

## MS 26,603

### Party Switching and Removal from Office

**Country:**

Brazil

**Court:**

Federal Supreme Court

**Competent Court:**

Full Court

**Format of the Session:**

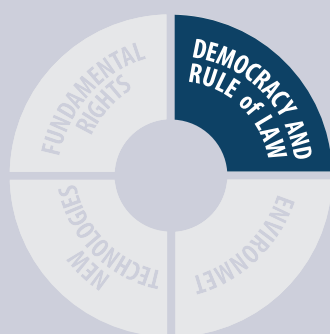
In-person

**Rapporteur:**

Justice Celso de Mello

**Decision Date:**

October 4, 2007

**Matter:**


#### CASE SUMMARY

A political party filed this Writ of *Mandamus* (MS) against an act by the President of the Chamber of Deputies, who rejected a request to declare vacant the positions of representatives who, after being elected under the proportional electoral system, requested the termination of their membership in a political party or switched it to another party without reason. The affected political party maintains that it has the right to keep the seats because, since in this electoral system, the mandates are obtained mainly by the votes received by the party and not by the candidates personally.

#### LEGAL REASONING

1. In the proportional system of open lists and nominal voting established by the 1988 Constitution, the number of seats to be filled by the party is calculated according to the number of votes received by the party and its candidates (article 14, paragraph 3, item V, and article 45, head paragraph of the 1988 Federal Constitution). In most cases, however, the elected candidates do not receive a minimum number of votes (electoral quota) and are elected based on the votes for the party.
2. The mandate is not a subjective right of the representative. Breaking party ties without reason and joining a party other than the one that made the parliamentary election possible constitutes party infidelity by the elected representative. This has negative consequences for the representative system (article 1, items I, II, and V of the 1988 Federal Constitution), such as: fraud against the sovereign will of the voters, arbitrary imbalance of forces in the Congress, offense against the sense of political responsibility, destabilization in the exercise of power, and deformation of government ethics.
3. Party disaffiliation is an exceptional act. Representatives have the right to retain their mandate in the following cases: (i) a significant change in the party's policy; or (ii) if they can prove a political persecution within the party they left. The Superior Electoral Court (TSE) can issue a resolution to regulate the justification procedure necessary to prove the occurrence of these exceptional situations, ensuring a due process of law (article 5, item LV of the 1988 Federal Constitution).

4. Although it is an act of violation of party loyalty, disaffiliation from the party without a reason does not invalidate the legislative and administrative acts practiced by the disloyal representative.
5. Since this is a substantial revision of the STF's case law, and in respect to the principles of legal certainty and the protection of trust, the Court determined that this decision would apply to future cases of party infidelity, from the date on which the TSE declared that the political mandate belonged to the party, and not to the representative.

## DECISION OF THE COURT

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The Federal Supreme Court ruled that political parties are the holders of electoral mandates. As a result, cases of party infidelity—voluntary termination of party membership or a representative changing to another political party without reason—will result in loss of the mandate. The Court adjusted the effects of this decision for future cases, taking into account the principles of legal certainty and the protection of trust.

## ADDITIONAL NOTES

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The aim of this decision was to prevent the multiple party changes that occurred after the proportional elections, which compromised the plural and minority representation that this electoral system was intended to achieve, thus disrupting the proper functioning of popular representation.