Florence, 22-23 November 2019

ICON•S Italian Chapter





SUPREMO TRIBUNAL FEDERAL

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

··· a multiple court

- Incidental constitutional review: (art. 102, 3, CF) Extraordinary appeal – Recurso Extraordinário (RE)
- Abstract costitutional 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.





SUPREMO TRIBUNAL FEDERAL

···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)





SUPREMO TRIBUNAL FEDERAL

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





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)

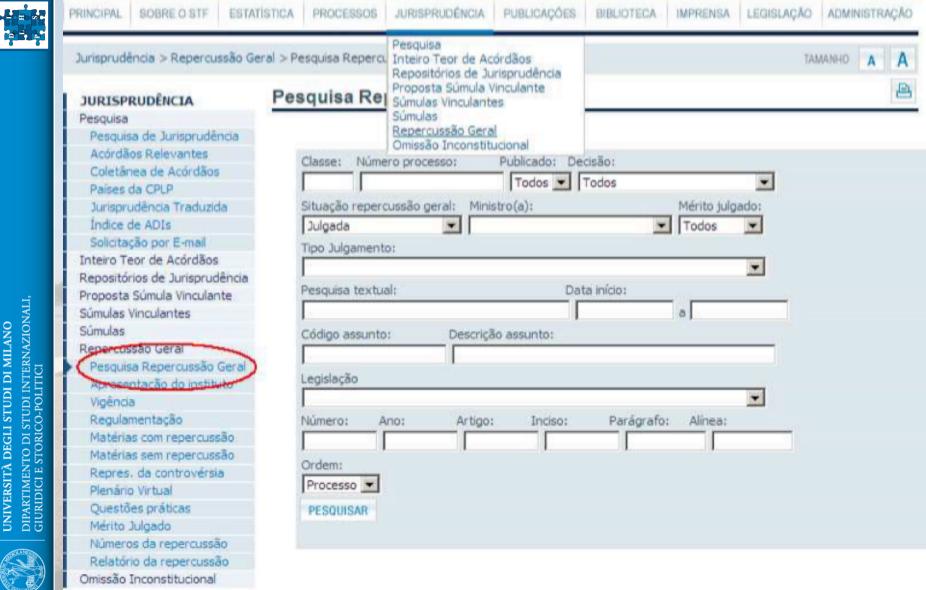




VIRTUAL PLENARY

- 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".









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	-	-	-	





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





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)





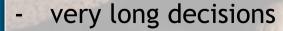
The STF and the medias

European Commission for the Efficiency of Justice - CEPEJ Consultative Counsel 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

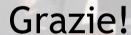




JNIVERSITA DEGLI STUDI DI MILANO DIPARTIMENTO DI STUDI INTERNAZIONALI

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





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(Picture www.stf.jus.br/arquivo/cms/bancolmagemFotoVisitaGuiada bancolmagemFotoVisitaGuiada_AP_75578.jpg)