

ADPF 1,013

Regular and Free Public Transportation on Election Days

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

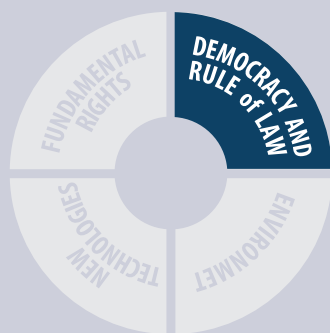
Rapporteur:

Justice Luís Roberto Barroso

Decision Date:

October 18, 2023

Matter:



CASE SUMMARY

A Claim of Non-Compliance with a Fundamental Precept (ADPF) that alleges the government failed to provide, on election days, free public transportation as frequently as in working days.

The request is based on citizens' rights to transportation and, particularly, the right to vote. It argues that the cost for travelling to polling stations is significantly higher than the abstention fine, as voting is compulsory in Brazil.

LEGAL REASONING

1. Article 14 of the Federal Constitution states that every citizen has the right and obligation to vote. Therefore, any infringement of this right is a violation of the Constitution. Considering the extreme social inequality that exists in Brazil, the absence of a public policy granting free transportation on election days has the potential of creating, in practice, a type of census suffrage, preventing the underprivileged from participating in the electoral process.

2. Elections must be attended by the largest number of voters and be free and fair, giving the entire population equal access. Therefore, public authorities have the constitutional duty to ensure free and regular public transportation in urban areas on election days. Its implementation is a constitutional requirement, as it promotes equal participation, providing significant numbers of voters with access to the ballot. In addition, it combats illegalities as it prevents transportation from serving as an instrument of interference in the electoral result.

3. The right to vote is not only a negative liberty, which requires the State to refrain from prohibiting or hindering its exercise, but also covers positive obligations, offering everyone equal opportunities to participate.

4. Against this backdrop, it is appropriate to adopt a solution that recognizes the National Congress' priority to legislate on the matter and, at the same time, stops this constitutional violation until a law is enacted. Appealing to the Legislative Branch is one of the possibilities for institutional dialogue between the Judicial and Legislative Branches. This solution privileges the legislative competence of the National Congress without neglecting the normative force of the Constitution.

DECISION OF THE COURT

The Federal Supreme Court heard the Claim of Non-Compliance with a Fundamental Precept and partially granted the request to recognize the existence of an unconstitutional omission due to the absence of a policy to offer free public transportation on election days. The Court requested the National Congress to pass a law regulating the matter. In case a law is not enacted by the municipal elections of 2024, municipal and intercity public urban transportation—including the metropolitan—must be offered free of charge and as frequently as on working days.

ADDITIONAL NOTES

Rule Statement: “The government’s failure to provide free public transportation in urban areas with a frequency commensurate with working days is unconstitutional.”



part 1



part 2

