

ADO 20

Legislative Omission in the Regulation of Paternity Leave

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:

December 14, 2023

Matter:


CASE SUMMARY

A Direct Action of Unconstitutionality by Omission (ADO) filed due to an absence of regulation for paternity leave under article 7, item XIX of the 1988 Federal Constitution, citing a legislative delay and inadequate protection under existing law.

The 1988 Federal Constitution establishes a five-day paternity leave, until a complimentary law sets new rules. However, it has been over 35 years and the legislature is yet to regulate the matter.

LEGAL REASONING

1. The right to paternity leave is a fundamental right essential for the implementation of the family's institutional guarantees (article 226 of the 1988 Federal Constitution), the full protection of childhood (articles 6 and 203 of the 1988 Federal Constitution), and the guaranty of fundamental right to equality between women and men (article 5, item I of the 1988 Federal Constitution).
2. Given the changing roles of men and women in the family and society and the increased participation of women in the labor market, it is essential to develop public policies on childcare. They should contribute to gender equality, the best interests of the child, the mental health of fathers and mothers, family planning, and reduce the impact of childbearing on women's careers.
3. It is necessary to change the behavioral patterns of men and women regarding the division of labor, especially in relation to domestic work. The International Labor Organization (ILO) has confirmed that social and economic progress is more equal and sustainable when maternity and paternity leave are shared.
4. In addition, it is essential that there is a cooperative effort of political and public agents in all government fields. This would help to implement and enhance the effectiveness of constitutional norms, especially when it comes to fundamental social rights expressed in the Constitution, as in the case of paternity leave, provided for in article 7, item XIX of the 1988 Federal Constitution.

DECISION OF THE COURT

The Supreme Court granted the request to declare an unconstitutional omission, stating the legislative delay regarding the regulation of article 7, item XIX of the 1988 Federal Constitution and article 10, paragraph 1 of the Temporary Constitutional Provisions Act, establishing an 18-month deadline for the National Congress to remedy the omission. If that does not happen, the Court is authorized to adjudicate on the matter.

ADDITIONAL NOTES

Rule Statement: “There is an unconstitutional omission in the delay to regulate paternity leave as provided in article 7, item XIX of the 1988 Federal Constitution. The Court set a deadline of eighteen (18) months for the Legislative Branch to rectify the omission. If the National Congress fails to do so, the Supreme Court is authorized to determine the concrete conditions for granting the fundamental right to paternity leave.



part 1



part 2



part 3

