

The Brazilian Federal Supreme Court (STF) and the Virtual Plenary

Florence, 22-23 November 2019

ICON•S Italian Chapter



UNIVERSITÀ DEGLI STUDI DI MILANO
DIPARTIMENTO DI STUDI INTERNAZIONALI,
GIURIDICI E STORICO-POLITICI



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SUPREMO TRIBUNAL FEDERAL

<http://portal.stf.jus.br/>

... *a multiple court*

- **Incidental constitutional review:** (art. 102, 3, CF)
Extraordinary appeal – *Recurso Extraordinário* (RE)
- **Abstract constitutional review:** (arts. 102, 1, “a” and §1, 103 CF)
 - Direct action of unconstitutionality,
 - Declaratory action of constitutionality,
 - Direct action of unconstitutionality by omission, and
 - Claim of noncompliance of fundamental precept.
- **Original jurisdiction:** (art. 102, 1, “b”, “c” etc.) to investigate and judge criminal acts committed by the president and vice president of the Republic and other senior government figures, such as the members of the National Congress, the Supreme Court’s Justices, permanent diplomatic heads of missions, etc.



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...*Peculiarities of the deliberative process*

11 Justices – Chambers (5 Justices) or Plenary (*quorum* eight justices)

Physical plenary sessions are broadcasted live by

<http://www.tvjustica.jus.br/>

<https://www.youtube.com/tvjusticaoficial/live>

No “Opinion of the Court”

Opinions of the Justices (q.m. 8) attached on Seriatim form

+ Headnotes (Ementa) + Final Brief Decision (*Acórdão*)



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Statistics

Pending cases on 20/11/2019 – **31,786 cases**

Cases decided in 2018 – **126,742 cases**

Monocratic: **112,210 cases**

Collegiate: **14,531 cases**

Concentrad control of constitutionality **305 cases**

Incidental control of constitutionality **2,552 cases**



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GENERAL REPERCUSSION OF CONSTITUTIONAL ISSUE

The Constitutional Amendment no. 45/2004 introduces GENERAL REPERCUSSION as condition of admissibility of the Extraordinary Appeal (Recurso Extraordinário – RE)

“In the Extraordinary Appeal, the appellant shall prove the general repercussion of the constitutional issues discussed in the case, as prescribed by law, in order for the Court to examine the admission of the appeal, the refusal being permitted only by voting of two thirds of the justices.” Art. 102, §3, CF

Art. 1.035 Civil Procedural Code (*Lei n. 13.105, del 16 marzo 2015*)

Art. 322 Rules of the Court (*Regimento Interno STF - RISTF*)



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VIRTUAL PLENARY

- Arts. 323 and 324 RISTF
- system that allows Justices of the Federal Supreme Court (STF) to deliberate if a matter has or has not general repercussion, for being admitted to incidental review - Extraordinary appeal (RE);
- online platform that tracks the votes of each single judge in regard to the issue of whether the case at stake;
- Rapporteur submits to the system her vote and motivation about existence of General Repercussion; Justices have 20 days to vote Y or N;
- available to public visualization live;
- RISTF 2016 and 2019 reforms: more questions are admitted to be judged by virtual plenary: internal appeals and merits on questions with “jurisprudence constante”.



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PRINCIPAL | SOBRE O STF | ESTATÍSTICA | PROCESSOS | JURISPRUDÊNCIA | PUBLICAÇÕES | BIBLIOTECA | IMPRENSA | LEGISLAÇÃO | ADMINISTRAÇÃO

Jurisprudência > Repercussão Geral > Pesquisa Reperc.

TAMANHO

JURISPRUDÊNCIA

- Pesquisa
- Pesquisa de Jurisprudência
- Acórdãos Relevantes
- Coletânea de Acórdãos
- Países da CPLP
- Jurisprudência Traduzida
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- Inteiro Teor de Acórdãos
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- Proposta Súmula Vinculante
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- Súmulas
- Repercussão Geral
- Pesquisa Repercussão Geral**
- Apresentação do instituto
- Vigência
- Regulamentação
- Matérias com repercussão
- Matérias sem repercussão
- Repres. da controvérsia
- Plenário Virtual
- Questões práticas
- Mérito Julgado
- Números da repercussão
- Relatório da repercussão
- Omissão Inconstitucional

Pesquisa Repercussão Geral

Classe: Número processo: Publicado: Decisão:

Todos Todos

Situação repercussão geral: Ministro(a): Mérito julgado:

Julgada Todos

Tipo Julgamento:

Pesquisa textual: Data início: a

Código assunto: Descrição assunto:

Legislação

Número: Ano: Artigo: Inciso: Parágrafo: Alinea:

Ordem:

Processo

PESQUISAR

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Tema

1072 - Possibilidade de concessão de licença-maternidade à mãe não gestante, em união estável homoafetiva, cuja companheira engravidou após procedimento de inseminação artificial.

Classe: **RE**

Número: **1211446**

Data de Início: **18/10/2019**

Data Prevista Fim: **07/11/2019**

Relator: MIN. LUIZ FUX

Manifestação/Voto

Ministro	Questão Constitucional	Repercussão Geral	Reafirmação de Jurisprudência	Manifestação
MIN. LUIZ FUX	Há	Há	-	Manifestação/Voto
MIN. MARCO AURÉLIO	Há	Há	-	Manifestação/Voto
MIN. DIAS TOFFOLI	Há	Há	-	
MIN. ALEXANDRE DE MORAES	Há	Há	-	
MIN. CELSO DE MELLO	Há	Há	-	
MIN. ROSA WEBER	Há	Há	-	
MIN. CÁRMEN LÚCIA	Há	Há	-	
MIN. RICARDO LEWANDOWSKI	Há	Há	-	
MIN. EDSON FACHIN	Não há	Não há	-	
MIN. ROBERTO BARROSO	Há	Há	-	
MIN. GILMAR MENDES	-	-	-	

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VIRTUAL PLENARY Pros X Cons

- ✓ relieve the physical plenary
- ✓ foster the celerity of the decision
- ✓ offers transparency in the monitoring of decisions
- ❖ usually only Rapporteur opinion is motivated
- ❖ leads to the recognition of general repercussion (no *quorum* required; 8 votes are necessary to refuse general repercussion)
- ❖ Collegiality – no rational exchange of arguments > decision aggregative not deliberative

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The STF and the medias TV Justiça

<http://www.tvjustica.jus.br>

It is a public broadcaster with programming transmitted by the digital TV system, and via internet (with specific youtube channel) and twitter, operating over 24 hours. It broadcasts a total of 44 programs; records and broadcasts hearings and plenary sections of STF by digital TV and on [Youtube](#).

- focuses on bridging the gaps left by commercial broadcasters in relation to judicial issues,
- allows the public to follow the judiciary and its main decisions on a daily basis,
- promoting citizens' knowledge of their rights and duties (adopts a clear language and a didactic approach)



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The STF and the medias

European Commission for the Efficiency of Justice - CEPEJ
Consultative Council of European Judges – CCJE

* **TRANSPARENCY** *

Transparency degeneration > negative impact on deliberative process:

- very little dialogical interaction among judges because sessions consist of the reading of individual opinions
- overexposure to public would also discouraging judges from changing their own opinion on the subject
- Justices fostered to act as lawyers
- very long decisions



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Grazie!

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(Picture www.stf.jus.br/arquivo/cms/bancolmagemFotoVisitaGuiada_bancolmagemFotoVisitaGuiada_AP_75578.jpg)