

ADI 815

Judicial Review and the Hierarchy of Constitutional Provisions

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

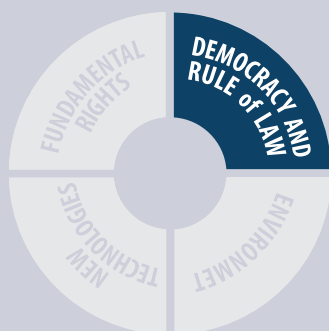
In-person

Rapporteur:

Justice Moreira Alves

Decision Date:

March 28, 1996

Matter:


CASE SUMMARY

A Direct Action of Unconstitutionality (ADI) that challenges the constitutionality of article 45, paragraphs 1 and 2 of the 1988 Federal Constitution. The plaintiffs contend these paragraphs require each federal entity (i.e., states and the Federal District) to have a number of deputies proportional to its population; however, they also provide for a minimum of eight and a maximum of seventy deputies for each federal entity, and a fixed number of four for federal territories. The plaintiffs argue these thresholds disrupt the proportionality between the number of deputies and federal entities' populations, giving some federal entities more voting power than others do. For this reason, it supposedly violates the principles of equality (article 5 of the 1988 Federal Constitution), equal voting power (article 14), democracy (article 1), sovereignty of the people (article 1, sole paragraph), and citizenship (article 1, item II). Moreover, it weakens the federation, safeguarded by article 60, paragraph 4, item I, which is an entrenchment clause.

The case revolves around whether an original provision of the 1988 Federal Constitution may be rendered unconstitutional based on an alleged hierarchy of constitutional provisions.

LEGAL REASONING

- 1.** The 1988 Federal Constitution is rigid in its form, that is, it does not allow for a hierarchy of its original provisions. Even though there are entrenchment clauses within the Constitution, there is a limit for the derived Constitution-making power, and not for the original one.
- 2.** The principle of constitutional unity establishes that original constitutional norms do not conflict with each other. The Constitution is, hence, a coherent system of norms. Apparent contradictions between these norms must be solved through a harmonizing interpretation.
- 3.** The Federal Supreme Court has the duty of safeguarding the Constitution, as per article 102, head paragraph of the 1988 Federal Constitution. This means the Court has the goal of ensuring observance of the entire Constitution, not of supervising the Constitution-making power and monitoring whether the constitutional convention violated supra-constitutional principles of its own insertion.

DECISION OF THE COURT

The Federal Supreme Court decided it is legally impossible to perform the judicial review of a norm from the original text of the Constitution.

