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The Criminal Liability of Legal Entities for Environmental Crimes from the Perspective of the Brazilian Supreme Court

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***Keywords*— Environment, Sustainability, Criminal Sanction, Symbolic Criminal Legislation; Natural Resources.**

***Abstract*— The research analyzed the jurisprudence of the Federal Supreme Court in the judgment of Extraordinary Appeal No. 548.181, from the State of Paraná, which overcame the understanding signed by the Superior Court of Justice, in the judgment of Ordinary Appeal in Writ of Mandamus No. 27.593 from the State of São Paulo, which dealt with the criminal liability of legal entities due to the practice of environmental crimes. The objective was to verify whether the liability imposed on legal entities was effective or whether it was reduced to a merely symbolic aspect. The work was developed through the dialectic method, which allows the questioning of the certainties established up to that point, enabling us to deny them and, from this intellectual exercise, to extract secure knowledge. It was concluded that the imputation of criminal liability to legal entities reveals itself as symbolic legislation that translates into an illusory action of the State with the purpose of conferring a way of solution to the problems and challenges for the protection of the environment, making it necessary that the discussions advance searching for more efficient answers for ecological tutelage.*

I. INTRODUCTION

The Constitution of the Republic from 1988 innovated the Brazilian legal system with the possibility of criminal liability of legal entities in two contexts, in crimes practiced against the economic and financial order and also against the popular economy, and in the hypotheses of the practice of environmental crimes, as verified in the articles 173, §5 and 225, §3.

The Law of Environmental Crimes, Law 9.806/1998, reverberated the constitutional command and regulated in infra-constitutional scope, the typification and sanctions applied to legal entities due to harmful conducts to the environment, as seen in article 3:

> Art. 3 The legal entities shall be held administratively, civilly and criminally liable according to the provisions of this Law, in cases where the violation is committed by decision of their legal or contractual representative, or of their collegiate body, in the interest or benefit of their entity.
>
> Sole Paragraph. The liability of legal entities does not exclude that of individuals, authors, co-authors or participants in the same fact (BRAZIL, 1998).

Thus, the 1988 Constituent Assembly announced the criminal liability of legal entities and the environmental crimes law brought the criminal typification, regulating punishable conduct and the penalties applied.

However, the research will question whether there are adequate and indispensable instruments in the criminal prosecution agencies to achieve the aspiration of punishing legal entities when they commit crimes against the environment.

If there are no normative instruments to fulfill this desideratum, it is up to the Judiciary to create interpretations to materialize the will of the Constitution and the law, so that the legal entities may be held responsible when commiting environmental crimes.

Thus, in this quest to build a legal framework to enable the criminalization of legal entities for crimes that violate the environment, the higher courts have issued decisions in the same direction, creating what is known as jurisprudence.

The research will verify whether the decision handed down by the Federal Supreme Court in the judgment of Extraordinary Appeal No. 548.181, from the State of Paraná, which overcame the understanding established by the Superior Court of Justice in the judgment of Ordinary Appeal in Writ of Mandamus No. 27.593 from the State of São Paulo, brought effectiveness, or whether it reduced the legislation on the criminal liability of legal entities to a symbolic aspect.

II. METHOD

The research developed follows the line of Society, Environment and Sustainable Regional Development and it was developed by the dialectical method, enabling the questioning about the certainties established until then, propitiating to deny them and, from this intellectual exercise, to extract a sure knowledge.

The work used the sociological-legal aspect since it analyzed, by means of jurisprudential research, and how the Federal Supreme Court has conceived the possibility of criminal liability of legal entities due to the practice of environmental crimes. For this, were made a research on the Supreme Court website: "criminal liability of legal entities in environmental crimes". Only nine results were found. After a preliminary analysis, a cutout was defined in order to deepen the study of the decision in Extraordinary Appeal No. 548.181, from the State of Paraná, and its precedents, which consolidated the understanding on the possibility of the legal entity being an isolated defendant in the criminal action that investigates environmental crimes.

According to the techniques of content analysis, it is stated that it is a theoretical research, since the procedure adopted to demonstrate the inefficiency of the criminal liability of the legal entity used the content analysis of scientific-legal texts, laws, environmental norms, resolutions, ordinances and the jurisprudence of the superior courts.

As for the nature of the data, the 1988 Constitution of the Federative Republic of Brazil, the environmental crimes law, as well as the laws, resolutions and other normal environmental norms related to the object of the research were used. The jurisprudence of the Federal Supreme Court and the Superior Court of Justice will be used, with the study of the precedents that were the basis for the judgment of Extraordinary Appeal No. 548.181, from the State of Paraná. The opinion of the researchers already published on the matter were surveyed. The collected and reconstructed data were analyzed from the perspective of the Democratic State of Law.

III. RESULTS

At first, the Superior Court of Justice, in the judgment of Ordinary Appeal in Writ of Mandamus No. 27.593 of the State of São Paulo (BRAZIL, 2012), reaffirmed the theory of double imputation to hold the legal entity responsible.

For the theory of double imputation, it is essential to create a necessary co-party liability that would involve the natural person of the partners and/or members of the management bodies and the legal entity itself, and that all should be listed as defendants in the criminal action filed to investigate environmental crimes, as it can be seen in the synthesis of the decision analyzed:

> CRIMINAL AND CRIMINAL PROCEDURE. ORDINARY APPEAL IN WRIT OF MANDAMUS.

> ENVIRONMENTAL CRIME. ART. 54, § 2, V, OF LAW 9.605/98. DOUBLE IMPUTATION. INDISPENSABILITY. INEPCT COMPLAINT. APPEAL GRANTED.
>
> 1. In environmental crimes, double imputation is necessary, since it is inadmissible to hold a legal entity criminally liable in isolation from the individual, who acts with his or her own subjective element.
>
> 2. (RMS n. 27.593/SP, Reporting Justice Maria Thereza de Assis Moura, Sixth Panel, judged on September 4, 2012, DJe of October 2, 2012).

The theory of double imputation imposes on criminal prosecution the verification of simultaneously guilt on the natural person or people who are part of the directive body and the legal entity itself, since it recognizes that the latter, as a moral and collective entity, does not have the capacity to act and, as a result, lacks guilt. The "culpability would be extracted exactly from the conduct of the individual or the group of individuals who decide for the legal entity, expressing their will and locupleting" (JOSÉ E AZEVEDO, 2019, p. 84).

The position of the Superior Court of Justice in the trial of the Ordinary Appeal in Writ of Mandamus No. 27.593 of the State of São Paulo (BRAZIL, 2012), which established the understanding of the application of the theory of double imputation in the criminal accountability of the legal entity for environmental crimes, was grounded and echoed the decisions rendered in previous judgments that dealt with the same theme, as, for example, can be seen in the ements of the following judgments that served as precedent:

> ORDINARY APPEAL IN HABEAS CORPUS. CRIME AGAINST THE ENVIRONMENT. INCOMPLETENESS OF THE COMPLAINT. ABSENCE OF MINIMUM DESCRIPTION OF THE RELATION BETWEEN THE APPELLANT AND THE CRIMINAL ACT. INADMISSIBILITY. LEGAL ENTITY. SIMULTANEOUS LIABILITY OF THE NATURAL PERSON. NECESSITY.
>
> 1. In crimes that involve companies whose authorship is not always clear and well defined, it is required that the accusatory body establish, even if minimally, a connection between the accused and the criminal enterprise charged to him. The mere fact of being a partner, manager or administrator does not authorize criminal proceedings to be brought for crimes committed within the scope of the company, if the cause and effect relationship between the accusations and his or her function in the company is not proven, even if with elements to be further explored during the criminal action, under penalty of recognizing objective criminal liability.
>
> 2. In this case, the Public Prosecutor's Office did not take care to point out any circumstance that could serve as a link between the appellant's conduct, as owner of the company, and the polluting action. A review of the case records also shows that there is a public power of attorney (page 88), drawn up on January 27, 2000, which grants broad powers of management of the company to another person.
>
> 3. If the individual is excluded from the accusation, the prosecution cannot be pursued against the legal entity alone.
>
> It is not possible to hold the legal entity criminally liable in isolation from the individual, who acts with his or her own subjective element.
>
> 4. Appeal granted to recognize the lack of competence of the accusation (RHC n. 24.239/ES, Reporting Justice Og Fernandes, Sixth Panel, judged on 10/6/2010, DJe de 1/7/2010).

> SPECIAL APPEAL. CRIME AGAINST THE ENVIRONMENT. FILING OF THE COMPLAINT. PASSIVE LEGITIMACY. LEGAL ENTITY. SIMULTANEOUS LIABILITY OF THE LEGAL ENTITY AND THE INDIVIDUAL. POSSIBILITY. APPEAL GRANTED.
>
> 1. Criminal liability of a legal entity in environmental crimes is accepted, under the condition that it could be charged as a co-author with a natural person who has acted with his or her own subjective element.
>
> (Precedents)

> 2. 2. Appeal granted to receive the accusation, in accordance with Precedent No. 709 of the Federal Supreme Court: "Except when the first degree decision is null and void, the decision that upholds the appeal against the rejection of the accusation is immediately valid for the receipt of the accusation" (Special Appeal No. 800.817/SC, Reporting Justice Celso Limongi (Associate Justice of the Court of Appeals), Sixth Panel, judged on February 4, 2010, published in the Court Gazette on February 22, 2010).

The adoption of the theory of double imputation by the Brazilian courts is based on the mechanism called "emprunt de criminalité", which comes from the French law.

Luiz Régis Prado (2022, p. 121) states that this construction:

> explains this type of criminal liability through the mechanism of the "emprunt de criminalité", done to the natural person by the legal person, from which derives the denomination of subsequent, ricochet or loan liability, which is supported by a human intervention. From this subsequent or borrowed character results an important consequence: every criminal offense imputed to a legal entity must have the natural person as a reference. Or, in other words: the responsibility of the former is indirectly related to the latter.

It is possible to observe that the action and the guilt, in the theory of double imputation, are based on the actions or omissions practiced by the managers and/or members that make up the legal entity, an indispensable requirement for the criminal liability of the legal entity.

For this reason, a true passive co-party must be formed in which the legal entity and the natural person of the partners and/or members of the directive body are denounced by the Public Prosecution Service, which must individualize the conduct of each one of those involved in the pleading that triggers the criminal action.

It should be noted that the legal entity is not liable if the partners or managers exceed the powers of the by-laws or articles of association with the specific purpose of committing crimes. In this case, those held responsible should be the natural persons who directly and under the veil of the legal entity committed the environmental offenses (PEREIRA, 2020, p. 88).

Many criticisms have arisen due to the theory of double imputation adopted by the Superior Court of Justice.

The first concerns the violation of the principle of legality, since the Constitution and the environmental crimes law did not provide for the simultaneous liability of the legal entity and the natural person or directive body that integrates it. The second criticism holds that amid the performance in the market of hyper-complex organizations and with multifaceted division of labor it would be impossible to individualize the conduct of the people who made the decisions with malice or fault that produced the harmful result to the environment (JOSÉ E AZEVEDO, 2019, p. 93).

With the development of the theory of double imputation the Supreme Court has fixed the thesis that the occurrence of environmental crimes involving legal entities should not automatically consider the responsibility of the individuals who control and/or direct the collective entity.

It would be necessary for the investigation to identify and individualize in detail the intentional or culpable conduct of the natural persons who belong to the legal entity and who caused the damaging result to the environment.

In this sense, Justice Gilmar Mendes, reporter of Habeas Corpus no. 83.554-6 from Paraná (BRAZIL, 2005), removed the responsibility of the president of Petrobrás due to a leak in a Petrobrás pipeline that would have caused environmental damage, as can be seen in the judgment under analysis:

> Habeas Corpus. 2. Objective criminal responsibility. 3 - Environmental crime under art. 2 of the Law No. 9.605/98. 4. harmful event: leakage in a Petrobrás oil pipeline 5. absence of causal link 6 - Responsibility for environmental damage not directly attributable to Petrobrás' executive officer. 7. existence of management and operational instances to inspect the state of conservation of 14,000 kilometers of oil pipelines. 8. non-configuration of causality relation between the imputed fact and the alleged criminal agent. 8. differences between the conduct of the company's leaders and the activities of the company itself. 9 - The problem of markedness in a risk society. 10- Impossibility of attributing the same risks to the individual and to the legal entity. (HC 83554, Rapporteur: GILMAR

> MENDES, Second Panel, judged on 16/08/2005, DJ 28-10-2005 PP-00060 EMENT VOL-02211-01 PP-00155 RTJ VOL-00209-01 PP-00186 LEXSTF v. 27, n. 324, 2005, p. 368-383).

For the Federal Supreme Court, analyzing the case, the causal connection between the accused natural person and the harmful event, between the individual's conduct and the result, was not clearly evidenced.

For this reason, the conclusion of the trial was the determination to cancel the criminal action against the president of Petrobras.

It was considered by the vote of the reporting judge that:

> If there were a cause and effect relationship between an action or omission of the former Petrobras CEO, the Public Prosecutor's Office should explain it in a consistent manner. And if there were consistency, I think, the causal chain would hardly occur directly between an act of the Presidency of Petrobras and a pipeline. I imagine that between the Presidency of Petrobrás, obviously a management body, and an oil pipeline, there are numerous managerial and operational instances in the field. Isn't there a team of engineers responsible for the said pipeline? Is it the president of Petrobrás who examines, on a daily basis, the state of conservation of the 14,000 kilometers of pipelines? There are no safety engineers at Petrobras? Obviously I am not assuming liability even for safety engineers. For these too there is the statute of guarantees in the criminal sphere. What I want is to show that, if there is a harmful event and if there is an attempt of individual accountability, a basic assumption for this is the consistent demonstration of causality between the alleged criminal agent and the fact (BRAZIL, 2005, p. 13).

Subsequently, the understanding of the Federal Supreme Court changed and began to consider the possibility of imputing liability only to the legal entity, considering it unnecessary to identify the managing partners or the natural person who caused the result harmful to the environment within the scope of business activity.

This thesis was established in the judgment of Extraordinary Appeal No. 548.181 of the State of Paraná (BRAZIL, 2014), which was intended to carry out, to a certain extent, a constitutionality check of Art. 225, §3 of the Federal Constitution of 1988 in order to impose criminal liability only on Petrobras on account of the practice of environmental crime, ruling out the indispensability of linking to the criminal action the natural persons who make up the governing bodies of the collective entity.

The rapporteur, Justice Rosa Weber, stated in her vote that the division of labor and the distribution of powers in the modern corporate world, often multinational, makes it impossible to identify the natural persons who acted to produce the result harmful to the environment.

For this reason, once the natural persons are not identified, the liability of the legal entity becomes imperative as, due to an eventual impunity, it could continue to obtain profits and advantages from the practice of illicit acts in its interest to the detriment of the ecological system. Therefore, it was necessary to comply with the constitutional and legal determination of criminalizing legal entities, regardless of the identification of natural persons who contributed to the environmental crime (BRAZIL, 2014, p. 19).

It was pointed out in the judgment that the exclusive criminal liability of the legal entity does not remove the importance of the criminal prosecution of natural persons whose actions produced the criminal offense.

But, unlike the understanding of the Superior Court of Justice, it would not be appropriate to condition (conditio sine qua non) the filing of a criminal action to the simultaneous prosecution of the legal entity with the natural persons who integrate it and/or were its managing bodies. Ascertaining the fragmented responsibilities of natural persons in modern business organizations would be impossible. "Therefore, conditioning or subordinating the criminal accountability of the moral entity to the cumulative imputation of the illicit fact to a specific individual is not consistent with the rule of § 3 of art. 225 of the Constitution of the Republic" (BRAZIL, 2014, p. 21).

Thus, the result of the judgment of Extraordinary Appeal No. 548.181 of the State of Paraná was set forth in which the Federal Supreme Court, by majority vote, established the thesis that recognizes the possibility of isolated and solo criminal liability of the legal entity that incurs environmental crimes. Justices Marco Aurélio and Luiz Fux dissented from the opinion of the reporting justice.

This is how the judgment analyzed was worded

> EXTRAORDINARY APPEAL. CRIMINAL LAW. ENVIRONMENTAL CRIME. CRIMINAL LIABILITY OF LEGAL ENTITIES. CONDITIONING OF THE CRIMINAL ACTION TO THE IDENTIFICATION AND CONCOMITANT PROSECUTION OF THE INDIVIDUAL THAT IS NOT SUPPORTED BY THE CONSTITUTION OF THE REPUBLIC.
>
> (1) Article 225, paragraph 3 of the Federal Constitution does not condition criminal liability of legal entities for environmental crimes to simultaneous criminal prosecution of the natural person who is allegedly responsible within the scope of the company. The constitutional rule does not impose the necessary double imputation. 2 - Today's complex corporate organizations are characterized by decentralization and distribution of attributions and responsibilities. 3 - To condition the application of art. 225, §3, of the Political Letter to a concrete imputation also to an individual implies an undue restriction of the constitutional rule, expressing the intention of the original constituent not only to broaden the reach of criminal sanctions, but also to avoid impunity for environmental crimes in face of the immense difficulties in individualizing those responsible within corporations, in addition to reinforcing the protection of the environmental legal good. 4. The identification of the sectors and internal agents of the company responsible for producing the illicit fact is relevant and should be sought in the specific case as a way to clarify whether these individuals or bodies acted or deliberated in the regular exercise of their internal attributions to the company, and also to verify whether the action was in the interest or for the benefit of the collective entity. Such clarification, which is relevant for the purpose of attributing a certain offense to the legal entity, should not be confused, however, with subordinating the liability of the legal entity to the joint and cumulative liability of the individuals involved. In not rare opportunities, the internal responsibilities for the fact will be diluted or partialized in such a way that they will not allow the imputation of individual criminal responsibility. (RE 548181, Rapporteur: ROSA WEBER, First Panel, judged on 08/06/2013, ELECTRONIC ACCURRENT DJe-213 DIVULG 29-10-2014 PUBLIC 30-10-2014 RTJ VOL-00230-01 PP-00464).

In the judgment of this precedent, which inaugurated the understanding of the Brazilian Supreme Court of the exclusive criminal liability of legal entities, the rapporteur herself, in her vote, recognized that there is a lack of legal instruments to make feasible and materialize the sanctioning of business activities operated by collective entities.

The reporting judge consigned in her vote that: "Possible gaps in the legislation regarding the criminalization of moral entities does not authorize the establishment of assumptions that contradict and void the raison d'être of the sanctioning of legal entities" (BRAZIL, 2014, p. 24).

With this recognition of the absence of a logical-legal structure to give concretion to the criminal prosecution and consequent criminal sanction in an exclusive way to legal entities, in face of their lack of capacity to act, culpability and legality instruments, most members of the STF clearly declared the symbolic ideal of the criminal liability of legal entities.

Justice Marco Aurélio pointed out in his dissenting vote that in the event of conviction of the legal entity, in this case Petrobras, there would be no conditions to enforce the sanction of a criminal nature that reaches the freedom to come and go. The minister stated that:

> "President, it is not discussed, in the case, civil, administrative, labor liability - which is also civil - or electoral - which is also civil. We are discussing criminal liability. And it is beyond doubt that the extension of the order, implemented with regard to the President of Petrobras, to the Superintendent, is not at stake. In this criminal action, as proposed, we will no longer have a natural person as an accused, but, even so, a prosecution involving a sanction that affects the freedom to come and go is being carried out. I wonder, once the guilt of Petrobras is sealed, who will be sentenced to serve the sentence!

> I remain convinced that we are wasting a candle on a very bad corpse. I believe that, as much as it strengthens the precept of article 225 of the Federal Constitution, regarding the criminal responsibility of natural persons and legal entities, it is not given, in view of the objective and subjective limits of criminal prosecution, to conclude that this precept is violated" (BRAZIL, 2014).

Justice Luiz Fux, who also diverged from the rapporteur and the other eight justices that followed her vote in the trial under review, also concluded that it is impossible to impute criminal liability exclusively to legal entities, as did Justice Marco Aurélio.

Justice Luiz Fux's interpretation of the constitutional text was stamped in the judgment examined:

> "[...] article 225, § 3, of the Constitution did not create the criminal liability of the legal entity because, by stating that environmental offenses "shall subject the violators, individuals or legal entities, to criminal and administrative sanctions," it would have only imposed administrative sanctions on legal entities.
>
> Furthermore, according to a synthesis of the opinion of these authors, article 5, item XLV establishes the principle of the personal nature of the penalty, which would prohibit any exegesis that would impose criminal liability on legal entities.
>
> Professor Barbosa Moreira, with his fine irony to explain the legitimatio ad causam, used to say: "legal entities do not eat, do not drink, do not love. That's according to what he used to say.
>
> Then, these authors also affirm that it would be a form of objective criminal liability. And, finally, they emphasize that the penalty has a re-socializing character, something absolutely impossible to be achieved in relation to legal entities".

Despite the dissenting votes of Justices Marco Aurélio and Luiz Fux on the impossibility of exclusive criminal imputation of legal entities for the practice of environmental crimes, as pointed out, the other Justices understood this possibility and, by a majority, the Federal Supreme Court overcame the theory of double imputation that prevailed in national jurisprudence and began to admit criminal actions that have legal entities accused of environmental crimes as exclusive and isolated defendants

IV. DISCUSSION

As the Federal Supreme Court is the guardian of the Constitution and has the last word in decisions that are binding on the entire Judicial Branch, as well as all agencies of the Direct and Indirect Public Administration, as provided in Art. 102, CRFB/1988, prevails in the Brazilian legal system the understanding that the legal entity in a unique and isolated way can respond for environmental crimes when its partners and administrators are not identified or are even acquitted.

This happens, as analyzed in the jurisprudence faced, even in the face of the recognition by some ministers of the Federal Supreme Court that there are no legal and material means to impute crimes to legal entities that commit crimes against the environment in the context of their business activities.

Well, there is only criminal liability with the possibility of applying criminal sanctions, and there are only criminal sanctions as a result of criminal liability. One does not exist without the other.

Anthropic actions that cause destruction and pollution cannot be regulated by legislation with no practical application, which is only symbolic and inefficient by criminal law that carries in its core the harshest sanction of the Brazilian legal system: the custodial sentence.

And how would there be a liberty penalty for legal entities? How would it be possible to imprison a company, be it national or multinational?

It is clear that there are no physical and material means to accomplish this purpose. Therefore, the incriminating norm seems to lack effectiveness and efficiency to fulfill the promise of ecological protection.

According to the juridical-philosophical concept, the efficacy of the legal norm concerns its possibility of applicability, enforceability, or execution, which thus leads to normative concretion in the empirical world. The effectiveness of the legal norm is revealed when its recipients make use of and observe the normativity created by the legislature or, also, when there are means of enforcement of the law by the organs of the State aimed at the execution of the legal command (NEVES, 2013, p. 43-44).

Thus, "the effectiveness of the law, covering the most varied situations - observance, execution, application and use of the law -, can be understood generically as

normative concretization of the legal text" (NEVES, 2013, p. 46).

Thus, the ineffectiveness of a norm is configured when the concretion of the norm does not occur, the applicability of the will of the law, due to its non-observance by citizens or due to the lack of legal or technical enforcement apparatus for state agencies to regulate the world of life (empirical) in accordance with the legislation posted, either in the Constitution or in infra-constitutional laws.

While the effectiveness of the rule concerns its instrumental possibility of execution/application (if-then) its efficiency is restricted to the realization and implementation of the finalistic program that moved the entire legislative process for the creation of the law, making the "means-end" that stems from the abstraction of the legal text and the concrete result that enforces the purpose for which the rule was created (NEVES, 2013, p. 48).

In this sense, one can only speak of the efficiency of the criminal liability of legal entities due to the practice of environmental crimes if it would be possible to apply sanctions of a criminal nature that has as its mistery the general positive prevention substantiated in the social acceptance that there is true protection of the environment through the legal norms that are inalienable and unchangeable for life across the planet, in an ecocentric view.

Still, when the ineffectiveness (applicability/executability) and ineffectiveness (does not achieve the purposes for which it was created) of the norm reach a very high situation, the law lacks social validity or normativity, as Marcelo Neves (2013, p. 48) teaches: "implying that the normative expectations of the people of the state bodies, in a generalized way are not guided by the legal provisions, we find ourselves facing a lack of social validity of the law or lack of normativity of the legal text".

The enforceability of a rule is verified by the quality and quantity of the objective conditions for its instrumental realization and protection of the legal goods that are placed under its protection. The absence of these conditions establishes an "illusion" and "dissimulation" of the proclaimed promises, which characterizes symbolic criminal legislation. This "illusion" can occur due to the intention of demonstrating a strong State, to appease the spirits of the population, or by the simple need to demonstrate that something is being done to fulfill commitments previously assumed. Due to this deficit of execution, the symbolic criminal legislation suffers from efficiency, which collapses the expectations of protection of the legal goods that should be protected by the criminal law (HASSEMER, 2008, p. 221).

There is another important negative effect of symbolic environmental criminal legislation: by creating a "disguise" that there is protection of the environment, it causes the debate to cease and relieves environmental policy of the pressure to seek and apply effective measures to protect our vital environment. For, the expectations are that criminal law will promote protection, when, in fact, such expectations do not materialize in the factual-empirical plan. Thus, the environment is unprotected and criminal law is demoralized due to the clear deficit of enforcement and inefficiency in the protection of legal goods placed under its protection. The political and legislative choice to adopt symbolic criminal legislation makes things look easy and, therefore, there is an early abandonment of the search for measures that are more efficient and closer to the problems related to the inalienable need to preserve the environment (HASSEMER, 2007, p. 227).

In this sense, the imputation of criminal liability to legal entities appears as symbolic legislation. Defends Hassemer (2007, p. 229):

> an Environmental Criminal Law with deficits in execution should be maintained, because of its symbolic effect on the population's position regarding environmental problems, is cynical and demoralizes the Criminal Law. The Criminal Law can't slyly instill effects on the population's conscience and it also can't instrumentalize pedagogical measures to the singularly involved, it must be free of deceit.

Symbolic is understood as all legislation that is produced with the purpose of providing a solution to the problems and challenges of environmental protection, or at least tries to reveal the legislator's good will towards the citizens for such a task. However, in reality, symbolic legislation is unenforceable and devoid of the material means to be executed and put into practice with results for society. Thus, the symbolic legislation makes it so that, besides not bringing effective protection to the legal good, it still serves as an obstacle to the advancement of debates and efforts (NEVES, 2013, p. 39) that seek to equalize the preservation of the environment and development, in such a way that it is characterized by sustainability.

Therefore, criminal liability in environmental crimes should be imputed to individuals who are members of the legal entity and who acted knowingly and voluntarily for the occurrence of environmental crimes, because:

criminal liability remains personal (art. 5, XLV). Therefore, when the physical authors of the facts committed in the name of a legal entity and considered criminals are identified and can be identified, then they should be held criminally responsible. Otherwise, we run the risk of having to be content with a purely formal penalization of legal entities, which, given the evidentiary and operational difficulty, would exhaust the real judicial activity, in yet another demonstration of the symbolic function of the Criminal Law, since, as Raúl Cervini denounces, "the 'mainstream media' would instill in public opinion the sufficiency of this basic satisfaction of its craving for justice, while the individuals who are truly responsible could remain as unpunished as ever, acting through other companies. In fact, no one can ignore the fact that behind a legal entity there is always a natural person, who uses the legal entity as a mere "façade", a formal cover. The formal appearance would be punished and the reality would be left freely operating hidden in another fantasy, a new legal entity, with a new CNPJ (BITENCOURT, 2022, p. 327).

It can be seen that the dominant jurisprudence of the Supreme Court and criminal legislation that seeks to hold the legal entity responsible is symbolic and devoid of the legal and material means necessary to hold responsible and apply criminal sanctions to the polluting corporate collective entity.

V. CONCLUSION

The study identified that the absence of the legal and material conditions for the criminal liability of the legal entity establishes a false perception of fulfillment of the proclaimed promises of environmental protection.

This collapses the expectations of protection of legal goods that should be protected by the criminal law and are not, thus characterizing the symbolic criminal legislation that reveals itself as an "illusion" and "dissimulation" of criminal protection of the environment.

Besides the lack of protection, the symbolic criminal legislation serves as an obstacle to the advancement of debates and efforts that seek effective protection of the environment.

Thus, the environment is unprotected by the possibility of criminal liability of legal entities and criminal law is demoralized due to the clear deficit of enforcement and inefficiency in the protection of legal goods placed under its protection.

The research found that the thesis of the Federal Supreme Court established in the trial of Extraordinary Appeal No. 548.181 of the State of Paraná (BRAZIL, 2014), by introducing into the Brazilian legal system the criminal liability of the legal entity in an isolated manner in the criminal action, which should perform more effectively the prosecution of environmental crimes, translated into a simple symbolic character, being inefficient to fulfill the purpose of holding the corporate legal entity criminally responsible.

The ineffectiveness of the criminal law applied to legal entities, due to environmental damage, is revealed in the very inability to protect the environment due to the lack of enforcement of the norms proposed in the environmental crimes law to achieve its purpose, which would be to protect the vital means of all existence on the planet.

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