

RE 466,343

The Civil Imprisonment of an Unfaithful Bailee Goes Against International Treaties

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

Rapporteur:

Justice Cezar Peluso

Decision Date:

December 3, 2008

Matter:


CASE SUMMARY

An Extraordinary Appeal (RE) filed by a financial institution against a decision by the São Paulo State Court of Appeals, which finds that the civil imprisonment of a person in default of a secured fiduciary sale contract is unconstitutional. The plaintiff claims that the failure to deliver the asset given as security for the loan characterizes the defendant as an “unfaithful bailee”, which authorized their imprisonment under article 5, item LXVII of the 1988 Federal Constitution¹.

LEGAL REASONING

Brazil has ratified and internalized the American Convention on Human Rights (Pact of San José, Costa Rica), which prohibits civil imprisonment for debt. This Convention is an international human rights treaty and has suprallegal status. It is below the Constitution, but takes precedence over ordinary and complementary laws. Under these conditions, even if the 1988 Constitution authorized the civil imprisonment of the unfaithful bailee, it would not be applicable due to the repealing effect of the international treaty on the non-constitutional laws that regulate imprisonment.

DECISION OF THE COURT

The Federal Supreme Court ruled the impossibility of civil imprisonment of debtors as a means of collecting property debts, except in cases of non-fulfillment of duties of support, according to article 7, item 7 of the American Convention on Human Rights.

¹ In a secured fiduciary sale contracts, such as the one in this case, a person takes out a loan to buy a durable good. They then offer the ownership of the good as collateral for the debt until the loan is fully paid. If the installments are not paid to the financial institution, the creditor can repossess the asset, sell it, and pay off the debt. The debtor, who has become the bailee of the asset, has the duty to hand it over.

ADDITIONAL NOTES

In the decision, the Supreme Court affirmed, for the first time, the supralegal status of international human rights treaties, which contributed to the greater internal stability of these norms.

Topic: Possibility of civil imprisonment of the unfaithful bailee in the Brazilian legal system (General Repercussion Topic 60).

Rule Statement: “The civil imprisonment of an unfaithful bailee is unlawful, regardless of the type of bailment.”

Binding Precedent 25

“The civil imprisonment of an unfaithful bailee is unlawful, regardless of the type of bailment.”

