

THE NEED FOR CRIMINAL STRICTNESS IN THE
COMMISSION OF ACTS OF TERRORISM THAT CAUSE
SERIOUS ENVIRONMENTAL DAMAGE

A NECESSIDADE DE RIGOR PENAL NA PRÁTICA DE ATO
DE TERRORISMO CAUSADOR DE DANO AMBIENTAL
GRAVE

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Abstract

This article addresses the lack of provisions in Brazilian legislation dealing with the consequences of terrorist acts when they result in serious damage to the environment. The research, conducted using a qualitative approach with the hypothetical-deductive method, used indirect documentation research techniques, with documentary and bibliographic research sources in primary and secondary resources. The hypothesis proposed is that the incorporation of the expression "serious environmental damage" into legislation, with the provision for increased penalties in cases of terrorist acts that result in such damage, could be an effective measure to deal with the growing threat of terrorist acts and the environmental crisis. The results indicate the need to introduce the expression in Law 13.260 of 2016, with a view to adapting national legislation to growing environmental concerns and the possibility of terrorist threats. It is recommended that a bill be presented to reintroduce the vetoed provision and remedy the legal omission.

Keywords: Environmental Law; Environment; Environmental crime and terrorism; Terrorism.

Resumo

Este artigo aborda a ausência de disposições na legislação brasileira que tratem das consequências dos atos terroristas quando resultam em danos graves ao meio ambiente. A pesquisa, conduzida por meio de uma abordagem qualitativa com o método hipotético-dedutivo, utilizou técnicas de pesquisa de documentação indireta, com fontes de pesquisa documental e bibliográfica em recursos primários e

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secundários. A hipótese proposta é que a incorporação da expressão "dano ambiental grave" na legislação, com a previsão de agravamento das penas em casos de atos terroristas que resultem em tais danos, pode ser uma medida eficaz para lidar com a crescente ameaça de atos terroristas e a crise ambiental. Os resultados indicam a necessidade de introdução da expressão na Lei 13.260, de 2016, visando adaptar a legislação nacional às crescentes preocupações ambientais e à possibilidade de ameaças terroristas. Recomenda-se a apresentação de um projeto de lei para reintroduzir a previsão vetada e suprir a omissão legal.

Palavras-chave: Direito Ambiental; Meio ambiente; Crime ambiental e terrorismo; Terrorismo.

Summary: 1. Introduction; 2. Concept of Environment and Environmental Damage; 3. Analysis of Article 2 of Law 13,260/2016; 4. Terrorism and Serious Environmental Damage; 5. Conclusion; 6. References.

1 INTRODUCTION

The concern with the protection of the environment is recent in the history of humanity, and the year 1972 was decisive for the change in the treatment of the environment by the member countries of the United Nations, in view of the United Nations Conference on the Human Environment, in Stockholm, Sweden, when, for the first time, heads of state from 113 countries, as well as non-governmental organizations, met to address pollution and environmental degradation on the planet³.

However, concerns about a sustainable development which would meet development needs while reconciling them with the protection of the environment for the future generations, only became predominant after the United Nations Conference on Environment and Development, known as Rio 92 that could be adopted as a conceptual framework for all the processes and debates that followed on the subject.

From the focus on the environment, we can analyze several measures adopted in the country, more specifically in the legislative field, which aimed at protecting the environment and mitigating damages and risks. However, the present scientific investigation concerns only the lack of legal provision in Law nº 13,260, of 2016, which disciplines the practice of terrorism, an action that may involve extremely serious environmental damage with catastrophic consequences for the current population and future generations.

Acts of terrorism are provided for in Law No. 13,260 of 2016⁴, which defines them and specifies the practices that can be achieved by the exception rule.

However, based on the analysis of the legal text, it is possible to note that there were several vetoes by the head of the Executive Branch, in particular to the wording of Article 8 in the Bill that resulted in the anti-terrorism rule, which

³ FREITAS, Vladimir Passos de, "Os reflexos no Brasil da Conferência do Meio Ambiente da ONU em 1972", In: CONSUELO, Y. M. Y., SOUZA, Maria Cláudia, coord., *Desenvolvimento e meio ambiente humano: os 50 anos da Conferência de Estocolmo*, Curitiba, Ithala, 2022, p. 88.

⁴ BRASIL, *Lei nº. 13.260, de 16 de março de 2016*, Available at: http://www.planalto.gov.br/ccivil03/_ato2015-2018/2016/lei/113260.htm, Accessed: 27 jul, 2022.

provided the following: “Art. 8. If the practice of any crime provided for in this Law results in environmental damage, the penalty is increased by one third”⁵.

For this reason, this article proposes to answer the following question: why serious environmental damage, under certain conditions, was not and still is not considered terrorism in Brazil?

The research carried out had a qualitative approach and used the hypothetical-deductive method. The study was based on a research of indirect documentation, including primary and secondary sources, such as existing documents, legislation and literature. The specific methodology chosen was the monographic method, consisting of studying the current conditions of the Brazilian legislative scenario regarding Law 13,260, of 2016, and its socio-environmental impacts.

2 CONCEPT OF ENVIRONMENT AND ENVIRONMENTAL DAMAGE

In order to outline a legal concept that serves as a basis for the understanding of environmental damage and serious environmental damage, a distinction that is not made in Law 13.260, from 2016⁶, it is necessary to analyze the various concepts of environment. Thus, it is important to understand, in the first place, the legal meaning of environment as a logical assumption for the continuation of the research.

At first, it was understood that human beings were at the center of concerns about sustainable development, so that, in June 1972, at the United Nations General Conference on Environment and Development in Rio de Janeiro, the Principle I of Eco/92 brought an anthropocentric vision and stated that men have the right to a sustainable life in harmony with nature⁷.

Certainly, the idea that the human being occupies a privileged place and greater space in the environment and can degrade it, is already outdated. Still, the idea that natural resources are endless and can be used eternally cannot be accepted anymore. Thus, man and nature occupy the same space; the human being does not dominate nature, having to seek conciliatory ways of using it, under penalty of ending up suffering with it the effects of his predatory attitude.

It is easy to recognize that over the years the protection of the natural heritage started to be recognized intrinsically and not only for the usefulness it has for the human being⁸.

Another important factor that we can analyze with the loss of strength of anthropocentrism is that the defense of the environment is also related to intergenerational interests and the need for development to be sustainable, in order

⁵ CÂMARA DOS DEPUTADOS, *Lei nº. 13.260/2016, de 16 de março de 2016*, Available at: <<https://www2.camara.leg.br/legin/fed/lei/2016/lei-13260-16-marco-2016-782561-veto-149753-pl.html>>, Accessed: 25 jul, 2022.

⁶ BRASIL, *Lei nº 13.260 de 16 de março de 2016*, Available at: <http://www.planalto.gov.br/ccivil_03/ato2015-2018/2016/lei/113260.htm>, Accessed: 27 jul, 2022.

⁷ INSTITUTO DO PATRIMÔNIO HISTÓRICO E ARTÍSTICO NACIONAL, *Carta do Rio*, 1992, Available at: <<http://portal.iphan.gov.br/uploads/ckfinder/arquivos/Carta%20do%20Rio%201992.pdf>>, Accessed: 29 jul, 2022.

⁸ LEITE, José Rubens Morato, *Dano ambiental: do individual ao coletivo, extrapatrimonial*, 2 ed. rev., atual. e ampl., São Paulo, Editora Revista dos Tribunais, 2003, p. 73.

to preserve resources for future generations. This means that the attitudes of human beings have become conditioned to and responsible for environmental protection⁹.

The answer in Brazilian law came through Article 225 of the Federal Constitution of 1988, which protected the environment as a diffuse good: "... of life, imposing on the Government and the community the duty to defend and preserve it for present and future generations"¹⁰.

Even before the Constitution, the environment was already protected and conceptualized by the advanced Law 6.938, of 1981, our National Environmental Policy Law, although only from the point of view of natural resources. Therefore, the cultural, artificial and work environments were excluded. Article 3 of the aforementioned legal diploma conceptualized the environment as "the set of conditions, laws, influences and interactions of a physical, chemical and biological order, which allows, shelters and governs life in all its forms"¹¹.

Having made the initial considerations regarding the environment, it is necessary to carry out the construction of the precept that one intends to build. As it can be seen from the aforementioned normative texts, from the 1988 Constitution onwards another function of social responsibility towards the environment was superimposed on the role of the State. This means that both the State and the collective are responsible for environmental protection with a view to future generations, pressing human, political and collective conditioning to be more aware of environmental needs.

Therefore, according to Milaré¹² the legal concept of environment can be constructed from a comprehensive perspective, so that the environment encompasses not only its traditional elements, such as air, water, soil and biosphere, but the cultural and historical elements that are also part of natural resources.

It is possible to state that when dealing with the environment we are dealing with a complex connection and combination between elements in a given temporal and spatial situation.

According to Ribeiro and Cavassan¹³, the understanding of nature occurred through human perception, and the idea of environment only emerged after the creation of a mental representation which, when considering a singularity (such as a species or an individual), started to be called environment. This process reveals that the environment is a human construction and depends on how we perceive and interpret nature.

⁹ LEITE, José Rubens Morato, *Dano ambiental: do individual ao coletivo, extrapatrimonial*, 2 ed. rev., atual. e ampl., São Paulo, Editora Revista dos Tribunais, 2003, p.74.

¹⁰ BRASIL, *Constituição da República Federativa do Brasil de 1988*, Available at: <http://www.planalto.gov.br/ccivil_03/constitucao/constitucao.htm>, Accessed: 25 jul, 2022.

¹¹ BRASIL, *Lei nº 6.938 de 31 de agosto de 1981*, Available at: <<http://www.planalto.gov.br/ccivil03/leis/16938.htm>>, Accessed: 25 jul, 2022.

¹² MILARÉ, Édís, *Direito do Ambiente*, 8 ed., São Paulo, Editora Revista dos Tribunais, 2013, p. 141.

¹³ RIBEIRO, Job Antonio Garcia, CAVASSAN, Osmar, "Os conceitos de ambiente, meio ambiente e natureza no contexto da temática ambiental: definindo significados, Gondola", *Enseñanza y Aprendizaje de las Ciencias*, v. 8, p. 70, 2013, Available at: <<http://hdl.handle.net/11449/135129>>, Accessed: 26 jul, 2022.

From this perspective, Mendonça¹⁴ explains that the environment can be conceived as the sole dimension of nature external to human society, dissociated from society, or even integrating the two constituent elements of reality: nature and human society.

We can, therefore, use Vevret 's concept about environment:

*The notion of environment does not cover only nature, even less only fauna and flora. This term designates the relationships of interdependence that exist between man, societies, the physical, chemical, biotic components of the environment and also integrates its economic, social and cultural aspects*¹⁵.

Thus, one cannot forget that the importance of the environment in contemporary society has risen, reaching the level of a third generation fundamental right. According to the lessons of Milaré¹⁶ it became universal as an expression of social experience itself and with such strength that it already acts as if it were innate, stable and definitive, not subject to the erosion of time.

In fact, the recognition of the right to a healthy environment for all configures the reaffirmation of the right to life guaranteed in the Federal Constitution. The members of Congress who drafted the Constitution dedicated an entire chapter to environmental preservation and protection. We can therefore understand its relevance in the national legal system that began with the United Nations Conference in Stockholm.

Once the concept of environment is understood and established, which can be extracted both from a legal and doctrinal perspective, we move on to the second point of this session, that is, the delimitation of the concept of environmental damage for Brazilian Law.

The approach to this issue will be carried out taking into account the assumptions already analyzed about the environment and its categorization as a diffuse and fundamental asset.

The basic premise for damage within the scope of the present study is what causes harmful changes to the environment, or that causes changes in people's health and their interests. That is, environmental damage is something undesirable for the environment that harms fundamental rights.

Regarding the subject, Garcia¹⁷ states: “ Environmental damage is the effect that damage to the environment has, even if indirectly, on the quality of life, health, heritage and feelings of the individual and/or the human community that is related to the affected environment”.

¹⁴ MENDONÇA, Francisco, “Geografia Socioambiental”, In MENDONÇA, F., KOZEL, S., Org., *Elementos de epistemologia da geografia contemporânea*, Curitiba, Editora da UFPR, 2002, p. 124.

¹⁵ VEYRET, Yvette, *Géo-environnement*, Paris, Sedes, 1999, p.6.

¹⁶ MILARÉ, Édís, *Direito do Ambiente*, 8 ed. rev. atual., ampl., São Paulo, Editora Revista dos Tribunais, 2013, p. 258.

¹⁷ GARCIA, Fernando Murilo, *Dano Ambiental existencial: reflexos do dano aos pescadores artesanais*, Curitiba, Juruá, 2015, p. 35.

Steigleder¹⁸ understands that the expression environmental damage has ambivalent content, as it will sometimes be used to designate harmful changes and sometimes the effects that such changes cause on people's health. She adds that in the Brazilian system, the repair of environmental damage is not limited to pure ecological damage. As an example, the author continues:

*An oil spill at sea, which causes water contamination and death of fish, will cause: a) individual damage to fishermen who depend economically on the fishing activity – due to the existence of several people linked to this same situation, configure damage to homogeneous individual interests, in which the focus continues to be the individual –; b) pure ecological damage, as the maritime ecosystem will remain affected in its essential characteristics, and c) latu sensu environmental damage, since the constitutionally protected environmental value, the quality of water resources and biota, will be seriously affected*¹⁹.

For the Brazilian legal system, environmental damage corresponds to an injury to the public interest, of a diffuse nature and more: something that undermines the common good of society. According to Souza Filho²⁰, this means that environmental damage exists because there has been a deterioration of the good and not because the existence of damage is directly related to an eventual reduction in individual assets.

According to the above, the National Environmental Policy Law provides, for example, for natural restoration as a way of reconstructing any environmental damage that may be caused, in order to stop the harmful activity and restore, as close as possible, that environment to its original state. It is necessary to recover the dynamic balance of the affected ecological system, that is, to recover its self-regulation²¹.

However, it should be noted that environmental damage can range from the death of a capybara, whose overpopulation can sometimes result in a problem for a park or its surroundings, to something of enormous gravity that affects life and health of a large part of the population.

In this research, the focus is the analysis of serious environmental damage, which is any intolerable injury caused by any human action, whether culpable or intentional, affecting the diffuse legal interest of the entire community, and may even bring consequences for future generations, causing danger concretely, not abstractly. However, the analysis will only be made of the damage resulting from an act of terrorism

¹⁸ STEIGLEDER, Annelise Monteiro, *Responsabilidade civil ambiental: as dimensões do dano ambiental no direito brasileiro*, 2 ed. rev. atual. e ampl., Porto Alegre, Livraria do Advogado Editora, 2011, p. 99.

¹⁹ STEIGLEDER, Annelise Monteiro, *Responsabilidade civil ambiental: as dimensões do dano ambiental no direito brasileiro*, 2. ed. rev. atual. e ampl., Porto Alegre, Livraria do Advogado Editora, 2011, p. 104.

²⁰ SOUZA FILHO, Carlos Frederico Marés, “O dano ambiental e sua reparação”, *Revista de Direito da Associação dos Procuradores do Estado do Rio de Janeiro*, Rio de Janeiro, vol. 1, p. 55, 1999.

²¹ SENDIM, José de Sousa Cunhal, *Responsabilidade civil por danos ecológicos: da reparação do dano através da restauração natural*, Coimbra, Almedina, 2002, p. 51.

3 ANALYSIS OF ARTICLE 2 OF LAW 13,260/2016

In the first place, it urges to point out that the regulation of terrorism in Brazil came about only after almost 30 years of its express mention in the Federal Constitution. There was a legislative vacuum to the constitutional command to criminalize terrorism, certainly due to the absence of cases in our territory.

However, it was not the delay in enacting the law that spurred the initiative. In fact, it was the hosting of the World Cup in Brazil, from June 12 to July 13, 2014, which was the first reason for legislative action. Pressured by the International Football Federation (FIFA), because terrorist attacks were announced in Brazil against people from some countries who would participate, Brazil presented a Bill in the Senate on November 28, 2013, which received number 499. However, it was not approved in time, having suffered resistance.

The theme returned to the agenda on June 16, 2015, since in 2016, from August 3 to 21, Brazil would host the Olympics. The formal justifications related to the creation of Law 13,260, of 2016, by the then Ministers José Eduardo Martins Cardozo and Joaquim Vieira Ferreira Levy were presented to the Head of the Federal Executive Branch. Among the reasons given, the most substantial ones are: a) terrorist organizations have been characterized in recent years as one of the greatest threats to human rights and the strengthening of democracy; b) based on this scenario, Brazil must be aware of the facts that occurred abroad, despite never having suffered any act in its territory; c) it is necessary to create a law that protects the individual and the society as a whole, as well as its various segments, whether social, racial, religious, ideological, political or gender; and d) delimit what terrorist organizations are, both through preparatory and executory acts.

Thus, on that same date, that is, June 16, 2015, the Executive Branch submitted to the National Congress the text of Bill (PL) No. 2016/2015, which had as its regulatory scope the provisions of item XLIII of article 5 of the Federal Constitution, disciplining terrorism, dealing with investigative and procedural provisions, in order to reformulate the concept of terrorist organization, as well as amending Law No. 1989²².

With an urgent procedure, pursuant to article 64, §1, of the Federal Constitution, the file received the numbering of Bill 101/2015 in the House of Representatives, under the rapporteurship of Federal Deputy Arthur Oliveira Maia.

Subsequently, after the conclusion on the constitutionality, legality and legislative technique, the bill was approved in the Chamber of Deputies, which resulted in Ordinary Law No. 13,260, of March 16, 2016, known as the Anti-Terrorism Law. However, the legal diploma was sanctioned with numerous gaps and presidential vetoes, as we will examine.

It is also important to point out that this incriminating type can have anyone as an active subject, being dispensable the need for agents to participate in its realization, that is, it is a unisubjective type. In fact, the legislator's option was to punish both those who commit individual or collective acts, or even through the so-called terrorist organizations.

²² BRASIL, *Lei n.º 13.260 de 16 de março de 2016*, Available at: <http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/lei/113260.htm>, Accessed: 27 jul, 2022.

In turn, with regard to the purpose of the incriminating type, the Terrorism Law understands that it consists of provoking social or generalized terror, exposing people, property, public peace or public safety to danger. Therefore, it should be noted that the victims may (or may not) be random, since they may configure a group or class of people or a State agent so that there is a kind of immediate or even mediate target. In this sense, Teider understands that there are immediate and mediate purposes:

*victims may be random, but not necessarily, even if they are configured as 'immediate targets'; that 'terrorism' should not necessarily be armed, with the example of cyberterrorism; that individual terrorism is possible; that the victims (especially the immediate ones) do not need to be from a specific group or class, nor does the group or class affected necessarily need to be the targets of terrorism; that it is not essential that the target be citizens, but may be agents of the State; and that prior classification, albeit imperfect, is necessary, above all in internal and national terms, even for prevention and combat purposes*²³.

Thus, in order to seek a definition for terrorism, although there is still no exact concept, as many authors only delimit “parameters, characteristics, milestones, common purposes to make a global conception of the term possible”²⁴. Teider proposes the following as a concept of terrorism:

*Crime(s) committed with the intention of, in carrying out its communication strategy (bearing in mind that 'all the key elements of communication are present: sender, channel, message, recipient and feedback), to generate a mass intimidation, a collective feeling of terror (extreme fear), in order to bring about changes (if contesting the Power) or assert political positions*²⁵.

It is likewise observed that one cannot speak of terrorism if the intention is not present, with the specific purpose of causing social or generalized terror. This is the “true communicational meaning of terrorism”²⁶.

The legislator continues in article 2, caput, of Law 13,260²⁷, of 2016, by bringing the subjective reasons for the motivation of the crime: xenophobia, discrimination or prejudice based on race, colour, ethnicity or religion.

For reasons of xenophobia, we understand that “it is a form of social discrimination that consists of aversion to different cultures and nationalities”²⁸.

²³ TEIDER, Lucas Hinckel, *Terrorismo e seu financiamento: a política pública criminal brasileira de prevenção*, São Paulo, Dialética, 2021, p. 22.

²⁴ MUNHOZ, Danielle Duarte, *Terrorismo: análise da política brasileira antiterror segundo o garantismo e o direito internacional*, Rio de Janeiro, Lumen Juris, 2019, p. 12.

²⁵ TEIDER, Lucas Hinckel, *Terrorismo e seu financiamento: a política pública criminal brasileira de prevenção*, São Paulo, Dialética, 2021, p. 23.

²⁶ VASCONCELOS, Carlos Eduardo de Oliveira, *Terrorismo e outras situações de emergência: teoria e prática da prevenção e do combate – Terrorism and other emergencies: theory and practice of prevention and control*, Brasília, ESMPU, 2018.

²⁷ BRASIL, *Lei n.º 13.260 de 16 de março de 2016*, Available at: <http://www.planalto.gov.br/ccivil03/_ato2015-2018/2016/lei/13260.htm>, Accessed: 27 jul, 2022.

²⁸ BUSATO, Paulo Cesar, *Lei Antiterror Anotada: Lei 13.260 de 16 de março de 2016*, São Paulo, Editora Foco, 2018. p. 27.

Xenophobia violates the existing equality between human beings and, therefore, refutes the possibility of harmonious coexistence of multicultural differences²⁹.

The legislator's understanding of including xenophobia as a motivation for protecting the equality of individuals, since “globalized terrorism does not concern only this or that State, however powerful or – simultaneously – more vulnerable it may be. It concerns the entire international community; it is she who is also offended”³⁰.

The elements of type, discrimination and prejudice are similar. While the former means establishing a difference between beings and things with a prejudice bias, the latter concerns someone's opinion or judgment, but without prior knowledge of the facts. According to Shecaira³¹, prejudice is “always a negative, unfavourable attitude towards groups based on stereotyped beliefs”.

The elements of race and ethnicity, on the other hand, are mixed up, as they “compose the synthesis of political and social aspects that identify common characteristics of a group of people”³². However, the issue has already been a matter of debate by the Federal Supreme Court in Habeas Corpus n°. 82,424³³, reported by Minister Moreira Alves, when it was established that the division of human beings into race results from a process of merely political-social content and from this assumption racism originates. In the same sense, we can understand the reflections of colour motivation, also embraced by the legislator in this context.

Finally, the motivation of religion deals with aspects that “concern the idiosyncrasies of each belief”³⁴.

According to Horn³⁵, religion cannot be denied its conception as a power factor, after all religion, when converted into fanaticism, distorts its principles and becomes an instrument of folly and social controls.

Continuing with the analysis of the second article, the legislator included social movements as a clause to exclude acts of terrorism, as described in the wording of paragraph 2. Such exclusion was the result of a political understanding between the forces that did not want to label as crime of terrorism those manifestations “from organized crime factions in Rio de Janeiro to popular movements or civil disobedience accompanied by some violence, including criminal

²⁹ NUCCI, Guilherme de Souza, *Leis penais e processuais penais comentadas*, 4 ed., São Paulo, Revista dos Tribunais, 2009, p. 321.

³⁰ COSTA, José Faria, SILVA, Marco Antonio Marques, *Direito Penal Especial, Processo Penal e Direitos Fundamentais: Visão Luso-Brasileira*, São Paulo, Quartier Latin, 2006, p. 185.

³¹ SHECAIRA, Sérgio Salomão, Racismo (noticiário), *Escritos em homenagem a Alberto Silva Franco*, São Paulo, Revista dos Tribunais, 2003, p. 407.

³² BUSATO, Paulo César, *Direito Penal: Parte Especial 1*, São Paulo, Atlas, 2014, p. 242.

³³ BRASIL, Supremo Tribunal Federal, Habeas Corpus n°. 82.424/RS, Relator: Ministro Moreira Alves, Brasília, 17 de setembro de 2003. *Lex: jurisprudência do STF*, Porto Alegre, 17 set. 2003, Available at: <https://jurisprudencia.stf.jus.br/pages/search/sjur96610/false>, Accessed: 30 jul, 2022.

³⁴ NUCCI, Guilherme de Souza, *Leis penais e processuais penais comentadas*, 4. ed., São Paulo, Revista dos Tribunais, 2009, p. 305.

³⁵ HORN, Norbert, *Introdução à Ciência do Direito e à Filosofia Jurídica*, Porto Alegre, Sérgio Antonio Fabris editor, 2005, p. 112.

violence”³⁶. The truth is that the Law failed to precisely conceptualize the requirements of motivation more precisely.

From the premises above, it is possible to carry out a critical analysis of Law nº 13.260, of 2016, having as the central objective the fight against all forms of terrorism, in order to guarantee the Democratic State of Law, as well as to offer all the constitutional principles.

4 TERRORISM AND SERIOUS ENVIRONMENTAL DAMAGE

An understanding of serious environmental damage, as well as the essential premises of the Terrorism Law, are necessary to understand former President Dilma Rouseff 's veto to Article 8 of Law No. 13,260 of 2016³⁷.

In the original wording, as already noted, the article stipulated that "if the practice of any crime provided for in this Law results in environmental damage, the penalty is increased by one third"³⁸. Nothing is more appropriate than balancing the penalty when, from a terrorist practice, there was an increase in the environmental damage, in addition to criminalizing acts of terror that caused environmental damage.

As reasons for the veto, the President understood that: “The legal provision would not be in accordance with the principle of proportionality, since any more serious result can already be considered in the dosimetry of the penalty. In addition, the legal interest protected by the article already has specific legislation”³⁹.

Consequently, the law was enacted on March 16, 2016, without any classification as to environmental damage. In the absence of any typifying norm, there is a gap regarding the protection of the legal good environment, which can cause severe results for society, as already pointed out.

Let's imagine some possible situations.

A determined terrorist organization blows up a subway tunnel in the city of São Paulo, with the immediate objective of causing fear and terror in the population that is using the transport, and with the immediate scope of contesting decisions taken by the Secretary of Transport of the Municipality.

It happens that, after the explosion of the bomb, it also damages the soil layer, contaminating the water table with chemical elements from the explosion of the artifact. This fact will certainly result in the contamination of the aquifer, where the groundwater is stored, which “plays a very important role in the hydrological

³⁶ VASCONCELOS, Carlos Eduardo de Oliveira, *Terrorismo e outras situações de emergência: teoria e prática da prevenção e do combate – Terrorism and other emergencies: theory and practice of prevention and control*, Brasília, ESMPU, 2018, p. 105.

³⁷ BRASIL, *Lei nº 13.260 de 16 de março de 2016*, Available at: <http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/lei/113260.htm>, Accessed: 27 jul, 2022.

³⁸ CÂMARA DOS DEPUTADOS, *Lei nº 13.260/2016, de 16 de março de 2016*, Available at: <<https://www2.camara.leg.br/legin/fed/lei/2016/lei-13260-16-marco-2016-782561-veto-149753-pl.html>>, Accessed: 25 jul, 2022.

³⁹ CÂMARA DOS DEPUTADOS, *Lei nº 13.260/2016 de 16 de março de 2016*, Available at: <<https://www2.camara.leg.br/legin/fed/lei/2016/lei-13260-16-marco-2016-782561-veto-149753-pl.html>>, Accessed: 25 jul, 2022.

cycle, as they are what keep the surface water courses stable and prevent overflows by absorbing rainwater”⁴⁰.

Still exemplifying, let’s suppose an attack through bomb explosion against a large hydroelectric plant, an action that suspending the transmission of electric energy, would cause panic in a large part of the population, in addition to the suspension of industrial activities, chaos in urban mobility and other consequences. A typical case of terrorism, provided for in art. 1st as sabotage to the operation of “energy generation or transmission facilities”. It happens that the attack could also result in the pollution of the waters of the lake that supplies the energy generation, leading to the death of the ichthyological fauna and preventing its use by people and animals.

In January of 2023, from the 8th to the 14th, there were attacks on seven power transmission towers in the states of Paraná, São Paulo and Rondônia. The National Electric Energy Agency (Aneel) reported that four of the towers were effectively knocked down, including signs of vandalism. Although the reasons for the facts are still under investigation and there has been no power outage, the fact is that nothing prevents the attack from being improved in the future, carried out in an environmental preservation area close to urban centers, resulting in well-founded social fear and serious environmental damage⁴¹.

Another aspect worth mentioning is the entry into the Amazon of the Revolutionary Armed Forces of Colombia — the People’s Army — FARC, which identifies itself as a revolutionary guerrilla, which has been operating in various activities that include Brazilian criminal organizations, giving rise to a situation that never existed before, such as money laundering in fishing or mining. The fact was exposed by the President of IBAMA, Rodrigo Agostinho, in an interview for Revista Carta Capital, exposing new situations such as money laundering from drug trafficking in fishing or illegal mining⁴². Evidently, this tragic situation, even though it cannot be considered terrorism, is a threat that it may become so, insofar as this proves to be necessary for those involved in illegal exploitation. Neither the Colombian group (FARC) nor the other ones lack experience or daring.

Such a hypothesis is not at all fanciful. The National Mining Agency (ANM) issued ANM Resolution No. 129, of February 23, 2023, providing “on compliance with the duties of preventing money laundering and financing of terrorism and the proliferation of weapons of mass destruction – PLD /FTP, legally assigned in the

⁴⁰ MESAVILLA, Débora Thaís, *O que são aquíferos e qual a importância dos aquíferos do Brasil? M3 Geologia e meio ambiente*. 2018, p. 6, Available at: <https://mbgeologia.com.br/index.php/novidades/detalhe/40/o-que-sao-aquiferos-equal-a-importancia-dos-aquiferos-do-brasil>, Accessed: 3 mar, 2023.

⁴¹ NAKAGAWA, Fernando, *Aneel registra sete ataques a torres de transmissão, sendo quatro derrubadas, CNN Brasil*, 2023, Available at: <https://www.cnnbrasil.com.br/business/aneel-registra-sete-ataques-a-torres-de-transmissao-sendo-quatro-derrubadas/>, Accessed: 8 de fev, 2023.

⁴² AGOSTINHO, Rodrigo, *Carta Capital: Os desafios do IBAMA pós-Bolsonaro, segundo o Presidente da entidade*, 2023, Available at: https://www.google.com/search?q=carta+capital+entrevista+presidente+do+ibama&rlz=1C1SQJL_pt-BRBR863GB863&oq=carta+capital+entrevista+presidente+do+ibama&aqs=chrome..69i57j0i546l2.13033j0j15&sourceid=chrome&ie=UTF-8#fpstate=ive&vld=cid:36aed490,vid:ZlxR_Xa3hD4, Accessed: 3 mar. 2023

form of arts. 10 and 11 of Law No. 9.613, of March 3, 1998⁴³. Said administrative act has created for miners producing precious stones and metals a policy to prevent money laundering and terrorism financing, incumbent upon them to implement procedures for identifying clients and others involved in the operations. This is an unprecedented initiative that clearly demonstrates the seriousness of the situation of such groups in the Amazon.

While the purpose of the Terrorism Law is to suppress practices that may give rise to social or widespread terror, it is evident that the secondary effects of such acts, in the mentioned scenarios and in numerous possible situations, can lead to harmful consequences for the environment and subsequently, to human health. However, the increase in penal sanctions is not part of the special legislation, weakening the penal system and environmental protection, which has constitutional status.

In its final wording, Law No. 13,260, of 2016, despite protecting life, property, public safety and public peace, did not include the environment, considered a fundamental right, leaving much more to a hermeneutic activity (environment as an asset related to health and public peace), rather than an explicit regulation.

As timid as the attempt to legislate on environmental damage as an integral part of Law No. 13,260 of 2016 might have been, the presidential veto, under the understanding that the legal good was already protected by specific legislation, was mistaken, as there is no legislation protecting the environment in a terrorism context in Brazil.

The attempt to legislate on environmental damage as an integral part of Law No. 13,260 of 2016, when it was vetoed because it was understood that the legal interest was already protected by existing laws, was a mistake. In fact, there is no law that protects the environment in a context of terrorism in Brazil.

In the Environmental Crimes Law, in the section on pollution and other environmental crimes, the protection of environmental damage emerges. However, this provision is limited to cases of environmental pollution, whether intentional or negligent, without requiring specific action for that purpose⁴⁴.

The environment has special importance for life and social peace, in addition to being an inexorable source of life as we know it, and the existence of legislation that seeks to protect it could never be limited to shallow and mistaken interpretations regarding an eventual existing protection.

On the other hand, the environment (as a constitutional precept of protection) and terrorism (as a constitutional commandment of criminalization) should be the object of a wide debate and typification observing all their nuances, even determining regimes and more serious consequences when there is evidence of the combination of these factors, that is, when serious environmental damage occurs as a result of a terrorist act.

⁴³ LEX EDITORA, *Resolução ANM nº 129, de 23 de fevereiro de 2023*, Available at: <<https://www.lex.com.br/resolucao-anm-no-129-de-23-de-fevereiro-de-2023/#:~:text=Disp%C3%B5e%20sobre%20cumprimento%20dos%20deveres,3%20de%20mar%C3%A7o%20de%201998>>, Accessed: 7 mar, 2023.

⁴⁴ BRASIL, *Constituição da República Federativa do Brasil de 1988*, Available at: <http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm>, Accessed: 25 jul, 2022.

Also, even if article 8 of the Terrorism Law was not vetoed, the protection of the environment resulting from acts of terrorism would still not be satisfactorily covered, since the text of the Law was open, imposing a rigor and a subjective interpretation of what environmental damage would be.

Thus, the reason for the veto of Article 8 could never be the already existing legal mechanisms to protect the environment, but rather Law No. 13,260 should limit and conceptualize its reach and need beyond the existing legislation. In other words, it should discuss the serious environmental damage caused by social and widespread terror.

However, it does not serve the public interest to persist in criticizing the presidential veto, but to adjust the situation to the current reality. The solution, therefore, is to propose, through a new Decree, the addition of a paragraph with the rejected aggravating factors, but improved with the provision of severity of the environmental damage, because in the old wording the mention was generic, simply environmental damage. Now, it is known that there are offenses of minor significance, such as the death of a dove. The aggravation of the penalty must be limited to environmental damage in which collective results are determined, that is, that reach, in a generic way, an indeterminate number of people.

Useless to say that there is no borderline between common damage and serious damage, as the Constitution indicates the right way to identify the cases that deserve the most severe reprimand, through the same words used for the requirement of an environmental impact study, that is, in the hypothesis of significant degradation of the environment (art. 225, § 1, item IV of the Federal Constitution)⁴⁵, about which there is already doctrine and jurisprudence.

In short, serious environmental damage is not insignificant when compared to other legal interests already protected by Law No. 13,260, of 2016, since it undoubtedly causes damage to human beings and future generations.

5 CONCLUSION

As explained in the first session of this present study, damage is understood to be the one which causes harmful changes to the environment or that causes changes in people's health and in their interests.

Serious environmental damage, in turn, consists of environmental damage with irreversible consequences or whose repair requires a long time, in addition to the environmental damages currently provided for in the national legal system, considering that there is no tolerability of the harmful degree.

Injury to one of the elements of the environment can affect it as a whole, characterizing the occurrence of environmental damage, and violating the precepts set forth in article 225 of the Federal Constitution⁴⁶.

Consequently, serious environmental damage is no longer the object of Law no. 13,260, of 2016, considering that, when delimiting the concept of terrorism, it

⁴⁵ BRASIL, *Constituição da República Federativa do Brasil de 1988*, Available at: <http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm>, Accessed: 25 jul, 2022.

⁴⁶ BRASIL, *Constituição da República Federativa do Brasil de 1988*, Available at: <http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm>, Accessed: 25 jul, 2022.

provided as the purpose of the crime to provoke social or generalized terror, exposing people, property, public peace or public safety to danger.

The strategies outlined in the Anti-Terrorism Law aim to promote equality and to combat all forms of discrimination, such as xenophobia, racism and threats to diversity and identity. However, it is important to remember that environmental preservation is essential to ensure a healthy and harmonious existence. For these reasons, including environmental protection in strategies to combat terrorism is a necessary measure to ensure a dignified environment for current and future generations.

Therefore, the conclusion of this work is that, due to a political-legislative option, the national legislation includes the term “serious environmental damage” in its provisions. However, evidently, at this moment, with the worsening of the environmental crisis and the concrete possibility of a resurgence of terrorist acts, nothing prevents, on the contrary it is recommended, that the omission be filled through a bill that reintroduces the vetoed provision.

6 REFERENCES

- AGOSTINHO, Rodrigo, *Carta Capital: Os desafios do IBAMA pós-Bolsonaro, segundo o Presidente da entidade*, 2023, Available at: <https://www.google.com/search?q=carta+capital+entrevista+presidente+do+ibama&rlz=1C1S1QJL_pt-BRBR863GB863&oq=carta+capital+entrevista+presidente+do+ibama&aqs=chrome..69i57j0i546l2.13033j0j15&sourceid=chrome&ie=UTF-8#fpstate=ive&vld=cid:36aed490,vid:ZlxR_Xa3hD4>, Accessed: 3 mar, 2023.
- BRASIL, *Lei nº 6.938 de 31 de agosto de 1981*, Available at: <http://www.planalto.gov.br/ccivil_03/leis/l6938.htm>, Accessed: 25 jul, 2022.
- BRASIL, *Constituição da República Federativa do Brasil de 1988*, Available at: <http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm>, Accessed: 25 jul, 2022.
- BRASIL, *Lei nº 13.260 de 16 de março de 2016*, Available at: <http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/lei/113260.htm>, Accessed: 27 jul, 2022.
- BRASIL, Supremo Tribunal Federal, Habeas Corpus nº 82.424/RS, Relator: Ministro Moreira Alves, Brasília, 17 de setembro de 2003, *Lex: jurisprudência do STF*, Porto Alegre, 17 set. 2003, São Paulo, Available at: <<https://jurisprudencia.stf.jus.br/pages/search/sjur96610/false>>, Accessed: 30 jul, 2022.
- CÂMARA DOS DEPUTADOS, *Lei nº 13.260/2016 de 16 de março de 2016*, Available at: <<https://www2.camara.leg.br/legin/fed/lei/2016/lei-13260-16-marco-2016-782561-veto-149753-pl.html>>, Accessed: 25 jul, 2022.
- BUSATO, Paulo César, *Direito Penal: Parte Especial I*, São Paulo, Atlas, 2014.
- BUSATO, Paulo Cesar, *Lei Antiterror Anotada: Lei 13.260 de 16 de março de 2016*, São Paulo, Editora Foco, 2018.
- COSTA, José Faria, SILVA, Marco Antonio Marques, *Direito Penal Especial, Processo Penal e Direitos Fundamentais: Visão Luso-Brasileira*, São Paulo, Quartier Latin, 2006.
- FREITAS, Vladimir Passos de, “Os reflexos no Brasil da Conferência do Meio Ambiente da ONU em 1972”, In: CONSUELO, Y. M. Y., SOUZA, Maria Cláudia, coord., *Desenvolvimento e meio ambiente humano: os 50 anos da Conferência de Estocolmo*, Curitiba, Ithala, 2022
- GARCIA, Fernando Murilo Costa, *Dano Ambiental existencial: reflexos do dano aos pescadores artesanais*, Curitiba, Juruá, 2015.
- HORN, Norbert, *Introdução à Ciência do Direito e à Filosofia Jurídica*, Porto Alegre, Sérgio Antonio Fabris editor, 2005.

INSTITUTO DO PATRIMÔNIO HISTÓRICO E ARTÍSTICO NACIONAL, *Carta do Rio*, 1992, Available at: <http://portal.iphan.gov.br/uploads/ckfinder/arquivos/Carta%20do%20Rio%201992.pdf>, Accessed: 29 jul, 2022.

LEITE, José Rubens Morato, *Dano ambiental: do individual ao coletivo, extrapatrimonial*, 2 ed. rev., atual. e ampl., São Paulo, Editora Revista dos Tribunais, 2003.

LEX EDITORA, *Resolução ANM nº 129, de 23 de fevereiro de 2023*, Available at: <<https://www.lex.com.br/resolucao-anm-no-129-de-23-de-fevereiro-de-2023/#:~:text=Disp%C3%B5e%20sobre%20cumprimento%20dos%20deveres,3%20de%20mar%C3%A7o%20de%201998>>, Accessed: 7 mar, 2023.

MENDONÇA, Francisco, “Geografia Socioambiental”, In MENDONÇA, F., KOZEL, S., Org., *Elementos de epistemologia da geografia contemporânea*, Curitiba, Editora da UFPR, 2002.

MESAVILLA, Débora Thaís, *O que são aquíferos e qual a importância dos aquíferos do Brasil? M3 Geologia e meio ambiente*. 2018, Available at: <<https://mbgeologia.com.br/index.php/novidades/detalhe/40/o-que-sao-aquiferos-equal-a-importancia-dos-aquiferos-do-brasil>>, Accessed: 3 mar. 2023.

MILARÉ, Édis, *Direito do Ambiente*, 8 ed. rev. atual., ampl., São Paulo, Revista dos Tribunais, 2013.

MUNHOZ, Danielle Duarte, *Terrorismo: análise da política brasileira antiterror segundo o garantismo e o direito internacional*, Rio de Janeiro, Lumen Juris, 2019.

NAKAGAWA, Fernando, *Aneel registra sete ataques a torres de transmissão, sendo quatro derrubadas*, *CNN Brasil*, 2023, Available at: <<https://www.cnnbrasil.com.br/business/aneel-registra-sete-ataques-a-torres-de-transmissao-sendo-quatro-derrubadas/>>, Accessed: 8 fev, 2023.

NUCCI, Guilherme de Souza, *Leis penais e processuais penais comentadas*, 4. ed., São Paulo, Revista dos Tribunais, 2009.

RIBEIRO, Job Antonio Garcia, CAVASSAN, Osmar, “Os conceitos de ambiente, meio ambiente e natureza no contexto da temática ambiental: definindo significados, Góndola”, *Enseñanza y Aprendizaje de las Ciencias*, vol. 8, pp. 61-76, 2013, Available at: <<http://hdl.handle.net/11449/135129>>, Accessed: 26 jul, 2022.

SHECAIRA, Sérgio Salomão, *Racismo (noticiário): Escritos em homenagem a Alberto Silva Franco*, São Paulo, Revista dos Tribunais, 2003.

SENDIM, José de Sousa Cunhal, *Responsabilidade civil por danos ecológicos: da reparação do dano através da restauração natural*, Coimbra, Almedina, 2002.

SOUZA FILHO, Carlos Frederico Marés, “O dano ambiental e sua reparação”, *Revista de Direito da Associação dos Procuradores do Estado do Rio de Janeiro*, Rio de Janeiro, v. 1, p. 49-60, 1999.

STEIGLEDER, Annelise Monteiro, *Responsabilidade civil ambiental: as dimensões do dano ambiental no direito brasileiro*, 2 ed. rev. atual. e ampl., Porto Alegre, Livraria do Advogado Editora, 2011.

TEIDER, Lucas Hinckel, *Terrorismo e seu financiamento: a política pública criminal brasileira de prevenção*, São Paulo, Dialética, 2021.

VASCONCELOS, Carlos Eduardo de Oliveira, *Terrorismo e outras situações de emergência: teoria e prática da prevenção e do combate – Terrorism and other emergencies: theory and practice of prevention and control*, Brasília, ESMPU, 2018.

VEYRET, Yvette, *Géo-environnement*, Paris, Sedes, 1999.