

MS 21,564

Impeachment of President Fernando Collor de Mello

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

Rapporteur:

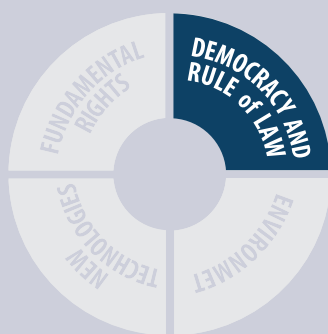
Justice Octavio Gallotti

Drafter of the Decision:

Justice Carlos Velloso

Decision Date:

September 23, 1992

Matter:


CASE SUMMARY

A Writ of *Mandamus* (MS), filed against an act of the President of the Chamber of Deputies, which establishes the rules for the impeachment proceedings following an accusation against the then President of the Republic. The petitioner alleges a violation of the constitutional principle of due process of law, especially with regard to the stages of the initial analysis of the complaint by the Chamber of Deputies and the manner of voting in the floor. The arguments are as follows: (i) the need for prior authorization by the Chamber of Deputies to preside over and try the President of the Republic for common criminal offenses and crimes of responsibility; (ii) the requirement of secret voting; and (iii) the unreasonable time for presenting a defense and the lack of authorization for the evidentiary stage.

LEGAL REASONING

1. Impeachment is the process for the trial of the President of the Republic for crimes of responsibility. Under the 1988 Federal Constitution, the Chamber of Deputies authorizes the commencement of impeachment proceedings (article 51, item I of the 1988 Federal Constitution), exercising the political judgment on the complaint presented against the government authority. The Federal Senate presides over and tries the President of the Republic (article 52, item I of the 1988 Federal Constitution) and receives both the accusation and the evidence necessary to prove the crime (article 86 of the 1988 Federal Constitution). The Senate also has to ensure that the accused has the right to a full defense (article 5 of the 1988 Federal Constitution).

2. According to Law 1,079/50 (article 23) and the Chamber of Deputies' House Rules (article 187, paragraph 1, item VI), voting in impeachment proceedings should be nominal and open in order to allow the population to oversee the actions of elected representatives. The defense period lasts ten sessions, based on an analogous application of the same House Rules (article 217, paragraph 1, item I).

DECISION OF THE COURT

The Federal Supreme Court partially granted a Writ of *Mandamus* to ensure that the President of the Republic has ten sessions in which to present his defense before the Senate.

ADDITIONAL NOTES

This decision dealt with the proceedings of Brazil's first impeachment process under the 1988 Federal Constitution. The impeachment of the President of the Republic and the decision of the STF made it possible to resolve the political crisis without disrupting the constitutional institutions. It also led to the definitive removal of the President and the suspension of his political rights for eight years.

