

ADPF 130

Non-Reception of the Press Law by the 1988 Federal Constitution

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

Rapporteur:

Justice Ayres Britto

Decision Date:

April 30, 2009

Matter:


CASE SUMMARY

A Claim of Non-Compliance with a Fundamental Precept (ADPF) to declare that the Press Law (Law 5,250/1967), enacted during Brazil's military dictatorship, was not received by 1988 Federal Constitution. It states that the law violated the freedom of the press, as guaranteed by the Constitution, paving the way for prior censorship and the undue punishment of journalists (article 5, items IV, V, IX, X, XIII, and XIV; articles 220 to 223 of the 1988 Federal Constitution).

LEGAL REASONING

1. The Press Law (Law 5,250/1967), created and enacted during Brazil's military dictatorship, is incompatible with the democratic constitutional order inaugurated by the 1988 Federal Constitution, which guarantees the fundamental right to freedom of the press, expression of thought, access to information, and expression of intellectual, artistic, scientific, and communication activity in Brazilian society.
2. The press is the instance of mass communication that informs citizens about what is happening in the public sphere and in politics. Thus, it is essential for the formation of opinion and the proper functioning of democracy. Because of this, the constitutional tensions between individual rights and full freedom of the press must be resolved in favor of a broad defense of press freedom in order to provide citizens with alternatives to the official version of the facts.
3. Journalistic criticism, when made in the public interest, is not subject to prior government censorship by any of the three branches of government. Freedom of journalistic information, as guaranteed by the 1988 Federal Constitution, must be complete and unrestricted. This means that no law can place restrictions on when or to what extent this freedom can be exercised. Such restrictions violate the very essence of freedom of expression.
4. In order to balance rights and avoid abuses to the fullest extent of freedom of the press, the 1988 Federal Constitution provides for the prohibition of anonymity and the protection of the confidentiality of the source whenever necessary for professional practice. It also prescribes the right of reply and compensation equivalent to the grievance, as well as the possibility of subsequent civil, criminal, and administrative liability for any emotional distress or damage to reputation.

DECISION OF THE COURT

The Federal Supreme Court declared that the Press Law, enacted during Brazil's military dictatorship, was incompatible with the democratic constitutional order in force after the 1988 Federal Constitution's enactment. The Court also prohibited any form of prior censorship or punishment, with the exception of the right of reply and the possibility of subsequent civil, criminal, and administrative liability for any emotional distress or damage to reputation.

ADDITIONAL NOTES



**AMICUS
CURIAE**



**Trial's
VIDEO**

part 1



**Trial's
VIDEO**

part 2



**Trial's
VIDEO**

part 3



**Trial's
VIDEO**

part 4

