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Environmental Criminal Liability of Legal Entities: Constitutional Foundations, Doctrinal Controversies, Jurisprudential Evolution, and Effectiveness of Environmental Protection

Responsabilidade penal ambiental da pessoa jurídica: fundamentos constitucionais, controvérsias doutrinárias, evolução jurisprudencial e efetividade da tutela ambiental
Responsabilidad penal ambiental de la persona jurídica: fundamentos constitucionales, controversias doctrinales, evolución jurisprudencial y efectividad de la tutela ambiental

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Abstract:
The criminal liability of legal entities represents one of the most significant transformations in contemporary Criminal Law. Traditionally, criminal systems were based on the premise that only natural persons could commit crimes, an understanding summarized by the maxim societas delinquere non potest. However, the growing complexity of economic relations and the increase in environmental damage caused by large corporations demonstrated the insufficiency of traditional accountability mechanisms. In this context, the Brazilian Federal Constitution of 1988 expressly authorized the criminal liability of legal entities for environmental offenses, later regulated by Law No. 9.605/1998. This article analyzes the constitutional foundations of corporate environmental criminal liability, its doctrinal bases, the main theoretical debates, the jurisprudential evolution of higher courts, and its effectiveness as an instrument of environmental protection. The methodology adopted consists of bibliographical, legislative, and jurisprudential research. The study concludes that corporate criminal liability is a legitimate and indispensable mechanism for environmental protection, although it still faces challenges related to investigation, evidentiary production, and the effective enforcement of legal sanctions.

Keywords:
Criminal liability. Legal entities. Environmental crimes. Environmental Criminal Law. Law No. 9.605/1998.

Resumo:
A responsabilização penal da pessoa jurídica representa uma das mais relevantes transformações do Direito Penal contemporâneo. Tradicionalmente, o sistema penal esteve fundamentado na premissa de que apenas pessoas físicas poderiam praticar delitos, entendimento sintetizado pela máxima societas delinquere non potest. Entretanto, a crescente complexidade das relações econômicas e o aumento dos danos ambientais provocados por grandes corporações evidenciaram a insuficiência dos mecanismos tradicionais de responsabilização. Nesse contexto, a Constituição Federal de 1988 inovou ao admitir expressamente a responsabilização penal das pessoas jurídicas por condutas lesivas ao meio ambiente, previsão posteriormente regulamentada pela Lei nº 9.605/1998. O presente estudo analisa os fundamentos constitucionais da responsabilidade penal ambiental da pessoa jurídica, suas bases doutrinárias, os principais debates teóricos, a evolução jurisprudencial dos tribunais superiores e sua efetividade como instrumento de tutela ambiental. A metodologia adotada consiste em pesquisa bibliográfica, legislativa e jurisprudencial. Conclui-se que a responsabilização penal da pessoa jurídica constitui instrumento legítimo e indispensável à proteção do meio ambiente, embora ainda enfrente desafios relacionados à investigação, produção probatória e aplicação efetiva das sanções previstas em lei.

Palavras-chave:

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Responsabilidade penal. Pessoa jurídica. Crimes ambientais. Direito Penal Ambiental. Lei nº 9.605/1998.

Resumen:
La responsabilidad penal de la persona jurídica representa una de las transformaciones más relevantes del Derecho Penal contemporáneo. Tradicionalmente, el sistema penal se fundamentó en la premisa de que solo las personas físicas podían cometer delitos, entendimiento sintetizado por la máxima societas delinquere non potest. Sin embargo, la creciente complejidad de las relaciones económicas y el aumento de los daños ambientales provocados por grandes corporaciones evidenciaron la insuficiencia de los mecanismos tradicionales de responsabilización. En este contexto, la Constitución Federal brasileña de 1988 innovó al admitir expresamente la responsabilidad penal de las personas jurídicas por conductas lesivas al medio ambiente, previsión posteriormente regulada por la Ley n.º 9.605/1998. El presente estudio analiza los fundamentos constitucionales de la responsabilidad penal ambiental de la persona jurídica, sus bases doctrinales, los principales debates teóricos, la evolución jurisprudencial de los tribunales superiores y su efectividad como instrumento de tutela ambiental. La metodología adoptada consiste en investigación bibliográfica, legislativa y jurisprudencial. Se concluye que la responsabilidad penal de la persona jurídica constituye un instrumento legítimo e indispensable para la protección del medio ambiente, aunque todavía enfrenta desafíos relacionados con la investigación, la producción probatoria y la aplicación efectiva de las sanciones previstas en la ley.

Palabras clave:
Responsabilidad penal. Persona jurídica. Delitos ambientales. Derecho Penal Ambiental. Ley n.º 9.605/1998.

INTRODUCTION

Environmental protection has assumed a prominent position in the Brazilian legal system since the promulgation of the 1988 Federal Constitution. The original constituent assembly expressly recognized an ecologically balanced environment as a fundamental right of the third dimension, indispensable to the healthy quality of life of present and future generations.

The growth of industrialization, the expansion of business activities, and the intensification of the exploitation of natural resources have contributed significantly to the increase in environmental risks. Several ecological disasters have demonstrated that the greatest damage to the environment often stems from structural business decisions, made within complex organizations and hardly attributable to a single individual.

In this scenario, the limitations of traditional civil and administrative liability instruments for the prevention and repression of high-impact environmental offenses became evident. The need to strengthen environmental protection mechanisms led the Brazilian constituent assembly to expressly admit the criminal liability of legal entities, especially in environmental matters.

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The constitutional innovation broke with one of the historical dogmas of classical Criminal Law, according to which only natural persons could commit crimes. Starting with the 1988 Federal Constitution and the subsequent enactment of Law No. 9,605/1998, a model of corporate criminal liability focused on environmental protection was consolidated in Brazil.

This article aims to analyze the constitutional foundations of corporate criminal liability for environmental offenses, the theories that justify its admissibility, the main doctrinal debates, the jurisprudential evolution of the superior courts, and its effectiveness as an instrument of environmental protection.

2. HISTORICAL EVOLUTION OF THE CRIMINAL LIABILITY OF LEGAL ENTITIES

The possibility of holding legal entities criminally liable is a historically controversial topic. For centuries, the prevailing view in Criminal Law was that only human beings were capable of committing criminal offenses, as they were endowed with consciousness, will, and moral discernment.

In Roman law, the prevailing idea was that only individuals could be the active subjects of crimes. This understanding was later incorporated into modern penal systems, especially after the development of classical theories of crime during the 18th and 19th centuries.

Traditional penal thought was consolidated in the Latin maxim societas delinquere non potest , according to which societies or corporations could not commit crimes. This understanding was based on the idea that culpability presupposes individual awareness and will, attributes that do not exist in legal entities.

However, the economic development resulting from the Industrial Revolution profoundly transformed social and productive relations. Large corporations came to exert significant economic and social influence, often being responsible for environmental damage of great magnitude.

Modern crime has taken on distinct characteristics from traditional crime. In many cases, illegal acts stem from institutional decisions made collectively within the organizational structure of companies, making it extremely difficult to identify the individual conduct of those responsible.

Given this reality, several legal systems have begun to recognize forms of criminal liability for collective entities, especially in matters related to environmental protection, defense of economic order, and the fight against corruption.

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International legislative developments have significantly influenced Brazilian law, culminating in the explicit constitutional provision for the criminal liability of legal entities in environmental matters.

3. THEORETICAL FOUNDATIONS OF THE CRIMINAL LIABILITY OF LEGAL ENTITIES

The discussion regarding the criminal liability of legal entities is directly related to the legal nature of collective entities. Two theories have historically stood out in this debate: the Fiction Theory and the Reality Theory.

3.1 Fiction Theory

The Fiction Theory was developed by Friedrich Carl von Savigny in the 19th century and argues that legal persons are merely creations of the legal system. According to this conception, only human beings possess natural existence and the capacity for autonomous expression of will.

According to Savigny , legal entities are nothing more than artificial constructs created by law to facilitate certain property and administrative relationships. Consequently, they would not be capable of acting, deciding, or committing crimes independently.

From this perspective, holding collective entities criminally liable would be incompatible with the fundamental principles of Criminal Law, especially because culpability presupposes awareness, will, and imputability, attributes inherent only to natural persons.

The Theory of Fiction exerted a strong influence on the legal systems of Romano-Germanic tradition, contributing to the consolidation of the principle societas delinquere non potest .

3.2 Theory of Reality

In contrast, Otto von Gierke developed the Theory of Reality, also known as the Theory of Organic Reality.

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According to this view, a legal entity possesses its own social existence, distinct from the sum of the individual wills of its members. Organizations develop internal structures, decision-making centers, and institutional objectives capable of producing an autonomous collective will.

From this perspective, the legal entity would not be a mere legal fiction, but a true subject of rights and duties, capable of being held accountable for acts performed in its interest or for its benefit.

The Reality Theory has become one of the main doctrinal foundations for the admission of criminal liability for legal entities, especially in light of the increasing complexity of modern business organizations.

4. Constitutional Basis of Environmental Criminal Liability

The 1988 Constitution of the Federative Republic of Brazil brought about a profound transformation in the legal protection of the environment by recognizing it as a fundamental right of the third dimension. Article 225 establishes that everyone has the right to an ecologically balanced environment, classifying it as a common good of the people and essential to a healthy quality of life, imposing on the Public Authorities and the community the duty to defend and preserve it for present and future generations.

Among the numerous innovations introduced by the Constitution, the provision in paragraph 3 of article 225 stands out, according to which conduct and activities considered harmful to the environment will subject their offenders, whether individuals or legal entities, to criminal and administrative sanctions, regardless of the obligation to repair the damage caused. This is the first express constitutional provision for the criminal liability of legal entities in the Brazilian legal system.

The constitutional norm definitively broke with the traditional paradigm of classical Criminal Law by admitting that collective entities can be held criminally liable when their activities cause environmental damage. The constitutional provision is not merely a legislative authorization, but a true constitutional mandate for criminalization, imposing on the sub-constitutional legislator the creation of effective mechanisms for holding companies accountable.

In addition to Article 225, some legal scholars identify another relevant constitutional basis in Article 173, § 5. This provision stipulates that the law will establish the liability of legal entities for acts committed against the economic and financial order and against the popular economy, without prejudice to the individual liability of their directors.

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Although there is discussion regarding the legal nature of this provision, it is observed that both demonstrate the constituent's intention to adapt Criminal Law to new forms of corporate crime, characterized by complex organizational structures and the difficulty of individualizing the conduct of agents.

As José Afonso da Silva teaches, the 1988 Constitution elevated environmental protection to the level of a fundamental right, imposing on the State effective instruments to prevent and repress degrading conduct. In this context, the criminal liability of legal entities represents an indispensable mechanism to ensure the effectiveness of environmental protection.

5. Law No. 9,605/1998 and the Consolidation of the Criminal Liability of Legal Entities

In compliance with the constitutional mandate, Law No. 9,605, of February 12, 1998, known as the Environmental Crimes Law, was enacted. This law represents a fundamental milestone in consolidating the environmental criminal liability of legal entities in Brazil.

Article 3 establishes that legal entities will be held administratively, civilly, and criminally liable when an environmental infraction is committed by decision of their legal or contractual representative, or their collegiate body, in the interest or benefit of the entity.

The rule demonstrates that liability does not automatically arise from the occurrence of environmental damage. It is essential that the infraction results from an institutional decision linked to the interests of the organization itself.

This requirement seeks to prevent instances of strict liability in criminal matters, preserving constitutional principles such as culpability and the personal nature of punishment, even if adapted to the peculiarities of collective entities.

Another relevant aspect is the autonomy between civil, administrative, and criminal liabilities. The company may be held liable simultaneously in all three spheres, without one excluding the other, observing the principle of the independence of the jurisdictions.

Regarding criminal sanctions, Law No. 9,605/1998 established a system compatible with the nature of legal entities. Instead of prison sentences, which are incompatible with collective entities, fines, restrictions on rights, and community service were provided for.

Restrictive penalties include the partial or total suspension of activities, the temporary closure of establishments, works or activities, as well as the prohibition of contracting with the Public Authorities or obtaining tax and credit incentives.

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Community service can include funding environmental programs, carrying out works to restore degraded areas, maintaining public spaces, or financing entities focused on environmental preservation.

Édis Milaré observes , such sanctions have an important preventive character, since they directly affect the company's economic activity, encouraging the adoption of internal mechanisms aimed at preventing environmental damage.

6 PRINCIPLES OF ENVIRONMENTAL CRIMINAL LAW

The criminal liability of legal entities must be interpreted in light of the principles that guide Environmental Law and Criminal Law.

The principle of prevention dictates that the State must act before damage occurs whenever there is sufficient scientific knowledge about environmental risks. Criminal liability functions as a mechanism to discourage the adoption of practices that are potentially harmful to the environment.

The precautionary principle applies to situations where there is still scientific uncertainty regarding the environmental impacts of a given activity. In these cases, the absence of absolute certainty does not prevent the adoption of preventive measures, especially when the potential damage could be serious or irreversible.

Another fundamental principle is the polluter-pays principle, according to which whoever causes environmental degradation must bear the costs arising from the prevention, repair, and compensation of the damage caused.

In the criminal sphere, the principle of minimum intervention assumes particular relevance. Although criminal law constitutes the most severe form of state intervention, its use is fully justified given the high constitutional importance of environmental protections and the inadequacy of other sanctioning mechanisms to address certain corporate offenses.

Also noteworthy is the principle of sustainable development, which seeks to harmonize economic growth, environmental preservation, and social justice, allowing business activity to proceed without compromising natural resources intended for future generations.

7 DOCTRINAL CONTROVERSIES

Despite the explicit constitutional provision, the criminal liability of legal entities remains the subject of intense doctrinal debate.

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Those who disagree argue that legal entities lack consciousness, will, or culpability, elements traditionally considered essential for the configuration of a crime.

Luiz Regis Prado states that culpability remains linked to the human capacity for self-determination, which is why some legal scholars believe there is an incompatibility between the classical foundations of Criminal Law and the criminal liability of collective entities.

Another frequently presented argument refers to the principle of personal liability for punishment, as stipulated in Article 5, item XLV, of the Federal Constitution. According to this view, any sanction imposed on the company would end up affecting employees, minority shareholders, consumers, and third parties who did not participate in the infraction.

Conversely, a significant portion of legal scholars argue that the Constitution definitively resolved this discussion by expressly allowing for the criminal liability of legal entities in environmental matters.

Vladimir Passos de Freitas argues that modern corporate crime demands equally modern instruments of repression, otherwise the constitutional protection of the environment will be rendered ineffective.

Similarly, Édis Milaré observes that many of the biggest environmental disasters stem from institutional policies adopted by companies, and not from isolated decisions by a single employee, which is why limiting liability to individuals would generate a clear deficit in environmental protection.

In this context, it is observed that contemporary doctrine has been moving towards the consolidation of corporate criminal liability as a legitimate instrument for the protection of diffuse legal interests.

8. The Evolution of Jurisprudence and the Overcoming of the Theory of Double Imputation

For many years, there has been debate as to whether the criminal liability of a legal entity necessarily depends on the simultaneous liability of a natural person.

This understanding became known as the theory of double imputation and was initially adopted by part of Brazilian jurisprudence.

According to this guideline, the company could only be held criminally liable if the individual responsible for committing the crime was also identified and reported.

However, this understanding has come under severe criticism in light of the increasing complexity of modern business structures. In large organizations, numerous decisions stem

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from diffuse corporate policies, making it extremely difficult to identify a single person responsible.

The Brazilian Supreme Federal Court has consolidated its understanding that the criminal liability of a legal entity is autonomous, and that simultaneous indictment of the individual is unnecessary when the requirements set forth in Article 3 of Law No. 9,605/1998 are met.

Subsequently, the Superior Court of Justice also began to admit the autonomous liability of the company, recognizing that the requirement of double imputation could jeopardize the effectiveness of environmental protection.

Overcoming this misunderstanding represents an important step forward in implementing the constitutional mandate set forth in Article 225, § 3, preventing complex organizational structures from being used as shielding mechanisms against criminal liability.

The currently consolidated guidelines strengthen the preventive nature of Environmental Criminal Law and encourage companies to implement internal environmental governance and compliance programs, reducing the risk of violations and promoting a greater culture of social and environmental responsibility.

9. CRIMINAL LIABILITY OF PUBLIC LEGAL ENTITIES

One of the most controversial topics in environmental criminal liability concerns the possibility of holding public legal entities criminally liable. Although the Federal Constitution and Law No. 9,605/1998 do not expressly distinguish between public and private legal entities, legal scholars remain divided as to the scope of the constitutional provision.

The opposing view argues that any criminal conviction of the State would produce effects incompatible with the public interest, since the financial penalties would ultimately be borne by the community itself through public resources. Furthermore, certain penalties stipulated in the Environmental Crimes Law, such as the suspension of activities or the prohibition of contracting with the Public Authorities, are incompatible with state action.

On the other hand, a significant portion of legal scholars argues that the absence of a constitutional prohibition prevents any a priori exclusion of public legal entities. It is argued that municipalities, autonomous agencies, public companies, and other state entities also carry out activities that are potentially harmful to the environment, which is why it would not be permissible to grant them preferential treatment to the detriment of environmental protection.

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Regardless of the position adopted, it is clear that the issue remains evolving, requiring future legislative and jurisprudential consolidation to define objective criteria regarding the criminal liability of public entities.

10 ENVIRONMENTAL COMPLIANCE AS A PREVENTION MECHANISM

The increasing complexity of business activities has led to the development of environmental compliance programs, designed as instruments for preventing environmental offenses and strengthening corporate governance.

The term *compliance* derives from the English verb *to. "Comply* " means acting in accordance with legal, regulatory, and ethical standards. In the environmental context, it corresponds to the set of internal policies, control procedures, audits, training, and monitoring mechanisms aimed at preventing damage to the environment.

The adoption of effective compliance programs significantly reduces the risk of criminal offenses, as it fosters an organizational culture based on legality and sustainability. Furthermore, it facilitates the identification of operational failures, promotes greater transparency in decision-making, and strengthens internal accountability mechanisms.

Although Brazilian law does not yet explicitly provide for environmental compliance as a cause for excluding the criminal liability of legal entities, its implementation can positively influence the sentencing process, demonstrating the company's institutional commitment to preventing illegal acts.

It is therefore observed that criminal liability should not be understood solely from a repressive perspective. Its true objective is to encourage preventive business behaviors capable of reducing the occurrence of environmental damage even before the intervention of the criminal justice system.

11 Comparative Law

The comparative study demonstrates that several legal systems have begun to recognize the criminal liability of legal entities, especially due to the growth of economic and environmental crime.

In the United States, corporate criminal liability has been established for decades. American jurisprudence recognizes that a legal entity is liable for the actions of its employees or

managers when acting in the organization's best interest, applying the theory known as *respondeat superior* . This model prioritizes prevention and encourages the adoption of internal control mechanisms.

In France, the criminal liability of legal entities was incorporated into the 1994 Penal Code, allowing them to be held accountable for various offenses, including environmental ones. Sanctions include fines, compulsory dissolution, prohibition from engaging in certain activities, closure of establishments, and publication of the conviction.

In Portugal, although the principle of personal criminal liability prevailed for a long period, legislative reforms have progressively expanded the possibility of holding collective entities criminally liable in specific matters, particularly those related to economic and environmental crime.

Within the European Union, there is a trend towards strengthening mechanisms for holding companies accountable for environmental damage, prioritizing preventive policies, sustainable development, and the adoption of corporate governance programs.

International experience demonstrates that the criminal liability of legal entities is not unique to Brazilian law, but rather represents a consolidated trend in contemporary legal systems in light of the growing importance of environmental protection.

12 EFFECTIVENESS OF ENVIRONMENTAL CRIMINAL LIABILITY

Despite the solid constitutional foundation and the regulation promoted by Law No. 9,605/1998, the effectiveness of the criminal liability of legal entities still faces significant challenges.

The first difficulty relates to the production of evidence. Large companies have complex organizational structures with multiple decision-making levels, a circumstance that often makes it difficult to demonstrate that a particular infraction resulted from an institutional decision taken in the interest or for the benefit of the entity.

Another obstacle lies in the infrequent application of the more severe sanctions provided for in the legislation. In forensic practice, fines are the predominant penalty, while more serious measures, such as suspension of activities or closure of establishments, are used only exceptionally.

Also noteworthy is the high use of consensual conflict resolution instruments, such as agreements and settlement mechanisms, which, although contributing to greater procedural

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speed, can reduce the preventive nature of criminal sanctions when applied without rigorous criteria.

Despite these difficulties, the criminal liability of legal entities plays a significant preventive and symbolic role. The possibility of applying criminal sanctions encourages investment in environmental management, integrity programs, internal audits, and sustainability policies, strengthening a corporate culture focused on compliance with environmental legislation.

Thus, the effectiveness of environmental criminal law does not depend exclusively on the number of convictions handed down, but also on its ability to induce preventive behaviors and promote greater social and environmental responsibility among organizations.

13 FINAL CONSIDERATIONS

The environmental criminal liability of legal entities represents one of the most important transformations promoted by contemporary Criminal Law. The 1988 Federal Constitution definitively broke with the traditional conception according to which only natural persons could be held criminally liable, inaugurating a legal model compatible with the reality of modern corporate crime.

Law No. 9,605/1998 gave effect to the constitutional mandate by establishing objective criteria for the criminal liability of collective entities, as well as sanctions appropriate to their legal nature. Subsequently, the jurisprudential evolution of the Supreme Federal Court and the Superior Court of Justice consolidated the autonomy of the criminal liability of legal entities, overcoming the old requirement of the theory of double imputation.

Although doctrinal differences persist regarding the foundations of corporate liability, the prevailing understanding is that the constitutional protection of the environment requires sanctioning mechanisms capable of reaching organizations responsible for environmental damage of great magnitude.

The research revealed that the criminal liability of companies is not merely punitive in purpose. Its main function is to encourage preventive policies of governance, risk management, and environmental compliance, promoting a genuine cultural shift in the way organizations operate.

However, challenges remain related to investigation, evidence production, jurisprudential uniformity, and the effective application of sanctions provided for in environmental legislation. Strengthening the institutional framework of oversight bodies, coupled with improving

corporate governance practices, is essential to enhance the effectiveness of the accountability system.

It is concluded, therefore, that the environmental criminal liability of legal entities constitutes a constitutionally legitimate, legally necessary, and socially indispensable instrument to ensure the protection of an ecologically balanced environment, contributing to the realization of the principle of sustainable development and to the protection of present and future generations.

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