Time limitation for occupation of indigenous land in Brazil

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1. Introduction

The Constitution of the Federative Republic of Brazil of 1988 dedicates its own chapter to treat indigenous peoples, where it can be observed, from art. 231, norms that recognize and protect the category in social organization, customs, norms, beliefs, norms that deal and originate with the occupation, being up to the Union, they are provided in the disciplines of the Magna Law, on demarcation, protection and respect the goods that are typical of the original peoples highlighted.

In constitutional digression (art. 231), the lands (inalienable - not subject to alienation; and unavailable - not subject to disposal or negotiation) traditionally occupied by indigenous peoples (which may generate imprescriptible rights - not being possible to fall on such and any assets, the effects of the statute of limitations and the possible loss of the right to exercise a defense and claim to recover a potential violation of a possible constitutional or legal right) are considered satisfactory for occupation of a habitual and urgent nature, considering that , likewise, the physical territorial space destined to productive activities that are essential for the preservation of natural resources related to well-being, physical and cultural reproduction in terms of customs and traditions

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typical of this category of Traditional Peoples and Communities - PCTs.

In view of these considerations, we seek to enter into a qualitative research of the documentary and bibliographic type in a historical-ethnic perspective to understand the possible impacts of the recognition or not of the Temporal Framework on the continuity of recognition, the self-sustainability of indigenous peoples in Brazil and the balanced national development itself.

In knowledge of the legal prerogatives, Carga Magna, equally, positively and in advance prescribes that any acts by third parties (non-indigenous and non-belonging to a certain people - including public authorities) be null and void, without producing any legal effect. whose purpose is the occupation, expropriation, dominion and/or possession of the lands traditionally occupied by the peoples portrayed in Brazil (even if for mere exploitation, unless endorsed and exclusive interest of the Union that depends on authorization and limits provided for by law complementary – stricter rule in the legislative process).

Therefore, it is evident that the largest Brazilian law constitutionally recognizes and protects PTCs (especially indigenous peoples) attributing to them inestimable importance to the continuity of recognition and self-sustainability (also of national development) that they have in traditional lands. and habitually occupied space for uses, practices, rituals, knowledge, customs, survival, expressions (cultural, traditional, ancestral, etc.) and the environment for present and future generations.

Furthermore, since 2016, the Extraordinary Appeal (RE) n. 1.017.365, reported by Minister Edson Fachin, and having as active and passive poles, respectively, the Fundação Nacional do Índio (FUNAI) and the Fundação do Meio Ambiente.

RE no. 1.017.365, among other aspects not to be addressed at this moment, deals with constitutional and administrative matters, the repossession by Faustino Feliciano and others to the detriment of indigenous peoples of the Ibirama La Klanõ reserve.

In its structure, the resource discusses the possibility of demarcating indigenous lands and the definition of a legal-constitutional statute (Temporal Framework) to begin to consider the possession and the moment of this when the occupation of lands valued by traditions and continuity, through sufficient evidence.

The RE has an effect of general repercussion and, any formation and delivery of a judgment stabilized in effects on the matter, will undoubtedly have negative or positive repercussions on the continuity of recognition and self-sustainability of indigenous peoples in the Federative Republic of Brazil, without ignoring the impacts to be resonate on policies for the preservation of a balanced environment.

In order to better understand the possible impacts of the eventual outcome of Extraordinary Appeal n. 1.017.365, in progress at the STF, this study will be carried out through bibliographic and documentary research, in a historical-cultural perspective. Thus, it is expected to better apprehend elements that inform how the constitutional norms protecting indigenous peoples will be interpreted by the guardian Court and final interpreter of the Magna Carta with eventual formation of a legal-constitutional thesis to be adopted in the judgment of the highlighted RE.

2. Notes to extraordinary appeal N. 1.017.365/STF

In order to understand the possible impacts of an eventual outcome of the Extraordinary Appeal raised, what is of interest to the debate is appreciated. So, let's see.

On 01/16/2017, the records of Extraordinary Appeal no. 1.017.365, originated from the Federal Regional Court of the 4th Region (under n. 00001682720094047214), currently comprising the National Indian Foundation - FUNAI (active pole) and the Santa Catarina Environment Foundation (passive pole), dealing with administrative matters and others of public law.

In short, the RE aims to define the thesis of general repercussion on the scope of article 231 (right to land, to the territory by indigenous people) of the Federal Constitution in angulation with the extension of the property right to involve lands currently occupied by the Xokleng people (TI Ibirama-Laklãnõ).

The appeal on the debate is still in transit in the Supreme Court plenary, without a ruling to resolve the demand.

On 09/09/2021, the Plenary of the Supreme Court decided to suspend the judgment held in a virtual way, a moment then awaited to resolve the long and complex object demanded.

According to the case files and the RE movements, on the STF website, the appeal was again scheduled for judgment to take place on 09/15/2021. Therefore, at the moment, there is no uniformity of understanding on the reception and formation of a legal-constitutional thesis to assist or not, the interests of the active or passive pole of the appeal relationship.

According to the case files and the RE movements, on the STF website, the appeal was again scheduled for judgment to take place on 09/15/2021. It so happens that, to date, there is no final decision to standardize the understanding on the reception and formation of a legal-constitutional thesis to assist or not, the interests of the active or passive pole of the appeal relationship.

3. Analyzing the possible effects of a legal-constitutional thesis to be formed by the STF

According to the course of ideas put forward, the indispensable concepts and definitions were brought to strengthen the debate regarding the PCTs, with a special focus on indigenous peoples in Brazil.

Therefore, from this moment on, possible impacts of the future delivery of the judgment that will settle the merits of Extraordinary Appeal n. 1.017.365, which deals with the possible formation of a thesis that establishes a “Marco Temporal” that could be used in judicial or even extrajudicial discussions, involving the possession,

occupation and continuity of these assets to legitimize the use of land traditionally belonging to indigenous peoples.

Considering the possible delivery of a judgment accepting the legal-constitutional thesis of expanding the hermeneutic scope of art. 231 of CRFB/88 (the Indians are recognized for their social organization, customs, languages, beliefs and traditions, and their original rights over the lands they traditionally occupy, and the Union is responsible for demarcating, protecting and ensuring respect for all their assets), the right to property, also with constitutional and legal provisions, may be predominant in interpretations involving the resolution of conflicts regarding indigenous possession in traditionally occupied territories when it conflicts with the property right of large landowners, etc.

With this, the rural sector and other representatives will use legal-constitutional interpretation, harmonized by the Supreme Court and with general repercussion, to innovate discussions of possession and occupation conflicts in ongoing or new actions throughout the national territory.

The risk of a collegiate understanding in this sense will have immediate and rapid effects in all judicial processes in Brazil, putting in legal uncertainty the constitutional protection of the right to territory, lands, possession (special and constitutional category), to the self-sustainability of PCTs (especially the indigenous peoples directly affected in the demarcation of lands in what is being discussed in the RE) and to the sustainable development and balanced favored by the recognition, appreciation and permanence of indigenous peoples in their historical, traditional and permanently occupied territories.

Furthermore, other rights may be weakened, indigenous and non-indigenous rights, in view of the existence of direct and indirect effects concerning such a delicate issue of constitutional refuge norm that it maintains a logical plan for other norms of equal weight. At the end of the day, violence against all PCTs will be priceless in a future time scenario.

As pointed out, the potential damages and possible risks to the set of constitutional, and even infra-constitutional, rights granted to indigenous peoples and similar categories, with the capacity to reflect on all debates involving the PTCs, are of difficult equation for the moment. present and, even more unpredictable in the future, before inferring in material and immaterial goods of current and future generations to imply in national development (patrimonial, cultural, historical, landscape, etc.), in the protection of the healthy environment, in the maintenance of traditions , practices, uses, rituals, knowledge, knowledge, etc. contributions to the support of the fauna and flora, also inherent to the historic way of living and organizing of the aboriginal peoples.

In view of the brief picture presented, we take a stand for the non-acceptance of the thesis of the "Temporal Framework", by the Plenary of the Supreme Court, defended in the records of Extraordinary Appeal n. 1.017.365, which aims to give a constitutional interpretation to art. 231 contrary to the goods protected by the original legislator, modifying the social and normative purposes spiritualized by the constituent by guaranteeing conditions for the continued recognition of all PCTs (especially indigenous peoples) and the security of self-sustainability of important peoples who are in tune with their own national development defended , expressly or implicitly, throughout the 250 (two hundred and fifty) great articles.

As expected, the rejection of the thesis of the infamous “Marco Legal”, by the Brazilian Supreme Court, will maintain the legal-constitutional framework to protect indigenous people and everything else that their existence, development, self-sustainability entails and organizational continuity in the mold of their own forms of disposition in the territory and in the world to which they belong, all inspired by the original constituent and by the democratic society of today.

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