

Monocratic Decisions

MI 2090 / DF- Federal District

MANDADO DE INJUNCAO

Author: Minister DIAS TOFFOLI

Judgment: November 11, 2009

Citation

DJe-217 DIVULG 18/11/2009 PUBLIC 19/11/2009

Parties

APPELLANT: NATIONAL CONGRESS
APPELLEE: AGENOR PEREIRA DIAS FILHO
ATTORNEY(S): ANTONIO CARLOS DE SOUZA

Decision

DECISION. Reviewed. Collective *mandado de Injuncao*¹ filed by Agenor Pereira Dias Filho against the National Congress. The claimant wishes to bring forward an omission related to the inexistence of a complementary law regulating the application of section 4, article 40 of the Federal Constitution, along with the summary of Constitutional Amendment No. 47/05. In the claim, he asserts, "(...) The Claimant is a civil servant working under unhealthy circumstances in the Federal District as an assistant nurse to the Department of Justice and to the Department of Human Rights, Citizenship and the State of Health, both (sic) of which are part of the Federal District's government, since July 1985 and December 1981, respectively. Once he qualified to retire, he remained under contract, working under the same conditions for an additional 533 (five hundred and thirty-three) days from February 2, 1984 to July 18, 1985, when he served as assistant nurse to the Federal Union (Hospital of the Armed Forces), working under special conditions (evidentiary document annexed). 4. On this date, with 25 (twenty-five) years and 08 (eight) months of effective employment, considering that he already qualified for retirement from both jobs, that is, if total employment is calculated by total time working under unhealthy conditions, the lack of regulatory norms on the subject became an issue and turned the right to retire inexistent." (pp. 3-4). Decided. In this case, the claimant alleges the inexistence of regulatory norms to define the conditions necessary to implement the right to special retirement prescribed in article 40, section 4 of the Federal Constitution. He appoints the National Congress as the recommended authority. Section 1, article 61 of the Federal Constitution states that the President of the Republic has authority regarding laws that "(...) II- discuss the: (c) civil servants of the Union and its Territories, and its legal regime, provision of jobs, stability and retirement". The National Congress provides the legal approval of the legal project presented by the President of the Republic. Given this distinction, in order to analyze

¹ Translator's note: A legal cause of action and constitutional guarantee whereby the Judiciary provides an injunction to the Legislative to protect a concrete, personal or collective right related to citizenship, nationality and sovereignty that may be violated due to the inexistence of a regulatory norm.

the validity of the case documents, it is necessary to know that the referenced legal project in the intended regulations were duly presented. Due to the aforementioned, under the terms of article 24, sole paragraph, of Law no. 8.038/90, c/c article 7, subparagraph I, of Law 12.016/09, I rule that the claimant request the necessary information from the National Congress. After receipt of such information, the case documents shall be presented to the Attorney General of the Republic. To be published. Brasilia, November 11, 2009. Minister DIAS TOFFOLI Author 1.

Legislation

LEG-FED	CF	ANO 1998
	ART-00040	PAR-00004 REDACAO DADA PELA EMC-47/2005
	ART-00061	PAR-00001 INC-00002 LET-C
	CF-1988	CONSTITUTICAO FEDERAL
LEG-FED	EMC-000047	ANO-2005
	EMENDA CONSTITUTIONAL	
LEG-FED	LEI-012016	ANO-2009
	ART-00007	INC-00001
	LMS-2009	LEI MANDADO DE SEGURANCA
LEG-FED	LEI-008038	ANO-1990
	ART-00024	PAR-UNICO
	LEI ORDINARIA	

Notes

Legislation made by: (TCL)

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