

ARE 1,267,879¹

Compulsory Vaccination of Children and Adolescents

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person²

Rapporteur:

Justice Luís Roberto Barroso

Decision Date:

December 17, 2020

Matter:



CASE SUMMARY

An Extraordinary Appeal lodged against a decision of the Court of Appeals of the State of São Paulo, which ruled that parents must vaccinate their underage children with the vaccines required by the Ministry of Health, based on the National Immunization Program (Law 6,259/1975) and the Statute of the Child and Adolescent (Law 8,069/1990). The appeal is centered on whether parents should be allowed to refuse to immunize their minor children due to personal convictions (article 5, items VI and VIII of the 1988 Federal Constitution).

LEGAL REASONING

1. The 1988 Federal Constitution protects freedom of conscience and mentions everyone has the right to make their personal choices (article 5, items VI and VIII of the 1988 Federal Constitution). However, as no right is absolute, freedom of conscience needs to be balanced with the right to life, the right to health (articles 5 and 196), and the prioritary protection of children and adolescents (article 227 of the 1988 Federal Constitution).

2. The State can impose mandatory vaccination as long as the immunizing product: (i) is duly registered with a health security body; (ii) is part of the National Immunization Program; and (iii) is made compulsory by legislation or competent authority. Brazilian law provides for mandatory vaccination for decades, recognizing vaccines as an effective and legitimate measure for public health security and the prevention of highly contagious diseases.

3. The health of children and adolescents must be prioritized, in accordance with the Statute of Children and Adolescents and the constitutional principle of the precedence of children. Parental authority does not allow parents to refuse mandatory inoculation for their children. They may not endanger the health of their children or third parties based on philosophical convictions.

¹ Adjudicated alongside ADI 6,586/DF and ADI 6,587/DF, on the vaccination against COVID-19, both with Justice Ricardo Lewandowski as the Rapporteur.

² This trial session was entirely conducted through videoconferencing (Resolution 672/2020/STF).

4. The phrase “mandatory vaccination” does not mean people may be forcefully vaccinated. It does, however, allow vaccination to be a requirement to practice certain actions (such as school enrollment) and government benefits (such as family allowance) or even attract punishment—which must observe the principles of reasonableness and proportionality.

DECISION OF THE COURT

The Federal Supreme Court ruled in favor of compulsory vaccination through approved vaccines listed in the National Immunization Program, considering it does not violate freedom of conscience, the philosophical conviction of parents, or parental authority.

ADDITIONAL NOTES

This case was adjudicated in the context of the COVID-19 pandemic. Particularly in Brazil, in addition to the challenges inherent to containing contagion, the country was placed in a context of disinformation and discouragement of vaccination caused by public bodies and agents, as well as a lack of federal-level coordination in vaccination.

Topic: The possibility for parents to refrain from vaccinating their children on the grounds of philosophical, religious, moral, and existential convictions (Topic 1,103).

Rule Statement: “The compulsory immunization through vaccines registered with a health security body is constitutional, provided that the vaccine is (i) listed in the National Immunization Program; (ii) made mandatory by law; or (iii) required by the Federal Government, States, the Federal District, or Municipalities, based on scientific and medical consensus. In such cases, it does not constitute a violation of freedom of conscience, parental authority, or the philosophical beliefs of parents or guardians.”



part 1



part 2



part 3



part 4

