

Journal of Comparative Urban Law and Policy

Volume 4
Issue 1 *Festschrift II in Honor of Julian Conrad
Juergensmeyer on the Occasion of His
Retirement: International Perspectives on Urban
Law & Policy*

Article 23

2020

Analysis of the Complex Relations Between Poverty and the Urban Environment in Brazil

Vladimir Freitas

Pontifical Catholic University of Paraná, Brazil, vladimir.freitas@terra.com.br

Follow this and additional works at: <https://readingroom.law.gsu.edu/jculp>



Part of the [Comparative and Foreign Law Commons](#), [Environmental Law Commons](#), [Land Use Law Commons](#), and the [Urban Studies Commons](#)

Recommended Citation

Freitas, Vladimir (2020) "Analysis of the Complex Relations Between Poverty and the Urban Environment in Brazil," *Journal of Comparative Urban Law and Policy*. Vol. 4 : Iss. 1 , Article 23, 353-369.

Available at: <https://readingroom.law.gsu.edu/jculp/vol4/iss1/23>

This Article is brought to you for free and open access by Reading Room. It has been accepted for inclusion in *Journal of Comparative Urban Law and Policy* by an authorized editor of Reading Room. For more information, please contact gfowke@gsu.edu.

ANALYSIS OF THE COMPLEX RELATIONS BETWEEN POVERTY AND THE URBAN ENVIRONMENT IN BRAZIL

Vladimir Passos de Freitas¹

ABSTRACT

Brazil has strong legal support for the protection of environmental areas. In addition to the fact that rural properties are required to leave a part, called the “legal reserve” (20% in the south of the country) untouched, there is also strong protection within urban areas. It turns out that population growth and rural-urban migration have caused a rise in new environmental issues, many of them affecting vulnerable populations. The purpose of this study is to identify the complexity of the invasions of these areas by homeless people and the difficulties of providing a legal solution to these cases. There is a striking conflict between two very important aspects protected in the Constitution, that are the right of all Brazilians to housing and a protected environment. The analysis confronts social and environmental factors, and their regulatory frameworks, considering the determinations of judicial decisions.

KEYWORDS: Poverty and environment. Protected environmental areas. Invasions.

INTRODUCTION

The concern with environmental protection in Brazil started to be more effective in the 1930s, when several initiatives were taken. In 1934, with the support of the Federal Government, the "Friends of the Trees Society" was created in Rio de Janeiro, to value nature as an economic resource to be rationally enjoyed, as well as being the object of cult and aesthetic enjoyment.² At the same time the "Friends of Alberto Torres Society" was created, which preached the rational use of natural resources and directed its studies on the

¹ Professor of the Graduate Program of the Pontifical Catholic University of Paraná. Master and PhD in Law from the Federal University of Paraná, Post-doctorate from the University of São Paulo, School of Public Health. Head of the Special Advisory Office on Legislative Affairs of the Ministry of Justice and Public Security. Former Chief Judge of Federal Court of Appeal, 4th Region. Email: vladimir.freitas@terra.com.br.

² RABELLO, Jessika Flückiger Dupré Rabello. **Educação e Geociências na 1ª Conferência Brasileira de Proteção à Natureza** (1934). São Paulo, Programa PIC/FEUS. Available in: <<http://www4.fe.usp.br/pesquisa-arquivos/public6/trab/a019.htm>>. Access: 18.03. 2004.

effects of deforestation. Also from 1934 is the creation of the first Brazilian Forest Code, through Decree 24,646.

The second major change took place in the 1960s, with the adoption of the so-called Geographic Environmentalism and the publication of legal norms protecting fauna and flora. Also from this time are the Forest Code that remained in force until 2012 (Law 4,771, of 18.09.1965), the Fauna Protection Law (Law 5.197, of 03.03.1967) and the Fisheries Code (Decree-Law 221, of 28.02.1967), partially repealed by Law 11,959 of 2009.

The first effective concerns began in the 1970s as a result of the 1972 United Nations Conference on Human Environment in Stockholm, Sweden, with the participation of 113 countries. Ecological groups of small impact arose; in 1973 the Special Secretariat of the Environment - SEMA is created, linked to the Presidency of the Republic; the first legal study on the subject³ and the first sentence prohibiting the release of untreated sewage into the waters⁴ are published; Decree 1.413 of 14.08.1975 is enacted, the first one to combat industrial pollution.

In the 1980s, the Brazilian urban situation was aggravated, as a result of the rural-urban migration and demographic growth. Cities started to have urban sprawl and outlying areas, usually occupied by poor populations who were forced to abandon rural life due to the mechanization of agriculture.

Not only is internal migration a bloating factor for cities. Large hydroelectric dams have contributed and continue to contribute to this state of affairs. Sandra Cureau, in a study on the subject, comments on the impact of forced displacement on traditional populations, which lose "relationships built over many years, exchanges and mutual support, the use of living quarters, even the use of appropriation of space and natural resources, which will not be reproduced in the new settlements."⁵ Most of these people end up on the outskirts of medium and large cities. This is a worldwide phenomenon, not only Brazilian. Ronaldo Coutinho notes that:

In the coming decades, the Third World is projecting itself as the generating area of megalopolises: The Indian city Mumbai jumped from 14th place in the world

³ FERRAZ, Sérgio. Direito Ecológico, Perspectivas e Sugestões. Porto Alegre: **Revista da Consultoria-Geral do Rio Grande do Sul**, 1972, v. 2, p. 43.

⁴ Judgment given on May 15, 1974 by Judge José Geraldo Jacobina Rabello in the case of the Popular Action No. 1,700 / 73, filed by Ernesto Zwarg against the Mayor and the City Council of Itanhaém, SP.

⁵ CUREAU, Sandra. Os Impactos Socioculturais Decorrentes da Construção de Usinas Hidrelétricas no Brasil. In: **Revista Magister de Direito Ambiental e Urbanístico**, v. 50, out.nov./2013. Porto Alegre: Magister Ed., 2013, p. 114.

ranking in 1975 to 4th in 2007; Karachi, in Pakistan, now occupies 12th place with 12 million inhabitants, and the same table, in its main lines, covers Istanbul (Turkey), Lagos (Nigeria) and Guangdong (China). On the other hand, the First World megacity group tends to stabilize: in 1975, Paris was the 7th urban spot in the world with 8.5 million inhabitants and in 2005 was already in the 21st position. London, megacity of the century left the group because it grew much less than the other ones.⁶

At the same time, environmental concerns have been the subject of a major legislative breakthrough. However, linked to generic protection and not to urban environment. Thus, Law 6.938, of 30.08.1981, disciplined the National Environmental Policy, introducing modern concepts such as the objective civil liability for environmental damage, the obligation of environmental education and the National Environmental System - SISNAMA, intended to standardize the action of environmental agencies belonging to the different spheres of power. Subsequently, Law 7,437, of 1985, introduced public civil action to discipline environmental conflicts of collective and diffuse interests, giving active legitimacy to associations whose bylaws have this purpose. Still in that decade the Constitution of 1988 dedicated to the subject several articles of protective nature, especially number 225, which is divided in paragraphs and subparagraphs.

In the succeeding years the issue of the environment has grown in importance and, in addition to new legislative texts (eg Law 9.605, of 12.02.1998, which deals with environmental crimes), the Courts have played a major role in deciding thousands of environmental cases distributed to them. As an example, we cite the pioneering decision of the Federal Regional Court of the 4th. Region, in 2003 tried a criminal appeal in which it confirmed the conviction of a legal person.⁷ The thesis of criminal responsibility of the legal person, at first controversial, was later pacified by decisions of other Courts, including the Supreme Court.⁸

In subsequent years, it turned out that, in Brazil and around the world, especially in Latin America, environmental law has become increasingly important and in most countries it has shifted from being solely a matter for the

⁶ COUTINHO, Ronaldo. A urbanização da pobreza e a lógica do capital. In: COUTINHO, Ronaldo; AHMED, Flávio (Coord.). **Cidade, Direito e Meio Ambiente**. Rio de Janeiro: Lumenjuris, 2011, p. 97.

⁷ BRAZIL Regional Federal Court of the 4th Region, Criminal Appeal No. 2001.72.04.002225-0 / SC, Rapporteur Judge Elcio Pinheiro de Castro, judgement on 06.08.2003.

⁸ BRAZIL Supreme Federal Court, Interlocutory Appeal in Extraordinary Appeal No. 628,582 / RS, Rapporteur Justice Dias Toffoli, judgement on 06.09. 2011.

environmental administration to being an issue constantly submitted to the examination of the judiciary.

In addition, the subject has been increasingly examined from the perspective of social and economic reflexes. Such concern has led some countries to set up specialized courts focusing on these aspects. For example, in Bolivia the Agro-Environmental Court was created and, in the words of Liana Amim Lima da Silva:

Its specialized function is agrarian, livestock, forest, environmental, water and biodiversity matters, which are not within the competence of the administrative authorities. It is governed by the principles of social function, comprehensiveness, immediacy, sustainability, interculturality, precaution, environmental responsibility, equity and social justice, imprescriptibility and defense of the rights of Madre Tierra and is exercised through IM as the highest court with national jurisdiction and by the agri-environmental courts of same hierarchy.⁹

In Brazil, in addition to 14 first-instance Environmental Courts, two Chambers specialized in environmental matter at the São Paulo Court of Justice and one semi-specialized at the Rio Grande Court of Justice, it is important to register the role of the Superior Court of Justice, that by its Boards of Public Law have been setting precedents of great importance in the area, with influence on the judgments of the whole country.

As we can see, the complexity of the current problems related to the protection of the environment has become the object of initiatives in the area of the administration of justice and of greater role of the Courts. For this reason, the judicial decision on environmental actions is no longer just legal but also political, because as José Luis Serrano notes, "environmental problems and their tutelage increasingly affect social consensus."¹⁰

⁹ SILVA, Liana Amim Lima da. Tribunal Agroambiental da Bolívia: uma nova jurisdição agroambiental para um estado plurinacional. In: **Revista On Line do Instituto Brasileiro de Administração do Sistema Judiciário-** IBRAJUS. Available in: <<http://www.ibrajus.org.br/revista/artigo.asp?idArtigo-305>>. Access: 02.04.2014.

¹⁰ SERRANO, José Luis. *Principios de Derecho Ambiental y Ecología jurídica*. Madri: Trotta, 2007.

THE COMPLEX SITUATION OF POVERTY AND PROTECTION OF THE URBAN ENVIRONMENT

The existence of an increasing number of poor people in large cities, and sometimes in midsize cities, live with a new environmental awareness and society's attempts to protect the environment. As Marques points out:

[...] these are issues that must necessarily be addressed simultaneously, poverty and urban environment. One influences the other. Economy lies between these two fields and can contribute to increasing poverty and to environmental degradation. Or, on the contrary, to overcome these two situations, revealing sustainability."¹¹

Édis Milaré draws the lines to be followed in the pursuit of the urban ideal:

The ideal-ideal of a city in the dimension of human aspirations is the utopia of utopias, to recall the ideal of a cherished city by Tomás Morus. The overwhelming majority of urban concentrations creeps into insoluble problems. What we try to do is to minimize or circumvent them. To do so, it is indispensable to improve the legal system of the cities, both to remedy what can be remedied and to prevent what cannot. On the other hand, the awareness and participation of urban communities in the pursuit of the best possible quality of urban life is crucial.¹²

To Túlio Chiarini, "environmental degradation can inflict serious damage on the poor people as their lives depend on the use of natural resources and their living conditions offer little protection against air, water and soil pollution."¹³

Although it is difficult to define responsibilities for social classes, the fact is that the first step to avoid pollution in urban areas is the ordering of the

¹¹ MARQUES, José Roberto. **Meio Ambiente Urbano**, 2. ed. Rio de Janeiro: Forense Universitária, 2010, p. 110.

¹² MILARÉ, Édis. Um ordenamento jurídico para a qualidade de vida urbana. In: **Direito Urbanístico e Ambiental**, coord. Vanusa Murta Agrelli e Bruno Campos Silva. Rio de Janeiro: Lumenjuris Ed., 2008 p. 68.

¹³ CHIARINI, Túlio. Pobreza e Meio-Ambiente no Brasil Urbano. **Revista Eletrônica Economia-Ensaios**. Uberlândia: Instituto de Economia da Universidade Federal de Uberlândia, v. 20, jul./dez. 2007, p. 15. Available in: <<http://www.seer.ufu.br/index.php/revistaeconomiaensaios/article/viewFile/1562/1388>>. Access: 03.04. 2014.

territory by an appropriate Master Plan, as provided for in the Constitution in art. 182, § 1st. Victor Carvalho Pinto observes that "Territorial planning is as or more important than Environmental Impact Studies. While EIS analyze the environmental costs of isolated projects whose location is already determined, the territorial plan indicates the best location for each type of activity."¹⁴

However, there are cases where extremes are reached, such as large migratory populations and consequent uncontrolled situation, including the practice of invasion of environmental protection areas. The large internal migrations can be the result of mechanization of agriculture, climatic conditions, especially drought, and the construction of large enterprises that end up attracting workers who, with their families, occupy less valued areas close to the workplace.

In such situation, municipalities see their revenues increase but, paradoxically, they find it difficult to provide basic education, health and housing services. A good example of this is in the northern region of the state of Rio de Janeiro. The exploitation of oil in the maritime (pre-salt) zone has resulted in a significant increase in the economy of the region's cities. However, urban problems worsened greatly. Let's look at an example. The city of Macaé, which received 287 million reais in royalties in 2019 (until June),¹⁵ proves to be one of the most violent in the state of Rio de Janeiro, with 50.5 annual homicides per 100,000 inhabitants.¹⁶

The numerous situations that life presents in this context reveal that the solution will not always be the judicial decision, because the difficulties of enforcement are immense. Just because the judge orders the evacuation of an environmental preservation area occupied by families, it does not mean that this will happen automatically. Indeed, most of the time improvised housing is built and families are set up there, including children and the elderly. At the time of evacuation these people have nowhere to go and the municipality and the plaintiff have no appropriate places for removal. The Military Police, required to support the lawsuit, fear conflicts that could have serious consequences with repercussions in the media.

Such aspects are not usually faced by the doctrine, which prefers to be limited to the convenient formal analysis of the legislation governing the subject. Thus, what is done is to repeat that the right to housing is provided for

¹⁴ PINTO, Victor Carvalho. Notas introdutórias ao Direito Urbanístico. In: **Temas de Direito Urbanístico**, v. 2. São Paulo: Imprensa Oficial do Estado de São Paulo, Ministério Público do Estado de São Paulo, 2000, p.155.

¹⁵ CLICK PETRÓLEO E GÁS. Available in: <<https://clickpetroleogas.com.br/royalties-do-petroleo-ja-rendeu-r-287-milhoes-para-macaee-so-este-ano/>>. Access: 27.08.2019.

¹⁶ GAZETA DO POVO. Atlas da violência 2019. Available in: <<https://infograficos.gazetadopovo.com.br/seguranca-publica/atlas-da-violencia-2019-por-municipios/>>. Access: 27.08.2019.

in article 6 of the Constitution of the Republic and that it is up to the government, pursuant to art. 23, § X, to promote housing construction and improvement of housing conditions.

ANALYSIS OF MEDIATION OPPORTUNITY IN URBAN-ENVIRONMENTAL CONFLICTS

Conflicts involving urban communities and the environment do not always find a definitive solution in the court decisions. There are many cases where implementation is not consummated in face of the difficulties presented by the real situation. Paulo Affonso Leme Machado warns that "the judge will often face difficult situations such as when the intended distortion of the common goods is, for example, intended for the construction of popular houses."¹⁷

With the knowledge of those who work in the area, Prosecutor Rosângela Staurenghi wrote about her doubt, about success through public actions and how a municipal secretariat commission was created in São Bernardo do Campo, SP, with the goal of creating a new strategy for protecting springs. She stated that:

We doubted the effectiveness of simple repression to contain these developments, and the coordinated work of the agencies and the frequent meetings would enable changes in the culture of omission followed by amnesty. In our favor, we had, in all the bodies involved, people seriously committed to changing the existing situation.¹⁸

From the true testimony of those who work in a real complexity area, it is understood that the simple filing of public civil actions and the granting of injunctions, in most cases, does not solve the problem. Often the judicial decision is not fulfilled, which results in discredit to the judiciary. In the Prosecutor's view, the joining of efforts and the preventive action may represent a more effective solution. It does not mean that the judicial route should not be honored. Obviously, it is the last and most important way to preserve environmental preservation areas. However, the peculiarities of this type of lawsuit recommend that the Government anticipates the results and, when they occur, try to find a solution that addresses the social problem arising and the right to housing, provided for in Article 6 of the Constitution.

¹⁷ MACHADO, Paulo Affonso Leme. **Direito Ambiental Brasileiro**. 22. ed. São Paulo: Malheiros, 2014, p. 496.

¹⁸ STAURENGHI, Rosângela. Loteamentos clandestinos em áreas de proteção aos mananciais: a experiência de São Bernardo do Camp. In: **Temas de Direito Urbanístico**. São Paulo: Imprensa Oficial, Ministério Público do Estado de São Paulo, 1999, p.191.

An example of this can be mentioned. The Superior Court of Justice, in 2006, ruled on a public civil action ordering the removal of about 200 families from springs area located in São Bernardo do Campo, SP, on the banks of the Guarapiranga Dam. The rapporteur justice rightly remarked that "in the conflict between the public and the private interests, the detriment of the latter should prevail when it is impossible for them to be reconciled."¹⁹ However, given the complexity of the vacancy of the area, the court decision was not enforced.

Cases like this could perhaps be solved through mediation, with the joint efforts of the Government. Not easy, for sure. But it is an attempt to be made, including not to expose the judiciary to a situation of weakness due to non-compliance with the court order.

In this regard, a timely initiative was taken by the Paulista School of Magistracy - EPM, which through Joint Ordinance 02/2013, signed jointly with the Permanent Group of Consensual Conflict Resolution Methods of the São Paulo State Court of Justice, set goals for implementing mediation in urban environmental conflicts. EPM's Social and Environmental Conflict Mediation and Settlement Group through Agreement 15/2013, made with the Catholic University of Santos-UNISANTOS, started to implement the projects. The University is responsible for assigning staff from interdisciplinary areas, teachers and technicians. For example, in removing the population from the environmental preservation area, all steps will be accompanied by psychologists in order to avoid emotional problems in those involved.

A situation that deserves special mention should also be noted - houses in areas at risk of environmental disasters. Law 12,340, of 2010, partially amended by Law 12,608, of 2012, gives residents the right to receive emergency treatment that ensures their right to be sheltered.

THE POSITION OF JURISPRUDENCE

The examination of decisions of the Brazilian Courts reveals the orientation of jurisprudence in actions involving conflicts between the environment and poverty. There is no single position; solutions depend on the characteristics of each case. Let us look at a typical example of what has been happening.

In the city of Praia Grande, on the coast of São Paulo state, on July 13, 2019, the environmental police arrested 20 people for illegal deforestation. They were found at Rua Turquesa, in an area known as Morro do Gato Preto, after having destroyed the vegetation of an area of 3,527 m² for the construction of irregular dwellings.²⁰ It is an intermediate protection area, because it is between

¹⁹ BRASIL. STJ, Recurso Especial 403/90-SP, Rapporteur João Otávio Noronha, j. 27.06.2006.

²⁰ Jornal A Tribuna, Santos, 14/7/2019, página A9.

the habitable part and the Serra do Mar State Park.

This type of occurrence is becoming increasingly common. Police action is limited to criminal aspects. Families will probably continue there, and even if they are expelled, they can return to the site or be replaced by other vulnerable people.

This example is only one of many similar occurrences, along the vast territory of the country. For example, in Florianópolis, from 2017 to now, a land of more than 30000 m², listed because it possesses rare specimens of flora, located between the communities of Serrinha and Caieira do Saco dos Limões, has been continuously invaded and the trees, vegetation and animals have given space for wooden residences.²¹ In Cuiabá, on November 14, 2018, the Prosecutor's Office of the state of Mato Grosso filed a public civil action against eight people residing in a permanent preservation area (APP). According to the news there was suppression of the vegetation, construction of fossae and irregular garbage disposal, pollution of the groundwater and contamination of the soil.²²

Let us see how the judiciary has reacted to such conflicts. Despite the difficulties of performing such research, in a country that has about 17,000 judges in activity, it is possible to reach some conclusions. In conflicts involving the protection of springs, the courts tend to protect the water resources that supply the population.

In the metropolitan region of Curitiba, capital of the state of Paraná, special adverse possession claims (in areas of less than 250 m²) were filed by people who claimed to maintain legitimate and uncontested possession for at least 5 years in permanent preservation areas, springs close to rivers that supply the local population. The lawsuits were dismissed by the Paraná State Court of Justice because the possession did not fulfill the social and environmental function:

CIVIL APPEAL. LAWSUIT OF SPECIAL URBAN ADVERSE POSSESSION. Irregular allotment. Invasion. Area with less than 250 m² located in permanent environmental preservation place. Spring that supplies the metropolitan region of Curitiba. Duty of protection by the government arising from the federal

²¹ GONÇALVES, Michael. **Fiscalização não impede invasão e dano ambiental de área privada em APL, em Florianópolis.** In: ND+. Available in: <<https://ndmais.com.br/noticias/fiscalizacao-nao-impede-invasao-e-dano-ambiental-de-area-privada-em-apl-em-florianopolis/>>, 1/3/2018. Access: 18.02.2019.

²² GAZETA DIGITAL. **MPE processa 8 pessoas para desocuparem área de preservação no bairro Pedra 90.** Available in: <<http://www.gazetadigital.com.br/editorias/judiciario/mpe-processa-8-pessoas-para-desocuparem-area-de-preservacao-no-bairro-pedra-90/557909>>. Access: 18.02.2019.

constitution. Municipal limitation on land occupation that determines one family per 10,000 m², possession that does not fulfill the socio-environmental function. Impossibility of declaration of the domain, unfounded claim. Reversed judgement. Appeal provided.²³

The state court ruled in the same direction in other appeals regarding adverse possession cases.²⁴ The same court, ruling on an order involving the removal of a protected area, upheld the court order:

CIVIL PROCEEDINGS – INTERLOCUTORY APPEAL- ENVIRONMENTAL PUBLIC CIVIL ACTION - Appeal insurgency against decision granting injunction, determining eviction of environmental preservation area and embargo of works on site - viability due to unavailability and indivisibility of the right to the environmentally balanced environment - environmental protection area of Irai - prevention and precautionary principle - 60 (sixty) days for families eviction and resettlement - unreasonable - time extension to 6 (six) months – appeal heard and partially granted.²⁵

The Rio Grande do Sul Court of Justice has considered the specific situation of the case under judgment. In the case of an invaded area of permanent preservation, it determined the removal of the occupants, but denied the imposition of a daily fine for noncompliance, because the obligation imposed on the municipality would burden the public finances without reaching the manager. On the other hand, it extended the period of compliance with the court decision to 365 days, given the complexity of the case. Check it out:

Civil Appeal Environmental Law. PUBLIC CIVIL ACTION. EVICTION OF PREDOMINANTLY PRESERVATION AREA. PROTECTIVE MEASURES OF ENVIRONMENTAL HERITAGE. DAMAGE REPAIR. The Constitution of the Republic established in art. 225 the Government's duty to adopt measures to protect and preserve the natural environment. In fact,

²³ BRASIL. Tribunal de Justiça do Paraná, Processo 816707/11/2012 21-7, 17[. Câmara Cível, rapporteur Vicente Misurelli, judgement on 07.11.2012.

²⁴ BRASIL. Tribunal de Justiça do Paraná, Processo 947227-9, 17^a. Câmara Cível, rapporteur Helton Jorge, judgement on 08.05.2013 and Processo 866952-7, 18^a. Câmara Cível, rapporteur Marcelo Dalla Dea, judgement on 07.11.2012.

²⁵ BRASIL. Tribunal de Justiça do Paraná. Processo 951687-4, 4^a. Câmara Cível, rapporteur Wellington Moura, judgement on 09.04.2013.

such a duty is of political and administrative competence of all political entities (art. 23, item VI, of the Constitution of the Republic), and, therefore, should avoid that the environmental protection spaces are used contrary to their function - preservation of native species and promote overt surveillance of these sites. HUMAN OCCUPATION CAUSING ENVIRONMENTAL DAMAGE. REPAIR. In this case, there is human occupation, with buildings and housing in an area of environmental preservation through omission or consent of the Municipal Government. It proves the illicit and the damage, it is necessary to repair it. Risk to families installed there is widely proven. DAILY FINE. Although, in theory, it is permissible to set a daily fine, it is not reasonable as a coercive means, since it would only burden the public finances, not reaching the manager who does not comply with the decision. DUTY OF SUPERVISION. The Government must permanently maintain local vigilance, preventing new occupations and pollution of the natural environment. DEADLINE FOR COMPLIANCE WITH THE SENTENCE. MAJORATION. Given the complexity of the measures to be taken by the municipal entity, the deadline for compliance with the decision is set to 365 days, the only topic in which the sentence is reversed. APPEAL OF THE MUNICIPALITY PARTIALLY PROVIDED. APPEAL FROM THE PROSECUTOR'S OFFICE DENIED. UNANIMOUS. (Appeal and Review Required No. 70049777154, Twenty-second Civil Chamber, Court of Justice of the RS, Rapporteur: Eduardo Kraemer, Judged on 27/06/2013).

The same court, judging the appeal filed by the Public Prosecution Office, ordered the eviction of an environmentally protected area within regular allotment, making it explicit that the right to housing could not override the collective interest in environmental protection:

CIVIL APPEALS. PUBLIC RIGHT NOT SPECIFIED. INVASIONS. GREEN AREAS OF INSTITUTIONAL USE. ALLOTMENT PROJECT APPROVED BY THE CITY. AREAS OF COMMON USE. FEDERAL LAW No. 6,766 / 79. ENVIRONMENTAL PROTECTION. EVICTION. Irregular occupations occurred in green and institutional areas, according to a municipality-approved allotment project. As these are common goods of the people, they cannot be enjoyed individually or by a

specific group of people. The destination is for general use by the community, in accordance with Law 6,766 / 79. In addition, these green plots are included in an Environmental Preservation Area, whose subdivision is prohibited under the Forest Code, Federal Law No. 6,766 / 79 and the Rio Grande do Sul State Environmental Code. The right to housing - individual - does not override the collective interest of the ecologically balanced environment. CONDITIONALITY TO RES JUDICATA. It's not applicable the conditionality of compliance with the judgment which confirmed an injunction to its res judicata, pursuant to art. 520, VII, of the CPC, in addition to causing greater damage to the environment. Exceptional appeals have no suspensive effect. FINE. The amount of the fine was limited ex officio. APPEAL FROM THE PROSECUTOR'S OFFICE GRANTED AND FROM THE INVADERS DENIED. (Court of Justice of Rio Grande do Sul. Civil Appeal No. 70047066915, 2nd Civil Chamber. Rapporteur: Almir Rocha Filho, judgement on April 25, 2012).

In an interlocutory appeal against an injunction granted, the state court of Rio Grande do Sul established that the right to decent housing must be observed with other recognized constitutional rights and that this decision is up to the administrative authority and not the judiciary one, under risk of compromising the independence of the Powers. However, in the decision it kept part of the lower court decision that ordered the municipality to place signs alerting the population that the area is of permanent preservation and risk.²⁶

The Federal Regional Court of the 4th Region, analyzing the same subject, but in an area of permanent preservation located near a beach, decided that the eviction should happen only "after the local Government has designated a suitable place for the residence of the defendant and his family, because the determination of eviction cannot be adopted without observing the greater effectiveness of the right to housing."²⁷

In another proceeding of the same Federal Court, involving the request for demolition of a house situated in a resting area, therefore of permanent preservation, inhabited by a family headed by a fisherwoman, it was decided that the extreme measure was against the dignity of the human being and the

²⁶ BRASIL. Tribunal de Justiça do Rio Grande do Sul, Agravo de Instrumento nº 70043642024, 22ª. Câmara Cível, rapporteur Carlos Eduardo Z. Duro, j. 29.06.2011.

²⁷ BRASIL. Tribunal Regional Federal da 4ª Região. Embargos Infringentes nº 2005.04.01.032019-0, SC, 2ª Sessão, rapporteur Jorge Maurique, judgement on 09.12.2010.

State should find a housing alternative, since "The prohibition of indirect discrimination considers the consequences of the vulnerability experienced by poor women, who carry the disproportionate burden generated by the various state and social demands and initiatives."²⁸

A complex issue was decided by the Superior Court of Justice, the relationship between the indigenous and the urban environment. It is well known that these traditional populations have adapted in many ways to the European culture. Thus, there are those who live in cities and those who transit through it but live in non-urbanized areas of the municipality. In Balneário Camboriú, SC, a group of indigenous people wanted to exhibit their native handicraft in a certain place. The municipality disagreed, because it had already indicated another location for this activity. The issue was decided by the Superior Court of Justice (STJ): "[...] there is no disrespect for the indigenous rights, given that the City acted within its urban jurisdiction and presented an alternative for the accomplishment of the trade act."²⁹ In other words, the Indians were not given the right to choose the place to exhibit their products.

The Environmental Chamber of the Court of Justice of São Paulo, examining a public civil action in which the municipality was accused of omission in the treatment of rainwater, for allowing, due to the lack of drains, that the rainwater flooded through the streets and, consequently, constituted a danger of disease contamination, maintained a preliminary decision that determined the municipality to build landfills.³⁰ Although the risk of spreading diseases, such as dengue, affects everyone, actually the poor, due to their greater vulnerability, are more exposed to contamination.

In the criminal area, it is also common the allegation of poverty to justify the practice of more complex environmental crimes, such as cutting down trees or killing small animals. However, case law has been strict in not admitting poverty as a justification. A good example of this orientation is the decision of the Minas Gerais Court of Justice reproduced below:

Appeal - Environmental Crimes – Condemnation granted. The state of poverty of the accused is not a justification for the commitment of environmental crimes. It does not constitute exclusion of illicit, material or formal, nor hypothesis of material atypical conduct. Understanding otherwise would lead to the absurdity of

²⁸ BRASIL, Tribunal Regional Federal da 4ª. Região, Apelação Cível nº 2006.72.04.003887-4 - SC, 3ª. Turma, rapporteur Roger Rios, judgement on 12.05.2009.

²⁹ BRASIL. Superior Tribunal de Justiça, Resp 1.103.923 - SC, 2ª. Turma, rapporteur Min. Herman Benjamin j. 27.4.2011.

³⁰ BRASIL Tribunal de Justiça de São Paulo, Câmara Especial do Meio Ambiente, Agravo de Instrumento nº 647.133- 5/3-00, rapporteur Samuel Júnior, j. 02.08.2007.

considering environmental preservation as the exclusive duty of those who are in good financial situation, leaving the environment to the legalized degradation in the poor corners of this country - and they are not few.³¹

Finally, one cannot ignore the existence of bad faith people, responsible for creating clandestine allotments, who sell plots of land to low-income people through private documents of no value. These invasions of permanent preservation areas result in irrecoverable environmental damage and those who do so rely on the inefficiency of the State. Criminal prosecution lasts for years, and the penalty, if ever imposed, will surely consist of merely providing services to the community.

In turn, the people who participate in this type of invasion are not always naive as they are supposed to. Not rarely, they are aware of the illegality of the action and take advantage of the factual situation to obtain land that can even be sold later. The Court of Justice of São Paulo, analyzing an appeal in which the justification for the environmental damage was the appellant's state of poverty, noted that "the argument of poverty is rejected. Poor is most of the Brazilian population. It doesn't justify the elimination of native forest."³²

CONCLUSIONS

The following conclusions can be drawn from these considerations: environmental problems affect everyone without distinction, but the poor, most often, suffer the consequences more directly and permanently;

Permanent preservation areas, which ensure minimum protection for the environment, are at risk of invasion when the growth of medium and large cities results in homelessness;

It is necessary for the municipal government to anticipate eventual invasions, preparing a Master Plan that contemplates all the activities of the municipality and that, as far as possible, meets socially vulnerable people;

In cases of repossession, compliance with the court order, where possible, should be done by attempting to allocate people to another available area, and in cases of environmental disasters, residents have the right to receive emergency treatment to ensure that they are sheltered;

In conflicts between the protection of the environment and the right to housing of the needy population, the Brazilian judiciary doesn't have yet a

³¹ BRASIL Tribunal de Justiça de Minas Gerais, Apelação Criminal nº 1. 0355.06 .008843-0/001, 5ª. Câmara Criminal, rapporteur Alexandre Carvalho, judgement on 17.03.2009.

³² BRASIL. Tribunal de Justiça de São Paulo, Apelação Cível 426.444-5/0-00, Mairinque, rapporteur Renato Nalini, j. 20.4.2006.

uniform position, but in most cases the victory has been of the needy;

Maximum rigor is needed against those who create illegal allotments, causing conflicting situations that generally affect buyers, low-income people, and the environment;

It cannot be ignored that invaders are sometimes aware of the legal prohibition of entering an area of environmental protection, nor can it be accepted that the state of poverty means the right to destruction of natural resources.

REFERENCES

BRASIL. STJ, Recurso Especial 403/90-SP, rapporteur João Otávio Noronha, j. 27.06.2006.

_____. Tribunal de Justiça de São Paulo, Apelação Cível 426.444-5/0-00, Mairinque, rapporteur Renato Nalini, j. 20.4.2006,

_____. Tribunal de Justiça de São Paulo, Câmara Especial do Meio Ambiente, Agravo de Instrumento nº 647.133-5/3-00, rapporteur Samuel Júnior, j. 02.08.2007.

_____. Tribunal de Justiça de Minas Gerais, Apelação Criminal nº 1.0355.06.008843-0/001, 5ª. Câmara Criminal, rapporteur Alexandre Carvalho, j. 17.03.2009.

_____. Tribunal Regional Federal da 4ª. Região, Apelação Cível nº 2006.72.04.003887-4- SC, 3ª. Turma, rapporteur Roger Rios, j. 12.05.2009.

_____. Tribunal Regional Federal da 4ª Região. Embargos Infringentes nº 2005.04.01.032019-0, SC, 2ª Sessão, rapporteur Jorge Maurique, j. 09.12.2010.

_____. Supremo Tribunal Federal, Agravo Regimental no Recurso Extraordinário nº 628.582/RS, 1ª Turma, rapporteur Ministro Dias Toffoli, j. 06.09.2011.

_____. Tribunal de Justiça do Paraná, Processo 816707/11/2012 21-7, 17ª. Câmara Cível, rapporteur Vicente Misurelli, j. 07.11.2012.

_____. Tribunal de Justiça do Paraná, Processo 947227-9, 17ª. Câmara Cível, relator Heltonjorge, julgado em 08.05.2013 e Processo 866952-7, 18ª. Câmara Cível, rapporteur Marcelo Dalla Dea, j. 07.11.2012.

_____. Tribunal de Justiça do Paraná. Processo 951687-4, 4ª. Câmara Cível, rapporteur Wellington Moura, j. 09.04.2013.

CHIARINI, Túlio, Pobreza e Meio-Ambiente no Brasil Urbano. **Revista Eletrônica Economia-Ensaios**. Uberlândia: Instituto de Economia da Universidade Federal de Uberlândia, v. 20, jul./dez. 2007, p. 15. Available in: <<http://www.seer.ufu.br/index.php/revistaeconomiaensaios/article/viewFile/1562/1388>>. Access: 03.04.2014.

COUTINHO, Ronaldo. A urbanização da pobreza e a lógica do capital. In: COUTINHO, Ronaldo; AHMED, Flávio (Coord.). **Cidade, Direito e Meio Ambiente**. Rio de Janeiro: Lumenjuris, 2011.

CUREAU, Sandra. Os Impactos Socioculturais Decorrentes da Construção de Usinas Hidrelétricas no Brasil. In: **Revista Magister de Direito Ambiental e Urbanístico**, v. 50, out.nov./2013. Porto Alegre: Magister, 2013.

FERRAZ, Sérgio. Direito Ecológico, Perspectivas e Sugestões. Porto Alegre: **Revista da Consultoria-Geral do Rio Grande do Sul**, V 2, 1972.

GAZETA DIGITAL. **MPE processa 8 pessoas para desocuparem área de preservação no bairro Pedra 90**. Available in: <<http://www.gazetadigital.com.br/editorias/judiciario/mpe-processa-8->

[pessoas-para-desocuparem-area-de-preservacao-no-bairro-pedra-90/557909>](#).
Access: 18.02.2019.

GAZETA DO POVO. Atlas da violência 2019. Available in: <<https://infograficos.gazetadopovo.com.br/seguranca-publica/atlas-da-violencia-2019-por-municipios/>>. Access: 27.08.2019.

GONÇALVES, Michael. **Fiscalização não impede invasão e dano ambiental de área privada em APL, em Florianópolis**. In: ND+. Available in: <<https://ndmais.com.br/noticias/fiscalizacao-nao-impede-invasao-e-dano-ambiental-de-area-privada-em-apl-em-florianopolis/>>, 1/3/2018. Access: 18.02.2019.

MACHADO, Paulo Affonso Leme. **Direito Ambiental Brasileiro**. 22. Ed. São Paulo: Malheiros, 2014.

MARQUES, José Roberto. **Meio ambiente urbano**. 2. ed. Rio de Janeiro: Forense Universitária, 2010.

MILARÉ, Édis. Um ordenamento jurídico para a qualidade de vida urbana. In: Vanusa Murta Agrelli and Bruno Campos Silva (coord.). **Direito Urbanístico e Ambiental**. Rio de Janeiro: Lumenjuris Ed., 2008.

PINTO, Victor Carvalho. **Notas introdutórias ao Direito Urbanístico**. In: *Temas de Direito Urbanístico*, v. 2. São Paulo: Imprensa Oficial do Estado de São Paulo, Ministério Público do Estado de São Paulo, 2000.

RABELLO, Jessika Flückiger Dupré Rabello, **Educação e Geociências na 1ª Conferência Brasileira de Proteção à Natureza (1934)**. São Paulo, Programa PIOFEUS. Available in: <<http://www4.fe.usp.br/pesquisa-arquivos/public6/trab/a019.htm>>. Access: 18.03.2004.

SERRANO, José Luis. **Princípios de Derecho Ambiental y Ecología jurídica**. Madri: Ed. Trotta, 2007.

SILVA, Liana Amim Lima da. Tribunal Agroambiental da Bolívia: uma nova Jurisdição Agroambiental para um Estado Plurinacional. In: **Revista On Line do Instituto Brasileiro de Administração do Sistema Judiciário - IBRAJUS**, Available in: <<http://www.ibrajus.org.br/revista/artigo.asp?idArtigo=305>>. Access: 02.04.2014.

STAURENGHI, Rosângela. Loteamentos clandestinos em áreas de proteção aos mananciais: a experiência de São Bernardo do Campo. In: **Temas de Direito Urbanístico**. São Paulo: Imprensa Oficial, Ministério Público do Estado de São Paulo, 1999.