

MI 670¹

Right to Strike for Civil Servants

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

Rapporteur:

Justice Maurício Corrêa

Drafter of the Decision:

Justice Gilmar Mendes

Decision Date:

October 25, 2007

Matter:


CASE SUMMARY

A collective Writ of Injunction (MI) filed against the National Congress' delay in regulating the right of civil servants to strike, which makes it impossible for them to exercise it (article 37, item VII of the 1988 Federal Constitution). It is argued that legislative omission cannot be used to frustrate a constitutional guarantee. In view of this, it is requested that the National Congress be called upon to remedy the legislative omission and that, until a specific rule is enacted, the strike law applicable to workers in the private sector be applied to civil servants, thus guaranteeing the exercise of the right to strike.

LEGAL REASONING

1. The lack of regulation of the right of civil servants to strike compromises the exercise of this constitutional right and makes it difficult to control any abuses practiced in the context of strike movements that are in fact launched, creating a scenario of disorder that ends up harming the society itself. The topic also involves strategic and budgetary issues directly related to public services and interferes with institutions that are essential to the proper functioning of the Democratic Rule of Law.
2. The Federal Supreme Court has repeatedly recognized the Legislative Branch's delay in issuing a rule on the matter. Under such conditions, the Court's case law must move forward, under penalty of also constituting a judicial delay. Therefore, in addition to recognizing the Legislature's unconstitutional omission and setting a sixty-day delay for the National Congress to issue on the subject, the STF determines that, once this deadline has passed, the right can be exercised immediately by applying Laws 7,783/1989 and 7,701/1988 by analogy to civil servants' strikes, until the National Congress approves a rule on the matter.
3. Finally, it should be noted that the judge may, in the light of the specific case, define a more severe legal regime for the exercise of the right to strike, considering the essentiality and continuity of the public service, the public interest involved and the unavoidable needs of society.

¹ Joint judgment with MIs 708 and 712.

DECISION OF THE COURT

The Federal Supreme Court recognized the legislator's unconstitutional omission, set a sixty-day deadline for Congress to legislate on the matter and determined that Laws 7,783/1989 and 7,701/1988 should apply by analogy to public servants' strikes, until a specific rule is approved.

ADDITIONAL NOTES

This case represents an evolution in the Federal Supreme Court's case law when it comes to dealing with unconstitutional omissions. For many years, the STF limited itself to recognizing the Legislature's delay and urging it to act in Writ of Injunction. In some cases, over time, it has even made it possible to realize rights with effects only between the parties. However, in the case under review, the Court went further and supplied the missing rule, with general and binding effects for all civil servants, until the National Congress passed a law on the matter.

