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ABSTRACT

Objective: The objective of this study is to examine the judgment handed down in Civil Appeal No. 14586/2001, with the aim of investigating the evolution of environmental concerns and the nature of regulations designed to protect the environment.


Method: The methodology used in this work was based mainly on bibliographical research, focusing on the study of the related ruling, in addition to consulting books, articles, magazines and other specialized publications in search of answers to the problem presented, with the aim of deepening knowledge on the subject.

Results and Discussion: The analysis of the evolution of environmental damage and the approaches to liability, as documented in the unanimous decision in Civil Appeal No. 14586/2001, revealed significant progress. The existence of collective environmental moral damage, supported by constitutional principles, is evident, as is the acceptance of this concept by national legislation and case law. Finally, the article pointed out the ways of repairing collective environmental moral damage, highlighting the importance of promoting efforts to solve this problem.

Research Implications: The practical and theoretical implications of this research are discussed, providing insights into how the results can be applied or influence practices in the field of study of Environmental Law. These implications may cover Environmental Civil Liability, Environmental Damage, Collective Moral Damage, as well as Environmental Reparation.

Originality/Value: This study contributes to the literature by pointing out ways of repairing collective environmental moral damage, highlighting the importance of promoting efforts to solve this problem.

Keywords: Environmental Civil Liability, Environmental Damage, Collective Moral Damage, Environmental Repair.

ANÁLISE DO PRIMEIRO PRECEDENTE DOMÉSTICO QUE RECONHECE A POSSIBILIDADE DO DANO MORAL AMBIENTAL COLETIVO APELAÇÃO CÍVEL Nº 2001.001.14586 DA SEGUNDA CÂMARA DO TRIBUNAL DE JUSTIÇA DO RIO DE JANEIRO

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RESUMO

Objetivo: Examinar o julgamento proferido na apelação cível nº 14586/2001, com o intuito de investigar a evolução da preocupação ambiental e a natureza das regulamentações destinadas a proteger o meio ambiente.


Método: A metodologia utilizada neste trabalho baseou-se principalmente em pesquisa bibliográfica, com foco no estudo do acórdão relacionado, além de consultar livros, artigos, revistas e outras publicações especializadas em busca de respostas para o problema apresentado, com o objetivo de aprofundar o conhecimento sobre o assunto.

Resultados e Discussão: A análise da evolução do dano ambiental e das abordagens de responsabilização, conforme documentado na decisão unânime da apelação cível nº 14586/2001, revelou progressos significativos. Fica evidente a existência do dano moral coletivo ambiental, sustentado por princípios constitucionais, assim como a aceitação desse conceito pela legislação nacional e pela jurisprudência. Por último, o artigo apontou as formas de reparar o dano moral coletivo ambiental, destacando a importância de promover esforços para resolver esse problema.

Implicações da Pesquisa: As implicações práticas e teóricas desta pesquisa são discutidas, fornecendo insights sobre como os resultados podem ser aplicados ou influenciar práticas no campo de estudo do Direito Ambiental. Essas implicações podem abranger a Responsabilidade Civil Ambiental, Danos Ambientais, no Dano Moral Coletivo, bem como na Reparação Ambiental.

Originalidade/Valor: Este estudo contribui para a literatura ao apontar formas de reparar o dano moral coletivo ambiental, destacando a importância de promover esforços para resolver esse problema.

Palavras-chave: Responsabilidade Civil Ambiental, Dano Ambiental, Dano Moral Coletivo, Reparação Ambiental.

ANÁLISIS DEL PRIMER PRECEDENTE INTERNO QUE RECONOCE LA POSIBILIDAD DE DAÑO MORAL AMBIENTAL COLECTIVO RECURSO CIVIL Nº 2001.001.14586 DE LA SEGUNDA SALA DEL TRIBUNAL DE JUSTICIA DE RÍO DE JANEIRO

RESUMEN

Objetivo: El objetivo de este estudio es examinar la sentencia dictada en el recurso civil nº 14586/2001, con el fin de investigar la evolución de las preocupaciones medioambientales y la naturaleza de la normativa destinada a proteger el medio ambiente.


Método: La metodología utilizada en este trabajo se basó principalmente en la investigación bibliográfica, centrándose en el estudio de la sentencia relacionada, además de la consulta de libros, artículos, revistas y otras
1 INTRODUCTION

The broad impact of the environmental issue has long represented a global demand, but awareness of the collective harm that can become irreversible is still not enough to drive more decisive and persistent measures, particularly in relation to changes in long-term habits, whether small or significant. In this context, environmental concerns have led to several reformulations in the legal field, with the aim of achieving the protection desired by the state structure, introducing a new way of understanding human relations as part of a society and its dependence on resources coming from the environment. This includes the implementation of accountability mechanisms for harmful acts.

In this context, the decision of civil appeal No. 14586/2001, taken through a unanimous judgment, highlights the need to demonstrate to society that the devices created to deal with preservation, protection and environmental reparation have a power of swift and severe punitive repercussion, as evidenced in the action that resulted in the conviction for collective environmental moral damage. This reflects the most fundamental interpretation of principles that have collective reach. This significant reflection of the judicial system is a remarkable example of how the force of norms regulates society, which has a set of constitutional expectations, all anticipated by the guarantee of dignity.
The existence of each mechanism is cause for celebration, but the environmental doctrine is still seen as late due to its importance and seriousness in the exploratory treatment of natural resources for a long time. Some of the damage already done is irreparable, while others require significant attention to repair it. The collection, management and proper accountability of the damage caused, directly or indirectly, is an urgent and educational need. This phase is understood as the right to include the human being in a complex organism of which he is a part, and no longer as the center of everything.

On perceiving the functionality of resources in the face of human inventions, raw materials were withdrawn more and more, under the assumption of their infinity in the environment. For a long time, the local view limited the human being to not seeing that in the long term this scenario would require a reinvention in the form of consumption, due to a generalized environmental emergency. This kind of utilitarian approach was the starting point for a series of initiatives that negatively impact the ozone layer, amplifying the greenhouse effect, which results in a progressive increase in the temperature of the planet, in the melting of the polar caps, and in the worsening of climatic changes. This reveals how limited the planet's capacity for tolerance has become in the face of the progression of pollution caused by human beings.

The relevance of the environmental crisis has highlighted the idea that human beings can no longer continue to seek uncontrolled growth. It is now essential that it be placed at the center of the concerns, showing respect for other individuals and future generations, mainly through environmental conservation, which becomes an indispensable requirement to preserve the quality of life of the population and even the continuation of existence on planet Earth. This perception generated a wave of demands for changes in global habits.

Natural resources, regardless of the justification for their extraction, must be protected, as they form a complex organism in which all biotic and abiotic elements play a crucial role in preserving the conditions that sustain life.

Considering the protection that the State guarantees to the community, the Law played a fundamental role in the creation of environmental preservation standards, giving rise to Environmental Law. This branch of law establishes guidelines for human actions that negatively impact the environment in its various facets, positioning the human being as an integral part of the environment in which he lives. The Constitution recognized the right to the environment as a new fundamental right belonging to all.

This view challenges any attempt to prioritize the gains made by exploration over the preservation of the environment, which is essential for the survival of all humanity. The
construction of this notion of environmental protection and its implementation in a context of intense exploration require tools with special characteristics, especially when dealing with the nuances of the analysis of collective character, since this right is qualified as diffuse. In addition, measures to prevent harmful behavior should be promoted.

Acts detrimental to the environment are considered a threat to the community and its ability to enjoy the constitutionally expected quality of life. They cause damage that is not limited to the material aspect, but also have an off-balance impact that requires repair mechanisms. Understanding the importance of this context, the objective of this article is to seek recognition of the off-balance sheet dimensions of environmental damage.

In this sense, the article analyzes the sentence for collective environmental non-material damage presented in civil appeal No. 14586/2001, both from a constitutional point of view and under ordinary legislation, considering the impact on the quality of life supply and the autonomous dimension of environmental damage, in accordance with the principle of full reparation of the damage, which guides environmental liability.

In addition, it seeks to highlight the importance of this recognition, which increases the visibility of the need for tools that promote the preservation of nature and quality of life, both in the repressive aspect, holding those who cause environmental damage responsible, and in the preventive aspect, creating conditions to effectively punish acts already committed in accordance with the legislation.

To achieve these goals, the methodology used in this work was mainly based on bibliographic research, focusing on the study of the related judgment, besides consulting books, articles, magazines and other specialized publications in search of answers to the problem presented, with the objective of deepening knowledge on the subject.

2 COLLECTIVE RIGHTS AND BASIC PRINCIPLES

Constitutional principles represent the starting point that must be intrinsic to any normative design, regardless of its nature. The evaluation of the application of the measures contained in a legal action in the face of a specific event or its anticipation must be considered as an effective and sensible commitment of law to society (Lima, 2006).

Doctrinal interpretation is also directly linked to the emphasis given to the current normative structure, which prioritizes the essence of these principles, guiding revisions and ensuring the best use of their viable attributes. Understanding the three phases in the evolution of the recognition of the normativity of principles allows a more appropriate analysis of their
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Currently, the conception of the stages on which the content can be based corresponds to the post-positivism phase, in which the principles cease to be a subsidiary source and acquire a binding character. Although there is practical resistance to the strict application of laws, which is a legacy of juspositivism, contemporary society can no longer believe that only written legislation will promote true justice. It is possible to argue that, even when applied correctly, the law often serves the interests of minorities in power, aiming to satisfy the political desires of the dominant classes, even when this implies a violation of constitutional principles (Magalhães Filho, 2004, p. 122).

When the social expression of principles was still in its infancy and its understanding was restricted to those familiar with the legal system, they should be incorporated into constitutions to be considered norms of imperative application. Therefore, they should not be seen merely as instruments for the harmonization of the legal system, devoid of normativity, as they were originally perceived. They represent a real normative support on which the entire legal structure of constitutional systems is based and give greater strength to the guarantee of their principles (Magalhães Filho, 2004, p. 124).

Principles, together with dispositive norms or rules, are part of the broader set known as legal norms and share similar characteristics. In the context of the legal structure, principles occupy a hierarchically superior position to rules, serving as the foundations by which rules are developed and interpreted, as long as they are aligned with the principle base. Thus, for a rule to be considered valid in the legal system and produce legal effects, it must comply with the appropriate principles. The detection of any deviation from this standard must be a topic of discussion in terms of punishment and consideration of measures that are outside the scope of constitutional provisions (Lima, 2006, p. 38).

Given that the Brazilian Constitution is the main normative statute to be considered, the principles stated therein, guiding conduct beneficial to society as a whole, prevail over other norms. There is no hierarchy between the principles, but rather a logic of application. In this context, it is possible to understand that the principles of greater abstraction do not have priority over others; however, all must be evaluated taking into account the circumstances of a specific case (Lima, 2006, p. 38).

Principle norms can be positive in the legal system, becoming explicit principles, or they may not be legally defined, acting based on a natural law approach, seeking the application of social justice or following the logic of the legal system, being called implicit principles. Both
have the capacity to confer imperativeness, and must be considered imperative during the elaboration, interpretation and application of laws (Lima, 2006, p. 41).

Given this understanding of the position and application of principles, it becomes clear that they are not limited to abstract precepts that describe general ideas without practical applicability. They represent the foundations that justify the purpose of the legal system, indicating the objectives to be achieved by law. In the context of the Brazilian legal system, the primary instrument for achieving these objectives is legislation, although its effectiveness is sometimes limited due to a culture that has not been sufficiently sensitized to allow the full and effective implementation of laws (Magalhães Filho, 2004, p. 126).

2.1 THE ROLE OF PRINCIPLES IN ENVIRONMENTAL STANDARDS

The exercise of providing due guidance for interpretation and the function of serving as a subsidiary source in the construction of other regulations for social actions that the law is responsible for protecting. This founding function establishes the principles as the source of norms (normae normarum), playing the role of guiding the elaboration, interpretation and application of all other norms of the legal system. They are strategically positioned to mitigate the imperative force of laws, since the possibility of manipulation by those with authority to direct them in favor of the interests of minority groups is known.

With a high degree of abstraction, principles guide norms to adapt to social reality. This is not a limitation, but rather a condition that allows the evolution of the law, which should not consist only of isolated measures that, due to the lack of necessary involvement, may not receive due attention (Magalhães Filho, 2004, p. 80).

Among the various principles established by the Constitution, the principle of human dignity is recognized as the one from which all others derive. It serves as the basis for the entire legal system, covering environmental issues and providing legal support to protect the social aspect related to collective dignity, especially with regard to a balanced environment essential for human life. This principle is the most observed in decision-making in its various facets, but it is also characterized by its complex abstraction, being essential for the foundation of all fundamental rights (Lima, 2006, p. 41).

The expression “dignity of the human person” is not rigidly defined, which is not a limitation, as already mentioned, but an inherent characteristic of the nature of principles that must be flexible to deal with the complexities of social reality and provide a basis for preventive or punitive administration of law (Lima, 2006, p. 41).
Despite this characteristic, there is a willingness to follow a standard in its application. It is precisely because of this characteristic that the principle of human dignity began to receive great attention from jurists, as generally happens after periods of exception, in which the condition of human beings was neglected and the measures applied against a regime dehumanized thousands of people, ignoring their individual characteristics and reducing them to enemies of an ideology, subject to extremely harsh treatment, including the loss of their lives. Strengthening the understanding of the scope of dignity acts as a brake against the implementation of inhumane practices (Lima, 2006, p. 41).

Guaranteeing the principle of human dignity ensures that no individual will be the target of actions that harm their full development as a human being, regardless of their identity or the actions they take. This principle acts as a limit to fundamental rights, establishing a minimum untouchable core, and also serves as a guideline when an individual's fundamental rights may threaten the dignity of others. This reference is extremely important to maintain the balance of the legal system and to preserve ideas that promote collectivity. In this context, rights related to a balanced and legally supported environment for its preservation are included (Lima, 2006, p. 43).

The evolution in the development of a culture that recognizes the damage caused to the environment and perceives the law as an effective means of combating and holding offenders responsible for this damage has gone through a long process of understanding the extent of the damage and integrating society into a collective effort of accountability. This involves both those who benefit and those who suffer harm to different degrees when environmental safety standards are disrespected (Garcia, 2006, p. 54).

2.2 EVOLUTION OF FUNDAMENTAL RIGHTS

To understand the transformation of environmental legislation that made it possible to classify damages as moral and collective, it is important to recognize the changes resulting from popular demands on a global scale that later influenced Brazilian norms. These changes emerged in response to the increasing severity of environmental damage and its potential future consequences (Garcia, 2006, p. 56).

Fundamental rights emerged as a means of limiting the power of the State and play a crucial role in a plural society, such as Brazil's, especially by promoting equality and legality in its purest form. This analytical approach was already present before modern
constitutionalism, representing the synthesis of philosophical-legal interpretations throughout the development of social organization (Garcia, 2006, p. 57).

It is important to note that these two principles did not originate with the characteristics that are now enshrined in doctrine. They have evolved over time according to culture and the need to protect human dignity, remaining essential for resolving a variety of issues (Garcia, 2006, p. 57).

The consolidation of fundamental guarantees occurred after the French Revolution in 1789, when the National Assembly promulgated the Declaration of the Rights of Man and the Citizen. This declaration established fundamental rights as minimum rights for all people, regardless of political borders. This evolution also encompassed demands for environmental protection, since the environment is a crucial element for the quality of life and, therefore, for the dignity of society (Garcia, 2006, p. 58).

Progress in consolidating these fundamental rights begins with the mobilization of years of dissatisfaction due to inhumane treatment under the total or partial connivance of the State. This revolt drove the need for an effective response, gradually reflecting on the structure of rights previously established. Initially, these rights were considered absolute, guaranteeing individual rights and individual freedom in opposition to State interference, known as public freedoms, characterized as first generation rights (Garcia, 2006, p. 58).

However, given the need to reformulate the conception of human rights and the delay in this reflection in society, which allowed the formation of collective demands to accelerate implementation, first generation rights proved to be no longer sufficient to meet social demands, especially in a post-war context. In response to this need, second generation rights were created, with a direct focus on the economic and social spheres, aiming to implement measures that guarantee equality. Second generation rights do not replace first generation rights, but are added to them, modifying the way these rights should be interpreted, since the previous absolute approach was no longer adequate (Bonavides, 2017, p. 517).

Continuing the path of modernization in the administration of rights and duties in the post-war era, third generation fundamental rights emerged, summarized in the motto "liberty, equality and fraternity". This social framework reflects the idea that the way people relate to each other and to the environment in which they live must be guided in order to avoid scenarios that could lead to new conflicts (Magalhães Filho, 2004, p. 127).

The need to clarify the effectiveness of this third generation of rights for society and its integration with environmental protection arises mainly from the fact that these rights are entitled to humanity as a whole, rather than purely individual guarantees. These are collectively
owned rights that cover all elements of a dignified life. What effectively unites the holders of these rights in a concrete situation is the factual circumstance that affects them, moving away from the perspective of individual subjective rights, which could limit the practical realization of these rights. Therefore, it is common for these rights to be mentioned as recommendations, without delving into their essence in the analysis (Garcia, 2006, p. 57).

Recognition of the need for law to embrace this demand and follow social dynamics to sustain developments led to the development of subsequent generations of rights, with the aim of structuring a new society that could avoid conflicting trends and align with the social parameters expected for collective coexistence. In this context, fourth generation rights were conceived, which are related to the universalization of fundamental rights and are also based on the advancement of technology, addressing issues within this core of concerns (Morais, 2000, p. 59).

2.3 COLLECTIVE ACTIONS

The measures introduced in post-war society strengthened the concept of diffuse rights, which are held by an indeterminate or difficult-to-determine collective, making it necessary to have a procedural tool that allows the interests of all these people to be defended jointly and for a specific purpose. However, it is not just diffuse rights that require collective protection; homogeneous individual rights and collective rights in the strict sense, which are considered accidentally collective, must also, by legal determination, be the object of collective protection in court (Lima, 2006, p. 132).

The recognition of diffuse rights, as an extension of individual rights, implies the attribution to the State of positive actions to provide the quality of life constitutionally foreseen for people. This represents one of the main expectations to overcome the barriers that prevent the effective representation of indivisible rights, which theoretically belong to an entire diffuse group. However, reality still shows the gap between what is and what should be, highlighting the need to use the demands of law to reform society according to its needs (Garcia, 2006, p. 57).

An important tool provided by the Constitution is the Public Civil Action, established in Article 129, II of CF/88, which represents an instrument for the Public Prosecutor's Office to act outside the criminal sphere. Its purpose is to hold accountable and repair moral and property damages caused to diffuse and collective interests, with an emphasis on the environment, consumers and goods and rights of artistic, aesthetic, historical and scenic value. Article 5,
LXXIII of the Constitution also provides for its use in situations that affect the integrity of the environment (Garcia, 2006, p. 59).

Liability for damage caused to diffuse and collective rights is often difficult to repair, especially in the case of environmental damage. Reparation may involve monetary compensation, which, depending on the specific case, can be used to restore the original state of the affected property or to bring it closer to that state (Garcia, 2006, p. 59).

The complexity of this process highlights the importance of damage prevention, especially given the nature of environmental damage. Given the impossibility of segmenting diffuse rights and some collective rights, as well as the fluidity of holders, it is practically impossible to individually and fairly identify the recipients of resources resulting from damages caused (Garcia, 2006, p. 59).

2.4 ENVIRONMENTAL PROTECTION AND THE FRAMEWORK OF ENVIRONMENTAL MORAL DAMAGE

Understanding the need to consider natural aspects in human life involves identifying that humans are animals that live and interact with the environment in various ways, including the extraction of resources necessary for their survival. This dependence on resources is a reality that dates back to the beginnings of humanity. However, as society developed and evolved in the way it relates to the environment, the unbridled growth of environmental degradation became a global concern (Ferreira Filho, 2004, p. 59).

The finiteness of natural resources became evident with the advancement of the capitalist system, as extractions reached proportions that irreparably harm the environment. Understanding the seriousness of actions harmful to nature represents only part of the concerns related to this issue. What was once seen as an abundance of resources and an opportunity for profit is now examined through the lens of scarcity and future depletion of these essential resources. The unrestrained exploitation of these resources even puts the survival of humanity itself at risk (Ferreira Filho, 2004, p. 59).

In response to this growing concern, several legal regulations have been enacted with the aim of dealing with environmental issues in a restorative, preventive and punitive manner. These laws, such as Law No. 4,504/1964 (Land Statute), Law No. 4,771/65 (Forest Code), Law No. 5,197/67 (Fauna Protection), Decree-Law No. 221/67 (Fisheries Code), Decree-Law No. 227/67 (Mining Code) and many others, provide the legal basis for the transformation, mainly
cultural, necessary in society, aiming to control actions in relation to nature (Ferreira Filho, 2004, p. 61).

Only in the eighties did legal protection of the environment mature, resulting in the emergence of Environmental Law as an emerging field of study. This new branch of law involves a set of rules that regulate conduct that can cause environmental imbalances, guaranteeing maximum standards of sustainability to promote effective conservation of the environment (Ferreira Filho, 2004, p. 62).

The basis of the organization of Environmental Law is Law No. 6,938/81, which was the first national legislation to conceive environmental protection in a global and systematic way.

This law recognizes the environment as an emergency concern and establishes specific principles that align with constitutional principles, such as the principles of environmental responsibility and the polluter pays (Ferreira Filho, 2004, p. 64).

The structuring of the notion of civil liability is present in the search to repair damages caused to legally protected assets, imposing sanctions to discourage conduct that is harmful to the environment. Individuals who commit intentional or negligent actions that violate current regulations and cause harm to third parties are responsible for the consequences of their actions and must repair the damage caused to the extent possible. However, when damage affects the environment, repair is not always viable (Ferreira Filho, 2004, p. 64).

Civil liability for environmental damage is not based on the protection of individual interests within the narrow domain of private autonomy, which is conceived as an area of protection for an isolated individual. Instead, this responsibility must be grounded in an interrelational context of norms that aim to protect, restore and improve the environment. This does not necessarily imply the suppression of private autonomy, but rather its redefinition in light of demands that demonstrate its connection with diffuse rights. Environmental legislation aims to ensure that the law is not just a theoretical element, but effective in practice, as long as the tools for its implementation are adequately articulated (Lima, 2006, p. 127).

Due to the newness of demands for environmental protection in a society that was previously primarily focused on profiting from the rampant exploitation of natural resources, assessing damage and taking appropriate remedial measures has become challenging. Furthermore, the guilt of the degraders was difficult to prove, since the damage resulted from the characteristics of the activities themselves. Therefore, in environmental civil liability, it is not necessary to prove the polluter's guilt; guilt is presumed due to damage caused by conduct that, by its nature, is harmful (Lima, 2006, p. 127).
2.5 COLLECTIVE ENVIRONMENTAL MORAL DAMAGE

Non-material damage, according to Brazilian legislation, is characterized by the possibility of reparation by means of financial compensation, that is, compensation. With the promulgation of the 1988 Constitution, non-material damage was recognized as a fundamental right and its reparation through compensation was enshrined. This is evidenced by Articles 5, 5th and 5th paragraphs of the Constitution. Moral damage cannot be repaired simply by restoring the previous situation, especially when restoration of the status quo ante is impossible. The objective of liability for moral damage is not restoration, and this understanding would later influence environmental legislation, including in the case of the civil action that motivated this research (Garcia, 2006, p. 62).

However, the lack of restoration does not prevent the damage from being protected, avoiding the impunity of the offenders. Non-material harm is assessed from a perspective of compensation or satisfaction for the victim, who may use compensation in the manner he considers most appropriate to alleviate the harm caused by third parties. The permutative nature of money, which is an instrument of exchange par excellence, allows the victim to seek the best way to deal with the damage caused by third parties (Ferreira Filho, 2004, p. 62).

Non-material damage has typically punitive functions, and is not limited to full reparation. It also has a function of discouraging conduct, due to its atoning nature. In other words, while a conviction for payment of a sum determined by the judge is expected, it is rarely the only penalty present in the judgment, especially when it comes to damages to property of a collective nature. Moral damage includes injury to personal rights and, more broadly, to injury to fundamental rights, whether individual or collective (Ferreira Filho, 2004, p. 64).

The continuous changes in society highlight the need to adapt the law to demands from a collective perspective, as is the case with environmental law. This new responsibility is accentuated especially by the presence of the new generation of rights, including diffuse rights, which recognize the dignity of the human person as one of the foundations of the national legal order, prioritizing initiatives that aim to guarantee the preservation of the quality of life and to make possible the full development of each individual (Ferreira Filho, 2004, p. 63).

In this context, the law began to encompass the protection of collective rights, taking into account the notion of collectivity and opening space for the concept of collective moral harm. This idea is applicable in situations of environmental damage, as illustrated in the case of civil appeal n° 14586/2001, decided unanimously to convict for environmental pollution crime. The civil lawsuit was filed by the municipality of Rio de Janeiro in opposition to Artur...
da Rocha Mendes Neto, alleging the suppression of vegetation in a property without due municipal authorization. The illegal activities found included the felling of trees and the start of unlicensed construction, resulting in the imposition of a fine and the prohibition of the said works.

In that context, the analysis addressed not only the damage resulting from tree felling and unauthorized construction, but also considered the possible future impacts that such activities could have on the environment. The proposed reparation for the damage caused by the appeal consisted in the donation of 2,800 seedlings of native species, in accordance with the directives of the competent environmental body. In addition, the dismantling of unauthorized buildings and the appropriate disposal of waste from these activities have been determined. It is important to note that the penalty was not only limited to the act of felling trees, but also considered the extent of this damage, which covered 51 trees.

The analysis also took into account the location of the property in relation to a State Park. Although the area was not formally protected, it was home to species of local flora and fauna of significant importance. The extent of environmental damage from a moral perspective lies in the difficulty of restoring the environment affected to its original condition. Faced with this irreparability, the legislation provided for the possibility of compensation as a form of reparation.

It was recognized that even with the planting of the seedlings recommended by the judgment, the effective recovery of the damage would take at least a decade, considering the period of growth of the trees. This consideration highlights the persistence of the environmental damage that will occur until the restore process is complete.

This decision reflects the seriousness with which environmental legislation is dealt with today. It highlights a shift in perspective, where the emphasis is on the importance of environmental status, prioritizing collective environmental damage over purely individual focus. In addition, that approach takes into account the principles of reasonableness and proportionality in the determination of damages, which were set at 200 minimum wages as a form of compensation for damages.

The handling of this case demonstrates the growing importance attached to diffuse rights, which are recognized because of the relevance of issues of public and collective interest. This evolution reflects the need to update the law design, adopting a collective ecological approach to strengthen the application of environmental law (Lima, 2006, p. 132).

The discussion on the parameters for determining collective moral harm refers to the finding that the value of a given community, regardless of its size, was affected in an
unjustifiable manner from the legal point of view. The damage caused acquired an immaterial and invaluable nature, as evidenced in the decision of the appeal case No. 14586/2001, which recognized the damage to the area formerly belonging to the State Park of Rio de Janeiro, which still maintained intrinsic characteristics of the region, being considered of inestimable value (Lima, 2006, p. 132).

This reparation figure is designed to punish wrongful or wrongful actions that harm diffuse rights, in particular the right to quality of life through environmental quality. It is important to note that the term "environmental moral damage" is often used as a synonym for "environmental collective moral damage". This illustrates the irony of individuals who cause harm against their own interests, since they are also beneficiaries of diffuse and individual rights (Lima, 2006, p. 133).

The issue of environmental non-material damage is intended to fill a gap that has long been observed in the environmental context. Previously, this loophole allowed impunity for actions that were clearly harmful to the environment, often motivated by the absence of penalties and by the encouragement of profits resulting from environmental exploitation. Repairing material damage to the environment is often unfeasible, but environmental moral damage plays a key role in discouraging degrading behavior. This follows directly from the application of the precautionary principle in environmental liability. Although pecuniary reparation is not the ideal method for dealing with damage to a good of inestimable value to society, it is necessary to avoid impunity (Magalhães Filho, 2006, p. 81).

The calculation of damages is always determined on the basis of criteria established by the discretion of the court, taking into account the specific circumstances of each individual case. It is important to point out that compensation is not directed directly at the victims of the damage, as in the case of individual non-material damage. Instead, the resources are not divided among the affected population, with each individual receiving a corresponding share, but rather directed towards state initiatives in favor of the environment, that is, to the public coffers (Magalhães Filho, 2006, p. 82).

3 FINAL CONSIDERATIONS

The need to address environmental issues has led to profound changes in the legal environment and in social awareness. This new paradigm seeks to establish a more comprehensive treatment of environmental issues, aiming at minimizing recognized damage. These changes have the potential to negatively affect the interest of all living beings and
represent an evolution in the branches of law that prioritizes collectivity in the prevention and repair of environmental damage.

The legal asset discussed in this context encompasses the possibility of serious harm to all members of society if the measures to reverse and prevent environmental damage are not properly implemented. The right to environmental equilibrium was elevated to fundamental right status after the 1988 Constitution. This right aims to ensure the quality of life of humanity, ultimately protecting the dignity of the human person, which is intrinsically linked to the preservation of the natural resources that sustain life.

The rigidity in the application of penalties to deal with environmental damage is justified by the common irreparability of such damage. Preventive measures are therefore preferable to reparation after the damage has occurred, since, even if it is possible to make good the damage in financial terms, the impact on the community persists.

In this sense, civil liability has undergone necessary adaptations, influenced by environmental principles, creating a specific liability system for environmental issues, as provided for in the Constitution. The focus on collective rights recognizes that the right to a balanced environment is a meta-individual right, representing an evolution in favor of social needs, ensuring the protection of rights in a way that does not neglect others.

Developments in the civil liability conviction aim to ensure that damages to any aspect of the environment, including those that affect the moral heritage of the community, are compensated. Compensation for collective non-material damage in the environmental context is an essential tool for protecting the environmental balance, which is recognized as a diffuse right. For collective moral damage to be configured, it is necessary that it causes an imbalance above the degree of environmental tolerance and that it affects the collective values of the population. The repair is done through financial compensation and restoration actions, aiming at minimizing the damage, in accordance with the environmental regulations.

Considering the collective off-balance character, the nature of environmental civil redress is hybrid, seeking to satisfy both victims and punish offenders, while promoting the prevention of environmental damage, educating those who have harmed the environment and allowing the State to enforce regulatory standards. The lack of recognition of collective moral harm in environmental matters undermines the liability of aggressors, not following the standard established by constitutionally recognized fundamental principles. The effectiveness of the law must be preserved in order to protect the environmental balance and guarantee a dignified life for all.
Análise do Primeiro Precedente Doméstico que Reconhece a Possibilidade do Dano Moral Ambiental Coletivo
Apelação Cível Nº 2001.001.14586 da Segunda Câmara do Tribunal de Justiça do Rio de Janeiro

REFERENCES


