

ADPF 378 MC

Impeachment Proceedings

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

Rapporteur:

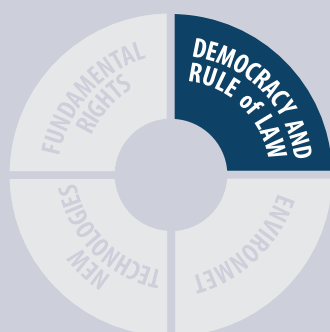
Justice Edson Fachin

Drafter of the Decision:

Justice Luís Roberto Barroso

Decision Date:

December 17, 2015

Matter:


CASE SUMMARY

A Claim of Non-Compliance with a Fundamental Precept (ADPF) to address the enforceability of the provisions of the Law of Impeachable Offences (Law 1,079/1950), which regulates the impeachment proceedings of the President of the Republic. It also discuss which provisions remain enforceable and how they should be interpreted according to the 1988 Constitution in order to guarantee the proper execution of the impeachment as per constitutional principles and norms.

The Claim challenges: (i) the role of the Chamber of Deputies and the Federal Senate in the impeachment proceedings; (ii) the nature of the vote (secret or open); (iii) the type of candidacy for the Special Commission of the Chamber of Deputies (nomination by the party leader or individual candidacy); (iv) the criteria for the establishment of this Commission; (v) the exercise of the right to defense; and (vi) the appropriate period for removing the defendant from office.

LEGAL REASONING

1. According to the 1988 Federal Constitution and Law 1,079/1950, impeachment is one of the existing proceedings in a Democratic Rule of Law. The process has a legal and political nature, which aims to analyze the accusations and decide on impeachable offences of a political nature committed by the President of the Republic. Judicial action is therefore limited to guaranteeing the due process of law.

2. The Chamber of Deputies is responsible for authorizing the commencement of the impeachment proceedings (article 51, item I of the 1988 Federal Constitution), exercising at first a political judgment necessary for the progress of the complaint. The Federal Senate is responsible for presiding over and trying the President of the Republic (article 52, item I of the 1988 Federal Constitution). These duties follow the interpretation already adopted by the Court during the impeachment of former President Fernando Collor de Mello.

- 3.** Regarding the impeachment proceedings carried out in the Chamber of Deputies, the Law of Crimes of Responsibility (Law 1,079/1950) provided for two deliberations by the Chamber: the first on the admissibility of the case; and the second on its validity. However, the STF held, in the case mentioned above, that the 1988 Federal Constitution overruled this idea and established that the Chamber's Full Court should decide the matter only once, with a qualified majority of two-thirds of its members (article 202, paragraph 7; article 217, paragraph 1; and article 218, paragraph 9 of the Chamber of Deputies' House Rules; and article 60, paragraph 2, and article 51, item I of the 1988 Federal Constitution).
- 4.** The Federal Senate, due to the lack of specific rules, used the same process for the impeachment of former President Fernando Collor de Mello. In this instance, the process is initiated by a simple majority of senators, based on an opinion prepared by a Special Commission. In case of approval, the President of the Republic is removed from office for a maximum of 180 days, with the Vice-President taking over on an interim basis.
- 5.** The leader of the party must nominate the candidates for the Special Commission of the Chamber of Deputies. Individual candidates are prohibited, as this would violate the principle of party autonomy (article 58, head paragraph and paragraph 1 of the 1988 Federal Constitution). The creation of the Special Commission must follow the criterion of proportionality, taking into account the representation of the parties and party blocs.
- 6.** In impeachment proceedings, all votes must be open to allow for greater transparency, control of the representatives, and legitimization of the process. Given the importance of this type of proceeding, which can lead to the removal and loss of the office of the President of the Republic, it is essential to ensure maximum transparency and publicity. Moreover, the secrecy of the vote is incompatible with the nature and seriousness of the proceeding for crimes of responsibility.
- 7.** Finally, impeachment proceedings must guarantee the due process of law. While the right to a preliminary defense is recognized, it is not mandatory once the Chamber of Deputies has received the complaint. The preliminary arraignment should be the last act in the proceeding, as it is an instrument of self-defense that strengthens the constitutional guarantees of the due process of law.

DECISION OF THE COURT

The Federal Supreme Court, in partially upholding the Claim of Non-Compliance with a Fundamental Precept, defined that the Chamber of Deputies is the competent body to authorize the commencement of the impeachment proceedings. The Federal Senate, on the other hand, is responsible for presiding over and trying the President of the Republic, who can only be removed from office once the process has been initiated in that legislative chamber.

In order to ensure greater transparency, control of representatives, and legitimacy of the proceedings, all votes related to the impeachment should be open, including the election for the Special Commission in the Chamber of Deputies. In addition, individual candidacies of deputies for the composition of this Commission are illegitimate.

The Court also ruled that, once the Chamber of Deputies has accepted the indictment, the right to preliminary defense, while recognized, is not mandatory. Finally, the preliminary arraignment should be the last act of the proceedings, since it is an instrument of self-defense that strengthens the constitutional guarantees of the due process of law.

ADDITIONAL NOTES

The decision took place in the context of the second national case of an impeachment proceeding of a President of the Republic after the enactment of the 1988 Federal Constitution. The first one, in 1992, resulted in the suspension of the political rights of former President Fernando Collor de Mello for eight years. The second one, in 2016, led to the removal of the then President Dilma Rousseff.



part 1



part 2



part 3