

## **CÓRREGO ÁGUA FRIA (ANÁPOLIS/GOIÁS): study of the (in)effectiveness of the judicial provision inscribed in Public Civil Action No. 0051306-47.2012.8.09.0006**

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### **ABSTRACT**

The present work presents the 'State of the Art' scheduled for the preparation of a Master's Thesis being developed in the stricto sensu Graduate Program in Environmental Sciences at the Evangelical University of Goiás (UniEVANGÉLICA). The agenda highlights the importance of studies focused on the effectiveness of Brazilian judicial provision aimed at the environmental protection of Permanent Preservation Areas (APP) in streams, especially the Água Fria Stream located in the municipality of Anápolis/Goiás. In 2012, two legal actions were proposed within the Judiciary of the Anápolis District: a Public Civil Action with a focus on obligations to do and not do, as well as environmental damage repair, and another, a Criminal Action to investigate any environmental crimes committed. The environmental damages were evident. The criminal action was dismissed and archived in the year 2022 without a judgment on the merits, due to the subsequent expiration of the state punitive prescription. The Public Civil Action also did not achieve the initially expected result, although it is still ongoing. To achieve success, a deductive approach was employed, enhanced by bibliographic and documentary techniques, allowing the development of research of a descriptive and explanatory nature.

**Keywords:** Água Fria Stream; Permanent Preservation Area; Environmental Damage; Jurisdictional Provision.

### **INTRODUCTION**

The present work is scheduled for the construction of a Master's Thesis that aims to analyze the (in)effectiveness of judicial protection directed towards the environmental protection of Permanent Preservation Areas, based on the procedural outlines of Public Civil Action No. 0051306-47.2012.8.09.0006 currently underway in the Municipal Public Treasury and Environment Court, and also on Criminal Action No. 0171668-78.2012.8.09.0006, which was processed before the 1st Criminal Court, both in the District of Anápolis-GO.

The research seeks to answer the following question – has the penal-environmental jurisdiction, directed by the Municipal Public Treasury Court and the 1st Criminal Court of the Anápolis District, regarding the improper use of the Permanent Preservation Area (APP) along the banks of the Água Fria Stream, achieved environmental effectiveness?

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In this context, the present extended summary presents the 'State of the Art' that encompassed the 'Research Project', a foundation/agenda crafted to serve as the cornerstone for the construction/elaboration of the Master's Thesis that will be defended at a future date in the PPGSTMA of UniEVANGÉLICA.

## **DEVELOPMENT**

Environmental degradation in Brazil began in the early years of colonization with the indiscriminate extraction of Pau-Brasil, which lasted for 400 years and nearly drove the species to extinction. It is not, however, necessary to conclude, according to Silva (2012), that humanity has finally become aware of its duty to minimize the impacts caused by its ancestors and to prevent them from continuing to occur. The legislative evolution of environmental protection has progressed over the centuries until it reached constitutional status in 1988, passing through the Environmental Crimes Law of 1998, the current Forest Code of 2012, the Biodiversity Law of 2015, and subsequent updates.

The results achieved, however, are far from ideal, with the subordination of the sciences, means of production, and Law to economic desires being evident. Calhau (2005) observes that the problem is aggravated by the lack of identity of Environmental Criminal Law and the absence of a consolidated jurisprudence on the Environmental Crimes Law.

In this vein, Cruz and Bodnar (2014) reflect that the crisis of effectiveness currently being discussed mainly stems from the lack of a legal rationality and an hermeneutics endowed with special ecological sensitivity, in which not only human beings are involved, but also the entire community of life and future generations.

Silva (2012) reflects that the great demand of contemporary Environmental Law is to give effectiveness to environmental legislation, but not expecting that the protection of the environment is carried out exclusively by the judiciary and its actors. Before, civil society must organize as a whole through individual and collective actions, consolidating commutative and distributive justice in the environmental sphere.

Lautenschlager and Varella (2018) emphasize that the 21st century witnesses the maturation of a still recent perception that the environmental dimension is inseparable from the economic, health, cognitive, and social dimensions. Sustainable development must be achieved at any cost, under penalty of making the life of future generations unviable. Greenhouse effect, heat islands, ozone layer degradation, acid rain, and the extinction of species of fauna and flora, sometimes endemic, are just examples of the various contemporary environmental catastrophes.

On the other hand, the excessive restrictions imposed by environmental legislation regulating the protection of Permanent Preservation Areas (PPAs) have proven to be an ineffective tool in controlling land use, especially in urban contexts that observe an agenda of expanding occupied areas to maximize economic exploitation in various fronts, whether real estate, industrial, or simply for the accumulation of people in vulnerable situations, at risk, without any infrastructure, planning, or preparation (SAID, 2009).

This is the context of the case of the improper use of the APP of the Água Fria Stream, where a commercial establishment was built to house a supermarket. The construction, however, was definitively halted after the issue was judicialized through a Public Civil Action filed by the Public Prosecutor's Office of the State of Goiás, with the further development being the handling of a criminal action to investigate the alleged environmental crimes that occurred there.

In this specific case, after eleven years of Public Civil Action, it was observed, in theory, little effectiveness among the objectives intended in the initial petition of the Public Prosecutor's Office. Regarding the criminal action, it was archived after ten years of proceedings, without even managing to implement the procedural triangulation for all the defendants.

These actions will be used as a case study to validate the entire theoretical framework used in this dissertation.

## **METHODOLOGY**

To achieve success, a deductive approach was employed, enhanced by bibliographic and documentary techniques, which allowed for the conduct of the study and the development of research of a descriptive and explanatory nature.

## RESULTS

The work, applying the method, delivers to the academy, to the faculty and students of UniEVANGÉLICA, the 'State of the Art' that encompassed the 'Research Project', a scientific basis established for the construction/elaboration of the Master's Thesis that will be defended at a future date in the stricto sensu Graduate Program in Environmental Sciences at UniEVANGÉLICA. The Dissertation will seek to establish the following hypothesis: The ineffectiveness of penal-environmental jurisdiction in Processes No. 0051306-47.2012.8.09.0006 and No. 0171668-78.2012.8.09.0006 confirms the socio-legal and environmental functional ignorance of the Law.

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