

THE THEORY OF INDIGENATENESS AS SPIRITUAL DAMAGE IN ENVIRONMENTAL ACTIONS OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS AND IN THE COURTS OF BRAZIL

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ABSTRACT

The present project addresses the concept of the materialization of indigenous territorial rights based on the theory of indigenate promoted in the Inter-American Court of Human Rights and Brazilian Courts, presenting the formation of spiritual elements in the cultural conception of the land. The research will aim to debate the rights of possession and property of indigenous peoples in confrontation with the thesis of the temporal framework of occupation as a legal logical interpretation in actions promoted in the IACHR, as well as in the analysis of cases in the Supreme Federal Court and Courts of Brazil. The research problematization will focus on the theme of how the legal logical argumentation of possession and property is formed based on the theory of indigenate and to what extent the collective right of indigenous property affirmed by spiritual structures is established. The methodology that will be used is the qualitative and inductive approach, as it will start from the analysis of concrete and comparative cases judged by the IACHR and Brazilian Courts that correlate the theory of indigenate versus the theory of indigenous fact, using documentary analyses and interpretation techniques. The methods that will be developed are: comparative, monographic, and historical. From the research, it is expected to verify the possible legal logical arguments being discussed in the IACHR and Brazilian Courts regarding the possession of indigenous peoples as an affirmation of territorial rights, as well as to provide the indigenous community with legal security in the argument of possession, property, social function, and the exercise of preserving the culture of indigenous peoples and its structural elements related to beliefs.

Keywords: Inter-American Court of Human Rights. Theory of Indigeneity. Temporal framework.

INTRODUCTION

The present summary focuses on addressing the concept of the materialization of indigenous territorial rights based on the theory of indigenate promoted by the Inter-American Court of Human Rights and the Courts of Brazil, investigating spiritual elements as harm.

The theory of indigenato goes against the colonization process that began with the arrival of Europeans in Brazil. The ascendancy of a superior culture over the culture of native peoples is imposed through force caused by the invasion of the lands of the

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original peoples, as well as conditioning indigenous peoples as an inferiorized culture. Regarding the theory of indigenato, so named, it was developed by MENDES JÚNIOR³ (1912), when he argued about the institute of indigenous possession in relation to traditionally occupied lands.

In this way, the research aims to investigate legal argumentation as a possible thesis applied to the theory of indigenato in order to demonstrate the territorial possession rights of indigenous peoples based on the rulings of the Inter-American Court of Human Rights, as well as how the conception of spiritual structures is formed through judicial decisions related to possession. I emphasize that the theory of indigenato is a concept affirmed by the rulings of the Inter-American Court of Human Rights, currently under discussion in the Supreme Federal Court and Courts of Brazil.

In this sense, the pursuit of the formation of the theory of indigenato based on the assumption of the possession of indigenous peoples is relevant and current, as it will provide an analysis of the interpretative techniques used for the formulation of the presented theory and how recent theories are applied in the IACHR and Courts in Brazil.

In this way, with a specific focus, the investigation will analyze the votes delivered in the Extraordinary Appeal RE 1017365, as well as decisions rendered by the IACHR; both and other decisions will provide a framework for the formation of the concept of indigeneity.

METHODOLOGY

The methodology that will be used in the project is the inductive and qualitative approach, with documentary analysis and bibliographic reviews, including the following: comparative, monographic, and historical. The phenomena of possession must be understood based on the premises of judgments, laws, drafted constitutions, historical facts, sociological aspects, and anthropological reports.

RESULTS

The formulation of possession based on the theory of indigenate will provide important support in the formation of the concept. Therefore, the expectation of the present research is to provide foundations for judgments, theoretical frameworks, the drafting of laws, and legal opinions, subsequently ensuring legal certainty on the subject.

CONCLUSION

The presentation of the thesis and the construction of the logical legal argument will bring legal certainty for future rulings. Therefore, the research will be of great value for the foundation of decisions, the drafting of laws, and the mechanisms of public policies focused on the rights of indigenous peoples, as well as the understanding of the boundary marker of the lands.

In this sense, the use of the rulings that have been issued on the debated topic, as well as the actions that are currently in progress, will be relevant for complementing research sources. Today, the most awaited ruling on the subject of territorial expansion and the consolidation of indigenous peoples' land tenure in Brazil is the Extraordinary Appeal – RE 1017365, which is pending in the Supreme Court, as it debates the theory of indigenate and the theory of indigenous fact, bringing to the center of discussion the concept of original land rights.

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