

ADI 223 MC

The First Collor Plan and Judges' Power to Grant Provisional Remedy

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

Rapporteur:

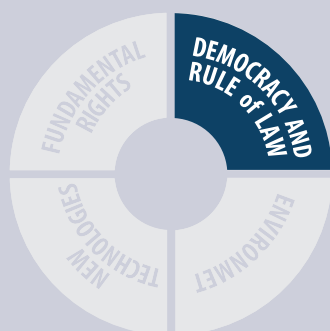
Justice Paulo Brossard

Drafter of the Decision:

Justice Sepúlveda Pertence

Decision Date:

April 5, 1990

Matter:


CASE SUMMARY

A Direct Action of Unconstitutionality (ADI) brought against Provisional Decree 173 (MP 173), which prevents judges from granting precautionary remedies connected in content to other ten provisional measures that implement a plan of economic reforms and adjustments to stabilize the Brazilian economy. The petitioners allege the general prohibition imposed by MP 173 impairs the constitutional right to full access to justice and the judicial review of the legitimacy of government acts (article 5, item XXXV of the 1988 Federal Constitution).

LEGAL REASONING

1. A judge's power to grant precautionary remedy intends to ensure that the legal process is effective and that a final judgment is reached. They prevent that violations become irreversible while a case pends judgment, thus safeguarding judicial access where a right is threatened or infringed (article 5, item XXXV of the 1988 Federal Constitution). Moreover, suppressing a subject or the possibility of adjudicating may represent an interference of the Executive Branch in the Judicial Branch, breaching the principle of separation of powers (article 2 of the 1988 Federal Constitution).
2. Under some circumstances, it is possible to restrain precautionary remedy and there are precedents of this. Moreover, the Court recognized a recent trend of abuse in the use of such measure. The scope of MP 173 was too broad and ill-defined, prohibiting all possibilities of precautionary remedy with the sole intention of protecting "emergency legislation," which was seen as unreasonable and disproportionate.
3. Considering the plan was developed in a time of hardship and economic struggle, the Supreme Court decided not to suspend the effects of MP 173 through its own abstract judicial review. Rather, it authorized a concrete judicial review, with judges deciding whether to grant provisional remedy in specific situations relating to the economic plan.

DECISION OF THE COURT

The Supreme Court did not grant the request to suspend the effects of MP 173 as a preliminary matter through a Direct Action of Unconstitutionality (ADI). The Court recognized the importance of the power to grant precautionary remedy to protect rights that are being threatened or violated and to enable the Judiciary to act effectively. Nevertheless, the Court considered MP 173 does not preclude judges from performing judicial review by analyzing each particular case and conceding relief where the measure is disproportionate and abusive.

ADDITIONAL NOTES

This decision was rendered in the context of the first Collor Plan, responsible for a number of dramatic and unpopular economic measures implemented in the early 1990's to tackle the country's hyperinflation. The economic plan also blocked part of citizens' bank deposits, privatized State-owned companies, and reorganized many public policies, including those related to trade and agriculture. By refusing to suspend MP 173, the Supreme Court avoided directly intervening in the economic plan. Nevertheless, it authorized judges to issue precautionary remedies according to each case, protecting citizens' rights in a transverse manner.