
THE IRRETROACTIVITY OF THE NEW FOREST CODE AND THE JURISPRUDENCE OF THE SUPREME FEDERAL COURT

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ABSTRACT

This paper points out some reflections about the constitutionality of the New Forestry Code, as viewed in the Brazilian Supreme Court judgement, performed in February of 2018. It is discussed the possibility of amnesty to environmental polluter agents, due to a misinterpretation of that legal diploma. Thus, starting from the analysis of the discourse of the votes of the Supreme Court Ministers, it is intended to subsidize a conciliatory thesis to allow the understanding that the prohibition of retroactivity in environmental matters does not limit the legislator. In the same way, the balance between the most beneficial retroactivity of the law and the need to repair environmental damage indicates that the hermeneutical path allows us to understand that the New Forest Code did not ameliorate the offenders but imposed new conditions to give full effect to the dictates of Article 225 of CF/88.

Keywords: Forest Code; Law 12,651 / 12; Environmental Damage; Nonretroactivity of the Law.

A IRRETROATIVIDADE DO NOVO CÓDIGO FLORESTAL E A JURISPRUDÊNCIA DO SUPREMO TRIBUNAL FEDERAL

RESUMO

Este artigo apresenta reflexões acerca da constitucionalidade de dispositivos do Novo Código Florestal, a partir de julgamento realizado pelo Supremo Tribunal Federal, em fevereiro de 2018. Discute-se a eventual anistia a agentes degradadores do meio ambiente, por força de uma interpretação do referido diploma legal. Assim, partir da análise do discurso dos votos dos Ministros da Suprema Corte, busca-se subsidiar tese conciliadora a permitir o entendimento de que a vedação ao retrocesso em matéria ambiental não limita o legislador. No mesmo sentido, a ponderação entre a retroatividade mais benéfica da lei e a necessidade da reparação dos danos ambientais, indicam que o caminho hermenêutico permite entender que o Novo Código Florestal não anistiou os infratores, mas impôs condições novas para conferir efetividade plena aos ditames do artigo 225 da CF/88.

Palavras-chave: Código Florestal; Lei 12.651/12; Danos Ambientais; Irretroatividade da Lei.

INTRODUCTION

For the common imaginary, it may seem that the judgment by the Federal Supreme Court (STF) in February 2018, when presented a series of arguments regarding the unconstitutionality of many provisions of the current Forest Code (Federal Law no.12.651/12), was authorizing a permissive retroactivity hypothesis in order to benefit the degrading infringer, in a possible retrogression to the preservation of the environment in Brazil¹.

This effort of imagination stems from the controversy that was established from a deliberate interpretation by that Supreme Court when, at the point of interest and by a narrow majority, considered as constitutional the permissive contained in art. 60 of the law that provides for the protection of native vegetation, establishing in turn the suspension of punishment in the case of environmental crimes in the course of compliance with the term of commitment for regularization of property or rural possession signed before the competent Environmental Authority, after joining the Program of Environmental Regulation (PRA) disciplined in art. 59 of the same law.

In this sense, it recognized the constitutionality of what was agreed to disclose as "environmental amnesty" introduced by the New Forest Code, with beneficiaries agents who committed crimes against nature before July 22, 2008, fueling a sense of impunity and generating a sense of that "crime compensates" in the face of the inertia of public power.

No doubt about this approach (among all the 58 articles questioned in the scope of the STF, in a universe of 84 articles in the New Code) is that one of the most controversial legal discussions took place, to define in the interpretation of that legal regime if there was or not the establishment of another kind of "legislative forgiveness" in our legal system.

Regarding the foundations of the same judgment and the merits of this discussion, we shall return to the theme more slowly in the latter part of this paper, showing that the understanding remains that the New Environmental Code can not retroactively harm in any way the environment, that the said legislative "pardon" has been admitted by our Supreme Court.

It happens that in the environmental field, because we are dealing with a diffuse interest, having inalienable goods (where everyone can use

¹ Judgment concluded in its fifth section, on February 28, 2018, having as Rapporteur the Minister Luiz Fux for ADI n. 4903, when by connection also were decided suits of unconstitutionality argued in ADI's n. 4901, 4902 and 4937, as well as in ADC no.042.

them but not having them), converges our legal system for its integral protection, not just whether or not there is a supposed "amnesty", but considering the case, by means of convergence, with other legal categories of equal importance of precedence and alignment with the best protection of the environment.

So, in this fast time of reflection, we will try to demonstrate that the phenomenon of retroactivity of the New Forest Code to protect environment damage or even exempt from its responsibilities in all its public spheres of protection (criminal, civil and administrative), would not be possible and not defensible, even after the reported collegial decision handed down in the case of concentrated control of constitutionality.

In fact, and not mentioned by the STF in that judgment, there are still legal arguments that must be considered in this discussion of non-permissibility and which have already been established by our higher courts on other occasions, especially those that concern the imprescriptibility of environmental damage, as well as the parameter that establishes as the axiological limit for such hypothesis the vector of the prohibition of regression, as we will see in the course of this text.

1 IMPRESCRIPTIBILITY OF ENVIRONMENTAL DAMAGE

It can be affirmed in a succinct way and without entering into the doctrinal merit of the prescription of environmental damage, that in the Superior Court of Justice (STJ), this issue led to a pacification of jurisprudence, to establish certain legal and social security in the area of environmental protection.

However, this imprescriptibility resolved within that High Court is limited to the civil liability of the agent causing the damage to the environment, strong in the categorical imperative of the polluter-payer and in the theory of objective liability, regardless of the subject's guilt, having in mind that we are dealing with a diffuse right reserved for future generations, in the line of argumentation of intergenerational law.

The strength of the idea would be to the extent that environmental damage, as well as injuring the legal good that is close to it, also affects all indiscriminately, spreading for humanity, reaching for the irreversibility of the damage caused to future generations. That is why the claim for reparation of environmental damage, within the hermeneutical logic, must be protected by the mantle of imprescriptibility, because it is an inherent

right to life, fundamental and essential to the affirmation of peoples, regardless of whether it is not expressed in legal text.

As regards the statute of limitations, according to the STJ, it is first necessary to distinguish which legal right is protected; that is, if eminently private are followed the normal deadlines of the indemnity actions; however, if the legal good is unavailable and fundamental to human life, as with the ecologically balanced environment and prior to all other rights, its desire for reparation is considered imprescriptible. In this way, environmental damage is included among the inalienable rights and, in this category, would be among those few covered by the mantle of imprescriptibility to an action that aims at its efficient repair².

In spite of the consolidated position in that Citizen Court, we are not unaware that in the Supreme Court, the same issue is still open, especially with the advent of the emancipatory Constitutional Text of 1988 and aware of the current inclination for greater flexibility on the part of our Supreme Court Court, as happened in the judgment of the New Forest Code, whose analysis of its verdict will again be considered at the end of this article.

Thus, in the environmental field, the temporal aspect gains more importance insofar as the potentiality of harmful behaviors increases with the submission of the natural patrimony in a broad way to the degrading agents, although the impacts are old and the resilience of the means tends to a new dynamic equilibrium. As a way to better understand and face the effects of these impacts is that in the area of the criminal sphere tends to qualify some crimes of this kind as permanent or continued, making it difficult also in this area of accountability the occurrence of the prescription of punitive claim.

Particularly in the STF, the discussion to classify (in this case) environmental crime as permanent or instantaneous, remains without a solid definition for more than fifteen years, but with a strong tendency towards a position that best meets the protection of nature, since it is permanent the temporal lapse only begins to flow when the permanence ceases. As the prescriptive reason does not find its initial term of occurrence and protracts in time, the treatment of the fact happens to be a continuous crime, in free will with the environment, placing its offender in a position of constant

² The arguments elsewhere have been reiterated in several judgments of the STJ that, for the sake of synthesis, we recommend consulting the decision terms of the REsp. n.1120117/AC, Rel. Ministra ELIANA CALMON, SEGUNDA TURMA, adjudicated on 10/11/2009, DJe 19/11/2009.

pendency with criminal justice³.

But all this to register in this topic that, in the cases of civil liability, advocates in favor of the environment time without limits of fluency, while in the criminal sphere the prescriptive period (depending on the damage and complexity of the concrete case) may still remain open, protruding in time until its permanence ceases. The same reasoning would apply to the case of a supposed amnesty, since it is peaceful in the literature (eg. JESUS, 2014), that even if given certain conduct, the duty to repair the damage in the civil sphere would persist.

By examining the precedents of these two courts, both the STJ and the STF, the jurisprudential movement is compatible with environmental causes, and these courts are increasingly instrumented with procedural tools that do not benefit or at least hinder the life of agents harmful to nature in Brazil.

And such positions are independent of the recent lessons learned in the judgment on the provisions of the New Forest Code, since they predate that decision and may even have informed the protective character of many Ministers who have been insinuated by their unconditional defense at the moment of concentrated control of constitutionality.

Therefore, the thesis of retracting the recent approved legislation, after being passed by the STF to benefit the cause of damage to the environment is already born doomed to failure, having to first transpose the rigid parameters of the fluidity of the time in an incessant course for effect of accountability, as highlighted above.

And as if it were not enough, it hampers even more a possible retroactive interpretation *in bonum partem*, in favor of the degrading one, when one turns to another counterpoint of fence, that is, the obstacle of the primacy of the prohibition of environmental regression, as will be explained next.

2 THE PROHIBITION OF RETROGRESSION

From what was heard in the discussion on the STF about the unconstitutionality arguments of the New Forest Code, the ideological clashes that served as the basis for ratifying the questioned devices brought

³ On this subject, see the news of December 2, 2003, where the “Primeira Turma do Supremo discute proteção ambiental e crime permanente”, available at the following website: <http://www.stf.jus.br/portal/general/>. And more recently, check out the archival rationale in Survey No.3.742/DF, rel Min. Luiz Fux, j. 18.10.2016.

together on the one hand developmental Ministers with an economic concern; on the other hand, Ministers of a more conservative nature, many embracing to extract from the principle of the prohibition of the retrocession a sense that better covered their argumentative pretensions.

It means that in an eventual agreement between these lines of thought, they will necessarily have to mediate a meaning that closely approximates the consensus, as well as the real extension of what is understood by the fence of retrogression in environmental matters, something unheard of within the STF itself and which will certainly fuel the academic debate.

Until recently not managed for environmental reasons and of German origin, the prohibition of retrogression was formed around the social issues in that country that, in the years of 1970, faced an enormous economic crisis with the real enlargement of the Social State, whose rigging did not take account of the demands of this quality that, although not constitutionally foreseen in the Fundamental Law of Bonn, were defended as irreversible by their nature of human rights (NOVAIS, 2010).

This principle, which is still vague and of undefined precision, would extend to any and all forms of protection of fundamental rights in the face of measures taken by the public authorities (with emphasis on the legislator and the administrator), whose scope is the suppression or even restriction of fundamental rights, be they social or of another human nature, in line with a constitutional right of resistance and maintenance of established achievements. (SARLET, 2009).

And in Brazil, but precisely in the STF, the first time that the fence to the retrocession appeared as an instrument of protection to the fundamental rights was in the judgment of ADI n.3.105, held on August 18, 2004, with Minister Cezar Peluso as Rapporteur, an opportunity in which the Amendment 41 was considered constitutional by a majority of votes, authorizing the establishment of a social security contribution on the earnings of inactive employees. It was up to the Minister Celso de Mello to analyze the scope of this principle when he voted for the unconstitutionality of that taxation, noting that the achievement of the guarantee of no longer contributing to the pension scheme with the retirement act could not be suppressed, to force retirees and pensioners to continue as contributors to the system, under penalty of illegitimate retrogression of this right.

After remembrance during that concentrated control of constitutionality, other judgments followed within the STF giving

relevance and prominence to the prohibition of retrogression⁴ until in mid-2012 this theoretical fence is consolidated as a new instrument adapted and of resistance in favor of nature⁵, culminating in its approach made unprecedented by this bias by the Excelsa Court on the occasion of debates on the constitutionality of the New Forest Code, at which time Ministers discussed the possibility of flexibilization, as well as reducing field of protection of the many environmental goods in relation to the previous legal regime, and we may already from these first considerations draw some guidelines for the application of that principle within the Supreme Court, even if not expressed expressly or completely the thought of all the Judges on this peculiar way to face its shift to the environment arena.

Opening a divergence during the trial that we highlight, not necessarily in the order of votes, we recorded the behavior of Minister Gilmar Ferreira Mendes, who, faithful to his doctrinal teachings written almost a decade ago, advocated the thesis that one must try to understand the principle of the fence of retrocession as a modality of the principle of proportionality, and should not constitute, in absolute terms, an insurmountable obstacle to the ordinary legislator's office in the production of the laws of our country, or in the editing of constitutional amendments that may eventually limit or even suppress social rights. However, for such normative acts to have their constitutional validity certified, it will be necessary to resist the triple test of proportionality (adequacy, necessity and proportionality in the strict sense, according to Mendes, 2015).

In the course of the debates, Gilmar Mendes pointed out that the STF runs the risk of going over the analysis of the National Congress in the name of prohibition of retrocession, after approval of an "extremely technical" law and resulting from more than two hundred public hearings, with the participation of all representative sectors of society related to the matter. All this was really necessary because the parameters of the previous 1965 code, in their view, were no longer fulfilled and, in the face of this,

4 Illustratively, precedents of the STF where the principle of prohibition of retrogression had relevance are as follows: ARE nº 639.337-AgR (Rel. Min. Celso de Mello, j. 23-8-2011, Segunda Turma, DJE de 15-9-2011 e o RE nº 398.041 (Rel. Min. Joaquim Barbosa, julgamento em 30-11-2006, Plenário, DJE de 19-12-2008)

5 Ingo Wolfgang Sarlet reveals that he has had the opportunity to participate along with other renowned experts in environmental law, such as Michel Prieur, Herman Beniamin, Carlos Alberto Molinaro, Patryck de Araújo Ayala, Tiago Fensterseifer and Walter Claudius Rothenburg, of the International Colloquium on the Principle of Prohibition of Environmental Retreat, carried out by the Senate's Committee on the Environment, Consumer Protection and Inspection and Control (CMA) of the Federal Senate, on the presidency of then Senator Rodrigo Rollemberg on March 29, 2012, whose lectures were gathered under the format of the book **O princípio da proibição de retrocesso ambiental**. Brasília: Senado Federal/CMA, 2012 (SARLET, 2016).

they created a new legislation more effective and conciliatory with the principles of the economic order, in an authentic process of convergence to restore a minimum of normativity in the environmental field (POMPEU, 2018).

This controversy on the way to face this possibility of retrogression was extended by the other votes, even if not necessarily referring to the merits of the issue, as happened with the manifestation of the Minister Alexandre de Moraes who, in the wake of the constitutionality defended by the rapporteur, said it was not considered possible to analyze the recent norms brought by the New Forest Code based only on the previous regime, since the current scenario of agriculture, as well as other methods of production and environmental recomposition, have evolved technologically these days, a reason that does not comprehends in a strick form the idea of retrogression fencing (POMPEU, 2018).

Minister Celso de Mello, first in the Court to preside over this same primacy almost fifteen years ago, has now been again to cite the prohibition of retrogression as a defense of the environment, not to say that economic activity and the "dynamism of the activity of the State" should be prevented, but understanding that this principle should serve as reference both for the Legislative and the Executive in the conduct of environmental public policies, all by judicial deference to the planning structured by the other powers of the Republic. However, where there is doubt whether a particular conduct is detrimental to the environment and citizens in general, the principle *in dubio pro natura* must always prevail, according to terms taken from its electronic vote.

Luis Roberto Barroso cites the same principle as one of his reasons for deciding that protection of the environment will have to be weighed up by combining demands of economic development, prohibition of social retrogression and limitations to the intervention of justice in the activity of the legislator, restricted to cases of "manifest lack of reasonableness and disproportionality of the measure". For Carmem Lúcia, in the limited field of extension of the principle under discussion, it would not be compatible with the Federal Constitution, in the name of a "flexibilization" of environmental legislation, to annihilate the right that has been won, even more on a subject of enormous importance like this, to take care of the type of commitment of rights that reaches not only the actuality, but future generations of humanity (POMPEU, 2018).

Indeed, it is possible to perceive that the question is open to the

Supreme Court, there being no discernment of the precise position of many Ministers on the matter, especially in the midst of a tense process of theoretical and ideological discussion.

Because the votes of the majority of the Judges are not very recent, and considering that this written vote does not always represent the fidelity of the oral debates we attended, we will certainly have new and future developments in the extension of that principle in environmental terms, hinder or even launch in the field of uncertainty an eventual retroactivity effort of the New Forest Code to benefit those who cause damage to the environment.

Even because the retrofit for this purpose was not authorized by the STF in said constitutional review, especially when the Court heard of the alleged "amnesty" of environmental crimes and, by a narrow majority, approved the legislative "pardon" under another form of seeing the environmental recovery, as detailed in the next item.

Thus, the most mature and well-established understanding of the STJ, for which "the new Forest Code can not retroact to overtake the perfect legal act, acquired environmental rights and the object of the suit, neither to reduce the level of protection of fragile ecosystems or species threatened with extinction to such an extent and without the necessary environmental compensation, to the point of transgressing the untouchable and unbridgeable constitutional limit of the State's "task" to guarantee the preservation and restoration of essential ecological processes (article 225, § 1, I)⁶".

Thus, and until the STF resumes the discussion by virtue of the constitutional coupling previously noted, we believe that the greatest extent conferred by the Citizenship Court prevails when it comes to nature protection and sealing of the retrocession in order to benefit the agent causing the environmental damage.

3 THE CONSTITUTIONALITY OF THE SUPPOSED "AMNESTY" BY THE STF

It is symptomatic of the application or not of the principle of prohibition of retrogression and its concrete effects, for example, the possibility of "amnestying" agents who committed crimes against the

⁶ Arguments validated within the STJ and reproduced within the AgRg no AREsp 327687 SP 2013/0108750-1. Judging Body: T2 - SEGUNDA TURMA. Publication: DJe 26/08/2013 Trial: August 15, 2013. Rapporteur: Minister HUMBERTO MARTINS.

environment before July 22, 2008, according to the content of art. 60 of the New Forest Code, within a reported logic that this would be configured to a benefit granted by the recent legislation, aiming at the direct and exclusive benefit of the devastating agents of nature, allowing the same actors to escape their criminal responsibilities.

However, this was not the reading given by the tight majority that was built within the STF from the normative statements of arts. 59 and 60 of that code, impressed by the fact that the so-called legislative "forgiveness" was linked to a series of constraints that must be imposed and adjusted with the peculiarity of the facts, by means of a final analysis of the concrete case and against what it defended the Rapporteur Minister in his inaugural vote. For Luiz Fux, the law under review conferred true "conditional amnesty" on violators, in total disagreement with art. 225, paragraph 3, of CF/88, which establishes criminal and administrative sanctions, regardless of the obligation to repair the damage caused⁷.

Marco Aurelio followed the understanding and said that nothing justifies an amnesty granted to the rural producers in relation to the damages occurred before July of 2008, not being able to prestige infractor proprietaries to the detriment of those who had the economic burden of observing the law, feeding henceforth the expectation of future exemptions of the same significance (POMPEU, 2018). But in the tiebreaker of this controversy, Celso de Mello argued that the aforementioned "pardon" is not arbitrary and does not compromise the constitutional protection of the environment, since it is deferred in the context of a "clemency of the State" that extends to all other crimes common and not confined solely to the sphere of political crimes⁸.

From what can be perceived, and from the interpretative vision of this narrow majority, the whole effort undertaken by the ordinary legislator in his attempt to approximate economic interest on the one hand and preservation of the nature on the other, it being very clear that both entrepreneurs and defenders of the environment have given way to the preservation of the essential nucleus of each of the norms of interest. This idea, already present in the work of Derani (2001), represents nothing more than the exercise of the reconciliation of constitutional fundamental

⁷ According to news linked to the official and electronic website of the Supreme Court under the title: "Relator profere voto no julgamento sobre o Novo Código Florestal", at 19:55 hrs. of the day 08/nov/17.

⁸ Basis summarized and taken from the vote of Minister Celso de Mello, already available for consultation on the STF website, within the ADI's that raised the matter.

rights in apparent tension. Said author, she was already beckoning for the integration of those rights, raising the right to the ecologically balanced environment as the driver of economic development.

Not exactly said in these terms in that judgment, and by the generalized understanding that it can be extracted from it, we think that the majority sought first to unravel the content of this essential core and then to respect it and keep it intact in the optimally achievable way that they have been able to glimpse, in a theoretical perspective that has been consolidating like guarantee of essential content of the fundamental rights in Brazil⁹.

It means that we are not necessarily in agreement with the final result of this referral, but in the balance of allowance and speculation in this last theory, most Judges have decided to misrepresent the legal nature of what is meant by "amnesty" and - even when some recognized it as such - was seen as an acceptable hypothesis of prestige to the essential core of the standards under consideration, since whoever in the end would be gaining from this search exercise for the better interpretation would be the environment itself, as we will now try to reinforce.

The premise of this finding stems from the answer to the following question: - what would be achieved in insisting on the punishment of the offender if nature would remain beaten and devastated? - And what would be the duty of restoration as independent of the penal and administrative sanctions, according to precept of art. 225, par. 3, CF/88, and defended in the Rapporteur's vote?

Informed by a national legal realism, others expressly declaring the ineffectiveness of the old legislation in defense of the environment, it turned the majority of the STF into the belief that the reparation advocated by instruments of the old code would hardly be realized, either because once the offender was convicted, would have more voluntary stimulation for this, or because the current state of disrepair in the conduct of this recomposition would not make it effective.

With the adhesion of offender to the Environmental Regulation Program (PRA), by signing voluntarily the term of commitment to its restorative requirements, since favorable to the maintenance of natural resources and in the guarantor line of its essential nucleus, would be worth

⁹ Regarding this approach, we suggest consulting the work of Sandro Nahmias Melo, published under the title "A garantia do conteúdo essencial dos direitos fundamentais". **Revista de Direito Constitucional e Internacional**. São Paulo, ano 11, abr./jun. 2003, n. 43, p. 82-97.

to pardon this arbitrary offender in honor of nature's greatest benefit. In the end, and as it was deliberated tightly within the STF, this result achieved would be much more pro-affirmative to the maintenance of environmental hygiene.

As for the other offending party, we can understand that it was given a second chance to redeem itself in relation to its criminal act, but instead it had to confess its crime, take on a series of new administrative impositions and, above all, restore the environment as a condition for receiving "forgiveness". After all this is done, it seems reasonable and well defensible that who gained more than lost was the recipient nature, and once reconstituted will be taken care of and also monitored by his former "evildoer" in a logical rationale that one more "soldier" will remain engaged in the war against its devastation.

In these circumstances some argue that the causers of the damage were not being unduly benefited, because now they would have to direct themselves to the government, pointing out their transgressions and take deadlines in order to meet restorative activities, movements that were not previously required, when a plethora of procedural mechanisms to guarantee the due legal process were available at that time, contradictory and amplitude of defense in the scope of precisely the complexity that summarizes the environmental demands. This delay in the final resolution of the process could lead, perhaps and in the field of eventualities, to a possible prescription of the punitive claim by the Brazilian State.

In this sense, it should be noted that the Federal Supreme Court acknowledged the general repercussion of matters related to the prescription of a claim for compensation for environmental damage. According to recently published material on its website, the theme is subject to Extraordinary Appeal (RE) 654833, which deals with damage caused by loggers in the illegal exploitation of indigenous lands in Acre, in the 1980s, where it is intended to dispel the thesis of imprescriptibility. It should be noted that the vote of Minister Alexandre de Moraes for the recognition of the general repercussion was accompanied by the other Ministers. However, the merit of the appeal will be submitted to the Plenary at the Court, with no date scheduled for trial (STF, 2018).

Far from the discussion whether or not there was "amnesty" on the part of the New Forest Code countersigned by the STF, from now on, it is important to accept that decision and to understand that it came to give restorative effectiveness to the environment and not limited to the

exclusive benefit of the offender, also not allowing for him to re-offend in any way, in respect to the principle of the prohibition of retrogression by the acts of State which, in its extended interpretation found within our Supreme Court, still gave shelter to the commented "pardon" for being of best advantage in the defense of our natural resources.

CONCLUSION

As demonstrated, all the functioning of the system and its interpretation operate in favor of the environment, sometimes seeking to give effect both to its protection and to the restoration of irregularly degraded spaces, sometimes circumventing situations that could at first benefit the cause of the damage with more reading favorable, in an argumentative line where the interest of nature must always prevail, in the exact technical standards of its sustainability.

Even in cases where it is apparently legislated to benefit those responsible for environmental damage, as has been seen previously, the guarantor vector of the essential nucleus of the norm will have to be uncovered in order to point out, in the course of this process of intelligence, the real, concrete and effective environmental benefits, on reasonable and convincing grounds that the preservation and/or recovery of nature must prevail, albeit at the price of re-negotiating with its predecessors and identifying devastating agents.

In short, it would not be rational to interpret the New Forest Code as a permissive and skillful norm to retroact only to the benefit of these offenders, if the Federal Constitution itself assures environmental law the *status* of fundamental for present and future generations, appearing as an important sociol-environmental achievement, protected by the mantle of the fence against retrocession in its greatest possible extent of protection.

As it has been registered, it is not possible to subvert the functioning of a legal system aimed at guaranteeing a healthy environment, even if weighted by the necessary economic activity, when other powerful instruments of *pro-natural* protection converge for the sustainability of life on the planet, closely linked maintenance of these natural resources.

For the foregoing, it is not convincing the thesis of a possible retroaction of the New Forest Code in order to only benefit the agent causing the environmental damage, which may even happen through reflex and at most ponderable, in view of a salutary optimization process and

since that in the end best advantage is attributed to nature recovery.

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