

The Confrontation of Environmental Problems through Compliance

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Abstract— This article intends to treat the Compliance Program as a way to combat environmental problems. Thus, the central issue is the following question: is it possible to address environmental problems through the implementation of the Compliance program? To solve this issue, the main objective of the article is to analyze the role of Compliance in addressing environmental problems. And specific objectives are to study environmental law in globalization and the concept of compliance. Therefore, the article was divided into three topics, the first dealing with Environmental Law in the Globalization era, the second on Compliance and the third on Compliance as an instrument to prevent environmental problems, where Environmental Compliance was analyzed in more detail, which are used by companies and public bodies to comply with environmental standards. As for the Methodology, the report of the results will be composed on the Inductive Logical basis. In the various phases of the Research, the Referent Techniques, Category, Operational Concept and Bibliographic Research will be used.

Keywords— Compliance. Environmental Law. Sustainability.

I. INTRODUCTION

The Environmental Law presupposes a systemic and holistic vision to maintain and recover the environmental balance, through the rational use of natural resources and the restraint of abusive practices that lead to the degradation and the exhaustion of the health of the planet. Principle 4 of the Rio Declaration on Environment and Development of 1992 states that "in order to achieve sustainable development, environmental protection should be an integral part of the development process and can not be considered in isolation".

In order to achieve sustainable development, it is necessary to impose and take effective measures, since it is not an easy task to achieve, in view of the great natural

disasters that have occurred due to the mismanagement of natural resources and the care for the environment.

This article seeks to analyze the emergence of the preoccupation with the environmental issue, inserted in the world context, from the work of Rachel Carson and the role of the Compliance Program in the new world order.

Thus, this article has a central problem, the following question: is it possible to address environmental problems through the application of the Compliance program?

In solving this question, the main objective of the article is to analyze the role of Compliance in addressing environmental problems. And specific objectives are to study environmental law in globalization and the concept of compliance.

As for the Methodology, the report of the results will be composed on the Inductive Logical basis. In the various phases of the Research, the Referent Techniques, Category, Operational Concept and Bibliographic Research will be used (PASOLD, .2008).

II. OF ENVIRONMENTAL LAW IN GLOBALIZATION

The development of the history of scientific and technological advances have always been accompanied by the necessary restructuring of ethical and legal paradigms, as a guide for action and human interference with the environment.

The perception of the negative effects of human action on the environment began in the United States in 1962 when Rachel Carson told "a fable for tomorrow" in her work Silent Spring, the debate on progress linked to a predatory economic model and the relationship of the human being with nature (CARSON, 2010).

Today, the reverberating theme refers to the unbridled emission of greenhouse gases, such as carbon dioxide and methane, which are released by burning fossil fuels and deforestation, which prevents heat from dissipating into the atmosphere.

Contrary to isolated negationist positions, the international community has invested in efforts to control climate change. Recently, at the Climate Conference (COP24) held in Katowice, Poland, after the withdrawal of Brazil's candidacy to host the event, representatives of some 200 nations agreed to maintain the commitments of the Paris Agreement, adopting new measures to implement models based on reducing the emission of gases (UN, 2018).

The concern is part of the Special Report of the Intergovernmental Panel on Climate Change (IPCC) which concluded that global warming is a consequence of the aggressive posture of the use and transformation of natural resources of the earth by man, especially since the Industrial Revolution. This represents the direct reference between global warming and the economic model of development adopted by most countries.

The current socioeconomic model that remains throughout the historical context is based on an aggressive posture of use and transformation of the environment. For a new structural project in the approach to environmental protection the predatory model that perpetuates needs to be reviewed and overcome. The motto focuses on a new model that considers the risks and sustainability levels of exploitation and use of natural resources. Development finds its limit in the protection of all forms of life, preserving the rights of current and future generations.

According to Klaus Bosselmann, with globalization the concept of sovereignty undergoes a reconstruction, especially in the environmental sphere, recognizing the global environment by nature, and the greatest unifier of humanity - at least in the sense of a shared concern.

It is urgent to replace historical misguided public policies and governments that are indifferent to the environmental cause. The challenge of transforming the hegemonic economic model also presupposes a great change in society in its relationship with the environment, re-evaluating the current consumer pattern, which is incompatible with the limited natural resources (BOSELMMANN, 2015).

The planet is the common home of all life forms and the right to a balanced healthy environment is recognized as a fundamental right of the third dimension. From the 1960s and 1970s, environmental protection, understood as a collective right that also protects man's life and quality of life in his individuality, "is now recognized in juridical and constitutional terms as one of the values that make up the list of fundamental (human) rights" (FENSTERSEIFER, 2008).

It is understood that the Fundamental Rights of the third dimension are trans-individual because they are collective, insofar as the number of holders and / or

persons affected by the violated right can be identified; and, because they are at the same time diffuse, since countless their holders or persons affected.

Examples of this are the largest socio-environmental disaster that occurred in Brazil in November 2015 in the city of Mariana, with the rupture of the Fundão dam, built and operated by the mining company Samarco S / A, which resulted in the release of tailings of ore for almost 700 km of Rio Doce; and only three years later, on January 25 of this year, in the city of Brumadinho, metropolitan area of Belo Horizonte, the rupture of the Córrego do Feijão dam, which hit the administrative center of VALE and houses of the rural area, devastating part of the community of Vila Ferteco and leaving a trail of destruction and deaths.

Environmental Law presupposes a systemic and holistic view. For a deeper reflection on the path that has been taken so far, an interdisciplinary analysis is indispensable in order to understand the connection and interdependence between Fundamental Rights and the environment.

In the chronological perspective of Gabriel Real Ferrer, the process of construction of Environmental Law is translated into three great moments, which he calls the three "olas". The author points out the importance of understanding the path taken up to the present situation, as a way to see new evolutions in the environmental field (REAL FERRER, 2013).

Gabriel Real Ferrer (2013) points out the influence of the Club of Rome for the convening and development of the United Nations Conference on the Environment in June 1972, in Stockholm, which provoked the first "ola" that spread over much of the planet. It was the first meeting of developed and developing countries to address the impacts of the environment caused by human action.

In the evaluation of the first "ola", Gabriel Real Ferrer highlights what he suggests as the most transcendent result of that moment: the constitutionalisation of environmental law in a significant number of countries, through the Principles that, embryonic, recognized the need to impose limits growth.

Due to the acute environmental crisis, civil society began to articulate through Non-Governmental Organizations (NGOs), which assumed the important role of new social agents engaged in the environmental cause, marking the beginning of the second "ola".

In 1992, the United Nations held the second Conference on Environment and Development (UNCED), RIO / 92, or Earth Summit. All participating countries incorporated abundant and modern environmental legislation, becoming known as the "photocopy generation" because

they reproduced the laws disregarding the local social, economic, legal and environmental reality.

The second wave is recognized for its importance in guiding global environmental standards through non-binding official documents in Rio / 92.

The third wave presupposes the moment of a collective reaction from the international community to address environmental challenges. There is an improvement in the level of commitment, but the same does not happen with the speed and intensity that environmental problems require. Also, alert Gabriel Ferrer Garcia:

is well known the lucid phrase with which the V Program of Action on Environment of the European Community (1992/2000) was closed "we can not wait and we can not be wrong", well, I am afraid we have waited and we are wrong too. (REAL FERRER, 2013).

For a new global Socio-environmental State, cooperation and solidarity between States is the new paradigm to be pursued. Gabriel Real Ferrer advocates transforming solidarity as an ethical principle into a legal principle, and stresses the need to think of politically organized groups or societies.

Environmental governance requires new policies for the construction of Environmental Law, transposing the classic power of the States. The planet will have to live a fourth wave to build a Planetary Environmental Law.

The compliance program begins to be used by large companies as support for the construction of this new environmental governance in a global Socio-environmental State. Thus, in the next topic what is this program will be studied.

III. OF COMPLIANCE

The fourth "ola", which Ferrer discusses, in which the world needs to live to build a Planetary Environmental Law, refers to the idea of Globalization and its drastic effects, among them corruption, which affects the private and public spheres of society, compromising sustainable growth and endangering the legitimacy of the government and the security of the global financial and economic system.

In this sense, the 10th Principle of the United Nations Global Compact forced global corporations to implement integrity programs (Compliance Program) to combat corruption in compliance with legal and ethical rules (UN, 2017).

Marco Cruz (2017) considers that the origin of the Compliance Program is remote, since it was born with the first ethical conflict, the expression found for the first time in the text of the Fabrianese Letter in 1186.

It was with the scandal in the electric power industries in the United States of America in 1960 that Compliance emerged as a program, as electric equipment manufacturers raised prices, leading to convictions for individuals and corporations for antitrust violations, encouraging the development of codes of conduct.

Following this scandal, the Foreign Corrupt Practices Act (FCPA) was enacted in 1977, known as the Transnational Anti-Corruption Act, which established accounting, tax and labor obligations to companies (TOMAZ, 2018).

The term Compliance comes from the verb to comply in English, which means to act according to a command or rule.

However, in a corporate form, the term Compliance characterizes the actions and attitudes taken by companies, carried out in compliance with the ethical, legal and procedural rules that regulate an activity, "thus becoming synonymous with correct posture in the conduct of its business".

The Compliance program is an integrity program aimed at establishing a set of institutional, management, control and regulatory acts, promoting transparency and reducing the level of risk of attitudes that violate the principles of integrity, adopting tools that prevent the occurrence of corruption cases (RIBEIRO, 2015).

Candeloro (2012) defines Compliance as an instrument of risk control:

It is a set of rules, standards, ethical and legal procedures, which, once defined and implemented, will be the main line that will guide the institution's behavior in the market in which it operates, as well as the attitude of its employees (CADELORO, 2012).

In addition, it is also an instrument to combat corruption, "so it is called here the preventive measures of commitment to combat corruption such as the economic compliance programs (RESENDE, 2018).

The Compliance program in the Brazilian legal system is provided for in Law no. 12,846, known as the Anti-Corruption Law, which establishes the program for the application of codes of ethics and conduct with the objective of detecting and remedying irregularities and illegal acts committed against the public administration, national or foreign:

It should be emphasized that all this systematic compliance programs are not mandatory for Brazilian companies, but serve to reduce the risks in the responsibility of commercial organizations of the acts practiced by their employees or managers with the Public Administration, whether direct or indirect (RESENDE, 2018).

Decree n. 8,420 that regulated the Anti-Corruption Law, establishes that the said program must have its structure

and application according to the reality of the company, improving it and adapting it according to the needs, thus guaranteeing its effectiveness. About this Roberto Epifânio Tomaz:

The compliance program should be adopted by corporations voluntarily, but it will be applied in all its areas of activity and in all its relations with the private sector, as well as with the public administration - in Brazil of extreme relevance, since the State still constitutes the largest borrower of goods and services (TOMAZ, 2018)

With this, it is realized that Compliance can be applied in any type of business organization, be it individual micro entrepreneur, limited company, anonymous, among others.

It is important to emphasize, therefore, that there is not only a kind of Compliance Program, since each company will adapt the program according to its economic reality and its needs (LIEBL, 2017).

The implementation of the Compliance Program recommends measures such as the elaboration of a Code of Conduct, implementation of Permanent Communication Policies, creation of the Ethics Committee, the Ethics Centered Recruitment system and the institution of the Internal Control and Audit System (CGU, 2009).

Therefore, the Compliance involves the strategy of risk prevention and social and economic gains, as it seeks legal and ethical conduct, starting with the focus of "economic and socio-environmental development in the direction of business, as well as the search for sustainable profitability.

Also, sustainability in the company also arises from the idea of sustainable development in the area of environmental law, and the intention of the company to perpetuate itself over time (LIEBL, 2017).

Thus, with a set of actions adopted will ensure economic, fiscal, labor, environmental and market outcomes. Thus, "Compliance fits into this environment as a program that serves more purpose than to annihilate the "virus" of unsustainability in the company (LIEBL, 2017).

Thus, the results with the adoption of the Compliance Program, guaranteeing the continuity of the company and its values, with financial, economic and social gains are perceptible and necessary for the World Social-Environmental State.

IV. OF COMPLIANCE AS AN INSTRUMENT FOR THE PREVENTION OF ENVIRONMENTAL PROBLEMS

With the alarming levels of environmental degradation and the abusive exploitation of natural resources, from the 60s and 70s, environmental protection, understood as a

trans-individual right that also reaches the protection of human life and quality of life in the his individuality, "is now recognized in juridical-constitutional terms as one of the values that make up the list of fundamental (human) rights" (FENSTERSEIFER, 2008).

In Zygmunt Bauman's (2013) reflection, the planet is constantly changing and the behavior of individuals, in today's net modernity, of free traffic and volatile barriers, where local conduct translates into a global reflection, forms an immense network of interdependence that can no longer be undone. Liquid society is experiencing a time crisis. Everything must be quick and thus it becomes superficial. The irreversible phenomenon of globalization has greatly altered the values of the society of producers, outlining the transformation of behavior that was genuinely aimed at a better life for all.

For Anthony Giddens (2000), the world we live in today is out of control, and it does not resemble that projected by Karl Marx, in which the greater the development of science and technology, the more stable and orderly the Planet.

In the modern era, the "precautionary principle" emerged in Germany in the 1980s to limit liability in the face of increased risk of manufacturing, which proposes that action should be taken in the case of environmental issues, even though there is scientific uncertainty regarding to them.

The precautionary principle is included in the Rio Declaration on Environment and Development, which defined it as "the guarantee against potential risks that, according to the current state of knowledge, can not be identified yet" (Raffensperger, 1999, Myhr, 2003; Varella, 2004; BRAZIL, 2019).

However, commitment to future generations is a duty of citizenship, not only of those who feel guilty for the damages caused to the environment, but of all, impelling collective practices and solutions of preservation to nature.

Given this, when it comes to the management of companies and public bodies a viable solution for achieving sustainable development and sustainability is the application of Environmental Compliance.

Disrespect for environmental laws has harmful effects on everyone, and it is through this field that Environmental Compliance has established itself, becoming a significant instrument for environmental management.

Corporate governance is inevitable, adopting eco-efficient placements and effective management that can deliver results with the least possible environmental impact.

Moreover, companies generate an absurdity of bureaucratic processes that lead to the formation of illegal means and fraudulent environmental standards. So

Environmental Compliance comes against these frauds, leaving companies committed to social ethics.

In addition to compliance, companies also seek certification, such as ISO 14000, which deals with environmental guidelines, thus, compliance with ISO complies with the concern of companies with their environmental responsibilities and in compliance with environmental standards.

It is known that there are several forms of Compliance, each of them focused on the reality and objective of the company, thus, Environmental Compliance is focused mainly to meet the environmental standards in which the organization is inserted.

Thus, for Tiago Rezende, environmental compliance "which aims to prevent and adapt companies to the new ethical perspective of the contemporary world must be based on the theory of the dynamic process of Human Rights." (REZENDE, 2018).

This is because the right to the ecologically balanced environment is seen as a fundamental right, in which everyone must preserve for present and future generations.

Therefore, Environmental Compliance also aims at structuring solid business models in the face of the socio-environmental crisis and the expansion of the market, and this model of the current economic market is based on sustainability:

The changes described are intended to strike a balance between business activities and sustainable development. This means that companies must implement programs based on sustainability in order to provide quality-of-life resources for present and future generations. One of the constructive channels to achieve this goal is the implementation of corporate sustainability compliance programs in organizations (REZENDE, 2018).

Thus, preservation and conservation of the environment, rather than being fundamental for organizations to operate legally, "is also considered strategic for organizations that want a competitive potential (REIS, 2018).

Therefore, in addition to dealing with environmental problems more easily, environmental compliance programs contribute to companies maintaining the achievement of their activities, always guided by ethical and socio-environmental values, in the view that society is part of the environment and requires it to continue developing.

V. CONCLUSION

Historical and theoretical elements have been examined that are able to re-emphasize the importance of preservation and restoration of the balanced environment

for the perpetuation of life in all its forms, in order to reverse the alarming scenario of excessive and unlimited exploitation of natural resources. The global era means confronting the diversity of risk situations and the new transnational demands of modernity, in the configuration of transnational public spaces that are justified as guarantors of Fundamental Rights, and especially of the right to the Environment balanced and healthy, vital to the perpetuation of human species on the planet.

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