

THE JUDICIALIZATION OF THE SELECTION PROCESSES AT THE FEDERAL UNIVERSITY OF AMAPÁ IN THE LIGHT OF BLACK HERMENEUTICS AND ANTI-DISCRIMINATION LAW

A JUDICIALIZAÇÃO DOS PROCESSOS SELETIVOS DA UNIVERSIDADE FEDERAL DO AMAPÁ À LUZ DA HERMENÊUTICA NEGRA E DO DIREITO ANTIDISCRIMINATÓRIO

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RESUMO

O artigo analisa a judicialização dos Processos Seletivos da Universidade Federal do Amapá (UNIFAP), a partir das controvérsias jurídicas e hermenêuticas geradas pela Resolução nº 21, de 2022, que redefiniu a política de reserva de vagas da instituição. A pesquisa fundamenta-se em análise documental de 43 processos judiciais extraídos do sistema PJe, compreendendo o período de janeiro de 2023 a dezembro de 2024. Os achados apontam para decisões conflitantes do Judiciário que afetaram diretamente a matrícula de candidatos, provocando sucessivas alterações no edital e gerando instabilidade institucional. A pesquisa destaca a insuficiência da leitura formalista do Direito, predominante em parte das decisões e propõe a hermenêutica negra e antidiscriminatória como um marco teórico alternativo capaz de discutir e problematizar a influência da posição social dos intérpretes jurídicos na aplicação das ações afirmativas. Conclui-se que a lateralização de uma visão inclusiva contribui para a reprodução das assimetrias estruturais e que é necessário repensar os limites da intervenção judicial nas

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políticas públicas educacionais. Como recomendação prática, propõe-se a criação de programas de capacitação do Judiciário em parceria com universidades públicas, especialmente as federais, com vista à formação crítica em relações raciais, letramento jurídico-racial e superação da ideologia do mito da democracia racial, visando tornar o Direito um instrumento de justiça substantiva e emancipação social.

Palavras-Chave: Ações Afirmativas. Cotas Raciais. Direito Antidiscriminatório. Hermenêutica Negra.

ABSTRACT

The article analyses the judicialization of the 2023 and 2024 Selection Processes at the Federal University of Amapá (UNIFAP), based on the legal and hermeneutical controversies generated by Resolution no. 21/2022, which redefined the institution's vacancy reservation policy. The research, which is descriptive and qualitative-quantitative in nature, is based on a documentary analysis of 43 court cases extracted from the PJe system, covering the period from January 2023 to December 2024. The results show that conflicting judicial decisions directly affected the enrollment of candidates, causing successive changes to the public notice and generating institutional instability. The research highlights the insufficiency of the formalist reading of the law, predominant in some of the decisions, and proposes black and anti-discriminatory hermeneutics as an alternative theoretical framework capable of highlighting the impact of the social position of legal interpreters on the application of affirmative action. The conclusion is that the absence of an inclusive vision contributes to the reproduction of structural asymmetries and that it is necessary to rethink the limits of judicial intervention in public education policies. As a practical recommendation, we propose the creation of training programs for the judiciary in partnership with public universities, especially federal universities, with a view to critical training in race relations, legal-racial literacy and overcoming the ideology of the myth of racial democracy, with a viewmaking law an instrument of substantive justice and social emancipation.

Keywords: Affirmative Action. Racial Quotas. Anti-Discriminatory Law. Black Hermeneutics.

INTRODUCTION

The promotion of equality in the Democratic State of Law requires more than the simple proclamation of formal isonomy, traditionally enshrined by the formula "all are equal before the law". As Bulos (2025) points out, although this maxim is present since the imperial period, and reaffirmed in the article 5 of the Federal Constitution of 1988, it proves ineffective before the inequalities historically produced by a social structure marked by deep racial hierarchies, ethnic and economic. It is a curious axiological paradox: how do societies that claim to be formally egalitarian remain structurally unequal? A dualism that seems to accompany the Brazilian social formation since the imperial period, making citizenship a historical challenge of the present (Carvalho, 1999).

This dualism had also been discussed by DaMatta (1997), when he discussed the conflicts between the hierarchical tendency and the egalitarian nature of the Brazilian dilemma. However, as suggested by the analyses of Luhmann (2006), this paradox seems to be broader and characterizes the very structure of global society, not being a Brazilian specificity. Neves (2004) played an important role in provoking Luhmann to discuss this paradox in peripheral societies.

In this context, affirmative action emerges as an institutional and political response to the realization that formally equal treatment can, in practice, perpetuate inequalities. As defended by Feres Júnior et al. (2018), the advance of these measures accompanies moments of crisis of the universalist model and signals a shift from the classical liberal paradigm to a more comprehensive conception of social justice, based on the need to treat unequal inequalities. The Constitution of 1988, although it included explicit provisions to combat racism and discrimination, such as article 3, paragraph IV, and article 5, paragraph VIII, did so under a normative model of programmatic and declaratory effectiveness, avoiding direct confrontation with structural privileges.

As discussed by Maggie and Fry (2004), the constitutional text adopts a condemnatory stance against racism, but within a normative paradigm that avoids the affirmative recognition of racial inequalities. The result is a kind of performative anti-racism, which celebrates equality, disregarding its material fissures.

This logic was stressed in 2001, when the city of Durban, South Africa, hosted the III World Conference against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance, promoted by the UN. The event resulted in the Durban Declaration, which recognized slavery as a crime against humanity and urged states to adopt concrete reparation policies. Brazil, a signatory to the Declaration, has come under international pressure to break with its historical model of denial of racism. As a result, a new political orientation emerges at the internal level: institutionally recognize racial inequality and address its consequences through affirmative action.

It was from this geopolitical constraint and the mobilization of black social movements that the country began to outline a national public policy of racial quotas. For the first time an official Brazilian delegation recognized the legitimacy of the historical debt with the black population. At the same time, on a sub national level, the state of Rio de Janeiro approved the Law 3,708 of 2001, instituting racial quotas in its public universities, a bold decision that inaugurated the institutionalization of affirmative action in Brazilian superior education (Maggie, Fry, 2004).

A paradigmatic episode was the launch, on May 13th, 2008, of the Manifest in Defense of Justice and Constitutionality of the Quotas, addressed to the then president of the Supreme Court, minister Gilmar Mendes. The document, as Elísio (2021) points out, not only called for legal recognition of racial quotas, but also denounced institutional paralysis in the face of a historical urgency. With no consolidated legal support at the time, political and symbolic pressure resulted in the adoption of the policy of racial quotas by 93 superior education institutions until that year. In at least 14 other universities (11 federal and 3 state), the theme is handled internally, demonstrating the advance of disputes in collegiate spaces of universities (Jesus, 2011).

The trajectory of affirmative action in Brazil, particularly in access to superior education, was not without resistance. Long before the edition of the Law 12.711 of 2012, known as the Quota Law, there was already a field of institutional dispute within public universities, where different justice projects and competing models of equality were confronted. The university field was gradually becoming a space stressed by social movements, especially the black movement, which claimed the recognition of racial inequality as a structural element of educational exclusion. These tensions materialized in occupations of university councils, normative propositions and public mobilizations that demanded an institutional repositioning before the historical denial of the right to difference.

Affirmative policy emerged as a belated response to historical struggles for reparation and inclusion. The absence of political-formal consensus forced the displacement of the legislative arena to the institutional spaces university, making the Superior Councils a stage of ideological and legal clashes. This process reinforces the argument that, in the absence of state action, organized civil society can operate as a protagonist in the formulation of public policies, even through non-conventional institutional routes. The birth of the Law no 12.711, of 2012, consolidated a practice already widely experimented and strained in the daily university life. The normative act instituted the reservation of 50% of the vacancies in the federal universities for students coming from the public network, also introducing criteria of racial and socioeconomic segmentation.

The proportionality of the black, brown and indigenous population of the State in which the institution is located, based on data from the Brazil Institute of Geography and Statistics (IBGE), was incorporated as a criterion for distributive justice, anchoring merit in a material conception of equality. However, after the law was created there was an absence of social and ideological conflicts. On the contrary, it shifted them to the legal arena, in which

they began to be reinterpreted under different hermeneutic prisms, often detached from the social context that originated such policies.

The amendments promoted by the Law no 14.723, of 2023, updated the legal regime of quotas, reducing the income ceiling for access to vacancies intended for low-income students (from 1.5 minimum wage to 1 minimum salary per capita) and establishing clearer rules for the allocation of vacancies, prioritizing black, brown, indigenous, quilombolas candidates and people with disabilities. These changes show the dynamic character of quota politics, whose regulation remains sensitive to the power correlations in society and the ideological clashes that cross the state. The amendments to the law also sought to reaffirm the legal validity of other norms that deal with the rights of groups such as black people, indigenous people and people with disabilities. Expanding and integrating the protection of such groups historically excluded from the minimum exercise of citizenship.

It is in this legal, political and historical environment that the experience of the Federal University of the state of Amapá (UNIFAP), which, after extensive pressure from social and internal collectives, including movements of blacks, indigenous, quilombolas, trans people, migrants and refugees, approved the the Resolution no 21, of 2022, which instituted the institutional policy of affirmative actions and human rights of the institution. Among the provisions of this regulation, we highlight the expansion to 75% of the reserve of vacancies in the graduation processes for students from the public network, as well as the prediction of racial, supra-numeric and intersectional quotas.

Innovation, however, triggered intense judicialization in the selection processes of 2023 and 2024, with dozens of lawsuits filed by candidates dissatisfied with the new division of vacancies. In addition to the security warrants and ordinary actions, the Federal Public Prosecution filed a civil action alleging the alleged unconstitutionality of the measure. The university has been compelled to publish multiple lists, correct classifications and respond in real time to injunctions and conflicting decisions, often made by judges with completely different understandings on the subject.

In this article, discussions are proposed under the aegis of a black hermeneutics and an anti-discrimination law, as formulated by Moreira (2020), which offers a necessary break. Unlike traditional reading, this approach starts from the recognition that law is crossed by power relations in which race, class, gender and sexuality operate as vectors of domination. Black hermeneutics shifts the center of interpretation to historically marginalized subjects, understanding them as active agents, leaving aside the view that they are mere passive recipients of norms.

This perspective breaks with the ideal of the legal subject "exempt" from modernity and recognizes vulnerability as a recurring position of racialized subjects. A legal interpretation based on concrete experiences of discrimination is required, in which race ceases to be an accident and becomes a relevant legal category.

In contrast to the liberal view, which focuses on individual acts of prejudice, this field seeks to reveal the institutional and structural mechanisms of discrimination. We also use, as an analytical vector, the discussions of domination in the light of Bourdieu (2001), revealing how the legal discourse, by presenting itself as universal, acts as a dominant symbolic instrument. For him, the law structures and legitimizes unequal social relations precisely by naturalizing its own language and its mechanisms of authority. Hide the real disputes behind an appearance of impartiality and reinforce existing hierarchies. In addition, the contributions of Santos (2002) offer a theoretical basis to question the dominant legal model, proposing the "sociology of emergencies", in which he defends the valuation of legal practices produced by minority subjects, often ignored by traditional dogmatic.

This understanding broadens the limits of what is recognized as legal, allowing us to understand law as a field in dispute, crossed by power relations and potentially open to emancipation. The legal-formalist interpretations, although disguised as neutrality, can act as mechanisms for maintaining structural inequalities, delegitimizing fundamental instruments of social inclusion. More than a legal clash, what is at stake is a deep interpretative dispute in which different conceptions of justice, equality and reparation confront each other.

This research focusing on the analysis of the judicialization of racial affirmative actions at the Federal University of the state of Amapá (UNIFAP) is informed by these broader issues outlined above. As for the technical-methodological aspects, the document analysis and the description of some qualitative and quantitative relevant data on the processes are combined. The documentary research consists of the examination of judicial decisions, administrative orders and other institutional documents, extracted from the public consultation of the Electronic Judicial Process (PJE) system of the Federal Regional Court of the 1st Region, available online in the domain "<https://pje1g.trf1.jus.br/pje/>".

The following search filters were used in the subject column: "Quota system", "Registration", "Affirmative actions" and "Quota for admission". These filters are found in the Unified Table of Procedural Matters of the National Council of Justice (CNJ) (Brazil, 2025). The qualitative dimension was structured from analytical categories, such as "formalism", "racially situated interpretation", "emancipation", "university autonomy" and "social inclusion".

The research starts from language as realization of thought, in which concepts develop from a dynamic that involves asking and answering (Rezende, 2002). This logic, which matures in the process of reflection itself, makes it possible to understand the legal field as a historical practice in dispute. By incorporating this perspective, the research proposes that judicial decisions are read from their internal contradictions and their concrete effects. In this key, we seek to capture how the Judiciary is positioned before the disputes for recognition and redistribution, especially in the context of affirmative action policies.

The quantitative axis materialized in the systematization of 43 judicial processes related to the Selective Process of 2024, held between January and December of 2024, with attention to legal bases, diversity of procedural effects and institutional repercussions.

In relation to the PS 2023, processes filed between January and December of 2024 were researched; however, the analysis fell exclusively on collective actions, due to a conflict of competence between federal bars, an aspect that will be detailed throughout the work.

The bibliographical research is based on an approach of anti-discrimination law, black and emancipatory, allowing a theoretical dialogue with the judicial decisions issued. The texts of Moreira (2017, 2020), Santos (2002), Bourdieu (2001), Munanga (2004), Jesus (2011), Maggie and Fry (2004) and Feres Júnior et al. (2018) were used as main references.

The interpretation of judicial decisions will be made from the dominant and counter-hegemonic legal narratives, considering the impact of the social position of magistrates in the construction of the constitutional interpretation of the Law no 12.711 (Brazil, 2012) and the Resolution n° 21 (UNIFAP, 2022).

Thus, the research seeks to identify how the interpretative choices of judges influenced the stability or the disruption of the affirmative policy of as well as the effects of these decisions on university autonomy and the right to access higher education for historically marginalized groups, especially the black population.

1 INITIATION OF THE JUDICIAL DISPUTE AND MISUSE OF THE SECURITY WARRANT AS A COLLECTIVE INSTRUMENT

The legal controversy began with questions about the interpretation of the legality of the reserve percentage adopted for quotas, based on the Law no 12.711 (Brazil, 2012), in which a minimum level of 50% of the vacancies for students coming from the public education system is established, as well as the application of the principle of equality enshrined in the Constitution (Article 5, caput, of the Constitution) and the fundamental

objective of the Federative Republic of Brazil to promote the good of all people without discrimination in any way, especially racial (Article 3, IV, of the Constitution).

It was argued that UNIFAP, by increasing this percentage to 75%, allegedly extrapolated the limits established by federal legislation, which led to the filing of multiple individual and collective actions. The Public Civil Action (ACP) of number 1007640-78.2023.4.01.3100 moved by the Federal Public Prosecution (MPF) was the main collective arguing that the university would have violated principles of reasonableness and proportionality by modifying the distribution of vacancies without a robust legal basis. The Selection Process of 2023 had already faced legal challenges, but it was in 2024 that reached a critical level. This is because a competence conflict was raised, due to the popular action in 1003192-62.2023.4.01.3100 being possibly connected with the ACP in 1007640-78.2023.4.01.3100.

The conflict was only resolved on April 10th of 2024. The Third Section of the Federal Regional Court of the 1st Region declared competent the judgment of the 2nd Civil Court, for understanding evidenced continence, considering the reasons to ask similar: questioned Resolution no 21, 2022, and the Notice no 01 of the Selection Process of UNIFAP, 2023. With the delay in defining the competent court for trial, there was no suspension or annulment in the selection process of 2023. Otherwise, in the 2024 selection process, several preliminary decisions were granted, determining the suspension of the notice and the redistribution of vacancies, imposing an equal division of 50% for broad competition and 50% for quota holders.

These decisions generated successive reformulations in the selection process, so multiple announcements and corrections of the notice followed, with a cascading effect of legal uncertainty. Given this scenario, the institution was obliged to continuously adjust the administrative acts, fulfilling conflicting determinations, which either determined the review of the distribution of vacancies, or restored the criterion originally provided for in the Resolution 21 of 2022.

In response, UNIFAP published several statements changing the classification of candidates, suspending registrations and reconfiguring the vacancies. The decisions made by the 2nd and 6th Federal Bars, in the seat of security warrant, in which they suspended the effectiveness of the resolution, extrapolated the legal limits by granting *erga omnes* effects, impacting all candidates of the contest.

This undue expansion of the effects reveals a serious procedural distortion, because the constitutional remedy cited does not lend itself to the challenge of general and abstract norms

nor can be substitute for appropriate procedural instruments for the defense of collective rights, as the public civil action or the collective security order. Moreover, the Supreme Federal Court has a peaceful orientation in the sense that the security warrant cannot be used to challenge a law or normative act in theory, as established by the Summary no 266 (Brazil, 1968).

The understanding stems from the fact that general and abstract norms do not have the ability to cause immediate injury to an individual right liquid and certain, since its application depends on the edition of concrete administrative acts. In other words, the existence of a normative act does not automatically generate a subjective right that can be invoked through an individual security order.

In a trial of 2014, minister Luis Roberto Barroso reinforced that the constitutional instrument presupposes the claim of injury or concrete threat to the right of the plaintiff. Also, the "Law in theory" referred to in the Summa is not properly the Law in its formal meaning, but in a material sense, covering normative acts under the law, provided that they have general and abstract character (Ag.Reg. in Security Mandate no 29.374, rapporteur minister Luis Roberto Barroso, STF, First Class, date of publication: October 15th of 2014).

In the case of the Resolution of UNIFAP, it was a general and abstract normative act, in which new rules were established for the distribution of vacancies in the entrance exams of the institution. Therefore, the judge could not annul it for all candidates by means of an individual Warrant of Security, since this would amount to a diffuse and expanded control of constitutionality, being not applicable in these actions.

A determining factor for the volume of decisions favorable to the redistribution of vacancies in 50/50 was that a single magistrate was responding cumulatively by the 2nd and 6th Federal Bars of the Judicial Section of the state of Amapá. As the related actions were concentrated in the 1st, 2nd and 6th Bars, of the three courts competent to analyze the questions to the edict, two were under the jurisdiction of a single magistrate, representing 66.66% of first instance decisions on the subject.

This circumstance explains why a large part of the lawsuits filed in order to contest the resolution have been aggregated into a judge, allowing his initial interpretation on the subject to have a significant impact on the course of the case. At first, he adopted an expansive stance when he assigned a broad scope that modified the whole event. However, throughout the proceedings, there was a reformulation of its position, correctly applying *inter partes* effects in subsequent actions.

Examples of this were Processes 1007909-83.2024.4.01.3100, 1006983-05.2024.4.01.3100, 1007415-24.2024.4.01.3100 and 1007382-34.2024.4.01.3100, in which the decisions respected the limitation of the effects of the sentence to the authors of the action, without reaching third parties not entering into the process. This change demonstrates recognition of the initial inadequacy of granting broad effects in individual actions. In the case of the Civil Public Action (ACP) no 1007640-78.2023.4.01.3100, the extension was correctly applied, since, by its nature, it is the appropriate procedural instrument for contesting normative acts that affect a wide group of people.

Despite the correction, its initial behavior demonstrates a clear judicial activism, characterized by both undue magnification of effects and interference in the formulation of public policies of the university. By unilaterally determining a rearrangement of vacancies, institutional deliberation was replaced by a judicial decision, disregarding that the establishment of criteria for affirmative action in superior education is consistent with the exercise of its constitutionally guaranteed autonomy.

Judicialization and judicial activism, although often associated, are not identical phenomena. As well stated by Luís Roberto Barroso (2012), both belong to the same matrix of extension of the action of the Judiciary, but have different natures. The first occurs when issues of great social or political repercussions are submitted to the Judiciary, often due to the inertia of other powers.

This is an inevitable phenomenon in constitutional democracies, where the supremacy of the Constitution and the constitutionality control system confer to the Judiciary the role of resolving normative conflicts and ensuring the effectiveness of fundamental rights. The activist behavior, otherwise, refers to a proactive posture of the Judiciary, characterized by the expansion of the sense and scope of constitutional rules, especially in moments of legislative omission or mismatch between social demands and the performance of the Legislature.

In this context, the Judiciary begins to adopt a more extensive role, filling normative gaps and interfering directly in decisions that, in principle, would be the responsibility of other powers. Barroso (2012, p. 25) emphasizes that judicial activism "is an attitude, the choice of a specific and proactive way to interpret the Constitution, expanding its meaning and scope".

Historically, this activism was consolidated in the United States, initially with a conservative bias, serving to legitimize segregationist practices and invalidate social laws, which generated intense clashes between the Supreme Court and the government of President Roosevelt. The scenario underwent a turnaround from the 1950s, when American

jurisprudence began to adopt a progressive bias, especially in defending the fundamental rights of marginalized groups such as Afro-descendants, women and prisoners (Barroso, 2012).

It is observed that the judicial authority responsible for most of the decisions acted beyond what is expected from a judicial review of legality, inducing a form of judicial activism, in which it interfered directly in the formulation and execution of a university public policy.

This created a scenario of instability and improper intervention in the administrative sphere, which was only reversed by the action of the Public Defender's Office of the Union, which managed to suspend the effects of the decisions until the final judgment. The Preliminary and Sentence Suspension Incident (SLS), provided for in the Article 4 of the Law no 8.437 (Brazil, 1992) and expanded by Article 15 of the Law no 12.016 (Brazil, 2009), is a procedural instrument that aims to suspend judicial decisions that may cause serious harm to public order, to the economy, health or legal certainty.

The action of the Public Defender's Office, through the regional human rights defender of the time, was decisive to avoid the premature change in quota policy without a definitive judgment on its validity. Resolution no 21, of 2022, remained in force due to the suspensions granted in that incident, ensuring that the university maintains the model of reserve of places established until the final judgment of the action. Furthermore, the suspension prevented any attempt to execute the substantive judgment rendered in the public civil action no 1007640-78.2023.4.01.3100, since Law no 8.437 (Brazil, 1992) itself established that its effects remain until the main decision becomes final.

2 WHEN THE "JUDICIAL PEN" REVOKES THE COLLECTIVE DEBATE

The sentences handed down in the Security Orders no 1001493-02.2024.4.01.3100, 1001489-62.2024.4.01.3100 and 1002638-93.2024.4.01.3100 (first to grant broad effects) present a series of misunderstandings and contradictions, especially with regard to the application of the Law no 12.711 (Brazil, 2012) and university autonomy in setting criteria for entry into their courses.

One of the main heterodox points lies in the mistaken semiotics that the reservation of 75% of the places for graduates of public education would exceed a supposed constitutional and legal limit, when, in fact, the legislation provides a minimum percentage of 50 without establishing a maximum ceiling:

Art. 1º As instituições federais de educação superior vinculadas ao Ministério da Educação reservarão, em cada concurso seletivo para ingresso nos cursos de graduação, por curso e turno, no mínimo 50% (cinquenta por cento) de suas vagas para estudantes que tenham cursado integralmente o ensino médio em escolas públicas ou em escolas comunitárias que atuam no âmbito da educação do campo conveniadas com o poder público, referidas na alínea b do inciso I do § 3º do art. 7º da Lei nº 14.113, de 25 de dezembro de 2020 (Brasil, 2012).

This type of argument ignores not only the logical method, but also the systematic, authentic and historical processes, disregarding both the normative structure of the legal system and the very objective of affirmative action in the context of ethnic-racial and socioeconomic inequalities.

Resolution no 21, of 2022, was elaborated after extensive and dedicated academic and social debate in the University Superior Council of UNIFAP. The participation of social movements linked to struggles for social rights (especially black people, LGBTQIAP+, indigenous peoples and other socially vulnerable groups).

Traditional legal hermeneutics, according to Maximiliano (2017), represents one of the fundamental pillars of the application of the Law, because it seeks to clarify, reconstruct and give meaning to legal rules, allowing them to be correctly applied to concrete cases. To interpret legally is not limited to a mechanical activity of subsumption, but involves a careful analysis of the meaning of words, the purpose of the norm and its insertion in the legal system as a whole and in the social and historical reality. The legal person is required to read the normative text in its literal sense and a broader understanding, taking into account the general principles of law and the objectives that the norm seeks to achieve, always paying attention to the constitutional goals, above all to achieve a just and egalitarian society.

When applying a rule to a specific case, the interpreter must verify the fact and all the respective circumstances, identifying which legal type it belongs to and which devices are truly applicable (Maximiliano, 2017). Even from the perspective of the authentic process of interpretation, in which the intention of the legislator itself is considered when creating the norm, reinforces the objective of the Quota Law (Brazil, 2012) to guarantee a minimum reserve, and not an insurmountable ceiling.

The creation of the standard was widely debated in the National Congress, being inserted in a context of public policies aimed at the historical reparation of racial and social inequalities in Brazil. In another perspective, the logical process requires the discovery of the meaning and scope of the norm without being limited to an isolated reading of the text, but taking into account its purpose and the principles that underlie it.

The parliamentary legislator, by establishing a minimum percentage of 50% of vacancies for students who have studied fully in the public network, sought to ensure a mandatory starting point, without preventing universities, in the exercise of their autonomy (enshrined in the article 207 of the Federal Constitution), increase this percentage, according to the social and racial reality of each State.

There is no legal compendium that imposes a maximum limit, so the sentence created a normative command (violating even the principle of the Separation of Powers), deviating from the logical cognition that supports the legal interpretation.

Although the application of the systematic process was considered, when comparing the device with other related commands to identify its meaning, the thesis raised is not supported by the integrated analysis of the Brazilian educational legislation.

The Federal Constitution (Brazil, 1988) reinforces the need for affirmative action to combat structural inequalities. Thus, the understanding that there would be a rigid limit to the reservation of vacancies disregards the spirit of the law and its connection with the broader legal framework, violating the interpretative harmony that the systematic method requires.

Also, the constitutional interpretation most appropriate to the objectives intended by Law no 12.711 (Brazil, 2012) finds in black exegesis the conceptual north of a modern constitutionalism, in view of the anti-discrimination law proposed by Moreira (2020), which seeks to achieve racial citizenship, which is "a substantive parameter of constitutionality control" (Moreira, 2019, p. 270).

Regarding the historical process, it is evident that the Law no 12.711 (Brazil, 2012) is part of a broader movement to combat educational and racial inequalities in Brazil. The percentage established for public school students is based on the correction of historical distortions of access limit of black, indigenous and low-income students to superior education.

It seems clear the total absence of support in this unusual interpretation of the judgment of the 2nd and 6th Federal Bars SJAP; he disregards the logic of the rule, ignores its relationship with the legal system, distorts the intention of the legislator, moves away from the Constitution regarding the search for material equality and human dignity and decontextualizes the history of quota policy. This is a reductionist and liberal-formalist meaning, which creates a serious precedent for the achievement of a minimum social scenario in which racial and social equity is guaranteed in higher education. It has moved away from the search for positive discrimination and the materialization of affirmative policy to enter higher education for black people.

Cappelletti (1993) warns that the proactive posture of the judiciary can generate an institutional imbalance, since judges do not have the same democratic and technical legitimacy as legislators and public administrators, especially when it comes to implementing a government action. On the contrary, the general population expects the judiciary to act in an impartial and independent manner, guided by the Constitution. By invalidating the decision of the Superior Council of a public university and replacing it with its own interpretative criterion, it denotes an expansion of the judicial power in such a way that individual decisions of judges start to define structural guidelines for the whole society, without proper democratic debate.

Although the judicial function has an essential role in guaranteeing rights and controlling the legality of administrative acts, there is a point where this action goes beyond the simple interpretation of the norm and begins to say how the university should formulate its educational actions. In this sense, an activist posture of a judge may result in a usurpation of the administrative function, because the very governability of the Public Administration becomes dependent on fragmented and unpredictable decisions.

3 DECISION INSTABILITY, PROCEDURAL LOTTERY AND JURISDICTIONAL FRAGMENTATION

There were also candidates who entered with individual security warrants demanding the maintenance of the 75% reserve for public education graduates, as provided in the Resolution 21 of 2022. However, the analysis of these demands was marked by a serious deliberative vicissitude, because, as already mentioned, a single judge was responsible simultaneously for the 2nd and 6th Federal Bars of the Judicial Section of the state of Amapá, while the 1st Federal Court was conducted by another.

This scenario made the definition of the right of each candidate practically a procedural lottery, if the request to maintain the 75% reserve was distributed to the 2nd or 6th Bars, it was rejected; if it fell in the 1st Federal Court, it was granted. This discrepancy evidenced the lack of uniformity in local precedents, creating considerable variability and compromising the principle of isonomy, since candidates in identical situations obtained completely divergent resolutions only because of the distribution.

The magistrate of the 1st Federal Court, in contrast to the more activist stance adopted in the other bars, demonstrated a more coherent and prudent approach when determining, *ad cautelam*, the reserve of the vacancies of the impeachers who sought to maintain the

percentage of 75% (example: Processes n° 1008262-26.2024.4.01.3100, 1009927-77.2024.4.01.3100 and 1008001-61.2024.4.01.3100).

However, with the decision of the Federal Regional Court of the 1st Region (TRF1) in the Preliminary and Sentence Suspension Incident (SLS no 1008409-40.2024.4.01.0000), all actions pleading for the maintenance of 75% were prejudiced, because the suspension guaranteed the validity of the resolution of the university until the final judgment of the main action.

Due to this new situation, the 1st Federal Court began to judge extinguished the actions without resolving the merits, considering that the right of the impeachers had already been guaranteed by the decision of the collegiate body. The lottery has become so evident that some candidates are trying multiple identical actions with the clear objective of choosing the most convenient judgment to obtain a favorable decision.

This practice is characterized by an attempt to cheat the principle of the natural judge, in which it ensures the random distribution of the process to be judged by an impartial judge, without interference from the parties in the designation. In several cases, a fine was imposed on the plaintiffs for bad faith litigation, thanks to an attempt at procedural manipulation. In the proceedings 1008456-26.2024.4.01.3100, 1007782-48.2024.4.01.3100 and 1007983-40.2024.4.01.3100, for example, it has been shown that the plaintiffs filed identical claims under different headings, waiting for distribution to see which judge would render a decision that is more favourable to their interests

The behavior not only unnecessarily burdened the Judiciary but also compromised the integrity of the process, violating fundamental principles such as good faith, loyalty and isonomy. Article 80 of the Code of Civil Procedure (Brazil, 2015) typifies bad faith litigation when the party deduces claim or defense against an express text of law or uncontroversial fact (section I) or alter the truth of the facts (section II). In addition, paragraph V considers a bad-faith litigant to be one who proceeds recklessly in any incident or act of the process, directly applying to the conduct of the impeachers by repeating identical actions.

The 1st Federal Court of the Judicial Section of the state of Amapá, analyzing the Security Warrants that pleaded the redistribution of vacancies to the percentage of 50/50, correctly rejected the requests (for example: Process no 1001488-77.2024.4.01.3100). In the decisions, solid and well-founded arguments were presented, corroborating the thesis of the legality of the reservation of 75% of the vacancies for graduates from the public network.

The judge pointed out that the Law no 12.711 (Brazil, 2012) establishes a minimum percentage of 50% for this reserve, and not a maximum, allowing universities, in the exercise

of their administrative autonomy, to expand as long as the ethnic-racial proportionality of federative unity is respected. It was pointed out that affirmative actions have the objective of achieving material equality, as already recognized by the Supreme Federal Court in the judgment of the DPF 186 (Brazil, 2012), which declared the constitutionality of racial and social quotas policies.

The judge also referred to the principle of proportionality, stating that increasing the reserve of vacancies to 75% does not constitute a violation of rights, but rather a legitimate means of promoting the inclusion of historically marginalized groups, especially considering the demographic reality of the state of Amapá, where the self-declared brown, black and indigenous population exceeds 78%.

Another relevant aspect was the strict observance of the principle of legality. It was recognized that the Resolution 21 (Unifap, 2022) did not go beyond the legal limits. It was edited based on federal legislation and objective criteria extracted from the IBGE Census. It was also highlighted the compliance of the Resolution with the article 3 of the Quota Law, observing the proportion of black, indigenous and quilombola population in the federative unit.

The academic community, faced with uncertainties and successive changes in the approved lists, naturally expressed dissatisfaction, but did not always have access to legal and institutional information that explained the impossibility of applying seemingly simple solutions. The administrative chaos, although understandable, was amplified by the lack of predictability on the outcome of the process.

Attributing negligence and disorganization exclusively to the university administration does not consider that with each new judicial decision the institution had the legal obligation to modify the classification of candidates, recalculate and publish new lists, always subject to new procedural setbacks.

Although it is difficult to point out a single responsible for this crisis, it is undeniable that the episode should serve as a point of reflection on the limits of judicialization of educational public policies and the interpretation adopted regarding affirmative public policies and compliance with constitutional principles, such as equality and human dignity.

4 QUANTITATIVE PANORAMA OF THE JUDICIALIZATION OF THE SELECTION PROCESS FOR ADMISSION TO GRADUATION AT UNIFAP IN 2024

A large part of the lawsuits questioning the Selection Process for Graduation in 2024 of Unifap is related to the distribution of vacancies, pleading the maintenance of the percentage of 75% for graduates of the public network or the redistribution to 50/50 between wide competition and quota holders:

Summary of the Legal Situation				
Kind of Action	Warrant	Common Procedure Action	Total of Actions	Percentage (%)
Pleading 50% of the places	19	12	31	72,1%
Pleading 75% of the places	12	There was not	12	27,9%
Total of Actions of the PS 2024	31	12	43	100%

Source: Elaborated by the authors (2025)

Of the 43 actions filed, 72.1% sought to modify the distribution of vacancies for an egalitarian model of 50/50 between broad competition and quota holders, only 27.9% pleaded the maintenance of the percentage originally established by the Resolution no 21, of 2022. Another relevant data of the research concerns the procedural form chosen for these demands. It appears that a significant portion of the candidates opted for the Security Warrant as a procedural way, totaling 31 actions of this nature.

In a first moment, the demands were judged under the mandamental way; however, after some months, actions of Common Procedure began to appear. This transition has an important procedural significance; the said constitutional action is characterized by urgency and by the requirement of liquid and certain law, being used when seeking a faster decision.

Pursuant to the art. 23 of the Law no. 12.016 (Brazil, 2009), its deadline for impeachment is 120 days from the knowledge of the contested act, so the first questions to the PS 2024 were massively concentrated in this way. However, as the deadline expired, those who still wanted to question the reservation of vacancies resorted to the ordinary common procedure, whose limitation period is 5 years, with a longer process and requires more evidentiary production. Furthermore, the distribution of shares among federal bars demonstrates the absence of standardization in the treatment of demands:

Judging Body	Warrants (50%)	Common Procedures (50%)	Total (50%)	Total Percentage (50%)	Warrant (75%)	Common Procedures (75%)	Total (75%)	Total Percentage (75%)
1st Federal Court	1	1	2	6,5%	7	0	7	58,3%
2nd Federal Court	7	3	10	32,3%	0	0	0	0%
6th Federal Court	11	8	19	61,3%	5	0	5	41,7%
Total	19	12	31	100%	12	0	12	100%

Source: Elaborated by the authors (2025)

The 6th Federal Court concentrated 61.3% of the disputes, in which it was pleaded the redistribution of vacancies to 50/50. In addition, this Judgment also received 41.7% of those who sought to maintain the 75%. The 2nd Federal Court, in turn, received exclusively requests questioning the reserve of 75%, without registering any demand seeking its maintenance, with the concentration of 32.3% of the actions against the percentage of the Resolution.

The 1st Federal Court, which brought together 58.3% of the lawsuits that sought to maintain the percentage of 75%, also received only two cases questioning the percentage of 75%, representing only 6.5% of the total. In possession of this information, it is evident the influence of each decision pattern on the conduct of disputes, with different results for candidates in similar situations.

Also, even with the decision of the Federal Regional Court of the 1st Region (TRF1) deferring the Suspension of Preliminary and Sentence (SLS), several cases were not covered by the measure. Some examples of actions not covered by SLS include the processes n^os 1007415-24.2024.4.01.3100, 1007432-60.2024.4.01.3100, 1009761-45.2024.4.01.3100, 1007382-34.2024.4.01.3100, 1007342-52.2024.4.01.3100 and 1007113-92.2024.4.01.3100.

In practice, UNIFAP still has students registered under the 50/50 percentage, because some decisions that determined this redistribution remain valid and ongoing. Thus, there are candidates registered under both the 75% and 50% criteria.

5 THE URGENCY OF A BLACK, EMANCIPATORY AND ANTI-DISCRIMINATORY HERMENEUTICS

The traditional legal interpretation, shaped in the paradigm of western modernity, has historically operated as an instrument of social regulation at the service of maintaining order, to the detriment of its emancipatory potentiality. As pointed out by Santos (2002), the centrality of legal-formal rationality, forged in the frameworks of liberalism and normativist positivism, resulted in the reduction of legal experience to a narrow set of categories, rules and interpretative techniques that invisibilize social pluralities and exogenous knowledge.

In this context, modern law has become one of the main factors for dissolving the tension between regulation and social emancipation. For Santos (2002), the so-called "modernist legal canon", reproduced by traditional legal disciplines such as jurisprudence, the philosophy of law and judicial sociology was built as a closed system of intelligibility, based on a narrow conception of realism and legality.

A rationality that discredits, silences or simply eliminates non-state, informal or community legal experiences. What does not conform to the legal forms recognized by the State is treated as non-existent, irrelevant or threatening. This narrowing of the legal horizon reinforces the idea that there is only law where there is valid state rule, reducing the field of justice to the borders of formal legality.

However, the author proposes what he calls the sociology of emergencies, a political effort to recover marginalized legal experiences and broaden the field of the possible. His criticism of modern law does not aim to destroy it, but "dispense it", in the sense of freeing it from the dominant conceptions of reality and opening the way for new readings of legal practice.

He calls on the operators of law to recognize that there are not only "official" legalities, but also insurgents, underground and cosmopolitan, composed by practices, norms and meanings produced by subordinate groups in contexts of struggle. In the name of "legal certainty" and "equality before the law", a depoliticized and unracialized reading of the Law is reaffirmed, which ignores the marks of colonialism, slavery and the persistent racial hierarchy of Brazilian society.

The critique brought makes visible that this interpretative model is epistemically limited and politically committed to the reproduction of the dominant social order. Modernist law refuses to imagine what it can be. The counter-hegemonic use of law by social movements is unconventional, it is often expressed through illegal practices, alleged or alternatives, which build, in practice, other conceptions of legality. This plural constellation challenges the interpreters to abandon the comfort of neutrality and to assume an active and situated listening to social demands (Santos, 2002).

From the perspective of a black hermeneutics proposed by Moreira (2017), it can be said that there are two major positions in dispute: on one side, a universalist and individualistic vision, which tends to interpret the law as a neutral and objective system, rejecting any reading that recognizes structural inequalities in society and, consequently, the need for affirmative action to promote racial and social equity.

This approach minimizes the historical impacts of exclusion and treats formal equality as an absolute principle, ignoring that mere legal isonomy does not always translate into material equality. On the other hand, there is a hermeneutics that understands Law from the perspective of subalternized groups, recognizing that it can be an instrument to maintain exclusion, but can also be used as a mechanism for social transformation.

In this exegesis, the legal instruments on equality and affirmative actions are not limited to an abstract and decontextualized analysis, but rather a reading that takes into account the practical effects of judicial decisions on the life of the historically marginalized population.

The dichotomy manifests itself in the divergence between magistrates as to the application of the percentage considered appropriate. When the 50/50 division is established without considering the impact of this measure on the inclusion of new black, brown, indigenous and quilombola students in superior education, it aligns with the traditional, positive-universalist interpretation of the Law.

In this situation, there is not a mere technical-legal discussion, something deeper is observed, the adoption of an individualistic perspective, in which the structural barriers faced by groups benefiting from this policy are disregarded. As well elucidated by Moreira (2017), the interpretative process is not neutral, since the social position of jurists directly influences the formulation of a decision. Thus, while the traditional view insists on the idea of a supposedly objective and impartial law, the anti-discrimination perspective reveals how judicial decisions can, intentionally or not, reproduce and perpetuate historical inequalities.

The consequences of this dispute for the Federal University of the state of Amapá materialized in the context of institutional instability and the threat to expand access to superior education for groups historically excluded. Orthodox appreciation may reflect the historical-social rearrangements of dominant groups, in which one tries, unconsciously, to merge with their own projects of perpetrating the subservience of a dominated group. In this sense:

A utilização estratégica do formalismo jurídico tem sido interpretada por muitas pessoas como exemplo de como projetos de dominação adquirem novas formas em novos contextos sociais e históricos. A luta eficaz contra meios de discriminação

precisa levar em consideração o caráter dinâmico dos sistemas de dominação, uma das razões pelas quais o uso do formalismo jurídico e a pressuposição da inexistência da relevância social de práticas discriminatórias pervasivas são fatos que encobrem a realidade social (Moreira, 2020, p. 113-114).

There is also a manifestation of symbolic power, in which the collective perception is shaped to favor the interests of the ruling class (Bourdieu, 2001). Law, within this structure, is not presented as a neutral entity, but as a fundamental element in the maintenance of power relations already established, operating under the guise of "justice", "isonomy" and "public interest". However, the supposed impartiality often hides a mechanism of reproduction of social inequalities.

For Bourdieu (2001), the legal discourse is based on two main linguistic effects: neutralization and universalization. The neutralization seeks to give a tone of impartiality to the statement, using impersonal constructions, eliminating any explicit indication of subjectivity.

Already the universalization operates in an attempt to build a generic and timeless subject, assigning values that are meant to be transcendent and applicable to any context, regardless of concrete circumstances. The hegemonic discourse on legal-racial isonomy in Brazil, strongly influenced by the myth of racial democracy, has limited how judges and courts understand the need for affirmative action.

In this context, the storytelling methodology, as proposed by Moreira (2020), presents itself as an interesting epistemological alternative for understanding the principle of isonomy, because it allows interpretation from the everyday experience of those who live social and racial exclusion in a systematic way.

The Euro-American vision of law, whose main axes are liberal, has failed to implement the emancipatory ideals of postmodern constitutionalism. Incorporating storytelling as an interpretative tool would allow the legal analysis of the case to be built from the perspective of marginalized groups. Therefore, the struggle for an inclusive interpretation cannot be reduced to a theoretical view of exclusion, but must consider the stories and experiences of those who daily face the effects of racial and social inequality (Moreira, 2020).

Thus, thinking of the law as a subordinate, as proposed by the author, goes beyond just recognizing the existence of inequality, it is a difficult mission to transmute the way the law is interpreted in order to consider the perceptions of the silenced within the legal system.

This implies rethinking judicial decisions from the perspective of the social reality of minority groups, recognizing that formal equality, when dissociated from material equality,

becomes an instrument for maintaining social hierarchies, rather than a means to overcome them.

As Munanga (2004) warns, the permanence of the myth of racial democracy in the Brazilian legal imaginary is still one of the main obstacles to the effectiveness of anti-racist policies. This ideology, which silences about white privileges and the racial hierarchy that structures the social space, also crosses judicial decisions that resist recognizing the legitimacy of affirmative actions.

Therefore, interpreting these disputes legally cannot be an offhand exercise of the country's history, nor of the collective pain that racism produces. A law is required that commits itself to the repair and redistribution of power. In another perspective, when we confront the legal discourse of "disproportionality" applied to affirmative actions before the meritocratic idea that historically justified the exclusion of racialized bodies from universities, Racial quotas challenge the selection criteria and the very symbolic foundations of public universities.

They denounce the racial selectivity of the Brazilian meritocracy and insert in the educational debate a critique of structural racism, making visible what has long been naturalized: the systematic under-representation of the black and indigenous population in superior education (Munanga, 2004).

CONCLUSION

The lawsuits that challenged the Resolution 21 of 2022 demonstrated the resistance of the Judiciary in recognizing that equality is not consolidated in the cold letter of the law, but in the way it applies to unequal realities. For centuries, the Brazilian law imported a Euro-American vision, excessively formalistic and abstract, which reduces the legal interpretation to a technocratic exercise, disconnected from the concrete experiences of the sub alternized groups.

This model hides itself in the security of the written text, ignoring the exclusions that it perpetuates. This formalistic logic materialized in the decision to redistribute the vacancies in an "egalitarian" way, without considering the history of exclusion that justified the affirmative policy. However, what if we interpret the Law in another way? What if, instead of seeing it as a closed code, orthodox and distant from social reality, we understood it from the narratives of those who were silenced in history?

It is here that the Black Hermeneutics and the Anti-Discrimination Law are presented as alternatives to the traditional model. Instead of a normativist approach, it is proposed a reading rooted in the concrete experiences of the black population, taking into account the historical structural barriers that have always restricted their access to superior education.

Thinking about Law from the perspective of the subordinate means questioning the supposed neutrality and recognizing that the hermeneutic process itself is inserted in a power structure that needs to be challenged. If the law were read in this light, the reservation of 75% of vacancies would not be seen as a distortion of isonomy, but as a necessary instrument to face centuries of inequality and search for historical reparation.

The Selection Process of 2025 is already beginning to be questioned judicially regarding the regional bonus, and it is possible that new clashes over quotas will occur. If there is no transmutation in the way Law is interpreted, the dispute will remain the same: a decontextualized reading against a perspective that recognizes the role of race in social experience and the relevance of affirmative actions to guarantee the fundamental right to education.

It is a mistake to think that what is at stake is a mere discussion on university resolution; we debate the very role of law in building a less unequal country and achieving a true democratic state of law. Law as a means of social transformation (Moreira, 2017, p. 396). The question that remains is: We will continue reproducing a hermeneutic (constitutional) exclusionary manor model, attached to an outdated technocracy, or assume a commitment to a critical interpretation that effectively transforms the Brazilian racial and social reality and guarantees material equality and reduction of inequalities?

One of the main practical contributions that emerge from this research concerns the urgent need to create and strengthen ongoing training programs for the Judiciary with a focus on the ethnic-racial issue. It is essential that judges and magistrates understand that the debate on affirmative action crosses a historical, sociological and political field deeply marked by structural inequality, institutional racism and the reproduction of privileges under the appearance of neutrality.

This training must be based on the recognition that the Brazilian Justice System often operates as an extension of the "myth of racial democracy", an ideology that has been consolidated as a symbolic engineering efficient to deny the existence of racism, Depoliticize the racial debate and prevent concrete progress towards redistributive justice (Munanga, 2004).

Judicial action, when devoid of a critical reading of this ideology, tends to reinforce the legal epistemicide, erasing the experiences of black, indigenous and peripheral populations in the name of an abstract isonomy. Therefore, it is proposed that this training includes the study of critical theoretical references, such as Black Hermeneutics, Anti-discriminatory Law, the studies on whiteness and racial privilege and the sociological foundations of racial inequality in Brazil so that judges have sufficient conceptual tools and political sensitivity to interpret cases involving affirmative policies in light of the Brazilian reality.

In this sense, it is recommended that this training of the Judiciary be developed in cooperation with public universities, especially federal universities that historically have been consolidated as privileged spaces of critical production of knowledge about racial relations in Brazil.

Such institutions house centers of Afro-Brazilian studies, graduate programs, interdisciplinary research groups and researchers committed to the denunciation of structural racism and the promotion of racial justice. Establish technical cooperation agreements between the judiciary and these universities would allow the construction of training courses, workshops, seminars and teaching materials aimed at racial literacy and strengthening an anti-discrimination hermeneutic awareness.

The proposal defended here is not only legal, it is pedagogical and transformative. Training the judiciary in an ethnic-racial perspective is an elementary condition so that justice agents can break with the technocracy that legitimizes institutional racism and, finally, operate the law as an instrument of reparation, equity and social emancipation. It is necessary to re-educate the legal view so that one can see (and judge) the Brazilian reality without the comfortable filter of denial.

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