of the minimum wage, with regular increases to ensure this right factually.

2. A minimum wage that does not meet the basic needs of workers and their families represents a partial omission in complying with the Federal Constitution, as it does not entirely fulfill the constitutional norm. A Direct Action of Unconstitutionality is applicable when the government fails to take measures aimed at effectively granting fundamental rights or guarantees, or takes inadequate measures to do so, in which case it represents a partial omission.

¹ At the time the ruling was issued, a Direct Action of Unconstitutionality by Omission was simply called a Direct Action of Unconstitutionality, with no differentiation. It was only on October 27, 2009 that Law 12,063 was passed, creating a procedure for the Direct Action of Unconstitutionality by Omission.

DECISION OF THE COURT

The Federal Supreme Court recognized the unconstitutionality of the partial omission in fulfilling the law that rose the minimum wage, since the wage could not meet the subsistence needs of workers and their families. Nevertheless, the Court noted the government's inaction to grant the constitutional right to a minimum wage does not give the Judicial Branch the power to enact norms. Hence, the Court could only notify the competent body, calling for the necessary measures to enforce the constitutional text.

