

ADI 3,330^{1, 2}

The University for All Program – Prouni

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

Rapporteur:

Justice Ayres Britto

Decision Date:

May 3, 2012

Matter:


CASE SUMMARY

A Direct Action of Unconstitutionality (ADI) brought against Provisional Decree (MP) 213/2004, now Law 11,096/2005, which established the University for All Program (Prouni). The program was created to promote access for low-income students to vacant university places, through a combination of scholarships and tax benefits for participating educational institutions. The constitutional assumptions of relevance and urgency for the establishment of Prouni by means of a Provisional Decree (article 62 of the 1988 Federal Constitution) were questioned, as well as the constitutional principles of: (i) equality, with regard to the provision of affirmative action for low-income students (article 5, head paragraph of the 1988 Federal Constitution); (ii) university autonomy, regarding the participation of universities in the program (article 207 of the 1988 Federal Constitution); and (iii) free enterprise, regarding the adhesion of private educational institutions to Prouni (article 170 of the 1988 Federal Constitution).

LEGAL REASONING

- 1.** Education is a social right that should reach everyone. It is therefore a constitutional duty of the State to be prioritized through public policies. Prouni is an affirmative action program that favors access to higher education for low-income students. Considering the profound inequalities that mark Brazilian society, the STF considered that the constitutional requirements of relevance and urgency were present for the program to be instituted by means of a Provisional Decree (article 62 of the 1988 Federal Constitution), which was later converted into law.
- 2.** The granting of scholarships through Prouni is a legitimate form of affirmative action that aims to reduce social inequalities, expand access to higher education and promote social inclusion. Differentiated treatment, through the granting of scholarships to students from public schools and former full scholarship recipients from private schools, is a measure compatible with the principle of equality, guaranteed in the 1988 Federal Constitution, by promoting material equality.

¹ Judged jointly with ADI 3,314/DF, reported by Justice Ayres Britto.

² In the same judgment, the Plenary did not hear ADI 3,379/RJ, reported by Justice Cármen Lúcia, for not recognizing the active legitimacy of the National Federation of Social Security Tax Auditors (Fenafisp) to bring the action.

3. Prouni does not violate the constitutional principles of university autonomy (article 207 of the 1988 Federal Constitution) and free enterprise (article 170 of the 1988 Federal Constitution), because university membership is optional, voluntary, and for a fixed period.

DECISION OF THE COURT

The Federal Supreme Court recognized the constitutionality of the University for All Program (Prouni), established by Law 11,096/2005, reaffirming the validity of affirmative actions in Brazil and their importance in combating inequalities in access to higher education for the low-income population.



part 1



part 2

