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Structural case management as an appropriate judicial mechanism in possessory disputes

A condução estrutural da causa como mecanismo jurisdicional adequado em conflitos possessórios

La conducción estructural del proceso como mecanismo jurisdiccional adecuado en los conflictos posesorios

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Abstract

The growing complexity of possessory disputes highlights the inadequacy of solutions based exclusively on legal subsumption, requiring judicial models capable of coordinating substantive law and procedural techniques. Against this background, this article analyses the operability of possessory law, understood as the coordination of substantive, normative, and procedural elements aimed at providing appropriate judicial protection in complex possessory disputes. To this end, it identifies the foundations underpinning this operability by examining the interface between the autonomy of possession, recent proposals to amend the Civil Code, the permanent possession of lands traditionally occupied by Indigenous Peoples in conflict with the good-faith possession of non-Indigenous occupants, and the structural management of proceedings. Special Appeal No. 1.637,991/AL, reported by Justice Afrânio Vilela, was adopted as a case study using a descriptive legal approach and bibliographic and documentary research methods. It is concluded that the operability of possessory law does not derive from legislative amendments, although they reinforce it, but from the interaction between the substantive autonomy of possession, structural procedural techniques, and judicial action, enabling the development of appropriate judicial remedies in highly complex possessory disputes.

Keywords: Civil Code; operability; possessory disputes; structural judgment.

Resumo

A crescente complexidade dos conflitos possessórios evidencia a insuficiência de soluções fundadas exclusivamente na subsunção normativa, exigindo modelos jurisdicionais capazes de articular direito material e técnica processual. Nesse contexto, este artigo analisa a operabilidade do direito possessório, compreendida como articulação entre elementos materiais, normativos e processuais voltados à concretização da tutela jurisdicional adequada em conflitos possessórios complexos. Para tanto, identifica os fundamentos que sustentam essa operabilidade a partir da interface entre a autonomia da posse, as recentes propostas de alteração do Código Civil, a posse permanente de terras tradicionalmente ocupadas por indígenas em conflito com a posse de boa-fé de não indígenas e a condução estrutural da causa. Adotou-se o estudo de caso do Recurso Especial n.º 1.637.991-AL, de relatoria do Ministro Afrânio Vilela, mediante procedimento jurídico-descritivo e técnica de pesquisa bibliográfica e documental. Conclui-se que a operabilidade do direito possessório não decorre das alterações legislativas, embora as reforcem, mas da interação entre a autonomia material da posse, as técnicas processuais estruturais e a atuação judicial, possibilitando a construção de tutelas jurisdicionais adequadas em conflitos possessórios de elevada complexidade.

Palavras-chave: Código Civil; conflitos possessórios; operabilidade; sentença estrutural.

Resumen

La creciente complejidad de los conflictos posesorios pone de manifiesto la insuficiencia de las soluciones basadas exclusivamente en la subsunción normativa, lo que exige modelos jurisdiccionales capaces de articular el derecho material y la técnica procesal. En este contexto, este artículo analiza la operatividad del derecho posesorio, entendida como la articulación entre elementos materiales, normativos y procesales orientados a la concreción de una tutela jurisdiccional adecuada en conflictos posesorios complejos. Para ello, se identifican los fundamentos que sustentan dicha operatividad a partir de la interfaz entre la autonomía de la posesión, las recientes propuestas de modificación del Código Civil, la posesión permanente de tierras tradicionalmente ocupadas por pueblos indígenas en conflicto con la posesión de buena fe de personas no indígenas y la conducción

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estructural del proceso. Se adoptó como estudio de caso el Recurso Especial n.º 1.637.991-AL, bajo la ponencia del Ministro Afrânio Vilela, mediante un procedimiento jurídico-descriptivo y técnicas de investigación bibliográfica y documental. Se concluye que la operatividad del derecho posesorio no deriva de las modificaciones legislativas, aunque estas la refuercen, sino de la interacción entre la autonomía material de la posesión, las técnicas procesales estructurales y la actuación judicial, lo que posibilita la construcción de tutelas jurisdiccionales adecuadas en conflictos posesorios de elevada complejidad.

Palabras clave: Código Civil; conflictos posesorios; operatividad; sentencia estructural.

1 Introduction

The current legal landscape is marked by a reorganisation of the legal system towards the constitutionalisation of other branches of law, thereby reinforcing the Constitution's central role and its capacity to extend principles across legal disciplines. In this context, the institution of possession has undergone several interpretative and legislative transformations, becoming established as a legal situation autonomous from ownership and endowed with social and political significance.

The growing complexity of social relations is reflected in the legal sphere, requiring more thoroughly reasoned legal solutions. The interdependence of disputes requires moving beyond an approach confined to legal subsumption, calling instead for the consideration of extra-legal factors and the development of solutions capable of giving effect to normative purposes.

In this regard, possessory disputes are particularly sensitive because they frequently involve the coexistence of fundamental rights, public interests, and consolidated legal situations, rendering a response based exclusively on the traditional technique of subsumption insufficient.

The aim of this study is to identify the substantive, normative, and procedural elements that enable possessory law to operate effectively by articulating the substantive foundations of possession, its constitutional configuration, structural procedural techniques, and judicial action.

For the purposes of this study, operability refers to the capacity of possessory law to produce effective judicial solutions through the coordination of substantive rules, procedural techniques, and judicial action aimed at giving effect to the fundamental rights involved in each specific case.

Accordingly, the central research question is as follows: how does the interaction between the substantive elements of possessory law, recent proposals for legislative reform, and structural procedural mechanisms facilitate the operability of possessory law in resolving complex possessory disputes?

This study is based on the hypothesis that the operability of possessory law constitutes an analytical category explained by the interaction between the substantive autonomy of possession, the constitutional adaptation of the rights involved, and the structural management of proceedings. It therefore cannot be adequately understood solely through recent legislative amendments.

Special Appeal No. 1,637,991/AL (Brasil, 2025), reported by Justice Afrânio Vilela, was selected as a case study to test this hypothesis. The case demonstrates the limitations arising from the court's strict adherence to the scope of the claim and the need for more flexible judicial action at the intersection between the possession of land traditionally occupied by Indigenous Peoples and the good-faith possession exercised by non-Indigenous people. It also examines the structural management of the case as one of the procedural dimensions of the operability of possessory law in addressing complex possessory disputes.

The findings demonstrate that the contemporary operability of possessory law does not arise exclusively from the proposed amendments to the Civil Code but rather from the combination of the substantive autonomy of possession, the constitutional configuration of the rights involved, and the structural management of proceedings.

This research is justified by the need to provide an analytical framework capable of explaining the role of structural litigation in complex possessory disputes, particularly in light of recent proposals to update the legal framework governing possession.

The sections of this article are therefore organised as follows. First, the institution of possession is analysed, particularly regarding its autonomy and the proposed legislative amendments. The article then examines the structural management of the case and the relaxation of the principle of congruence as manifestations of operability. Finally, considerations are presented regarding the judicial mechanism best suited to addressing such possessory disputes.

Regarding the technological support employed in preparing this study, generative artificial intelligence (AI), specifically GPT-4, was used. The tool was employed to optimise textual revision and translate the abstract and

title of this article, with a view to improving time efficiency and terminological accuracy. The authors reviewed the resulting content and assume full responsibility for it.

2 The autonomy of possession and proposed reforms to the legal framework governing it

Owing to its historically contingent nature¹, the institution of possession has undergone substantial changes, particularly from the perspective of the constitutionalisation of Civil Law, which has become increasingly prominent in models of legal interpretation. Throughout the development of Civil Law, particularly possessory law, greater recognition has been afforded to the autonomy of possession from ownership and to the growing importance of its social function as an expression of necessity, alongside the evolution of the very concept of possession.

As this development progressed, the distinction between the social function of possession and that of ownership required a new legislative approach, particularly through the reduction of adverse possession periods. This mechanism has, in fact, become essential to demonstrating the autonomy of possession as a fact giving rise to rights² (Rodrigues Júnior; Leonardo, 2019).

Possession came to be understood as an autonomous legal situation with its own social, political, and normative significance, directly influencing positive law. Possession is therefore manifested at the factual level and afforded legal protection irrespective of any examination of ownership or another right, thus placing it within the category of legal facts. At the same time, it may also be regarded as one of the powers inherent in ownership. Consequently, the lawful exercise of possession by a person who does not hold title to the property entitles that person to possessory protection (Oliveira, 2025).

Alves (2002) had already argued that possession had long come to be understood in itself, independently of any corresponding legal basis or title. It may also be regarded as one of the legal powers comprising the right of ownership or other, less comprehensive rights. In this respect, possession in itself, as the *de facto* exercise of acts associated with ownership, was distinguished and identified as *ius possessionis* or *ius possidendi* when it arises from a relationship involving a right in rem.

It is therefore well established that possession receives protection in its own right, including through autonomous legal proceedings, with such protection being granted simply because the rights-holder is a possessor, provided that this legal situation is duly established. The claim is thus based on demonstrating an infringement of the right to possession and assumes a defensive character. It consequently differs from petitory actions, which seek to safeguard the titleholder's interests in the property based on proof of ownership.

Although this study does not seek to explore the historical development of possessory law, it should be noted that several classical theories were developed to explain possession and have been partially incorporated into contemporary Brazilian Civil Law. These include Savigny's Subjective Theory, which applies to adverse possession because it considers the legal power of a person to dispose of an asset with the intention of acting as its owner, and Ihering's Objective Theory, reflected in Article 1,196 of the Civil Code, which focuses on physical control over an asset or the ability to exercise such control.

A holder or servant of possession is a person responsible for preserving possession on behalf of the possessor and in compliance with the possessor's instructions and may also undertake acts of self-defence of possession³. Reference should also be made to Precedent No. 619 of Superior Court of Justice (STJ), which establishes that the unlawful occupation of public property constitutes mere precarious holding and precludes claims for compensation for improvements and accessions (Brazil, 2018).

This therefore constitutes an exception to the effects of possession concerning compensation for necessary improvements in the case of a bad-faith possessor⁴ as well as compensation for necessary and useful improvements

¹ The legal system is understood, following Reale (1994), as dynamic and historically contingent, thereby situating social life within its spatial and temporal contexts.

² Building on Fachin's work, Rodrigues Júnior and Leonardo (2019) explain that he viewed possession as an independent legal status, not subordinate to ownership. This is particularly pertinent given that possession is integral to the factual basis of various legal situations, including adverse possession and the recovery and maintenance of possession. This concept has now been firmly established in Brazilian case law and legislation, as evidenced by Statement No. 492 of the Fifth Civil Law Conference.

³ This provision was also conceived at the Fifth Civil Law Conference. Notably, the proposed amendments to the Civil Code include an express provision allowing holders acting on behalf of possessors to exercise possessory self-help, as contemplated in the proposed second paragraph of Article 1,198.

⁴ As Melo (2025, p. 258) explains, the proposed update would prevent bad-faith possessors from obtaining any beneficial effects by removing the possibility of compensation from the new wording, based on the principles of ethicality and operability as guiding principles for codification.

and the rights to retain the property and remove improvements made solely for the possessor's convenience or enjoyment. Based on the Civil Code, other classifications of possession should also be highlighted: indirect or direct possession, lawful or unlawful possession, and recent or long-standing possession, the latter being particularly relevant to the procedural rules governing actions for the maintenance and recovery of possession (Brasil, 2002).

Still within the context of the aforementioned precedent, it must be emphasised that the exception to the absence of compensation in cases involving the unlawful occupation of public property arises from the specific legal regime governing Indigenous lands, which derives from the constitutional recognition of original rights and differs from the possession regulated by the Civil Code. The case examined in the following sections of this article (Brasil, 2025) supports this understanding, as it guarantees compensation to good-faith occupants.

The proposed amendments and revisions concerning possessory law seek to promote legal certainty and dialogue with other areas of Civil Law. To this end, an initial point has been established for the conversion of good-faith possession into bad-faith possession. Good faith would cease on the date the possessor is validly served with notice, including through extrajudicial mechanisms, when the claimant's possessory claim against the possessor has been recognised (Melo, 2025).

Regarding the protection of possession under possessory law, the classification of possession as lawful or unlawful is relevant because possessors must demonstrate lawful possession to obtain the corresponding protection. Possession is lawful insofar as it is not acquired through violence, concealment, or precarious means, pursuant to the current wording of Article 1,200 of the Civil Code⁵. The proposed amendment to this article seeks to clarify the meaning of precarious possession by replacing the term "precarious" with "breach of trust", thereby defining the concept more precisely and preventing divergent and conflicting interpretations (Brasil, 2024a).

The classification of possession as unlawful depends objectively on the manner it was acquired at the factual level. It therefore differs from bad-faith possession, which is subjectively determined. Unlawful possession must also be distinguished from permission and tolerance. The former involves authorisation granted by the possessor without relinquishing control or supervision of the property, whereas the latter relates to the possessor's omissions when another person exercises possession (Rocha; Dantas Bisneto, 2023).

One strand of legal scholarship understands that possession remains unlawful for as long as the violence or concealment persists and that lawful possession is restored after this period. According to Rocha e Dantas Bisneto (2023), another strand of legal scholarship rightly explains that not every effect is possessory in nature, as in the case of mere physical holding – a purely material situation involving physical control of an asset without legal consequences. Therefore, when violence or concealment persists, autonomous holding exists, and the affected person may seek possessory remedies.

Another relevant consideration is that direct possession, currently understood as possession exercised by virtue of a personal right or a right in rem, does not extinguish the indirect possession of the person from whom direct possession was obtained and entitles the direct possessor to defend their possession against the indirect possessor. Based on the wording of the proposed amendment, the term "does not extinguish" would be replaced with "does not prevent the exercise of indirect possession",⁶ thereby establishing that neither form of possession invalidates the other and that both produce legal effects in favour of their respective possessors (Melo, 2025). In summary, this is an amendment proposed for Article 1,197 of the Civil Code.

It may therefore be inferred that the proposed update, in the terms used in the article's draft wording, seeks to reflect the interpretation adopted in judicial decisions. In the context of possessory disputes between Indigenous and non-Indigenous people – even considering the *sui generis* nature of Indigenous possession and its distinct treatment compared with possession arising from a personal right or a right in rem – relevant legal effects may arise for both possessors because neither form of possession extinguishes the other.

A further conclusion follows from the fact that, in a possessory dispute such as that examined in Special Appeal No. 1,637,991/AL (Brasil, 2025), the aim is to safeguard Indigenous Peoples' possessory rights alongside the non-Indigenous occupants' right to housing. It should be recalled that the right to housing is a social right held by everyone and that the State has a duty to uphold it. This right also has implications for the aforementioned issues

⁵ In this regard, Venosa (2013, p. 1382-1383) explains that violent possession is possession obtained through physical, moral, or psychological violence to expel possessors or prevent their return, thus contrasting with peaceful and uncontested possession. Concealment, in turn, refers to acquiring possession covertly, secretly, or through dissimulation, irrespective of intent, and therefore renders possession unlawful.

⁶ For the purposes of this article, all direct quotations from the original sources have been translated into English.

concerning the social function of ownership and human dignity itself. This context may support an institutional arrangement centred on the Constitution, an objective reinforced by the proposed amendments to the Civil Code.

3 Structural management of the case and relaxation of the principle of congruence

The structural management of the case is analysed based on a Special Appeal arising from a possessory action brought against the Federal Government, the National Foundation for Indigenous Peoples (FUNAI), and the Xucuru-Kariri Indigenous community. The claimants sought to recover possession of the property on which they had lived in good faith for several years and from which they had been dispossessed. Because granting the requested relief was impossible, given that the property comprised Indigenous lands constitutionally owned by the Federal Government, the judge converted the possessory action into a claim for compensation.

The decision, upheld by the Court of Justice of the State of Alagoas, not only recognised the area as traditionally occupied Indigenous land but also ordered the claimants' resettlement and compensation for the improvements they had made. It should be noted that the claimants had not requested either of these forms of relief. The judge therefore adopted phased measures intended to facilitate a peaceful and structured resolution of the dispute.

The Federal Government, FUNAI, and the National Institute for Colonisation and Agrarian Reform (INCRA) filed Special Appeal No. 1,637,991/AL (Brasil, 2025), alleging an extra petita judgment and a breach of the principle that courts are bound by the scope of the claim. The Second Panel of the STJ, in a judgment reported by Justice Afrânio Vilela, dismissed the appeal (Brasil, 2025):

2. A possessory action (in which private non-Indigenous parties seek repossession) may be converted into a claim for compensation when the lands in question have previously or subsequently been recognised as Indigenous lands. In such cases, the judgment does not exceed the scope of the relief sought (extra petita). [...] 5. A judgment that cautiously and judiciously orders the gradual implementation of measures intended to achieve, within a reasonable period, the ideal situation prescribed by law does not violate the very statutory provision it seeks to implement. On the contrary, it gives effect to that provision through the proper application of the principles governing structural procedural law. The phased implementation of judicial measures intended ultimately to fulfil the statutory requirement (in this case, exclusive Indigenous possession within 180 days) does not deny the law its effect.

The judgment is a clear example of the structural management of a case, given the multipolarity of the parties, the complexity of the dispute, and the prospective nature of the judicial orders. These characteristics justified both the phased implementation of judicial measures as a decision-making technique and the relaxation of the principle of congruence.

At first glance, although relaxing a principle to apply it in practice may appear contradictory, Didier Jr., Zaneti Jr. and Oliveira (2017) explain that a structural decision seeks to achieve structural reform within a given setting to give effect to a fundamental right or resolve complex disputes. It therefore calls for the restructuring of institutions to give effect to constitutional rules that bureaucratic organisations would otherwise threaten. A relationship can thus be identified between structural decisions and the instrumental nature of judicial proceedings.

On this subject, Dinamarco (2013, p. 352-353) emphasises that the purpose of judicial proceedings and their instrumental and teleological dimensions must not be overlooked. In this regard, the author invokes the "[...] well-known warning that proceedings must be capable of providing those who hold a right, to the extent practically possible, with everything to which they are entitled and precisely that to which they are entitled", thereby reinforcing the instrumental nature of judicial proceedings.

Similarly, Liebman (2005, p. 54) notes that the word "process" refers to "proceeding towards a goal" and is ultimately an effort to give effect to the exercise of jurisdiction. Furthermore, Calamandrei (2018, p. 23) teaches that judicial proceedings constitute a "[...] method of reasoning, predetermined and ordered by law, which the parties and judges must follow, step by step, according to a prescribed sequence and dialectical coordination, ultimately to obtain a just judgment".

Almeida (2009) explains that procedural law reflects the political circumstances experienced by society and that cultural realities may expand or restrict legal safeguards. Accordingly, judicial proceedings are an instrument for achieving substantive justice, as merely guaranteeing access to the courts is insufficient. It is also necessary to ensure judicial relief administered by the judge within the limits of their powers, with the aim of adapting the

procedure to the relevant circumstances. This is known as the principle of procedural adaptability because judicial proceedings are not an end in themselves.

This instrumental dimension requires proceedings to be adapted to the demands of each right, lest they become ineffective, since an instrument that does not fulfil its purpose becomes useless (Lucon, 2017). This effort must be gradual because the legal system is becoming increasingly complex and encompasses microsystems that differ substantially from one another. The case under examination, for example, involves an intersection between a possessory-law microsystem and the protection of Indigenous rights.

Judges must necessarily adapt to the specific features of each case; otherwise, they risk issuing decisions that are unsuited to the parties' factual circumstances despite fully complying with legislation and precedents⁷. The complexity of the context surrounding structural decisions is also reflected in the duty to provide reasons for them, as judges must explain not only the law applied but also the meaning attributed to the relevant rule and the ideal outcome they seek to achieve (Lucon, 2017).

Structural decisions are characterised by recognising specific rights while simultaneously establishing a plan for their implementation. Therefore, they are not confined to the literal wording of the law and must go beyond it to give genuine effect to the legislation applicable to the case. This approach emerged alongside judicial activism, which was particularly prominent in the United States between the 1950s and 1970s (Didier Jr.; Zaneti Jr.; Oliveira, 2020).

In objective terms, Didier Jr., Zaneti Jr. e Oliveira (2020, p. 109) define a structural decision as "one that, based on the identification of a state of non-compliance, establishes the ideal state of affairs to be implemented (the end) and the manner in which that outcome is to be achieved (the means)". Understood in these terms, it may be argued that this does not involve the structuring but rather the restructuring of the applicable legal rule.

This is because rigid adherence to the principle of congruence and strict application of the law may produce practical injustice when resolving specific cases involving public policies, such as Indigenous interests and the right to housing, as a wide range of rights are at stake. Complex cases generally require judicial decisions to achieve social effectiveness, which may be accomplished through structural decisions.

A structural decision need not necessarily be issued in major public-law disputes involving collective interests, such as ADPF No. 709, which addressed the Indigenous health emergency during the COVID-19 pandemic; it may also be issued in complex private-law relationships. Mello (2024) explains that the common feature is that the decision is developed throughout the dispute according to its particular circumstances.

In this regard, Mello (2024) identifies three characteristics of a structural decision. The first is flexibility, because the decision is shaped throughout and in accordance with the proceedings, making strict adherence to the scope of the claim unfeasible. The second is negotiation and micro-institutionality, as dialogue occurs among the parties that will effectively comply with the operative provisions. The third is experimentalism and accountability, because the substance of the decision is neither final nor immutable: it depends "on an assessment of the effectiveness of the measures established therein" and may "require supplementary decisions and adjustments"⁸ (Guedes; Amaral, 2020, p. 1713).

According to Guedes e Nogueira (2019, p. 4), the implementation of public policies through judicial decisions has particular features because the *modus operandi* of restricting judges to ruling solely on what claimants have requested has not provided satisfactory responses to complex disputes, particularly those involving public policies such as the right to housing and Indigenous interests. It must nevertheless be recognised that more active judicial involvement in public-policy matters raises serious questions regarding institutional legitimacy.

Indeed, this issue permeates the political and institutional debate and creates tensions among the different branches of government, particularly concerning the democratic deficit of legal institutions in public-policy formulation. In this context, transferring key public-policy decisions to spheres relatively insulated from majoritarian control contributes to the growing centrality of constitutionalism and judicial review as mechanisms for containing the uncertainties of representative democracy.

⁷ The observations of Ferraz Júnior (1980, p. 38) are particularly relevant. He defines a decision as an act intended to "transform undecidable incompatibilities into decidable ones" and which may generate situations more complex than those existing beforehand. Accordingly, the modern concept of a decision is not based on harmony and consensus, since consensus is what makes a decision possible; once the decision has been issued, the conflict is not eliminated but merely transformed. Indeed, resolving a conflict through a judicial decision merely prevents the dispute from continuing rather than eliminating it.

⁸ In summary, Amaral and Guedes (2020) recall that neither a struggle over possession in itself nor a possessory action will determine whether proceedings are structural; rather, this classification depends on the addition of other elements regarded as essential. This refers to the adjustments made to ensure appropriateness.

Regarding the structuring of proceedings, Didier Jr., Zaneti Jr. and Oliveira (2020) draw an illuminating analogy by presenting bankruptcy proceedings as a model for organising structural proceedings. First, the bankruptcy court establishes the existence of bankruptcy and subsequently proceeds to the stage involving the liquidation of rights and obligations, thus forming a two-stage procedure. Similarly, structural proceedings identify a state of non-compliance, establish a goal, and then implement the defined objective through a structural decision.

Following this comparison, Silva Neto (2019) explains that a structural decision may initially be interpreted as *extra petita*, thereby relaxing the principle of congruence, but that it consequently affords more comprehensive protection to the interests under discussion in the dispute. In the case under examination, for example, the claimants sought only repossession. From a strictly legal perspective, their claim would have been summarily dismissed, without compensation and with the immediate removal of the non-Indigenous occupants from the site, despite their good-faith acquisition, vulnerability, and the improvements made to the property over several decades.

Once again, the application of constitutional filtering can be observed in the reinterpretation of the legal system through the lens of the Constitution, with emphasis on its normative force. Nevertheless, the outcome of the dispute under examination demonstrates that the legal-positivist paradigm, which prevailed in earlier periods, does not supersede the pursuit of a socially effective legal outcome in the context of contemporary judicial practice and the ongoing reform of civil legislation.

The expectation that judges will issue decisions capable of producing practical effects appears to be a contemporary requirement. This becomes even clearer considering the Sustainable Development Goals (SDGs) established by the United Nations (UN), particularly SDG 16, which seeks to “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels” (Brasil, 2024b, p. 366). These goals have been adopted by the Brazilian National Council of Justice (CNJ) to promote judicial action capable of generating tangible and sustainable impacts.

4 The appropriate judicial mechanism for possessory disputes based on the construction of the case

The preceding discussion initially highlighted the growing importance of the social function as an expression of the need, from the perspective of constitutionalisation, for constitutional principles to resonate more strongly within private law.

From this perspective, various judicial approaches concerning vulnerable groups came to be considered in view of the difficulties arising from subsuming cases under legal rules through deductive reasoning⁹, which is often inconsistent with the current stage of legal development and the contemporary conception of the constitutional rights of human beings.

This raises the question of whether the same conclusion could be reached in possessory disputes involving non-Indigenous lands and whether the principle that courts are bound by the scope of the claim could be set aside, considering the possessory grounds of the case and the proposed amendments to the Civil Code. This question may lead to different lines of inquiry, ranging from the examination of possession of Indigenous and non-Indigenous lands to an in-depth study of the intersection between possessory protection and the forced removal of vulnerable groups.

In view of these possibilities, the appellate judgment does not consider the Indigenous status of the lands. As stated by the Justice-Rapporteur, neither the issue of Indigenous possession nor that of private ownership was subject to appellate review, as these matters had been procedurally barred since the decision of the state Court of Justice. The dispute was therefore resolved with respect to compensation for improvements made by the good-faith occupant, a distinct issue grounded directly in the Constitution (Brasil, 2025).

Clearly, this solution should not be automatically generalised to all possessory disputes involving non-Indigenous lands. Nevertheless, whenever a dispute entails a high degree of institutional complexity, involves vulnerable groups, and requires the progressive implementation of public policy, the procedural grounds for structural management remain potentially applicable, in accordance with the arguments developed throughout the preceding section.

⁹ Ferraz Júnior (1980) explains that the complexity of judicial decision-making cannot be addressed merely by subsuming the facts under a legal rule, as a claim will not always be linear. It is often necessary to develop a solution intuitively and subsequently seek grounds to support it. In short, decision-making is a process regulated by the systematic framework of the legal system, particularly its guiding general principles, while remaining sufficiently open to the contemporary interpretation of indeterminate concepts and the filling of gaps. Decidability is therefore conceived as continuous intervention in social conflicts aimed at balancing legal rules with the discretion of legal practitioners and, naturally, the objectivity of the law with the subjective context of the cases under examination.

The acknowledged influence of constitutional matters on private law extends conflicts originating in the social sphere to matters involving individual interests. Thus, while the problem-solving and protective functions afforded to collective possession are promoted, individual possession or ownership likewise receives protection through the provision of compensation by the State, which is responsible for public policies. When a conflict arises, it may, depending on its characteristics and complexity, assume a structural nature (Amaral; Guedes, 2020).

Therefore, in possessory disputes involving vulnerable groups and the State, a repossession action may be converted into a claim for compensation without constituting an *ultra petita* or *extra petita* judgment when returning possession to the possessor or owner is impossible. In the case under examination, the evidence of possession gave the non-Indigenous occupants a right to compensation but did not entitle them to retain possession, clearly because ownership was constitutionally vested in the Federal Government.

Ferreira (2015) highlights the lack of scholarly engagement with the procedural techniques applied to possessory disputes, particularly those involving social movements. This is attributable not to shortcomings in the legislation but to its reflection of the concerns of a particular period. Accordingly, appropriate and effective judicial protection is achieved by adopting a procedure that is sensitive to the specific implications of each case without overlooking the characteristics of the substantive right involved. This approach therefore represents an invitation to move beyond the merely declaratory dimension of the judicial function by promoting judges' creative role in developing legal rules.

Moreover, Reale's (1994) observations regarding the relevance of sources as legal models are particularly pertinent. The content of these sources becomes detached from the legislature's original intention and from the circumstances existing when the rule was enacted, allowing the rule to respond to the facts and values prevailing at the time of adjudication. These facts and values may therefore contribute to the validity of legal rules when they correspond to a new understanding. Because of this prospective nature, Law must be understood as "rule and regulated situation", since legal rules must extend beyond their formal connections and be interpreted in conjunction with the realities of social life.

Accordingly, judges are responsible for adapting proceedings to the factual circumstances before them to develop judicial protection that is appropriate and responsive to the Brazilian legal system from a constitutional perspective, particularly as encouraged by the principles underlying the proposed reform of the Civil Code. Clearly, possessory protection under civil legislation cannot be asserted in absolute terms, notwithstanding its autonomy from ownership, as discussed in the opening section.

Against this evolving social background, several studies had already identified the need for judicial proceedings to serve an instrumental role in protecting the possession of vulnerable groups. Ferreira (2015) reinforces the understanding that the social right to housing must occupy a central position in the resolution of possessory disputes. Otherwise, an inflexible application of the law to individual cases risks indiscriminately removing people without ensuring the existential minimum necessary for their survival.

The challenge therefore lies in reconciling the individualism of the law with the specific case under examination to identify more reasonable solutions in accordance with the principles of appropriateness and reasonableness, based on the understanding of principles as legal rules. More broadly, legal practitioners must adapt legal mechanisms to new realities, taking as their starting point the Constitution's hierarchical position, from which the validity and application of legal rules extend even into private-law relationships. Perlingieri (2019) suggests that legal practitioners must consider cultural and legal foundations from a historical and dialectical perspective¹⁰.

The scope of judicial discretion¹¹ is reduced when the causal effects arising from the prospective decision are considered from consequentialist and pragmatic perspectives, subject to limits imposed by standards of rationality and naturally the internal coherence of legal system. Furthermore, comparing empirical data brings legal reality closer to social reality, enabling disputes to be resolved more effectively. Notably, law must not be reduced to a social fact as it is also normative, coercive, and institutionalised.

At this point, the words of the Justice-Rapporteur in the case under examination are particularly noteworthy. The Justice stated that the "[...] carefully considered decision of the court constitutes a genuine practical application of the

¹⁰ Reale (1994, p. 84) regards dialectical logic as enabling an understanding of the normative system, which is variable and unstable. The author explains that the sense or meaning of a legal rule or model changes over time in response to shifts in values or other normative dimensions within the realm of facts.

¹¹ Discretion is understood here in the sense adopted by Lorenzetti (2010, p. 180), who defines it as arising when normative indeterminacy permits more than one correct decision.

principles governing structural procedural law, which seeks to implement public policies in light of reasonableness, promoting social harmony without suppressing any rights” (Brasil, 2025).

Operability of structural possessory protection comprises three dimensions: a) substantive adequacy: the autonomy of possession, its social function, and constitutionalisation; b) normative adequacy: the expansion of the operability of possessory law through the proposed legislative amendments, recognising greater protection of possession and simultaneous legal effects; and c) procedural adequacy: the relaxation of the principle of congruence, structural decisions, and appropriate judicial protection, enabling the substantive objectives of possessory law to be achieved through judicial proceedings.

Accordingly, minor adjustments supported by reasoned justification safeguard the instrumental nature of judicial proceedings and are particularly necessary in disputes involving possessory protection. In the case under examination, progressive measures were ordered to accommodate the parties to the dispute as the mechanism most appropriate to the claim through a flexible solution. In other words, traditional adjudication based merely on subsuming the facts under the applicable rule would not have produced a legal solution suited to the conflict between fundamental rights.

5 Final considerations

The research demonstrated that the operability of possessory law constitutes a category explained by the interaction of substantive, normative, and procedural elements, whose coordination enables the development of appropriate judicial remedies in complex possessory disputes.

The analysis of Special Appeal No. 1,637,991/AL (Brasil, 2025) demonstrated, in a context involving Indigenous lands, vulnerable groups, and a high degree of institutional complexity, that relaxing the principle of congruence and structurally managing the case constitute practical manifestations of the operability of possessory law rather than exceptional solutions detached from the logic of the legal system.

As a contribution of this study, the operability of possessory law is understood as an analytical category comprising the substantive autonomy of possession, which provides the legal basis for possessory protection; the constitutional configuration of the rights involved, which guides the interpretation and application of substantive law; and the structural management of proceedings, which enables these rights to be progressively realised in complex possessory disputes. The interaction among these dimensions constitutes the explanatory criterion for structural possessory protection advanced in this article.

The examination of the conceptual autonomy of possession and the proposed reformulation of concepts concerning possessory matters demonstrates the constitutionalisation of Civil Law. The coexistence of direct and indirect possession and of conflicting constitutional rights is explicitly recognised, with legal effects consequently being attributed to both positions.

Transformations observed in possessory law and judicial practice reveal a movement towards internal reinterpretation guided by the Constitution, through which possessory protection increasingly engages with constitutional values.

The operability of possessory law constitutes a useful analytical criterion for understanding the contemporary configuration of possessory protection in complex disputes, explaining how substantive rules, legislative reforms, and structural procedural techniques interact in developing constitutionally appropriate judicial solutions.

Finally, although this study was based on a possessory dispute involving lands traditionally occupied by Indigenous Peoples, the elements identified support the conclusion that the structural management of proceedings is not limited to this context. When a possessory dispute entails a high degree of institutional complexity, involves vulnerable groups, or requires the progressive implementation of fundamental rights, the operability of possessory law may justify structurally oriented judicial solutions, subject to the particular circumstances of each case.

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