ENVIRONMENTAL

ATTORNEY GENERAL'S OFFICE FILED A DIRECT ACTION OF UNCONSTITUTIONALITY AGAINST SÃO PAULO'S LAW, ALLEGING VIOLATION OF THE CONSTITUTIONAL RIGHT TO PRIOR CONSULTATION OF TRADITIONAL AND INDIGENOUS COMMUNITY

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AUTHORS

EDUARDO FERREIRA
PARTNER / SÃO PAULO

CAMILA ARGENTINO SILVA RIBEIRO SCOPEL
LAWYER / SÃO PAULO

The Attorney General's Office filed the Direct Action of Unconstitutionality (ADI) 7,008, on September 30, with a request for a restraining order against Law 16.260/16 of the state of São Paulo. State law "authorizes the State Treasury to grant the exploitation of services or the use, in whole or in part, of" in state properties. The ADI 7008 was distributed to the rapporteurship of Minister Roberto Barroso.

According to the petition, São Paulo's law would have violated constitutional provisions related to the Union's competence to legislate on indigenous peoples and general norms of protection of the environment and indigenous populations, in addition to ignoring the duty of respect for the organization of these populations and the rights of possession and enjoyment of the lands they traditionally occupy. This is because the state standard regulated the granting of ecotourism and commercial logging activities and forest by-products in state conservation units, regardless of environmental licensing and without prior consultation with potentially affected indigenous populations.

The Attorney General's Office requires the granting of a precautionary measure to suspend the effectiveness of Law 16.260/16 and, at the end, to uphold the request for the purpose of declaring:

> the obligation of prior environmental licensing for the granting of commercial exploitation of wood and forest by-products in state conservation units, because they are activities with medium potential for environmental impact; and

> the need for prior consultation with affected communities as a condition for granting concessions.

In Brazil, traditional and indigenous communities do not have a specific protocol for Free, Prior and Informed Consent (FPIC), as recommended in the Convention of the International Labor Organization (ILO) 169 and to which the Attorney General's Office expresses its mention. In this scenario, the judgment of the ADI, in addition to deciding the constitutionality of the state law, will be an important precedent on the subject, especially in relation to the understanding of the ministers of the Supreme Court on whether the specific protocol, in fact, is necessary to meet the convention or if, in the case of environmental licensing, the public hearing could provide such formality.