

ADI 5,617

Electoral Financing for Female Candidacies

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

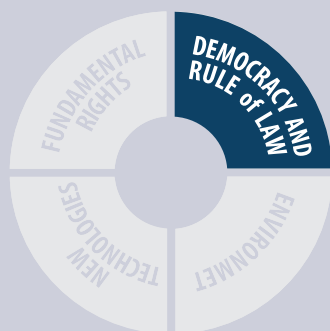
In-person

Rapporteur:

Justice Edson Fachin

Decision Date:

March 15, 2018

Matter:


CASE SUMMARY

A Direct Action of Unconstitutionality (ADI) that questions the minimum and maximum percentages of the Party Fund (government resources for political party funding) resources for the financing of electoral campaigns by female candidates, as well as the period of validity of this affirmative action, which was established by the 2015 Electoral Mini-Reform (Law 13,165/2015). The rule determined that, in the three elections following the law's enactment, parties should reserve 5–15% of the resources received through the Party Fund for their female candidates.

The petitioners also argue that the percentage of the Party Fund allocated to female candidates is insufficient to promote gender equality in the competition between men and women in the electoral process. Therefore, they propose a minimum percentage of 30%, which is the same percentage of female candidates that a party must have by law. Furthermore, limiting the affirmative action to just three elections would not be enough to overcome the structural inequality in the representation of women in politics.

LEGAL REASONING

1. Data from the Superior Electoral Court revealed a huge discrepancy in female representation in the country's politics. Despite being the majority of the Brazilian population and electorate, women occupy less than 15% of the seats in the Federal Legislative Branch. The adoption of rules for the financing of women's candidacies in the electoral process is necessary to correct this long-standing under-representation. In addition to preventing further discrimination, campaign-financing quotas have the role of repairing the negative effects of gender discrimination and its lasting consequences, as well as creating fairer conditions for historically marginalized groups, as in the case of women in politics.
2. Affirmative actions aimed at increasing the participation of women in politics are based on premises that defend gender equality and democracy. By promoting the principle of equality, these actions recognize that the distribution of public resources

cannot be discriminatory on the grounds of gender. The autonomy of parties does not exempt political parties from the obligation to respect fundamental rights, including the right to equality. Furthermore, gender equality requires not only equal opportunities but also a level playing field that allows women to achieve similar results to men in elections. The effective participation of women in politics is essential to ensure that public policies overcome historical inequalities, contributing to a more representative and fair democracy.

3. Setting a minimum percentage of 5% and a maximum of 15% of Party Fund resources for female candidates is unconstitutional, as it creates obstacles to the entry and participation of women in politics and to the drafting of laws that reduce these inequalities. In practice, this rule favors male candidates, since men will be able to receive between 85% and 95% of the available funds. This disparity would prevent a level playing field for women and prolong gender inequalities in politics.

4. The autonomy of political parties, granted by article 17 of the 1988 Federal Constitution, cannot justify practices that disrespect fundamental rights, such as gender equality and human dignity. Respect for equality applies equally to the public sphere and to private relations and guarantees the protection of the individual not only in relation to the government but also concerning to other private persons. Thus, private autonomy cannot prevail over constitutional principles. Furthermore, considering their transformative role in society, political parties have a duty to promote women's political participation and to combat any form of gender discrimination.

5. The distribution of public funds intended for electoral campaigns by political parties must be proportional to the number of candidates of both sexes, respecting the minimum level of 30% of female candidates, as established in article 10, paragraph 3 of the Law of Elections (Law 9,504/1997). The public nature of these resources reinforces the obligation for their distribution to be non-discriminatory, ensuring equal opportunities for men and women in the electoral contest.

6. The time limit of three elections for the affirmative action of earmarking Party Fund resources for female candidacies is unconstitutional, since it must be directly proportional to the number of female candidacies, as determined by article 10, paragraph 3 of the Law of Elections (Law 9,504/1997). Unlike the temporary nature of gender quotas relating to candidacies, non-discriminatory resource allocation should continue as long as there is a need for quotas for female candidacies.

DECISION OF THE COURT

The Federal Supreme Court has ruled that the distribution of resources from the Party Fund destined to finance women's electoral campaigns must be directly proportional to the number of candidates of both sexes, respecting the minimum level of 30% of women candidates, as provided for in article 10, paragraph 3 of the Law of Elections (Law 9,504/1997).

In addition, the Court declared unconstitutional the setting of a deadline for this affirmative action and eliminated the time limit of three elections for the application of the funding quota for women candidates. Thus, the equitable and non-discriminatory distribution must be maintained as long as there is justification for the minimum number of female candidates.

ADDITIONAL NOTES

In a motion for resettlement, the Federal Supreme Court accepted the rapporteur's proposal to ensure that the financial resources accumulated in previous years in the specific accounts used to promote women's political participation would be transferred to the financing of electoral campaigns of female candidates in the 2018 election, without reducing the percentage of 30% of the fund allocated to each party for women's candidacies.



part 1



part 2



part 3



part 4

