

MI 283

Financial Reparations for Politically Persecuted Persons during Brazil's Military Dictatorship

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

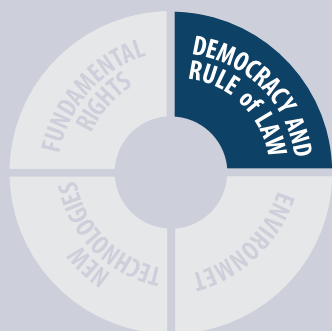
Rapporteur:

Justice Sepúlveda Pertence

Decision Date:

March 20, 1991

Matter:



CASE SUMMARY

A Writ of Injunction (MI) filed by a former officer, who was fired from the Air Force and prevented from exercising his occupation for decades, based on secret ordinances in force during the Military Dictatorship in Brazil. The petitioner claims that his right to financial reparation as a politically persecuted person, under article 8, paragraph 3 of the Temporary Constitutional Provisions Act (ADCT), had been violated due to the National Congress' inaction to propose legislation for the proper exercise of this right.

LEGAL REASONING

1. As a result of the inaction of the Legislative Branch to perform its constitutional duty (article 8, paragraph 3 of the ADCT), the Court recognized the violation of the petitioner's right to financial reparation as a politically persecuted person since the 1988 Federal Constitution established a deadline for this measure and the persecution had been definitively proved.
2. In view of the legislative inaction and the State's obligation to compensate for the damage suffered, the Court decided to: (i) set a reasonable time limit for overcoming the legislative delay (a common objective of the Writ of Injunction); and (ii) to recognize the petitioner's right to stand before court and claim an award of damages against the Federal Government, even in the absence of specific regulation.

DECISION OF THE COURT

The Federal Supreme Court (STF) ruled the case as an unconstitutional omission and determined that the National Congress delayed to enact a specific law guaranteeing the fundamental right to financial reparation for politically persecuted persons under article 8, paragraph 3 of the ADCT, of the 1988 Federal Constitution. The Court set a time limit of 45 days for the Congress to remedy the omission, and another 15 days for the President of the Republic to sign it into law. At the end of this period, the petitioner could request a judgment for the *quantum* of the compensation. The STF also stated that any subsequent law would not affect the decision, but would be applied in the most favorable way to the petitioner.

ADDITIONAL NOTES

In the context of the Writ of Injunction, the STF's case law was limited to recognizing the Legislative Branch's delay and urging it to act. From this decision on, however, the Court has evolved to set a time limit for the Legislative Branch to act and guarantee the petitioner's right, making this constitutional action more effective.