

ADI 4,277 and ADPF 132

Recognition of Same-Sex Stable Unions¹

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

Rapporteur:

Justice Ayres Britto

Decision Date:

May 5, 2011

Matter:


CASE SUMMARY

A Direct Action of Unconstitutionality (ADI) and a Claim of Non-Compliance with a Fundamental Precept (ADPF) that, taken together, challenge the constitutionality of a norm and/or interpretations that only recognize stable unions made up of couples of different sexes ("heteroaffective"), therefore excluding same-sex couples ("homoaffective"). The petitioners argue this understanding violates a number of fundamental rights, including the rights to human dignity, autonomy, freedom, equality, and legal certainty. Furthermore, it prevents same-sex couples from pursuing their own projects of well-being and from freely exercising their affection, and/or fails to provide them with sufficient protection.

LEGAL REASONING

1. The word "homoaffectiveness," employed in the law, refers to a bond of affection and solidarity between same-sex couples. From this concept, a homoaffective union is a family nucleus characterized by an affectionate, public, and long-term relationship between people of the same sex.
2. Constitutional rights to human dignity, autonomy, and freedom grant people the right to decide on their own well-being projects and to choose freely how to experience their affections. The right to equality and the constitutional prohibition against unjustified discrimination prevent homoaffective couples from being treated differently from heteroaffective couples. The right to legal certainty also means homoaffective couples will be protected in the legal reflections of their relationships. Even though the 1988 Federal Constitution only describes stable unions between men and women, its text had the intention to safeguard women, not to exclude same-sex couples.
3. Article 226 of the 1988 Constitution provides families with a special State protection, defining a family as the fundamental unit of society, a place for the development of people and their personality. There are various forms of family, and the Constitution does not restrict them to heterosexual couples. On the contrary, same-sex couples also build families and should be recognized as such.

¹ In 2018, the Supreme Court's historic decision received the MoWBrasil certificate, offered by the Brazilian National Committee of the UNESCO Memory of the World Program, and was inscribed as a documentary heritage of humanity in Brazil's National Register. Justice Ayres Britto, rapporteur of the actions (ADPF 132 and ADI 4,277), represented the Court at a ceremony held at the Aeronautics Historical-Cultural Institute in Rio de Janeiro.

DECISION OF THE COURT

The Federal Supreme Court upheld the constitutional actions to recognize homoaffective unions as family units and granted them the same rights as stable unions between people of different sexes.

ADDITIONAL NOTES

The decision greatly affected the rights of LGBTQIAPN+ people. It enabled the National Council of Justice to draft Resolution 175/2013, which created the necessary conditions for the existence of same-sex marriages.



part 1



part 2



part 3



part 4



part 5

