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A discussion of the social environmental state of law: The cooperation between state and collectiveness

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This article intends to examine the formation process of the social environmental state of law, recognized as a necessity for the modern society. The proposal builds on the understanding that, in order to promote the environmental protection, the state of law had established some legal instruments. In fact, one of the main tools used was the constitutional order for the cooperation between the civil society and the state. In this sense, this article is intended to ascertain how this cooperation has been conducted. The intention is to verify whether this instrument is truly being effective in order to guarantee the environmental quality. Therefore, in this study, the social environmental state of law is identified as inserted in a globalized context; in which economic interests can easily overlap other social intentions, as well as in the risk society juncture context, regarding the environmental matter.

Key words: Socio environmental state of law, modern society, environmental protection, cooperation, environmental quality.

INTRODUCTION

The social environmental state of law has the human being as the holder of the rights, which must guarantee a healthy environment quality. Then, this new deal of state means that, the environmental matter should be a conditioner for the state's behavior. The state, then, should be framed by the solidarity as a purpose, what incited the establishment of the diffuse or third generation rights.

Concerning all this, the formation process of the social environmental state of law presents some special characteristics and contradictions. Indeed, the state-society cooperation can be considered, at the same time, a fundamental instrument for the new environmental rationality and a contradiction of the system. The state considers every single individual as an agent endowed with the capacity and the accountability, concerning the environment protection. However, the individuals' (or society) cooperation with the state is not an instrument of easy delimitation and control. The difficulties found in the enforcement of this tool instigate the question about its true effectiveness.

At the same time, one must also consider that, the current strategies involving the collectiveness face the problem concerning the cultural diversity. In social huge

groups as nations, the differences of diverging opinions are substantially unfavorable, whether the goal is joint behaviors. Authors like Fucks (1996), defends that the collectiveness can just help in the environmental matter when very well instructed and regulated by the governmental experts and institutions. He says that, giving accountability for the diffuse amount of people represents a great strategy for doing nothing and for incriminating someone for neglecting. This means that, the environmental causes are completely vulnerable when the discourse is granted; this represents a great weakness in the strategy for solving any environmental matter.

In this sense, it must be regarded that any environmental law/legislation approach should observe aspects such as the attention for the socioeconomic model chosen by the state as a development process. It is because most of the time, its means and its purpose do not conciliate the development and preservation of natural resources (Sader, 1988). Other issues which ask attention are some social actors, who are always in the socio-political scene of the countries, usually in form of new social movements, exploring the possibility for such movements to politicize aspects of the daily life by introducing some practice of cooperation for the civil

society, regarding the formulation of public social policies (Chauí, 1990).

METHODOLOGY

The investigation, firstly, begins with great collection of literature on the subject, supplemented by articles and data, as well as search case law. There is a need to contextualize the paradigm of collective participation in the States history, considering the context of the Social Environmental State of law. By the use of established theoretical doctrines, it must be demonstrated that, the environmental law evolution through its legislative history, as well as international treaties, gives primary emphasis to the principle of participation and cooperation.

To understand the practical application of the principle of participation, we start the comparative analysis of different models of practice. In this sense, the quantitative analysis will be wide, verifying those states which have some kind of cooperation instrument. The qualitative analysis will refer to the depth in a given social context that is specially chosen, in which there will be a deep investigation of this context.

THE CONSTRUCTION OF THE SOCIO ENVIRONMENTAL STATE OF LAW

The socio environmental state of law can be defined as the State which has recognized the environmental protection as a governmental task established by the constitutional order. It is the recognition of the diffuse rights and the solidarity as a social purpose.

The environmental issues have left the ecologists and environmental scientists, guidelines to be included to the government, legal and social agendas, because of the increasing degradation. Since the 1970's, a global motivation for environmental conservation through the protection and the definition of sustainable development can be noticed. In this sense, the Law has also shown an increasing worry about the environmental protection, however, the greatest shift was the re-questioning of concepts and definitions in the constitutional level, initiating a new generation of rights (Bobbio, 1992)¹. The headway of the social awareness about the environmental protection was affirmed as an international matter in the ECO-92, placed in Rio de Janeiro, Brazil. After that, an increasing number of States began to establish legal tools concerning the environmental protection. In this sense, the adoption of the cooperation between

States, collectively, has been considered an interesting instrument for the joint society, for solving the diffuse and imprecisely environmental matter. Moreover, what must be pointed out is the global character of the environmental matter, which means that, the problems transcend national boundaries and require an inter-national treatment.

Concerning the establishment of the Social Environmental State of Law, Canotilho (1999) assumes that, besides "be and should be", the democratic Rule of Law must be conducted by principles and by individual participation - guaranteed by governmental policies. In this context, it is important to point out the sovereignty and the governmental power as central elements for the modern politics. Both guarantee the state's acceptance as an international actor, as well as the greater political and legal national actor.

The liberal state and the social state (of law), were not able to guarantee a healthy life for its citizenships. In this context, the environmental protection holds an important new role within the Rule of Law, which is the effort in prize for the harmonization between economic development and protection of natural resources, without forgetting their duties related to solidarity. According to Leite (2007), the solidarity between the state and the collectivity is essential in order to adequate the environmental protection. The protection of the environment then, is not only a government obligation, but also, every citizen's duty.

In this sense, the cooperation between state and collectiveness is an expression of the participation principle. This principle refers to the importance of the cooperate relationship between the State and society in order to solve the environmental problems. It considers as fundamental importance, the participation of several social sectors in the formulation and implementation of environmental policy. It assumes that all social forces, aware of their responsibilities, can contribute to the protection and improvement of the environment.

The proposal about sharing with individuals the accountability concerning the environmental matters represents a new social function. However, effectiveness of this participative citizenship can be questioned. In view of Canotilho (2007), the institutionalization of a State Environmental Law leads to a juridical environment, where participation is imposed to citizens and civil society in order to defend the environmental rights. It means that there is the imposition of participation, however, is this demand truly working?

Therefore, the lack of effectiveness concerning the cooperation matter can be reasons for the current inability of society in dealing directly with instruments given by the state. Another possible reason can be the state's inertia in providing tools which makes possible, the individual's action. However, since the environmental damages are the cause of all this preoccupation, it must

¹ According to Bobbio, there are first, second, third and fourth generation of rights. The first generation rights are those concerning individual freedom. The second ones refer to social rights recognized by the democratic nations' constitutions. The third generation rights are still in conceptual development (as well as the fourth generation), but they can be recognized as solidarity, collective and diffuse legal rights. Finally, the fourth generation rights deal with ethical parameters, for instance, the biological research that allows manipulation of genetic heritage. In Bobbio, N. (1992). *A era dos direitos*. Rio de Janeiro, Campus.

be seen from the risk society context.

The socio environmental state of law and the risk society

The Social Environmental State is characterized by the shift of the social rights, in order to joint the legal action between state and citizenship to promote the environmental protection. The Environmental protection, which began in the XXI century, is projected as one of the most important constitutional values to be incorporated by the Rule of Law, in the context of new challenges imposed by Risk Society (Beck 2001).

The Risk Society is defined by the lack of concrete answers, concerning environmental matters, in which uncertainties permeate the solutions for the environmental conflicts. Beck (1992) presents the environmental crisis as the science's recognition that certainties do not exist. The society, in this context, is characterized by the extinction of the distances, by the borders' abolition, and by the global risks. Each person is equally susceptible to the environmental risks, which demands collective protection.

The concern about the environment, accepting the limited nature, conducts a new paradigm for the society and for the democracy. It is a new relationship between individuals and nature. According to Capra (1996), this relationship can be called deep ecology and recognizes the intrinsic value of each natural resource as essential for the natural equilibrium.

In this sense, the environmental complexity appears as a limitation for the human capacity of previewing and managing risks produced by technology. Beck (2001) points out the inability for the capitalist rationality to absorb the uncertainty generated by the impact of its own technology to the environment complexity. The technology evolution and the large scale production, generate current consequences which the present science is not able to deal with. The uncertainty decrease, concerning the extension of the risks is a goal to be achieved.

In this sense, Canotilho (2007) assumes that the promotion of the environmental protection by the Social Environmental State of Law can be seen in two main perspectives. The globalist is the one in which the environment protection should not restrict the national's legal systems, but should be based also on legal international and supranational systems, always observing the scope of protection in a global character.

The individualistic perspective would be based on a normative sense grounded on private rights, which behold instruments, such as property rights, for the environmental protection instrument. By these perspectives, the author attempts to approach constitutional doctrine and jurisdictional practices, in order to demonstrate how a cooperation relationship between state and individuals

is not at least built in the Social Environmental State of Law.

The cooperation and the principle of participation

The expansion of environmental protection, in the recent years, added for the organized civil society some bargaining power, as never seen before. This indicates that some new values are being consolidated, suggesting the possibility for conciliation between development and environmental protection.

However, the instruments proposed have not already achieved effectiveness, which instigate the questioning about the roots of the problem. The establishment of the democratic discussion in the Social Environmental State of Law's constitutional order means a great power to be used by the society. However, the cooperation model requires participation, autonomy from the State and full exercise of citizenship, ensuring the construction of new development patterns which can consolidate the socio-environmental equilibrium.

Therefore, the cooperation must be understood as a relationship between the public order - represented by a broad Rule of Law- and the organized civil society Reigota (1995). Despite considerable advances in environmental legis-lation, in admitting the cooperation, what can be noticed is that, the current model of (re) structuring of the State's institutions does not effectively spread the public participation concerning environmental policies. The result can be perceived as the weak socio-environmental States, violator of individual rights, collective and social.

According to Paoli (1989), the institutional cooperation is incompatible with States which run accordingly to the market laws. In the same way, Leis (1992) points out that it is a serious mistake to entrust the formulation and management of environmental policies only to the State, especially, when based on market's logic. Therefore, a State based on the market interests, not surprisingly, frustrates the full effectiveness of the hankered co-operation State - Collectivity.

CONCLUSION

The aim of this article was to examine critically the structure of the Social Environmental State of Law, especially regarding the cooperation between the State and the collectiveness for the environmental protection. The study can show that the principle of participation is a method of inclusion of civil society in that process; however there are several difficulties regard doing so.

The most important point is to call attention for the question about the true effectiveness of the cooperation between State and society as a democratic tool. What

can be perceived is that more studies about how environment protection process can be constructed and conducted within the Social Environmental State of Law must be conducted. Without claiming to exhaust the subject, this investigation focuses on how society's instruments have been modified in order to follow the new perspective concerning nature limitation. The analyses situated the environment as a global matter, to which isolated measures are not efficient.

From the conception that there is nothing more international in nature, in the globe, the importance of the environmental conservation promoted by the community appears unquestionable. What we should give importance and, if possible, take some moments to look at, is the real effectiveness of the tools available today for collective participation.

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