

ADPF 186

Ethnic-Racial Quota System in Universities

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

Rapporteur:

Justice Ricardo Lewandowski

Decision Date:

April 26, 2012

Matter:


CASE SUMMARY

A Claim of Non-Compliance with a Fundamental Precept (ADPF) to invalidate the acts that established the quota system in higher education, which reserves 20% of places, for ten years, in favor of Black and Indigenous candidates. The plaintiff claims that the policy violates the fundamental precepts of human dignity, equality, and the repudiation of racism, as well as the provisions establishing the universal right to education, among other norms.

LEGAL REASONING

1. Quota or affirmative action policies aim to tackle the history of inequality present in ethnic-racial and social relations in Brazilian universities. These institutions have the smallest contingent of Black and Indigenous students due to their condition of economic, social, and political subordination over time.
2. The 1988 Federal Constitution protects not only formal equality, that is, the right of all citizens to equal treatment under the law, but also substantive equality, which imposes different treatment on people in conditions of real inequality in order to equalize them effectively in terms of conditions and opportunities. This is the reason for being of the quota system.
3. This policy does not violate the meritorious criterion of selecting the best candidates for higher education. Uniform criteria cannot assess groups of people subjected to different living conditions over time, since they never shared equal conditions and opportunities. To do so is to perpetuate structural discrimination in favor of those from better backgrounds.
4. Additionally, the legitimacy of criteria used in the admission to higher education must consider the objective it intends to achieve, as well as the constitutional principles that guide it: the pluralism of ideas, groundwork for the exercise of citizenship, and the formation of leaders capable of fighting for rights, including those of minority groups. Diversity is also an essential component of university education.

5. Affirmative actions also have an important symbolic role. When a Black child recognizes another Black person occupying a prominent place in society, they also see themselves into that position of leadership, which widens the scope of possibilities for their life plans. Therefore, these policies have an important psychological component that multiplies social inclusion.

6. However, such policies must consider the idea of proportionality. It should only be effective for as long as they are necessary to overcome inequality at the university level and, once this purpose has been achieved, it should be ended. In this case, a deadline of 10 years was set for the right to reserved places to end, thus meeting the criterion.

DECISION OF THE COURT

The Federal Supreme Court uphold the ethnic-racial quota system in the admission process to public higher education institutions, recognizing that the rule intends to overcome historical social distortions, based on the right to material equality and the principle of proportionality.

ADDITIONAL NOTES

