

BRAZILIAN ENVIRONMENTAL AND URBAN LEGISLATION: ENVIRONMENTAL CONFLICTS OF THE LARGE REAL ESTATE DEVELOPMENTS IN FLORIANÓPOLIS¹

Gabriel Bertimes Di Bernardi Lopes²

Universidade do Estado de Santa Catarina (UDESC) |

Juliana Carioni Di Bernardi³

Universidade Federal de Santa Catarina (UFSC) |

ABSTRACT

Environmental law and urban planning law are priority themes in environmental and urban planning studies, because they allow understand the State intervention in the legal structure of territorial planning and use, as well as in environmental and urban conflicts. The objective of this research was to analyze the effectiveness of Brazilian environmental and urban planning legislation in environmental conflicts related to large real estate developments in Florianópolis. The study was based on a theoretical framework that enabled the understanding of environmental relations responsible for public policies that determine in practice the guarantee of preservation and equitable distribution of natural resources for the next generations. For this purpose, the theoretical framework of the “ecological state of law” was adopted. The methodology applied in this research was supported by eight case studies, had a qualitative character and was divided into two stages. The first stage was exploratory and the

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² Post-Doctorate in the Graduate Program in Architecture and Urbanism at the Federal University of Santa Catarina (UFSC). PhD in Geography from UFSC. Master in City Urbanism, History and Architecture by UFSC. Bachelor’s in Geography by Universidade do Estado de Santa Catarina (UDESC). Professor at Public Administration Department of the UDESC. Researcher at the Center for Social Innovations in the Public Sphere (NISF) and Territory, Architecture and Citizenship (SITUS). Lattes resume: <http://lattes.cnpq.br/7872432677803420> / ORCID: <https://orcid.org/0000-0001-9195-5934> / e-mail: gabriel.dibernardi@udesc.br

³ PhD in Architecture and Urbanism by Universidade Federal de Santa Catarina (UFSC). Master in City Urbanism, History and Architecture by UFSC. Specialist in Environmental Law and Management by the Complexo de Ensino Superior de Santa Catarina (CESUSC). Bachelor’s in Legal Sciences by CESUSC. Member of the research groups “Urbanities: Urban Form and Socio-Spatial Processes” and “Territory, Architecture and Citizenship (SITUS)”. Lattes resume: <http://lattes.cnpq.br/3749623352119058> / ORCID: <https://orcid.org/0000-0003-3977-6781> / e-mail: juliana.carioni@posgrad.ufsc.br

second stage was inductive, deductive, descriptive and explanatory. The hypothesis of this research confirmed the ineffectiveness of the Brazilian environmental and urban planning legislation in environmental conflicts related to large real estate developments in Florianópolis, supported by the systematic reproduction of irregularities in municipal public administration and state environmental public management, characterizing “organized irresponsibility”.

Keywords: environmental and urban planning legislation; environmental conflicts; large real estate developments.

LEGISLAÇÃO AMBIENTAL E URBANÍSTICA BRASILEIRA: CONFLITOS AMBIENTAIS DOS GRANDES EMPREENDIMENTOS IMOBILIÁRIOS EM FLORIANÓPOLIS

RESUMO

O Direito Ambiental e o Direito Urbanístico são temas prioritários nos estudos ambientais e urbanos, porque permitem compreender a intervenção do Estado na estrutura jurídica do planejamento e ordenamento territorial, assim como nos conflitos ambientais e urbanos. Esta pesquisa teve como objetivo analisar a efetividade da legislação ambiental e urbanística brasileira nos conflitos ambientais relacionados aos grandes empreendimentos imobiliários em Florianópolis. O estudo apoiou-se em um referencial teórico que possibilitou a compreensão das relações ambientais, responsáveis pelas políticas públicas que determinam na prática a garantia da preservação e distribuição equitativa dos recursos naturais para as próximas gerações. Para tanto foi adotado o referencial teórico do “Estado Ecológico de Direito”. A metodologia aplicada nesta pesquisa foi apoiada em oito estudos de caso, teve o caráter qualitativo e foi dividida em duas etapas. A primeira etapa foi exploratória e a segunda etapa indutiva, dedutiva, descritiva e explicativa. The hypothesis of this research confirmed the ineffectiveness of Brazilian environmental and urban planning legislation in environmental conflicts related to large real estate developments in Florianópolis, supported by the systematic reproduction of irregularities in the municipal public administration and in the state environmental public management, characterizing “organized irresponsibility”.

Palavras-chave: conflitos ambientais; grandes empreendimentos imobiliários; legislação ambiental e urbanística.

INTRODUCTION

The effectiveness of environmental and urban planning legislation is treated by most researchers erroneously, for the weight they have in the containment of negative urban environmental impacts and in a standardized way. For a deeper analysis, one needs to investigate the totality of these processes, including the analytical syntheses of their internal structures, their articulations, and the elements that make up the performance of the legal, social, political, economic, and environmental processes.

The objective of this research was to analyze the effectiveness of environmental and urban planning legislation in Brazil in the face of environmental conflicts related to large real estate developments in the city of Florianópolis.

We must highlight the originality of this research, based on a theoretical framework to understand the socio-environmental relations responsible for public policies. In practice, they determine the guarantee of preservation and equitable distribution of natural resources, infrastructure resources, and public services for present and future generations. To this end, the “Ecological Rule of Law” was adopted as the main theoretical reference.

The hypothesis of this research confirmed the ineffectiveness of Brazilian environmental and urban planning legislation in environmental conflicts related to large real estate developments in Florianópolis, supported by the systematic reproduction of irregularities in the municipal public administration and in the state environmental public management, characterizing “organized irresponsibility”. The main irregularities in the municipal public administration are associated with the elaboration of master plans and the omission in relation to the obligation of neighborhood impact studies. Still in the municipal sphere, irregularities in the granting of building permits stood out. In the state environmental public management, the irregularities in granting and omission related to environmental licensing stood out.

1 THEORETICAL CONTEXTUALIZATION

1.1 Environmental conflicts and popular participation

The environmental crisis is pointed out by many researchers as a reflection of the unbridled search for economic growth, supported by the widespread, intense occupation of natural spaces, which has significantly

reduced the resilience capacity of nature and rapidly exhausted natural resources (RODRIGUEZ; SILVA, 2013).

Urban legislation is the main instrument of control in the process of land use and occupation in urban spaces. However, this instrument, which is a competence of the municipal public administration, does not always prove to be efficient, often causing perverse effects, such as areas that are more valued than others and land stockpiled for real estate speculation, pushing out the needy population towards the periphery, with precarious infrastructure and services or environmentally inadequate areas (BRAGA, 2001).

Conflicts are present in the democratic process, and social participation involves multiple interests, which, in the current context, can be seen as a limitation, whether in the internal process or in decision-making, which hinders civil society participation in the construction of public policies and their articulation with the governance process. Another aspect to be considered is cultural identity, since the different social actors face different social and environmental contexts (TOURAINÉ, 1996).

In this scenario, conflicts emerge in the search for an effective participation of civil society in issues involving governance, inserted in a centralizing and contradictory democratic process, which aims, primarily, to economic interests and meets the agendas related to the interests of power, although decisions are linked to the technical planning agenda, especially in large and medium-sized cities, where real estate capital, formed by the partnership between the construction industry and rentier capital, has greater speculative interest (LANNA *et al.*, 2002).

However, the weight given to participation as an instrument of social control and expansion of the levels of governance has not corresponded to the expectations of technical and academic circles and of the population in general (PATEMAN, 1992).

In Brazil, social participation was introduced in the legal framework aiming to deconstruct the existing hegemonic model, intending to expand the decision-making spaces, favoring the interaction between government structures and the participation of social movements through a new participatory format regulated by constitutional protection and national policies (LAVALLE, 2011).

The changes in society are materialized territorially, driven by the processes of social production of space, benefiting a few social groups, to the detriment of the majority, socially and spatially segregating the population,

whose territorial location is determined strictly by its commercial value and the purchasing power of consumers, giving the territory a marketing nature. It is fundamental to recognize the social agents that structure this process and their role (SANTOS, 2008).

In opposition to the misappropriation of the urbanization process by the capitalist system, the right to the city emerges, seeking the expansion of democratic control over the capital surplus incorporated into the cities, so that the social benefits of the construction of urban space are not limited to economic and political elites (HARVEY, 2014).

It is common in Brazil for public resources to be distributed in disagreement with the pacts signed with society and social movements. In practice, public policies have been agreed upon, above all, with the political and economic elite. The logic that access to public funds is prioritized for specific social groups still remains, without the effective responsibility of the public administration in ensuring dialogue with society to define the destination of public resources and build public policies (TONELLA, 2013).

1.2 Ecological Rule of Law and organized irresponsibility

The State and the Law, being human constructions with the purpose of regulating societies in a democratic way, respecting the values of freedom and human rights, remained with its anthropocentric nature, allowing and encouraging the separation between the human and the natural. The Ecological Rule of Law has been discussed in environmental legal theory for some decades, as environmental challenges grow. In this context, the reflection on the bases of society's legal structure and the legal mechanisms to limit freedoms with respect to ecological integrity bring new parameters for discussion and should include the elements of nature in societal regulation, based on the rethinking of the ecology of Law, aligning itself to a new perspective of the Ecological State of Law (LEITE *et al.*, 2017).

The construction of the Ecological State of Law is strengthened in the general principles of Environmental and Urban Planning Law, which prohibit the suppression of its less protective interpretation. This imposes a duty of gradual progression of legislative and legal protection for nature, in addition to guiding case-by-case impasses to decisions that are more favorable to the environment. Despite the important role played by the 1988 Federal Constitution to establish environmental protection, binding

the State and civil society to the promotion of these legal values, the influence of real power factors undermines the constitutional dictates, creating conditions for the objectives signed in the social pact that consolidated the sustainable character of Brazilian environmental and urban planning legislation not to materialize (LEITE; BECKHAUSER, 2021).

The differences in the fields of Environmental Law and Urban Planning Law are reflected in the tension relations contained in the duality present in the management of the built environment and the natural environment, resulting from their distinct geneses, due to the specificity of their disciplinary fields, research objects and areas of practice, creating an environment conducive to organized irresponsibility.

The organized irresponsibility is characterized by a context in which many laws and duties are created, but the execution of the norm, besides being fragmented, is illicit, because it is not actually materialized in Law, making the problem systemic, since the environmental management agencies grant the environmental license without due care, as well as the city hall in the elaboration of master plans and the public authorities in the elaboration of master plans and the organs of the public power, which in an inconsistent manner, lack a systemic vision, ineffectively applying the Brazilian environmental and urban planning legislation. Since Environmental and Urban Planning Law is not very systemic and fragmented, it needs innovative approaches that bring nature as an actor in Law. A version capable of promoting governance in a more ecological manner is needed, making environmental and urban planning legislation more effective in relation to cases of organized irresponsibility (BECK, 2011).

Considered a key concept of the risk society theory, organized irresponsibility has greatly influenced and impacted several areas of Law, especially Environmental Law and Criminal Law. It acts as a guiding thread of the risk society, aiming to demonstrate the failure in the model of environmental management by the public authorities, which does not consider an ecosystemic vision in its approach, but uses a fragmented strategy of Law, in a social tolerance of environmental degradation and sometimes accepting *fait accompli* in matters of Environmental Law. The risk society is one that, due to its continuous economic growth, can suffer the consequences of an environmental catastrophe at any time. Therefore, the evolution and worsening of issues, followed by an evolution of society (from industrial society to risk society), without, however, an adequacy of legal mechanisms to solve the issues of this new society (GUIVANT, 2016).

The emergence of the risk society designates a stage in modernity in which the threats produced until then by the economic model of industrial society begin to take shape. The theory of risk society, characteristic of the phase following the classic industrial period, represents the awareness of the exhaustion of the production model, which is marked by the permanent risk of ecological crisis (BECK *et al.*, 1997).

Thus, this new approach to Environmental and Urban Planning Law, instead of dealing with palliative aspects of environmental issues, takes a systemic approach, requiring participative ecological governance with disciplinary and transdisciplinary arguments to make environmental management and a new understanding of the application of Brazilian environmental and urban planning law effective.

Environmental protection is intertwined with the constant improvement of control tools and methodologies available for observation, in addition to the permanent review of data and state authorizations arising from them, in order to enable the Law to protect, with sufficiency and completeness, human health and the integrity of ecosystems. In these terms, the commitment capable of materializing the Ecological Law requires a governmental action directed and committed to the environmental and human rights agendas, in order to enforce norms and obligations, potentialized by the application of some general principles of Environmental and Urban Planning Law, which emerged from international conferences (LEITE; BECKHAUSER, 2021).

2 METHODOLOGICAL PROCEDURES

2.1 Qualitative, exploratory, inductive, deductive, descriptive and explanatory approach

The methodological procedures of this research were divided into two stages, guided by a qualitative, exploratory, inductive, deductive, descriptive, and explanatory approach. In the first stage, the exploratory nature was adopted, aiming to expand the knowledge on the subject, based on a systematic bibliometric review, an inventory of the environmental and urban legislation, and a survey of the public civil actions. In the second stage an inductive, deductive, descriptive, and explanatory research was carried out, through the analysis of bibliometry, environmental and urban legislation, and public civil actions.

The methodology applied in this research was qualitative, since the

reality analyzed is multiple and subjective, and the experiences of individuals and their perceptions also useful and important aspects for the research (PATIAS; HOHENDORFF, 2019).

By definition, exploratory research has the function of filling in the gaps that usually appear in a study, and may involve a bibliographic survey, interviews with people with practical experiences with the researched problem, and analysis of examples that stimulate understanding (CRESWELL, 2007).

The reasoning or logic of this research was inductive, characterized, above all, by an analytical methodology that started from specific questions, so that it was possible to carry out the construction of a general theory (PATIAS; HOHENDORFF, 2019).

The deductive method allowed for the proof of the theoretically analyzed relationships from an in-depth theoretical immersion in the dimensions that guided data analyses (ECO, 2017).

Data analysis was initially guided by the descriptive nature of the study, seeking to meet the research objectives. Thus, qualitative research proved to be more appropriate as it is recommended to understand and describe practical perspectives, providing experiences, interactions, and documents in their natural context (FLICK, 2009).

The descriptive study sought to meet the specific objectives of this research. To this end, it was necessary to analyze the trajectory, context, and processes of the initiatives studied, highlighting the variables of trajectory, in addition to reconstituting the historical contexts that condition the formation of certain territorial dynamics of development and social innovations (SABOURIN, 2011).

The main objective of descriptive research is to describe the characteristics of a certain population, a certain phenomenon, or to establish relationships among variables (GIL, 2008).

The explanatory character of this research aimed to make a certain phenomenon understandable, so it can be used to explain why a certain phenomenon occurred, clarifying its causes. It aims, therefore, to clarify which factors contributed to the occurrence of a certain phenomenon (VERGARA, 2000).

It is a methodological process in which the case studies contributed with contextual perception, without neglecting representativeness and focused on the dynamic understanding of the local reality, presenting value when the conjunctures are complex and may change, when the conditioning factors have not been found before, when the situations are too political,

and when there are many interested parties. Therefore, the case study, as a scientific research tool, facilitates the understanding of processes in the face of the social complexity in which they manifest themselves. Both in situations of constraints and in the analysis of obstacles, especially, in situations of potentialities, for the validation of exemplary models (PARKER; NORTHCOTT, 2016).

2.2 Bibliometric review

On December 25, 2020, a search was conducted in the Scielo database, set in all indexes, using the search terms Environmental and Urban Legislation AND Environmental Conflicts AND Large Real Estate Developments, yielding no results and highlighting the originality of the theme adopted in this research. Using the search terms Environmental and Urban Legislation OR Environmental Conflicts OR Large Real Estate Developments, the search returned 153 articles. Nine articles from the Scielo database were cited in this research.

On December 25, 2020, a search was conducted in the Scielo database, set in all fields, using the search terms Environmental and Urban Legislation AND Environmental Conflicts AND Large Real Estate Developments, yielding no results and highlighting the originality of the theme adopted in this research. Using the search terms Environmental and Urban Legislation OR Environmental Conflicts OR Large Real Estate Developments, the search returned 25 articles. Three articles from the Scopus database were cited in this research.

In general, the bibliometric review confirmed the innovative character of the theme of this research, since it did not present any results with the search terms Environmental and Urban Legislation AND Environmental Conflicts AND Large Real Estate Developments. Using the search terms Environmental and Urban Legislation OR Environmental Conflicts OR Large Real Estate Developments, the search returned 178 articles. The theoretical framework of this research incorporated a total of 12 scientific articles published in the Scielo and Scopus databases.

2.3 Public civil actions

This research included eight case studies, all located in the city of Florianópolis, capital of the State of Santa Catarina. The case studies were

analyzed according to the chronological order of the lawsuits filed by the Federal Public Ministry.

The cases of Costão do Santinho Resort, Porto da Barra Urbanistic Complex, Florianópolis Village Golf Resort, Condomínio Residencial Costão Golf, Floripa Shopping, Il Campanário Villaggio Resort, Shopping Iguatemi Florianópolis and Parque Hotel Marina Ponta do Coral were analyzed (BRASIL, 1996; 1997; 2004; 2005a; 2005b; 2006; 2007; 2012).

Access to the public civil actions was made through the website of the Federal Regional Court of the 4th Region, using the respective case numbers, indicating as the place of origin the Federal Court of Santa Catarina. However, access to the full records was by password authorized by the Santa Catarina Federal Court.

The oldest actions, such as those of the Costão do Santinho Resort and Porto da Barra Urbanistic Complex, are only available in their entirety in physical form. In these cases, authorization from the Federal Court of Santa Catarina was also necessary for data collection.

The only case whose lawsuit's files are in the Court of Justice of Santa Catarina is that of Condomínio Residencial Costão Golf. In this case, data were collected from the website of the Court of Justice of Santa Catarina, using a password provided by the Court.

3 SUMMARY OF RESULTS

3.1 Current status of large real estate developments

Eight case studies that presented environmental conflicts related to large real estate developments in Florianópolis were analyzed. Of the eight case studies, in five of them, the current situation of the real estate development is installed and operating, namely the cases of Costão do Santinho Resort, Condomínio Residencial Costão Golf, Floripa Shopping, Il Campanário Villaggio Resort, and Shopping Iguatemi Florianópolis.

In the remaining three case studies the current situation of the real estate development is not installed, such as the cases of Porto da Barra Urbanistic Complex, Florianópolis Village Golf Resort and Parque Hotel Marina Ponta do Coral. However, the fact that these three enterprises have not been installed does not exempt them from having benefited from irregularities in the preparation of master plans and in the granting of environmental licenses, violating the Brazilian environmental and urban planning legislation, besides also characterizing cases of organized irresponsibility.

3.2 Participation of municipal actors

With respect to the participation of the municipal actors involved in the eight case studies analyzed, it was concluded that in five of them the Municipal Government of Florianópolis was accused of committing irregularities in the preparation or alteration of municipal master plans that directly benefited the Condomínio Residencial Costão Golfs, Floripa Shopping, Il Campanário Villaggio Resort, Shopping Iguatemi Florianópolis and Parque Hotel Marina Ponta do Coral.

In the other three case studies the Municipality of Florianópolis was not included as a defendant in the public civil action at the time the actions were filed by the Federal Public Ministry. However, in the three case studies the Municipality should also have been included as a defendant in the public civil actions because of irregularities in the preparation and revision of the Municipal Master Plan 2014, which benefited the Costão do Santinho Resort, Porto da Barra Urbanistic Complex, and the Florianópolis Village Golf Resort with permissive zoning, uses, and postures.

Although the Urban Planning Institute of Florianópolis (IPUF) was a defendant only in the case of the Costão do Santinho Resort and the Florianópolis City Council was not a defendant in any of the eight case studies, in both cases the actors are responsible for the irregularities in the master plans, since IPUF is the public agency of the Municipality with the technical responsibility for the elaboration of the master plans, and the Municipality has the responsibility to approve municipal master plans. The Superintendence of Public Services was not a defendant either but participated by granting irregular building permits.

3.3 Participation of state actors

In the state sphere, of the eight case studies analyzed, in six of them the Environmental Foundation (FATMA), now the Environmental Institute (IMA), was accused of committing irregularities in the granting of environmental licenses that directly benefited the Costão do Santinho Resort, the Porto da Barra Urbanistic Complex, the Costão Golf Residential Condominium, Floripa Shoppings, Il Campanário Villaggio Resort and the Park Hotel Marina Ponta do Coral.

In the other two case studies, FATMA was not included as a defendant in the public civil action at the time the actions were filed by the Federal

Public Ministry, however, in the case of Shopping Iguatemi Florianópolis, FATMA should also have been included as a defendant in the public civil action, because of the omission in its responsibility to require the environmental licensing of the enterprise. Only in the case of the Florianópolis Village Golf Resort did FATMA not grant irregular environmental licenses or omit from its responsibility to carry out the environmental licensing. The fact that this enterprise is located in an area where the Federal Government demands land restitution and is suing the Santa Catarina State Government for carrying out irregular agrarian reform on Federal Land points to a complicating factor in relation to the irregular granting of environmental licensing by FATMA for this enterprise.

Also noteworthy is the omission of the State Public Ministry, which has not shown interest in participating in any of the eight cases, even though they are located in consolidated urban areas.

3.4 Participation of federal actors

In the federal sphere, of the eight case studies analyzed, in four of them the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA) was defendant for omitting its responsibility for environmental licensing, being the cases of Costão do Santinho Resort, Floripa Shopping, Il Campanário Villaggio Resort and Parque Hotel Marina Ponta do Coral.

In the four case studies in which IBAMA was not the defendant in the public civil actions, environmental licensing was not in fact within its competence, and these were the cases involving the Porto da Barra Urbanistic Complex, Florianópolis Village Golf Resort, Condomínio Residencial Costão Golf, and Shopping Iguatemi Florianópolis.

In the eight case studies analyzed, the Federal Public Ministry presented itself as a fundamental actor in the mediation of environmental conflicts, supervising with the necessary rigor the public entities involved aiming to improve the quality of public environmental and urban management, as well as greater effectiveness in the application of Brazilian environmental and urban legislation.

However, the slowness of the judicial proceedings, prolonging them for decades, as in the case of Costão do Santinho Resort, which has already been underway for approximately 25 years, can encourage actions that are harmful to the environment, contributing indirectly to the ineffectiveness

of environmental and urban planning legislation in cases related to large real estate developments.

3.5 Popular Participation

With respect to popular participation in environmental conflicts related to large real estate developments in Florianópolis, the growth and maturation of environmental social movements was verified, since in seven of the eight case studies analyzed civil society organizations were the authors of public civil actions, totaling the participation of twenty-one civil society organizations.

The only case without direct participation of organized civil society was the case of the Costão do Santinho Resort, although the complaint was made by the residents of Santinho Beach.

3.6 Urban Environmental Impacts

In the eight case studies analyzed, the real estate developments produced urban environmental impacts. The five projects implemented – Costão do Santinho Resort, Condomínio Residencial Costão Golf, Floripa Shopping, Il Campanário Villaggio Resort and Shopping Iguatemi Florianópolis – occupied permanent preservation areas and marine lands, removing native vegetation such as restinga, mangrove, Atlantic forest and riparian forest, eliminating endemic wild animals, altering dunes and archeological sites, and grounding, rectifying, dredging, cementing and channeling water courses and springs. The three developments not implemented, namely the Porto da Barra Urbanistic Complex, Florianópolis Village Golf Resort and Parque Hotel Marina Ponta do Coral, changed the areas of their projects with landfills, opening of drainage ditches and deforestation for pasture, besides the demolition of buildings with historical relevance to the local heritage.

The three real estate projects not been implemented, namely the Porto da Barra Urbanistic Complex, Florianópolis Village Golf Resort and Parque Hotel Marina Ponta do Coral, project severe urban environmental impacts, such as destruction of the stabilizing vegetation of mangroves and restinga vegetation, excavations, dredging, landfill and pollution of waterways, groundwater tables and springs, with contamination by sewage, heavy metals and hexane, decrease in water availability, compromising

groundwater quality and balneability of adjacent beaches, pressure on aquatic fauna by altering water, sediment and nutrient inputs, increase in the flow of boats, generation of traffic on the main highways, increase of flooding due to soil sealing, erosion and increase of salt water flow in lagoons, silting up, extinction of fauna and flora, including endemic species, a decrease in the populations of migratory species, alteration in air quality, the formation of pockets of human occupation on dunes, marine lands, sambaquis, archeological sites and conversation units.

The Residential Condominium Costão Golf, besides producing severe urban environmental impacts from its deployment and operation, also projects irreversible impacts, such as the possibility of contamination of the Ingleses Aquifer with the use of 30 tons of pesticides per year in the management of its golf course, putting at risk the water supply of the entire population of the northern region of Santa Catarina Island.

3.7 Offense to principles, constitutional protection and legislation

In all eight case studies analyzed, the large real estate developments violated the principles of Environmental and Urban Planning Law, the 1988 Federal Constitution, and Brazilian environmental and urban planning legislation.

Among the violations of the principles of Environmental and Urban Planning Law promoted in the eight environmental conflicts analyzed, the most noteworthy are violations of the precautionary principle, the prevention principle, and the polluter-pays principle.

In the eight environmental conflicts analyzed there were violations to the Federal Constitution of 1988, for example, arts. 20, 24, 30, 182, 216, and 225 were violated.

The eight environmental conflicts analyzed hurt the Brazilian environmental and urban planning legislation. In the violations of Brazilian environmental legislation, it was found that in all eight real estate developments the National Environmental Policy of 1981 was violated, either by the absence of environmental licensing or by the nullity of the licensing.

Regarding the Brazilian urban legislation, the violations to the City Statute of 2001 stood out, promoted in six of the eight case studies. The cases of the Costão do Santinho Resort and the Porto da Barra Urbanistic Complex did not directly hurt the City Statute of 2001, since the public

civil actions in these two environmental conflicts were filed in 1996 and 1997, respectively, before the City Statute was approved in 2001.

CONCLUSION

Sustainable development aims to overcome socio-spatial disparities by relying on environmentally safe territorial development strategies for ecologically vulnerable areas, ensuring biodiversity conservation and improving urban environments with eco-development (SACHS, 2009).

Yet historically natural resources have always been linked to global economic development, fueling this growth. It is necessary to balance the relationship between the use of natural resources and economic development so that the next generations do not pay with their very lives for the results of misuse of such resources, evidencing a contradiction between the appropriation of capital and control of space, in relation to the preservation of the environment and the socioeconomic development of the population. Such contradiction leads to issues such as the impossibility of reconciling issues like sustainable development, which is a principle of Environmental Law, with economic development guided by liberal and capitalist foundations (CARIONI *et al.*, 2012; LOPES *et al.*, 2014).

Unraveling the existing relations between the public power and the large real estate enterprises, understanding the mechanisms used by them to defy the laws and promote environmental damages, fits in as a practice to the good of the fight for environmental preservation.

However, to unveil the damaging actions to the environment, caused by the lack of precaution and prevention on the part of large real estate enterprises and the government, is not enough if these data are not made public and discussed with society, so that the community can join forces to demand from the government responsibility in the creation and enforcement of laws that will guarantee the quality of life of the population.

Many irregular changes in the master plans, as well as irregularities in the granting of building permits and environmental licenses, have directly benefited large real estate developments. In these cases, the environmental and urban legislation was not effective. The inspection carried out by the competent bodies is generally flawed, and it is necessary to discuss the flaws in the inspection of the application of the Brazilian environmental and urban planning legislation, so that damaging actions against the environment do not occur.

Besides the lack of enforcement, some laws are lenient, such as the Environmental Crimes Law, which requires the repair of environmental damage committed and establishes punishments for those who degrade the environment, almost always with monetary penalties. The punishments foreseen are fines that represent a derisory percentage in relation to the entrepreneur's capital, in addition to light penalties that are unlikely to materialize.

The effectiveness of the environmental and urban legislation depends on the direct action of the public power; thus, it is not rare to see fragility in the protection of the environment, either due to the omission of the public power or to the high bureaucracy in its slow and often ineffective procedures.

In the cases analyzed, the role of the Federal Public Ministry was fundamental. Through the Public Civil Action Law, an important instrument for controlling environmental and urban impacts, it sought to bring large real estate developments into compliance with Brazilian environmental and urban planning legislation. Thus, one can conclude that the Federal Public Ministry, with the advent of the Public Civil Action Law, presents itself as an important social actor in the inspection and preservation of environmental and cultural heritage resources.

The environmental and urban planning legislation in Brazil are historically in the world's legal vanguard with the insertion of principles of Environmental and Urban Planning Law in their norms, even before they become popular in the international debate, however, they often come up against political and economic interests minimizing their effectiveness.

The fundamentals of the City Statute are disrespected by the municipal public administration in the elaboration of master plans. Important instruments such as environmental licensing and the environmental impact study/environmental impact report, aiming to ensure environmental and cultural preservation, are enshrined in the National Environmental Policy, but are disregarded by the state environmental management.

In certain cases, large real estate developments violate the principles of Environmental and Urban Planning Law, as well as environmental and urban planning legislation, irreversibly impacting the environment and accentuating social and spatial segregation. However, in view of the severe environmental impacts produced or projected, and the strong action of the Federal Public Ministry and environmental movements, a greater number of projects have been halted.

The eight case studies analyzed configured environmental conflicts, related to large real estate developments, promoters of environmental impacts and violations to the Ecological Rule of Law, to the principles of Environmental and Urban Planning Law, to constitutional rights and to the Brazilian environmental and urban planning legislation, with direct participation of Costão do Santinho Resort, Complexo Urbanístico Porto da Barra, Florianópolis Village Golf Resort, Condomínio Residencial Costão Golf, Floripa Shopping, Il Campanário Villaggio Resort, Shopping Iguatemi Florianópolis, Parque Hotel Marina Ponta do Coral, Prefeitura Municipal de Florianópolis, Instituto de Pesquisa e Planejamento Urbano de Florianópolis, Superintendência de Serviços Públicos de Florianópolis and Instituto do Meio Ambiente de Santa Catarina.

The systematization of this research demonstrated the ineffectiveness of Brazilian environmental and urban planning legislation in environmental conflicts related to large real estate developments in Florianópolis, supported by the systematic reproduction of irregularities in the municipal public administration and in the state environmental public management, characterizing “organized irresponsibility”.

The irregularities in the municipal administration occur from the elaboration of less restrictive master plans, the non-charging of neighborhood impact studies, and the undue granting of building permits. In the state environmental public management, irregularities occur through the improper granting of environmental licensing, the omission of environmental licensing requirements, and the approval of insufficient environmental impact studies.

This study evidenced the need for a new environmental rationality, which enables the social reappropriation of nature, guided by new principles, capable of considering the limits imposed by ecology on economic development. The current strategies for overcoming the global environmental crisis have been fatal, demonstrating the economic incompatibility of capitalism with sustainability and the appropriation of nature by capital, since the theory of value does not include the value of nature, including only exchange value. Environmental complexity requires rational environmental management to overcome the crisis, supported by the preservation of multiple cultural identities and democratic community participation in both the global and local spheres (LEFF, 2006).

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