

Monocratic Decisions

AL 745391 / MG – MINAS GERAIS

AGRAVO DE INSTRUMENTO

Author: Minister JOAQUIM BARBOSA

Judgment: 9/22/2010

Publication

DJe-186 DIVULG 01/10/2010 PUBLIC 04/10/2010

Parties

APPELLANT : UNION
ATTORNEY : ATTORNEY GENERAL OF THE UNION
APPELLEE : FEDERAL PUBLIC DEPARTMENT

Decision

DECISION: This case relates to a motion for *agravo regimental* [interlocutory appeal] regarding the decision that denied a request for *recurso extraordinario* [extraordinary appeal] (article 102, III of the Federal Constitution) in the opinion issued by the Federal Regional Tribunal of the 1st Region that affirmed the Federal Public Department's authority to file a public civil suit regarding the subject of providing medication. The following is the issue of the decision under review (p. 23) : "CONSTITUTIONAL AND CIVIL PROCEDURE. HEALTH. INALIENABLE AND EQUAL INDIVIDUAL RIGHT. PUBLIC DEPARTMENT. STANDING. – The Public Department is responsible for defending the inalienable and equal individual rights, when such rights have repercussions in the people's fundamental human rights to health and to life. Precedents of the Federal Supreme Tribunal and of the Superior Justice Tribunal on the issue. – Appeal granted in order for the honorable monocratic judge to decide the issue, on its merits, by analyzing the evidence in the case documents." The appellant alleges a violation of article 129, III of the Federal Constitution, claiming that the Public Department has the authority to file a public civil suit in defense of individual rights. This Court, upon reviewing cases with similar facts recognized the Public Department's standing to file a public civil suit in defense of the disadvantaged. Reviewed: SUMMARY : *AGRAVO REGIMENTAL AS PART OF A RECURSO EXTRAORDINARIO*. PROVISION OF MEDICATION. PUBLIC DEPARTMENT. STANDING. DEFEND INALIENABLE SOCIAL AND INDIVIDUAL RIGHTS. PRECEDENTS. 1. The Brazilian Constitution, in its article 127, expressly confers on the Public Department the power to act in defense of the inalienable public and individual interests, as in the case of providing medication to the person in need. 2. It is unnecessary to discuss the usurpation of the public defense system's competency or its private advocacy. *Agravo regimental* denied. (RE 554.088-AgR, author Minister Eros Grau, DJe 20.06.2009) In the same sense as the following

monocratic decisions: AI 735.151, author Minister Celso de Mello; RE 567.706, author Minister Ricardo Lewandowski; AL 699.597, author Minister Dias Toffoli and RE 554.544, author Minister Carmen Lucia. In light of the precedence, the opinion under review was not divergent. Given the above, I deny the request. To be published. Brasilia, September 22, 2010. Minister JOAQUIM BARBOSA Author

Legislation

LED-FED CF ANO-1998
 ART-00102 INC-00003 LET-A ART-00127
 ART-00129 INC-00003
 CF-1988 CONSTITUICAO FEDERAL

Notes

Legislation made by: (JAS)

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