

ADPF 347

Massive Violation of Fundamental Rights in the Brazilian Prison System

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

Rapporteur:

Justice Marco Aurélio

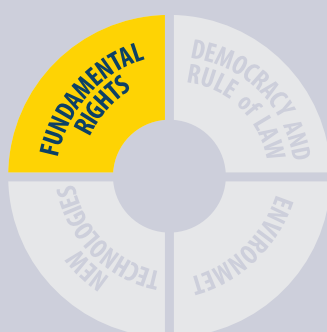
Drafter of the Decision:

Justice Luís Roberto Barroso

Decision Date:

October 4, 2023

Matter:



STRUCTURAL LITIGATION

CASE SUMMARY

A Claim of Non-Compliance with a Fundamental Precept (ADPF) to recognize and declare the unconstitutional state of affairs of the Brazilian prison system due to the serious and massive violation of prisoners' human rights. It also proposes the determination of measures aimed at promoting the improvement of prison conditions, as well as the containment and reversal of the process of hyperincarceration and overcrowding in Brazilian prisons.

LEGAL REASONING

1. In the Brazilian prison system, the scenario is one of massive violation of fundamental rights and is characterized by: (i) overcrowding and poor quality of existing places, which are impacted by a deficit in the supply of essential goods and services that are part of the existential minimum; (ii) new prisoners entering the system in an unwarranted and disproportionate manner, including first-time offenders and crimes of low dangerousness, which only contributes to the worsening of crime; and (iii) the prison time being longer than that provided for in the conviction or the regime being more severe than what is due. This situation compromises the system's ability to fulfill its purpose of resocializing prisoners and guaranteeing public safety. Thus, the current scenario is in disagreement with the rules established in the 1988 Federal Constitution (article 3, item III, and article 5, items XLVII, XLVIII, and XLIX), in the international human rights treaties to which Brazil is a party, and in other laws applicable to the matter (including the Sentence Execution Law).

2. This is a structural problem, defined by the deep contempt for prisoners' fundamental rights, which is why the Court recognized the unconstitutional state of affairs in the Brazilian prison system. Accordingly, the solution to the issue requires the cooperative action of several authorities to draw up national and local plans, with the participation of institutions and the community, to achieve a satisfactory resolution.

DECISION OF THE COURT

The Federal Supreme Court partially granted the Claim of Non-Compliance with a Fundamental Precept (ADPF), recognizing the Brazilian prison system is facing an unconstitutional state of affairs due to a massive violation of the fundamental rights of prisoners.

In order to overcome this situation, the Supreme Court imposed several measures on the government. For instance, the Federal Government, States, and Federal District, with the aid of the National Council of Justice, are to prepare, in 6 months, a plan to improve those conditions, and implement it in 3 years. The plans must cover the main problems of the prison system: (i) overcrowding and poor conditions; (ii) the excessive influx of prisoners; and (iii) the delayed release of prisoners. The Supreme Court will approve the plans, and their execution will be monitored by the National Council of Justice, with the Supreme Court's supervision.

ADDITIONAL NOTES

Rule Statement: "1. There is an unconstitutional state of affairs in the Brazilian prison system, responsible for the massive violation of prisoners' fundamental rights. This calls for the joint action of several authorities, institutions, and the community in order to reach an appropriate solution. 2. Hence, the Federal Government, States, and Federal District, alongside the Department of Monitoring and Inspection of the National Council of Justice (DMF/CNJ), must formulate plans to be submitted for the Supreme Court's approval according to the deadlines, directives, and aims set in this decision. These plans must comprise mostly the conditions of overcrowding, the poor quality of prisons, and the inflow and outflow of prisoners. 3. The Council of National Justice will carry out a study and regulate the creation of courts of execution of sentences proportional to the number of criminal courts and prisoners."



part 1



part 2



part 3

