

## The docile dream of owning a home<sup>\*</sup>

### *O dócil sonho da casa própria*

Vania Siciliano Aieta\*\*  
João Marcelo Sant'Anna da Costa\*\*\*

#### **Abstract:**

The subject of this paper is the speech about the “dream of owning a home”, its meaning and its purpose. The research is important because housing public policies take such speech for granted to the extent it might get confused with the social right of housing. The main purpose is to point out that this confusion creates and keeps an endless consumer market for the construction industry. The method is legal and theoretical through the analysis of documents and precedents from the Superior Court of Justice with inductive reasoning. The theoretical framework is founded in Foucault, regarding the power of discipline on the docile bodies. In conclusion, the speech about the “dream of owning a home” legitimizes public policies that focus on private property acquisition by pretending to grant effectiveness to housing, when their purpose is to attend political and economic reasons.

**Keywords:** Biopolitics, Foucault, Dream Of Owning A Home, Superior Court Of Justice, Housing.

#### **Resumo:**

*O tema deste trabalho é o discurso do sonho da casa própria, seu significado e os interesses aos quais se alinha. A pesquisa se justifica devido o discurso ser encampado por todas as políticas públicas de habitação, ao ponto de se confundir com a própria efetivação do direito social de moradia. O objetivo principal é demonstrar essa confusão e como ela serve para criar e manter o mercado consumidor inesgotável para a construção civil. A metodologia de pesquisa é teórico-jurídica, com análise documental e de jurisprudência do Superior Tribunal e Justiça (STJ), e raciocínio indutivo. O fundamento teórico é encontrado em Foucault, a respeito do poder da disciplina sobre os corpos dóceis. Conclui-se, portanto, que o discurso do sonho da casa própria legitima políticas de facilitação da aquisição da propriedade privada sob o propósito de dar concretude ao direito social de moradia, mas atende interesses políticos e econômicos.*

**Palavras-chave:** Biopolítica, Foucault, Sonho da casa própria, Superior Tribunal De Justiça, Habitação.

\* Artigo traduzido por Inteligência Artificial.

\*\*Professora Adjunta do Programa de Pós-Graduação em Direito da Faculdade de Direito da Universidade do Estado do Rio de Janeiro (UERJ), aprovada em primeiro lugar em concurso de provas e títulos. Pós-doutora em Direito Constitucional pela Universidade de Santiago de Compostela, Espanha e pela Pontifícia Universidade Católica do Rio de Janeiro (PUC-Rio). Doutora em Direito Constitucional pela Pontifícia Universidade Católica de São Paulo (PUC-SP). Mestrado em Teoria Geral do Estado e Direito Constitucional pela PUC-Rio. Graduação em Direito pela Universidade do Estado do Rio de Janeiro (UERJ). Visiting Researcher na Universidade de Santiago de Compostela, Espanha (2018) e Visiting Scholar na Università La Sapienza, Roma, Itália. Lattes: <http://lattes.cnpq.br/3428878189943493> Orcid: <https://orcid.org/0000-0003-1670-3416> E-mail: [vaniaaieta@yahoo.it](mailto:vaniaaieta@yahoo.it)

\*\*\*Doutorando, Mestre e Bacharel em Direito pela Universidade do Estado do Rio de Janeiro UERJ. Pós-graduado em Direito do Estado e Regulação pela Fundação Getúlio Vargas (FGV-RIO). Membro do Instituto dos Advogados Brasileiros (IAB), do Comitê Brasileiro de Arbitragem (CBAR), da comissão de Direito Constitucional da Ordem dos Advogados do Brasil - Rio de Janeiro (OAB/RJ), do Comitê Brasileiro da Associação Henri Capitant. Lattes: <http://lattes.cnpq.br/1909162182908433> Orcid: <https://orcid.org/0000-0003-1855-1030> . E-mail: [jmsc@aaalaw.com.br](mailto:jmsc@aaalaw.com.br).

## 1 Introduction

Attend classes, study, be a good student, get good grades, pass the year, pass the entrance exam, enter a university, study, pass the semester, get a good internship, graduate with a high performance coefficient, be hired in the internship and get the first job or pass a public exam, earn a good salary, getting married, buying a car, buying a house of your own, being promoted, changing cars, making a career, having children and reproducing this cycle of life with them.

The sequence of activities above is daily approved and faithfully complied with by most individuals, especially those belonging to the *Baby Boomer* Generation, Generation X and part of those called *Millennials*<sup>1</sup>. It seems that only through this sequence do individuals recognize themselves as happy, successful, belonging to the society in which they are inserted and, finally, stable. In a survey sponsored by the *Institute for International Social Research*, carried out in the 1960s, home ownership was pointed out as the main aspiration of workers (Bolaffi, 1982, p.37-70). According to Peruzzo (1984, p.41), "*home ownership not only plays a strong attraction in the face of financial difficulties and the uncertainties of urban employment, but also demonstrates social ascension*". Thus, most individuals consider themselves to have achieved their stability and achieved this "success" by finally acquiring their own home and achieving the *must-have* of their generation.

In Brazil, the desire for home ownership could be explained, at least partially, by historical reasons: the status of power of the plantation owners, the difficulty of access to real estate property after the Land Law, the census vote, the disorganized migration from the countryside to the cities, the public policies that invariably favored the commodity-housing, the changing economic policies and their recurrent crises, legal uncertainty and the reflection of all this on rental prices.

This scenario could have been changed. After the Lease Law (Law 8.245/92), the Real Plan, the globalization of the labor market, the evolution of urban mobility, the applications of accommodation services and the evolution of the national financial system, there are several other ways to obtain (i) concreteness of the right to housing<sup>2</sup> and (ii) remuneration of investor

---

<sup>1</sup> Available at <https://www.goldmansachs.com/insights/archive/millennials/> accessed on July 22, 2020.

<sup>2</sup> For example, social rent.

capital<sup>3</sup>. In any case, even today, the *dream of owning a home*<sup>4</sup> is seen by most individuals as an indisputable truth, a Mecca<sup>5</sup> to which everyone must orient themselves.

In the context of the formulation of public housing policies and judicial decisions, the *dream of owning a home* is often confused and becomes synonymous with the social right to housing, as if the acquisition of private property for housing purposes were the right enshrined in Article 6 of the Constitution of the Federative Republic of Brazil.

In 2018, however, the Second Section of the Superior Court of Justice (STJ) issued a decision in Special Appeal No. 1.601.149/RS, which did not confer absolute status on the *dream of owning a home*, but relativized it in the face of economic interests and the logic of real estate financing and civil construction. Before the aforementioned judgment was handed down, the Third Panel of the Superior Court of Justice judged Special Appeal nr. 1.448.026/PE and issued a judgment using the discourse of the *dream of owning a home* to position itself in the sense that only the acquisition of private property within the scope of real estate financing would be legitimate, denying that the original acquisition by adverse possession had the same effect.

What, then, would be the meaning of the discourse of the *dream of owning a home*? What interests does he align himself with? Can the *dream of owning a home* be interpreted as a discourse projected on individuals with purposes other than the realization of the right to housing?

Although this work does not intend to exhaust the theme, it intends to contribute to the scientific research of the problem-situation through the submission of the following premise to the test: the discourse of the *dream of owning a home*, widely accepted by individuals as a truth and goal of life, constitutes a discipline tool that seeks to increase the relationship of docility-utility of bodies, increasing its economic utility and reducing its political insurgency.

To test this hypothesis, this paper presents and analyzes the decisions of the STJ referred to above and then uses the theory of Foucault (2013), on docile bodies and the power of discipline, and of Aieta (2016), on the social function of cities and the culture of life in cities.

---

<sup>3</sup> It is estimated that, in Rio de Janeiro, the rental value of a residential property corresponds to 0.3% of the value of the property, a return that is usually lower than the profitability of fixed income investments.

<sup>4</sup> The exact origin of the expression dream of owning a home is unknown. On the one hand, it stems, in part, from the translation of the *American way of life*. On the other hand, many authors consider the expression to have emerged in Brazil since the 1940s, with the formulation of public policies aimed at housing and the social right to housing. In any case, it represents a cultural belief that security and stability are terms associated with the individual acquisition of urban property. For more information, it is recommended to read Barone (2020). Available at <https://www.scielo.br/j/anaismp/a/ps3F9YRCgDKfgw95HcbQpPf/?format=pdf&lang=pt>. Accessed on October 14, 2021

<sup>5</sup> Mecca is considered the holiest city for the Islamic religion,[3] and its adherents often pray toward it. Available at HYPERLINK "<https://pt.wikipedia.org/wiki/Meca>" <https://pt.wikipedia.org/wiki/Meca> accessed on October 14, 2021

In this way, it is tried to explain that the discourse of *the dream of owning a home* can be associated with political-social control and can serve as a propagandist tool of the real estate industry, used to maintain a faithful and perennial consumer market inexhaustible for civil construction, an advertisement that is already organically incorporated into the core of individuals and the culture of life in cities.

The conclusion reached was that the discourse of *the dream of owning a home* legitimizes measures to facilitate the acquisition of private property with the purpose of giving concreteness to the social right to housing and, thus, meets political and economic interests of income generation (including for construction companies) and employment through the production of new housing units. In this sense, the discourse of the *dream of owning a home* is an important tool of social discipline because it allows the creation, through its propagation and assimilation, of the consumer market of the housing commodity, without which economic policies disguised as housing policies would not achieve their effects.

## 2 Methodology

The problem proposed in this work, which is the meaning of the discourse of the *dream of owning a home* and the interests to which it is aligned, is complex and does not find a direct answer in the literature. Therefore, this work meets the simplest definition of research insofar as it "seeks [...] answers to questions or problems proposed that do not find immediate solutions in the specialized literature on the subject" (Gustin, 2006, p.6), but does not propose to present an exhaustive answer to the problem.

Considering that "*the production of emancipatory knowledge originates from a complex problem that is vital and that is configured from a legal phenomenon understood in its cultural and three-dimensional dimension: factual, axiological and normative*" (Gustin, 2006, p.7), the work seeks to contribute to the analysis of the problem from a specific perspective, respecting the limit of time and depth available, For now, to research. It is a legal-exploratory work with a view to allowing the development of future research in greater depth.

To carry out this work, we were guided by the legal-dogmatic methodological approach that "*considers the Law with methodological self-sufficiency and works with the elements internal to the legal system*" (Gustin, 2006, p.21). The methodology of theoretical research was used, more specifically a documentary analysis and jurisprudential content from the examination of the two decisions rendered by the STJ. Using primarily "paper sources",

bibliographic research was developed, essential for legal research, in its documentary aspect (Adeodato, 1998, p.5): "In the case of legal research, it is also important to study documents such as laws, jurisprudential repertoires, sentences, contracts, legislative annals, opinions, etc., constituting a branch of bibliographic research that we can call **documentary**".

The reasoning developed in this work is inductive reasoning, as well as the conclusions are broader than the data and assumptions collected from the analysis of judicial decisions. In this way, the three phases of the inductive process of knowledge are fulfilled, namely, it is observed that the decisions of the STJ have used the discourse of the *dream of owning a home* in alignment with economic interests. In addition, it is sought, in Foucault's (2013) theory about the discipline exercised over docile bodies, and in the doctrine represented by Aieta (2016) about life in cities, an explanation for the (generalizing) correlation between the discourse of the *dream of owning a home* and the economic and social interests that permeate the real estate industry beyond the right to housing.

As a theoretical framework, it is understood that (Gustin, 2006, p.37/38):

foundation that supports all this argumentation and gives it meaning, or even one of its statements that is incisive and that refers to something that supports an idea that has been theoretically or empirically verified. [...] The theoretical framework is, therefore, an incisive statement by a theorist from a certain field of knowledge who has carried out investigations and orderly reflections on a given theme and arrived at methodical explanations and conclusions on the subject or, as already explained, the theoretical foundation that supports his reflections in all or part of his production.

Therefore, the theory developed by Foucault (2013) about docile bodies and the discipline exerted on them is used as a theoretical framework to shape their behavior and increase the utility-docility relationship, increasing economic potential and reducing political insurgency. And in addition to Foucault's (2013) theory, the lessons on the social function of cities and on the culture of life in cities offered by Aieta (2016, p.1626/1627):

[...] the most interesting notion of city is revealed in BERMAN's conceptual construction when he asserts that the "City is the place for us and for those who will come after us; the place for those who will continue to fight to make us feel at home in this world. The city brings the feeling of being at home" (BERMAN, 2007). But what do we see today? What do we see in capitals, medium-sized and large cities? A reality that is different from what is thought and desired. The architecture of fear, bringing us wonders, as in Hobbesian proposals. Such a frame of fear is revealed in the appearance of countless bars in homes, in life in condominiums, in public buildings, in a permanent and forced coexistence with violence. [...] The city must basically be the place of habitation and the organization of the city must meet this purpose: the city must fulfill a social and fundamental function that surpasses all the possibilities existing in it: to provide housing, to ensure social rights as a whole, meeting the human needs of survival, existence and also happiness. [...] The new means of communication, composed of all kinds of resources, also enslave man, making our daily lives extremely fast. And such demands stain both the public living space, as people do not have time to carry out their daily activities satisfactorily, as

well as even in the universe of domestic privacy, family life has become more difficult due to the time in moving around in large cities.

The justification for the theme of the *dream of owning a home* stems from the fact that public housing policies, which propose to put into effect the social right to housing and, more generally, seek to materialize "*human rights, in particular social rights [...], so-called second generation, which more precisely encompass economic, social and cultural rights, formulated to guarantee, in their fullness, the enjoyment of first-generation rights*" (Bucci, 2006, p.3) recurrently use this discourse to encourage the acquisition of the housing commodity.

The analysis of judicial decisions on the subject is justified because it is also in the Judiciary that the clashes over social rights are fought, as Bucci (2006, p.6) explains:

Social conflicts are not denied and masked under the cloak of idealized individual freedom. On the contrary, in the arenas of political socialization, especially the Legislative Branch, but also, in a way, the Judiciary, the clashes for social rights gain a privileged place.

Therefore, this study is based on the premise that the judicial clashes fought over the means of giving concreteness to social rights are equally permeated and affected by ideological discourses contaminated by ulterior motives and aimed at aligning with economic practices masked in the form of social public policies. As Villaça (1999, p.174) explains, "*one must carefully consider the difference between the discourse and the real action of the State, whose objectives, moreover, are often hidden*".

Thus, there is nothing more pertinent than to study judicial decisions, then promote the discussion on the basis invoked in them, analyzing it from the theoretical perspective presented, generalizing the conclusions. This is because, "*the most developed elaboration in law regarding public policies is not in the field of public law [...], but in the procedural field*" (Bucci, 2006, p.32).

### **3 Judicial decisions and the discourse of the *dream of owning a home***

In this chapter, two court decisions that invoked the theme of the *dream of owning a home will be analyzed*. Recently, the STJ did not confer absolute status on the *dream of owning a home*, but relativized it in the face of economic interests and the logic of real estate financing and civil construction. Also recently, the same STJ used the discourse of the *dream of owning a home* to position itself in the sense that only the acquisition of private property within the

scope of real estate financing would be legitimate, denying that the original acquisition had the same effect.

Thus, these two decisions were selected that reveal how the *dream of owning a home*, treated as an unmistakable premise and almost as a fundamental right of the individual, also transpires and reveals that, in truth, the promotion of the acquisition of one's own home serves economic and political interests aligned with the logic of capital.

The first judicial decision analyzed is the recent decision handed down by the Second Section of the STJ which, on August 15, 2018, by majority vote, granted special appeal No. 1601149/RS<sup>6</sup> and edited the following repetitive thesis for the purposes of Article 1,036 of the Code of Civil Procedure:

Except for the so-called Band 1, in which there is no real estate intermediation, the contractual clause that transfers to the promissory-buyer the obligation to pay the brokerage commission in the promissory contracts of purchase and sale of the Minha Casa, Minha Vida Program, provided that the total price of the acquisition of the autonomous unit is previously informed, highlighting the value of the brokerage commission.

In fact, the STJ considered valid the contractual clause through which the construction company, seller, transfers to the buyer the obligation to pay the brokerage fee due to the real estate broker intermediating the business. The only requirement made by the STJ, in the aforementioned ruling, is that the contract informs the total acquisition price of the autonomous unit sold by the construction company, with emphasis on the value of the brokerage fee. This thesis established by the STJ applies to all similar legal relationships and not only to that specific case.

The analysis of the correctness or otherwise of the repetitive thesis is not the main objective of this work. The reasoning set out in the aforementioned judgment is, however, because it allows us to verify how rooted the discourse of the *dream of owning a home* is in the legal discussion on the realization of the social right to housing. Despite being defeated on the merits of the special appeal, the rapporteur Justice Paulo de Tarso Sanseverino was joined by his peers in the affirmation about the main objective of the Minha Casa Minha Vida Program (PMCMV):

The prohibition of this practice is consistent with **the main objective of the program, which is to facilitate the beneficiaries' access to home ownership**. [...] Even if the beneficiary manages, in some way, to obtain financial resources to pay the brokerage commission, this requirement creates an onerous nature that is not compatible **with the program, which aims to make the acquisition of one's own home less**

---

<sup>6</sup> Superior Court of Justice. Special Appeal 1601149/RS, Appeal of Justice Paulo de Tarso Sanseverino, Appeal for the Judgment of Justice Ricardo Villas Bôas Cueva, Second Section, judged on 06/13/2018, DJe 08/15/2018.

**expensive**, through the series of mechanisms already described. [...] From this perspective, it is observed that the advantage obtained by the builders/developers with the collection of the brokerage commission offends the **guiding principle of the PMCMV, which is to facilitate access to home ownership**. (emphasis added)

It is understandable, then, that the Minister of the STJ has repeatedly pointed out that the main objective, scope and guiding principle of the PMCMV and the public housing policy is the facilitation of the acquisition of homeownership. There is no criticism or reflection on the facilitation of home ownership as a skillful or mandatory mechanism for the realization of the social right to housing, the primary objective of a public housing policy. The Minister took the *dream of owning a home* as the main objective to be protected and, therefore, understood that it was not possible to transfer the cost of the brokerage commission to the buyer, since it was incompatible with the main objective of the PMCMV.

Likewise, the Federal Public Prosecutor's Office (MPF), in an opinion presented to the STJ in that case, argued that the guarantee of the fundamental and constitutional right to housing involves the implementation of public policies aimed at the acquisition of homeownership. In its opinion, the MPF suggested that the dignity of the human person is realized with the acquisition of one's own home:

25. In particular, it is undeniable that the PMCMV essentially and ontologically has a social character, aiming at access to housing by the low-income population, in strict observance of the fundamental right that Constitutional Amendment No. 26/2000 included in article 6 of the Federal Constitution, imposing on the State the duty to ensure to all, in a broad and universal way, through the adoption of public policies, the achievement of a ceiling. In fact, it is not too much to remember that one of the clearest effects of social exclusion in Brazil is the housing deficit and the precarious housing of urban populations in risk areas, which is why **the implementation of public policies aimed at the acquisition of home ownership leads, in the final analysis, to the realization of the constitutional postulate of the dignity of the human person** (art. 1, III, of the FC). [...]

27. As seen, the requirement of payment of a brokerage commission by the purchaser of the property within the scope of the PMCMV is not compatible with the nature and purpose of the program, as it contradicts the programmatic genesis itself, which has as **its primary objective to enable access to housing by the low-income population, giving concreteness to the provisions of article 6, of the Federal Constitution**, which, based on the wording given by Constitutional Amendment No. 26/2000, included housing in the list of social rights. (emphasis added)

It should be noted that the MPF ratified the discourse of facilitating the acquisition of private property on the grounds that "*the implementation of public policies aimed at the acquisition of home ownership leads, in the final analysis, to the realization of the constitutional postulate of the dignity of the human person*".

This syncretism between the discourse of the *dream of owning a home* and the search for the realization of the social right to housing, this inseparable relationship to the naked eye between the two things, home ownership and the right to housing, is what seems to prove to be

the true hypothesis because, as will be seen below, the PMCMV aims to facilitate the acquisition of home ownership for reasons of economic policy, long before anything else. It is explained.

In his opinion, Justice Luis Felipe Salomão also corroborated the discourse that the acquisition of private property aims to give concreteness to the social right to housing. For the Minister, production and acquisition of home ownership give concreteness to the right to housing:

2. The Minha Casa, Minha Vida Program, established by Law No. 11,977/2009, has the primary scope of **creating mechanisms to encourage the production and acquisition of home ownership by low- and middle-income families, in order to give concreteness to the provisions of article 6 of the Federal Constitution, specifically the fundamental right to housing and, ultimately, to the constitutional postulate of the dignity of the human person** (art. 1, III, of the Charter of the Republic). [...] (emphasis added)

However, Minister Luis Felipe Salomão noted that the PMCMV is aligned with the capitalist economic model. In this sense, the Minister considered the fact that the construction company passes on the cost of the brokerage fee to the purchaser of the real estate unit "*is a logical consequence of this capitalist economic model and does not have the power to prevent access to the benefits of the PMCMV*".

The opinion seen by Justice Luis Felipe Salomão was delivered following and following the enlightening winning vote, written by Justice Ricardo Villas Bôas Cuevas. This winning vote, in turn, pointed out that public policies that promote home ownership meet economic interests, especially those of the civil construction sector. For the winning vote, the construction companies and developers would be placed in a condition of imbalance with the buyer if they could not pass on to the buyer the brokerage fee not computed in the cost of their product:

**On the other hand, it would create a huge financial imbalance for construction companies and developers who, following the repeated commercial practice, failed to compute the cost of brokerage in the commercialization of their autonomous units, which jeopardizes the achievement of one of the objectives of the program, which, as already mentioned, also aims to meet the political and economic interests of the country. stimulating the production chain of the real estate and civil construction sectors and generating employment and income for a significant portion of the population.** (emphasis added)

The winning vote lays bare the discourse of the *dream of owning a home* to the extent that it clarifies that the PMCMV is aligned with the political and economic interests of the country, especially the real estate sector and civil construction. The winning vote does not silently submit to the discourse of the *dream of owning a home*, it does not give it the status of

the main objective of the PMCMV. In fact, the winning vote exposes that the economic-political objective of the PMCMV could not be put at risk.

Thus, considering that the transfer of the brokerage fee to the consumer is a commercial practice that, on the one hand, does not prevent the acquisition of private property outside Range 1 of the PMCMV, on the other hand, if prohibited, it could tarnish the financial balance of construction companies and developers, it is clear that the winning vote allows the commercial practice targeted in the lawsuit.

In other words, the winning vote clarifies that the PMCMV has two main objectives, one economic and the other social, and the second cannot prevail over the first. The PMCMV, which facilitates the acquisition of private property, is not only a public policy with the objective of giving concreteness to the right to housing, but a public policy aligned with the political and economic interests of the country to generate employment and income. It is precisely when the assimilation of the discourse could harm the logic of capital that the economic-political face of the discourse is revealed and imposes itself as the idea that: the logic of capital and the real estate market must be protected.

The second judicial decision analyzed is the judgment handed down by the Third Panel of the STJ. On November 17, 2016, the Third Panel of the STJ, by unanimous vote, dismissed special appeal No. 1448026/PE.<sup>7</sup> Right in its summary, the ruling reveals that it decides that the issue affects the "*possibility of acquisition by adverse possession of property linked to the Housing Financial System and owned by Caixa Econômica Federal*". According to the vote of the rapporteur Justice Nancy Andrighi, the property belonging to Caixa Econômica Federal (CEF), despite being occupied for more than 15 years by the appellant, who was also the holder of fair title, could not be subject to adverse possession because it was "*linked to the Housing Financial System, because it was affected by the provision of public service, it must be treated as a public good, and is therefore not subject to statute of limitations*". The message of the judgment is simple: the original acquisition of the property, by prescription, would not be judicially recognized; only the acquisition by the financing made available by the CEF within the SFH would be so.

What is relevant in this judgment is the special use of the discourse of the *dream of owning a home*. The appellant, who intended to exercise her right to housing through the recognition of adverse possession of the property she had occupied for more than 15 years, would be, for

---

<sup>7</sup> Superior Court of Justice. Special Appeal 1448026/PE, Judge Nancy Andrighi, Third Panel, judged on 11/17/2016, DJe 11/21/2016.

the judgment, on the opposite side of the *dream of owning a home*. In fact, in the ruling, the discourse of the *dream of owning a home* was used to raise the status of importance of real estate financing, the business activity of CEF. Because the CEF finances the acquisition of the housing commodity – private property, home ownership – the property belonging to it could not be the object of non-onerous original acquisition by those who, in fact, occupied the property for housing purposes.

As for the particular, it is important to note what Milagres (2009, p.183) called the "*programmatic rhetoric of the constitutional text*". In fact, the right to housing transcends the idea of state provision and is not restricted to a defense function. It is the person who must be protected and who must have the right to "*a space essentially conducive to the protection of his dignity*" (Milagres, 2009, p.183). The interests of the public power should not oppose this, under penalty of the constitutional precepts of material dignity of the human being and minimum material conditions for a dignified life becoming mere rhetoric of constitutional text.

As can be seen, in the second judicial decision analyzed, the interest of the public power, represented by the CEF, is elevated to a status of more importance (that is, even more so). The discourse of the *dream of owning a home* is used to legitimize only the acquisition of one's own home within the scope of real estate financing promoted by CEF, distancing it from the non-onerous acquisition. It reveals, therefore, that the discourse of the *dream of owning a home* serves much more the purpose of capital, given that the acquisition of one's own home is only legitimate if through financing contracted with a financial institution, than through the social right to housing. Contrary to what was decided, Milagres (2009, p.185) states that the "*intangibility of space is not determined by its ownership, public or private, but by the effective destination or enjoyment of the existential good*". Notwithstanding the doctrinal lesson, the judicial decision analyzed gave greater weight to public ownership than the effective destination given to the property, which already served as a private residence.

From the analysis of the two judicial decisions mentioned above, it is extracted that the discourse of *the dream of owning a home*, associated with the realization of the social right to housing, in fact, has primarily an economic objective, so much so that, when the social objective and the economic objective seem to be in opposition, the judicial decisions defended the economic interest to the detriment of the social interest. This analysis is further corroborated by the speech of the president of Brazil on the date of the launch of the PMCMV. Hirata (2009, p.1) recalls that this program was instituted in response to a scenario of economic turbulence and political mobilization:

In a context of strong international crisis, marked by billions of dollars in accumulated losses, billions of dollars donated to banks, increased remittances of profits from multinationals based in Brazil, loss of international liquidity, decrease in commodity prices, economic stagnation, almost 800 thousand layoffs, uncertainties about the direction of the economy in terms of investments, social policies, to employment levels, intense popular mobilization, etc., President Lula launched on March 25, 2009 the National Housing Plan, as one of the main measures to combat the crisis and political and economic instability – as well as its negative impacts on employment levels – mainly through the incentive to generate employees, income and economic growth.

Hirata (2009, p.2), transcribing the words of the president himself, concludes that the housing issue was a strong flag triggered by a discourse that sought, in the first place, to face the economic crisis:

[...] This is an almost emergency program, as a response on the one hand to face the global economic crisis, solve part of the housing problems of some Brazilians and, at the same time, make us generate many jobs, to generate income and to generate greater movement in the Brazilian economy. Everyone knows that this is the goal.

Regarding the PMCMV, Oliveira (2015, p.144) notes "*that the Minha Casa Minha Vida Program, by constituting itself as a countercyclical measure, with the stimulus to the civil construction market, has become much more of a real estate policy than a housing policy*". In this vein, it is important to refer to the research of Medeiros (2007, p. 9/10):

Faced with the housing problem, the State is called upon to take measures and guarantee the usual conditions for those whose income is insufficient to solve their housing problems on their own. **The action of the State also ends up promoting the capitalist agenda. The construction of housing complexes implies the maintenance of social order, urban health, and economic dynamics.** [...] With the transformation of housing into a commodity, its most relevant characteristic, that of "basic necessity", is relegated to the background: **access via the market first meets the capitalist agenda, and not the social imperative.** The ideology of home ownership has served as an argument of the Brazilian State for the implementation of a market housing policy in the country. (emphasis added)

It is therefore necessary to seek an explanation so that, even in the face of the prevalence of economic interest over social interest, the discourse continues to be propagated as a means of giving concreteness to the social right to housing.

#### 4 Docile bodies and the dream of owning a home

The discourse of the *dream of owning a home* is, historically, imbricated in national public policies that propose to reduce the *housing deficit*. Firstly, because, for the most part, such public policies have as their object the granting of property titles directly by the public administration or through incentives for their acquisition in the real estate market. Secondly,

because these policies are accompanied by strong government propaganda, typical of a paternalistic regime (messianism, populism and clientelism), which aims to impute in the population a feeling of duty of loyalty and gratitude to the ruler(s) who allowed that citizen to achieve his "dream".

This was the case with the national public housing policies represented by the creation of the Casa Popular Foundation and, later, by the creation of the National Housing Bank (BNH) and the Housing Financial System (SFH). Azevedo and Andrade (1982, p. 20) refer to the Casa Popular Foundation and the BNH as follows: "*they were government initiatives that succeeded populist administrations and that pointed to home ownership as a means of gaining legitimacy and achieving penetration among urban workers*". The same authors (Azevedo; Andrade, 1982, p.59) then state that the BNH was consolidated as an elaborate "*strategy aimed at 'cooling' the masses, and, if possible, obtaining their support*". As Oliveira (2015, p.133) diagnoses:

In addition, its creation is inserted in a context of political and economic crisis, which was faced by the "new regime" established with the military coup of 1964. In addition to the crisis in the real estate sector, the period is marked by the containment of the masses, seen as focuses of tension, and thus the *dream of owning a home* is also an ideological tool. "[...] Implicit in this project was also the idea that home ownership could play an important ideological role, transforming the worker from a contestant into an 'ally of order'".

Currently, the main public housing policy developed at the national level, the PMCMV instituted by Law 11.977/2009, seeks, according to Lira (2015, p. 21):

give concreteness to article 6 of the Federal Constitution of 1988, in accordance with Constitutional Amendment No. 26, of 02.14.2000, which enshrines housing as a fundamental social right, always attentive to the principle, also fundamental, of the "dignity of the human person" and which proposes to "give concreteness".

Since the PMCMV aims to give concreteness to the social right to housing through the creation of mechanisms to encourage the production and acquisition of new housing units<sup>8</sup>, this program still follows the model of previous public policies. According to government propaganda, its objective would be to allow the *dream of owning a home* by facilitating the acquisition of private property.

Although there is no doubt that the acquisition of private property for housing purposes, at the end of the day, is a measure capable of giving concreteness to the social right to housing, this does not mean that the promotion of this acquisition has mainly this objective. Especially because, as Milagres (2009, p.184) points out, the right to housing transcends its economic

---

<sup>8</sup> It should be noted that the second part of Law 11,977/2009, which dealt with land regularization, was repealed by Law 13,465/2017, and, in any case, it is not the objective of this work to examine the proposals for land regularization.

aspect and the boundaries of the subjective patrimonial right, not to be confused with any category of real rights. Despite this, the analysis of the judicial decisions above revealed that the main objective of promoting the acquisition of private property for housing purposes is the promotion of economic interests, in the same sense as the speech of the president of Brazil at the time of the launch of the PMCMV, as already exposed at the end of the previous chapter.

Nevertheless, in the legal struggle for the valorization and realization of the social right to housing, the discourse of the *dream of owning a home* is recurrently invoked to defend the facilitation of the acquisition of private property as if its main objective was, indeed, to give concreteness to the social right to housing. In this regard, it is hypothesized that the discourse of the *dream of owning a home*, which is widely accepted by most individuals as a truth and goal of life, constitutes a discipline tool that seeks to increase the relationship of docility-utility of bodies, increasing their economic utility and reducing their political insurgency.

The facilitation of the acquisition of private property would be a convenient measure because, with the discourse and with the purpose of giving concreteness to the social right to housing, it meets political and economic interests of income generation (including for construction companies) and employment through the production of new housing units. The discourse of the *dream of owning a home* would be very important to create, through its propagation and assimilation, the consumer market of the housing commodity, without which the economic policy disguised as social would not achieve its effects. As Medeiros (2007, p.33) reminds us:

the State uses a social rhetoric whose basis is social promotion, however, in general, the interventions of the State are much more intended to achieve economic successes [...] State interventions in the housing issue in Brazil aim to materialize the ideology of home ownership. The house is seen as a necessary asset for social stability.

This, therefore, is the hypothesis of this work: The organic assimilation of the discourse of the *dream of owning a home*, far beyond aiming to give concreteness to the social right to housing, aims to stabilize the social order, increase the economic utility of individuals and reduce their political insurgency.

Foucault's (2013) theory regarding the discipline practiced on docile bodies allows us to explain this hypothesis, because, in the renowned work *Discipline and Punish: Birth of Prison*, Foucault (2013) presents his conception of "docile bodies": submissive and exercised bodies, with greater strength in economic terms of utility and less strength in political terms of obedience, manufactured by discipline.

Discipline, in turn, is presented by Foucault as the set of methods that acts on bodies allowing minute control, exercising constant subjection and coercion of forces and imposing a relationship of docility-utility: the more obedient, the more useful. In this way, the discipline would be used in the process of submission, use, transformation and improvement of docile bodies.

The relationship between the discipline of docile bodies and the distribution of individuals in space is also presented by Foucault: each individual in his place, in each place an individual, avoiding distributions by groups, decomposing collective implantations. It is important to establish where and how to find each individual, to monitor the behavior of each one, to appreciate it, to sanction it, to measure its qualities or merits. The discipline, therefore, Foucault states, organizes an analytical space.

Gradually, discipline produces in docile bodies the assimilation of discourse, in this case, the discourse of the *dream of owning a home*. This assimilation is natural and organic, part of a process of meticulous, linear and progressive control, which makes, over the years, more and more necessary to achieve stability through the acquisition of one's own home. A relationship of interdependence is formed: one must have one's own home (and previously fulfill all the steps that allow one to achieve this) in order to be a social individual. It is the control of the march of life of individuals, an anatomical-chronological scheme of appropriate behavior. As Foucault (2013, p.146) explains: "*time penetrates the body, and with it all the minute controls of power*".

By fulfilling the various stages of the "correct" way of life, the individual achieves "adequate" progress and success, that is, stability. The discourse of the *dream of owning a home* thus proposes to encourage the "stability" of the individual after the fulfillment of the previously designated and organically accepted stages. This is as, once again, Foucault (2013, p.154) points out: "*disciplinary procedures reveal a linear time whose moments are integrated into each other, and which orients itself towards a terminal and stable point*".

At this point, the reader of this work must have already elucidated a dozen reasons to justify the *dream of owning a home* and to criticize the hypothesis that is presented. Probably all of them are true. This does not mean that all of them are naturally necessary. For example, it is not disputed that access to a roof, to a dwelling, to a home can be a legitimate basic desire of an individual, a primary good that he wishes to have access to, even after the social contract and whose access must be guaranteed by the State as guardian of the common good:

We know that the common good is an ultimate element of the State. And our concept of the common good, although it is a term of open fabric that includes ideologized

interpretations, can and should be close to the idea of the *right of happiness*, provided for in the Constitution of the United States of America. (Aieta, 2016, p. 1626)

What is considered, however, is that access to this primary good of housing does not necessarily involve the acquisition of private property for housing purposes, the acquisition of one's own home. This consideration is very well explained by Peruzzo (1984, p. 40):

there is [...] evidence that the State's concern bases order on the ownership of the property and not on the dwelling. Housing can be owned or not by the resident. But housing-property contributes more to the social order.

The hypothesis that is presented is that this confusion between commodity-housing and the social right to housing, this direct correlation that the dignity of the human person necessarily passes through the acquisition of one's own home, is, so to speak, the organic assimilation of an order that provokes a determined behavior previously imposed on the individual. In the words of Foucault (2013, p.159):

This carefully measured combination of forces requires a precise system of command. [...] The order does not have to be explained, or even formulated: it is necessary and sufficient that it provokes the desired behavior.

It is, therefore, a freedom that has been carefully measured. Instead of preventing access to land, prohibiting access to private property and denying access to power, a restricted freedom is granted, a sense of mastery of one's own acts, of the realization of what would be one's own will, the realization of what would be one's own dreams. It is the replacement of the negative and purely prohibitionist state by the state of channeling the desires and forces towards the desired result. It is the conduct of what would be the happiness to which you would be entitled (*right*) and that the State would have the purpose of safeguarding (Aieta, 2016). However, as Medeiros (2007, p.42) explains, the State's intention is evident, "*to associate housing with property. The property-housing interface was characterized as a fundamental tool to achieve stability and social control*".

By rooting the individual in his own home, immovable by nature, a series of possibilities and freedoms of the individual, who is now dependent on it, is eliminated. How to change neighborhood or city? How to stop working daily to pay the costs of owning a home? It is necessary to evolve to a new stage of disciplined behavior: to be a good worker and a good payer, to remain economically active always with a positive balance (under penalty of "dirtying" one's name), therefore, irremediably inserted and dependent on the capitalist economy. The dream is projected, the dream is implanted in the individual, means are developed to achieve this dream and, thus, feel fulfilled. With positive attitudes instead of

negative actions, the insurgency of one more individual is defenestrated, who becomes dependent on the progressive circuit of stability.

Once again, Foucault's theory (2013) can be used to summarize this particular: "*the old simple scheme of incarceration and closure – of the thick wall, of the solid door that prevents entry or exit – begins to be replaced by the calculation of openings, of full and void, of passages and transparencies*" (Foucault, 2013, p.166).

The discourse of the *dream of owning a home*, as it could not be otherwise, must be pulverized. To be effective, it must be ubiquitous, it must be confused with the truth, it must be treated as fact. And it needs to be expanded from the rabble to the so-called ruling class, because those who control must also be controlled. The discourse of the *dream of owning a home* must be whispered on *billboards* and clear and inducing advertisements. "Conquer the dream of owning a home!" is the *favorite slogan* that accompanies a beautiful image of a happy family.

It can be seen, then, that advertising plays a fundamental role in the propagation of the discourse of the *dream of owning a home*, that is, it acts in the diffusion of values that must be assimilated organically. As Oliveira (2015, p. 159/160) adds:

The role of advertising, selling ideas, values, stereotypes and prejudices, exploring much more the meanings and possibilities of emotions than the meaning, that is, the usefulness of the products themselves, cannot be disregarded. In this way, it produces the need to consume "not only things, but values", which it helps to disseminate (Padilha, 2006, p.109). Its role in the consumer society, creating needs and attributing value to commodities, is discussed by authors such as Baudrillard (1995), for example, for whom, "consumption emerges as active and collective conduct, as moral coercion, as an institution. It makes up a whole system of values, with all that this term implies as a function of group integration and social control."

As Aieta (2017, p.13) teaches us, "*one cannot forget that the media system has the capacity to fix ideologies, interfering significantly in the formation of public opinion and in the construction of the social imaginary*". For this reason, the discourse of the *dream of owning a home* is subliminally spread on every corner, bars to newsstands, from newspaper classifieds to apps, from luck in misdemeanor to success in lotteries. It is a strategy of social discipline that the *dream of owning a home* fills the environment and is confused with the air itself, being inhaled daily and involuntarily (Foucault, 2013, p.170):

This allows the disciplinary power to be absolutely indiscreet, because it is everywhere and always alert, because in principle it leaves no part in the dark and continuously controls the very ones they are in charge of controlling; and absolutely "discreet", because it works permanently and largely in silence. (FOUCAULT, 2013, p.170):

As Medeiros (2007, p.11) points out, "*the intention of associating the home with the condition of one's own is passed on to the Brazilian population as a social and economic*

*imperative. The actions of the State deal with the need for social (population) and spatial ordering".* It is in this sense that the discourse of the *dream of owning a home* is understood.

By encouraging each individual to acquire their private property, to take root in a certain, determined and individualized place, we have the discourse of home ownership. On the one hand, as an exercise of the economic utility of the individual as a consumer of the commodity-housing product and, on the other hand, as a facilitator of the surveillance of that individual, further reducing his chance of disobedience because, as the motto of the Brazilian military dictatorship very well summarizes, "*one more owner, one less revolutionary*" (Peruzzo, 1984, p. 39).

The conclusion reached is that Foucault's (2013) theory regarding the discipline practiced on docile bodies allows us to explain the organic assimilation of the discourse of the *dream of owning a home* which, far beyond objectifying and giving concreteness to the social right to housing, aims to stabilize the social order, increase the economic utility of individuals and reduce their political insurgency. Therefore, this discourse of the *dream of owning a home* is associated with political-social control and serves as a propagandist tool for the real estate industry, used to maintain a faithful and perennial consumer market inexhaustible for civil construction, propaganda that is already organically incorporated into the core of individuals and the culture of life in cities.

## 5 Final considerations

The judicial decisions analyzed exposed the economic and recovery objectives of the real estate market that the PMCMV effectively pursues with the facilitation of the acquisition of homeownership, that is, the housing merchandise. On the one hand, the STJ clearly did not confer absolute status on the *dream of owning a home*, but relativized it in the face of economic interests and the logic of real estate financing and civil construction. On the other hand, the same STJ used the discourse of the *dream of owning a home* to position itself in the sense that only the acquisition of private property within the scope of real estate financing would be legitimate, denying that the original acquisition had the same effect. Thus, it was found that the discourse of the *dream of owning a home*, associated with the realization of the social right to housing, in fact, has primarily an economic objective, so much so that, when the social objective and the economic objective seem to be in opposition, the judicial decisions defended the economic interest to the detriment of the social interest.

Nevertheless, in the legal struggle for the valorization and realization of the social right to housing, it has been seen that the discourse of *the dream of owning a home* is recurrently invoked to defend the facilitation of the acquisition of private property, as if its main objective was to give (in fact) concreteness to the social right to housing.

An explanation why, even in the face of the prevalence of economic interest over social interest, discourse continues to be propagated as a means of giving concreteness to the social right to housing, can be found in the work of Foucault (2013). The discourse of the *dream of owning a home* can be understood as a tool of discipline that seeks to increase the relationship of docility-utility of bodies, increasing their economic utility and reducing their political insurgency. The discourse of the *dream of owning a home* would aim at the creation, through its propagation and assimilation, of a consumer market for the housing commodity, without which the economic policy disguised as social would not achieve its effects.

The conclusion reached is that Foucault's theory (2013), regarding the discipline practiced on docile bodies, offers a possible explanation for the organic assimilation of the discourse of the *dream of owning a home* which, far beyond aiming to give concreteness to the social right to housing, aims to stabilize the social order, increase the economic utility of individuals and reduce their political insurgency. Therefore, this discourse of the *dream of owning a home* is associated with political-social control and serves as a propagandist tool for the real estate industry, used to maintain a faithful and perennial consumer market inexhaustible for civil construction, an advertisement that is already organically incorporated into the core of individuals and the culture of life in cities.

Remembering that this work does not intend to exhaust the theme, it seems to be demonstrated that the discourse of the *dream of owning a home*, widely accepted by individuals as a truth and goal of life, can be interpreted as a tool of discipline that seeks to increase the relationship of docility-utility of bodies, increasing their economic utility and reducing their political insurgency. It was concluded, therefore, that the discourse of the *dream of owning a home* legitimizes measures to facilitate the acquisition of private property with the purpose of giving concreteness to the social right to housing and, thus, meets political and economic interests of income generation (including for construction companies) and employment through the production of new housing units. The discourse of the *dream of owning a home* is an important tool of social discipline because it allows the creation, through its propagation and assimilation, of the consumer market of the housing commodity, without which economic policies disguised as housing policies would not achieve their effects.

## REFERENCES

ADEODATO, João Maurício. Bases for a methodology of research in law. **CEJ Magazine**, Brasília, v. 7, p. 143-150, 1998.

AIETA, Vania Siciliano (ed.). **City Law**. Rio de Janeiro: Freitas Bastos, 2015. t. 1.

AIETA, Vania Siciliano. Smart cities: a proposal for the inclusion of citizens towards the idea of "human city". **Revista de Direito da Cidade**, Rio de Janeiro, v. 08, n. 4. p. 1622- 1643, 2016. Available at: <https://www.e-publicacoes.uerj.br/index.php/rdc/article/view/25427/19155>. Accessed on: 27 set. 2021.

AIETA, Vania Siciliano. **Criminalization of politics**: the fallacy of the "judicialization of politics" as a democratic instrument. Rio de Janeiro: Lumen Juris, 2017.

AZEVEDO, Sérgio de; ANDRADE, Luís Aureliano Gama de. **Housing and power**: from the Casa Popular Foundation to the National Housing Bank. Rio de Janeiro: Zahar, 1982.

BOLAFFI, Gabriel. Housing and urbanism: the problem and the false problem. In: MARICATO, Ermínia (ed.). **The capitalist production of the house (and the city) in Industrial Brazil**. 2nd ed. São Paulo: Alfa-omega, 1982. p. 37-70.

BUCCI, Maria Paula Dallari. The concept of public policy in law. In: BUCCI, Maria Paula Dallari (ed.). **Public policies**: reflections on the legal concept. São Paulo: Saraiva, 2006. p. 1-47.

FONTE, Felipe de Melo. **Public policies and fundamental rights**: elements of foundation of the jurisdictional control of public policies in the democratic state of law. São Paulo: Saraiva, 2013.

FOUCAULT, Michel. **To watch and punish**: the birth of prison. Translation: Raquel Ramalhete. 41. ed. Petrópolis: Vozes, 2013.

GUSTIN, Miracy Barbosa de Sousa. **(Re)thinking legal research**: practical theory. 2. ed. ver. ampl. current. Belo Horizonte: Del Rey, 2006.

HIRATA, Francini. "Minha Casa, Minha Vida": housing policy and job creation or deepening urban segregation?. **Revista Aurora**, Marília, year 3, n. 4, jul. 2009. Available at: <http://www2.marilia.unesp.br/revistas/index.php/aurora/issue/view/121>. Accessed on: 01 ago. 2018.

LIRA, Ricardo Pereira. Formal law and informal law in Brazilian urban centers. In: AIETA, Vania Siciliano (ed.). **City Law**. Rio de Janeiro: Freitas Bastos, 2015. t.1, p. 11-27.

LIRA, Ricardo Pereira. **Above speculation**: evenprivate, property has a social function. Interviewer: Marina Ito. **Conjur**, Rio de Janeiro, 10 out. 2010. Available at:

<https://www.conjur.com.br/2010-out-10/entrevista-ricardo-cesar-pereira-lira-advogado-professor-uerj>, Accessed on: 22 ago. 2019.

MARICATO, Ermínia (ed.). **The capitalist production of the house (and the city) in Industrial Brazil.** 2nd ed. São Paulo: Alfa-omega, 1982.

MEDEIROS, Sara Raquel Fernandes Queiroz de. **Homeownership: dream or reality?: a look at the housing complexes in Natal.** 2007. Dissertation (Master's Degree in Regional Development; Culture and Representations) - Federal University of Rio Grande do Norte, Natal, 2007. Available at: [https://repositorio.ufrn.br/bitstream/123456789/13779/1/CasaPrópriaSonho\\_Medeiros\\_2007.pdf](https://repositorio.ufrn.br/bitstream/123456789/13779/1/CasaPrópriaSonho_Medeiros_2007.pdf). Accessed on: 27 set. 2021.

MILAGRES, Marcelo de Oliveira. **Right to housing: special right of personality?** 2009. Thesis (Doctorate in Law) - Federal University of Minas Gerais, Belo Horizonte, 2009. Available at: [https://repositorio.ufmg.br/bitstream/1843/BUBD-96NMX4/1/direito\\_marcelo\\_de\\_oliveira\\_milagres\\_tese.pdf](https://repositorio.ufmg.br/bitstream/1843/BUBD-96NMX4/1/direito_marcelo_de_oliveira_milagres_tese.pdf). Accessed on: 27 Sept. 2021

OLIVEIRA, Viviane Fernanda de. **The meanings of home ownership: closed popular horizontal condominiums and new spatial practices in Presidente Prudente and São Carlos.** São Paulo: Cultura Acadêmica, 2015.

PERUZZO, Dilvo. **Housing and dispossession.** São Paulo: Cortez, 1984.

SICZÚ, João. Government does its homework. **Rumos Magazine: Economy and Development for the New Times**, São Paulo, year 34, n. 244, p.26-31, 2009.

VILLAÇA, Flávio. A contribution to the history of urban planning in Brazil. In: DEAK, C.; SHIFFER, S. R. (ed.). **The process of urbanization in Brazil.** São Paulo: Edusp, 1999. p. 171-243.

Received: 06.23.2020

Accepted on: 09.23.2021