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Responsabilidade Criminal De Pessoas Jurídicas Por Crimes Ambientais: Caso Bungee

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Abstract
The criminal liability of legal entities for the practice of environmental crimes is a subject that is much discussed among scholars of Criminal Law and Environmental Law, and has gained ground in the Brazilian legal system after the Supreme Federal Court settled the controversy, aiming to protect the collective right to a sustainable environment and to compel individuals to group together to commit crimes in the name of the legal entity. In this sense, the legal coordinates on the prosecution of companies that commit environmental crimes are generally full of obstacles, caused by the lack of legal guidance and doctrinal and jurisprudential understandings. Thus, in order to highlight the hypotheses of correct processing of environmental crime cases, we sought to analyze the legitimacy of Criminal Law in light of the Environmental Crimes Act, applying it to the practical case of alleged uncontrolled burning practiced by the company Pedro Afonso Açúcar e Bioenergia S.A., belonging to the Bunge group.

Keywords: *Liability. Environmental Crime. Environmental Law.*

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I. Introduction

The environmental liability of legal entities is a much-discussed topic among contemporary scholars, which in itself generates a need to delve deeper into the subject. Thus, it is necessary to understand the limits of criminal liability of legal entities with regard to damages caused to the environment, given that, in theory, their liability is limited. Such liability is different from the punishment applied to individuals, since the latter is limited to applying custodial sentences, which is unfeasible in the case of punishing legal entities.

The punishment of legal entities within the scope of environmental law derives from a constitutional mandate of criminalization, typified in article 225, § 3º of the Constitution, which establishes the application of sanctions to Legal Entities when their activities cause harm to the environment. Thus, the right and duty to hold individuals criminally, administratively and even civilly liable arises from the constitutional text, as can be seen in this study.

The role of criminal laws that regulate the application of sanctions to legal entities seeks to prevent the irreversibility of damage caused to the environment. Therefore, it can be seen that criminal protection

encompasses comprehensive protection of the environment, and it remains to be seen whether such protection is effective in terms of environmental protection.

However, there is a legal controversy surrounding this position that legal entities are liable for environmental crimes. Several factors contradict this idea of environmental punishment. In this connection, the issue of which factors justify the application of criminal sanctions to legal entities when an event is harmful to the environment is addressed.

To this end, the study presented here aims to analyze the specific case of uncontrolled burning, which occurred around the city of Pedro Afonso, in the state of Tocantins, carried out by a company belonging to the Bunge group.

Furthermore, this study will address the scattered legislation that deals with environmental law, verifying which facts were attributed to the company in question and what the results were from their application according to the ongoing legal proceedings.

The study will also be able to determine which measures can be adopted by the State as a preventive measure to avoid this type of conduct by other companies, as well as demonstrate whether or not the application of punitive measures is effective. The objective is exploratory research, which aims to understand the problem, identify it and suggest a solution.

It will be prepared through criminal proceedings applied to the case of the company Bunge Alimentos LTDA. Previously published material will be used, using the bibliographic/documentary technical procedure, individually, where legal provisions will be analyzed, especially from the Federal Constitution of 1988 and the Environmental Crimes Law. In addition to books, scientific articles and materials available on the internet will be used.

Furthermore, the research aims to delve deeper into the investigation of the real effectiveness of the use of sanctions aimed at punishing environmental crimes committed by legal entities. It also intends to analyze whether the measures adopted in the specific case under analysis proved to be effective, both in the preventive and punitive aspects of Environmental Criminal Law.

It also aims to investigate the conflicts involving the criminalization of legal entities, taking into account Savigny's theory, as well as analyzing the effectiveness of the criminal conviction of legal entities.

Therefore, this study aims to contribute to all legal professionals who work in the field of criminal law, especially those who work in the environmental field, by highlighting in a compiled form the main and relevant points of environmental liability of legal entities, aiming to improve innovations related to the topic addressed.

II. Reading Review

Environment And Environmental Law

Awareness of the environment, especially the natural environment, has been considered and developed in the country since its colonization, when legislation was passed on the exploitation of timber and brazilwood, according to Amado (2015). According to the author, such interest in preservation was conceived with the sieve that it was perceived that the environment has an economic value and not because it is important to preserve it because the environment represents an indicator for a healthy quality of life.

This is how the creation of environmental preservation began and consequently this range of laws that later came to form environmental law, according to Amado (2015).

Law 6,938 of August 31, 1981 - Provides for the National Environmental Policy, defines the environment in its art. 3rd, transcribing that it is understood as "the set of conditions, laws, influences and interactions of a physical, chemical and biological order, which allows, shelters and governs life in all its forms".

According to Rodrigues (2016, p. 69), the concept of environment must go beyond a mere consideration of space, that is, according to the author, the emphasis on the word environment must be rejected, observing the broad concept that occurs by the combination of the two words in the following terms:

Therefore, the expression "environment", as seen in the conceptualization of the legislator of Law No. 6,938/81, does not only portray the idea of space, of a simple environment. On the contrary, it goes beyond that to mean the set of relationships (physical, chemical and biological) between living (biotic) and non-living (abiotic) beings that occur in this environment and that are responsible for the maintenance, shelter and governance of all forms of life existing in it.

The Superior Court of Justice (STJ) and the Federal Supreme Court define the environment in a broad way, which encompasses several factors, such as cultural, work and artificial environments, among others, as expressed in several judgments of the respective courts:

The safety of the environment cannot be compromised by corporate interests nor be dependent on motivations of a merely economic nature, especially if we bear in mind that economic activity, considering the constitutional discipline that governs it, is subordinate, among other general principles, to that which privileges the "defense of the environment" (CF, art. 170, VI), which translates a broad and comprehensive concept of the

notions of natural environment, cultural environment, artificial environment (urban space) and work environment" (STF, Full Court, ADI 3,540 MC/DF, rel. Min. Celso de Mello, DJ 3-2-2006). "ENVIRONMENTAL AND CIVIL PROCEDURE. ARCHITECTURAL PRESERVATION OF PARQUE LAGE (RJ). RESIDENTS' ASSOCIATION. ACTIVE LEGITIMACY. CHARACTERIZED THEMATIC RELEVANCE. LEGAL CONCEPT OF 'ENVIRONMENT' THAT INCLUDES IDEALS OF AESTHETICS AND LANDSCAPING (ART. 225, CAPUT, OF THE CR/88 AND 3rd, INC. III, ITEMS 'A' AND 'D' OF LAW NO. 6,938/81). (...)4. Secondly, the Brazilian federal legislation that deals with the issue of environmental preservation is express, clear and precise regarding the relationship of containment existing between the concepts of subdivision, landscaping and urban aesthetics and the concept of environment, with the latter encompassing the former.

It can be seen then that the concept of environment adopted by the STJ goes beyond that established in infra-constitutional legislation.

Responsibility

Ricoeur (1995, pp. 33-34) defines responsibility as: "to impute an action to someone is to attribute it to that person as its true author, to place it, so to speak, on their account and make them responsible for it". This concept can be related to Kant's theory, according to which there must be an infraction followed by retribution.

According to Stoco (2007, p.114), responsibility is summarized in the duty an individual has to make reparation for any damage that they have caused to another. He emphasizes that the word originates from the Latin respondere. Diniz (1999, p. 34) defines responsibility as: "(...) the application of measures that oblige a person to make reparation for moral or patrimonial damage caused to third parties, due to an act committed by them, by a person for whom they are responsible, by something belonging to them or by simple legal imposition".

According to Lemos (2008, p. 105), civil liability based on the theory of risk is established in the sole paragraph of article 927 of the Civil Code, which states: "There shall be an obligation to repair the damage, regardless of fault, in cases specified by law, or when the activity normally carried out by the author of the damage implies, by its nature, a risk to the rights of others."

At the same time, for the theory of integral risk, it matters little whether the act originated in a lawful or unlawful manner, that is, regardless of whether the act is within legal parameters, if the environment suffers any damage, the author of the misfortune will be held liable, as explained by Lemos (2008, p. 106):

The fact is that the law does not distinguish between lawful acts, unlawful acts and abuse of rights when configuring damage to the environment. Therefore, we must recognize that damage to the environment may result from lawful acts or activities, such as in situations where the entrepreneur has a license and carries out his activities within the limits of this license and, even so, may be held liable if the environment does not absorb the impacts of the activity. The theory of activity risk is adopted, ruling out the possibility of alleging exclusions of liability.

Abuse of rights is a lawful act that exceeds the limits that conflict with the rights of others. This is because damage to the environment constitutes a violation of the rights of the community. According to Lemos (2008, p. 105), this is a social damage because it affects diffuse interests.

Lemos (2008, p. 108) explains that abuse of rights consists of the use of a faculty that is placed on one, however, above what is reasonable, that is, beyond what society and the law allow, causing harm to others, as already specified by the Civil Code itself in its art. 187.

Types Of Liabilities

It is known that there are some types of liability, both for individuals and legal entities. As a preliminary, it is important to highlight that the theories arise from the perspective that whoever causes harm to others is obliged to provide compensation to them.

The wording of article 186 of the Civil Code, together with art. 927 of the same code, is limited to regulating civil life precisely at the point of attributing liability for compensation arising from non-compliance with certain acts of life in society. Read as

Art. 186. Anyone who, by voluntary action or omission, negligence or imprudence, violates the rights of others and causes harm to others, even if only moral harm, commits an unlawful act.
[...]
Art. 927. Anyone who, by unlawful act (arts. 186 and 187), causes harm to others, is obliged to repair it.

Sole paragraph. There shall be an obligation to repair the damage, regardless of fault, in the cases specified by law, or when the activity normally carried out by the author of the damage implies, by its nature, a risk to the rights of others. (BRAZIL, 2002, online)

Thus, subjective liability is based on the theory of fault. This time, based on this theory, it is necessary to prove the agent's fault so that he can then be held liable for the damages. It is worth mentioning that, with

regard to fault, Tartuce (2014) covers both intent (intention to harm) and fault in the strict sense (recklessness, negligence or lack of skill).

In objective civil liability, the damage is configured at the time of the practice of a lawful activity, which, despite being legal, causes some type of damage to another person, generating the duty to compensate due to the existence of the causal link. This type of liability is based on the theory of risk.

Therefore, only the theory of risk will be the object of this study, which is divided into the Theory of Administrative Risk and the Theory of Integral Risk, as they are directly and indirectly linked to liability resulting from the determination of environmental damage.

According to Carvalho (2017, p. 345), the Theory of Administrative Risk is based on the premise that the State is considered to have greater power in a relationship with those it administers, both politically and economically. Therefore, because of this, the State has had to assume a greater risk in relation to the individual, due to the harmful acts resulting from its activity. In other words, according to the author, the State assumes the risk for its activities, which entails the duty of possible liability for the simple fact of carrying out the activity "regardless of the poor provision of the service or the fault of the public agent at fault.

In this way, the State becomes objectively liable for the damages that any of its agents may cause to third parties, a theory adopted by Brazil within the scope of Administrative Law that includes exclusion of liability in some cases, such as in the event of exclusive fault of the victim.

In the Theory of Comprehensive Risk, the liability of the agent, whether an individual or the Public Administration itself, arises from the simple demonstration of the existence of the damage and the causal link. According to Carvalho (2017, p. 346), no form of exclusion of the causal link is permitted, since "an adequate causality is not adopted".

Also according to the author, the theory of comprehensive risk is applied to cases arising from nuclear activity, damage caused to the environment and crimes occurring inside aircraft in Brazilian airspace or those resulting from terrorist attacks. Furthermore, this liability arises from the well-established theory of integral risk, which comes from the principle of the polluter-pays principle of Environmental Law.

Federal Law No. 6,938/1981 (National Environmental Policy Law) provides for a type of joint liability among agents involved in the damage caused to the environment, as stated by Tartuce (2014, p. 367-368):

The polluter pays principle aims to hold those who cause damage to the environment responsible for the consequences and social costs resulting from the pollution they generate. The meaning of the rule can be seen in the provisions of article 14, § 1, of Law 6,938/1981 (National Environmental Policy Law): "the polluter is obliged, regardless of the existence of fault, to compensate or repair the damage caused to the environment and to third parties affected by their activity". This is the rule that establishes objective (without fault) and joint civil liability among all those involved in environmental damage. The National Environmental Policy Act (L.P.N.M.A.) unifies the treatment that already occurred regarding environmental damages in other specific previous laws, such as in the case of Law 4,771/1965 (former Forest Code) and Law 6,453/1977 (which establishes civil liability for damages related to nuclear activities, also of an objective nature). It should be understood that it is possible to seek grounds for objective liability for environmental damages, in a generic and consolidated sense, only in the National Environmental Policy Act.

However, this theory of integral risk is still widely discussed within the scope of criminal doctrine. It is important to emphasize that, according to Cunha (2017, p. 154), through this discussion three currents emerged addressing the controversy of possible criminal liability of the Legal Entity. Liability in Environmental Law is a result of the theory of integral risk, which according to Filho (2009, p. 524), consists of holding the individual accountable, regardless of proof of causal link and guilt.

III. Currents On The Criminal Liability Of Legal Entities

Regarding the first approach, the author clarifies that a legal entity could never commit any crime, given that it is a virtual entity, therefore, its acts would be devoid of will and conscience. According to Boschi (2006, p. 135) the constituent never intended to create criminal liability for the legal entity:

The text of § 3° of art. 225 of the Federal Constitution merely reaffirms what is in the public domain, that is, that natural persons are subject to sanctions of a criminal nature, and that legal entities are subject to sanctions of a legal nature. The constitutional legislator, apparently, at no time intended, when drafting the text of the Basic Law, to break the rule enshrined by him (art. 5°, XLV) that criminal liability is, in its essence, inherent only to human beings, since they, as we have stated before, are the only ones endowed with conscience, will and capacity to understand the fact and to act (or omission) in accordance or not with the law.

Therefore, according to this theory, an individual can be held liable in three ways, that is, civilly, administratively and criminally. As for a legal entity, the liability is limited to twofold liability, namely civil and administrative, since it does not commit any crime.

The second theory understands that only individuals commit crimes. However, if the crime is environmental and results from an infraction committed by means of a decision by the company's

representative, whether legal or contractual, or by means of a collegiate decision, in the pursuit of interest or some benefit for the company, the criminal liability of the legal entity is permitted.

In this sense, Galvão (2003, p. 70) adds:

When applying the law, the judge may find a conduct and reach a judgment of social and criminal disapproval. When analyzing the practical case, with its evidence and circumstances, if the company's conduct is reprehensible, it may be convicted. This is not a case of objective criminal liability or criminal liability for the actions of a third party. This is because the authorship of the act and the proof of materiality do not necessarily mean a conviction. A value judgment is made on the social disapproval of the conduct.

Thus, according to Cunha (2017, p. 155), the logic of this theory is that only individuals commit crimes, but legal entities can be held criminally liable when, as a result of an act committed by an individual who has direct ties to the company, causes damage to the environment.

The third theory treats legal entities as autonomous entities, distinguishing them from their members, and therefore they are subject to committing environmental crimes and being penalized. This theory was even accepted and adopted by the Superior Court of Justice in the judgment of Appeal in Writ of Mandamus No. 37,293, but it is linked to the image of the individual, and the absence of this image in the complaint would result in the dismissal of the criminal action.

However, in contrast with the STJ, the SFT understands that the liability of legal entities does not depend on the individual, applying in the case of the judgment of Extraordinary Appeal 548,181:

(...) On the merits, it was noted that the STJ's thesis, to the effect that the criminal prosecution of moral entities could only occur if there were, simultaneously, the description and imputation of an individual human action, without which the liability of the legal entity would not be admissible, would violate Article 225, § 3°, of the Federal Constitution. It was emphasized that, by conditioning the imputability of the legal entity to that of the human person, it would almost be subordinating the criminal legal liability of the moral entity to the effective conviction of the natural person. It was emphasized that, even if it were concluded that the ordinary legislator had not fully established the criteria for imputing the legal entity for environmental crimes, there would be no way to try to transpose the paradigm of imputation of natural persons to collective entities" (RE 548,181, First Chamber, King. Min. Rosa Weber, DJe 06/19/2013).

Thus, the issue regarding the possibility of criminal liability remains settled, however, it should be noted, only in relation to damage caused to the environment.

Legal Provision Of Legal Entity Liability

The Constitution of the Federative Republic of Brazil of 1988 brought with it a normative type of order to the criminal legislator, in order to meet the need to impute a form of criminal liability to the offender of an environmental crime. In art. 225, § 3º of the political charter, there is an express mandate for criminalization, leaving it to the criminal sphere to protect these behavioral practices, in view of the importance given by the legislator to the legal asset to be protected, namely, the environment.

In this sense, Vecchiatti (2017, p. 223-224) observes.

In summary, the author analyzes both the traditional guarantor function of the constitutional order, limiting the activity of the democratic legislator, and the function of promoting social security through Criminal Law, by which the legislator is obliged to criminalize certain behaviors, namely, those that offend constitutionally recognized legal assets, in what is indispensable for guaranteeing life in society.

It is clear that the Constitution of the Federative Republic of Brazil of 1988 (CRFB/88) leaves it up to the legislator, according to his/her convenience, to measure the proportionality with which punishability would be measured on the aspect in question based on opportunity and convenience; and the order is for there to be punishment.

The creation of Law 9.605/98 (Environmental Crimes Law) establishes a criminal type, holding the violator of this norm liable for sanctions, as stated in its art. 3, caput: "Legal entities shall be held administratively, civilly and criminally liable in accordance with the provisions of this Law, in cases where the infraction is committed by decision of their legal or contractual representative, or of their collegiate body, in the interest or benefit of their entity".

The creation of the aforementioned Law has generated heated debates among scholars in the constitutional, criminal and environmental fields regarding the criminal liability of legal entities, since they would not be able to answer for their acts in the absence of a manifestation of will. In this context, it is necessary to clarify some essential factors in the study on the subject.

Criminal Offense

Criminal offenses encompass aspects of the theory of crime, resulting, in theory, in conduct classified under an incriminating norm that imposes a penalty – formal aspect – and “human behavior that causes

significant and intolerable harm or risk of harm to the protected legal asset, subject to criminal sanction" – material aspect, as explained by Cunha (2016).

In Brazil, criminal offenses are divided into two parts: crimes or misdemeanors, which are synonyms; and misdemeanors or dwarf crimes, according to the definition of Nélson Hungria. For Cunha (2016), the second can still be called "Lilliputian crime or vagabond crime".

Once the distinction phase is overcome, it is imperative to mention who has the capacity to commit a criminal offense, focusing at this point on the types of crime. Thus, the figure of the active subject of the crime emerges, in which, according to Cunha (2016), "is the person who commits the criminal offense. Any capable individual who is 18 (eighteen) years old can be an active subject of a crime. For Masson (2015), "it is the person who directly or indirectly carries out the criminal conduct, whether alone or in conjunction".

The active subjects of the crime are, in theory, the person who commits the offense. Therefore, in the words of Estefam (2016), in principle, only a human being can be an active subject of a crime.

The doctrinal divergence begins at this point, under the questioning of the legitimacy of the legal entity to compose the active pole of the criminal relationship. In this vein, the CF/88, in art. 225, § 3°, states: "Conduct and activities considered harmful to the environment will subject offenders, whether individuals or legal entities, to criminal and administrative sanctions, regardless of the obligation to repair the damage caused", which in itself would eliminate the entire controversy, as it arises from the order of the main text.

Furthermore, three currents emerged, formed under the direction of the debates. Among them, the first one is worth highlighting, which is explained in the words of Boshi (2006, p. 135):

The text of § 3° of art. 225 of the Federal Constitution merely reaffirms what is in the public domain, that is, that natural persons are subject to sanctions of a criminal nature, and that legal entities are subject to sanctions of a legal nature. The constitutional legislator, apparently, at no time intended, when drafting the text of the Basic Law, to break the rule enshrined by him (art. 5°, XLV) that criminal liability is, in its essence, inherent only to human beings, since they, as we have stated before, are the only ones endowed with conscience, will and capacity to understand the fact and to act (or omission) in accordance or not with the law.

Despite all the doctrinal discussion, the Superior Court of Justice has already ruled on the matter in the judgment of Resp No. 800,817 of Santa Catarina, in favor of holding the legal entity liable, as follows: "The criminal liability of the legal entity in environmental crimes is accepted, under the condition that it is reported in co-authorship with a natural person, who has acted with their own subjective element" (REsp 800,817/SC, Rel. Min. Celso Limongi — summoned judge, 6th Panel, judged on 02/04/2010, DJe 02/22/2010).

IV. Environmental Crimes And Their Consequences Applied To Legal Entities

Environmental crime is defined in Law 6.938/81 and is defined as the practice of some damage to any of the elements of the environmental system, be they fauna, flora, heritage and natural resources, which exceeds the legal limit. (ANDRADE, online).

The object of this study limits the practice of environmental crimes by legal entities, which covers a broad and controversialfield. According to Masson (2015), Savigny's theory states that legal entities would not exist in reality, therefore they would not be endowed with will, and could not be the subject of rights and duties.

On the other hand, the theory of reality maintains that the legal entity is indeed an autonomous entity and, therefore, endowed with will. Thus, it should be considered a subject capable of contracting rights and obligations, and this is the prevailing theory as can be seen from the teachings of Capez (2010, p. 77):

It was wisely stated that there are no problems regarding culpability, since the aforementioned article (art. 225 of the Federal Constitution) makes it clear that the harmful conduct was carried out by decision of the legal representative(s) of the company, and for the benefit of that entity, that is, even if the legal entity, in fact, is not culpable, its partners, directors and managers are, so that a type of reflexive liability was created: initially, culpability is verified at the level of the natural person, that is, if the natural person who caused the harm to the environment is a partner, manager, director, etc. of a legal entity, and that the latter, in the end, benefited from the conduct of that person; the criminal liability of the legal entity is established.

This issue has already been resolved according to the understanding of case law and with the advent of the Federal Constitution, which, according to Masson's lesson (2015), "admitted the criminal liability of legal entities for crimes against the economic and financial order, against the popular economy and against the environment, authorizing the ordinary legislator to impose penalties compatible with their nature".

As for the consequences applicable to legal entities for the practice of environmental crimes, they are the most varied, from fines to the dissolution of the legal entity, depending on the severity of the damage caused, as provided for in the list of art. 8 of the Environmental Crimes Law, in the field of restrictive penalties:
Art. 8º The restrictive penalties of rights are:
I - provision of services to the community;
II - temporary ban on rights;
III - partial or total suspension of activities;

IV - pecuniary payment;
V - home confinement.

At the same time, this liquidation of the legal entity is forced by the State and results in the loss of assets and values, being a form of criminal sanction that has as its main activity the activity that results in environmental crime, as is the case of clandestine logging, according to Silva (2016).

V. Environmental Crime Committed By A Company That Is Part Of The Bunge Group

On the twenty-third day of August, two thousand and seventeen, a police report was filed reporting the existence of a large fire in the sugarcane plantations, located around the BUNGE plant facilities, which had already been burning since the previous day. The police report also stated that the fire had reached the farm next door, at which point the farm employees, together with the company employees, tried to remove the animals that were in the pasture.

Since there was no time to remove all the animals from the pasture, the victim – the owner of the farm who gave the police report, stated that approximately thirty head of cattle had died from the fire and that up until that moment there had been no team working to contain the spread of the fire.

The witnesses were heard and an expert report was prepared at the site of the burning, including an official letter to the NATURATINS agency, which provided information stating that there was no authorization for controlled burning (AQC) and that, even if there were an authorization, its validity would be suspended due to an ordinance from the agency itself that prevents burning at that time due to the occurrence of strong winds, lack of rain, dry plant mass and low air humidity.

Therefore, the conclusion of the police investigation resulted in the indictment of the legal entity for the practice of the crime provided for in art. 54 of Law 9.605 of February 12, 1998, which provides for criminal and administrative sanctions arising from conduct and activities that are harmful to the environment, and provides other measures.

On November 30, 2017, the Public Prosecutor's Office (MP) of the district of Pedro Afonso filed a complaint against the company Pedro Afonso Açúcar e Bioenergia S.A. alleging that the company had set fire to the area. According to the representative of the reporting agency, setting fire to sugarcane fields was a common practice of the company with the intention of facilitating harvesting in an area of sugarcane leased by the company, without authorization from the responsible environmental agency.

Also according to the complaint filed by the MP, one of the main victims, who had his assets affected to a large extent, as can be seen:

• Burning of approximately 45 hectares, with an estimated cost of R$54,450.00 (fifty-four thousand, four hundred and fifty reais);
• Burning of 200 hectares, total estimated cost of R$71,646.00 (seventy-one thousand, six hundred and forty-six reais);
• Burning of 70 hectares of legal reserve; • Damages estimated at R$60,379.00;
• Losses of R$35,200.00 (thirty-five thousand, two hundred reais), with the death of several head of cattle;
• Damages estimated at R$150 thousand reais, due to death and injuries to livestock;

In its defense, the company argued that the complaint lacked a condition for the action, since the request was legally impossible. This is because the complaint was filed based on art. 250, § 1, item II, item "h" of the Penal Code. Therefore, the legal entity could not be an active subject in that lawsuit since, in the Brazilian legal system, it is only liable for environmental crimes. It also asserted that the company could only be held liable if the violation had resulted from a decision by its legal representative, contractual representative, or its collegiate body, in the interest or benefit of the entity, which, according to the defense, there would be no proof in the records by the Public Prosecutor's Office. The discussion is fueled by the conflict that surrounded the entire bibliographic collection of this study, since, as already explained here, a legal entity does not perform acts endowed with will, therefore it would be impossible for it to be held responsible for the practice of a crime, except in the cases of environmental crimes, which in reality result from a constitutional mandate of criminalization.

However, with regard to the legal requirement that the act be practiced in accordance with the "interest or benefit" of the legal entity, Rodrigues (2016, n.p.) very well explains that the greatest difficulties are found in this field of action of the Justice system, since the interests or benefits are adapted to different and diverse situations.

In this context, art. 250 of the Penal Code consists of the crime of arson, which provides for a prison sentence of three to six years and a fine, followed by item "h", inserted in the causes of increased punishment for those who have committed the crime in crops, pastures, woods or forests.

The concept of fire is understood by Fabbrini Mirabete (Manual de direito penal, volume III, 22nd edition, page 59) as the "combustion of any matter (solid, liquid or gaseous), with its total or partial destruction, which, due to its proportion and conditions, can spread, exposing public safety to danger". From this

understanding, it can be concluded that not just any fire being set will be considered a fire, but one that causes an extensive progression of the risk of carbonization.

In this vein, explains Romano (2014, online), the crime of arson can occur in intentional or negligent forms (article 250, § 2). If the legal entity does not have the will in its practices, liability for the crime of arson listed in the Penal Code would be focused on that third party, who, regardless of whether or not he is the legal representative of the company, would have incurred the type of crime in art. 250 of the Criminal Code, which aims to criminalize the human person, since at the time of its creation, the criminal conviction of a fictitious person was never imagined.

Analyzing the context above, Romano (2014, online) comments that due to legal and doctrinal ties regarding the criminal liability of legal entities, there will be several problems arising from the absence of specific procedural rules, and therefore, there must also be a review of the principles of criminal law applied to environmental criminal law. Regarding the practice of environmental crime, according to (Romano (2014, online), the conduct translates into provoking (producing, causing, giving rise to) "fire, which is understood as "dangerous fire, potentially harmful to the integrity of woods and forests". Furthermore, the criminal type is regulated by Decree No. 2,661, of July 8, 1998, which establishes precautionary standards regarding the use of fire in agricultural and forestry practices. The type is also known as "uncontrolled burning" or "uncontrolled fire in a forest or any other form of vegetation" (Decree 2,661/98).

It is noted that the report of the crime of arson, according to the defendant, should be addressed to the third party (natural person) after the perpetrator has been determined, since the articles of the Penal Code are not intended for legal entities.

The Court of Justice of the State of Tocantins (TJ/TO) has already ruled in this regard:

HEADNOTE: PRECAUTIONARY MEASURE. ARTICLE 319. CODE OF CRIMINAL PROCEDURE. IMPOSITION OF PRECAUTIONARY MEASURE ON A THIRD PARTY BY REFLECTIVE MEASURE. LEGAL ENTITY. IMPOSSIBILITY. CRIMINAL LIABILITY OF LEGAL ENTITY. ADMITTED ONLY IN THE CASE OF ENVIRONMENTAL CRIME. IMPROPER CRIMINAL SPHERE. UNSUITABLE INSTRUMENT. 1. The precautionary measure requested in the context of a complaint by the Public Prosecutor's Office may not apply to a legal entity. 2. The Supreme Federal Court and the Superior Court of Justice adopt the understanding that criminal liability of a legal entity is admissible, however, only in the case of an environmental crime. 3. Thus, the (criminal) sphere in which the precautionary measure was requested and the means used by the Public Prosecutor's Office (complaint) are inadequate, since it involves a case of a bidding crime, and does not fall within the constitutional possibility (environmental crime) of holding a legal entity liable, especially when the latter is not included in the list of defendants and is not involved in the procedural relationship. 4. Preliminary injunction granted to reform the first instance decision and, consequently, nullify the prohibitory order imposed on the appellant companies to bid and contract with the public authorities of the States of Tocantins and Goiás (the latter, unless there is no prohibition by the Goiás Court), allowing them to bid and contract again with the public authorities of the State of Tocantins, provided that they do so individually. APPEAL GRANTED AND, ON THE MERITS, GRANTED. (MS 0016187-03.2016.827.0000, Rapporteur Desa. ETELVINA MARIA SAMPAIO FELIPE, 2nd Criminal Chamber, tried on 04/25/2017).

Therefore, according to the ruling by the Egregious Court, in the case of environmental crimes, the legal entity may be held criminally liable, in which case the complaint must be supported by the Penal Code, given that the criminal type covers the illicit act allegedly committed by the company belonging to the Bunge group.

VI. Conclusion

The criminalization of legal entities still generates broad debates that, according to authors in the area, have always left gaps and caused serious problems for judges in specific cases, given the verification of compliance with the legal parameters related to their practices.

This time, in an initial approach, the concept of environment and the first aspects of its legal protection were verified, which came to be regulated in the country through Law 6.938/81, with the concept having been expanded by the Superior Court of Justice.

Afterwards, there was a discussion regarding liability, covering civil liability, as well as addressing the Theory of Risk and the theory underlying this research, which is the Theory of Integral Risk, focusing on liability in the sphere of Environmental Law.

Later, we present the main positions on the permissibility of holding legal entities liable in the criminal sphere and its legal provision that arises from a constitutional mandate of criminalization.

We also collected some lessons on what constitutes a criminal offense, presenting the subjects of a crime, for which they must be endowed with will (intent) or guilt, heating up the doctrinal debates on the liability of the legal entity, given that it does not have acts of will in its practices.

We also addressed what the hypotheses are and which crimes can be committed by the legal entity, presenting for this purpose, the specific case of uncontrolled burning, allegedly practiced by the company Pedro Afonso Açúcar e Bioenergia, a company that is part of the Bunge group in its legal concerns.

Therefore, it is conclusively stated that the measure applied by the Public Prosecutor's Office in the complaint filed in this case is sensible and consistent with the Brazilian legal system. This is because, despite the Penal Code having been created in a different era, when the subject returned to the physical person, since the existence of a fictitious person was not imagined.

However, it is well known that the law adapts to the present day and must continue to do so, since, as a result of globalization, new facts will always arise for the various branches of law, situations in which the Justice system will be called upon after hard work by criminal policy on society with the purpose of guaranteeing public order and social peace, safeguarding individual and collective rights.

In the meantime, despite the textual invocation of Decree No. 2,661/98, it is worth noting that this regulation is a specific rule on the concession for the use of fire and its suspension at certain times of the year, for example in cases of lack of rain, referring to the Environmental Crimes Law in cases of legal violation.

Thus, the criminal type listed in art. 250, § 1, item II, item "h" of the Penal Code is more comprehensive than the Environmental Crimes Law, and, as explained, the exclusive application of that Law is somewhat confusing and full of possible legal discussions given the existence of Gaps.

Finally, although it is not possible to emphasize the company's guilt given the lack of a final and binding court decision, the practice is being processed before the criminal court of the district of Pedro Afonso, which has been at a standstill since the beginning of 2018 due to the slowness of the Judiciary.

Therefore, in order to resolve this impasse, it will be up to the Supreme Federal Court to express its views through its summaries to settle the issue of the application of the Penal Code to legal entities, since, as we have seen, the liability of the latter is applicable in the criminal sphere.

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