

AP 470

Mensalão Judgment

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

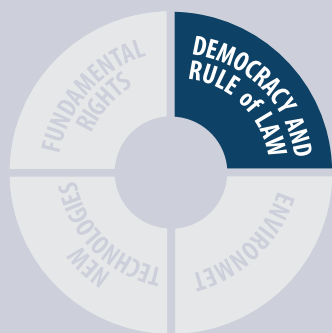
Rapporteur:

Justice Joaquim Barbosa

Decision Date:

December 17, 2012

Matter:



CASE SUMMARY

This Criminal Case (AP), to be originally processed by the Federal Supreme Court, concerns an elaborate scheme to pay monthly sums to representatives of several political parties in exchange for favorable votes on government projects in the Chamber of Deputies. The case involves the trial of prominent politicians and businesspersons accused of crimes against the financial system and public administration, such as bribery, embezzlement, money laundering, and conspiracy.

LEGAL REASONING

- 1.** The Federal Supreme Court (STF) had jurisdiction to try the defendants due to the jurisdictional prerogative of some of the defendants. The STF ruled that the non severance of the case for the defendants without jurisdictional prerogative would serve the interests of the criminal investigation and would not violate the principles of the appropriate court ascertained by law and the two-tiered system.
- 2.** The Court received the charge due to substantial evidence of the crimes attributed to the defendants. The crime of conspiracy was proven in the extensive evidentiary material, which demonstrated, in a contextualized manner, the existence of a stable and organized conspiracy, with a division of tasks aimed at committing crimes, into three nuclei: (i) political; (ii) operational/advertising; and (iii) financial nucleus. Each individual was responsible for specific actions or omissions essential to the achievement of the unlawful objectives.
- 3.** The payment of undue benefits to members of the National Congress, in exchange for political support, proved the crimes of active and passive bribery. Payments were identified for the then President of the Chamber of Deputies and several federal representatives, made by partners of the advertising agency involved in the scheme.
- 4.** The crime of embezzlement was showed by the misappropriation of public funds through fraudulent advertising

contracts and subcontracts, in which the services provided and the amounts received were incompatible, as found by audit teams from different bodies.

5. The crime of money laundering was defined by the concealment and disguise of the criminal origin of the sums received by the defendants, and the use of intermediary financial institutions for money laundering. The public agents involved were fully aware of the unlawful origin of the money paid in cash used in exchange for political support.

6. The removal from office of a representative convicted in a criminal case does not violate the principle of the separation of powers. The Federal Constitution granted the STF the power to preside over and try members of the National Congress for common criminal offenses¹ (article 102, item I, subitem *b* of the 1988 Federal Constitution). The application of the accessory penalty of disfranchisement of political rights is an effect of the final and unappealable decision (article 15, item III of the 1988 Federal Constitution).

DECISION OF THE COURT

The Federal Supreme Court convicted several defendants of conspiracy, active and passive bribery, embezzlement, and money laundering. The convictions varied according to each defendant's involvement in the crimes and included imprisonment and fines. Some defendants were acquitted due to insufficient evidence.

ADDITIONAL NOTES

The *mensalão* scandal is considered a historic milestone in Brazil for the punishment of politicians and businesspersons for committing white-collar crimes. The case received widespread media coverage and placed the Supreme Court at the center of press attention and public political debates.



part 1



part 2



part 3



part 4

¹ In a subsequent decision (public policy in AP 937), the STF stated that the jurisdiction to try common crimes committed by federal representatives is limited to those crimes committed during their term of office and related to the exercise of their office.