

ADI 6,341 MC-REF

Health Measures to Combat COVID-19 and the Autonomy of the Federal Entities

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

Rapporteur:

Justice Marco Aurélio

Drafter of the Decision:

Justice Edson Fachin

Decision Date:

April 15, 2020

Matter:



CASE SUMMARY

Referendum on the provisional measure in Direct Action of Unconstitutionality (ADI) in which the constitutionality of the provisional measure issued by the President of the Republic was questioned to centralize in the federal government the decisions on dealing with the public health emergency resulting from the COVID-19 pandemic, such as isolation measures, quarantine and restrictions on movement. It was claimed that the rule disrespected the constitutional powers of states and municipalities to protect the right to health of their population, and violated the autonomy of the entities and, therefore, the federative principle itself (article 18 of the 1988 Federal Constitution).

LEGAL REASONING

1. The 1988 Federal Constitution provides that the entities that are part of the Brazilian Federation have the autonomy to organize, govern and administer themselves (article 18 of the 1988 Federal Constitution). In this sense, the states have concurrent competence with the federal government to legislate on health matters (article 24, item XII of the 1988 Federal Constitution). The municipalities, in turn, have the power to legislate on matter of local interest (article 30, item II of the 1988 Federal Constitution). In the same way, the federal government, the states and the municipalities have common administrative competence to implement measures to protect the health of their citizens (article 23, item II of the 1988 Federal Constitution).

2. It is the duty of all federal entities to guarantee the right to health and to prevent and combat epidemic diseases. In this context, the federal government legislates on general health standards, and the states and municipalities provide for specific measures, according to their local realities and needs. In the absence of federal legislation, the states still exercise full regulatory authority. Thus, the federal Executive Branch may issue provisional measures in health matters, provided that the autonomy of the other spheres of government to deal with the matter is preserved.

3. All federated entities must observe, in their actions, the technical and scientific recommendations of the World Health Organization (WHO), an international organization with expertise in the field. It would be serious, from a constitutional point of view, if, in the context of public health emergency and under the invocation of exclusive or private jurisdiction, the federal government's omissions were rewarded, preventing states and municipalities from implementing public policies essential to the protection of citizens.

DECISION OF THE COURT

The Federal Supreme Court upheld the precautionary measure, recognizing that the federated entities (states, federal district and municipalities) have the power to legislate and adopt public health measures to combat the COVID-19 pandemic, in conjunction with the federal government.

ADDITIONAL NOTES

This decision is part of the context of the COVID-19 pandemic, declared a public health emergency of international concern by the WHO on March 11, 2020. Based on this classification, the WHO emphasized that all countries should activate and expand their mechanisms for responding to health emergencies, in addition to following technical and scientific recommendations on the subject. In the case of Brazil, states and municipalities played an important role in this matter.

