

Pet 3,388

Demarcation of *Raposa Serra do Sol* Indigenous Land

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

Rapporteur:

Justice Ayres Britto

Decision Date:

March 19, 2009

Matter:


CASE SUMMARY

This popular action challenges the administrative demarcation process of the *Raposa Serra do Sol* Indigenous Land, a continuous area in the state of Roraima, inhabited by different Indigenous ethnic groups. The plaintiff asks the Court to declare the demarcation null, based on the following arguments, among others: (i) the administrative demarcation process is null because it does not allow those seriously affected to defend their interests and is based on a partial report signed by a single professional; (ii) the continuous demarcation of the lands allocated to several ethnic groups, instead of an isolated demarcation in favor of each community ("islands"), affects a large part of the land, jeopardizing the development of the state of Roraima; (iii) it also violates the principle of reasonableness, and privileges the interests of Indigenous peoples to the detriment of other parties; (iv) national security and the sovereignty of the State are threatened by the demarcation, since large areas of land would be removed from the full control of the State.

The state of Roraima also joined the action, pointing out: (i) the unconstitutionality of the decree that regulated and defined the demarcation of Indigenous lands; (ii) the nullity of the expansion of the areas previously established on behalf of the communities; and (iii) the impossibility of overlapping Indigenous lands with national parks.

LEGAL REASONING

1. Indigenous peoples have the right to permanent possession and exclusive usufruct of the lands they have traditionally occupied. This right is original and predates the 1988 Federal Constitution, and therefore takes precedence over later interests. The demarcation of Indigenous lands is an official declaratory act by the State that recognizes a pre-existing factual and legal situation, and fulfills the State's duty to guarantee the protection of rights and the preservation of Indigenous cultures.

2. The administrative process for the demarcation of the *Raposa Serra do Sol* Indigenous Land is not flawed because, contrary to what is alleged, it provided the interested parties with the opportunity to

be heard and to present a full defense, as shown by the case file. Moreover, the process was based on an anthropological report prepared by a qualified expert.

3. The model of continuous demarcation of Indigenous lands is the most appropriate for the protection of their rights, since it guarantees the territorial continuity necessary for traditional practices and the maintenance of the cultural integrity of these peoples. The alternative, demarcation in “islands”, would divide the land and could weaken the autonomy, as well as the cultural and economic survival capacity of Indigenous communities. As for the impact on the development of the state of Roraima, the demarcation does not hinder the economic development of the state, which should align with cultural and environmental preservation, and accommodate the plurality of worldviews.

4. The federal government is responsible for the demarcation of Indigenous lands. This action does not affect national sovereignty. On the contrary, the presence of Indigenous peoples in these areas does not constitute a threat, but rather a strategy that contributes to the monitoring and defense of the national territory.

5. Regarding the allegations made by the state of Roraima, the Federal Supreme Court noted that there was already a precedent from the STF itself on the constitutionality of the decree regulating the demarcation. The Court clarified that it is possible to expand the area previously demarcated if an anthropological report technically proves that there was an error in the previous demarcation. It also stated that there is no conflict between the demarcation of Indigenous lands and the environmental protection of an area that is part of a national park. On the contrary, the Court stated that there is a convergence between the Indigenous way of life and the environmental preservation that national parks require.

6. Finally, the STF ruled that the demarcation of Indigenous lands should respect the institutional safeguards defined in the rapporteur’s opinion and further developed on issues such as the exploitation of natural resources of national interest, the presence of public facilities, and the operation of the Armed Forces on these lands. These safeguards sought to balance the rights of Indigenous communities with strategic and national security interests.

DECISION OF THE COURT

The Federal Supreme Court dismissed the popular action and declared the continuous demarcation of the *Raposa Serra do Sol* Indigenous Land constitutional.

ADDITIONAL NOTES

This was the first Supreme Court decision on the demarcation of Indigenous lands under the 1988 Federal Constitution. It guaranteed broad recognition of the rights of Indigenous peoples, but also set limits and conditions on the matter. In a motion for clarification, the Court stated that these limits and conditions reflected the Court’s understanding at the time of the ruling and would not have binding effects on future demarcations.

The decision used two concepts that have since become controversial: the “*marco temporal*” of the Indigenous rights to the land and the “obstinate usurpation”. The term “*marco temporal*” referred to the right of the communities that were on these lands when the 1988 Federal Constitution was enacted to

see them demarcated and protected. The term “obstinate usurpation” refers to the right of the peoples who were unjustly removed from their lands before that milestone and who were unable to return. This is an important precedent, usually invoked in demarcations and court decisions, whose conclusions have been and continue to be discussed in other cases before the Court.

