CODICES

*Identification:*

a) Brazil / b) Federal Supreme Court / c) Single-judge decision / d) 22.04.2020 / e) Provisional Relief on Civil Original Action 3.385 (ACO 3385 TP) / f) The Union cannot request items bought by a regional state (ventilators) to combat Covid-19 / g) *Diário de Justiça Eletrônico* 99 (Justice Official Gazette), 24.04.2020 / h).

*Keywords of the systematic thesaurus:*

01.06.08 Constitutional Justice - Effects - **Influence on everyday life**

03.06.02 General Principles - Structure of the State - **Regional State**

04.08.01 Institutions - Federalism, regionalism and local self-government - **Federal entities**

05.03.02 Fundamental Rights- Civil and political rights - **Right to life**

05.04.19 Fundamental Rights- Economic, social and cultural rights - **Right to health**

*Alphabetical index:*

[Disease](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Disease%22%5d), [infectious](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Disease,%20infectious%22%5d) / [Dispute](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Dispute%22%5d), [competence](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Dispute,%20competence%22%5d), [central government](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Dispute,%20competence,%20central%20government%22%5d), [local government](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Dispute,%20competence,%20central%20government,%20local%20government%22%5d) / Division of powers / Executive, power, competences, scope / [Fundamental right](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Fundamental%20right%22%5d), [protection](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Fundamental%20right,%20protection%22%5d) / [Health](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Health%22%5d), [protection](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Health,%20protection%22%5d), [effective](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Health,%20protection,%20effective%22%5d) / [Health](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Health%22%5d), [public health](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Health,%20public%20health%22%5d), [public interest](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Health,%20public%20health,%20public%20interest%22%5d) / [Responsibility](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Responsibility%22%5d), [authority](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Responsibility,%20authority%22%5d) / [Responsibility](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Responsibility%22%5d), [constitutional](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Responsibility,%20constitutional%22%5d) / State, duty, protection of life and safety /

*Headnotes:*

According to the Constitution (Article 5, XXV), unless the state of defense or state of siege is declared and in force, the Union shall only take private properties. Thus, the federal government has no power to request ventilators bought by a state-member.

*Summary*:

The state of Maranhão reports that it acquired more than sixty-eight ventilators from the company Intermed Equipamento Hospitalar Ltda. to equip intensive care units (UTI, in the Portuguese acronym). Without these ventilators, in cases of medium and high severity, the treatment of COVID-19 is completely insufficient.

Subsequently, the Union requested from the company Intermed, on a compulsory basis, all pulmonary ventilators already acquired by the State of Maranhão. In addition, the Union also requested all ventilators that would be produced in the next 180 (one hundred and eighty) days.

The petitioner claims that the Federal Constitution forbids a federal entity from taking assets, administrative personnel and services of another entity (Articles 1, 18, 25 and 30).

He highlights that, in addition to the damage caused to citizens and the effects on their integrity and health, the action adopted by the Union´s taking wastes the resources spent on the construction of intensive care units, which would be underused in case of lack of ventilators.

At the beginning of his decision, justice-rapporteur Celso de Mello addressed the jurisdiction of the Federal Supreme Court to preside over and try this case. He pointed out that the Federal Supreme Court has the duty of acting in cases of federative conflict. In this case, the litigation undermines the exercise of the powers of the federal entities.

According to justice-rapporteur, the numerous intensive care units destined for COVID treatment in that state and that will not have the main necessary equipment to cope with the severe cases of the disease, in addition to the risks of evolving to death, demonstrate the presence of *fumus boni iuris* and *periculum in mora*. Thus, he granted the provisional relief.

As per justice-rapporteur, the relationship between the Union, the state-members , the Federal District and the municipalities are based on the Federal Constitution, and their actions cannot transgress the provisions established thereof, otherwise the institutional autonomy of the federal entities is nullified.

Justice Celso de Mello emphasized that, under the Federal Constitution, unless a state of defense or a state of siege is declared and in force, the Union shall only take private properties (Article 5, XXV).

This means, therefore, that it is unacceptable for the Union to request goods, services, administrative personnel and resources from municipalities under an ordinary state of affairs, without the enactment of any of the constitutional crisis systems (state of defense and/or state of siege).

Justice Celso de Mello stressed the need to enforce the fundamental rights of the person, among which, by their precedence and supremacy, the right to life and the right to health. Therefore, the rapporteur granted the provisional relief of urgency to ensure the state of Maranhão, at an early stage, adequate protection to the health of its residents.

He reinforced the need for the Union to fully respect and guarantee the right to life and health. Therefore, he determined that, within 48 hours, the company Intermed Equipamento Médico Hospitalar Ltda. had to deliver to the State of Maranhão 68 (sixty-eight) ventilators acquired by the referred state, through the Contract 67/2020.

*Supplementary information:*

- Articles 2º.V and VI and §§ 1º and 2º; 5º. XXV; 6; 102.I, f; 136, § 1º, II; 139.VII; 196; 237.head paragraph of the Federal Constitution of 1988.

- Brazilian Code of Civil Procedure article 300.head paragraph and § 3º.

- Law 8.080/90, article 15.XIII.

- Law 13.979/2020, article 3º.VII.

- By-Laws of the Federal Supreme Court, articles 247, § 1º and art. 110.I.

*Languages:*

Portuguese.

CODICES

*Identification:*

a) Brazil / b) Supreme Federal Court / c) Full Court / d) 13.05.2020 / e) Referendum of the provisional remedy in the Direct Action of Unconstitutionality 6357 (ADI 6357 Ref-MC) / f) remove requirements from laws to expand prevention programs against Covid-19 to protect the most vulnerable population / g) *Diário da Justiça Eletrônico* 137 (Justice Official Gazette), 03.06.2020\* / h).

*Keywords of the systematic thesaurus:*

04.06.03 - Institutions - Executive bodies - **Application of laws**

04.08.07 - Institutions - Federalism, regionalism and local self-government - **Budgetary and financial aspects**

04.10.02 - Institutions - Public finances - **Budget**

04.10.07 - Institutions - Public finances - **Taxation**

*Keywords of the alphabetical index:*

[Budget Act](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Budget%20Act%22%5d) / [Budget](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Budget%22%5d), [control](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Budget,%20control%22%5d), [state](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Budget,%20control,%20state%22%5d) / Budget Law / [Budget](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Budget%22%5d), [law](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Budget,%20law%22%5d), [amendment](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Budget,%20law,%20amendment%22%5d) / [Budget](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Budget%22%5d), [supplementary](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Budget,%20supplementary%22%5d) / [Economic and financial crisis](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Economic%20and%20financial%20crisis%22%5d) / [Economic and financial situation](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Economic%20and%20financial%20situation%22%5d), [extremely difficult](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Economic%20and%20financial%20situation,%20extremely%20difficult%22%5d) / [Economic policy](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Economic%20policy%22%5d), [measure](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Economic%20policy,%20measure%22%5d) / [Economic situation](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Economic%20situation%22%5d), [adjustment](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Economic%20situation,%20adjustment%22%5d) / [Economy](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Economy%22%5d), [transition period](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Economy,%20transition%20period%22%5d) / [Emergency measure](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Emergency%20measure%22%5d) / 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*Headnotes:*

The requests to disregard the requirements provided by the Act on Fiscal Responsibility and the Budget Directives Law, due to the need to increase unforeseen and necessary expenditure to combat COVID-19, which is the main question under this action, became moot by the enactment of a new Constitutional Amendment that provides on the same subject un-der discussion in this case.

*Summary*:

The president of the Republic filed a Direct Action of Unconstitutionality before the Federal Supreme Court to discharge some requirements of the Act on Fiscal Responsibility (Supplementary Law 101/2000 – LRF, as in the Portuguese acronym) and the Budget Directives Law (Law 13,898 / 2020 – LDO, as in the Portuguese acronym ). He intended to create and expand prevention programs against COVID-19 and protect the population vulnerable to the pandemic.

To increase indirect tax expenses and obligatory spending of continuous nature, the LFR requires an estimate of the budget and financial effect, compliance with LDO, demonstration of the resources´ origin and financial offsetting of their effects in the subsequent fiscal years.

The initial pleading highlighted that the expenditures referred to in these rules “were those aimed at implementing ordinary and regular public policies, which could be subject to adjustment to Budget Laws due to their potential predictability". Despite the provisions of LRF allowing exceptions for the budget requirements, such exceptions would not be sufficient to guarantee the prompt decision-making process required by the current scenario.

According to the plaintiff, enforcing the rules mentioned amid the current COVID-19 outbreak could violate the dignity of the human person, the guarantee of the right to health, the social values of work and the guarantee of the economic order.

Therefore, the plaintiff requested the Court to interpret the norms according to the Constitution in order to remove the requirement to demonstrate the budgetary adequacy and compensation in relation to the creation and the increase of public programs aimed at confronting the calamity created by the COVID-19´s dissemination.

The petitioner pointed out that the current context of sanitary, fiscal and economic crisis would require planning emergency public policies and that they were unpredictable when formulating the respective budget laws and, especially, the LRF.

In addition, the petitioner stated that the request was limited to ruling out the application of such preconditions "concerning mainly the expenses needed to face the state of calamity”.

On March 29, 2020, justice-rapporteur Alexandre de Moraes granted a provisional measure to rule out the application of LFR and LDO articles during the state of public calamity and for the sole purpose of combating the pandemic of COVID-19. The Justice based the decision on a judgment of probability and the requirements of *fumus boni juris* and *periculum in mora* were present.

According to him, suspending the provisions exceptionally did not conflict with the fiscal prudence and intertemporal budget balance enshrined by the LRF, because no budget spending would be carried out based on indefinite legislative proposals, characterized by political opportunism, inconsequence, discouragement or improvisation in Public Finance.

The provisional measure authorized budgetary expenses to protect life, health and the very subsistence of Brazilians affected by such serious situation; which are fundamental rights constitutionally guaranteed and worthy of effective and concrete protection.

Justice Alexandre de Moraes clarified that the provisional measure applies to all federal entities that have decreed a state of public calamity because of COVID-19 pandemic, in exceptionally and temporarily means.

On May 13, 2020, the Full Court of the Supreme Federal Court, by a majority, affirmed the provisional measure previously granted. However, the Court dismissed the Direct Action of Unconstitutionality due to the later enactment of Constitutional Amendment (EC) 106/2020, which instituted an extraordinary fiscal, financial and contracting regime to deal with the national public calamity resulting from the pandemic. The Court emphasized that the EC 106/2020, also called "War Budget", did not turn the challenged law constitutional in consequence, but rather confirmed the acts previously performed.

Finally, the Court asserted that article 3 of EC 106/2020 replaces the very understanding of the provisional measure granted, since it applies to the Union, the states and the municipalities. Although the action had become moot, the Court granted interpretation to Article 3 highlighting its application to the three entities of the Federation. In turn, article 2 of EC 106/2020 provides that not only the Union is responsible to cope with the calamity; but also the states and the municipalities.

*Supplementary information:*

\* Date the minutes of judgment was published. The entire content of the decision is pending publication. Plenary session held by videoconference according to Resolution 672/2020/STF.

- Federal Constitution: articles 1.I and III; 6, head provision; 170, head provision; 193 and 196

- Constitutional Amendment 106/2020.

- Supplementary Law 101/2000.

- Law 13,898/2019.

*Languages:*

Portuguese.

CODICES

*Identification:*

a) Brazil / b) Federal Supreme Court / c) Full Court / d) 14.05.2020 / e) Referendum of the provisional remedy in the Direct Action of Unconstitutionality 6359 (ADI 6359 Ref-MC) / f) Suspension for 30 (thirty) days of the deadline for party affiliation, electoral domicile and disengagement from public service. / g) *Diário da Justiça Eletrônico* 137 (Justice Official Gazette), 03.06.2020 \* / h).

*Keywords of the systematic thesaurus:*

01.03.04.06 Constitutional Justice – Jurisdiction - Types of litigation - **Litigation in respect of referendums and other instruments of direct democracy**

04.09.07.02 Institutions - Elections and instruments of direct democracy - Preliminary procedures - **Registration of parties and candidates**

*Keywords of the alphabetical index:*

Dismissal, obligatory period / Disease, infectious / Election to Parliament, law/ [Election](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Election%22%5d), [association](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Election,%20association%22%5d) / 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*Headnotes:*

The established deadlines for the municipal elections that will take place on October this year shall remain in force, despite the state of pandemic caused by COVID-19, under penal-ty of violation of the democratic principle and popular sovereignty.

*Summary*:

For the next elections that will take place in Brazil on October 2020 the legislation provides that candidates must have their party affiliation approved up to six months before the elections and that they must have electoral domicile in the respective jurisdiction for a period of 6 (six) months. A supplementary law also provides that people holding public office or positions shall leave their activities within the period established by law.

The Progressives Party (PP) filed a Direct Action of Unconstitutionality and requested the suspension for thirty days of the deadline for party filiation, electoral domicile and disengagement from public service for those who were interested in running for the 2020 elections. The deadline would start running on 4 April 2020.

According to the PP, although the contested normative acts are still constitutional, they would be in transition towards an unconstitutionality status, due to the circumstances arising from the measures to confront COVID-19 pandemic, since they make it impossible to fulfil the democratic principle and the popular sovereignty in the 2020 elections.

The PP referred to the deadlines provided for in article 9, head paragraph, of Law 9,504/1997 (Law of Elections), as well as in article 1, IV, V and VII, Supplementary Law 64/1990 and, by extension, article 10, head paragraph and paragraph 4, of Resolution 23,609/2019 of the Superior Electoral Court, which provide for the selection and registration of candidates for the elections, and the related provisions of Resolution 23,606/2019 of the Superior Electoral Court, relating to the 2020 Election Calendar.

The petitioner pointed out that he did not intend to anticipate the 2020 elections nor extend offices of current political agents, who will have terms ending next December (mayors, municipal councilors and senators). He argued that, because of measures limiting the locomotion of people and the right to assembly, filling new filiations would be compromised. The political party also mentioned the lack of engagement of women in politics, which would prevent the fulfillment of gender quotas, as required by Elections Law.

For the PP, the pandemic also affects the holder of an office or position in the government bodies who intend to run for elections. The petitioner cited, as an example, the state and municipal health secretaries who would wish to run for an elective office for the next elections, however, they are under strong pressure to remain in their positions, as they are directly involved in the formulation or implementation of public policies to contain COVID-19. In such circumstances, these people would be torn between keeping their positions and functions, which would sacrifice their candidacy projects; or resigning from office to comply with the rules of disengagement and compete in the 2020 election.

Justice-rapporteur Rosa Weber rejected the provisional measure. The Justice pointed out that, in times of uncertainty, the preservation of established procedures for the expression of popular will, of the institutions that shape democracy, despite their fallibility, may be one of the few safeguards of normality.

The Full Court of the Federal Supreme Court, on May 14, 2020, by a majority, fully affirmed the rapporteur’s decision. According to the Court, the immediate suspension of the deadlines provided for in the contested rules would weaken the protections against the abuse in the exercise of office, position or job in the government bodies or associated entities. Such a suspension of deadlines would also disproportionately increase the risk of regular and legitimate elections and, consequently, produce situations with even greater potential risk for the democratic principle and popular sovereignty. Moreover, it would jeopardize the unamendable clause of periodic suffrage (Federal Constitution, article 60, paragraph 4, item II) and, consequently, popular sovereignty and the Democratic State of Law (Federal Constitution, article 1, sole paragraph).

The Court stated that the judicial protection of the electoral process is based on the Constitution prevalence, which established a Democratic State of Law marked by independence and harmony among the Legislative, Executive and Judicial branches. In this context, the rules establishing the rites and procedures inherent to democracy should be treated as what they are: guarantees of the perennial existence of the democratic regime. The idea of democracy, particularly representative democracy, cannot be treated legally as a merely abstract concept, a vague ideal or simple rhetoric. Deadlines such as the one of disengagement are not mere formalities, but aim to ensure the preponderance of isonomy, an expression of the republican principle itself, in the electoral dispute. If they are not complied with, the very legitimacy of the electoral process may be undermined.

According to the Court, in view of the exceptional measures to face the coronavirus (COVID-19) pandemic, the idea of extending electoral deadlines, with the postponement sought, can be tempting. Nevertheless, the constitutional history recommends that, especially in crisis situations, the preservation of the established procedures for the expression of the popular will and of the institutions that shape democracy should be sought to the maximum. Despite their fallibility, they may be one of the few safeguards of normality.

The Court pointed out that, according to a report released by the Superior Electoral Court to monitor the impacts of the COVID-19 pandemic, with a view to the 2020 municipal elections, in light of the current electoral calendar; the Electoral Court has, so far, material conditions to implement elections this year.

The Federal Supreme Court concluded that the risk of weakening the democratic system and the rule of law itself related to the disruption of the electoral deadlines, as a result of the acceptance of the provisional claim, appears to be a more serious risk than the damage claimed due to the maintenance of deadlines in the current circumstances. When dealing with controversial issues, one should not forget the inherent importance of the democratic process and the sacred value of suffrage.

*Supplementary information:*

- Date of publication of the minutes of judgment. The full content of this decision was pending publication when this summary was submitted. This judgement was held by videoconference in accordance with Resolution 672/2020/STF.

- Articles 1; 14 and 17 of the Federal Constitution of 1988;

- Constitutional Amendment 106/2020;

- Supplementary Law 64/1990;

- Law 9,504/1990;

- Resolution 23,609/2019 of the Supreme Electoral Court – the choice and registration of candidates for the elections;

- Resolution 23,606/2019 – Electoral Calendar (elections 2020)

*Languages:*

Portuguese.

CODICES

*Identification:*

a) Brazil / b) Federal Supreme Court / c) Full Court / d) 17.04.2020 / e) Referendum of the provisional remedy in the Direct Action of Unconstitutionality 6387 (ADI 6387 Ref-MC) / f) / g) *Diário da Justiça Eletrônico* (Justice Official Gazette) 137, 03.06.2020 \* / h).

*Keywords of the systematic thesaurus:*

01.05.04.07 Constitutional Justice - Decisions - Types - **Interim measures;**

05.03.32.01 Fundamental Rights - Civil and political rights - Right to private life - **Protection of personal data**

05.03.36.02 Fundamental Rights - Civil and political rights - Inviolability of communications - **Telephonic communications**

*Keywords of the alphabetical index:*

Data, access, public interest / Data, personal, protection/ Data, use, purpose limitation, principle / Data protection, unnecessary personal data, information concerning health Disease, infectious / Information, access, limit / Information, access, denial / Information, access, reasonable / Information, disclosure / Information, duty to provide / Information, obligation to provide / Information, right / Personal privacy, right / Provisional measure / Telephones, cell.

*Headnotes:*

The practice of sharing data by telecommunications companies with the Brazilian Institute of Geography and Statistics Foundation, for supporting official statistical production during the public health emergency due to coronavirus (COVID-19), violates the right to intimacy and private life.

*Summary*:

In five Direct Actions of Unconstitutionality jointly decided, the Federal Council of the Brazilian Bar Association and political parties questioned the constitutionality of the Provisional Presidential Decree 954/2020. Such measure enabled telecommunication companies to share data with the Brazilian Institute of Geography and Statistics Foundation (IBGE, as in the Portuguese acronym), for supporting official statistic production during an emergency public health situation resulting from the coronavirus (COVID-19).

In short, the decree obliges fixed and mobile telephone companies to disclosure the list of names, telephone numbers and addresses of their consumers, individuals or legal entities, to IBGE Foundation.

For the petitioners, the decree violates the provisions of the Federal Constitution that ensure the dignity of the human person, the inviolability of intimacy, of private life, of honor and of one´s reputation, besides the confidentiality of data.

Justice-rapporteur Rosa Weber granted the provisional measure and suspended the effectiveness of the Decree 954/2020. The rapporteur emphasized that the emergency scenario resulting from the health crisis or the need of specific data to formulate public policies to cope with it were not underestimated. However, their fight cannot legitimize the violation of fundamental guarantees enshrined in the Constitution.

According to rapporteur, the conditions under which the use of digital personal data takes place, by public or private authorities, is one of the greatest contemporary challenges to the right to privacy.

As per Justice Rosa Weber, paragraph 1 of Article 2 is the only provision of the Decree 954/2020 addressing the purpose and method to use the data. However, the provision states only that the data will be exclusively used by IBGE Foundation to produce official statistic, aiming to conducting non-presential interviews for household surveys. The decree does not delimit the object of the statistics to be produced, nor the specific purpose, nor the amplitude. It also does not clarify the need to make the data available or how it would be used.

Justice-rapporteur pointed out that the decree did not demonstrate legitimate public interest to share personal data of telephone service users, considering the necessity, adequacy and proportionality of the measure. In addition, the executive branch had the responsibility to do so when issuing it.

Thus, although the decree’s wording mentioned that the shared data would be confidential, the decree did not present a technical or administrative mechanism capable of protecting the personal data from unauthorized access, accidental leakage or improper use either in its transmission or in its processing. It merely delegates the procedure to share data to an act of the president of the IBGE Foundation, without offering sufficient protection to the relevant fundamental rights at stake.

These situations would be aggravated by the fact that the General Law on the Protection of Personal Data (Law 13,709/2018) was not yet in force. The law defines the criteria for the liability of agents for any damage that may occur because of the processing of personal data.

On May 7, 2020, the Full Court of the Federal Supreme Court, by a majority, affirmed the provisional measure to suspend the effectiveness of the Provisional Presidential Decree 954/2020. The Court asserted that the right to privacy and its consequent rights to intimacy, honor, and image emanate from the recognition that the individual personality deserves to be protected in all its manifestations. In order to apply such rights, the Federal Constitution provides, in article 5, XII, the inviolability of the confidentiality of correspondence and telegraphic communications, data and telephone communications, except, in the latter case, by a court order, in the cases and in the manner established by law for the purposes of criminal investigation or criminal prosecution.

For the Court, the Decree 954/2020 does not meet the constitutional requirements regarding the effective protection of Brazilians' fundamental rights.

The Court also pointed out that IBGE website reported a partnership with the Ministry of Health to implement a version of the National Continuous Household Sample Survey (NCHSS) focused on monitoring COVID-19 (NCHSS COVID). The research is focused on quantifying the spread of COVID-19 pandemic and its impacts on Brazilian labor market.

To define the sample of the new survey, IBGE used a base of 211 thousand domiciles that participated in NCHSS Continuous in the first quarter of 2019 and selected those with registered telephone number. According to the Court, this fact would be sufficient by itself to highlight that the system of data sharing as disciplined in the decree is needless and excessive.

The Federal Supreme Court concluded that the permission to use the data collected to produce official statistics thirty days after the pandemic be over was excessive. In addition, article 4, single paragraph, of the Decree 954/2020 was disproportionate when allowing the conservation of personal data by the public entity, for a time that clearly exceeds what is strictly necessary to fulfil its stated purpose, which is to support statistical production from COVID-19.

*Supplementary information:*

- Date of publication of the minutes of judgment. The full content of this decision was pending publication when this summary was submitted. \*This decision was rendered by videoconference according to Resolution 672/2020/STF;

- Articles 5.head paragraph, 5.X, 5.XII, 5.LIV of the Federal Constitution of 1988;

- Law 13,709/2018 - General Personal Data Protection Act;

- \*\* The Brazilian Institute of Geography and Statistics is one of the main providers of data and information in the country. The "IBGE Foundation" nomenclature is used in administrative or legal documents relating to the Institute.

*Cross-references:*

Federal Supreme Court:

- Direct Actions of Unconstitutionality nºs 6388, 6389, 6390 e 6393 (julgamento conjunto com a ADI 6387).

*Languages:*

Portuguese.

Codices

*Identification:*

a) Brazil / b) Federal Supreme Court / c) Full Court / d) 21.05.2020 / e) Provisional remedy on the Direct Action of Unconstitutionality 6421 (ADI 6421-MC) / f) public agents´s liability for action and omission in acts related to the covid-19 pandemic / g) *Diário da Justiça Eletrônico* 137 (Justice Official Gazette), 17.06.2020\* / h).

*Systematic thesaurus:*

04.06.10.01.02 Instituições - Órgãos executivos - Responsabilidade - Responsabilidade jurídica - **Responsabilidade civil**

04.06.10.01.03 Instituições - Órgãos executivos - Responsabilidade - Responsabilidade jurídica - **Responsabilidade penal**

*Alphabetical index:*

[Civil servant](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Civil%20servant%22%5d), [authority](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Civil%20servant,%20authority%22%5d), [misuse](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20index:%22Civil%20servant,%20authority,%20misuse%22%5d) / [Civil 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*Headnotes:*

Authorities must observe technical and scientific criteria of medical and sanitary entities when carrying out their actions during COVID-19 pandemic. Their actions are subject to the principle of prevention and of precaution, that is, if there is any doubt as to the effects of any measure, authorities should not apply it, as self-restraint must guide the Administration.

*Summary:*

The Brazilian Press Association and six political parties filed Direct Actions of Unconstitutionality against the Provisional Presidential Decree (MP, in the Portuguese acronym) 966/2020 that limits public officials´ liability during the COVID-19 pandemic.

Article 1 of the decree provides that public agents can only be held liable, in civil and administrative areas, if they act or omit themselves intentionally or in a gross error for the performance of acts directly or indirectly related to: a) public health emergency due to COVID-19 pandemic; and, b) striving against the economic and social effects resulting from COVID-19 pandemic.

Its first paragraph also provides that liability for technical opinion will not automatically extend to that person who has adopted it as the basis for the decision-making act.

In turn, article 2 identifies as gross error the “manifest, evident and inexcusable error performed with serious fault, characterized by an action or omission with a high degree of negligence, imprudence or malpractice”.

The plaintiffs claim that when dealing with liability for damages caused by authorities, the Federal Constitution does not differ the types of fault – weather serious or simple - that give rise to the possibility of filing a claim for compensation to the State for the damage caused.

The petitioners also maintain that the definition of “gross error” in the decree is vague and creates obstacles to the inspection and control of administrative acts, in addition to providing a permissive environment during and after the pandemic.

According to them, the decree subverts the principle of civil liability, by providing that the causal link between the performance of an act and the harmful result does not entail authorities´ liability. They emphasize that this provision violates the right to compensation for material, moral and reputation damage.

Finally, the petitioners point out that the interpretative parameters placed in the decree to make the existence of gross error appear extremely open and fluid, in order to hinder civil and administrative liability of public authorities.

The Federal Supreme Court found that the subject addressed in the decree is relevant and urgent, which identify provisional measures.

The Court clarified that the purpose of this decree was to provide safety to public officials who have decision-making powers, by minimizing their responsibilities in treating the disease and combating its economic effects.

Thus, the Court, by a majority, partially granted the provisional measure to confer interpretation according to the Constitution to articles 1 and 2 of the Decree 966/2020.

In relation to article 1, the Court decided that the authority responsible for the decision must demand that the technical opinion deals expressly with: (i) the scientific and technical standards and criteria applicable to the matter, as established by nationally and internationally acknowledged organizations and entities; (ii) the constitutional principles of precaution and prevention.

With regard to article 2, the Court asserted that when outlining gross error one must take into account the observance, by the authorities: (i) of scientific and technical standards, norms and criteria, as established by internationally and nationally known organizations and entities; as well as (ii) the constitutional principles of precaution and prevention.

The Court pointed out that one of the problems in Brazil is that the control of Public Administration acts comes many years after the relevant facts, when, many times, there is no longer any record, in memory, of the emergency situation, uncertainties and vagueness that led the administrator to decide.

Situations that involve acts such as corruption, overpricing or undue favor are illegitimate conduct regardless of the pandemic situation. The decree does not deal with crime or illegal act. Thus, any interpretation of the contested text that gives immunity to public officials in relation to an unlawful act or improbity must be excluded.

The Justices highlighted the need to consider that there are incorrect public authorities, who take advantage of the situation to benefit from it despite the deaths that have been occurring; and that of right managers who may fear harsh retaliation for their actions.

In this sense, the contested text correctly limits the agent's liability for the strictly gross error, which the Court interpreted in accordance with the Constitution, as previously mentioned.

Finally, the Federal Supreme Court upheld the following legal theses: “1. The administrative act that gives rise to a violation of the right to life, health, the balanced environment or adverse impacts on the economy constitutes a gross error, for failure to observe: (i) scientific and technical standards and criteria; or (ii) the constitutional principles of precaution and prevention. 2. Authorities should demand that the technical opinions on which they will base their decision deal expressly with: (i) the scientific and technical standards and criteria applicable to the matter, as established by internationally and nationally recognized organizations and entities; and (ii) the constitutional principles of precaution and prevention, under penalty of becoming co-responsible for possible violations of rights”.

*Supplementary information*:

- Date of publication of the minutes of judgment. The entire content of the judgment is pending publication. Session held by videoconference in accordance with Resolution 672/2020 / STF.

- CF / 1988: Articles 1; 37, §§ 4, 5 and 6 and 196.

- Law 12.376 / 2010 - Law of Introduction to the rules of Brazilian law.

- Law 13,655 / 2018 - includes in Decree-Law 4,657 / 1942 provisions on legal certainty and efficiency in the creation and application of public law.

- Decree 9,830 / 2019 - regulates articles of Decree-Law 4,657 / 1942, which institutes the Law of Introduction to the rules of Brazilian Law.

- Decree-Law 4,657 / 1942 - institutes the Law of Introduction to the rules of Brazilian law.

*Cross References*:

Joint Decision of Provisional Measures in Direct Actions of Unconstitutionality 6422; 6424; 3425; 6427; 6428 and 6431.

*Languages*:

Portuguese.

CODICES

*Identification:*

a) Brazil / b) Federal Supreme Court / c) single-judge decision / d) 13.05.2020 / e) Claim of Noncompliance with a Fundamental Precept 568 (ADPF 568) / f) the settlement sum approved in court may be reallocated to fight the coronavirus pandemic (Covid-19) / g) *Diário de Justiça Eletrônico* (Justice Official Gazette) 122, 18.05.2020 / h).

*Systematic thesaurus:*

03.06.02 General Principles - Structure of the State - **Regional State**

04.08.01 Institutions - Federalism, regionalism and local self-government - **Federated entities**

04.08.07.02 Institutions - Federalism, regionalism and local self-government - Budgetary and financial aspects - **Arrangements for distributing the financial resources of the State**

04.18 Institutions - **State of emergency and emergency powers**

05.03.02 Fundamental Rights - Civil and political rights - **Right to life**

05.04.19 Fundamental Rights - Economic, Social and Cultural Rights - **Right to Health**

*Alphabetical index:*

International agreements, priority / International agreement, validity, evaluation / Agreement, international, applicability / Agreement, international, binding force / Administration, efficiency / Administration, flexibility / Administration, morality, principle / Evaluation, legally significant facts / Health care, public service / Health care, right / Deposit, amount, socially oriented / Deviation of power / Disease, infectious / Education, State, duty / Emergency, assistance / Emergency, ongoing / Forest, protection / Deposit Insurance Fund / Jurisdiction, exclusive competence / Capital washing / Education program, government, financial assistance / Project, State importance / Health protection, system / Appeal, financial, adequate / Judicial review, administrative decision / Health, protection, program, Government / Health, public health, public interest / Health system, direct assistance / Health situation, worsening.

*Headnotes:*

The amount Petrobras agreed to pay in penalties because of a non-prosecution agreement is extra-budget and the Court may reallocate it to the states to fund actions aimed at combating the COVID-19 virus. Such authorization comes from the pressing need that threatens the life and physical integrity of the population and complies with the public interest, as it is indispensable to safeguard the constitutional right to health.

*Summary*:

Petrobras entered into a non-prosecution agreement with the U.S. Department of Justice to pay over US$852 million in penalties to settle criminal investigations of the so-called Operation Car Wash (*Operação Lava-Jato*). However, the U.S. government would credit 80% of the total (over US$682 million) that Petrobras would pay to Brazilian authorities pursuant to an agreement to be negotiated subsequently between Petrobras and the Federal Prosecution Office.

Such agreement, named “Commitments-making Agreement”, was entered between Petrobras and the prosecutor of the Prosecution Office of the state of Paraná, responsible for the Car Wash task force, and was ratified by the Federal Court of Curitiba on January 23, 2019. The agreement provided that half of the amount would be invested in "projects, initiatives and institutional development of entities and networks of appropriate entities, educational or not, that reinforce the fight of Brazilian society against corruption".

The resources would constitute an endowment fund to be administered by a private law foundation, headquartered in Curitiba, in which representatives of the Federal Prosecution Office, the Federal Prosecution Office of the state of Paraná, and representatives of society would have a sit. Despite the fact that the resources came from an international agreement entered by Petrobras with the U.S. Department of Justice, the federal judge justified her competence to approve the national agreement because the facts had had origin from investigations and criminal proceedings presided over the Federal Court of Curitiba.

The federal attorney general (PGR, as in the Portuguese acronym) filed this Claim of Non-Compliance with a Fundamental Precept arguing that the agreement assigned responsibilities to the Federal Prosecution Office of the state of Paraná that went beyond the constitutional limits of their competence. The attorney emphasized that the agreement concentrated the powers to investigate and act in legal proceedings as well as execute a billionaire budget (in Brazilian currency), whose revenue comes from an international agreement to which it is neither a party nor a third person legally interested.

The federal attorney general pointed out that the MPF of Paraná or the Federal Court of that state could not perform acts of management or manage billionaire resources to be remitted by Petrobras. The attorney highlighted that members of the Car Wash task force entered into the agreement and settled administrative and financial commitments to be undertaken by the MPF. That is, the authorities had spoken on behalf of the institution without having the power to do so.

The MPF emphasized that the request on this case is to correct the allocation of the amount due by Petrobras to the U.S., but forwarded to Brazil because of this non-prosecution agreement, which resulted in a credit between Petrobras and the United States of America.

In turn, in Constitutional Claim 33,667 (Rcl 33,667), the president of the Chamber of Deputies argued that Curitiba´s Court decision of ratification had violated the Federal Supreme Court jurisdiction, because part of the investigations and criminal actions related to the Operation Car Wash were pending before the Supreme Court. Moreover, just as the PGR, the president pointed out that the Federal Prosecution Office in Paraná had committed a clear usurpation of powers of other organs.

The Federal Supreme Court ordered both cases (ADPF 568 and Rcl 33,667) to proceed together.

On March 15, 2019, justice-rapporteur Alexandre de Moraes suspended the effects of the decision that ratified the “Commitments-making Agreement” entered by Petrobras and the prosecutors of the state of Paraná (Car Wash task force), as well as the effectiveness of the agreement itself. The Justice also ordered the immediate blocking of the amounts deposited by Petrobras, as well as subsequent deposits, in the current account designated by the Federal Court. According to this decision, the account could only be moved with the express authorization of the Federal Supreme Court.

In his decision, Justice Alexandre de Moraes pointed out that Petrobras chose - in circumstances where constitutional, legal and moral aspects should still be analyzed by the Court - to settle a second agreement to pay fine in penalties, in which the prosecutors of the Federal Prosecution of the state of Paraná (MPF-PR, as in Portuguese acronym) were chosen as the “Brazilian authorities”. According to the Justice, the Supplementary Law 75/1993 provides for the Federal Prosecution Office to head the administrative representation of the institution.

The rapporteur stated that the agreement did not indicate the MPF-PR bodies as the Brazilian authorities to receive the payment of the fine, nor the need for the agreement to be ratified by the Federal Court in Curitiba (the capital of the state of Paraná).

Moreover, for justice-rapporteur Alexandre de Moraes, the second agreement had established provisions not provided for in the U.S. agreement, which only stipulated the fine to be credited in favor of Brazil, without requiring the formation of a legal entity or specific activities. One of the clauses of the now suspended agreement provided that half of the amount would be invested in "projects, initiatives and institutional development of entities and networks of reputable entities, educational or otherwise, that strengthen the fight of Brazilian society against corruption", and would constitute a property fund to be administered by a private law foundation.

In a preliminary analysis, the Justice considered doubtful the creation and constitution of a private foundation to manage resources derived from the payment of fines to the Brazilian authorities, which upon entering the National Treasury became public, and whose destination would depend on a budget law issued by the National Congress.

Subsequently, the president of the Chamber of Deputies requested the allocation of the resources recovered to fight fires in the Amazon Rainforest and to the National Education Development Fund. On September 5, 2019, the federal attorney general, the federal government and the general counsel to the National Treasury entered into an agreement and settled that R$ 1.6 billion would be destined for education and R$ 1 billion for environmental protection.

The agreement was approved in case ADPF 568 and became final on October 10, 2019.

Later, represented by their governors and attorneys, the states of Maranhão, Pará, Amazonas, Mato Grosso, Amapá, Acre, Roraima, Rondônia and Tocantins filed a petition to request the financial resources due to Legal Amazon states to be transferred by state funds and/or specific sources to be created in the public budget, in order to allow rapid remittance and execution of specific actions.

The justice-rapporteur determined the immediate transfer of the funds settled in the agreement to the states, as mandatory transfers, for all budgetary and financial purposes, under the supervision of the Office of the Federal Comptroller-General and the Federal Accounting Court. He clarified that, although the resources were initially owned by the Union, it undertook the commitment to transfer these amounts to the states directly affected by the fires in Legal Amazon through the agreement itself.

On March 19, 2020, the federal attorney general filed a petition and pointed out the situation of alarm and concern regarding the public health in relation to the spread and contagion of the coronavirus COVID-19. Therefore, and because these are extra-budget resources that allow reallocation and, considering the amount assigned to education (R$ 1.6 billion) had not yet been implemented, the PGR requested that such amount be destined to the Union, managed by the Ministry of Health and applied exclusively to the costs of actions aimed at combating the COVID-19 virus.

Previously, the Oswaldo Cruz Foundation (Fiocruz, as in Portuguese acronym), although not part of the procedural relationship, had also requested part of the resources discussed under this case. Fiocruz pointed out the activities developed by the foundation in view of the public health emergency caused by the COVID-19 pandemic.

The authorities involved in the approval of the original agreement expressed their consent to the proposal to reallocate part of the resources in question.

Thus, on March 22, 2020, Justice Alexandre de Moraes ratified the proposal to adjust the original agreement and determined the immediate allocation of R$ 1,601,941,554.97 (one billion, six hundred and one million, nine hundred and forty-one thousand and five hundred and fifty-four *reais* and ninety-seven cents) provided for in Item 1.1 of the Agreement on the Allocation of Resources to the Ministry of Health, to fund actions to prevent, contain, combat and mitigate the Coronavirus Pandemic (COVID-19).

According to the rapporteur, the right to life and health appear as an immediate consequence of the human dignity as the foundation of the Federative Republic of Brazil. In this sense, the Federal Constitution, under articles 196 and 197, consecrated health as a right of all and a duty of the State. Such entitlement entails universality and equality in access to health actions and services.

The severity of the emergency caused by COVID-19 pandemic requires Brazilian authorities, at all levels of government, to implement public health protection, adopting all possible measures to support and maintain the activities of the Unified Health System.

Subsequently, the states of Acre, Maranhão, Tocantins and Mato Grosso requested to redirect the funds they received (in the fight against actions to prevent, inspect and combat deforestation, forest fires and environmental crimes in Legal Amazon) in emergency actions to confront the pandemic. The states emphasized that the funds to which actions had not yet begun would be redirected to the fight the pandemic. The untying would only be valid in relation to values that had not been committed by the date of approval of the agreement.

Justice Alexandre de Moraes stated reallocating the money would not abruptly cease any government actions or programs, while at the same time the government would address a pressing need that threatens the life and physical integrity of the population of those states. He emphasized that the proposed amendment is in accordance with the public interest, to the extent that it is indispensable for the protection of the right to health (Federal Constitution, articles 6, head paragraph, and 196).

According to the rapporteur, the states will have to prove the effective use of the authorized amount.

*Supplementary information:*

- Date of publication of the trial minutes.

- CF/1988: Articles 1, 2, 6.head paragraph; 37.head paragraph and XIX; 60, paragraph 4, III; 127.head paragraph; 129; 165; 167; 168 and 196.

- Law 12.846/2013 - Anti-Corruption Law;

- Complementary Law 75/1993 - Discipline, organization and structure of the Public Prosecution Service of the Union;

- Complementary Law 101/200 - Fiscal Responsibility Law

- Budget Guidelines Law and Annual Budget Law.

*Cross-references:*

Supreme Court:

 - Constitutional Claim 33,667 (file was processed in conjunction with ADPF 568).

*Languages:*

Portuguese.

CODICES

*Identification:*

a) Brazil / b) Federal Supreme Court / c) Single-judge decision / d) 03.04.2020 / e) Provisional Remedy in the Claim of Noncompliance with a Fundamental Precept 662 (ADPF 662-MC) / f) increase of families to receive social assistance benefits without a corresponding source to fund it / g) *Diário da Justiça Eletrônico* 85 (Justice Official Gazette), 07.04.2020 / h).

*Systematic thesaurus:*

04.04.03.04 Institutions - Head of State - Powers - **Promulgation of laws**

04.06.10.02 Institutions - Executive bodies - Liability - **Political** **liability**

04.07.16.01 Institutions - Judicial bodies - Liability - **Liability of the State**

04.10.02 Institutions - Public finances - **Budget**

05.01.01.04.02Fundamental Rights- General questions - Entitlement to rights – Natural persons - **Incapacitated**

05.03.02 Fundamental Rights- Civil and political rights - **Right to life**

05.04.19 Fundamental Rights- Economic, social and cultural rights - **Right to health**

*Alphabetical index:*

[Benefit](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5Bfield%20E_Alphabetical%20index:%22Benefit%22%5D), [governmental](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5Bfield%20E_Alphabetical%20index:%22Benefit,%20governmental%22%5D) / [Budgetary balance](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5Bfield%20E_Alphabetical%20index:%22Budgetary%20balance%22%5D), [principle](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5Bfield%20E_Alphabetical%20index:%22Budgetary%20balance,%20principle%22%5D) / [Budget](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5Bfield%20E_Alphabetical%20index:%22Budget%22%5D), [control](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5Bfield%20E_Alphabetical%20index:%22Budget,%20control%22%5D), [state](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5Bfield%20E_Alphabetical%20index:%22Budget,%20control,%20state%22%5D) / 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person, social assistance, entitlement, conditions / Disabled person, welfare benefit, urgent need / Disease, infectious / Elderly person / Health, effective protection / Health, public health, public interest / Health protection, system / Health situation, worsening / Responsibility, authority / Responsibility, constitutional / [Social assistance](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5Bfield%20E_Alphabetical%20index:%22Social%20assistance%22%5D), [entitlement](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5Bfield%20E_Alphabetical%20index:%22Social%20assistance,%20entitlement%22%5D), [condition](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5Bfield%20E_Alphabetical%20index:%22Social%20assistance,%20entitlement,%20condition%22%5D) / [Social 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assistance](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5Bfield%20E_Alphabetical%20index:%22Social%20benefits%20and%20assistance%22%5D), [amount](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5Bfield%20E_Alphabetical%20index:%22Social%20benefits%20and%20assistance,%20amount%22%5D) / Social welfare / Financial control / Financial mean, principle /

*Headnotes:*

The law that have increased the number of people to receive the social assistance benefit produced a budget and financial impact. The national emergency period concerning the novel Coronavirus disease (COVID-19) is not sufficient reason for the rule not to indicate the source of full funding to increase beneficiaries, especially since it is a proposal for a permanent increase paid on a continuous basis.

*Summary*:

The president of the Republic, by the Office of the General Counsel to the Federal Government, filed the present Claim of Non-Compliance with a Fundamental Precept against the Senate Bill 55, 1996, in the amended part of Article 20, paragraph 3, of Law 8,742/1993 (Organic Law of Social Assistance).

The aforementioned article of the law guarantees a monthly benefit of one minimum wage to handicapped people and to the elderly who prove they do not have the means to provide for their own support or having it provided by their families, as set forth by law (BPC, in the Portuguese acronym).

The Senate Bill 55/96 raised the limit of family income to access to BPC from one quarter to half a minimum wage, which was fully vetoed by the president of the Republic.

According to information provided by the National Congress, the economic crisis triggered by COVID-19 pandemic would make the approval of Bill 55/1996 even more opportune on its amendments in the part where it alters article 20, paragraph 3 of Law 8,742 /1993.

The petitioner claims that Bill 55/96 does not comply with the principles of the Republic; of democracy; of due process of law and sustainable indebtedness. In addition, it contradicts the fundamental right of good governance. According to the plaintiff, the legislative process finished without final deliberations and an estimate of its budget and financial effects.

He reports that the presidential veto was based on the opinion of the Ministry of Economy and the General Secretariat of the Presidency. The veto pointed out that there was an increase in the limit of the family *per capita* income for granting BPC, and there was no indication about the respective source of full funding. Therefore, the Bill had created a benefit breaching the new national Fiscal Regime.

The petitioner points out that the increasing health and economic emergency resulting from the expansion of contamination by COVID-19 coronavirus represents a factor that requires control of new expenditures and public finance. The author requires the suspension of the effects of the National Congress act that could overturn the presidential veto and approve the object of this claim.

Meanwhile, on March 23, 2020, the National Congress rejected the president’s veto on Bill 55/1996 and, therefore the Bill became Law 13,981/2020. This law increased the monthly family *per capita* income requirement from one quarter to half a minimum wage.

Initially, with the conversion of the Bill into law, justice-rapporteur Gilmar Mendes decided that this Claim of Non-Compliance with a Fundamental Precept would become a Direct Action of Unconstitutionality.

The Justice found that the subject addressed in this claim is relevant and urgent, what identifies the provisional measures. Thus, in a single-judge decision, subject to the Full Court´s *referendum*, he partially granted the provisional measure, suspending the effectiveness of the new wording given by Law 13,982/2020 to article 20, paragraph 3 of Law 8,742/1992.

According to the justice-rapporteur, the referred rule increased public expenses without indicating the respective source of full funding and omitted the budget and financial impacts of the extension of the benefit, what violates the Federal Constitution, the Temporary Constitutional Provisions Act, the Fiscal Responsibility Law and the Budget Directives Law. He highlighted the need to prepare a study of budget and fiscal impact in order to enable the implementation of the standard object of the present claim.

Thus, although the norm questioned did not change the value of the constitutional benefit, it increased the number of beneficiaries by changing the criterion for receiving the benefit from 1/4 (one quarter) to 1/2 (half) the minimum wage as the family *per capita* income.

The rapporteur stated that the requirement to indicate the respective source of full funding for social welfare benefits is a commitment to the future and to each citizen, especially those most in need, as it ensures good governance, in order to allow the enjoyment of benefits with security and social justice.

He acknowledged that the public health crisis is worsening, demanding the implementation of the necessary and imperative measures of distance and social isolation recommended by the World Health Organization. Moreover, the public health crisis is experiencing serious economic effects, especially by the poorest groups of Brazilian population.

Given the crisis magnitude, the rules of organization and procedure of a financial nature cannot hinder legal solutions that achieve a minimum satisfactory level of social rights. Thus, the rapporteur considered not only constitutional, but also necessary and urgent to adopt measures aimed at granting temporary emergency aid to mitigate the adverse effects of the economic recession.

On the other hand, he believes that the increase in the benefit of continued provision does not constitute an emergency and temporary measure aimed at confronting the calamity of COVID-19. Unlike other emergency benefits, the increase of BPC under the proposed terms has a permanent nature, which is a definitive increase on the amount of benefit, and it is not attached to the present crisis.

The justice-rapporteur concluded that the emergency period is not a sufficient reason to overrule the constitution, which requires the corresponding source of costing to increase the number of people served by the welfare system. That is especially relevant considering it is a proposal to increase benefits paid on a continuous basis.

*Supplementary information:*

- Articles 1.head paragraph; 2; 5.LIV and paragraph 2; 37 and 195, paragraph 5 of the Federal Constitution of 1988.

- Temporary Constitutional Provisions Act: articles 107 to 113.

- Budget Directives Law (LDO, in the Portuguese acronym): article 144.

- Fiscal Responsibility Law: article 17.

- Law 8,742/1993: article 20, paragraph 3.

- Law 13,981/2020.

*Languages:*

Portuguese.

CODICES

*Identification:*

a) Brazil / b) Federal Supreme Court / c) Single-judge decision / d) 27.03.2020 / e) Provisional Remedy in the Claim of Noncompliance with a Fundamental Precept 663 (ADPF 663-MC) / f) suspension of the term of the Provisional Presidential Decree during the Covid-19 pandemic / g) *Diário de Justiça Eletrônico* (Justice Official Gazette) 78, 31.03.2020 31.03.2020 / h).

*Keywords of the systematic thesaurus:*

01.05.04.07 Constitutional Justice – Decisions - Types - **Interim measures**

01.01.04.02 Justiça Constitucional – Constitutional jurisdiction - Relations with other institutions - **Legislative bodies**

*Keywords of the alphabetical index:*

Administration, efficiency / Provisional measure / Provisional measure, nature / Parliament, ability to function, protection / Parliament, act / Parliament, action, internal / Parliament, commission, functioning / Parliament, committee, competences / Parliament, power, restriction / Parliament, Senate, regulation / Parliamentary democracy, principle / Parliamentary rule, legal force.

*Headnotes:*

In times of state of emergency, matters of public health are of national importance and in view of the state of public calamity resulting from COVID-19, it is reasonable for the National Congress to adopt measures to adjust the voting procedure for provisional presidential decrees, such as issuing an opinion by a parliamentarian directly on the floor of the Chamber of Deputies or the Federal Senate, as the case may be.

*Summary*:

The president of the Republic filed a Claim of Non-Compliance with a Fundamental Precept in view of the Executive Commission Act 7/2020 of the Federal Senate and Draft Resolution 11/2020 of the Chamber of Deputies, which waived the attendance of parliamentarians in situations of vulnerability due to the COVID-19 (coronavirus) pandemic.

The normative acts also provide for the Remote Deliberation System (SDR, in the Portuguese acronym), which enables the Congress to continue operating during this period. SDR is a technological solution that makes it possible to discuss and vote on matters virtually. It must be "exclusively used in situations of war, social upheaval, public calamity, pandemic, epidemiological emergency, collapse of the transport system or situations of force majeure that prevent or make it impossible for Senators to meet in person in the National Congress or in another place" (Article 1, sole paragraph, of Executive Commission Act 7/2020 of the Federal Senate).

The Draft Resolution 11/2020 establishes that deliberations in the SDR environment must be preferably related to public health emergency due to COVID-19 coronavirus (Article 4, paragraph 2).

The general counsel to the federal government, on behalf of the president of the Republic, argues that the exceptional situation in the National Congress functioning compromises the regular legislative process, in particular the procedure to vote on the provisional presidential decrees.

He points out that the provisions intend to replace the constitutional provision of paragraph 9, article 62, which establishes the initial examination of such decrees by the joint committee of Federal Deputies and Senators.

The petitioner argues that "the sixty days period, extendable for an equal period, for the National Congress to assess the decrees is suspended during the parliamentary recess – a period of 30 days of suspension. He claims that, in fact, this situation amounts to a parliamentary recess, until the resumption of the conditions for obtaining the regular quorum for deliberation under Article 47" of the Constitution (majority vote).

According to the petitioner, the rules under questioning breach the due legislative process, the power of agenda of the National Congress, popular sovereignty and legal certainty (Federal Constitution, Articles 1, I; 5, XXXVI and LIV and 62, paragraphs 3 and 6). Therefore, the petitioner requests to extend the validity periods for processing the presidential decrees in the National Congress.

The Chamber of Deputies and the Federal Senate reported that the regulation of the provisional presidential decree by the SDR is an exceptional measure, the result of an effort to continue the legislative process in the electronic form.

Justice-rapporteur Alexandre de Moraes, in a single-judge decision to be endorsed by the Full Court, partially granted the provisional measure. He authorized that, during the situation of public calamity resulting from COVID-19, the decrees can be instructed on the floor of the Chamber of Deputies and the Federal Senate. Only under exceptional situations, the issuance of an opinion in place of the Joint Committee by parliamentarians of both Houses will be authorized.

The Justice highlighted the exceptional possibility for the president of the Republic to adopt provisional decrees with immediate force of law. He stated that the Federal Constitution established a strict procedure to make provisional presidential decrees valid and effective, such as the possibility of being issued for sixty days and their reissue for another sixty days. Thus, if the National Congress does not consider the decrees within the allowed period, this normative act will lose its effectiveness.

The rapporteur highlighted that the inertia of the Legislative Branch in analyzing the norm within the maximum constitutional period of 120 days does not entail its approval by the deadline expiration, nor its extension, but rather its tacit rejection.

And, even in the most serious constitutional cases of defense of the State and Democratic Institutions – State of Defense (Federal Constitution, article 136) and State of Siege (Federal Constitution, article 137) – there is no rule providing for the suspension of the decadent period of validity of provisional presidential decrees, because the Federal Constitution determines the continuous and permanent operation of the National Congress.

The justice-rapporteur pointed out that there were changes in the functioning of the Committees and floor proceedings, which required adjustments in the procedure for the analysis and voting of the provisional presidential decrees, which, exceptionally, replaced their initial examination upon the Joint Committee of Deputies and Senators (CF, Article 62, paragraph 9).

However, in times of state of emergency in public health of national importance and under the circumstances of public calamity resulting from COVID-19, it is reasonable for the National Congress to temporarily establish the presentation of an opinion on the decrees by the parliamentarian directly on the floor.

The rapporteur also admitted the exceptional possibility for the floor proceedings of the Chamber of Deputies and the Federal Senate to work remotely, in the form and timeframe defined for the operation of the Remote Deliberation System (SDR) in each House. According to the justice-rapporteur, this exceptional regimental provision will enable, "in its fullness and efficiently", the analysis of provisional presidential decrees.

The rapporteur pointed out that parliamentary recess is the only period during which the 120-day period is suspended.

*Supplementary information:*

- Articles 1º; 2º; 3º; 5º, XXXVI and LIV; 47; 60, § 4º; 62.head paragraph and §§ 3º, 4º e 6º of the Federal Constitution of 1988.

-The Resolution n.º 1 of 2002 of the National Congress regulates the rite of processing provisional decrees after being issued by the President of the Republic. In sum, after publication in the Justice Official Gazette, when the deadlines related to the validity and the procedure start to count, a Joint Committee formed by Senators and Deputies is formed to previously analyze the constitutional assumptions of relevance and urgency, merit and financial and budgetary adequacy. The Committee approves an opinion on the provisional decree, which is then taken to the floor proceedings of the Chamber of Deputies, the Initiating House. If approved, the decree is sent to the Federal Senate. In this house, in the same way, a Joint Committee is established and the approved opinion is taken for deliberation by the Senate floor. Each of the Houses can conclude by rejecting the Provisional Decree. In this case, its validity and processing are closed and it is filed.

*Languages:*

Portuguese.

CODICES

*Identification:*

a) Brazil / b) Federal Supreme Court / c) single-judge decision / d) 13.05.2020 / e) Claim of Noncompliance with a Fundamental Precept 672 (ADPF 672) / f) the states, the Federal District and the municipalities are competent to adopt measures to combat the coronavirus pandemic (Covid-19) / g) *Diário da Justiça Eletrônico* 89 (Justice Official Gazette), 15.04.2020\* / h).

*Systematic thesaurus:*

01.03.04.03 Constitutional Justice – Jurisdiction - Types of litigation - **Distribution of powers between central government and federal or regional entities**

03.06.02 General Principles - Structure of the State - **Regional State**

04.08.01 Institutions - Federalism, regionalism and local self-government - **Federal entities**

04.18 Institutions - **State of emergency and emergency powers**

05.03.02 Fundamental Rights - Civil and political rights - **Right to life**

05.04.19 Fundamental Rights - Economic, social and cultural rights - **Right to health**

*Alphabetical index:*

Administration, efficiency / Disease, infectious / Emergency, assistance / Emergency, ongoing / Health care, public office / Health care, right Health protection, system / Health, protection, programme, governmental / Health, public health, public interest / Health situation, worsening / Health system, direct assistance / Sovereignty, equal, between federal states / State authorities, conflict / State authorities, distribution of power / State, duty to protect fundamental rights and freedoms / State, duty to protect life /

*Headnotes:*

The states and the Federal District enjoy concurrent power, while municipalities enjoy supplementary power within their respective territories to adopt restrictive measures during the pandemic. Therefore, complying with federalism and its constitutional rules on distribution of powers implies respecting the decisions of governors and mayors regarding social distancing and quarantine, suspension of teaching and cultural activities, and trade restrictions.

*Summary:*

The Federal Council of the Brazilian Bar Association filed a Claim of Non-Compliance with a Fundamental Precept (ADPF, as in the Portuguese acronym) concerning the actions and omissions the federal government had been taking to manage the emergency public health and economy policies due to the outbreak of coronavirus (COVID-19) pandemic.

The claimant reports that Law 13,979/2020 provides for a series of sanitary measures such as to enforce the use of isolation, quarantine and restriction on some outdoor gatherings of people. The law also authorizes simplified and streamlined procedures for contracting goods, inputs and services to support and strengthen the functioning of health system.

In its petition, the claimant points out that the National Congress has also approved the Union´s request and acknowledged the state of public calamity resulting from the pandemic. The Congress allowed budget spending notwithstanding the limits and fiscal targets set by the Fiscal Responsibility Law. Therefore, although the Union has these instruments to react to the crisis, most of the federal government´s decisions do not address the health emergency. According to the petitioner, the actions taken so far have affected the country’s governance and endangered Brazilians´ life.

The petitioner emphasizes that several states and municipalities have implemented measures to contain social agglomeration and reduce the number of people infected. The claimant states that cooperative federalism model adopted by the 1988 Federal Constitution is the ground of the constitutional, administrative and political agreement entered into the states and the municipal governments. According to Articles 23, II and 24, XII of the Constitution, the Union, the states and the municipalities have the power to legislate concurrently on public health matters. Amid public calamity, the actions of states and municipalities become even more crucial because local and regional authorities are the ones able to make a diagnosis around the evolution of indicators and service capacity for health care, including intensive care unit and ventilator equipment availability in each region.

The petitioner adds that the president of the Republic acts in such a way as to escalate conflicts with governors and mayors who, in turn, rely on federal support to implement the necessary health policies. In fact, states and municipalities rely on federal resources remittance and other measures taken by the federal government to grant economic relief, as it has a greater financial and technical capacity to coordinate efforts to overcome the crisis.

According to the petitioner, the Ministry of Economy has minimized the economic effects of the crisis and took a long time to adopt measures which, when taken, were proved to be insufficient. The CFOAB points out that the following fundamental precepts had been violated: the right to health, the right to life and the federative principle, as the president of the Republic acts to undermine and discredit measures adopted by other federative entities based on their respective constitutional powers which are independent and harmonious with each other.

Upon these matters, the petitioner requests a provisional measure to enjoin the president of the Republic from performing acts contrary to social isolation policies adopted by the states and the municipalities, and to order the immediate implementation of economic measures to support the most affected sectors by the crisis.

Justice-rapporteur Alexandre de Moraes found that notorious divergences of opinions among authorities of different levels have caused insecurity and justified fear throughout society. Thus, in a single-judge decision to be submitted to the Full Court, the rapporteur partially granted the provisional measure to acknowledge and ensure the concurrent power of the states and the Federal District. The rapporteur also recognized, within their territories, the supplementary competence of municipalities to adopt and maintain the restrictive measures allowed in quarantine, regardless of an overcoming federal act on the contrary. According to the rapporteur, this decision does not eliminate the power of the Union to establish restrictive measures throughout the country if it deems to be necessary.

Obviously, the Court may assess on a case-by-case basis the formal and material validity of each normative act issued by the states and municipalities.

According to Justice Alexandre de Moraes, it is legally possible to file this specific type of Claim before the Court aiming at avoiding public authorities´ actions that could jeopardize the fundamental precepts of the Republic, including the protection of health and the respect for federalism and its rules of distribution of powers, enshrined as unamendable clause by the Federal Constitution. The Constitution guarantees health as a right of all and a duty of the State, what entails universal and equal access to health actions and services.

Therefore, the rapporteur decided that it was not possible to grant the claimant's request to replace the discretionary judgment of the executive branch.

On the other hand, the severe outbreak of coronavirus pandemic (COVID-19) requires Brazilian authorities, at all levels of government, to implement public health concrete protections and to adopt all possible and technically sustainable measures to support the activities of the Unified Health System.

The justice-rapporteur emphasized the Judiciary is not supposed to replace the President´s judgment of convenience and opportunity when exercising his constitutional powers. However, the Judiciary has a constitutional duty to verify the facts and the decision´s logical coherence taken on each case. Thus, if there is no consistency, the measures are flaw due to violation of the constitutional order and the principle of prohibition on the arbitrariness of public authorities.

After these considerations and, in respect of federalism and its constitutional rules of distribution of competences, the Justice stated that governors and mayors must be respected in their decisions regarding the imposition of social distancing, quarantine, suspension of teaching and cultural activities, and trade restrictions.

Federal entities enjoy autonomy, which implies distribution of legislative, administrative and tax powers. In relation to health and public assistance, including organization of food supplies, the rapporteur pointed out that the Constitution provides for common administrative competence among the Union, states, Federal District and municipalities.

Likewise, the Federal Constitution provides for concurrent power among the Union, the states and the Federal District to legislate on health protection and on defense. Concerning the municipalities, the Constitution also allows supplementing federal and state legislation if there is local interest. The Justice highlighted the political-administrative decentralization of the Health System, pursuant to which the services are performed in outlying regions and the financial burdens are distributed among the federative entities, including sanitary and epidemiological surveillance activities.

In his conclusion, the Justice stated that the Union must not cancel decisions that the states, the Federal District or the municipal governments have adopted or will adopt within their territories and that aim at striving against the pandemic.

*Supplementary information:*

- \* Date of publication of the trial minutes.

- Articles 1º.head paragraph; 2º; 5º.head paragraph; 6º.head paragraph; 23.II and IX; 24.XII; 30. II; 196 and 197 of the Federal Constitution.

- Supplementary Law 101/2000 - Fiscal Liability Act

- Law 13,979/2020 - Provides measures to address the public health emergency of international importance due to the coronavirus responsible for the 2019 outbreak.

- Law 8,080/1990 - Health Organic Law

- Legislative Decree 6/2020 - it recognizes the state of public calamity.

- Ordinance 454/2020 of the Ministry of Health - it declares the state of Community transmission of the corovirus (Covid-19) throughout the national territory.

*Languages:*

Portuguese.

CODICES

*Identification:*

a) Brazil / b) Federal Supreme Court / c) single-judge decision / d) 09.06.2020 / e) Provisional Remedy in the Claim of Noncompliance with a Fundamental Precept 690 (ADPF 690-MC) / f) transparency and publicity are needed regarding epidemiological data on the Covid-19 pandemic / g) *Diário da Justiça Eletrônico* (Justice Official Gazette) 145, 12.06.2020 h).

*Keywords of the systematic thesaurus:*

05.03.02 Fundamental Rights - Civil and political rights - **Right to life**

05.03.24 Fundamental Rights - Civil and political rights - **Right to information**

05.03.25 Fundamental Rights - Civil and political rights - **Right to administrative transparency**

05.04.19 Fundamental Rights - Economic, social and cultural rights - **Right to health**

*Keywords of the alphabetical index:*

Administration, efficiency / Data, access, public interest/ Data, correction, right / Disease, infectious / Health, public health, public interest / Health care, public office / Health care, right / Health protection, system / Health situation, worsening / Health system, direct assistance / Information, access, denial / Information, access, reasonable / Information, accuracy / Information, disclosure / Information, disclosure by the federal government / Information, obligation to provide / Information, right / Responsibility, authority / Responsibility, constitutional / Transparency, administrative / Transparency, principle / Transparency, public administration.

Headnotes:

The severity of the emergency caused by COVID-19 pandemic requires effective public health protection from Brazilian authorities. Disastrous consequences for the population may arise if there is no transparency and disclosure in the collection, analysis, storage and dissemination of epidemiological data, which must provide planning guidance for public authorities on policy-making, in addition to full knowledge of the country´s scenario to society.

Summary:

Political parties filed the present Claim of Non-Compliance with a Fundamental Precept in view of acts of the federal government that restricted the disclosure of data related to COVID-19.

The petitioners report that, three times in the last week, the Ministry of Health website delayed the release of data on the new coronavirus pandemic.

In addition, without legitimate justification, the Ministry of Health changed the bulletin format "COVID-19 Daily Report". They omitted relevant data on the evolution of this pandemic in Brazil, such as: total numbers of confirmed cases, recovered cases and deaths; the accumulated numbers in the last three days; how many deaths were under investigation and how many patients were still under medical supervision.

According to the petitioners, concealing this information makes it impossible to monitor the progress of COVID-19 in Brazil and it delays the implementation of public health policies to control and prevent the disease. Moreover, the suspected data manipulation insults Brazilian population.

The claimant alleged violation of fundamental precepts of the Federal Constitution especially the right to life and health, in addition to the duty of transparency of public administration, allied to the principle of supremacy of the public interest.

The petitioners required a series of acts to provide greater transparency of the data regarding COVID-19 pandemic.

Justice-rapporteur Alexandre de Moraes partially granted the provisional measure ordering the Minister of Health to maintain full daily disclosure of epidemiological data related to the pandemic (COVID-19), including on the Ministry of Health website. The Justice also determined that the data must provide the accumulated numbers of occurrences.

According to the rapporteur, the Federal Constitution provides that the democratic state must ensure the well-being of society. Within the idea of well-being, the provision of all necessary information for planning and combating the pandemic caused by COVID-19 should be highlighted as one of the main purposes of the State. In addition, the effectiveness of public policies aimed at health, including the constitutional obligation of the Unified Health System (SUS) to carry out epidemiological surveillance actions.

The Constitution also expressly establishes the principle of disclosure as one of the essential vectors for the public administration, giving it absolute priority in the administrative management and ensuring full access to information for the entire society.

The principles of disclosure and transparency included in the Federal Constitution correspond to the State's obligation to provide essential information to society. Access to information is a true instrumental guarantee for a full exercise of the democratic principle, which includes "discussing public matters in an unrestricted, robust and open manner" in order to ensure the necessary oversight of government bodies, which only becomes effectively possible with the guarantee of discloser and transparency.

Thus, except in exceptional situations, the Public Administration has the duty of absolute transparency when carrying out public affairs, as set forth in articles 37, head paragraph and 5, items XXXIII and LXXII of the Federal Constitution.

This case under decision does not characterize an exception to the necessary discloser and transparency. The change made by the Ministry of Health in the "Daily Report" bulletin related to the pandemic, with the suppression and omission of epidemiological data, is a well-known fact. The information is necessary to allow the analysis and comparative projections to assist public authorities in making decisions and to allow the population to understand the pandemic situation experienced in the national territory.

The rapporteur concluded the requirements were present to partially grant the provisional measure requested, *ad referendum* of the Full Court, due to the serious risk of an abrupt interruption in the collection and dissemination of important epidemiological data, which were essential for maintaining historical evolution analysis of the pandemic (COVID-19) in Brazil.

Therefore, the Justice partially granted the provisional measure to ensure the maintenance of the full disclosure of all epidemiological data that the Ministry of Health had carried out until June 4, 2020.

Failure to comply with this action may result in irreparable damage resulting from non-compliance with the constitutional principles of discloser and transparency and the constitutional duty to carry out sanitary and epidemiological surveillance actions in the defense of the life and health of all Brazilians.

*Supplementary information:*

- Articles 5.XXXIII and XLLII; 37.head paragraph; 196; 197 and 200 of the Federal Constitution of 1988.

*Languages:*

Portuguese.

CODICES

*Identification:*

a) Brazil / b) Federal Supreme Court / c) single-judge decision / d) 16.05.2020 / e) Provisional remedy on Habeas Corpus 184828 (HC 184828 MC) / f) expulsion of Venezuelan diplomats from the national territory / g) *Diário da Justiça Eletrônico* (Justice Official Gazette) 124, 20.5.2020 / H).

*Systematic thesaurus:*

02.01.01.04.19 Sources - Categories - Written rules - International instruments - **International conventions regulating diplomatic and consular relations**

04.04.03.05 Institutions - Head of State - Powers - **International relations**

04.16 Institutions - **International relations**

*Alphabetical index:*

Ambassador / Diplomat / Diplomat, Accreditation / Diplomatic Relations, Establishment / Expulsion / President, Powers / President, Power, Delegation / President, Powers, Delegation / President, Individual Law, Control / Judicial Review of other State Powers / COVID-19 / Covid -19, pandemic / COVID-19, Public health / Vienna Convention on Consular Relations, effectiveness

*Headnotes:*

The president of the Republic´s act that disaccredits Venezuelan diplomats is valid, since it falls within his private and non-delegable competence. However, the 48-hour period established for officials to leave the national territory is not reasonable considering the current stage of the COVID-19 pandemic that puts at risk their life, in addition to their physical and psychological integrity.

*Summary:*

This case refers to a writ of habeas corpus, with a request for a provisional measure, filed against the president of the Republic and the minister of State for foreign affairs, which challenged a letter signed by such minister on April 28, 2020, that determined Venezuelan diplomats and their families to leave the national territory until May 2, 2020.

On May 2, justice-rapporteur Roberto Barroso granted a provisional measure to suspend, for a period of 10 days, the effects of the mandatory expulsion order for Venezuelan officials from the Brazilian territory.

The Office of the Attorney General of the Republic and the Ministry of Foreign Affairs protested against the plaintiff's claim and the provisional measure granted, alleging, preliminarily, two reasons. First, the Supreme Court´s lack of jurisdiction. The writ challenges an act of the minister of State, which falls under the Superior Court of Justice´s jurisdiction. The attorney general affirmed such argument. Second, the habeas corpus is inaptness because there is no risk of imprisonment or threat to freedom of movement. They stress the order is a mere "political request" for Venezuelan officials to leave Brazil. Regarding the merits, they maintained that the discussion carried out in this habeas corpus refers to the maintenance of relations with a foreign State and its diplomatic representatives, which were within the president´s exclusive power.

Justice-rapporteur Roberto Barroso affirmed the provisional measure previously granted to, without interfering in the validity of the president's political-administrative decision, suspend its effectiveness, ensuring that patients remain in the national territory during the state of public calamity and health emergency acknowledged by the National Congress.

The Justice pointed out that the Office of the General Attorney to the Federal government and the Ministry of Foreign Affairs alleged that the matter dealt with in this habeas corpus is the explicit and unequivocal competence of the President of the Republic, as provided in Article 84, VII, of the Federal Constitution. A private competence that cannot be delegated, since "maintaining relations with foreign States and accrediting their diplomatic representatives" is not among delegable powers mentioned in the sole paragraph of the same Article 84. Therefore, the Minister of Foreign Affairs is a mere executor of the decision. The President of the Republic himself transmitted this information on a social network: "[t]he mandatory withdrawal of the Venezuelan diplomatic corps was determined by an act of the president of the Republic and the minister of foreign affairs." Therefore, the Federal Supreme Court has jurisdiction to decide the case, since Article 102, I, i, of the Federal Constitution determines the responsibility of this Court to hear and decide habeas corpus against acts of the President of the Republic.

As to the allegation that the habeas corpus is inaptness since the letter only formalized negotiations on a political agreement, the Justice stressed that the risk to freedom of movement was clear by the use of the terminology adopted: "48 hours to abandon the country, process of withdrawal if they do not go alone, employment of specialized troops, reinforcement of personnel and evacuation of the embassy”. In addition, once again, the president of the Republic himself had spoken in the press and on social media complaining of the interference of the Court in the "expulsion" of the Venezuelan diplomats.

Despite the jurisdiction of the Court in the case and the undeniable risk of the claimants’ locomotion, it is not for the Federal Supreme Court to review, under a habeas corpus, the merits of the political and administrative decision of the Brazilian Head of State. The president has the discretion to accredit or disaccredit the claimants and, therefore, to stop the exercise of their diplomatic and consular functions. Venezuelan officials, therefore, are subject to the rules of the Migration Law like any foreigner.

Article 9 of the Vienna Convention on Diplomatic Relations (Decree 56,435/1965) gives the accrediting State a reasonable period to take the necessary measures after the disaccredit of diplomatic agents. However, it is necessary to assess whether the health emergency situation recognized by the World Health Organization and the National Congress makes it impossible for the claimants to leave the national territory. In this current scenario of pandemic recognized by the World Health Organization, the 48-hour period set by the contested decision is unreasonable and, therefore, contrary to the commitment made by Brazil when ratifying the Vienna Convention on Diplomatic Relations and the Vienna Convention on Agents Consular, in addition to violating the Universal Declaration of Human Rights (Article 3) and the American Convention on Human Rights (Articles 4 and 5) as they pose a risk to the lives and personal integrity of the claimants.

Thus, the president's act is valid, but it shall have its effects suspended for as long the state of pandemic declaration is in force.

*Supplementary information:*

- CF / 1988: articles 84, VII and sole paragraph;

- Vienna Convention on Diplomatic Relations (Decree No. 56,435 / 1965): article 9;

- Universal Declaration of Human Rights: article 3;

- American Convention on Human Rights: Articles 4 and 5.

*Languages:*

Portuguese.