

ADI 3,367

Creation of the National Council of Justice (CNJ)

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

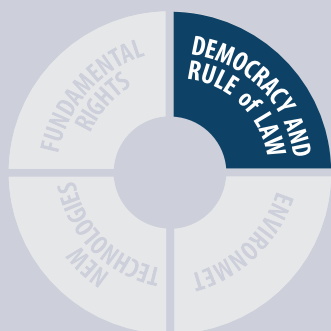
In-person

Rapporteur:

Justice Cezar Peluso

Decision Date:

April 13, 2005

Matter:


CASE SUMMARY

A Direct Action of Unconstitutionality (ADI) aimed at the Constitutional Amendment 45/2004, which created and regulated the National Council of Justice (CNJ) as the administrative body of the national Judicial Branch, with the power to supervise the administrative and financial activities of the Judiciary and carry out disciplinary control over magistrates at a national level.

LEGAL REASONING

1. The creation and composition of the National Council of Justice to control the administrative and financial activities of the Judicial Branch and the ethical and disciplinary control of judges does not offend the principle of the separation of Powers, laid down in article 2 of the 1988 Federal Constitution, since the CNJ is part of the national Judicial Branch and is made up, for the most part, of members of that same Branch (article 103-B of the 1988 Federal Constitution). The inclusion of two representatives of the Public Prosecutor's Office, two lawyers, and two citizens (article 103-B, items X, XI, XII and XIII of the 1988 Federal Constitution) among the members of the CNJ only strengthens the republican and democratic character of the Judicial Branch.

2. In the same way, the role of the CNJ in monitoring the actions of the state jurisdictional courts does not violate the federal pact, since the Judicial Branch has a national character, and its jurisdiction is one and indivisible. Nor is there any violation of judicial independence, since the CNJ's competence is purely administrative. It cannot, therefore, interfere in the performance of the judicial function or the material conditions for its impartial and independent exercise.

3. The acts of the CNJ are subject to judicial control by the Federal Supreme Court (article 102, item I, subitem *r* of the 1988 Federal Constitutional), while the STF is not subject to its administrative, financial, or disciplinary control. In short, the CNJ exercises control over the Judicial Branch, but its power is also limited by it and subject to its judicial scrutiny.

DECISION OF THE COURT

The Federal Supreme Court declared the constitutionality of the creation of the National Council of Justice, an internal body for the administrative, financial, and disciplinary control of the Judicial Branch, as provided for in the Constitutional Amendment 45/2004.