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THE PRINCIPLE OF INSIGNIFICANCE AND ENVIRONMENTAL LAW

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Abstract: The article analyzes the principle of insignificance, and its foundations, applied to environmental crimes. In this sense, based on a conceptualization of criminal legal good, and the origin of the principle in question, its legal nature, conceptualization and requirements, we discuss the constitutional protection given to the environment in the 1988 Constitution, as well as in the environmental criminal legislation that emerged after CF/88. Taking this into consideration, the objective of the article is to understand the divergences between legal scholars and operators regarding the possibility of applying the Principle of Insignificance in crimes of an environmental nature, listing, to this end, the positioning and arguments present in the doctrine, as well as in the jurisprudence of the main national courts.
Keywords: Principle of Insignificance; Environment; Environmental Crimes.

INTRODUCTION

Nowadays, there is an incessant search for care and defense of the environment, a result of concern about unbridled industrial growth after the industrial revolution.

This concern was reflected, and could not be different, in contemporary legislation. In Brazil, the greatest progress in relation to environmental protection occurred with the Federal Constitution of 1988, which in a complete and innovative way dispensed an entire chapter in its text to the subject, when dealing with this asset as a transgenerational right, in addition to making it explicit in its article 225, § 3, an authorization for the infraconstitutional legislator to issue prevention and reprimand standards for agents who harm the environment, called "Express Criminalization Warrant".

As a consequence of this constitutional treatment, in 1998 the Environmental Crimes Law (Law number: 9,605/1998) was published, a normative text in which conducts considered harmful to the legal good of the environment are defined, and for this reason administrative sanctions and/or or penalties.

This law was another major advance in the field of Environmental Law, because by obeying the express criminalization order, issued by the constituent, the infraconstitutional legislator sought to effectively exercise the criminal protection necessary for environmental protection. Furthermore, it must be noted that until then, criminal legislation protecting the environment consisted of sparse laws with little Criminal Law content.

Despite being a law with criminal content, Law number: 9,605/1998 covers a lot of administrative content, and as the legal asset in question is the environment, it also covers other branches of science, mainly in the biological area, in addition, it also focuses on a legal asset that is extremely relevant to society, essential to life on the Planet. All the aspects conferred on the environmental legal good make the actions of both the legislator and the operator of criminal law complex, given the importance of their actions.

When legislating or acting in the area of Environmental Criminal Law, it is up to the legal operator to apply, where applicable, the institutes and principles of Criminal Law. However, you must always respect and keep in mind the position and characteristics of the asset that is in focus, namely the environment. The essence of the legal interest in question must be observed, and it is not enough for the operator to analyze the adequacy or otherwise of the conduct unilaterally.

Thus, despite the position that the Principle of Insignificance occupies today in the criminal field, its applicability with regard to environmental crimes requires greater care, as it is the legal-criminal asset of the environment, with characteristics that differ from other assets. safeguarded by Criminal

Law, so that both typical conduct and the resulting legal injuries have unique aspects.

In view of the above, the article aims to demonstrate that there are doctrinal divergences regarding the possibility of applying the Principle of Insignificance, a principle of Criminal Law, to crimes of an environmental nature, considering the nature of the property, its aspects and its relevance to the community.

CONCEPT AND ORIGIN OF THE PRINCIPLE OF INSIGNIFICANCE

The criminal legislator, in the search for the protection of the most relevant legal assets for society, when legislating with the aim of protecting the largest possible number of assets, sometimes ends up creating abstract and indeterminate criminal types, and thus a large number of actions or omissions subject to criminal sanctions.

Faced with such legislative imperfection, the criminal legal framework sucks into itself conduct that is absolutely unnecessary and deserves a criminal sanction, but which fits perfectly into the formal description of the criminal type, [1]when in reality they must be excluded from the scope of application of criminal law, since this must only be concerned with conduct that actually violates criminal law.

Faced with this disturbing context, Claus Roxin, around 1964, was the one who formulated the Theory of the Principle of Insignificance as known today.

Although formulated by Roxin, it is worth mentioning that in Roman Law there were already remnants of what we know today as the principle of insignificance, as shown in the Romanistic broach *minima non curat praetor,* which means "the magistrate must disregard insignificant cases in order to take care of matters truly unavoidable."

It is worth noting, however, that in 1903, Franz Von Liszt spoke about the hypertrophy that Criminal Law was going through at the time, asking society about the possibility and opportunity to restore the maxim minima non curat praetor, as a *way* of curb the excessive, and sometimes unnecessary, application of criminal law.

There are no divergences between national doctrine and jurisprudence when classifying insignificance as a legal principle of criminal law, even though there is no legal provision that expressly provides for such a principle.

At the same time, the concept that the Law is not exhausted in the written text, and that principles can exist even if they are not legislated, is already consolidated among jurists, as is the case with the principle of insignificance. However, to be a valid principle in our legal system, insignificance underwent constitutional recognition, which was only possible due to the existence of the constitutional norm provided for in article 5, § 2 of CF/88, known as the reservation clause, which prescribes:

> [...] The rights expressed in this Constitution do not exclude others arising from the regime and principles adopted by it, or from international treaties to which the Federative Republic of Brazil is a party (BRAZIL, 2023a).

The aforementioned clause has such a name, as it is the constitutional norm that gives rise to the entry into our legal system of implicit principles, without them being formally outlined by law.

The principle of insignificance derives from doctrinal and jurisprudential construction, so that it does not have a concept described and

1 It is worth remembering that for some authors, such as Zaffaroni, when defining criminal typicality, he calls the concept of "conglobing typicality", where typicality results from the sum of formal typicality and material typicality. The first consists of the perfect adequacy of the fact to the letter of the law, while to assess the second it is necessary to analyze two distinct judgments, namely, disapproval of the conduct and disapproval of the legal result.

expressed in a legal provision, a fact that for a long time was an obstacle to its acceptance.

The barriers that the applicator of criminal law placed in front of the application of the principle of insignificance, as it is not expressed in any norm, no longer find any basis, as it is up to the legal science scholar to recognize that the Law is not limited to the text legal, given that several implicit principles today are usually applicable in our legal system.

Given the absence of a standard regulating the topic, it was up to doctrine and jurisprudence to establish criteria to define and conceptualize the Principle of Insignificance in criminal matters. Here are some concepts taught by the doctrine.

Vico Mañas, cited by Silva (2011), teaches that:

> [...] The principle of insignificance, therefore, can be defined as an instrument of restrictive interpretation, based on the material conception of the criminal type, through which it is possible to achieve, through the courts and without tarnishing the legal security of systematic thinking, the political-criminal proposition of the need to decriminalize conduct that, although formally typical, does not affect in a socially relevant way the legal interests protected by criminal law (SILVA, 2011, p.100).

The national jurisprudence moved in the same direction as the doctrine to conceptualize the principle studied. The following judgment must be brought to the table:

> [...] Criminal law must not concern itself with conduct that produces results, the depreciation of which - as it does not result in significant damage to relevant legal assets - does not, for that very reason, represent significant harm, whether to the holder of the protected legal asset, or the integrity of the social order itself.
>
> THE PRINCIPLE OF INSIGNIFICANCE QUALIFIES AS A FACTOR OF MATERIAL DISCHARACTERIZATION OF CRIMINAL TYPE.
>
> - The principle of insignificance – which must be analyzed in connection with the postulates of fragmentarity and minimal State intervention in criminal matters – has the meaning of excluding or removing criminal typicality itself, examined from the perspective of its material character. (...) (HC 98.152/MG, Rapporteur Minister Celso de Mello, Second Panel, unanimous, Electronic justice diary5.6.2009)"

Finally, all the concepts demonstrated here, among many others, mostly follow the same line of reasoning, by conceiving the principle of insignificance as a principle of criminal law that establishes that insignificant, minimal, small injuries must be disregarded, not characterizing crime and generating the atypicality of the fact.

It is worth noting that the principle in question appears more as a method of criminal policy, since it emerged as a response to social complaints regarding the excessive use of Criminal Law as a means of repression.

Criminal Law must, indeed, reprimand and sanction agents who engage in conduct typified by criminal law. Meanwhile, it must impose itself only on those conducts that necessarily require its sanction, those conducts that affront, that concretely harm or expose to danger a legal asset protected by the criminal norm.

In a more detailed analysis of the concepts studied so far, regarding the principle in question, there is no doubt that its main purpose is to prevent the person applying criminal law from being positivist to the point of causing injustice.

In this sense, it is worth checking the words of Silva (2011):

> Thus, the function of the Principle of Insignificance consists of serving as an instrument of restrictive interpretation of the criminal type, taking it as having a material content, to exclude from the scope of criminal law formally typical conduct that, in view of its limited harmfulness, does

not demonstrate legal relevance for Criminal Law (SILVA, 2011, p.117).

LEGAL FOUNDATIONS OF THE PRINCIPLE OF INSIGNIFICANCE

Studying the legal basis of a given institute involves researching its reason for being and, consequently, the position it occupies within the legal system.

Insignificance, constituting a principle, has its foundations in other principles of Criminal Law, thus recognized within the Democratic State of Law in which we live.

There are three main principles of Criminal Law that underlie the principle of insignificance, which are: the principle of proportionality, minimum intervention and fragmentarity.

The principle of proportionality consists of a presupposition of Criminal Law that aims to prevent criminal law from being applied in excess, from imposing sanctions that are above appropriate and unnecessary.

This principle is extremely important in Criminal Law, because it must be observed both by the legislator when drafting the criminal law, so that there is due adequacy between the conduct described in the legal type and the sanction to be imposed, and by the applicator. of criminal law that when imposing the sanction, it must be established observing the circumstances of the specific case, so that it is proportional to the conduct perpetrated by the agent.

Carrying out a proportionality judgment prevents injustices from occurring on the part of the legislator or enforcer of criminal law, and avoids the application of penalties that are absolutely disproportionate to the act committed by the agent.

Proportionality is a substitute for the theory of insignificance precisely with regard to this judgment of measuring proportionality, since it also happens for the application of the principle of insignificance to occur.

Minor injuries to the legal good will be considered insignificant, meaning that the application of criminal law would be flagrantly disproportionate.

This is what Silva (2011) asserts:

> [...] Based on the theory of insignificance in criminal matters, the Principle of Proportionality serves as a foundation for the Principle of Insignificance, as it is concretely implemented when it focuses on criminally insignificant conduct to exclude them from the scope of Criminal Law in reason why there is disproportionality between the act committed and the criminal response to this practice (SILVA, 2011, p.135).

In the same sense, cited by Silva (2001), Odone Sanguiné lectures:

> [...] The basis of the principle of insignificance lies in the idea of 'proportionality' that the penalty must maintain in relation to the seriousness of the crime. In cases of negligible harm to the legal good, the unjust content is so small that there is no reason for the ethical *pathos* of the penalty. Even the minimum penalty applied would be disproportionate to the social significance of the fact (SILVA, 2011, page: 135).

Thus, it is concluded that the operator of criminal law, when applying the theory of insignificance, must first make a judgment from the perspective of the principle of proportionality.

The principle of minimum intervention, also called by some authors as the principle of subsidiarity, attributes to Criminal Law the characteristic of *ultima ratio* (last reason), that is, it will only act when the other branches of law no longer prove to be sufficient, given the that the criminal sanction on the individual produces extremely serious effects.

This principle underlies the theory of insignificance, as it is a principle of criminal policy, which restricts the excessive use of state *jus puniendi,* to conduct that generates minor

injuries that do not require the application of a criminal sanction.

REQUIREMENTS FOR APPLYING THE PRINCIPLE OF INSIGNIFICANCE

In the same way that there was discussion for a long time regarding the conceptualization of this institute, it was necessary for there to be an analysis regarding the necessary requirements for its application, and this is due to the fact that the theory of insignificance deals with jurisprudential and doctrinal construction, without a provision It's cool to regulate it.

Therefore, the delimitation regarding valid requirements, at least reasonable criteria, for the application of the principle of insignificance also remained the responsibility of doctrine and jurisprudence.

At first, there was great rejection on the part of legal operators to start applying insignificance, on the grounds that it would generate true legal uncertainty, given the vague fixation and lack of objective clarity of the application criteria, but today this aversion has already been partly overcome. See, in this regard, the words of Odone Sanguiné, cited by Silva (2011):

> [...] Certainly, an indeterminate or vague concept can pose a risk to legal certainty. However, the doctrine and jurisprudential praxis itself have been able to find the indices and delimiting criteria through a dogmatic reconstruction, within the categorical limits of the petty crime, against any temptation of empiricism or case-by-case logic (SILVA, 2011, 154).

The majority doctrine formulated a theory, by which it is understood that for the agent's conduct to be considered insignificant it must be analyzed from two perspectives, which are the indices of devaluation of the action and devaluation of the result, products of the personal conception of the unjust brought by finalism.

In this line of understanding, it is beneficial to reproduce Silva's (2011) understanding:

> [...] For our part, we understand that to recognize typical conduct as criminally insignificant, the classical model of determination must be used, thus carrying out an assessment of the indices of devaluation of the action and devaluation of the result of the conduct carried out, to the quantitative-qualitative degree of its harm in relation to the legal asset being attacked is assessed. In fact, it is the assessment of the implementation of the elements of the conduct carried out that will indicate its legal significance – or insignificance – for Criminal Law (SILVA, 2011, p.156-157).

Aiming at greater legal certainty, and following what had already been conceived by Brazilian doctrine and jurisprudence, the Federal Supreme Court, in a decision handed down in Habeas Corpus number: 84412/SP, established objective criteria for applying the principle of insignificance in each specific case., they are i) minimal offensiveness of the agent's conduct; ii) no social danger of the action; iii) very low degree of reprehensibility of the behavior and iv) insignificance of the legal damage caused.

Important for the study, transcribe the syllabus mentioned above:

> "PRINCIPLE OF INSIGNIFICANCE - IDENTIFICATION OF VECTORS WHOSE PRESENCE LEGITIMATES THE RECOGNITION OF THIS CRIMINAL POLICY POSTULATE - CONSEQUENT DISCHARACTERIZATION OF THE CRIMINAL TYPE EM SEU ASPECTO MATERIAL- OFFENSE OF THEFT - CONDEMNATION IMPOSED ON AN UNEMPLOYED YOUNG MAN, ONLY 19 YEARS OF AGE - "STEALTH RESPONSE" NUMBER: R-VALUE $25.00 (EQUIVALENT TO 9.61% OF THE MINIMUM WAGE CURRENTLY IN FORCE) - DOCTRINE – STF (Federal Court of Justice) CONSIDERATIONS - REQUEST GRANTED. EM TORNO DA

> JURISPRUDÊNCIATHE PRINCIPLE OF INSIGNIFICANCE QUALIFIES AS A FACTOR OF MATERIAL DISCHARACTERIZATIONOFCRIMINAL TYPE. - The principle of insignificance - which must be analyzed in connection with the postulates of fragmentarity and minimal State intervention in criminal matters - has the meaning of excluding or removing criminal typicality itself, examined from the perspective of its material character. Doctrine. (...) Criminal law must not concern itself with conduct that produces results, the depreciation of which - as it does not result in significant damage to relevant legal assets - does not, for that very reason, represent significant harm, whether to the holder of the protected legal asset, or the integrity of the social order itself. (84412 SP, Rapporteur: CELSO DE MELLO, Judgment Date: 10/18/2004, Second Panel, Publication Date: DJ 19-11-2004 PP-00037 EMENT VOL-02173-02 PP-00229 RT v. 94, Number: 834, 2005, pp. 477-481 RTJ VOL-00192-03 PP-00963)" (BRAZIL, 2012).

Analyzing these criteria, we can see that the first two refer to the devaluation of the action, the third alludes to the magnitude of culpability, while the last concerns the devaluation of the result. Great questions arose in the doctrine after the establishment of the criteria set out above, regarding their cumulative or separate application. Doctrine still differs on this.

ENVIRONMENT AS A LEGAL ASSET THAT REQUIRES PROTECTION

At a global level, the first major conference to deal with the environment was in 1972 in Stockholm, Sweden, where the first major guiding principles of environmental protection science emerged, which would go on to influence the entire world, giving rise to a more concrete concern in the which concerns the need to think about and apply means that promote the environmental sustainability of the Planet.

Among the principles recognized in the Stockholm Declaration of Principles, it is worth highlighting that from then on, the environment began to be considered not only as a fundamental right of every human being, but also as a transgenerational right, that is, a right not only for the present generation, but which must also be preserved for future generations. In this sense, Professor Padilha (2010):

> [...] THE DECLARATION OF PRINCIPLES of the Stockholm Conference proclaims, for the first time, since the first charters of rights arising from the Bourgeois Revolutions, the recognition that, among the fundamental rights of man, in addition to freedom and equality, there is, also, the right to adequate living conditions in an environment whose quality allows a life of dignity and well-being. It also emphasizes that the recognition of this right implies the solemn responsibility of protecting and improving the environment, not only for present generations, but also for future generations. It is, therefore, not only a fundamental right but also a generational one, as those who have not yet been born have an equal right to the preservation of the earth's natural resources (PADILHA, 2010, p. 52).

After the Stockholm Conference, in the global context, the immediate need for environmental awareness arose, which generated an impact on the Constitutions of the time, which, unlike the previous ones, began to treat the environment as a legal asset in need of care, including the Constitution of the Federative Republic of Brazil in 1988. In this sense, the teachings of Prado (2009):

> [...] However, recognition of the importance of environmental conservation dates back to recent times. As a natural environment for living beings, the interest in its guarantee comes from the moment when man finds himself compelled to safeguard rare goods (PRADO, 2009, p.64).

This context is mainly due to the great innovations brought about by the industrial and technological revolutions of the time, in which man began to use natural goods unrestrainedly, which in turn are finite, and this same man, when faced with an imminent scarcity of these goods, if they did not start using them in a rational and sustainable way. At that moment, the need to develop a policy of environmental protection, improvement and restoration emerged in the world's consciousness.

THE 1988 FEDERAL CONSTITUTION AND THE ENVIRONMENT

The Federal Constitution of 1988, compared to the previous Constitutions of Brazil, brought important innovation in the protection of the environment, dare we say that the innovation was precisely the broad protection given to the environment, since until then no Constitution had dealt with the environment as a legal asset of such relevant value to society.

This way, the 1988 Constitution is a historic landmark in terms of the treatment of Brazilian Environmental Law, as it pioneered a whole chapter in its text dedicated to the environment. See Padilha's (2010) lesson on the topic.

> [...] The decisive step towards the systematization of Brazilian Constitutional Environmental Law was actually taken by the Brazilian Constitution of 1988, which, in addition to making explicit and direct references in various parts of the constitutional text, imposing duties on the State and society, with In relation to the environment, he dedicated his own chapter to it (Chapter VI) within the Social Order (Title VIII) (PADILHA, 2010, p. 156).

The foundation of all this protection is established in article 225 of the Federal Constitution, which provides:

> [...] Article 225. Everyone has the right to an ecologically balanced environment, an asset for the common use of the people and essential to a healthy quality of life, imposing on the Public Power and the community the duty to defend and preserve it. it for present and future generations.

From the analysis of the aforementioned article, it can be clearly stated that the Brazilian Constitution, by explicitly proclaiming everyone's right to an ecologically balanced environment, essential to a healthy quality of life, this being a right not only for those present, but also of future generations, shows that it brought with it the principle roots established at the Stockholm Conference, especially with regard to the characteristic of transgenerational law.

For the first time, the constituent legislator proclaimed in the Constitution means of protecting the environment, this being within an international context, in which it was necessary to affirm the environment as a common good, and the perennial need for care and protection.

Prado's considerations (2009, p.71): "The intention of the Brazilian constituent legislator was to provide a broad response to the serious and complex environmental issue, as an indispensable requirement to guarantee a dignified quality of life for everyone".

The constitutional text, even when consigning the environment as a right of all, created the order of "supra-individual" law, conceived this way, as it is a diffuse and collective right, beyond the dimension, understood as such because it is very owned by all humanity and not directed at any specific individual, and for this reason it is among the so-called *third dimension rights* [2].

In effect, the constituent, in article 225,

2As a note, it is worth remembering that civil and political rights are classified as *first dimension rights, second dimension* rights refer to economic, social and cultural rights, while *third dimension rights* allude to diffuse rights. and collectives. Although

§ 3 of the Constitution ("§ 3 - 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"), regulated in a direct and explicit way, which would be under the responsibility of the infraconstitutional legislator to legislate in the field of Criminal Law, creating standards not only for prevention, but also for reprimanding unfair attacks on the environment.

This characteristic is called "Express Criminalization Warrant", because despite the subsidiary and *ultima ratio nature* of Criminal Law, this order is a way that the constituent found not only to impose on the infraconstitutional legislator the publication of norms, but also to consolidate the environment as an asset effectively, and for the avoidance of doubt, of the order of legal-criminal assets, in a world where many other assets of lower values have already been consolidated in the field of Criminal Law. It is therefore up to the legislator, supported by the Constitution, to definitively define and apply the appropriate sanction to conduct that causes harm or exposes the legal interest of the environment to harm.

It is appropriate to analyze the teachings of Prado (2009):

> [...] After all, based on this constitutional requirement, it is up to the ordinary legislator to build a true criminal normative system that defines, in a certain and exhaustive way, the punishable conduct and respective penalties, in harmony with the criminal constitutional principles, as a legal structure minimum, to comply with the provisions of the Federal Constitution (PRADO, 2009, p.76).

LAW NUMBER: 9,605 OF 1998 (ENVIRONMENTAL CRIMES LAW)

The Environmental Crimes Law dates from February 12, 1998, and as noted, it is a post-constitutional law, and otherwise it could not be, as such a rule emerged in response to the aforementioned "criminalization order" disciplined in article 225, § 3 of the Major Diploma, as well as the most urgent needs of a society increasingly thirsty for natural resources to sustain its development, as well as its most basic, essential needs.

It must be noted that prior to the law on crimes against the environment, there was no legislation in Brazil that dealt with the issue directly and in such a specific way, there were only scattered laws that were mainly administrative in nature.

The law on environmental crimes is referred to by the doctrine as a law of a hybrid nature, as the body of its text intersperses different contents of criminal, administrative and international scope. The international character added to environmental criminal law finds its basis in the basic characteristic of the environment as a collective good, the good of all humanity. Regarding the fact that it has the characteristic of a rule loaded with excessive administrative dependence, it is worth analyzing it due to the overload of blank criminal rules in the body of its text.

It is worth remembering that a blank criminal rule is a rule in which the description of the punishable conduct is incomplete, thus requiring the complementation of another legal provision, which may consist of another law or an administrative normative act (for example an ordinance).

Luiz Regis Prado defines the institute as follows:

> [...] Blank criminal law can be conceptualized

much of the doctrine has already used the terms generations or dimensions of human rights, some scholars more recently avoid both terms, in order not to fragment such rights, which occur more or less simultaneously in their view.

> as one in which the description of the punishable conduct is incomplete or lacking, requiring another legal provision for its integration or complementation. This is worth saying: the legal hypothesis or protasis is formulated in a generic or indeterminate way, and must be resolved/determined by a normative act (legislative or administrative), in an extra-penal rule, which belongs, for all purposes, to criminal law (PRADO, 2008, p.170).

While in a brief analysis of the types created by the 1998 legislator, it appears that it made extensive use of the heterogeneous blank criminal norm, that is, it requires its complementation in a normative act of another power, in this case the administrative one., so that their conduct can be punishable, and this is due to the fact that environmental matters enter concepts from other areas of knowledge, not being restricted to solely criminal matters.

The environmental criminal legislator, when classifying conduct that violates the environmental protection order, chose to make extensive use of criminal types in the form of dangerous crimes, both abstract and concrete.

Before delving into the concept of dangerous crimes, it is necessary to make a brief analysis of the reasons why the legislator decided to use these types of criminal offenses. It is necessary to interpret complex environmental criminal matters as they are, you see.

When it comes to Environmental Criminal Law, as the expression already translates, it is a situation in which Criminal Law attracts another branch of the system into its field, so that it can offer its protection.

Well, while Environmental Law is an extremely complex branch, with concepts and determinations rooted in other branches of knowledge than Law, and this occurs in a different way than what occurs with Criminal Law. Environmental criminal legislation becomes, in the same way, excessively complex and, especially, full of purely technical concepts. When mentioning purely technical concepts, reference is made here to concepts from other areas of knowledge, such as engineering, administrative, biological, among others.

Given the complexity of the environmental criminal type, most scholars conceptualize the main environmental crimes as danger crimes, which can be classified into abstract danger and concrete danger, in contrast to result crimes.

Luiz Régis Prado gives his thoughts on the topic:

> [...] Ipso facto, the majority doctrine has established, especially for the basic criminal types – in environmental matters -, the form of the crime of danger, especially abstract danger, to the detriment of the crime of injury or (material) result, through a rigid typification process that always takes into consideration, the relationship between the protected asset and the dangerous conduct (PRADO, 2009, p.112-113).

The crime of abstract danger is classified this way, as it is a crime in which the danger is part of, and an ex ante judgment is made, and the danger becomes inherent in human conduct, so that it becomes presumed. While in the case of concrete danger, for the conduct to be punishable, the danger to the legal good must in fact have occurred.

It is beneficial to reproduce the excerpt in which Prado (2008) conceptualizes the two types of crimes:

> [...] dangerous crimes: the existence of a dangerous situation – potential injury – is enough. They are divided into: crime of concrete danger: the danger integrates the type as a normative element, so that the crime is only consummated with its actual occurrence for the legal good, that is, the danger must be effectively proven. (...); and abstract danger crime: danger constitutes solely the ratio legis, the reason that gives rise to the legal prohibition of certain

> conduct. Appreciable ex ante, the danger is inherent to the action or omission, not requiring proof (PRADO, 2008, p.240-241).

Following this line of reasoning, it can be seen that the adoption by the legislator of criminal types of danger is closely linked to the complexity of formulating the type of unjust environmental criminal and the importance of the asset to be protected.

The main characteristic of the crime of danger is that in the action described in the type, the agent does not cause an injury to the protected legal asset, but rather the threat of injury exposes said asset to danger, and for this reason it was that the 1998 legislator would have opted to use this legal technology in publishing the law on environmental crimes.

With this technique, the legislator sought to focus on preventing future environmental injuries, as these, in turn, generate irreparable and incalculable damage with long-term effects.

APPLICATION OF THE PRINCIPLE OF INSIGNIFICANCE IN ENVIRONMENTAL CRIMES

The great discussion that surrounds the topic focuses on the fact that the legal environment is of such important relevance, and, mainly, because it is an asset created by the Constitution of the Republic to guarantee a supra-individual good. There are, however, some who today already understand the application of insignificance in environmental crimes.

The legal good of the environment is considered an autonomous legal good and of important value to society. It is protected by Criminal Law, and as it is a criminal legal entity, it is subject to the principles that underlie and regulate Criminal Law, such as minimum intervention and fragmentation.

Silva (2008), on the subject, teaches:

> [...] Criminal Law must be called upon in those cases in which the relevance of the protected legal interest, combined with the social reprehensibility of the conduct that is harmful, requires the respective intervention as a criminal punitive solution to the conflict. Other than that, as it is au *ltima ratio,* it must not be invoked. This also applies (or must apply) to Environmental Criminal Law (SILVA, 2008, p.55).

Authors who support the possibility of applying the principle of insignificance to environmental crimes only use an analysis regarding criminal protection, without taking into consideration, the classification of the property as individual or supra-individual.

If a distinction is not made because the environment is a supra-individual good, so that the institute of insignificance can be applied, an analysis is made regarding the possibility of knowing/verifying whether the damage to the environment can be considered insignificant, which in the view de Silva (2008) is perfectly possible, otherwise note:

> [...] Regarding, specifically, environmental criminal protection, the first question is whether there is damage to the environment that can be considered criminally insignificant. The answer to this question is affirmative, because, as already explained, the imperfection and breadth of the environmental criminal type reach some conducts that have no significance for Criminal Law (SILVA, 2008, p.88).

When predicting the analysis carried out to assess when an injury will be considered insignificant, Silva (2008, p.89) calls it the "criterion of concrete insignificance", consisting of the assessment of the indices of devaluation of the action and devaluation of the result of the unjust environmental penalty., considering that the injury will be insignificant when the two indices evaluated can be considered negligible.

It would be beneficial to reproduce Taglialenha's (2005) understanding on the subject:

> [...] without a doubt, it is possible, viable and desirable to apply the principle of insignificance in the context of crimes against ichthyofauna, whenever there is insignificant environmental damage, or when a conduct, although socially appropriate, formally constitutes a typical fact.
>
> [...] it is not up to the operator of the law to deny the application of the criminal sanction on the grounds that fish, or crustaceans, or molluscs, or hydrobic plants are not relevant to Criminal Law. However, whenever the damage to the protected property is insignificant, the principle of insignificance will fully apply (TAGLIALENHA, 2005, p.100-101).

It can be drawn from the understanding expressed by the aforementioned authors that the analysis for applying the principle of insignificance to environmental crimes is perfectly possible for two reasons, namely, firstly, before considering the environment as a supra-individual asset, considering it solely from the perspective of legal-criminal good, and secondly by the possibility of being able to assess the degree of environmental damage as being insignificant, through an analysis of the devaluation of the action and the devaluation of the result.

With regard to jurisprudence, for a long time, among legal practitioners, the idea of applying the principle of insignificance to environmental crimes was completely rejected, however, there are currently precedents for its application in practically all Brazilian Courts.

Below are the decisions of the Superior Court of Justice in this regard.

> "SPECIAL RESOURCE. ENVIRONMENTAL CRIME. FISHING IN PROHIBITED LOCATIONS. PRINCIPLE OF INSIGNIFICANCE. NO EFFECTIVE DAMAGE TO THE ENVIRONMENT. MATERIAL ATYPICITY OF CONDUCT. REJECTION OF COMPLAINT. RESOURCE PROVIDED.
>
> 1. The return of the live fish to the river demonstrates the minimum harm to the environment, a circumstance recorded in the "Inspection Report signed by ICMBio [in which] it was informed that the severity of the damage was slight, in addition to the crime not having been committed affecting species threatened."
>
> 2. The instruments used - reel rod with reel, lines and styrofoam - are permitted for use and do not constitute professionalism, but on the contrary, demonstrate the amateurism of the accused's conduct. Precedent.
>
> 3. In the absence of harm to the legal interest protected by the incriminating norm (Article 34, caput, of Law number: 9,605/1998), the conduct is atypical.
>
> 4. Special appeal provided to recognize the material atypicality of the conduct, reestablishing the original decision to reject the complaint."
>
> (Resource, number: 1.409.051/SC, rapporteur Minister Nefi Cordeiro, Sixth Panel, judged on 4/20/2017, Electronic justice diary of 4/28/2017.)

> "CRIMINAL. POSSESSION OF WILD ANIMALS. CONDUCT OF LITTLE RELEVANCE. PRINCIPLE OF INSIGNIFICANCE.
>
> 1. A - The incidence of normal criminal law, in view of the principle of minimum intervention, must occur only to the extent necessary to protect the legal interest, and must only sanction injuries that produce serious consequences.
>
> 2. - Possession of nine wild birds, by a defendant residing in rural areas, within the habits of local culture, without demonstrating commercial intent, does not characterize the crime provided for in Article 1 of Law number: 5,197/67. Application of the principle of insignificance.

> 3. Dismissal of the appeal in the strict sense" (TRF – 1st REGION, Proc.: 199801000504222/MG, THIRD PANEL, DJ DATE: 02/04/2000, PAGE: 210, Rapporteur JUDGE OLINDO MENEZES (...)
>
> 2. However, it is essential that the application of the aforementioned principle occurs in a prudent and judicious manner, which is why the presence of certain elements is necessary, such as (I) the minimum offensiveness of the agent's conduct; (II) the total absence of social danger of the action; (III) the tiny degree of reprehensibility of the behavior and (IV) the inexpressiveness of the legal injury caused, as already established by the collector Pretorio Excelso (HC 84.412/SP, Rapporteur Minister CELSO DE MELLO, DJU 19.04.04). 3. In order for the incriminating criminal law to apply, it is essential that fishing with prohibited equipment can effectively cause risk to the species or the ecosystem; None of this, however, occurs in the specific case, in which two fishermen, using only one net - a net considered illegal because it exceeds the legally 50 centimeters established limit, as recorded in the article -, had removed only 2 kilograms fish from the dam, of different species. 4. The material atypicality of the conduct is evident, due to the unnecessary movement of the state machinery, with all the known implications, to investigate conduct that is unimportant to Criminal Law, as it does not represent an offense to any legal asset protected by the Environmental Law. 5. MPF opinion on granting the order. 6. Order granted to block the Criminal Action filed against the patients, for alleged violation of Article 34, single paragraph, II of Law 9,605/98." (STJ - Superior Justice Tribunal), HC 20080172886, FIFTH PANEL, ELECTRONIC JUSTICE DIARYDATE:05/03/2010, Rapporteur NAPOLEÃO NUNES MAIA FILHO) (BRAZIL, 2012).

The Federal Supreme Court, even in the face of decisions from other Courts for the application of insignificance in environmental crimes, in its decisions, initially remained faithful to the inapplicability of the aforementioned principle to crimes that harm the ecologically balanced environment. hex

However, in a decision dated August 21, the 2012, a Second Panel of the STF (Federal Court of Justice), when judging Habeas Corpus number: 112563, acquitted, for the first time, a fisherman from Santa Catarina, who had been sentenced to the sanctions of article 34, sole paragraph, item II, of Law 9,605/98, to 01 (one) year and 02 (two) months of detention, for fishing during prohibited times and with prohibited equipment containing 12 (twelve) shrimp.

The ministers who voted for the application of the principle, namely Peluso and Gilmar Mendes, in summary, based their votes on the disproportionality between the sanction applied and the result of the conduct imposed by the agent, that is, the analysis fell on the disvalue of the result obtained, that is, the fishing of just 12 (twelve) shrimp which, according to the Ministers, caused a minimal injury.

Currently, the doctrinal and jurisprudential understanding on the topic does not rule out the application of the *in-comment principle* for crimes of an environmental nature, as can be deduced from the words of Minister Marco Aurélio in Criminal Action Number: 439/SP.

> [...] According to the lesson of Francisco de Assis Toledo, contained in em Criminal Law Basic Principles, "according to the principle of insignificance, which is fully revealed by its own name, criminal law, due to its fragmentary nature, only goes as far as necessary for the protection of legal interests. You mustn't worry about trifles." Supporting this perspective, the Second Panel, when judging *Habeas Corpus* number: 92.463-8/RS, rapporteur Minister Celso de Mello, highlighted the principle of minimum State intervention in criminal matters. The circumstance of having the environment protected is not such as to rule out this understanding (CRIMINAL ACTION 439/ SP; MARCO AURELIO; STF (Federal Court

of Justice).

FINAL CONSIDERATIONS

From the analysis, it is possible to consider that it is already clear, both doctrinally and jurisprudentially, that even though it is not a principle formally outlined by law, the principle of insignificance is already part of the Brazilian criminal legal system, as an explicit principle, and Its application is already common, especially with regard to property and tax crimes.

It is also possible to note that this principle is essentially one of Criminal Policy, through which the operator, analyzing the given circumstances, can stop applying the heavy hand of Criminal Law to those conducts that, even formally outlined to the type, do not have the ability to affect significantly the legal interest protected by the criminal law, and, therefore, they cease to be materially typical and, simply, do not require a criminal sanction.

That said, after seeking to understand the essence of this principle, to understand the possibility of its application in environmental crimes, it is important to discuss the situation of the environment as a legal-criminal asset. In this sense, the environment, today, is protected by the protection provided by the Federal Constitution of 1988, and, therefore, deserves protection by Criminal Law, different from what happened a few years ago. The protection given to the environment grew in proportion to the global concern with the absurd growth of the population, as well as the unbridled industrial evolution, a factor that gave rise to this protectionist environmental awareness.

In Brazil, this awareness emerged with the current Constitution, and, starting from the Constitution as a time frame, as already mentioned, after creating criminal norms for environmental protection, taking into consideration, the lag in environmental protection in the criminal field., since until then there was only sparse legislation with an administrative content much higher than the criminal one.

Law number: 9,605/98, called the Environmental Crimes Law, establishes conduct harmful to the environment, subject to criminal sanctions, and with some unique aspects in relation to other criminal norms, as it takes into consideration, the legal-criminal good in focus.

Thus, it must be recognized that, nowadays, despite the contrary position of part of the doctrine, at least in jurisprudence the principle of insignificance has been applied to crimes of an environmental nature.

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