

RIGHT TO ACCESS TO ENERGY AS A HUMAN RIGHT IN BRAZILIAN CONSTITUTION

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Overview

As society evolves, a dignified life is accomplished by a minimum array of public services that should be guaranteed in order to meet the basic needs of an individual and to ensure means for their basic needs. According to Sen (2004), social opportunities facilitate economic participation, and can help generate individual abundance and public resources for social services, enhancing development for free and sustainable individuals.

Deprivation of liberty may come from inadequate processes or opportunities, limiting social opportunities, tools that promote substantive freedom for an individual to live better, assuring the principle of minimum existence. Thus, it is an essential nucleus of fundamental rights backed by the principles of the dignity of the human person, the Democratic State of Law and the pursuit of happiness, being such an assecutory right of equality of chances and of social rights to the maximum extent (TORRES, 2009; FOOT). The object under study demonstrates its importance within a framework of evolution of the social demands, intensifying the degree of exigency of the minimum rights for a life with dignity.

This analysis addresses doctrinal aspects that guide the copreening of access to electric energy as a fundamental social right, being a fundamental constitutional right to non-standardized rights. In this sense, after the analysis of the fundamentals for inclusion of the access to electric energy in the list of Brazilian social fundamental rights, the jurisprudence of the mother country is analyzed.

Methods

Through the analytical methodology, it is intended to situate the legal instrument of administrative easement established by the legal doctrine and to verify through the jurisprudence underlying the topic, the controversial points and the tendencies that the courts adopt in this matter.

Results

Brazilian Federal Constitution (art. 5º. §2º) brings an open clause for fundamental rights, which means that depending on Brazilian society evolution, certain rights can be recognized as fundamental rights without the necessity of being written in the Constitution. The doctrine has the role of interpreting the article to recognize extra-constitutional fundamental rights, and so-called "implicit" and "arising" fundamental values or rights. The democratic character of the current constitution presents the order of changing values, allowing the inclusion of new rights such as the right to access to energy.

Conclusions

The right to access energy services can be qualified as an unfolding of the principle of the dignity of the human person and as an extension of the right to provide the continuous public service. Finally, to conclude by the existence of a fundamental social right not typified, access to electric energy, however, this right without effectiveness.

References

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