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COLLECTIVE MOBILIZATION AND JURISDICTIONAL PROTECTION OF THE ENVIRONMENT: MAIN CHALLENGES IN LIGHT OF THE 1988 FEDERAL CONSTITUTION

Artur Cortez Bonifácio[1]
Universidade Federal do Rio Grande do Norte (UFRN)

Jéssyca Cleópatra Yury Soares dos Santos[2]
Universidade Federal do Rio Grande do Norte (UFRN)

ABSTRACT

This research addresses community mobilization and its relationship with the jurisdictional protection of the environment, emphasising the democratic challenges inferred from the constitutional norms that govern environmental matters. It presents public civil action and popular action as judicial mechanisms able to interfere in the directions of environmental preservation. It discusses the role of the Eco-Constitutional State, limited in its practice by Environmental Law. It addresses the plurality of constitutional interpreters, with a view towards their mobilization for the promotion of environmental protection. It debates participatory democracy from the perspective of certain doctrines. It also carries out a critical analysis of the responsibilities of the legitimized parties for environmental protection, considering the expansion of environmental education as one of the main democratic challenges of the day. It mobilizes the deductive method, proceeding from general notions on the topic to an analysis of its particular aspects. The chosen methodology was the bibliographic research, with the presentation of different authors' perspectives on the issue. It became clear that the Judiciary is now conferred with an unprecedented degree of relevance, an expression of the ongoing crisis of representativeness and of the uncertainties experienced in contemporary society. The article concludes that collective mobilization is a challenge precisely because its ideal format is nowhere to be found, making it necessary for the actors involved

1 Postdoc in Legal and Political Sciences from the University of Lisbon (ULISBOA). Doctorate and Master in State Law from the Pontifical Catholic University of São Paulo (PUC-SP). Law graduate from UFRN. Professor at UFRN. Member of the Academy of Legal Letters of Rio Grande do Norte. Email: artur_bonifacio@yahoo.com.br

2 Master's student in UFRN's Graduate Program of Law. Law graduate from UFRN. Federal public servant. Email: jcleosantos@gmail.com

in such a process to wait for the action of the Public Power in the form of policy formulation.

Keywords: democratic challenges; collective mobilization; jurisdictional protection of the environment.

MOBILIZAÇÃO COLETIVA E TUTELA JURISDICIONAL DO MEIO AMBIENTE: PRINCIPAIS DESAFIOS À LUZ DA CONSTITUIÇÃO FEDERAL DE 1988

RESUMO

A presente pesquisa aborda a mobilização da coletividade e sua relação com a tutela jurisdicional do meio ambiente, com ênfase nos desafios democráticos inferidos a partir das normas constitucionais acerca da matéria ambiental. Apresenta a ação civil pública e ação popular como mecanismos judiciais capazes de interferir nos rumos da preservação ambiental. Discute o papel do Estado Constitucional Ecológico, ao estabelecer como premissa sua atuação inserta nos limites estabelecidos pelo Direito Ambiental. Aborda a pluralidade de intérpretes da Constituição, com o intuito de que estes se mobilizem para promover a proteção ambiental. Debate a democracia participativa sob a perspectiva de determinados doutrinadores. Analisa, ainda, as responsabilidades dos legitimados para a proteção ambiental, de forma crítica, ao elencar a ampliação da educação ambiental como um dos desafios democráticos. Utiliza o método dedutivo, uma vez que serão apresentadas noções gerais sobre o tema e, em seguida, uma análise sobre seus aspectos particulares. A pesquisa bibliográfica com a apresentação da perspectiva de diferentes autores sobre o tema foi a metodologia empregada. Percebeu-se que o Judiciário apresenta sobremaneira relevância, em virtude da crise de representatividade atual, bem como nas incertezas vivenciadas na sociedade contemporânea. Concluiu-se que a mobilização coletiva é um desafio, justamente porque não é encontrada em seu formato ideal, aguardando a atuação do Poder Público mediante a formulação de suas políticas.

Palavras-chave: *desafios democráticos; mobilização coletiva; tutela jurisdicional do meio ambiente.*

INTRODUCTION

Why is there environmental degradation in times of advanced technological development? How can it be that the history of human suffering caused by nature's response to the unbridled exploitation of natural resources is not sufficient to solidify a new outlook on environmental matters? Although a single area of knowledge cannot provide sufficient answers, Law can contribute to an overall effort towards clarifying these questions.

In the Brazilian context, jurisdictional protection of the environment is a duty of the Public Power. On the other hand, the national legal system also ascribes certain duties to society's collective body. Separating this entity from its necessary participation in the political-legal scenario is to enable the transference of all actions to the hands of the state. Such a separation fails to satisfy the demands of a large portion of the people, in view of the various constitutional attributions that the state has already received, as well as the priorities of the public budget.

If the people fail to claim their rights in environmental matters, the state will certainly understand that this area does not require major investments, making itself negligent in regard to providing concrete form to the right of an ecologically balanced environment – i.e., ignoring the constitutional provision that obliges it to ensure such a balance.

Thus, it is fundamental to uphold an idea of participatory democracy in which actors choose to make environmentally positive changes, given their recognition of the benefits of such a proactive stance. This position activates responsible attitudes towards the environment, instead of leaving these actors to wait for government action in a democratic system that is merely representative.

Such an attitude also prompts critical and autonomous thinking regarding the civic reality – comprised of rights and duties – that surrounds individuals. It translates into an *a priori* modification of thought that moves on to action, i.e. to the factual level, starting from the simplest and arriving at the most complex environmental-protection actions (which require the mobilization of large numbers of people).

The issue to be discussed here refers to the essence of this mobilization, from the starting point of Environmental Law – a set of rules that regulate the man-nature relationship, besides orienting and limiting the action of the Eco-Constitutional State. This will be presented based on an

overview of the state's functions, considering its subdivision into the Executive, Legislative and Judiciary branches, according to the attributions they exercise or should exercise.

Likewise, some legitimized environmental protection actors will be subjected to a critical analysis on the fulfillment of their responsibilities, including a discussion on how these responsibilities could be scaled to achieve constitutional desideratum.

Participatory democracy will be approached from the perspective of certain doctrines, in order to outline previous researches on the subject. This recapitulation has no intention of exhausting the theme, if anything because the focus of this article lies squarely on the issue of democratic, everyday-life challenges in the way of a popular mobilization for environmental protection.

To clarify these challenges, we will present the previous paradigmatic approach to the subject, referring to Constitutional Theory's view on democratic issues, and to how the Constitution is an important disciplining factor, acting in the benefit of society's common good.

1 GUIDELINES FOR CONSTITUTIONAL-STATE ACTION IN THE FRAMEWORK OF ENVIRONMENTAL LAW

Environmental Law (in Portuguese, "Direito Ambiental") regulates the relationship between man and environment. In the Portuguese language, it encompasses other denominations, such as "Direito do Meio Ambiente" and "Direito do Ambiente." The latter form ("Direito do Ambiente") is considered less redundant than "Meio Ambiente," since the term "meio" already denotes the environment surrounding individuals (BRANDÃO, 2016). The author José Afonso da Silva defends, however, that this redundancy has a definite purpose: to contribute to the accuracy of the chosen term, emphasizing its meaning in legal norms (SILVA, 2010).

It is worth emphasising that Environmental Law "is a Law that imposes on the other sectors of the legal universe the respect to the norms that form it, since its foundation of validity emanates directly from the Constitutional Norm" (ANTUNES, 2007, p. 22-23, our translation). Therefore, it is necessary to interpret the other branches of law from a constitutional point of view, giving due consideration to environmental standards.

The environment ("meio ambiente"), a nomenclature adopted in the 3rd section, I, of Law no. 6,938, August 31, 1981, which "provides for the

National Environment Policy, its purposes and mechanisms for formulation and application, and also provides other measures", is the "set of conditions, laws, influences and interactions of a physical, chemical and biological order that allows, shelters and governs life in all its forms."

When choosing to use the currently consecrated terminology, namely, Environmental Law ("Direito Ambiental"), prior to referring to its use in the context of the Constitutional State's action, it is imperative to draw brief considerations on the relevance of this branch of Law for the referred proposal.

This is due to the fact that the Environmental Law State is an attempt to answer to the demands of the risk society, ensuring the preservation of minimum ecological standards for the development of human beings' full potential, based on genuine care for environmental quality standards (MOURA, 2012).

One word that is closely related to the risk society is uncertainty. Science is one of the fields in which this uncertainty is clearly perceived, and never more so than when it comes to the impending environmental catastrophe. Currently, new factors that cannot be predicted diminish the state's reaction in respect to public management and the ways in which it is operationalized (MOURA, 2012).

Dealing with these novel aspects requires the public power to envision innovative strategies. This does not guarantee, however, a solution for environmental demands, since the unpredictability of innovation stands in the way of an insightful perception regarding the contemporaneous challenges for the development of administrative activities.

Thus, one must recognize that the scope of the right to an ecologically balanced environment presupposes the intervention of the Eco-Constitutional State, also known as the Socio-Environmental State of Law. Coupled with the participation of civil society, this action by the state must be coupled to broad environmental protection, so it may fulfill its constitutional duties to safeguard the environment for present and future generations. As such:

> […] The Eco-Constitutional State is more than a 'State of Law' or a 'Democratic State' – its analysis proceeds from the need to legitimize ecologism, environmentalism or any nomenclature that seeks the tenacious and effective protection of the environment, focusing on the near future, in which the environment will be decisive for the dignified survival of humanity (FERRONATTO et al., 2009, p. 12, our translation).

In fact, humanity already suffers from environmental problems that demand a new thought and new forms of action. In this sense, this so-called *near future* is increasingly imbued in the present.

Although the state being discussed here has an abstract character, this limitation cannot be used as a pretext for underestimating its role. Thus, the debate on the premises of such an 'abstract' state is of great relevance, as they function as goals to be reached in a timely manner (LEITE; FERREIRA, 2010).

Once one accepts the premise that the roles of the Eco-Constitutional State must be fulfilled, it becomes undeniable that its action is also tied to a negative dimension, since such a state must *avoid* practicing environmental violations or causing damage to the environment. At the same time, the Eco-Constitutional State must intervene positively, approximating it from the notion of a broadened Social State, in recognition of the fact that the formulation of public policies is essential for the materialization of environmental rights.

These public policies must be closely related to the exercise of democracy, which is itself limited by the Constitution, so they may be put into practice while complying with the legal system as a whole. The Eco-Constitutional State is also subjected to such limitations. Thus, references or guidelines for its conformation have to be based on constitutional interpretation.

Regarding the intervention of the Judiciary in this area, we highlight the role of the Supreme Federal Court in a situation concerning the northern region of Rio de Janeiro:

> The intervention of the Judiciary Power over public government policies is a complex theme that still prompts passionate discussions about its several aspects. In the environmental area, the Supreme Federal Court had the opportunity to examine an extraordinary appeal against a judicial decision of the Federal Regional Court of the 2nd. Region (RJ), directed against the State of Rio de Janeiro. The decision determined that the construction of the Treatment Station Project for the depollution of the Paraíba do Sul River should be completed, avoiding the release of natural-state sewage to the waters supplying the city of Campos Goytacazes, in the north of the state. The judicial decision of the Supreme Court regarding the appeal rejected the thesis that the original judicial order constituted undue interference over a matter concerning the Executive Branch. It also rejected the notion that the order failed to consider the Member State's financial limits, imposing an exacerbated burden. Here is what the decision's preamble states: INTERLOCUTORY APPEAL. CONSTITUTIONAL. PUBLIC CIVIL SUIT. ENVIRONMENTAL PROTECTION.

> PUBLIC POLICY IMPLEMENTATION. POSSIBILITY. VIOLATION OF THE PRINCIPLE OF THE SEPARATION OF POWERS. NON-OCCURRENCE. PRECEDENTS. 1. This Court has previously established that it is the duty of the Public Power and society to uphold an ecologically balanced environment for the present and future generations. This is a transindividual right ensured by the Federal Constitution, which ascribes its protection to the Prosecution Service. 2. *The Judiciary Branch, in exceptional situations, may determine that the Public Administration must adopt measures to assure constitutionally recognized rights as essential; this does not necessarily constitute a violation of the principle of separation of powers.* 3. Interlocutory appeal not granted (STF, Int. Appeal 417.408/RJ, 1st. Rapp. Minister Dias Toffoli, ruling on 05/20/2012) (FREITAS, 2014, p. 255, our emphasis, our translation).

Therefore, Environmental Law is of fundamental importance for the attainment of a balanced environment. When the state restricts individual activity through the use of its Police Power, for example, it does so in the name of the community's overall well-being, even when its action concerns environmental issues.

The environmental surveillance carried out by the state also makes it clear that polluters must obey the norms of Environmental Law. If a set of legal rules aimed at disciplining the use of natural resources did not exist, not only would greater conflicts emerge, but their resolution would be unfeasible – since each individual's action would be guided neither by an overarching concern for the community nor by the preservation of the greater good.

It should be noted that today's constitutional protection of the environment differs from yesterday's in more than one way. For instance:

> […] Environmental degradation [used to be] synonymous with sanitary degradation, a mere appendage of the larger universe of production and consumption, thus presenting itself as a strictly homocentric argument, with undisguised economic and utilitarian content (DELAGE, 2009, p. 3, our translation).

Societal perception of the environment was therefore restricted to the economic sphere, with no consideration for fundamental rights and human dignity, among other concepts sedimented by the constitutional text. In addition, environmental concerns focused strictly on how to better serve human beings, without no measure of the relevance of caring for the environment on its own right, that is, caring for what it represents in and of itself, regardless of human interference.

The protection and conservation of the environment, as recommended by the 1988 Constitution of the Federative Republic of Brazil (CFRB), are

certainly desirable behaviors when it comes to quality of life. As a fundamental right, it ensures citizens' prerogative to an ecologically balanced environment. This is outlined above all in section 225. "[A necessary endeavor is] the search for the foundation of such a healthy and ecologically balanced Environment, understood as a Fundamental Right, part of the third generation, guided by Human Dignity, and acting, in particular, as a way of building a new character of the state" (ROCHA; MARQUES, 2016, p. 72, our translation).

In regard to the collective body, this doctrine classifies the rights of solidarity or fraternity as belonging to a third generation – precisely due to the fact that they are collective in nature or even diffuse, demanding worldwide action, at various times, as well as imposing distributed responsibilities and the interaction of diverse interests. However, in some specific cases, it is not necessary to disregard these rights' individual generation. This leads to the adoption of creative techniques to promote their guarantee and protection (SARLET, 2007, p. 58-59).

It is noteworthy that, according to the same provision, the environment is an asset for the common use of the people. This reveals its essence: it is neither strictly public, nor strictly private. In this sense, "the fundamental right to a healthy environment means that citizens are required to promote, before the state, both the rights of the person and the rights of collective and social life" (PEREIRA; LIMA; CASAGRANDE, 2013, p. 605, our translation).

Another important aspect is that environmental demands are a shared, worldwide concern. Thus, guidelines adopted by a given government cannot be seen as isolated measures, but rather as part of a joint set of actions at the global level.

It is important to understand that "transnationality, in this case, is a corollary of globalization, and recognizes the existence of issues that must be addressed by everyone, regardless of the particular nation-state to which one belongs" (OLSEN; FREITAS, 2017, p. 19, our translation). Such an assertion coexists harmoniously with the idea of national interconnectedness and shared responsibility among *all persons* – not only among individual states, although they do play an indispensable role.

So as to enrich the present analysis, we will now describe, in general terms, how Brazil's constitutional text ascribes the respective duties of the Executive and Legislative Powers.

Regarding the formulation of public policies, the Executive Branch

lies closer to the population. It must meet urgent demands and internalize popular needs, so as to decide how the public budget shall be applied and which actions will be a priority of the current mandate. Such characteristics become clearer when municipal (city-level) conjunctures are analyzed.

In terms of administrative action, the exercise of the Police Power (in its several modalities – prevention, repression, and the maintenance of order) – is an inherent duty of the state. It should be added that "the administrative competence in environmental matters encompasses both the authorizing activity in a broad sense (environmental licensing and authorization), as well as the activity of surveillance" (BIM; FARIAS, 2015, p. 212, our translation).

When it comes to the Legislative Power, it is widely recognized that its activity may demand considerable time, debate and reflection. This does not provide for an immediate capability to address environmental conflicts, with their economic and social effects.

Today, legislative omission is also an obstacle to the protection of rights. This may have dire consequences for future generations, since certain diffuse societal goods require broad action by present generations. Thus, one must uphold the imperative of ethical action among future generations, associated with solidary action, without losing sight of the notion of the environment as essential to humanity.

Therefore, as a kind of filter to the legislative (when analyzing the compatibility of norms with the Constitution) and surveillance (when rebuking possible excesses or omissions) activities of the administration, the Judiciary also works towards environmental protection, solving the conflicts of interest that are presented daily to the authoring body of a regulatory norm.

It is clear, then, that satisfactory, swift, efficient jurisdictional tutelage provides access to a kind of justice able to drive the country's development forward. Once its functions are effectively fulfilled, plaintiffs come to believe in the Socio-Environmental State (also known as the Social-Welfare State or Sustainable State). In the fight against pollution, for instance, this fulfillment can be materialized when a public civil action is proposed and results in an environment-friendly outcome. Such an outcome renews hopes that the infra-constitutional laws – and even the Constitution itself – are not simply dead letters.

In the following section, we address the issues of jurisdictional protection and intergenerational solidarity for the environment. Society needs to

be able to activate the Judiciary, considering the awareness process as en end-goal, in addition to the political participation that this debate promotes within the scope of environmental protection as a state function. Thus:

> It should be noted that judicial pathways are, in fact, the last resort against the threat of environmental degradation. Today's society requires environmental demands to have a place for discussion in the judicial system. Such an opening will drive the exercise of citizenship, leading to greater awareness (LEITE; FERREIRA, 2010, p. 123, our translation).

Opposed to the feeling of impotence mentioned in the reflection below, citizens' participation in the discussion on environmental matters, for instance, builds the sentiment that the legislation is fair and that it is possible, to some extent, to change one's surroundings in order to achieve a better quality of life:

> […] Citizens' and civil society's access to means of judicial provocation diminish the feeling of impotence often present in large or small environmental disasters, all of which are man-made, whether the figure of man appears in the form of government, as a legal person, or an individual (THEODORO, 2016, p. 83, our translation).

Thus, citizens may not feel totally vulnerable in the face of government acts, legal entities or other individuals, since they are in possession of a specific faculty, that is, to be able to appeal to the Judiciary.

2 COLLECTIVE MOBILIZATION: AS ESSENTIAL AS THE ENVIRONMENT ITSELF?

With a considerable frequency, the media reports on examples of people who behave in favor of a healthy environment by developing isolated but significant actions: separating organic waste, replacing disposable packages with reusable ones, and reusing cooking oil, just to name a few (BRAGA, 2016).

Such actions, however, do not provide a comprehensive solution to today's problems. This creates the need for systematic "government actions to transform these behaviors by isolated people or community groups into 'macroenvironmental' public actions, stimulating the awakening of environmental awareness" (BRAGA, 2016, p. 75, our translation). In theory, such an awakening could prompt a real revolution in the ways of exacerbated consumerism, nowadays prevalent among many cultures. Thus, "among other changes, this envisaged environmental revolution leads to

less and less compulsive consumption and more and more conscious consumption, precisely in the sense that 'less is more'" (BRAGA, 2016, p. 76, our translation).

Does this reduction in excessive consumption lead to a change in values? That is, does it lead to a definite choice between these two alternatives – consuming excessively or preserving nature to guarantee quality of life to present and future generations? In this sense, "the crisis emerging from today's society, which has become unsustainable, is not an environmental crisis, but rather a crisis of values; this determines its ethical character" (DUARTE, 2011, p. 187, our translation). Environmental catastrophes, then, cannot be characterized as mere natural events involving no human participation. With their inconsequential behavior, human beings are, in many cases, responsible for producing such disasters.

Before presenting other ideas, we shall analyze the concept of mobilization, so as to better clarify and orient this research:

> Mobilization occurs when a group of people, a community or an entire society decides on and acts towards a common objective, seeking, on a daily basis, results that have been agreed upon by all. To mobilize is to summon the will for the concretization of a common purpose, with all involved actors working according to a shared interpretation and sense of purpose. Participating in a social mobilization process is a choice, because participation is an act of freedom (TORO; WERNECK, 2004, p. 13, our translation).

This freedom is also protected by the CFRB. Section 5, XVII, and in other constitutional devices provide for this right.

One of Brazilian society's democratic challenges is the absence of large-scale mobilization. There are non-governmental organizations as well as some actions by civil society. Generally speaking, however, Brazilian society does not exert a significant pressure on politicians when it comes to environmental demands. In a hypothetical future when this mobilization actually occurs, the result could be the prioritization of the environment among political matters: "Indeed, as the political class is pressured by its voters due to the inexistence or ineffectiveness of environmental protection policies, this will become part of the day's agenda, a political priority of the first magnitude" (BRAGA, 2016, p. 21, our translation).

In this sense, the following commentary on the need to expand the public debate about democracy and the legitimacy of state decisions – so that society itself may reflect on the indispensability of these choices – is insightful:

> Democracy traces back to the idea of citizen participation in decision-making on things that concern the community if not directly, at least through its representatives. From the moment that this decision-making sphere moves away to become an untouchable international plan, its legitimacy is compromised. Environmental protection needs to go through a process of cultural incorporation; even though it may be true that the environmental-protection discourse will not reach everyone, it may reach the majority of the population. One cannot give up on this public deliberation process, wherein arguments capable of convincing people about the ethical value of preserving the environment can be advanced. After all, only in this space of public dialogue can legitimate decisions be made and effectively enforced. Political decisions that are not widely recognized can only be enforced by coercion (OLSEN; FREITAS, 2017, p. 24-25, our translation).

One of the reasons for the aforementioned lack of mobilization is the lack of adequate information. Although the media have expanded the dissemination of data on government deliberations, this ease of communication does not necessarily translate into a conscious use of information to effect virtuous change on the course of national affairs, especially when it comes to the democratic sphere.

Often, information is subject to bias in order to defend arguments that do not necessarily correspond to reality. Diverse and conflicting interests make their way into media reporting. To a certain extent, this situation opposes obstacles to the formation of environmental awareness and, consequently, to environmental mobilization.

In this sense, "communication in the mobilization process is dialogical in that it is not a transfer of knowledge, but a meeting of interlocutors" (BRAGA; SILVA; MAFRA, 2007, p. 66, our translation). In this sense, for effective mobilization, transmitted information must not be based on the thoughts of a single individual or small exclusive group, but rather on a set of perceptions emerging from the collective efforts of many minds.

Today's all-too-common feeling of political dissatisfaction is hardly reflected in significant attitudes at the time of voting or other forms of political intervention, such as the drafting of laws or the monitoring of parliamentarian activities.

Some problems of representativeness and their consequences are listed below, in a very clear-cut way:

> Electoral vices, targeted propaganda, the manipulation of public conscience and citizens' opinion by the powers and vehicles of information, in the service of the ruling class, who bribed them; even the law-hurting demonstrations against the people and against both nation and society in the most delicate governmental situations –

> all hurt the national interest, distort the ends of the state, corrupt public morals and degrade what, until now, the status quo has been able to dress as democracy and representation (BONAVIDES, 2001, p. 25-26, our translation).

It should be emphasized that true democracy is not summed up in the act of voting. Rather, democracy must include the possibility of having a voice, so as to significantly alter the course of state decisions and resolutions aimed at the community and at the protection of individual rights. Thus, many theoreticians study the crisis of representativeness, which is not only real, but, according to Paulo Bonavides in the aforementioned excerpt, presents society with grave problems, such as the manipulation of the electorate – an obstacle to an authentic participatory democracy.

Conversely, today's crisis of representativeness can lead to the articulation of civil society, independently of conventional powers. "Participatory democracy allows for the exercise of power by representation, but not without intense supervisory participation of public opinion and the vertiginous increase of the means for debate and popular pressure …" (GÓES, 2011, p. 297, our translation). It is not a question, therefore, of extinguishing the representative model as it has developed hitherto; rather, the proposal would be to strengthen it, without allowing the entire responsibility for environmental protection to fall on the Public Power. The following observation ratifies this understanding:

> There are many forms of direct participation by the people in political life and in the direction of public affairs that confer concrete form to participatory democracy. The latter does not eliminate the institutions of representative democracy. On the contrary, it reinforces them, establishing a closer and more dynamic relationship between government/people, representative/represented, and providing better conditions for the development of an effective government of the people, by the people, and in favor of the people (SILVA, 2007, pp. 51-52, our translation).

Going beyond Brazil's frontiers, it should be noted that, "as an ethical framework for a just, sustainable and peaceful world of the future, the Earth Charter contains relevant values and principles" (BOSSELMANN, 2010, p. 107, our translation). This international document sets out principles for strengthening human rights, notably democracy, as shown below:

> 13. Strengthen democratic institutions at all levels, and provide transparency and accountability in governance, inclusive participation in decision making, and access to justice.
>
> a. Uphold the right of everyone to receive clear and timely information on environmental matters and all development plans and activities which are likely to

> affect them or in which they have an interest.
> b. Support local, regional and global civil society, and promote the meaningful participation of all interested individuals and organizations in decision making.
> c. Protect the rights to freedom of opinion, expression, peaceful assembly, association, and dissent.
> d. Institute effective and efficient access to administrative and independent judicial procedures, including remedies and redress for environmental harm and the threat of such harm.
> e. Eliminate corruption in all public and private institutions.
> f. Strengthen local communities, enabling them to care for their environments, and assign environmental responsibilities to the levels of government where they can be carried out most effectively.

As for "clear and timely information on environmental matters," one way to obtain it would be systematic environmental education, from schools to universities, from newspapers to political decision-making spaces.

Family intervention would also be essential for the achievement of transformations in environmental education. This means that "… state action – through the implementation of public policies in the educational area – cannot be dissociated from social commitment to environmental education, starting with family intervention" (PEREIRA; LIMA; CASAGRANDE, 2013, p. 608, our translation).

There are also Brazilian devices that currently allow society at large to participate in determining the general orientation of decisions on environmental matters. Two examples are Popular Action (*Ação Popular*) and Public Civil Action (*Ação Civil Pública*), which will be discussed next, since they have developed mechanisms to challenge political acts that negatively affect the environment.

Protection of the environment is conveyed by popular constitutional action in compliance with the 5th section, LXXIII. Individually, the citizen is the legitimate proposing party. In this sense, environmental protection is a subjective public right, aimed at challenging harmful administrative acts.

Law no. 4,717/65 exempts one from costs and the burden of succumbence if the plaintiff is unsuccessful or if the lawsuit is dismissed, except in cases of demonstrated bad faith.

The Prosecution Service will function as inspector of the law, in addition to being permitted to intervene in certain cases.

As an institute of citizenship and surveillance of Public Administration, popular action gives citizens the possibility to participate in environmental protection, thus fulfilling a constitutional duty that affects the

rights of present and future generations. Furthermore, it would be valid to interpret that:

> The scope of popular action is not limited to supervising the conduct behind the Administration's acts. This is because, when placing the environment as one of its objects, it transfers to the Public Power the duty to preserve and protect it, due to the provision in section 225, caput, of the Federal Constitution. In this case the term 'act' must have, therefore, a more elastic content, encompassing both commissive and omissive acts, insofar as the duty of preventing damages and protecting the environment is imposed on the Public Power. The purpose of popular action as understood by section 5, LXXIII of the Constitution is to annul the harmful act, reverting what has already been done. However, if we are dealing with a material act – e.g., a case in which a company lacking the license to operate disrespects the norm and pollutes the environment – then the premise of popular action would be to extirpate the ongoing act, prescribing abstention from the practice in question (FIORILLO, 2010, p. 558-559, our translation).

It should be highlighted that popular action seeks to annul the harmful act, so that the attack on the effects of the consummated act must be brought forward in the context of public civil action, as will be seen below.

The environmental origin of public civil action is found in Law no. 6,938/81. Law no. 7,347/85, meanwhile, disciplines public civil action at the processual level, establishing certain innovations.

The legitimacy of the Prosecution Service in the defense of the environment is exposed in section 129, III, of the Federal Constitution. "For this very reason, as an authentic spokesperson for the interests of the community in the protection of the environment, [the Prosecution Service] is immune to any jurisdictional control for the assurance of adequate representation" (MILARÉ, 2009, p. 1076, our translation).

Due to the diversity and relevance of the protected legal assets when filing public civil action, such as moral and property damages caused to the consumer, to the urban order, to the public and social patrimony, there are several legitimates besides the Public Ministry: the Public Defender's Office, the Union, the States, the Federal District and the Municipalities, the autarchy, the public company, the foundation, the mixed-capital society or association – as long as they meet certain legal requirements. Therefore, the defense of diffuse rights is not reliant on just one legitimate. This expands the jurisdictional appreciation of threats or injuries to the interests of the community.

It should be remembered that, in the present historical and social context, public civil action represents "... *a great advance in regard to every*

previously available jurisdictional procedure, so much so that we may now firmly state that the Judiciary Power, when properly and regularly provoked, presents itself as an important actor of environmental protection" (GRANZIERA, 2009, p. 660, our emphasis, our translation).

In this way, this celebrated advance provides a differentiated perspective for the defense of diffuse and collective rights, not the least because any natural or legal person may become a defendant, which greatly expands the purview of the Prosecution Service and of the' Judiciary itself.

3 CRITICAL ANALYSIS OF ENVIRONMENTAL PROTECTION ATTRIBUTIONS

Popular participation can be modelled after the "Open Society of Constitutional Interpreters," idealized by Peter Häberle. Since pluralism and information about the constitutional order are paramount, one must interpret the Constitution in order to apply it. This interpretation is not restricted to the producers of decisory norms or to certain groups of theoreticians; it is extended to the people as a whole (HÄBERLE, 2014, p. 27, our translation).

This reasoning would apply to all interpreters, including those legitimized in matters of environmental protection. Their responsibilities derive from constitutional interpretation. The latter is able to establish attributions even for actions that emerge from implicit principles.

The diversity of legitimized environmental protection actors ratifies, above all, the perspective that "the right to the environment must be observed as a way of preserving people's life and dignity, and also as an essential asset to the quality of life of the community, constituting a central tenet of fundamental rights" (FETTBACK, 2009, p. 47, our translation).

Given the attributions outlined in the Constitution, the legitimate can act in favor of the desired environmental legacy, i.e., environmental protection for the benefit of present and future generations. Thus, the Constitution presents itself as a central figure of such achievements. The infra-constitutional legislation must necessarily be compatible with it, justifying the thesis that constitutional supremacy ultimately supports the action of the legitimates analyzed here. The following reflection emphasizes that participation stems from the Constitution. This is the reason why the situations below demand a constitutional theory:

> To constitutionalize forms and processes of participation is a specific task of a constitutional (procedural) theory. This applies to contents and methods only to a limited extent. Fundamentally, the political process must be (and remain) as open as possible. This includes allowing for the possibility of the defense of "diversionist" interpretations. It is true that the political process is a process of communication from all to all, in which constitutional theory must attempt to be heard, finding its own space and assuming its role as a critical instance (HÄBERLE, 2014, p. 50, our translation).

To a certain extent, when Paulo Bonavides analyses participatory democracy from the standpoint of Constitutional Theory in its material modality, his thinking approximates Häberle's, as both believe that talking about participation is talking about Constitutional Theory:

> There is no constitutional theory of participatory democracy that is not, at the same time, a material theory of the Constitution. This is a theory whose materiality has its legal limits of effectiveness and applicability determined largely by a form of control that should combine, on the one hand, the authority and judicature of the constitutional courts and, on the other, the authority of popular and sovereign citizenship, whose decisory capabilities are exercised as those belonging to a court of last instance (BONAVIDES, 2001, p. 25, our translation).

The achievement of the desired environmental legacy, in addition to the idea of a society in which everyone is a constitutional interpreter, also requires environmental education, without which it becomes difficult or practically impossible to achieve such an objective. As a continuous process, this type of education relies on knowledge about the problems surrounding individuals, so that they may seek the qualifications necessary to solve them (PEREIRA; LIMA; CASAGRANDE, 2013). The events in Mariana and Brumadinho (MG) are examples of environmental catastrophes in which education could have been essential. Would popular participation have changed the course of these disasters? What if there had been a greater demand for the protection of the environment, emerging from an education focused on the issues of the region's ore exploration scenario? It is noteworthy that each Brazilian city has peculiar environmental problems. The educational system, including universities, must adapt to this demand, as, in most cases, it is not so simple to obtain information on environmental exploration.

This is premised on the necessary social engagement, be it from government, schools, universities, citizens, or communities themselves. This entire effort – summed up in well-structured public policies, quality education focused on the specific challenges of each location, as well as the

strengthening of participatory channels – would pay itself in the form of quality-of-life improvements and the concretization of the right to an ecologically balanced environment, thus fulfilling the Constitution.

CONCLUSION

This article discussed collective mobilization associated with jurisdictional protection of the environment, given its main environmental challenges. To this end, potential mechanisms of jurisdictional protection were described, namely: public civil action and popular action.

Furthermore, the Constitutional State was characterized from the perspective of Environmental Law, including its transformation into an Eco- or Socio-Environmental Constitutional State, guided by the limits established in the 1988 Constitution and by other legal instruments that form the Brazilian legal system. The actions of the Judiciary, Legislative and Executive powers must be consistent with this overall direction. The Judiciary has been ascribed the greatest responsibilities, in view of the debate about jurisdictional protection of the environment, the focus of this work.

Therefore, as we have widely discussed, the Judiciary has an extremely relevant function, given Brazilian society's ongoing crisis of representativeness. This is crisis is certainly related to the concept of risk society – a society whose foundations are defined by uncertainty and passive reliance on the Eco-Constitutional State to meet collective demands.

Such a lack of mobilization – manifested as a state of waiting for advancements to emerge from the policy-making activities of the Public Power – was problematized here as one of today's greatest democratic challenges. The notion of representative democracy was investigated starting from its conceptual basis and associated with the constitutional principle of solidarity between generations. The problem of mobilization can only be solved on the basis of ethical dictates and the engagement of present and future generations, combined with genuine awareness that such a mobilization and the achievement of the desired environmental legacy will depend on the fulfillment of the responsibilities attributed to the legal actors who have been legitimized as agents of environmental protection. According to the reasoning developed throughout this work, the Supreme Federal Court has recognized such a constitutional principle.

Seen as a diffuse right, the ecologically balanced environment was approached as essential to human quality of life and dignity. Its scope depends

on another factor, also regarded as a democratic challenge: environmental education. Based on this factor, community demands for public policies aimed at environmental protection will become increasingly frequent.

Finally, it should be noted that participatory democracy is a path to the desired environmental legacy. Evidently, such a legacy must be produced by present generations. The Constitution integrates this immediate scenario. Its norms must also be interpreted by the people, to combat all anti-environmental transgressions, honoring the "Green Constitution," so as to truly achieve the worthwhile goal of a better quality of life.

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