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ORIGINAL ARTICLE

Right to adequate housing and the National Commission for the Resolution of Collective Land Conflicts of Resolution 510 of the CNJ: from the transitional regime in ADPF 828 of the STF as a permanent regime in the Judiciary

Direito à moradia adequada e a Comissão Nacional de Soluções Fundiárias da Resolução 510 do CNJ: do regime de transição na ADPF 828 do STF como regime permanente no Poder Judiciário

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Abstract: The deficit in the right to adequate housing in Brazil is an indisputable fact. Legislative policies and public policies have not proven to be sufficient and the Judiciary has acted to promote the social right to adequate housing in collective land conflicts. The general objective is to analyze judicial activism in terms of judicialization of public policies on adequate housing and specific objective is to analyze the structural decisions handed down in the judgment of ADPF 828 of the Federal Supreme Court, as well as the transition regime and the consequent creation of National Commission for Land Solutions at the National Council of Justice (CNJ). The main findings consist of the observation that the National Land Commission of the National Council of Justice, regulated in Resolution 510, of June 26, 2023 of the CNJ, have demonstrated themselves as new locus of structural process and promoted greater effectiveness in resolving land conflicts of a collective nature. In conclusion, the Land Conflict Resolution Commissions

have implemented a structural process that has increased effectiveness of the right to adequate housing in collective conflicts.

Keywords: Right to decent housing. Structuring decisions. The transitional regime of ADPF 828 of the STF. Resolution 510 of the CNJ and National Commission for the Resolution of Land Conflicts.

Resumo: O déficit do direito à moradia adequada no Brasil é um dado incontestável. As políticas legislativas e políticas públicas não se mostraram suficientes e o Poder Judiciário tem atuado para promover direito social à moradia adequada em conflitos fundiários coletivos. O objetivo geral é analisar o ativismo judicial em matéria de judicialização das políticas públicas de moradia adequada e o objetivo específico é analisar as decisões estruturais proferidas no julgamento da ADPF 828, do Supremo Tribunal Federal, bem como o regime de transição e a consequente criação da Comissão Nacional de Soluções Fundiárias no Conselho Nacional de Justiça (CNJ). Os principais achados consistem na constatação de que a Comissão Nacional Fundiário do Conselho Nacional de Justiça, regulamentados na Resolução 510, de 26 de junho de 2023 do CNJ, tem se demonstrado como novo *locus* de processo estrutural e promovido maior efetividade na solução de conflitos fundiários de natureza coletiva. Como conclusão, as Comissões de Solução de Conflito Fundiários têm implementado um processo estrutural que tem aumentado a efetividade do direito à moradia adequada em conflitos coletivos.

Palavras-chave: Direito à moradia digna. Decisões estruturantes. Do regime de transição da ADPF 828 do STF. Resolução 510 do CNJ e Comissão Nacional de Solução de Conflitos Fundiários.

1 INTRODUCTION

The collective land conflicts are a national reality, with a register of the increase of conflicts during the years of 2019 and 2022, with a higher concentration in the northern and northeastern states, which are heavily deforested.[1]

[1] Land conflicts in the countryside have complex causes, linked to the concentration of land ownership, inequality and social injustice, chronic problems in the history of our country, which, given the thematic limitations of this essay, will not be explored in depth (Comissão Pastoral da Terra, 2023).

An analysis of national case law reveals that the Judiciary, when judging injuctions in collective possessory actions, lacked the sensitivity to examine collective land conflicts, disputes linked to the right to housing, the rights of traditional communities, the right to strike and manifest, granting injuctions and removals simply by means of precarious proof of ownership (CNJ; Insper; Instituto Pólis, 2021), resulting in human rights violations in the handling of land conflicts (Ribeiro, 2022).

Since 2018, there are non binding guidelines from the National Human Rights Council (Resolution No. 10/2018) regulating evictions and forced displacement of vulnerable groups, since in these cases of collective land conflicts there is a special demand for legal protection and human rights promotion. These evictions and forced displacements violate the human rights and should be avoided, seeking alternatives that mitigate restrictions on human rights.

The Supreme Federal Court (STF) intervened in collective land conflicts in Argument for Failure to Comply with a Fundamental Precept (ADPF) 828, and a series of structural decisions were taken to suspend any administrative or judicial measures that resulted in evictions, forced removals or repossessions of a collective nature or of properties that serve as homes for vulnerable populations.

The Argument for Failure to Comply with a Fundamental Precept analyzed the violation of many fundamental precepts in order to prevent and repair damage to fundamental precepts relating to the social right of health (art. 6º; art. 23, section II; art. 24, section II; art. 194; art. 196; art. 197; art. 198; art. 199; art. 200), the foundation of the Federative Republic of Brazil of the dignity of the human person (art. 1º, section III); the fundamental objective of the Federative Republic of Brazil to build a just and supportive society (art. 3º, section I), and the fundamental right to housing (art. 6º e 23, inc. IX).

The orders for interim relief in ADPF 828 are obligations to respect, protect and promote the right to housing, where the Judiciary, now with the Land Solutions Commissions established in the

transitional regime, has implemented a real judicial policy on the fundamental social right to housing in the face of the partial omission of the Legislative Branch.

The scope of this article will be limited to the study of the structural decisions taken in the context of the STF's ADPF 828 and the transitional regime, regulated in CNJ Resolution 510, for the creation of the National Land Conflict Resolution Commission and the Regional Land Conflict Resolution Commissions of the Federal Regional Courts and Courts of Justice. The focus is on the role of the Judiciary in making the right to housing effective through structural processes, especially through the functioning of the Land Conflict Resolution Commissions.

The general objective is to analyze judicial activism in terms of judicialization of public policies on adequate housing and specific objective is to analyze the structural decisions handed down in the judgment of ADPF 828 of the Federal Supreme Court, as well as the transition regime and the consequent creation of National Commission for Land Solutions at the National Council of Justice (CNJ) and the Regional Commissions at the Courts of Justice and Federal Regional Courts.

The hypothesis is that the National Land Council of the National Council of Justice and the Regional Council of the Courts of Justice and the Federal Regional Courts, created in the transitional regime of ADPF 828 and regulated in CNJ Resolution 510 of June 26, 2023, have proven to be new locus of structural process, ensuring greater effectiveness in resolving land conflicts of a collective nature or of vulnerable populations.

The methodology adopted in this article is a bibliographical and monographic review based on national and foreign authors. The method of approach will be inductive, with a case study, allowing the construction of the research hypothesis after the empirical observations of the judges.

2. THE EXISTENTIAL MINIMUM AND THE LEGAL REGIME OF A FUNDAMENTAL SOCIAL RIGHT GUARANTEED BY THE CONSTITUTION AS A PREREQUISITE FOR THE EFFECTIVENESS OF THE RIGHT TO HOUSING

Before going to the specific object of this article - the right to housing and its realization through the Land Conflict Commissions - it is important to contextualize the right to housing within the regime of fundamental rights enshrined in the 1988 Constitution.

The social rights (art. 6º to 11 of the Federal Constitution of Brazil) are endowed by the fundamentality, with a special legal regime jusfundamental, possessing at least two characteristics: immediate applicability (article 5, § 1, 1988 Constitution) and the protection against abolitive amendments (article 60, § 4, IV, 1988 Constitution).

The concept of fundamental right in the broad sense formulated by Robert Alexy is broken down into: (i) provisions of fundamental right, which are the statements that typify fundamental rights in the Constitution; (ii) norms of fundamental right, which in their semantic sense prescribe a set of prescriptions, such as ordered, prohibited or permitted and (iii) the positions of fundamental right in the strict sense, which are the legal relationships established between the holder of the fundamental right and the state. (Alexy, 2014, p. 53-58).

Jorge Reis Novais (Novais, 2003, p. 55) analyzing the fundamental right as a whole, in its multifunctionality, mentions that it is possible for the holder of a fundamental right to have the perspective of the bundle of legally protected positionsof advantage as a fundamental right to be protected or each of those different positions that can be considered as constituing a fundamental right.

A fundamental right rule can be seen in its twofold character: objective and subjective. The objective character in the legal guarantee of imposing objective duties on the state is a subjective dimension, resulting from the legal guarantee, of a position of individual advantage

in the enjoyment of the protected goods of fundamental rights (Novais, 2003, p. 57).

The fusion between two dimensions (subjective and objective) alows to observ the multifunctionality of the fundamental rights, that is, analyze the fundamental right as a whole: the same rule can have multiple functions, linked to respect, protection and promotion of the same legal asset protected by the Constitution (Hachem, 2013a, p. 625-630).

In this context, a first question appears: Can social rights be restricted, in their essencial core or abolished through constitutional amendments?

With the 1988 Constitution, there was a significative expansion of fundamental rights, and the recognition of fundamental rights as integral elements of the identity and continuity of the fundamental law, with an express prohibition of any constitutional reform tending to supress them (Costa Moura, Torres, Mota, 2023, p. 2110).

With regard to abolitive constitutional amendments, it is pertinent to point out that the Constitution, right from the preamble, makes clear the adoption of the Democratic and Social Rule of Law, and a systemic reading of the 1988 Constitution shows that there is no legal or even arxiological hierarchy between the rights of freedom or social rights, or rights of one dimension to the detriment of another dimension. Therefore, there is only one literal interpretation that can exclude the fundamental rights from the protective dimension of the permanent clauses.[2]

Despite the great divergence in doctrine and jurisprudence on various points in regards to the immediate application of the social rights and immutable clauses of social rights, there is a consensus that the rules of fundamental social rights are at least to supply basic needs

[2] Only a literal or ideological grammatical reading of the constitutional norm can give the sense that social rights are not protected as immutable clauses (BRANDÃO, 2008, p. 462-468).

and guarantee minimum conditions of dignified existence for the citizen, in other words, to guarantee the existencial minimum. The norms of fundamental social rights are binding on the Public Powers (Executive, Legislative and Judiciary), regardless of regulation by the ordinary legislature (Hachem, 2013b, p. 221).

Initially, in the modern state, the fundamental rights were linked only to the individual rights, due to liberal-bourgeois thinking and the Enlightment and jusnaturalist doctrine of the 17th and 18th century, which identified the fundamental rights as negative rights and essentially marked a sphere of autonomy for the individual and a limitation on state power, with individual freedom taking precedence. However, with the rise of new social and economic issues at the end of the 19th century, the fundamental rights were extended to include the economical, social and cultural rights, imposing on the State actions capable of promoting equality (Costa Moura, 2023, p. 2108-2109).

The social rights, as part of the dignity of the human person, should be analyzed in the light of the concept of the existential minimum. The existencial minimum concept is attributed to the German publicist Otto Bachof, in the early 1950s, who argued that the right to a dignified life requires not only rights of freedom, but also social security, since without the material resources for a life with dignity, the very dignity of the human person would be affected (Sarlet; Zockun. 2016. p. 119-120).

In Brazil, Ingo Wolfgang Sarlet points out that although the existential minimum could be conceptualized as a indetermined legal concept, doctrine and case law have understood that the object and content of the existential minimum is linked to the right to life and the dignity of the human person (Sarlet; Zockun, 2016. p. 125).

Felipe de Melo, conceptualizing the existential minimum in the abstract, at least in relation to benefit rights, believes that it should be understood as synonymous with minimum benefits so that the freedom and dignity of the human person, the subsistence of the human being, the capacity for self-determination and the ability to participate in

political decisions are preserved. The extension of these obligations must be analyzed in the specific case, with all the elements analyzed by the magistrate (Fonte, 2013, p. 207-219).

Daniel Wunder Hachem (Hachem, 2013b, p. 211) well states that the right to existential minimum does not mean the guarantee of a simple physical survival (physiological minimum), since the existential minimum, in addition to enabling mere existence, must also enable the enjoyment of other rights and the free development of its holder's personality (sociocultural minimum), distinguishing the existential minimum from the vital minimum.

The German Federal Administrative Court, after the construction of the existential minimum concept, recognized the subjective right of the individual, as the holder of a right, to financial aid from the state, based on the dignity of the human person and the rights to life and liberty.

Robert Alexy (Alexy, 2014, p. 436) analyzing the issue subjective rights to benefits, concludes that there is no doubt that the Federal Constitutional Court presumes a right to an existential minimum when it states that if the legislator arbitrarily abstains from carrying out the duty of the welfare state, a claim could arise for the individual, secured by means of a constitutional complaint, and in another precedent when it states that social assistance to the needy is one of the unquestionable duties of the welfare state.

The majority doctrine in both Brazil and Germany prefers to reject the a priori establishment of a set of material benefits to ensure the right to a dignified life, indicating that each individual may have different needs and that in each temporally defined historical moment the existential minimum may change. (Hachem, 2013b, p. 213).

There are two positions on the enforceability of the existential minimum: (i) existential minimum as a maximum ceiling (adopting the position of Ricardo Lobo Torres that only social rights linked to essential content to guarantee the existential minimum can have immediate applicability, in the light of article 5, § 1, of the Federal

Constitution) and (ii) existential minimum as a minimum floor (a position that allows the holder of the subjective right in addition to demanding the existential minimum before the Judiciary, also to claim the portion of economic and social rights that go beyond the existential minimum, provided that, in a process of weighing, with the other constitutional principles) (Hachem, 2013b, p. 217).

In the European Union in general and in Germany in particular, doctrine attributes the existential minimum to the requirements of human dignity, with the right to social assistance being the main manifestation of the existential minimum (Sarlet; Zockun, 2016, p. 121).

Another important category, opposed to the existential minimum, also imported from the German constitutional law, is the concept of the "proviso of the possible".

The origins of the proviso of the possible can be traced back to the decisions of the Federal Constitutional Court of Germany, in the famous numerus clausus 1 and numerus clausus 2 cases.

Essentially, the judgments recognized, when analyzing freedom of professional practice, the right to sufficient minimum opportunities - through rights of organization and procedure - for each individual to be admitted to the course of their choice. In other words, the Federal Constitutional Court of Germany concludes that it is reasonable to demand from the state the right to participate in a selection process, and that there is no individual subjective right to a university place.[3]

In its original understanding, there is a tension between the individual claims and the welfare state, with an appeal to the rationality of individual expectations (Sgarbossa, 2010, p. 127-128).

In contemporary Brazilian jurisdiction, the discussion of the proviso of the possible in the strict sense is linked to justifiability of fundamental social rights and the separation of powers.

[3] For a more in-depth study of the numerus clausus 1 and numerus clausus 2 judgments, consult Sgarbossa (2010, p. 127-145).

The judicialization of rights with judicial control of public policies, for the realization of fundamental rights, has been a source of debate in the theory of the State and in Constitutional Law, given the functional limits of each Power.

As objections to the potential of judicial control of public policies we have two main axes of difficulties to be faced by the Judiciary: (1) democratic deficit and (2) functional deficiencies for the Judiciary to control public policies.[4]

Eurico Bitencourt Neto (NETO, 2010, p. 98), following a dominant position in the doctrine, argues that fundamental rights, especially social rights linked to the guarantee of minimum means of subsistence, are binding parameters for defining the content of the right to the existential minimum. Fundamental social rights are not subject to the state's financial reserve when it comes to dignified human existence.

The rights of liberty do not dispense with state benefits and therefore also have costs. However, it is the fundamental social rights, due to their more clearly prestational facet, that give rise to the greatest debate about their judicial enforceability in the face of cost and the separation of powers (Pereira, 2009, p. 84-96).

Felipe de Melo Fonte (Fonte, 2013, p. 201-207) analyzing public policies as a means of making fundamental rights effective divides them into two categories: a first category is made up of public policies that concern the concrete fulfillment of the existential minimum. and the second category of public policies are those that do not concern the core area of human dignity. The first category are public policies that can be judicially demanded, the second group of public policies that are not essenciais, in the opposite direction can not be judicially demanded.

[4] For a more in-depth study of the topic of the syndicability of public policies by the Judiciary, consult Valle (2016, p. 101-182).

Ana Paula Barcelos (Barcelos, 2010, p. 115), seeking to preserve the separation of powers, summarizes the issue well when she says that the judge in the control of public policies must seek a clear normative foundation or point out that the choice adopted by the administrator is morally wrong, otherwise the judicial decision will be just an opinion, and only that, without any special intrinsic value.

Despite a certain consensus in doctrine and jurisprudence regarding the justiciability of fundamental social rights and public policies linked to the existential minimum - which could be demanded as a subjective public right - we have weighty criticisms of this judicial stance, such as (i) the allocation of public resources to an elite (economic or cultural) that has access to the Judiciary and (ii) a preference for individual demand, to the detriment of collective demand (Schier, P. Schier, A., 2018, p. 78).

Jorge Reis Novais (Novais, 2003, p. 227), when dealing with the issue of restrictions on the applicability of fundamental social rights, points out three restrictions not directly provided for in the Constitution, but directly derived from it, all of which are issues that arise when the judge makes the judicial control of public policies in a specific case: (i) immanent reserve of weighting or proportionality, considering the principiological nature of fundamental rights; (ii) reserve of the politically adequate or opportune, given the democratic legitimacy attributed to some powers with elected representatives and (iii) proviso of the financially possible.

Carlos Bernal Pulido (Pulido, 2007, p. 81), assertively states that the principle of proportionality, one of the restrictions not expressly provided for in the Constitution, but implicit, asserts that proportionality fulfills the function of structuring the interpretative procedure of determining the content of fundamental rights, resulting in binding the legislator and the judge in the reasoning of their decisions in the control of constitutionality.

The scarcity of resources, another restriction not expressly provided for in the Constitution, is always (i) moderate in modern states, so the question is to verify the adequate allocation of resources; (ii) the proviso of the possible cannot only be opposed to social rights; (iii) financial scarcity cannot be analyzed as a single criteria, but must be analyzed together with the other provisos (immanent proviso of weighting and proviso of the politically adequate or opportune) (Pivetta, 2016. p. 126).

The right to adequate housing, as a fundamental right, is subject to the jusfundamental legal regime of the Brazilian Federal Constitution and its restrictions. Internationally, the right to housing as a social right has been enshrined since 1966 in the International Covenant on Economic, Social and Cultural Rights (PIDESC).[5]

According to the specialized doctrine on the PIDESC, this international treaty consolidated a tripartite structure of obligations: respect, protection and compliance. The obligation to respect is related to the negative character on the part of any state bodies, i.e. minimizing the impact of displacing subalternized populations. The obligation to protect is a positive action by the state, preventing abuses by third parties against the rights of other private individuals. In the obligation to comply, states undertake to adopt legislative, administrative and judicial measures (Möller, 2021, p. 16).

The fundamental right to housing, which is the subject of this article, can be analyzed as a whole in the following way, combining the theory of fundamental rights and legal norms: (i) freedom to choose one's housing, with the state being prohibited from invading one's home without flagrante delicto or a judicial warrant (defense function or respect function); (ii) provision of shelters for the destitute (factual provision function); (iii) creation of bodies within

[5] BRASIL. Decree No. 591 of July 6, 1992. Available at: http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/d0591.htm. Accessed on July 12, 2023.

a public housing policy, incorporated into the national enabling financial system (organization function); (iv) regulation of access to popular housing programs (function and procedure) and (v) protection against violation of the right to housing by private individuals (protection function).

The fundamental right to housing, provided for since Constitutional Amendment 26/2000 of the Federal Constitution of Brazil, is usually identified as social in nature, since it protects both individual and collective interests. The social dimension of fundamental right to housing dispels the traditional identification of the right to housing as housing. In addition to exercising private autonomy and private life, the shelter allows for public autonomy. Housing, as a public link, is the place where the individual connects with the city and the State, and is essential to enable the exercise of a life with dignity, in the context of public freedoms and political citizenship (Costa Moura; Torres; Mota, 2023, p. 2124).

It is important to point out that even if a fundamental right does not eventually form part of the existential minimum and does not allow the holder of the subjective dimension the possibility of demanding direct enforceability from the private individual before the Public Administration or the Judiciary, given the objective nature of fundamental rights, the State has a duty to provide the maximum possible - not just the minimum - for the realization of fundamental rights (Hachem; Kalil, 2016).

Having established these legal categories - existential minimum, proviso of the possible, justiciability, jusfundamental legal regime and multifunctionalities - the next chapter will focus on the right to housing and the functioning of the Land Conflict Commissions established by the STF in ADPF 828 and regulated by CNJ Resolution 510 of June 26, 2023, a commission that strengthens the structural process in litigation linked to the right to adequate housing.

3. THE LAND CONFLICT RESOLUTION COMMISSIONS DETERMINED IN ADPF 828 AND REGULATED IN RESOLUTION 510, OF JUNE 26, 2023, OF THE NATIONAL COUNCIL OF JUSTICE, AS A FORMALIZATION OF THE STRUCTURAL PROCESS AS THE MAIN METHOD OF RESOLVING DISPUTES OVER THE RIGHT TO ADEQUATE HOUSING

The aim of this chapter is to take a closer look at the Land Conflict Resolution Commissions, which were created under the transitional regime of ADPF 828 and regulated by Resolution 510 of June 26, 2023. These Land Conflict Commissions are not jurisdictional in nature, nor do they replace the natural judge of the case, who remains responsible for the provision of justice.

The hypothesis of this article is that the Land Conflict Resolution Commissions, despite not being jurisdictional in nature, inaugurate a real structural process in the protection of housing rights in collective conflicts.

The Federal Supreme Court, consolidating its jurisprudence, in a plenary session that ended on June 30, 2023, authorized the judicial control of public policies aimed at fundamental rights, establishing, among other theses, the following thesis: "The intervention of the Judiciary in public policies aimed at the realization of fundamental rights, in case of absence or serious deficiency of the service, does not violate the principle of separation of powers" (STF/RE 684.612).

Nevertheless, with the conclusion of the judgment on theme 698, the STF expressly adopts the possibility of judicial control of public policies aimed at fundamental rights, which will be a key point for analyzing the right to adequate housing and its effectiveness by the Judiciary.

Having established the premise that the Judiciary can intervene in the control of public policies, it is important to ascertain whether Civil Procedure Law has adequate resources to ensure the effectiveness of social rights. In procedural terms, one of the most important

instruments for resolving complex issues in the field of collective protection are structural decisions (Arenhart, 2013, p. 391).

Structural processes are characterized by polycentric litigation, in other words, they go beyond the logic of adversarial litigation.

Sérgio Cruz Arenhart (2013, p. 392-393) establishes some requirements for a procedural system to admit structural decisions: (i) a mature procedural system, which relativizes the separation of powers, (ii) structural measures must be the last resort, that is, the typical measures of procedural law must be exhausted (iii) the procedural system must be flexible, admitting attenuation to the principle of demand, allowing a high degree of freedom to the magistrate to adapt his decisions to the concrete case, not only to the request of the parts and (iv) the structural measure must be in harmony with the injury it intends to prevent or repair, under penalty of excess.

Sérgio Cruz Arenhart, exemplifying structural decisions, mentions collective land conflicts and makes a hypothetical judgment in the context of repossession occupied by a social movement: "[...] Opting to grant the repossession measure could aggravate a social problem, with the removal of entire families [...] Rejecting the request, on the other hand, implies a denial of the right to possession/property [...]" (Arenhart, 2013, p. 390).

Therefore, in structural litigation of the right to adequate housing, it is entirely appropriate to assess the economic and social conditions of the parts involved, ensuring that there are adequate housing policies for this population and seeking solutions that prevent further violation of their fundamental rights (Barbosa; Mariano, 2023, p. 1152-154).

By recognizing the lack of efficient policies or failures in their application, the management of the structural process can encourage public managers to develop housing programs within the context of urban planning, as well as housing solutions for this vulnerable group. The refusal or negligence of administrative representatives to meet the needs of this population will result in civil and administrative liability (Barbosa; Mariano, p. 1152-154, 2023).

At an international level, the most emblematic case pointed out by the doctrine of the origin of the structural process in the USA is the famous solution given to the Brown v. Board of Education case. In this class action trial, the U.S. Supreme Court unanimously ruled in favor of the parents who complained about the policy of racial segregation in a municipality in the state of Kansas, pointing to a violation of the 14th Amendment to the U.S. Constitution, putting an end to the racist policy of "separate but equal" (Arenhart, 2013, p. 390).

A structural injunction, in short, aims to bring about a structural reform of some relevant social issue. The public school system was just the beginning of structural rulings, with the U.S. Judiciary expanding, through its structural rulings, reforms to meet constitutional guidelines in other areas, such as police, prisons, mental health hospitals, shelters and social service agencies, among others (Arenhart, 2013, p. 390).

Collective disputes over the right to adequate housing are typical structural processes. To ensure this, it is necessary to guarantee the presence of the different groups and sectors involved, as well as carrying out a comprehensive analysis of the economic and social situation of families. In addition, the contribution of academics, technical professionals and experts is crucial to gaining a deeper understanding of the situation and facilitating the search for consensual and less impactful solutions for all parts involved. By actively involving the municipal, state and federal governments, it is possible to ensure that the proposed policies or programs are developed according to criteria of equality and discretion, without violating the separation of powers (Barbosa; Mariano, 2023, p. 1156).

In the Global South, identified geographically with the southern hemisphere and developing countries, a social constitutionalism has emerged since the second half of the 20th century, when the state acts structurally when there is a violation of social rights, while maintaining the same characteristics as the Global North, despite the differences, the structural process maintains the same characteristics of polycentric

litigation, which requires a structural plan to solve endemic problems, such as the right to housing (Möller, 2021, p. 58).

On Latin America, the best-known case of a structural process regarding the right to housing is certainly the famous "T-025 ruling of 2004", a case heard by the Colombian Constitutional Court, dealing with the problem of those displaced by security issues such as guerrilla warfare. In this action, it heard 108 requests for injunctions from 1,150 displaced families who were unable to access a series of basic social rights. In this action, the Colombian Constitutional Court declared the "unconstitutional state of affairs" and ordered a series of structural measures (Möller, 2021, p. 181).

At the international level, we have recommendations from international organizations to stop arbitrary evictions and removals, which demonstrate the successful procedural strategy in the STF's ADPF 828. The United Nations (UN) Rapporteur on Adequate Housing issued a formal request for Brazil to cease evictions and removals while the pandemic lasted, in response to a complaint made by Brazilian social movements (Gaio; Mesquita Filho, 2023, p. 339).

The question of housing has become a central issue in various parts of the world, with legislative and executive branch measures aimed at halting evictions and promoting the protection of economically and socially vulnerable groups.

The housing shortage in both cities and rural areas has worsened considerably, especially during the COVID-19 pandemic.

The plenary of the Federal Supreme Court, in a virtual session from November 1 to November 2, 2022, endorsed the injunction to determine, on a transitional basis, that the Courts of Justice and the Federal Regional Courts should have commissions to resolve land conflicts, carrying out inspections and judicial hearings, with gradual and staggered execution as a prior and necessary step to collective eviction orders, among other measures, there is even the promotion of a prestational facet of the right to housing when it is determined to send people in situations of social vulnerability to public shelters

(or places with decent conditions) or adopt other measures to safeguard the right to housing, in any case prohibiting the separation of members of the same family.

The STF's ADPF 828 showed its effectiveness in several structuring decisions and, in terms of the concept of structural process advocated in this article, inaugurated a true structural process in the right to adequate housing in collective land conflicts.

Exemplifying. The rapporteur, Minister Luís Roberto Barroso, granted several structuring decisions within the scope of ADPF 828, including suspending, for a period of 6 months from the date of this decision, administrative or judicial measures that result in evictions, forced removals or collective repossessions of properties that serve as homes or represent productive areas for individual or vulnerable populations, in cases of occupations prior to March 20, 2020, when the state of public calamity began (Legislative Decree No. 6/2020).

With regard to the preliminary eviction, suspend for a period of 6 (six) months, as from this decision, the possibility of granting a summary preliminary eviction, without the hearing of the opposing part (art. 59, § 1, of Law No. 8.245/1991), in cases of residential leases in which the tenant is a vulnerable person, maintaining the possibility of an eviction action for non-payment, with observance of the normal procedure and the adversarial process.[6]

In comparison with the ADPF 828 court decision and Law No. 14.126/2021, the law is more protective on some points, especially when the law makes no distinction between occupations before and after the pandemic.

However, Law No. 14.216/2021 had its application restricted to urban properties, ruling out the protection of rural properties. In

[6] BRASIL. Federal Supreme Court. **ADPF 828 MC/DF**. Monocratic decision. Rapporteur: Min. Luís Roberto Barroso. Trial: 03/06/2021.

addition to the housing shortage, we have a significant number of occupations for land reform.

Minister Luís Roberto Barroso, in a monocratic decision, once again granted provisional relief[7], now to extend the effects of Law No. 14.216/2021 to rural areas until March 31, 2022, given the inertia of the National Congress in legislating the matter and the urgency arising from the health crisis.

With the deadline of 31/03/2022 approaching, the legitimate entities requested an extension of the period of validity of the provisional protection until the World Health Organization (WHO) decreed the extinction of the pandemic or as long as the pandemic situation did not subside in Brazil. The Minister rapporteur of ADPF 828, Luís Roberto Barroso, partially granted the request, extending the deadline until June 30, 2022.[8]

The Plenary of the STF, by a majority, finally endorsed the incidental provisional guardianship, partially granted, and determined the inauguration of the transitional regime for the resumption of the execution of decisions suspended in this action for breach of fundamental precept, determining, among other measures, the resumption of executions of the suspended decisions, as well as determining that the Courts of Justice and the Federal Regional Courts should immediately set up commissions on land conflicts that can serve as operational support for the judges and, especially in this first moment, draw up the strategy for resuming the execution of the decisions suspended by ADPF 828.[9]

The STF's plenary decision, in the ADPF 828 judgment, points to the land conflict mediation model of the Paraná Court of

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[7] BRASIL. Federal Supreme Court. **ADPF 828 TPI/DF**. Monocratic decision. Rapporteur: Min. Luís Roberto Barroso. Trial: 01/12/2021.

[8] BRASIL. Federal Supreme Court. **ADPF 828 TPI-SEGUNDA/DF.** Monocratic decision. Rapporteur: Min. Luís Roberto Barroso. Trial: 30 mar. 2022.

[9] BRASIL. Federal Supreme Court. **ADPF 828 TPI/DF**. Monocratic decision. Rapporteur: Min. Luís Roberto Barroso. Trial: 02/11/2022.

Justice[10] as a reference for other Courts of Justice and Federal Regional Courts, which should immediately set up land conflict commissions (monocratic decisions handed down by the rapporteur Minister Luís Roberto Barroso and endorsed by the Supreme Court's plenary).[11]

One of Insper's statistical studies showed that in 2021 alone, 19.923 people were protected from the suspension of evictions, removals and repossessions by decisions of Supreme Court Justices in the context of ADPF No. 828 complaints.[12]

The transitional regime of the Land Conflict Resolution Commissions, although created in the so-called transitional regime, has become part of the procedural means available to judges and courts in collective land conflicts.

The Regional Commissions of the Courts of Justice and the Federal Regional Courts and the National Commission on Land Conflicts, regulated by Resolution 510 of June 26, 2023, of the National Council of Justice, are a reality in the Judiciary and have already been implemented in several courts.

According to the President of the Land Solutions Commission of the Paraná Court of Justice, Judge Fernando Prazeres, and Judge Lucas Cavalcanti da Silva (Prazeres; Cavalcanti, 2023, p. 285), the Regional Land Solutions Commission is nothing more than a support structure for the judge who will judge collective land conflicts, offering opportunities for conflict mediation.

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[10] Land Conflicts Comission of the Court of Justice os Paraná. The Court Of Justice of Paraná has a technical note regulating the administrative and jurisdictional procedures for the adequate treatment of land and urban conflits of a collective nature (Available at: https://drive.google.com/file/d/1vuf1xVrlMjIdIxgrVkU1l5WluocJiSnJ/view. Accessed on: July 25, 2023.

[11] Preliminary decisions ratified, by majority, by the plenary Supreme Court (Available at: https://jurisprudencia.stf.jus.br/pages/search. Accessed on: February 27, 2024.

[12] Insper has a technical note on Action for Breach of Fundamental Precept 828. Action for Breach of Fundamental Precept (Available at: https://www.insper.edu.br/wp-content/uploads/2021/12/Nota_Tecnica_Acao_de_Descumprimento_de_Preceito_Fundamental_n_828.pdf. Accessed on March 14, 2024).

Therefore, the judge in a collective land conflict is removed from the all-or-nothing logic: either he orders removal and eviction or he keeps the families, even if they are in irregular occupations. The judge now has greater power to provide a negotiated solution, through mediation or conciliation, or even the power to order structural measures, in a typical structural process.

CNJ Resolution 510 establishes a series of stages for the Land Conflict Resolution Commissions: (i) the technical visit, (ii) mediation, (iii) preparation for compliance with the repossession order and (iv) a public hearing. They are all powerful procedural tools for tackling a structural issue in our country: the housing shortage and collective land conflicts.

The Land Conflict Resolution Commissions, in short, have shown results in overcoming the inefficiency of the traditional adversarial civil process by implementing a structural process with political litigation.

4. CONCLUSION

The classic procedural system is not equipped with the instruments needed to give effect to social rights, through the proper processing of structural proceedings, collective proceedings and constitutional proceedings in concentrated control of constitutionality. There is a clear deficit in the effectiveness of the norms of fundamental social rights set out in the Federal Constitution, such as the right to adequate housing, so there is a need to build a structural and collective procedural system aimed at realizing these social rights.

In ADPF 828, the right to housing was analyzed in all its multifunctionality and the Judiciary ordered a series of structural measures. One of the results of the STF's ADPF 828 was the creation of the National Executive Committee for Land Solutions by the CNJ, through Presidential Ordinance No. 113, of April 28, 2023 and Resolution No. 510, of June 26, 2023, and the Regional Comissions by the courts.

The hypothesis that the creation of Land Conflict Resolution Commissions is the new locus of the structural process in the context of the right to housing was confirmed, as it ensures greater effectiveness in resolving land conflicts of a collective nature or of vulnerable populations. This precedent is based on respect, promotion and fulfillment of the right to adequate housing. In civil procedural law, land conflict resolution commissions strengthen the real structural process in polycentric litigation of the right to adequate housing.

The expectation is to create a new legal culture in Brazil regarding land conflicts and a new empirical behavior by judges aimed at resolving the historical deficit of the right to housing in Brazil.

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