

ADPF 779

The Theory of Defense of One's Honor for Crimes against Women is Unconstitutional

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

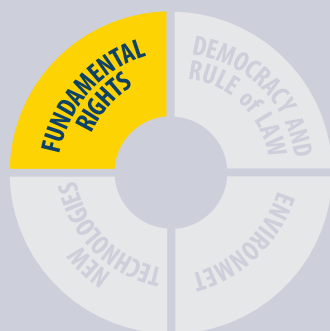
Rapporteur:

Justice Dias Toffoli

Decision Date:

August 1, 2023

Matter:



CASE SUMMARY

A Claim of Non-Compliance with a Fundamental Precept (ADPF) in which the constitutionality of a defense theory known as the “defense of one’s honor,” used in cases of femicide or violence against women, is challenged. This theory was typically used to exonerate those accused of femicide in jury trials where the jury panel had no technical knowledge. The petitioners claim its application violates the principles of human dignity (article 1, item III of the Federal Constitution) and the rights to life and gender equality (article 5, head paragraph of the Federal Constitution).

LEGAL REASONING

1. The theory of defense of one’s honor was usually employed in cases of femicide or violence against women to justify the wrongdoing, arguing it should not be considered an offense but sociably acceptable behavior. The argument was that homicide or violence are fair when the victim has been unfaithful to her partner, as this conduct supposedly hurt the offender’s honor.
2. The acceptance of the theory of defense of one’s honor in court has negative consequences for women and society, as it formalizes the inequality between men and women, naturalizes and encourages domestic violence against women and femicide, and contributes to the impunity of the aggressor.
3. For these reasons, the theory is unconstitutional and must not be used by the defense, the prosecution, the police, or the court itself, before or during criminal proceedings. Any reference to this theory could lead to the annulment of the evidence or the decision, even in the case of jury trials. It is the duty of the state to exercise a minimum degree of control over the decision of a jury when the conclusion is based on discriminatory, unworthy, and unconstitutional arguments, as is the case with the defense of one’s honor.

DECISION OF THE COURT

The Federal Supreme Court has ruled that the theory of defense of one's honor, used in criminal proceedings in cases of femicide or violence against women, is unconstitutional, as it violates the principles of human dignity (article 1, item III of the Federal Constitution), protection of life, and gender equality (article 5, head paragraph of the 1988 Federal Constitution). For this reason, such a theory must not be used at any stage of criminal proceedings, including before the jury trial, under penalty of nullity.

ADDITIONAL NOTES



Trial's
VIDEO

