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THE ENVIRONMENTAL REGULARIZATION PROGRAM (PRA) AS A NEW MODEL OF RECOVERY OF ENVIRONMENTAL LIABILITY: FAILURE OF "PUNIR TO CONSCIOUS"

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ABSTRACT

Brazilian environmental legislation, and especially the New Forest Code of 2012, sought to incorporate prerogatives of sustainability and sustainable development into Brazilian Environmental Law, culminating in meeting the needs of the current generation without compromising the needs of future generations. The legislation had aspects such as amnesty for crimes occurred prior to the year 2008, seeking to commit the perpetrators of environmental crimes to the solvency of their environmental liabilities, which was harshly criticized by Brazilian doctrine. The present study seeks to analyze the breakdown of environmental protection paradigms based on a real diagnosis of the Brazilian environmental liabilities from the New Forest Code, the Environmental Regularization Program and aspects related to the constitutionality from the judgment of the Direct Action of Unconstitutionality 4,901 by the Federal Supreme Court in February 2018.

Keywords: Environmental Regularization Program; Environmental liability; Forest Code; Amnesty.

O PROGRAMA DE REGULARIZAÇÃO AMBIENTAL (PRA) COMO NOVO MODELO DE RECUPERAÇÃO DO PASSIVO AMBIENTAL: FALÊNCIA DO "PUNIR PARA CONSCIENTIZAR"

RESUMO

O novo Código Florestal de 2012 traz como um dos institutos inovadores o Programa de Regularização Ambiental (PRA) quanto à recuperação da degradação do meio ambiente no campo. Busca-se, pelo referido instrumento político-administrativo, viabilizar uma tutela ambiental mais efetiva, uma vez que este instrumento faz um diagnóstico do passivo ambiental por meio do Cadastro Ambiental Rural (CAR), e propõe uma recuperação monitorada, com prazos e métodos condizentes com a realidade dos proprietários e possuidores rurais. Este novo código vem substituir o modelo tradicional do "punir para conscientizar", baseado no princípio do poluidor-pagador, que, notoriamente, demonstra ineficácia quanto à tutela constitucional do meio ambiente ecologicamente equilibrado. Parte-se de outro pressuposto, qual seja, a conversão da recuperação do passivo ambiental em prestação de serviços ambientais. Com relação à metodologia, o presente artigo baseia-se em pesquisa bibliográfica e jurisprudencial, com a utilização dos métodos hipotético-dedutivo e indutivo.

Palavras-chave: *Programa de Regularização Ambiental; Passivo Ambiental; Código Florestal; Anistia.*

INTRODUCTION

Law increasingly deals with environmental issues, especially considering sustainable development as an informing principle of political and normative construction, in the search for ecological balance and mitigation of environmental impacts in the contemporary world. In the forest area, the importance of the new Brazilian Forest Code of 2012, which has the challenge of reconciling agribusiness and the economic sector in the international scenario, and the protection of forest environmental assets, which are also very prominent in the country, is well-known.

Within this context, said forest legislation, despite the recognized policy of punishment of the polluter, is part of a novel assumption about the indispensability of knowing the real Brazilian environmental liabilities, through instruments such as the Rural Environmental Registry (CAR), and to make possible a proposal more in line with the conditions of recovery and preservation of forest assets, as shown in the Environmental Regularization Program (PRA).

The legislator emphasized the importance of solvency of environmental liabilities at the national level, especially for those agents that had negative impacts on the environment previously, in the mid-second half of 2008, from the conception of a process of environmental recovery deferred over time and with conditions that give the impression that it is a real amnesty to the polluters, which in this article seeks to demystify. We can see a paradigm shift, since the bankruptcy of the current model regarding environmental protection, essentially punitive (polluter-pays principle), is notorious.

The study in question starts from a general analysis of sustainable development, going through issues such as education and environmental management, environment as a fundamental good protected legally. Given this context, it becomes possible to deepen the structure and proposal of the Environmental Regularization Program presented by the New Forest Code, as a model based on recovery as an environmental service, replacing the "punish to raise awareness", the main policy adopted by public environmental Protection.

The research goes beyond bibliographical and documentary, emphasizing also the jurisprudence, in particular the Federal Supreme Court, which had the challenge of making feasible the novel forest legislation, in particular the Environmental Regularization Program, in concentrated control of constitutionality.

1 THE LEGAL INSTITUTES INHERENT TO THE PROTECTION OF THE ECOLOGICALLY BALANCED ENVIRONMENT, AS FUNDAMENTAL RIGHT

Sustainability, environmental management and education, as well as the environment as a fundamental asset are institutes that are related and contextualize the administrative and judicial instruments of supervision.

The concept of sustainability has been increasingly deepened in the most diverse areas of knowledge. In management studies, for example, organizations seek to deepen possibilities for designing environmental management. The same applies to law, which, based on legislation, seeks the consolidation of sustainability in a general character, establishing the parameters from which the relations between man and nature are considered adequate for the preservation of the environmental legacy for current and future generations.

According to Nascimento (2012), although environmental management is a recurring topic in contemporary society, it is not a new concept, but a conception that assumes greater importance in modernity, given the damages caused by the interaction of man with environment in an irresponsible way, seeking the accumulation of wealth without worrying about environmental degradation, which causes serious consequences to be perceived by all human individuals.

Environmental management, therefore, came to assume a prominent position due to the correlation between economic growth and environmental preservation. Altenfelder (2004) points out that, since the Industrial Revolution, there is a need for reflection on sustainable precepts, since the consumption of natural resources and pollution have developed at an accelerated pace, significantly harming the environment.

According to Aquino et al. (2015, p. 44), one of the main prerogatives of today's society lies in sustainable development. Sustainability would be the capacity to meet current needs (whether of a person, a group of people or even an organization), without compromising the needs of future generations, so that, historically, in this intrinsic relationship between man and resources, there is a concern that this interaction does not lead to a generational discontinuity.

Nascimento (2012) points out that the degradation of natural resources (be they renewable and nonrenewable), pollution and the creation of risk situations have intensified in the last decades, since, from 1960 on, there

has been a significant increase in environmental awareness, a landmark of environmental management. Using the arguments of Raquel Carson in his work "A Primavera Silenciosa" (The Silent Spring), the author emphasizes the importance of environmental management:

> It was in 1962 that the author Raquel Carson launched this book, which refers to the understanding of the interconnections between the environment, the economy and issues related to social welfare. In this decade, there has been an increase in environmental concern with the impact of anthropic activities on the environment (...). In the late 1960s, a group of scientists who advised on the so-called Club of Rome using mathematical models warned of the risks of continued economic growth based on non-renewable natural resources (NASCIMENTO, 2012, p. 17-18).

Ortega (2003) points out that, specifically at the national level, several landmarks have sought to foster environmental management, such as the creation of the Land Statute in 1964, the Forest Defense Code in 1965 and the Wildlife Protection Act of 1967, the Brazilian Institute for Forest Development and the establishment of indigenous reserves, national parks and biological reserves, aspects that sought to optimize environmental awareness and the importance of environmental management itself.

Meyer (2000) points out that environmental management aims at maintaining a healthy environment, providing sustainability, acting on the changes caused by the use and disposal of goods and taking into account the debris generated by human activities, from the establishment of a action plan that is feasible in the technical and economic spectrum, with the precise definition of priorities. Various instruments of monitoring, control, taxation, imposition, subsidy, disclosure, works and mitigation actions are used, as well as training and awareness raising, based on environmental scenarios in a given area, seeking solutions to problems that are diagnosed.

According to Zanardi (2010), concern and environmental curiosity have always been present in humans; however, the starting point for the modern conception of environmental education was given in 1962, with the publication of the literary work "Silent Spring" by the journalist Rachel Carson, who warned about the harmful effects of human actions in the face of the environment, leading to the loss of quality of life resulting from the indiscriminate and excessive use of chemical products (such as pesticides, for example) and the subsequent effects on the environment.

Even in the 1960s (more specifically in 1968), the Council for

Environmental Education in the United Kingdom was formed, consisting of thirty specialists from various fields of expertise who met in Rome to discuss the crisis moment and the future of humanity. In 1972, the so-called "Club of Rome" produced the report entitled *The Limits of Growth*, which denounced the negative impact of the increase in world consumption, which led humanity to a limit of growth and possible collapse, considering the reduction of consumption as a social priority, denouncing the degradation of the environment, which suggested a global approach to solving environmental problems. The document also recommended the development of environmental education as a critical element to combat environmental degradation (ZANARDI, 2010).

Tannous and Garcia (2008) point out that in 1975 the United Nations Educational, Scientific and Cultural Organization (UNESCO) held in Yugoslavia the International Meeting on Environmental Education, producing the Belgrade Charter, which defined that environmental education should be conceived in a multidisciplinary, continuous and integrated to the regional differences, directed to the national interests. In this sense:

> The Belgrade Charter, written in 1975 by 20 environmental education experts from around the world, states that the goal of environmental education is to develop a citizen who is aware of the total environment (concerned with the problems associated with that environment and who has the knowledge, attitudes, motivations, involvement and abilities to work individually and collectively in search of solutions to solve current problems and prevent future ones. The Charter of Belgrade therefore expressed the need for the exercise of a new global ethic, which would lead to the eradication of poverty, hunger, illiteracy, pollution and human exploitation and domination (...) The Belgrade Charter is considered a historical document in the evolution of environmental awareness (TANNOUS, GARCIA, 2008, pp. 186-187).

Yet the fundamental historical conception of environmental education stems from humanity's growing concern about the impacts and degradation of natural resources. The aforementioned facts elucidate the growth of such concern and the global effort to make environmental education a trend to be practiced internationally, influencing, above all, the modern conceptions of Environmental Law and, consequently, the legislative production on the subject.

According to Koller (2004), an egalitarian society that seeks full

development must be based, among other aspects and fundamentals, on environmental and educational issues.

Sustainability is an attempt to integrate economic and social life with the flows of biological cycles; that is, the promotion of the supply of the human needs of the current generation without compromising the environment in which we live and the satisfaction of the next generations (CALIA, 2007). Moreira and Stamato (2009) relate sustainable development to the capacity of a productive system to sustain itself, at an appropriate level, over an indeterminate period of time, adapting its productivity practices in a continuous way, fomenting its economic, social and environmental conditions together.

Steinbrenner, Velloso and Cunha (2015) correlate that the idea of sustainability is linked to a broad and complex idea of the lasting equilibrium between humanity and the environment, seeking the integration of several dimensions (social, cultural, economic and environmental), leading in considering the place as the central stage of territoriality, presupposing the protagonism of local actors as a central factor in the construction of sustainable local human development.

> The term socio-environmental, in turn, we understand [...] is not a simple neologism that refers to an abstract concept, increasingly used in several sectors, but a "unit of contraries", whose unification of the term + environmental) indicates a political movement and the emergence, albeit at a slow pace, of a new relationship between nature and culture. [...] there is a lack of a socio-environmental perspective on the reality in which we live, a view in which man and nature are inseparable and solutions to social and environmental issues are integrated (STEINBRENNER; VELLOSO; CUNHA, 2015, p. 2).

In this way, sustainability is considered as one of the main prerogatives of humanity today, being a constant concern that integrates the most diverse areas of knowledge and human action. It is within this context that the aspects related to environmental legislation are deepened, and an analysis of the Brazilian environmental legislation is carried out.

According to Wainer (1999), the historical antecedents of the Brazilian environmental legislation refer to the Philippine Ordinances, which established standards of control and vegetal exploration at national level, besides disciplining land use, defunding of river waters and regulating the practice of hunting. The author teaches that it was from

the international meetings focused on the debate on the environment and development that the first environmental legislation was started to promote the construction of a sustainable society, that is, able to satisfy its needs without compromising the needs of future generations.

The basis of Brazilian environmental legislation, currently, is found in Article 225 of the Federal Constitution of 1988, which, in a pioneering way, brought true systematization of the ecologically balanced environment, considered a fundamental right.

> Art. 225. Everyone has the right to an ecologically balanced environment, a common good used by the people and essential to a healthy quality of life, imposing on the public power and the community the duty to defend and preserve it for present and future generations. Paragraph 1 - To ensure the effectiveness of this right, it is incumbent upon the public authority: I - to preserve and restore essential ecological processes and to provide for the ecological management of species and ecosystems; II - preserve the diversity and integrity of the genetic heritage of the country and supervise the entities dedicated to the research and manipulation of genetic material; III - to define, in all units of the Federation, territorial spaces and their components to be specially protected, being alteration and suppression allowed only by law, any use that compromises the integrity of the attributes that justify its protection is prohibited; IV - require, in the form of the law, for the installation of a work or activity potentially causing significant environmental degradation, a previous environmental impact study, to be publicized; V - to control the production, marketing and use of techniques, methods and substances that may endanger life, quality of life and the environment; VI - promote environmental education at all levels of education and public awareness for the preservation of the environment; VII - protect fauna and flora, prohibited by law, practices that jeopardize their ecological function, cause extinction of species or subject animals to cruelty (BRAZIL 1988, p. 127).

The Brazilian constitution of 1988, in such a way, established the importance of seeking ecological and environmental balance and imposing sustainable development as a prerogative of society. Gomes (2008) teaches that until the early 1980s there was no specific legislation to protect the Environment in Brazil, so that the 'legislations' that dealt with the subject consisted only in scarce regulations with regulations related to water and forests, with a more economic-than- environmental protection objective, so that none of the constitutions prior to 1988 applied specific rules of a true environmental protection system, except for the Federal Constitution

of 1946, which made reference to environmental law in establishing the Union's competence to legislate on the protection of water, forests, hunting and fishing.

Brazil and its legislation only turned their attention to the environment from a global trend that involved sustainability and environmental concern, especially with reference to the Declaration of the Environment, adopted at the United Nations Conference in Stockholm in year of 1972, where the fundamental right to the preservation of the environment and the right to life arises (GOMES, 2008). This Declaration enshrined that the human being had a fundamental right to freedom, equality and a life with adequate conditions of survival (ie, quality of life), and to preserve and improve the environment for the present and future generations:

> It was in this circumstance that the environment came to be considered essential so that the human being could enjoy the fundamental human rights, among them, the very right to life. The look at the protection of the Environment, consolidated in Stockholm, made, therefore, that most of the people came to think Nature in a different way. In Brazil, until then, without a specific legal system, the Environment was guaranteed by common provisions and was characterized by the protection of occupational safety or hygiene, protection of some health aspects or taking care of some unhealthy and dangerous industrial activities. However, internal and external pressures, motivated by social, cultural, political and economic factors, contributed to the resumption of the discussions initiated in Stockholm, with applications focused on the Brazilian territory (GOMES, 2008, p. 4).

Within this context, the advent of Federal Law no. 6. 938, 1981, establishes the National Environmental Policy, which in the meantime established political-administrative instruments aimed at protecting the environment, which is considered as the set of physical, chemical, and biological conditions, laws, influences and interactions, harboring and ruling life in all its forms (WAINER, 1999). However, the 1980s consisted of a very important framework for Brazilian legislative consolidation regarding concern about the environment and sustainability, despite popular pressure and international trends since the 1970s (Stockholm Declaration).

The environment, therefore, based on these prerogatives, came to be considered a "fundamental good". This, third genre of good, created by Constitutional Law according to Fiorillo (1999), before Public and Private

Law. A good thing to which people do not bind through the property institute, which is based on use, enjoyment, fruition and disposition. For the author, the 1988 constituent defines the environmental good as that of common use of the people, who, in turn, can use it, but without making it an object of property, since it is nobody's, at the same time which has, for each citizen, an essential and fundamental value.

> There is no denying that in Brazil, from the remote times, there were norms directed towards the protection of nature, however, not expressly and comprehensively as in the present. Global awareness made it possible for the Federal Constitution of 1988 to establish the proximity between the Environment and human and social content, thus allowing everyone the right to have the conditions that govern life not be changed in an unfavorable way, because they are essential. The Environment has been treated in an unprecedented way, as a right of all, well used by the common people, and essential to the quality of life, a condition which, moreover, can be seen in the preamble of the Federal Constitution. At the moment when it establishes a democratic State destined to assure to the Brazilian society, among other rights, the one of well-being, consequently preaches the idea of a State that develops activities in the sense of the man to feel in perfect physical or moral condition, (GOMES, 2008, p. 7). This is the case, however, because of the fact that there is a lack of environmental protection.

In addition to the Federal Constitution of 1988, and the National Environmental Policy (Law no. 6. 938 / 81), other legislations are of fundamental importance regarding the environmental protection system. Milaré (2013) presents that the Brazilian Forest Code (Law no. 4,771, dated 1965) addressed pioneering issues related to fundamental material law, even if not comprehensively. Thus, it is pointed out as one of the main instruments that deal with Environmental Law, since its first versions.

2. ON THE NEW BRAZILIAN FOREST CODE AND THE ENVIRONMENTAL REGULARIZATION PROGRAM (PRA)

The Forest Code of 1965 was the pioneer legislation that dealt with environmental aspects at the national level, according to Milaré (2013).

According to Fonseca (2012), the new Forest Code (Law no. 12. 651 / 2012) sought to be more realistic, adjusting the forest legislation

in the realm of the country's experienced reality, considering, on the one hand, imperativeness of environmental preservation, without disregarding that development is also necessary for a healthy quality of life, respecting the legal acts constituted under the aegis of previous legislation. For the author, it would be of no use that novel legislation was utopian, aimed at the maximum preservation of the environment without being attached to the fact that people must produce for the maintenance of society.

The new Forest Code is directly related to the concept of sustainability, to the concept in which the balance of the environment and its preservation are considered indispensable, however, without neglecting the necessary exploitation of forest resources, the basis of the Brazilian economy. It is necessary to consider, in all the scope that correlates the new Forest Code and sustainability, that socioeconomic development is also a prerogative of humanity.

> Preserving is expensive. And if the benefit is for the whole community, the costs must also be socialized. Thus, the Code envisaged new ways for forest recovery, with incentives for small producers, enabling the recovery to effectively operate, without anyone being harmed. It seems that a single standard dealing with preservation and exploitation denotes the possibility of the combination of the two factors, allowing their compatibility. Peculiarities will emerge over time, but this is what leads to legislative evolution. In this first moment, it seems that the New Forest Code has emerged as a step forward, both in terms of preservation and in terms of sustainable environmental exploitation (FONSECA, 2012, p. 24).

According to Pereira (2013), the new Forest Code brought several changes, in detriment of previous legislation. Among the most significant are the alteration of the word "conservar" for "preservar" or "proteger" and the "amnesty" for deforestation carried out until July 22, 2008. The author points out that the concern to minimize the impacts generated by the technological innovations promotes the creation of environmental laws that seek not to degradation and the recovery of the natural landscape, so that the creation of laws or measures of environmental protection is endowed with interests with based on ecological awareness. The success of the application of the New Forest Code, therefore, depends on the relationship of the legislation with the social aspects of the agents involved, ie, the creation and advent of the law, by itself, does not guarantee environmental conservation, especially in Brazilian rural areas.

The new Forest Code (Law no. 12,651 of May 25, 2012), amending the laws numbers 6,938, dated August 31, 1981, 9,393, of December 19, 1996, and 11,428, of December 22, 2006 and repealing laws numbers 4,771, dated December 15, September 1965 and 7,754 of April 14, 1989 and Provisional Measure No. 2,166-67 of August 24, 2001, in its Article 1, establishes general norms on the protection of vegetation, permanent preservation and reserve areas legal, forestry, supply of raw forest, control of the origin of forest products and control and prevention of forest fires, providing economic and financial instruments to achieve its objectives.

The sole paragraph of said provision indicates that the new law, with the objective of sustainable development, establishes in its items I to VI the following principles:

> I - Affirmation of Brazil's sovereign commitment to the preservation of its forests and other forms of native vegetation, as well as biodiversity, soil, water resources and the integrity of the climate system, for the well-being of present and future generations (Included in Law No. 12,727, of 2012).
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> II - Reaffirmation of the importance of the strategic function of agricultural activity and the role of forests and other forms of native vegetation in sustainability, economic growth, improvement of the quality of life of the Brazilian population and the presence of the country in the national and international food markets and bioenergy (Included by Law 12,727, of 2012).
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> III - Government action for the protection and sustainable use of forests, consecrating the country's commitment to the harmonization and harmonization between the productive use of land and the preservation of water, soil and vegetation (Included by Law 12. 727, 2012).
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> IV - Common responsibility of the Union, States, Federal District and Municipalities, in collaboration with civil society, in the creation of policies for the preservation and restoration of native vegetation and its ecological and social functions in urban and rural areas (included by Law 12,727, 2012).
>
> V - Promotion of scientific and technological research in the search for innovation for the sustainable use of soil and water, recovery and preservation of forests and other forms of native vegetation (Included by Law No. 12. 727, of 2012).
>
> VI - Creation and mobilization of economic incentives to promote the preservation and recovery of native vegetation and to promote the development of sustainable productive activities (Included by Law No. 12. 727, of 2012).

According to Lehfeld et al. (2015) this device does not consist

of a single biodiversity defense code, but rather a legislation dealing with vegetation from the agribusiness perspective, requiring attention to the possible impact, in specific cases, of other forestry, from protecting fauna and soil stability to protecting water quality, combating desertification, mitigating the effects of climate change, protecting the traditional knowledge of forest peoples and even defending of ecological heritage from the cultural point of view.

In this light, recognizing the need to reconcile the protection of forest resources, such as Legal Reserve, Areas for Permanent Preservation or even Restricted Use, with the development of agribusiness, the new Forestry Code brought to light a normative proposal of environmental recovery through the Environmental Regularization Program (PRA). According to Lima (2016), the new code established, for the first time, the environmental regularization of agricultural properties, requiring cooperation of public entities, producers, productive chair and organizations, allowing the expansion of agricultural production and, at the same time, to promote environmental preservation so that the legislation is effective in achieving its objectives. Basically, three pillars are based on the Forest Code: the Rural Environmental Registry (CAR), the State Regularization Programs (PRA), which guide the regularization process and the Producer's Terms of Commitment.

Regarding the Environmental Regularization Program, the aforementioned author states that

> The Environmental Regulation Program (PRA) is a set of rules on the process of regularization before the new Forest Code. Based on the Rural Environmental Registry (CAR), which will define the liabilities of PPAs and RLs to be regularized, it provides that the producer must propose a Recovery Project for Degraded or Changed Areas (PRADA) that, once approved by the environmental agency, will be the basis of a Commitment Term signed by the producer. The PRAs should be clear about the regularization of deforested areas before and after July 22, 2008 (LIMA, 2016, p. 14).

According to Uba (2016), the Environmental Regularization Program contemplates the set of actions and measures of a technical-environmental nature that the Public Power will require of the owners and rural owners, with the purpose of adjusting their respective property to the forestry legislation, promoting the regularization of their areas. The

legislator established that the Union, the States and the Federal District should implement the Environmental Regularization Program of rural properties and properties, with the objective of adapting them to the terms of the Transitory Provisions of the New Forest Code.

4 ENVIRONMENTAL REGULARIZATION PROGRAM : PROPOSAL OF A NEW MODEL OF DIAGNOSIS AND RECOVERY OF ENVIRONMENTAL LIABILITY

According to Martins and De Luca (1994, p. 26), "environmental assets are all assets of the company that aim at preservation, protection and environmental recovery and should be segregated in a separate line in the Balance Sheet. "They can be represented by the accounts that are in current and noncurrent of said accounting statement (*current assets:* capital whose purpose is to fund the activity of the entity that will cause the increase in shareholders' equity. They are: cash, banks, inventories, financial investments, capitalization bonds, other credits; *non-current:* capital without turnover, but important in the operation of the end-of-life business: investment, fixed assets, deferred).

The liability, in turn, is any business obligation to third parties. This way, we understand the environmental liability as the representativeness of damage caused to the environment by the enterprise, whether public or private, which happens to also represent an obligation and social responsibility of the company or even the Government on environmental aspects (ADES, 2015).

The environmental liability is evident when there is aggression to the environment due to the execution of economic or productive activities without having any project for the recovery of such impact (BASSO, 2005). In Brazil, the environmental liability, as an accounting institute, is very recent, so that companies have difficulty in recognizing the appropriate treatment to be given regarding their registration and disclosure.

When we speak of environmental liability and social responsibility, we should readily understand that damage to our ecosystem must be minimized, and the obligation to act of the company is clear by virtue of Law No. 9605/1998, which provides for criminal and administrative sanctions derived from conducts harmful to the environment. In order for the company to comply with the legislation, it will evidently have

a high financial cost, since it must acquire equipment that will reduce its environmental impact (filters, machinery, products and labor). For example, in the case of a paper-producing company whose raw material is pulp extracted from trees, the legislation obliges it to plant native seedlings with proportionality relative to how much was exploited by the same.

The recognition of the environmental liability is of paramount importance to the organization, since such legal obligations to repair damages to the environment are not detected in the act of negotiation, this could end up generating a series of significant damages and negative effects to the buyer (ADES, 2015). According to Ribeiro (1992), the recognition of environmental liabilities can originate from any event or transition that reflects the business interaction with the ecological environment, whose sacrifice of economic resources will occur in the future, with the acquisition of assets to contain the impacts environmental, inputs included in the operational process for non-production of toxic waste, expenses for the recovery of contaminated areas, etc.

According to Philippi Jr. (2014), although planting is done in a small area, agriculture and environmental activities can culminate in large-scale environmental impacts such as contamination of water resources, the indiscriminate use of pesticides, erosion of soils, destruction of native forest, among others. Family farming and agribusiness are thus areas of activity that end up impacting directly on the environment, generating environmental liabilities.

Lima (2016) points out that the Environmental Regulation Program (PRA) has an adhesion procedure that consists of seven steps: registration in the Rural Environmental Registry (CAR), application for adhesion to the Regularization Program and presentation of the Recovery Project for Degraded Areas or altered, analysis by the environmental body of said project and its approval, signature of the Term of Commitment, and monitoring of compliance of said program by the applicant.

This is a proposal of the new Forest Code considering the recognition of the relevant environmental liabilities in the national scenario and the political-administrative difficulties of the current model of environmental recovery, based on the polluter-pays principle, reduced to the punishment of the one who exploits forest goods in disagreement with the legislation in force.

According to Machado and Saleme (2017), the PRA is an initiative of the federative entities that must take the lead in order to make possible

the regularization of properties with environmental liabilities, so that their adhesion establishes a proposal more in line with Brazilian rural reality, lack of supervision by public environmental agencies, disproportionate fines and no criteria that make payment impossible, as well as the promotion of an awareness of environmental protection, and the frequent judicialization of these issues that fall into the delays of the courts.

> The innovation brought about by the Law is the obligation of this implementation to be effective in all states. **It is often difficult to register rural properties, as they have peculiarities that make it difficult to supervise and monitor activities**. Among the difficulties that are found in rural properties, the most complex was solved through georeferencing, which lends itself to the exact sizing of foreign exchange and confrontations. **Another complex aspect is the diagnosis of environmental liabilities that may exist in rural property**. All these elements were the object of reflection by the legislators and technicians who elaborated the text, especially since it was already extremely difficult to indicate the location of the legal reserve in the rural property or possession (MACHADO, SALEME: 2017, p. 129, emphasis added).

One of the functions of the Rural Environmental Registry (CAR) is to make available on the Internet all aspects related to the environmental regulation of rural properties in the national territory. The diagnosis of the environmental liability includes the location of the legal reserve informed (dependent on the approval of the environmental agency in charge of the CAR after the SISNAMA body), indicating the state of the property, that is, the conservation of the natural reserves or the existing biome on its surface (LIMA, 2016).

Ellovitch and Valera (2013) point out that although the forest legislation is subject to criticism by the doctrine and jurisprudence in relation to the CAR regulations, the feasibility of the PRA was duly included to establish the deadlines for the correction of environmental liabilities, so that the Environment Council of each member state should define actions or possible activities with a lower environmental impact.

> Article 59 of Law 12. 651, of 2012, indicates that federal entities must, within one year, counted from the publication of the Law, implement environmental regularization programs. Registration in the CAR will automatically imply that of the Sicar. **The person responsible for the declaration should clarify the environmental liability**

> **on the property**. Under the terms of Decree 8235, of 2014, after registration, the owners can proceed to environmental regularization, through adhesion to the environmental regularization programs of the states and the Federal District. It can be effected by recovery, recomposition, regeneration or compensation. These last can only be applied in legal reserves as specified in paragraph 5 of Law 12. 651, 2012. **From the registration in the CAR and the finding of the environmental liability, the owner can request immediate adhesion to the PRA. Article 4 of the aforementioned Decree states how the states and the Federal District should implement the program, making it clear that the competent bodies should sign a single term for rural property commitment**. In the case of regularization of compensation in legal reserve, it is necessary to present necessary supporting documents (MACHADO; SALEME, 2017, p. 234).

Once the PRA has been approved, surveys may be carried out on the property, with the purpose of verifying compliance with the Degraded or Altered Areas Recovery Project. The rural properties must be regularized before an adequate inspection, effecting the diagnosis of the environmental liabilities existing in the rural property. However, in order to break the paradigm of environmental protection with the aim of promoting sustainability (fundamental prerogative of current forest legislation), it is necessary to establish an effective monitoring system in the country, under penalty of PRA being equivalent to the current model of lack of inspection by environmental agencies.

According to Lima (2016), in the Environmental Regularization Programs, the term of commitment is made possible in which the owner or rural landowner undertakes to recover, recompose, regenerate or compensate for environmental liabilities that have promoted impact responsibility.

In view of this situation, it is pointed out that an Environmental Regulation Program (PRA), structured in an appropriate manner, contemplates the mitigation of environmental impacts and liabilities as a whole, seeking the preservation and balance of the environment.

4 ON THE CONSTITUTIONALITY OF THE FOREST CODE AND ENVIRONMENTAL REGULARIZATION PROGRAMS: JURISPRUDENTIAL ANALYSIS OF THE DIRECT ACTION OF UNCONSTITUTIONALITY NO 4. 901/18

It is also necessary to analyze the issues involving the constitutionality of the Environmental Regularization Programs, based on the recent jurisprudential understanding, on the judgment of the Direct Action of Unconstitutionality ADI 4. 901/DF, of February 2018, carried out by the Federal Supreme Court (STF). In the said ADI, among other aspects, paragraphs 4, 5, 6, 7 and 8 of article 12 of the Forest Code were questioned, raising, among other arguments, environmental damage resulting from legislative changes, which, in theory, weakened the regime of protection of areas of permanent preservation and legal reserve, which could, according to the arguments raised, be extinguished.

According to the Supreme Court, the Forest Code complies with the constitutional norm of validity, especially regarding the environmental recovery process established by the Environmental Regularization Program (PRA). Thus, the suspension of the punishment of the person who committed a crime, or even environmental administrative infraction, before July 22, 2008, by joining the PRA, does not violate the Federal Constitution. This is true conversion in payment for environmental services, since the extinction of punishability will occur only if there is the effective fulfillment of the term of commitment of regularization of the property or rural possession, according to the Project of Recovery of the Degraded or Amended Area approved by the environmental body.

The vote of Minister Celso de Mello contemplated that the rule included in article 60 of the aforementioned decree is based on article 48, item VIII, of the Federal Constitution (amnesty), not being covered with arbitrary content and without compromise of the essential nucleus that qualifies the regime constitutional protection of the environment, inducing agents who have committed certain environmental crimes prior to July 22, 2008 to solve their environmental liabilities.

In the same sense, the Supreme Court's jurisprudence also considers that under the terms of paragraphs 4 and 5 of article 59 of the Forest Code, there is no unconstitutionality, recognizing as legitimate the benefit attributed to the owner or rural owner within the context of the Program of Environmental Regulation. Constitutionality was recognized in cases

of amnesty in the face of the commitment to solving the environmental liability, provided that the legal and administrative requirements of the PRA, regulated by the Union and also by the member states, are complied with.

FINAL CONSIDERATIONS

At the present time, it is fundamental to rethink about the protective measures of the environment, especially in the field. The environmental liabilities of rural properties are relevant and should be considered as parameters for the effective performance of public agencies and entities of the direct and indirect public administrative area. In this sense, it was perceived that the "punish to raise awareness" model was not enough for this environmental recovery. New strategies are imperative for the pursuit of an ecologically balanced environment (principle of sustainable development).

The present study sought to analyze the importance of the new forest legislation, in true breakdown of paradigms until then supported by the doctrine and legislation regarding environmental protection (polluter pays principle).

In this sense, the viability of recovering environmental liabilities was demonstrated by a new model introduced by the Forest Code of 2012, namely, the Environmental Regularization Program (PRA). The environmental amnesty, considered as the suspension and extinction of the punishment of the one who suppressed native vegetation or forests until July 22, 2008, does not violate the Constitution, as considered by the Federal Supreme Court in February 2018, since it is recognized that a reasonable proposal in the current protective environment (bankruptcy of the punitive model based on the application of the polluter-pays principle).

An Environmental Regularization Program, in this sense, provided that it is structured by the responsible federal entity, in an appropriate way, contributes to the full attendance of the issues that involve environmental liabilities in rural properties, and environmental recovery processes (recomposition, compensation and regeneration) in a manner more in keeping with the difficulties of seeking sustainability in an industry that involves great economic interest in its exploration.

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