

## RCL 4,335

### Downgrading the Incarceration Conditions of Convicts for Heinous Crimes

**Country:**

Brazil

**Court:**

Federal Supreme Court

**Competent Court:**

Full Court

**Format of the Session:**

In-person

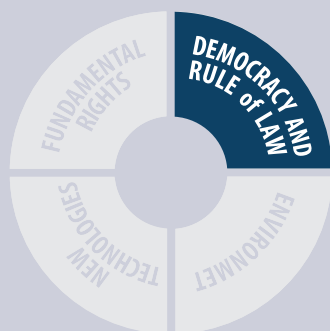
**Rapporteur:**

Justice Gilmar Mendes

**Decision Date:**

March 20, 2014

**Matter:**



#### CASE SUMMARY

A Complaint (Rcl) filed against a decision of the Federal Supreme Court rejecting the claim to downgrade the incarceration sentence of those convicted of heinous crimes, based on a provision in the Heinous Crimes Law, which forbids downgrading (article 2, paragraph 1 of Law 8,072/1990). The plaintiff alleges the Court declared the norm unconstitutional in Habeas Corpus 82,959/SP and, later, consolidated this understanding in Binding Precedent 26. The Court, however, argues the decision related to the Habeas Corpus only affects the parties to the suit, having no effects on third parties.

#### LEGAL REASONING

1. In Habeas Corpus 82,959/SP, the Supreme Court declared that denying prisoners convicted of heinous crimes the possibility of downgrading their incarceration conditions was unconstitutional. In this decision, the Court found that article 2, paragraph 1 of Law 8,072/1990 breached the constitutional principle of the individualization of punishment (article 5, item XLVI of the Federal Constitution) and failed to consider that the aim of downgrading incarceration conditions is to reform a prisoner who, at some point, will return to social life.
2. The unconstitutionality declared in Habeas Corpus 82,959/SP was consolidated by Binding Precedent 26, which standardized the Court's case law and had an expansive effect on the Court's precedents, guaranteeing the possibility of downgrading to all convicts for heinous crimes in the country who meet the requirements for it.
3. The constitutional provision that establishes that the Federal Senate must suspend the effects of laws the Supreme Court declares unconstitutional (article 52, item X of the 1988 Federal Constitution) must be interpreted as a power to inform, exercised simply to ensure the publicity of the Court's decisions on unconstitutionality.

## DECISION OF THE COURT

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The Federal Supreme Court ruled prisoners convicted of heinous crimes may have their incarceration conditions downgraded. It also determined judges must assess whether individuals interested in the Complaint fulfill the requirements for the benefit, according to Binding Precedent 26. Moreover, the judgment issued in this Complaint restated the position that decisions by the Federal Supreme Court produce legal effects of general scope, regardless of the need for the Federal Senate to publicize them.

## ADDITIONAL NOTES

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### Binding Precedent 26

"For the purposes of downgrading the incarceration conditions of a convict for a heinous or equivalent crime, the court in charge of executing the sentence must observe the unconstitutionality of article 2 of Law 8,072 of July 25, 1990, without prejudice to assessing whether or not the convict meets the objective and subjective requirements for the benefit, and may determine, for this purpose, in a reasoned manner, an assessment of the convict's situation."



part 1



part 2