

THE INSULT PROHIBITED BY THE CONSTITUTION AND BY THE BRAZILIAN SUPREME FEDERAL COURT

SYMBOLIC VIOLENCE IN THE DISCOURSE OF POWER

Murillo Gutier | murillo@gutier.adv.br

The episode involving the interview granted by Justice Gilmar Mendes to *Metrópolis* on April 23, 2026, should not be treated merely as an unfortunate phrase, a rhetorical slip, or an impropriety of language. The most sensitive point lies in the symbolic structure of the argument: in attempting to defend the honor of the Brazilian Supreme Federal Court against satire, caricature, and political attacks, the Justice used homosexuality as an example of a situation supposedly offensive to the image of a public figure. In doing so, he displaced an existential characteristic protected by the Constitution into the rhetorical field of insult, humiliation, and dishonor (Metrópolis, 2026).

The gravity of the statement is not limited to the word employed, but rather to the internal logic of the comparison. When the representation of someone as homosexual and the representation of someone as the perpetrator of misappropriation of public funds are brought together in the same argumentative sequence, an improper symbolic equivalence is produced. The statement does not merely mention homosexuality; it places it within the social grammar of offense, as though sexual orientation could, in itself, operate as a cause of public degradation. It is precisely at this point that language ceases to be neutral and begins to operate as an instrument of symbolic violence (Dal Piva, 2026).

Slavoj Žižek provides an important theoretical key for understanding this phenomenon. In *Violence: Six Sideways Reflections*, the philosopher distinguishes immediately visible violence, identifiable in acts of direct aggression, from objective, systemic, and symbolic forms of violence, which operate more silently and, precisely for that reason, become more naturalized. Symbolic violence is inscribed in language, in the ways of naming, classifying, and organizing the world, imposing universes of meaning that may inferiorize people without the need for physical aggression or explicit insult (Žižek, 2014).

From this perspective, language does not merely communicate a previously formed idea. It also creates social places, establishes hierarchies among forms of existence, and defines who appears as a subject worthy of recognition and who may be converted into an object of ridicule. For this reason, symbolic violence is especially dangerous when it emerges under the appearance of a casual example, a rhetorical hypothesis, or an improvised remark in an interview. It does not need to present itself as frontal hate speech; often, it manifests itself in the seemingly natural manner in which a society associates certain identities with shame, laughter, or disqualification (Žižek, 2014).

The problem with the statement attributed to the Justice lies precisely in this naturalization. By suggesting that the representation of Romeu Zema as homosexual could be

offensive, the phrase reactivates a long history of using sexual orientation as an instrument of public embarrassment. It is not, therefore, a mere terminological inadequacy, but a symbolic reinscription of homosexuality in the place of dishonor. The violence lies less in the isolated word and more in the structure that makes that word function as an example of insult (Žižek, 2014; Dal Piva, 2026).

The contradiction becomes even more expressive because this is not just any public official. Gilmar Mendes is the dean of the Brazilian Supreme Federal Court, that is, the longest-serving Justice of the Court. His words do not circulate in the public sphere as a mere private opinion. They carry institutional authority, symbolic density, and pedagogical force. When the dean speaks, the speaker is someone who represents, even informally, the jurisprudential memory of the Court and the weight of its constitutional authority (Dal Piva, 2026).

Such an institutional position requires heightened prudence. A constitutional judge is not merely a technical interpreter of the Constitution; he is also a guardian of the public language of law. His words, even when spoken outside the case records, may reaffirm or erode constitutional values. Therefore, when a Justice of the Supreme Federal Court uses sexual orientation as a possible example of offense, there is something more serious than an individual error: there is a collision between the public language of authority and the constitutional normativity of dignity (CNJ, 2019).

CNJ Resolution No. 305/2019, in regulating the use of social media by judges, reinforces that judicial freedom of expression must be reconciled with the duties inherent to judicial office. The act recommends moderation, decorum, prudence in language, and prohibits manifestations that constitute discriminatory speech, including LGBTphobia. Although the episode occurred in an interview, and not strictly on social media, the institutional logic is the same: the words of a judge cannot reproduce discriminations that the constitutional order has committed itself to combating (CNJ, 2019).

The contradiction is also revealed in the Justice's own academic trajectory. Gilmar Mendes earned his doctorate from the University of Münster, in Germany, in 1990, with a dissertation on abstract judicial review before the German Federal Constitutional Court and the Brazilian Supreme Federal Court. His academic formation is directly linked to German constitutionalism, a tradition in which human dignity occupies a central place in the post-war period and functions as a clause of restraint against historical experiences of dehumanization (STF, 2026; LexML, 1990).

However, the German Federal Constitutional Court itself, the institutional birthplace of the Justice's doctoral research, has a problematic page in this matter. In the judgment BVerfGE 6, 389, of May 10, 1957, concerning § 175 of the German Criminal Code, the Court rejected a constitutional complaint related to the criminalization of male homosexual relations. The case shows that constitutional courts may also err when they absorb, under the appearance of legal language, the social prejudices of their time (Bundesverfassungsgericht, 1957).

Section 175 of the German Criminal Code criminalized male homosexual relations and remained a symbol of legal violence directed against persons whose sexual orientation was treated as deviance, danger, or indignity. The subsequent overcoming of that tradition demonstrates that constitutionalism is not immune to history: it may also reproduce exclusions when it fails to perceive that certain apparently legal categories are, in truth, institutionalized forms of symbolic violence (Bundesverfassungsgericht, 1957).

The irony is evident. A Justice trained in the German academic environment, deeply knowledgeable about abstract judicial review and comparative constitutional adjudication, should perceive with particular clarity the risk of transforming sexual orientation into an example of public degradation. The German experience teaches precisely that constitutional language may serve both to protect dignity and to obscure prejudices. A jurist who knows this history cannot treat it as a marginal detail (Mendes, 1990; Bundesverfassungsgericht, 1957).

In the Brazilian context, the contradiction is even more direct. In ADO 26/DF, decided on June 13, 2019, the Brazilian Supreme Federal Court recognized legislative omission in providing criminal protection against homotransphobia and adopted a constitutionally conforming interpretation to include homophobic and transphobic conduct within the legal-constitutional concept of racism, until Congress enacts specific legislation. The Court thus affirmed that sexual orientation and gender identity cannot serve as grounds for inferiorization, discrimination, or violence (STF, 2019).

ADO 26 was not merely a criminal law judgment. It represented a constitutional affirmation of dignity. By recognizing that homotransphobia violates equality and citizenship, the Supreme Federal Court removed sexual orientation from the field of social shame and placed it within the field of constitutional protection. For this reason, any public language that relocates homosexuality as a category of humiliation contradicts the deepest meaning of that precedent (STF, 2019).

The same tension appears in ADPF 787/DF, reported by Justice Gilmar Mendes himself. Decided on October 17, 2024, and published on December 18, 2024, the decision addressed state omission in the protection of transgender persons within the Brazilian Unified Health System. The case involved the need to ensure adequate, respectful medical care compatible with gender identity and with the biological needs of the transgender and travesti population (STF, 2024).

In ADPF 787, human dignity did not appear as a rhetorical ornament, but as a binding legal foundation. The opinion recognized that state omission may produce an unconstitutional state of exclusion and institutional embarrassment. Hence the contradiction: the dignity affirmed in the judgment cannot be weakened in an interview; the principle that protects minorities in judicial decisions cannot be relativized in the improvisation of public speech (STF, 2024).

In comparative law, the precedent *Obergefell v. Hodges*, decided by the Supreme Court of the United States in 2015, reinforces the same civilizing direction. The Court recognized that same-sex couples have a fundamental right to marry, based on the Due Process and Equal

Protection Clauses of the Fourteenth Amendment. The decision affirmed that constitutional liberty encompasses personal choices central to dignity, autonomy, and identity (SCOTUS, 2015).

The meaning of *Obergefell* is particularly important because the U.S. Supreme Court recognized that the legal exclusion of homosexual persons produced concrete and symbolic harm. The judgment did not merely authorize marriage between persons of the same sex; it removed those relationships from the historical place of indignity and recognized them as legitimate expressions of liberty, affection, autonomy, and constitutional belonging (SCOTUS, 2015).

It is at this point that Žižek allows the critique to be deepened. Symbolic violence consists precisely in making what is historically produced appear natural. When homosexuality is used as an example of offense, language is not merely describing a hypothesis; it is reactivating an old social code according to which certain forms of existence would be laughable, diminished, or morally suspect. The phrase thus begins to operate as a symptom of a cultural structure that contemporary constitutionalism claims to have overcome, but which continues to reappear in the automatisms of language (Žižek, 2014).

The Justice's subsequent statement on X, acknowledging the mistake of having cited homosexuality when referring to what would be an injurious accusation, has public relevance. Acknowledging the mistake is better than insisting on it. However, the retraction corrects only the surface of the statement. It does not fully undo the previous symbolic structure, because the problem was not merely the chosen word, but the association that made it possible to treat homosexuality as an example of dishonor (Poder360, 2026).

Discursive absolution in a few characters does not automatically erase the symbolic violence of the argument. Žižek helps us perceive that violence does not reside only in the visible explosion, the ostensible act, or the literal offense. It also resides in the invisible mechanisms that make certain associations socially intelligible. If a phrase can function publicly as an example of insult, it is because behind it there is a prior social grammar that still links sexual diversity to shame (Žižek, 2014).

The comparison with the posture of Justice Rosa Weber during the events of January 8 is also relevant. On that occasion, the Brazilian Supreme Federal Court was the target of one of the gravest institutional attacks since 1988, and the response of the Court's presidency followed the proper path of jurisdiction: case records, hearings, decisions, judgments, and institutionality. This is the legitimate language of the constitutional judge. When a judge abandons this field and begins to dispute the public scene as a political character, he exchanges the authority of legal reasoning for the vulnerability of the striking phrase (Dal Piva, 2026).

The constitutional judge need not be silent, but he must be institutional. His authority does not arise from combative rhetoric, but from coherence among the Constitution, legal reasoning, and public conduct. When the defense of the Court's honor is made at the expense

of the symbolic dignity of a minority, the institution that was meant to be protected is ultimately weakened, because the Supreme Federal Court cannot defend itself by contradicting the very values that justify its existence (CNJ, 2019; STF, 2019).

The reference to Oscar Wilde, brought into the carousel, illuminates the historical density of the episode. At the end of the nineteenth century, the so-called “love that dare not speak its name” was used as a sign of moral scandal and judicial persecution. Since then, entire generations have struggled so that sexual orientation would cease to be an instrument of shame, blackmail, exclusion, and symbolic punishment. Therefore, when a contemporary constitutional authority uses homosexuality as an example of possible insult, it touches upon a historical memory charged with institutional suffering (Holland, 2003; Dal Piva, 2026).

The episode therefore reveals an uncomfortable dissociation within Brazilian legal culture: the dignity of minorities is affirmed in judgments, while public language is still allowed to reproduce remnants of exclusion. This is not merely personal hypocrisy. It is something more resistant: a distance between proclaimed constitutionalism and lived constitutionalism. The Constitution declares that all persons are equal in dignity; the case law confirms that promise; yet language, when careless, reveals that old prejudices remain deposited at the bottom of social life (Žižek, 2014; STF, 2019).

For this reason, criticism of the statement is not mere linguistic policing. It is constitutional criticism. In societies marked by historical exclusions, language is not a peripheral detail: it is a field of dispute over dignity. To name an identity as a possible insult is to relocate it in the symbolic place of inferiority. And that is incompatible with a constitutional order founded upon equality, human dignity, and the prohibition of discrimination (Constitution of the Republic, 1988; Žižek, 2014).

Someone who participated in a Court that recognized the constitutional gravity of homotransphobia in ADO 26, who reported an action aimed at protecting transgender persons in the Brazilian Unified Health System in ADPF 787, who knows the historical experience of § 175 of the German Criminal Code, and who masters comparative constitutionalism after *Obergefell*, cannot treat homosexuality as a rhetorical category of public insult. Constitutional coherence requires that the dignity affirmed in judicial opinions also be respected in the language of interviews (STF, 2019; STF, 2024; Bundesverfassungsgericht, 1957; SCOTUS, 2015).

In the end, the episode shows that constitutionalism is measured not only by what is written in judgments, but also by the coherence among judicial decision, public posture, and linguistic responsibility on the part of its interpreters. In a Democratic State governed by the Rule of Law, respect for diversity is not a moral concession, a gesture of tolerance, or a discursive favor. It is a cornerstone of the constitutional order. Where diversity is converted into insult, even by rhetorical carelessness, equality ceases to be a concrete experience and returns to being an abstract promise (Constitution of the Republic, 1988; Žižek, 2014).

General Synoptic Table

Item	Explanation
Core of the episode	The statement attributed to Justice Gilmar Mendes is problematic because it used homosexuality as an example of a situation offensive to the image of a public figure.
Central problem	The criticism does not fall only upon the word employed, but upon the argumentative structure that associates sexual orientation with insult, shame, or public degradation.
Symbolic violence in Žižek	For Žižek, violence also operates in language, which organizes the world, imposes meanings, and may naturalize social hierarchies and exclusions.
Language as a constitutional field	In matters of dignity, public language is not neutral: it may either reaffirm rights or reproduce historically sedimented prejudices.
Institutional role of the dean	As the longest-serving Justice of the Supreme Federal Court, Gilmar Mendes speaks with heightened symbolic authority, which is why his discursive errors have greater public impact.
Contradiction with German academic formation	His formation in Münster and his study of the German Federal Constitutional Court make the statement even more contradictory in light of the historical experience of § 175 of the German Criminal Code.
Meaning of German § 175	The provision criminalized male homosexual relations and demonstrates how law may institutionalize prejudices under the appearance of legal normality.
Contradiction with ADO 26	The Supreme Federal Court recognized homotransphobia as a grave constitutional violation, incompatible with equality and human dignity.
Contradiction with ADPF 787	Gilmar Mendes himself reported a decision aimed at protecting transgender persons within the Brazilian Unified Health System, affirming human dignity as a binding legal foundation.
Relevance of Obergefell	The U.S. precedent recognized the right of same-sex couples to marry and removed homosexuality from the field of legal indignity.
Apology	The subsequent retraction is relevant, but it does not eliminate the symbolic structure of the previous statement, since the problem lay in the association between homosexuality and insult.

Constitutional logic	The Constitution requires dignity to be respected not only in judicial decisions, but also in the public language of authorities.
Critical conclusion	In a Democratic State governed by the Rule of Law, diversity is a cornerstone of the constitutional order and cannot be converted into a rhetorical instrument of humiliation.

Table of Precedents and Normative References

Precedent or Norm	Explanation
ADO 26/DF - STF - Reporting Justice Celso de Mello - judgment on June 13, 2019	The Supreme Federal Court recognized legislative omission in providing criminal protection against homotransphobia and included, until specific legislation is enacted, homophobic and transphobic conduct within the legal-constitutional concept of racism provided for in Law No. 7.716/1989.
ADPF 787/DF - STF - Reporting Justice Gilmar Mendes - judgment on October 17, 2024 - DJe December 18, 2024	The Supreme Federal Court addressed state omission in the protection of transgender and travesti persons in the Brazilian Unified Health System, determining measures to ensure adequate, equal, and respectful care in accordance with gender identity.
BVerfGE 6, 389 - 1 BvR 550/52 - German Federal Constitutional Court - judgment on May 10, 1957	The German Federal Constitutional Court rejected a constitutional complaint involving § 175 of the German Criminal Code, which criminalized male homosexual relations, becoming a historical example of constitutional error in the protection of sexual minorities.
<i>Obergefell v. Hodges</i> - Supreme Court of the United States - 576 U.S. 644 - judgment on June 26, 2015	The Supreme Court recognized that same-sex couples have a fundamental right to marry, based on due process and equal protection under the Fourteenth Amendment.
Code of Ethics of the National Judiciary / CNJ Resolution No. 305/2019	Judicial ethics requires prudence, decorum, and respect for the dignity of the judicial office, in addition to prohibiting discriminatory manifestations, including those related to sexual orientation or gender identity.
Constitution of the Republic of 1988	Human dignity, equality, and the prohibition of discrimination form the normative basis that prevents sexual diversity from being used as a marker of public humiliation.

Bibliographic References

DAL PIVA, Abner. *O decano e o insulto que ele mesmo proibiu*. Instagram, 2026.

HOLLAND, Merlin. *The Real Trial of Oscar Wilde*. London: HarperCollins, 2003.

MENDES, Gilmar Ferreira. *Die abstrakte Normenkontrolle vor dem Bundesverfassungsgericht und vor dem brasilianischen Supremo Tribunal Federal*. Münster, 1990.

ŽIŽEK, Slavoj. *Violência: seis reflexões laterais*. Translation by Miguel Serras Pereira. São Paulo: Boitempo, 2014.

Case Law and Normative References

BRAZIL. Supreme Federal Court. Direct Action of Unconstitutionality by Omission No. 26/DF. Reporting Justice: Justice Celso de Mello. Full Court. Decided on June 13, 2019.

BRAZIL. Supreme Federal Court. Claim of Non-Compliance with a Fundamental Precept No. 787/DF. Reporting Justice: Justice Gilmar Mendes. Full Court. Decided on October 17, 2024. DJe December 18, 2024.

BRAZIL. National Council of Justice. Resolution No. 305, of December 17, 2019. Establishes parameters for the use of social media by members of the Judiciary.

GERMANY. Bundesverfassungsgericht. BVerfGE 6, 389 - 1 BvR 550/52. Decided on May 10, 1957.

UNITED STATES. Supreme Court of the United States. *Obergefell v. Hodges*, 576 U.S. 644. Decided on June 26, 2015.

Journalistic Sources Consulted

METRÓPOLES. *Gilmar diz que sátira tem limite e cita Zema como boneco homossexual*. Brasília, April 23, 2026.

PODER360. *Gilmar pede desculpas por sugerir que “homossexual” é ofensa*. Brasília, April 24, 2026.