THE PROTECTION OF THE ENVIRONMENT IN THE BRAZILIAN SUPREME FEDERAL COURT: ANALYSIS OF REAL CASES

A PROTEÇÃO DO MEIO AMBIENTE NO SUPREMO TRIBUNAL FEDERAL: ANALISE DE CASOS REAIS

ABSTRACT

The Supreme Federal Court, STF, is the guardian of the Constitution of Brazil (article 102, caput, Constitution of the Federative Republic of Brazil, 1988). Accordingly, we understand it is appropriate to study how the Brazilian Supreme Court has been judging specific subjects regarding constitutional matters, especially the ones inherent to the protection of the environment, analyzing the solutions which were adopted in each highlighted case. Indeed, the current article aims to analyze three relevant real cases in particular, which were all examined by the Supreme Court: the traditional “cockfights”, the import of used and remolded tires and the Criminal Responsibility of the Juridical Person in what regards the protection of the environment. To accomplish it, we also bring to light the variety of assertions used when these cases were judged by the Court, allowing, thus, the identification of a Political-Legal view over this very important subject.

Keywords: Environmental Law. Sustainable Development. Precautionary Principle. Social and Environmental Responsibility.

1 INTRODUCTION

The Environmental Law has generated numerous treaties over biosafety, threatened species, climate changes and biodiversity. Besides this, as affirmed by DUARTE (2003), the additional protocols to these conventions translate empty principles in what concerns concrete goals, allowing the elaboration of new domestic and international safeguards.

Brazil, due to its territory richness and diversity, has a mandatory seat in international discussions regarding the environment, but the translation of the country’s possibilities depends on policies formulated to deal with big internal and external challenges. Brazil’s trajectory as a global actor in what concerns the environment mingles in part with the emergence of the ecological issue in the international scenery. As stated by HORTA (2002), regarding the protection of the environment, the Brazilian Federal Legislation, posterior to the Stockholm Conference debates, has climbed three important steps since 1975.

The first, according to HORTA (2002), is characterized by the preventive police practiced by some organs of the Federal Administration. The second one coincides with the formulation of the National Environmental Policy Act, the prediction of sanctions and the introduction of the Objective Responsibility Principle, which does not depend on guilt regarding the obligation to repair the damage. The third, as highlighted by the scholar, represents a double innovation: the creation of the Public Civil Action in what regards responsibility “for the damages caused to the environment, under the jurisdiction of the Judiciary Power, and the assignment of the collectivity diffuse interests to the patronage of the Public Prosecution in the dominion of the environment” (HORTA, 2002, p. 270).

The Constitution of the Federative Republic of Brazil (CRFB), from 1988, has dedi-
cated to this subject a chapter (“Capítulo VI - Do Meio Ambiente, Título VIII - Da Ordem Social”) that was entirely destined to ensure this protection, according to the command of the article 225, which proclaims the right of an ecologically balanced environment to all Brazilians, affirming also that the environment is property of all the people. The same article also emphasizes that it is a duty of the Public Sector and the collectivity the act of defending and preserving the environment for the present and future generations.

We must register, however, that even before the promulgation of the Federal Constitution of 1988, the law 6.938/81 mentioned the National Environmental Policy Act. This norm defines the environment, on article 3rd, I, as a group of conditions, laws, influences and interactions of physical, chemical and biological order, which allows, houses and rules life in all its tenses. In the doctrinaire plan, JOSÉ AFONSO DA SILVA presents us the following definition about the idea of environment:

 [...] the interaction of the natural, artificial and cultural elements group that allows life’s balanced development in all its tenses. The integration aims the assumption of a unitary conception of the environment, comprehending natural and cultural resources. That is why the preservation, the recovery and the revitalization of the environment have to constitute a concern for the Public Sector, and, consequently, to Law, because it creates the ambiance where human life moves, develops, actuates and expands. (SILVA, 2004, p. 20).

According to the Environmental Law doctrine, the article 225 of the CRFB welcomed, notably, the so-called Intergenerational Responsibility Principle, in which the Constituent not only worried about the preservation of the right to a balanced environment for the current generation, but, equally, for the future ones. This is a rule of indisputable ethical substance, once that the Major Law, reflecting about the future, determines providences to be taken by the Public Sector [the State] nowadays.

Likewise, it has been consecrated, on the same legal text, the principle of the Sustainable Development, established by the “Principle 4” of the Declaration of Rio de Janeiro on Environment and Development, approved by the United Nations Conference, which took place on June 1992 in this city, written as follows: “To achieve the sustainable development, the environmental protection must constitute an integral part of the developing process, without being considered isolated from this” (ONU, 2014).

We can infer that, from the concept of sustainable development, the sought after economical growth cannot forget the correspondent and equally important preservation of the environment for the present and future generations. Thus, with absolute certainty, as adverted by KISS (2004, p. 3), “the richness we inherit from the previous generations cannot be dissipated for our [exclusive] convenience and pleasure, but passed on, to the extent possible, for those who will succeed us”.

According to ALVES (2011, p. 84), the process of “the environmental protection constitutionalization has brought two other important aspects: the guarantee of an ecological essential minimum and the guarantee of avoiding ecological relapse as a principle of the Environmental Law, searching, thus, to repel any bias in what regards the environment”.

In the same way, the article 225, § 1º, V, of the CRFB also signals the relevance of the Precautionary Principle, in the sense that it imposes to the State the obligation of adopting providences aiming to control the production, commercialization and employment of techniques, methods and substances comprising risks to life, life quality and to the environment. The Precautionary Principle is harmonically related to the Declaration of Rio de Janeiro on Environment and Development “Principle 15”, which affirms that the States must be attentive to the menace of serious or irreversible damages and that “the lack of absolute scientific certainty will not be used as a reason for the postponement of economically viable projects to prevent the environmental degradation” (ONU, 2014).

Reading the Main Law attentively, we notice that the protective premises mentioned on article 225 are not isolated, but reinforced by a variety of norms spread throughout the Constitution, being interesting to quote the subsequent ones: a) the article 5th, LXXIII, which disposes about the usage of the Popular Action to fight harmful practices regarding the environment; b) the article 170, VI, which points out the environment as one of the principles
of the economical order; c) the articles 21, 22, 23 and 24, which list a number of competences (in the political, administrative and legislative areas) common or shared by the Union, the States, the Federal District and the Municipalities considering the environmental issue and reinforcing, thus, the legal protection; d) the article 129, III, which talks about the Public Civil Inquiry and the Public Civil Action as instruments to protect the environment, being conducted by the Public Prosecution; e) the article 216, V, which relates the archaeological sites in the roll of the Brazilian Cultural Heritage.

According to PRADO (2011, p. 119), the detailed constitutional treatment given to the environmental subject signals a trend on the contemporary constitutions, elaborated in a moment of profound reflection and consciousness, which reveals the Constituent’s intention to give a proper answer to the issue, aiming to inspire not only the Legislator, but equally the Judiciary Power when this is analyzing the frequent conflicts regarding the matter. In the same way, MILARÉ (2011, p. 88) says that the environmental issue insertion in the Major Law configures a historical framework of undisputable value, being one of the most significant tasks during the elaboration of the Constitution.

Indeed, as the Supreme Federal Court is the guardian of the Constitution (article 102, caput, CRFB), it is its responsibility to interpret properly the rule written on article 225 of the country’s main legal code: the relevant right of having a legal protection of the environment. This rule is characterized, according to a strong doctrinaire trend (by all, MUKAI, 2002, p. 6), by its diffuse and third generation nature.

ANTUNES (2011), highlighting the relevance of the role played by the jurisprudence on the protection of the Environmental Law, and, transversely, emphasizing the methodology adopted for the elaboration of the current work, brings into consideration the fact that the jurisprudence has a strongly relevant role in what concerns the protection of the environment, because it is simply the concrete implementation of the legal norms. Still according to the scholar, the role of the jurisprudence reflects on the Environmental Law, since the issues are solved case-by-case: we rarely see a “repetition” of environmental actions, “having in mind that the particular circumstances of each hypothesi do not have the tendency to replicate [ANTUNES, 2011, p. 23]. On the other hand, even though the legislative production grows on an exponential speed, it does not have the capacity of taking care of the different situations that arise day-by-day, which reveals the importance of the environmental jurisprudence.

Having into consideration the relevance diagnosed by ANTUNES, and complying to it, it is pertinent to analyze some real cases submitted to the Supreme Court in the recent years, considering the positions adopted on each case. With this jurisprudential compilation, we hope to contribute for the consolidation of the Environmental Law as an autonomous Law branch, ruled by a variety of principles which gives it undoubtedly theoretical fundament.

2 CONCRETE CASES

The Supreme Federal Court trials analyzed below are separated thematically, each one being pertinent to a specific case, aiming to facilitate the reader’s comprehension.

2.1 “COCKFIGHTS” (AÇÃO DIRETA DE INCONSTITUCIONALIDADE Nº 1.856/RJ).

This case, very relevant to the environment, analyzed the constitutionality of the so-called “cockfight”, an issue that was submitted to the Supreme Federal Court when the Ação Direta de Inconstitucionalidade nº 1.856/RJ was proposed by the Attorney General. This action had as its Minister-Rapporteur CELSO DE MELLO, and it was judged on May 26th 2011, being decided that cockfights configure a crime under the environmental criminal legislation (article 32, law 9.605/98, “Lei dos Crimes Ambientais”) and affront the Constitution [article 225, caput, and § 1st, VII]. Therefore, they do not represent a cultural manifestation, but an undisputable cruelty act against the animals used in the fights - which legal-constitutional protection is supported by the Fundamental Law.

Briefly, on the vote uttered by CELSO DE MELLO, the negative impact that the attacked legislation would represent for the envi-
environmetal patrimony of the human beings and for the preservation of the fauna was reckoned, this being the reason why the Minister acknowledged, in casu, the existence of a conflict between the impugned law [law 2.895, from March 20th 1998, edited by the State of Rio de Janeiro\(^3\)], which admitted the “cockfights”, and the constitutional rule written on article 225, caput, and § 1st, VII\(^4\), which forbids any cruelty against the animals. The Minister-Rapporteur, quoting a doctrine from the environmental area, recalled that the Constituent, protecting the fauna and prohibiting practices that submit animals to cruelty, aimed to make effective the fundamental right of having a well-preserved environment, asserting, still, that:

[... the clause inscribed on article 225, § 1st, item VII, CRFB, besides rendering a content with a high-degree of ethical-legal significance, justifies itself because of its complexion, motivated by the need to render the occurrence of risky situations that could threaten all forms of life, not only the human being, but also the animal kingdom, which integrity would be compromised by degrading, perverse and violent practices against irrational beings.

In the same way, CELSO DE MELLO mentioned the undisputable relation between the legal-ethical duty of preserving the fauna and the subsistence of the human being in an ecologically balanced environment, highlighting, thus, the importance of the predictions written on article 225, CRFB. These predictions are characterized by the metaindividual aspect, when affirming that the right to the integrity of the environment constitutes a legal prerogative of collective ownership, reflecting, “inside the process of human rights affirmation, the significant expression of a given power, in a broader sense, to the social collectivity”.

In the occasion, the Minister quoted a variety of trials on which the STF reckoned that the “cockfight” practice configures a true outrage to the article 225, § 1st, item VII, CRFB: a) the Recurso Extraordinário 153.531/SC, on which it was discussed the so-called “ox spree”, Minister-Rapporteur MARCO AURÉLIO; b) ADI 2.514/SC, reported by EROS GRAU, on which it was affirmed that cruelty to animal life is not compatible to the Brazilian Constitution; c) ADI 3.776/RN, reported by CEZAR PELUSO, when the law 7.380/98, from the State of Rio Grande do Norte - which regulated cockfights -, was declared unconstitutional for offending the article 225, § 1st, VII, CRFB.

We must register that CELSO DE MELLO, extensively interpreting the term fauna, written on article 225, § 1st, VII, CRFB, asserted that the protection given to animals through this constitutional rule includes the wild, domestic or domesticated animals, with the cocks being put in the last category. Also, it is interesting to recall the interpretation given by AYRES BRITTO concerning the rule of article 225, §1st, VII, CRFB:

If we pay attention to the text [...] we will notice [...] that it is part of a constitutional context, initiating with the preamble of our Magna Carta, which mentions a fraternal, pluralistic and unjustified society. Also, fraternity here evokes, in our minds, the idea of something unrelated to any kind of cruelty, mainly those which cause bloodshed, physical mutilation or even the death of the tortured being.

It is noted, thus, that Minister AYRES BRITTO\(^5\), when speaking about the case, quoted as an important fundament the constitutional rule which prohibits torture [article 5th, XLIII, CRFB], asserting that the impugned practice (“cockfight”) typifies a clear torture hypothesis against the animals participating on the fight, which last goal would be “the death of one of the contenders, one of the roosters”.

The Brazilian Supreme Court, when declaring the attacked State norm unconstitutional, sheltered the predominant position in the Brazilian doctrine [MACHADO, 2011, p. 885] regarding this reprehensible practice:

Acts practiced with folkloric or even historical character, like the “ox spree”, are included on article 32 of law 9.605/98 and not only those who practice them must be punished, but also the ones that incite them in any way. The use of instruments on the animals in rodeos typifies the mentioned crime, because it materializes torture against the animals. [...] In the same way, all the activities where the animals have to confront themselves in fights or disputes. ‘Cockfights’ are considered cruelty acts against the animals.

In the end, CEZAR PELUSO explained that the regulation established on the impugned Fluminense law is not only prohibited by the constitutional rule inscribed on article 225, CRFB, but, furthermore, by the dignity of the human person principle\(^6\) (article 1st, III, CRFB).
The practice of the “cockfights” would implicate, to a certain extent, a “stimulus to the most primitive and irrational instinct of the human being”, torture. In other words, the prohibition also lies on the “prohibition of all the practices that promote, stimulate and encourage actions and reactions which diminish the human being and offend, thus, the constitutional protection regarding the dignity of the human person, a fundament of the Republic”.

The intervention manifested by Minister CEZAR PELUSO showed to be extremely pertinent, especially for invoking the notion inscribed on the dignity of the human person principle, which, according to the lesson taught by SARLET (2008, p. 203), must be amplified, aiming to reckon the existence of a non-human life dignity, giving rise, therefore, to “a re-reading of the classic social contract towards a kind of social environmental (or ecological) contract, aiming to contemplate a place for these natural beings in the ambiance of the State community”.

On the same path walked by PELUSO, FIORILLO (2011, p. 45) says that the contemporary interpretation of the environmental property exceeded the vision that the environment configures a mere public property, being considered a fundamental asset to the guarantee of the dignity of the human person in a Democratic State.

Hence, the STF, when judging this ADI, gave effectiveness to the constitutional right to an ecologically balanced environment (article 225 CRFB), avoiding, thus, the nefarious and frequent behavior in which - far from portraying a cultural right - the current ecological essence in the constitutional frame is vehemently denied.

2.2 The Import of Used and Remolded Tires (Arguição de Descumprimento de Preceito Fundamental nº 101/DF).

This case [analyzed according to the Environmental Law], which arrived on the Supreme Court concerning the import of used and remolded tires by Brazil, is emblematic. In the “Arguição de Descumprimento de Preceito Fundamental” [ADPF] 101/DF, action reported by Minister CÁRMEN LÚCIA and trialed on June 24th 2009, it was brought to attention that a variety of legal decisions was being uttered in opposition to certain Ordinances from the Department of Foreign Commerce Operations [Departamento de Operações de Comércio Exterior - DECEX] and the Secretary Office of Foreign Commerce [Secretaria de Comércio Exterior - SECEX], as well as in relation to certain Resolutions from the Environmental National Board [Conselho Nacional do Meio Ambiente - CONAMA], besides many Federal Decrees which forbid (and still forbid) the import of used and remolded tires. Decisions rendered by Federal judges and Federal Regional Courts of Law were not respecting some fundamental commands inscribed on articles 196 and 225 of the Constitution, notably by authorizing the import of the mentioned products. The issue encompassed, still, corporative interests, in an apparent conflict with the collective interests embodied on the right to health and an ecologically balanced environment, a polarity that demanded a profound analysis by part of the STF Ministers, as signaled by the Rapporteur:

And we shall not think this as a simple issue, because, on one side, companies are defending the right - which, according to them, would be endorsed by the freedom of initiative - of using that residue for their profits, from what comes employment for many people, and, on the other hand, there are the fundamental constitutional principles of the right to health and the defense of a healthy environment, which need to be respected for the good of the future generations.

The present case, involving issues related to foreign commerce and the protection of the environment, besides a number of legal decisions concerning the import of used and remolded tires, demonstrates the weight of the words uttered by the Supreme Federal Court about certain cases, which effectively occurred when the ADPF analyzed was judged. Regarding the necessity of a position by part of the STF, Minister CÁRMEN LÚCIA observed that this pendency imposed to the Court a decision to be made, because:

[...] the result to which we get, in the international field, would justify the overthrown of the prohibitive norms about the import of used tires, because, for the Court of Appeal of the World Trade Organization, if a part of the Brazilian Judiciary Power liberates companies to import them - despite the validity of given rules -, it is because the goals presented by Brazil in the international body of commerce
do not have the constitutional fundament that would justify them. On the contrary, being only one Constitution the Brazilian one and having the issue full and uncontested effectiveness, there would not be the permissive legal cracks regarding what is forbidden.

To start with, the Minister, analyzing the occasional benefits to be obtained by the reuse of import tires and the damages caused to health and the environment, said:

It is necessary to affirm, therefore, that if there are more economical benefits on the use of those residues in the production of rubberized asphalt or in the cement industry, we must take into account that a lower industrial price cannot be converted into a higher social price, to be paid with people’s health and with the environment’s contamination, as notoriously occurs. The Brazilian Constitution – like all the other democratic ones – does not confer rights to be paid with human lives.

Continuing on her vote, Minister CÁR-MEN LÚCIA made reference to the Prevention Principle (prevention against known risks), distinguishing it from the Precautionary Principle (prevention against uncertain risks): “The Precautionary Principle links itself, directly, to the concepts of ‘hazard mandatory removal’ and the necessity of providing safety to the proceedings adopted to guarantee the future generations”, making the human actions environmental sustainability effective. This principle also makes effective the “human existence constant search for protection, which is important for the protection of the environment as well as for the guarantee of the conditions regarding his health and physical integrity, and considering the individual and the society in its entirety”. Concerning this, the Minister’s considerations go against the thoughts of FERNANDES (2009, p. 105), to whom, in front of scientific uncertainties about the effects of a determined product over the human health, it must be conferred preponderance to the non-exposition of the workers to these agents.

Thus, supported by the Prevention and Precautionary Principles, the Brazilian State, complying to its duty4 of providing the right to health and to an ecologically balanced environment, has correctly edited a set of norms designed to prohibit the import of such products, having in mind that, as well exposed by the Minister, “the authorization for the import of used or remolded tires is undoubtedly a generator of more damages than benefits, especially in what regards the rights to health and an ecologically balanced environment”.

Minister CARLOS BRITTO, on his vote about the matter, highlighted the global importance of the environmental theme, remembering that the environment is “subject to invariable concerns to all the legal systems, and it has earned the dimension of a global theme”. He also said that democracy, ethics, the shattering of prejudices and the preservation of the environment are all global themes, and that the “environment began to be inserted on the world’s worries as a condition for the planet’s sustainability, needing to be imposed against commerce freedom”.

Eventually, in the end of the ADPF judgement, the STF plenary, comprehending the dimension of the problem inherent to the correct destination of hazardous residues in a general way, proclaimed as constitutional the Brazilian State normative acts which prohibit the import of used and remolded tires, most notably considering that: a) the import of used and remolded tires configure an outrage to the constitutional rights of health and an ecologically balanced environment; b) the lack of a complete elimination of the used tires destination harmful effects causes damages to the environment; c) the recycling of used and remolded tires characterizes a violation of the constitutional principles (article 225 CRFB) comprising a sustainable development and an intergenerational responsibility; d) it is necessary to adequate the economic growth to a sustainable development, e) it is necessary to comply with the Precautionary Principle, which has a constitutional status, harmonized with the other economic and social order principles; f) the import of used and remolded tires affronts the constitutional precepts of health and an ecologically balanced environment (article 170, I and VI, and sole paragraph, art. 196 and article 225, all from the CRFB).

2.3 Legal Personality Criminal Responsibility independent from the one inherent to the Natural Person (Recurso Extraordinário 548.181/PR).

In what concerns this subject, it is important to notice that, before the advent of the 1988 Constitution, it was clear, at least for the Brazilian doctrine, that the Criminal Law only cared about human behavior. On the occasion,
the possibility of having a Juridical Person as an active subject of offensive behavior was never considered. Nowadays, having in mind the text of article 225, § 3rd, CRFB, and even considering the regulation established by law 9.605/98 (“Lei dos Crimes Ambientais”), the issue still bears some controversy, especially in the doctrinaire field, this being the reason why we understand as pertinent presenting the main favorable and contrary arguments in what concerns the criminal responsibility of the Juridical Person when committing environmental crimes.

The doctrinaire segment favorable to the criminal accountability affirms that the Principle of Guilt, when inherent to the Juridical Person, does not present the same boundaries which are demanded from the Natural Person. Under this point of view, in what regards moral entities, culpability must be analyzed under the social scope. Hence, for instance, when not complying to rules related to the environmental preservation, generating harmful results to the society, the Juridical Person Social Culpability gets configured, which makes the criminal accountability possible.

Therefore, according to this reasoning, a chemical plant can be criminally punished for having polluted a river, given the fact that the economic activity exploitation imposes to it compliance to the principles established on the Constitution. Moreover, it is argued that the text of article 225, § 3rd, CRFB reflects a tendency observed in the contemporary legal systems: the extension of the criminal responsibility to the Legal Entities, which are sometimes used to cover offensive practices.

Notwithstanding the favorable thesis, there are people who defend the impossibility of a Juridical Person to offend (societas delinquire non potest). Amidst others, one of the evoked arguments relates to the constitutional prohibition regarding the objective criminal responsibility, which basic premise does not admit the possibility of somebody being criminally punished if the action was not intentional or culpable. Having in mind the impossibility of a Juridical Person to act (or not) intentionally or with culpability, a part of the criminal doctrine rejects the condition of a criminal active subject, even in front of the legal frame established by law 9.605/98. It is still affirmed that the Criminal Law should only intervene when finding that the other Legal branches are not strong enough to protect the legal good, which is, in this case, the environmental one. Therefore, regarding a Juridical Person, the Administrative Law already has instruments which makes it capable of regulating and restraining possible damages to the environment. Likewise, the criminal sanctions [written on articles 21, 22 and 23 of law 9.605/98] applicable to the Legal Entities are, mostly, the ones with administrative imprint, demonstrating that it is not necessary to use the Criminal Law, known as a subsidiary branch.

Despite this current debate on the doctrinaire field, the Brazilian jurisprudence recognized the perfect applicability of the text of article 225, § 3rd, CRFB, according to the article 3rd, law 9.605/98:

Article 3rd The Legal Entities will be administrative, civil and criminally accountable according to this law in the cases the violation was committed by an order of its legal or contractual representative, or by its collegiate body, in the interest or benefit of its entity. Sole paragraph.
The Legal Entities responsibility does not exclude the accountability of the Natural Persons, authors, co-authors or participants on the same action.

Analyzing this legal text, we notice that the ordinary legislator, when regulating article 225, § 3rd, CRFB, allowing, thus, the effective criminal accountability of the Juridical Person for environmental crimes, demanded, for this reason, two requisites, which are: a) the criminal violation [environmental] has to be committed through a decision of its legal or contractual representative, or by its collegiate body; b) the criminal violation [environmental] has to be committed in the interest or benefit of the moral entity.

The Superior Court of Justice {Superi-
The Protection of the Environment in the Brazilian Supreme Federal Court: Analysis of Real Cases

or Tribunal de Justiça, STJ), interpreting article 225, § 3rd, CRFB, together with article 3rd of law 9.605/98, firm the position expressed on Recurso Especial 610.114/RN, Fifth Group, Minister-Rapporteur GILSON DIPP, judged on November 17th 2005:

I. The environmental law, regulating a constitutional precept, began to predict the possibility of Legal Entities to be criminally liable for damages to the environment.

III. The Juridical Person criminal accountability for the practice of environmental felonies comes from a political choice as a way not only to punish the offensive behavior against the environment, but as a way of general and special prevention.

IV. The criminal imputation to the Legal Entities finds barriers on the supposed lack of capacity to practice a criminal relevant action, to be culpable and to suffer penalties.

V. If the Juridical Person has an independent existence in the legal system and practices acts in the social stratum through its administrators, it may start to practice typical acts, being, therefore, criminally liable.

VI. Culpability, in the contemporary concept, is the social responsibility, and the Juridical Person culpability, under this context, is limited to its administrator’s will when acting for its benefit.

VII. The Juridical Person can only be liable when there is an intervention of a Natural Person, acting to benefit the moral entity.

VIII. Anyway, the Juridical Person has to be direct or indirectly beneficiary for the act practiced by decision of its legal or contractual representative, or by its collegiate body.

[...].

X. There is no offense to the constitutional principle that “no punishment will surpass the condemned person...”, because the existence of two distinct persons is uncontroversial: one Natural - which contributes to the practice of the felony - and the other Juridical, each one receiving an individualized punishment, according to its offensive activity.

[...].

XIII. The Juridical Person can only be accountable when there is an intervention of a Natural Person acting in benefit of the moral entity.

XIV. The collegiate acting in benefit of the Juridical Person is the own will of the company.

XV. The lack of identification regarding the

Natural Persons who performed in benefit of the Juridical Person and participated of the felonious event precludes the reception of the accusatory exordial.

XVI. Plea devoid.

And everything was going exactly as it was established on the trial above, until the First Group of the Supreme Court, analyzing the Recurso Extraordinário 548.181/PR reported by Minister ROSA WEBER and judged on August 6th 2013, brought to attention the issue (constitutional) related to the possibility of having (or not) a Juridical Person condemnation for the practice of environmental offense, even considering the acquittal of the Natural Person responsible for the company’s direction.

Also, it is interesting to register that, in the examined case, the Superior Court of Justice, following that predominant orientation in the Court, had excluded the imputation [concerning the crime typified on article 54, law 9.605/98] related to the Juridical Person managers, resolving, thus, to interrupt the criminal lawsuit in what regards the moral entity, evidencing the adoption of the Theory of the Double Imputation. The abstract of the decision uttered by the STJ Sixth Group in the Recurso Ordinário em Mandado de Segurança nº 16.696/PR, Minister-Rapporteur HAMILTON CARVALHIDO, judged on February 9th 2006, is quoted below:

1. Admitted the criminal accountability of the Juridical Person, by constitutional prediction, the actio poenalis requires, to happen, the simultaneous imputation of both the moral person and the natural one, which, immediately or not, performing according to its quality or attribution conferred by its bylaws, commit the crime, complying, thus, to the principle of nullum crimen sine actio humane.

2. Excluding the imputation of the managers responsible for the criminalized behaviors, the interruption of the criminal lawsuit, regarding the Juridical Person, is mandatory.


Notwithstanding the quoted understanding of the Superior Court of Justice, its First Group, by majority, reckoning [in part] the Re-
curso Extraordinário 548.181/PR, provided the plea and withdraw the effects of the judgement uttered in the Recurso Ordinário em Mandado de Segurança 16.696/PR. To do that, they affirmed that linking the criminal persecution related to the Legal Entities to the concomitant description and imputation of an individual human action violates the rule inscribed on article 225, § 3rd, CRFB, which content affirms that the conducts and activities considered offensive to the environment will subject the violators, Natural or Juridical Persons, to criminal and administrative sanctions, independently of the obligation to repair the damages caused.

The present trial differs from the jurisprudence uttered until then in the STJ, being able to become a new paradigm regarding the issue from now on. Anyway, if the issue inherent to the constitutionality of the criminal accountability was already controversial in the doctrinaire field, more problems will appear before what was decided in the bulge of the Recurso Extraordinário 548.181/PR.

Concerning the current status of this risky atmosphere - generated especially by the economic activity of big companies -, denying the prediction inscribed on article 225, § 3rd, CRFB cannot be seen as something lucid, in the sense that it is the Criminal Law, as it happens to all and every branch of Law, that must adapt to the Constitution, and not the contrary.

Attentive to the imperious need to discuss, on the Criminal Dogmatic field, the issue inherent to the criminal accountability, DIAS (2001) already signaled the necessity to analyze (and build), dogmatically, the Legal Entities Criminal Accountability issue. The lucid contribution of the Coimbra professor applies to the present moment, when the Supreme Court, through the Recurso Extraordinário 548.181/PR, plunges deep on the analysis of the question inherent to the criminal responsibility of the Juridical Person (and its legal and criminal implications). According to DIAS (2001, p. 178-9), “it is not worth to think about signaling to the Criminal Law the minimum capacity of contention in what regards the mega-risks of a society at stake if the dogma of the criminal responsibility individualization remains unaltered”.

The eminent professor acknowledges the cultural issues involved in the dogmatic of risk: “the individual character prejudice regarding the entire criminal responsibility (once more, an anthropocentric prejudice) had run its course, being definitively shaken “ (DIAS, 2001, p. 178-9). In addition, he argues that the Portuguese legislation and doctrine gave a great contribution reckoning “the pitfalls of action and legal-criminal culpability incapacities, which were traditionally considered in what regards all the criminal accountability of non-individual entities “.

Accepted, beside the individual criminal accountability (not necessarily subdued to it), the criminal accountability of the collective entities principle, it becomes necessary and urgent much more about it, about its practical-normative detachment, about its relations with the individual responsibility, about the demands which will result from them in the field of the law to be built]. (DIAS, 2001, p. 178-9).

From that, it is understood that the Constitution of 1988 effectively brought, on article 225, § 3rd, the possibility of punishing a Juridical Person for crimes against the environment, which regulation came to light with law 9.605/98, not being conditioned to the simultaneous accountability of the ruling Natural Person. Having in mind the importance conferred to the environment by this Constitution, we believe that the effective criminal accountability of the moral entity demands a new legal-criminal structure, being addressed to the criminal accountability of the Juridical Person and independent from the one pertinent to the Natural Person, this being the reason why the double imputation theory, adopted by the STJ (and put under the spotlight by the STF) until the present moment, deserves to be reviewed.

3 CONCLUSION

The jurisprudence excerpts analyzed here translate the understandings of the Supreme Federal Court in different cases - related to three distinct themes - all inherent to the Environmental Law. It must be noted, in all of them, a common fact: the importance conferred by the Brazilian Supreme Court to the environment and the necessity to preserve it for the present and future generations, exactly as determined on article 225 of the CRFB.

Therefore, there is no doubt that the current Constitution - interpreted on the last
legal instance - conferred to the protection of the environment a new and unprecedented social-political dimension, consecrating, definitively, important beacon principles of the Environmental Law, such as the ones related to intergenerational social-environmental responsibility, sustainable development, precaution concerning the environmental protection, among others. The analysis of the selected cases, on its jurisprudential richness, reveals itself an important indication of the acknowledgement in what regards the notable importance that the environment represents for all humanity, which, eventually, makes part of it on an inseparable way.

REFERENCES

- MILARÉ, Edis. A importância dos estudos de impacto ambiental. In MILARÉ, Edis;

Notes (Endnotes)

- 2 Article 32. Performing abuse acts, mal-
treatment, hurting or mutilating wild, domestic or domesticated animals, native or exotic:
- Term - detention, from three months to a year, and fine.
- § 1st Incurs the same terms those who perform painful or cruel studies on living animals, even though for didactic or scientific purposes, when there are alternative resources.
- § 2nd The term is augmented from a sixth to a third if the animal dies.
- 3 The abstract of law 2.895/98 has the following text: “Authorizes the creation and performing of exhibitions and competitions between birds of the combatant species (non wild fauna) to preserve and defend the genetic patrimony of the galius-gallus species”.
- 4 It is interesting to highlight that the article 225, § 1st, VII, CRFB, covers not only the wild animals, but equally the domestic or domesticated animals, a category that comprises the roosters frequently used on the so-called “cockfights”.
- 6 We must highlight that Antunes (2011, p. 24) notes that the right written on article 225 of the CRFB has its basis on the Principle of Dignity of the Human Person, which also justifies it.
- 8 As for such duty, Minister Cármen Lúcia said: “If the protection of health is a duty of the State, which is represented by each one of its three powers, the Judiciary Power has to ensure the full and effective application of the rules that determine the necessary means to protect it”.
- 9 Article 196 CRFB. Health is a right of everybody and a duty of the State, ensured through social and economical policies aiming to reduce the risk of diseases and other problems and to guarantee the universal and egalitarian access to the actions and services for its promotion, protection and recovery.
- Regarding the right to health, we must also quote article 6th CRFB: “Education, health, work, dwelling, leisure, safety, social security, the protection of maternity and children, the assistance to the helpless, are all social rights, according to this Constitution”.
- 10 For instance, the opinion of Bitencourt (2011, p. 274-276), contrary to the Juridical Person Criminal Responsibility: “In Brazil, the obscure prediction of article 225, § 3rd, Federal Constitution, regarding the environment, has driven some criminals to sustain, wrongly, that the Magna Carta consecrated the Juridical Person Criminal Responsibility. However, the criminal accountability is still limited to the subjective and individual liability”.
- 11 Article 21. The isolated, cumulative or alternatively applicable penalties to the Legal Entities, according to the text of article 3rd, are:
  - I - fine;
  - II - restriction of rights;
  - III - service to community.
- Art. 22. The Juridical Person restriction of rights penalties are:
  - I - partial or total suspension of its activities;
  - II - temporary closing of the establishment, interruption of the construction or suspension of the activity;
  - III - prohibition from signing deals with the Public Sector, as for having subsidies, subventions or donations.
- § 1st The suspension of activities will be applied when these are not obeying to the legal or regulatory dispositions regarding the protection of the environment.
- § 2nd The closing will be applied when the establishment, construction or activity are functioning without the due authorization, or not complying with the granted license or violating a legal or regulatory law.
- § 3rd The prohibition from signing deals with the Public Sector, as for having subsidies, subventions or donations, cannot exceed a ten-year-term.
- Art. 23. Service to community by the Juridical Person will consist of:
  - I - defrayal of programs and environmental projects;
  - II - recuperating of degrading areas execution;
  - III - Public spaces maintenance;
  - IV - contribution to environmental or cultural Public Entities.
- 14 The pollution offense is typified as follows:
  - Art. 54. Causing pollution of any type in levels which result or may result in harms to the
human health, or that provoke the mortality of animals or the significant destruction of the flora:

- **Term** - confinement from one to four years and fine.
- **§ 1st** If the crime is wrongful:
  - **Term** - detention from six months to a year and fine.
- **§ 2nd** If the crime:
  - **I** - makes an area, urban or rural, inappropriate for human occupation;
  - **II** - causes atmospheric pollution that can provoke the retrieval, even though momentary, of the inhabitants of the affected areas, or causes direct damages to the health of the population;
  - **III** - causes water pollution, making the interruption of the water supply to a community necessary;

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