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INTEGRAL MANAGEMENT MODEL

OF ADMINISTRATIVE AND JUDICIAL PROCESSES IN ENVIRONMENTAL MATTERS

MODELO DE GESTIÓN INTEGRAL DE PROCESOS ADMINISTRATIVOS Y JUDICIALES EN MATERIA AMBIENTAL

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ABSTRACT

This management system would provide the necessary tools to both the administrative authorities and the administrators of justice at the time of resolving processes, where they should consider whether the natural or legal person is a repeat offender and as to that address their resolution or sentence. To avoid double sanctions for the same action, to provide speed in administrative-judicial processes, and to control the responsibility of natural or legal persons with the environment. It is proposed to design a model of integral management of administrative and judicial processes in environmental matters.

Keywords: Administrative processes, environmental matters, management model.

RESUMEN

A través de este sistema de gestión se dotaría de herramientas necesarias tanto a las autoridades administrativas como a los administradores de justicia al momento de resolver procesos, donde se deberán considerar si dicha persona natural o jurídica es reincidente y en cuanto a ello direccionar su resolución o sentencia. Evitar sanciones dobles por una misma acción, brindar celeridad a los procesos administrativos-judiciales, y controlar la responsabilidad de personas naturales o jurídicas con el medio ambiente. Se propone diseñar un modelo de gestión integral de procesos administrativos y judiciales en materia ambiental.

Palabras clave: Procesos administrativos, materia ambiental, modelo de gestión.

INTRODUCTION

In all human very organized and fertile coexistence, it is necessary to highlight that all the people like members of a society should respect and to complete the willing norms for the social coexistence; however, the means where it is developed this coexistence and the economic activities among others that frequently contribute to the development of a society, they carry out the activities without respecting the rights of the means that we inhabit the nature that is to say.

This topic is focused in the institucionalization of an entity that guarantees as much to the nature as to its operators of activities, control, execution, efficiency, effectiveness and velocity in steps and processes so much administrative as judicial without necessity of going to different entities for oneself event.

Besides, adapting the human behavior in pro of the environment, to teach that the deterioration to the environment doesn't configure it alone the emanation of smoke, residuals, the pruning of trees or simply to throw waste indiscriminately, the excellent reason of this investigation topic is to demonstrate that the environmental contamination sandal an infinite conglomerate of causes, and effects, which can be caused by the minimum negligence and to generate considerable losses so much environmental as degradation of the quality of life.

DEVELOPMENT

The artificial protection of the environment is necessary and indispensable to avoid its progressive destruction and to guarantee the full development of future generations in a balance mark, sustainability and sustentability.

The rights of the nature in the antiquity were created from a very excellent perspective, the flora, fauna etc., they were in some societies considered gods and for this, its contact with the societies was considerable.

The code Hammurabi established among other things the respect towards the nature when considering that if a person without the proprietor's of an orchard consent cut a tree without the consent of this, will weigh on that cut the tree to reimburse half silver mine" (Hammurabi, 1970). Also, respect settled down to certain processes of the nature like go a long way also manifested that, if in one pounded the blow of a God has shown or a lion has killed animals, the shepherd will be justified before the God and envelope the loss in the one pounded he will be the proprietor of pounded who will make front.

The same Bible establishes a logical order to my pyramidal approach, where the first thing that was created was the light, the earth, the waters, the plants, the animal ones and finally the human being. It is the group of principles and juridical norms that regulate the behaviors, singular and collective with incidence in the atmosphere (Cuba. Ministry of the Computer science and the Communications, 2019). It has also defined it as group of norms that regulate the relationships of public and private right, to preserve the environment, free of contamination, or to improve it in the event of being affected.

It is convenient to clarify that, as for the material content of the concept of the environmental thing and, of the right that regulates it, they have thought about two extreme positions and an intermediate one. The first, excessively wide, where practically everything is environment. In the opposed position -the one restricted - there are who, with a desire of more precision, they bound too much the environmental problem to the environment of the common goods, that is to say, the water, the air and the processes of contamination that it affects them. The intermediate position, lastly, establishes that the material object of the atmosphere understands three aspects: a) the natural resources and their use; b) the natural accidents; and c) the problem of the human establishments.

The Environmental Right is, in a sense, a new branch of the Right that, for its interdisciplinary character, it is nurtured of the principles of other sciences. In another sense, it is also a new interdisciplinary branch of the Right. This way, for their systematic character and to guide the interests, it is in intimate relationship with the Public Right -so much administrative as penalizer - and, for their preventive and reparative emphasis of the particular damages, it constitutes an important chapter of the Private Right. On the other hand, for their redistributional vocation is related with the economic aspect of the Right and for their supranational character it commits principles of the International Right.

This last, because the environmental question is impregnated of a strong problematic that requires solutions to international scale. The contamination moves from a point to another of the planet, reason why, for natural empire, the regulation and the control of the goods of the earth they cannot be constrained to the frontiers of the States that have been defined according to political approaches. The ecosystems have natural limits; the biosphere is an only one. But it is necessary to clarify that the Environmental Right doesn't come to replace to the old agrarian rights, miners or of waters, but rather it is devoted to study the juridical implications of the relationships of all those elements to each other and with the man, impregnating the other branches of the Right, as the Constitutional one, the Office worker and the Civilian. That is to say that to the precise definition of the content of the institutional juridical

matter, the analysis of the methodological study should be added, for that which is useful the systemic theory that so much diffusion has had in the last years.

Lastly, we point out that the evolution of the environmental norms has followed diverse stages. The first one, understands the precepts guided in function of the uses of a resource (water, it dilutes drinkable, sailing, etc.). The second, more evolved, it frames the legislation in function of each category or species of natural resource, coordinating the different uses (dilute, minerals, forest, etc.). The third, guide the normative towards the group of the natural resources. Finally, the fourth stage takes in consideration the environment like global group and assists to the ecosystems. This last one understands the environmental norms in strict sense. These stages of the legislative evolution, although successive, some are not excluded others.

The environmental justice refers to the fair one to share of the ecological space, but equally to the effort of avoiding the environmental damage, or if it happens, with its compensation or repair. This is not only an ethical question, but rather also a political and artificial question. Ultimately, an intelligence question of capacity of anticipation.

The environmental justice is independently the fair treatment and the significant participation of all the people of its race, color, national origin, culture, education or entrance with regard to the development and the application of the laws, regulations and environmental policies.

The fair treatment means that any group of people, including the racial, ethnic or socioeconomic groups, it owes disproportionately the load of the negative environmental consequences as a result of industrial, municipal and commercial operations or the environmental and political execution of programs at federal, state, local and tribal level.

The agrarian activity regulated by the norms of the agrarian right is also reached by the Environmental Right, being an activity that influences in a direct form and insinuation on the environment.

The extraction of vegetation, the monocultivation and the pesticides use, of payments and chemical fertilizers, evident ecological consequences that the Right should regulate to preserve the natural habitat, and the renewable resources take place that so widely uses this work form, and that they are absolutely necessary for its development.

The Agrarian Right and the Environmental Right have their object characteristic of regulation, but however there are topics that are common to both, as when the agrarian activity impacts in the environment. Although it is extremely important this primary activity (the agrarian one) it is also unavoidable that it exercises it to the agreement with a way of exploitation that respects the nature in search of a sustainable development.

In Argentina in this sense, it has been promulgated at national level partially November of 2002, 27 the law 25.675: General Law of the Atmosphere" (Argentina. Camera of Deputies, 2002) that presents instruments for a sustainable development and the protection of the biodiversity, giving norms of environmental policies (environmental classification of the territory, evaluation of the impact on the atmosphere, control on the anthropic activities (human work), environmental education, diagnosis and information on the atmosphere and economic system to promote the sustainable development).

For effects of this strategy, it is understood each other for agroenvironmental, an intersector focus that promotes the sustainable use of the economic space; by means of production systems and conservation that improve the economic competitiveness, the human well-being and the sustainable handling of the earth and their natural resources, chords with the socioeconomic processes that happen in the territory.

Mission: To propitiate the establishment of political, instruments and actions inside the legal and intersector marks that link the institutions with the development of the human capital, impelling the participation of the diversity of social and economic actors of the region to reach a viable, competitive, sustainable and equal development.

Vision: To be a region model that makes a good use of the economic space, propitiating the justness and the sustainability in the use of the ecosystems, terrestrial and marine, with viable and competitive production outlines that involve the economic processes in the territory and they contribute to improve the level and quality of their inhabitants' life.

On november 28, 2007 were sanctioned the law 26.331 on Budgets Minimum of Environmental Protection of the Native Forests" (Argentina. Camera of Deputies. 2007), to promote their conservation and sustainable handling, imposing the necessity before proceeding to the dismount, of making studies on environmental impact.

The juridical concept of contamination was born in the year 533 in the digest and it was confirmed by the constitution of so much of 533 in which rested that a violation exists to the good customs when somebody dirties the waters or pipes contaminating them with manure". (Antúnez & Díaz, 2018)

In America, the Incas imposed strong and severe hardships to those who damaged the birds guano producers, settling down, quotas of use of water to the farmers. (Antúnez & Díaz, 2018). The Mayan imposed to use cycles and rest of the earth, they respected that this took place and they requested pardon for the caused damage.

From the beginning of the Republic of Ecuador, had not been considered rights to the nature and any other public instrument that guarantees the protection to the natural, same goods that bear to the preservation and maintenance of the natural balance conserving and protecting the environmental quality; for it is necessary to emphasize that with the promulgation of the constitution of 1998 (Ecuador. Constituent National Assembly, 1998), already in the Ecuador something thought about the protection to the environment, being created this way ordinary laws that assured the maintenance and preservation of the same one. However, it was little or anything what was made in pro of the environment; in 2008 with the promulgation of the current constitution (Ecuador. Constituent National Assembly, 2008) it has been considered a series of instruments that guarantee the full enjoyment of the natural resources and their protection, being created this way, fundamental rights consecrated in the great letter.

It is then, starting from it is also believed it the environment ministry whose purpose is the one of protecting, to safeguard the environment, to generate programs and projects that look for to rescue and to protect the natural areas of Ecuador, instruments has also been created that they control and they mitigate the emission of gases or any pollutant type that generate environmental and long term damages without a doubt environmental impacts when being introduced to the environment.

The environment ministry in Ecuador has gone by several stages, mainly it was created in the year 1926, in the government of the expresidente Abdalá Bucaram later on in the year 1999 he fuses a single entity the environment ministry and the Ecuadorian forest Institute and of natural areas and wild life, later in the year 2000 by means of reformation to the statute of the juridical régime office worker of the executive function settled down that this function consists to the ministry of tourism and atmosphere among other and prepares that the ministry of tourism and atmosphere fuse in a single entity called under secretary of tourism the same one that belonged to the Ministry of Trade External industrialization of tourism and the environment ministry.

In April of the same year with ordinance executive 5590 the ordinance number 26 in which settles down the separation of the ministry of tourism and the atmosphere ministry being created with total financial and administrative artificial independence of the ministry of the atmosphere.

At the present time, the ministry of the atmosphere negotiates their action based on their own laws and to others as:

"The Constitution of the Republic of the Ecuador.

"Forest law and of Conservation of Natural Areas and Wild Life.

"The Law of Environmental Administration.

"The Unified Text of Secondary Legislation of the Ministry of the Atmosphere.

"The Code Of The Law Of Civil Service AND Administrative Career AND Of Unification AND Approval of the Remunerations of the public sector.

"The Organic Law of the General Control of the State and Others.

The Organic Code of the Atmosphere (Ecuador. Presidency of the Republic, 2017) entered in validity on April 12, 2018 the same one that keeps narrow relationship with that settled down in the constitution of the Republic (Ecuador. Constituent National Assembly. 2008), considering the article 14 of the constitution, which recognizes the population's right to live in a healthy and ecologically balanced atmosphere that guarantees the sustainability and the good to live. Public interest is the preservation of the atmosphere, the conservation of the ecosystems, the biodiversity of the integrity of the genetic patrimony of the country that are declared with the prevention of the environmental damage and the recovery of the degraded natural spaces.

As it is certain and according to the signal doctrine, the preservation and conservation of the environment and the ecosystems are possible according to measures and programs that are elaborated and they are developed with the appropriate control of the competent authorities, it is also certain that all economic general activity of an or another way some type of deterioration and the environment that which is perceptible almost immediately, It didn't seize the environmental damages, since these are only visible with passing of the time and provided they have not taken the necessary correctives to mitigate certain environmental impact.

It is necessary to emphasize that the environment ministry executes viable programs at institutional level, however, the districts environmentally affected don't receive the appropriate recovery toasted on the part of the wallet of State.

The Constitution of the Republic of Ecuador guarantees the right to the nature and people to live ecologically in an atmosphere healthy and balanced, just as it rests in the articles that next are detailed for its analysis and study.

The setting in validity of the Environmental Organic Code 18, it substituted to the repealed Law of Environmental Administration, enlarging the administrative spheres, since, in the repealed Law, the environmental administrative topics were unique competition and exclusively of the Ministry of the field, however, this new Code bets to have a better one and Mays control arriving so much to all the sectors through the delegation of competitions to the provincial, Municipal and Rural GADS as for the environmental control, maintaining the low Ministry, its competition and excellent situations in the environmental context.

In accordance with the Unified Text of Secondary Environmental Legislation, Book I, published in the Registration Official Supplement of March 2, 2003, 31 the National Environmental Authority is the Ministry of the Atmosphere, entity of the Executive Function to which would correspond to carry out the constant technical definitions in the penal law, through regulations, agreements or resolutions. However, although it is clear the ability of the Ministry of the Atmosphere to carry out that task through the signal bodies. It was estimated that the technical definitions should be incorporated in the environmental laws, to avoid confusions or frequent changes of those that could benefit to some of the parts in a penal conflict on the matter in some moment, in which the surest thing is that the Ecuadorian State is involved.

The environmental crimes were incorporated for the first time to the Ecuadorian penal legislation in the Chapter X-TO, Of the Crimes against the environment, for the Law N.º 49 published in the Official Registration 2 of January 25, 2000, in seven juridical norms, those that are reproduced in some cases with modifications in the project of Organic Penal Integral Code in I comment.

The crimes against the atmosphere and the nature or pacha suckle reason of this study they are contained in the Quarter Chapter, in five Sections of the First Book of the Organic Penal Integral Code, that is: crimes against the biodiversity; crimes against the natural resources; crimes against the environmental administration; common dispositions; and, crimes against the natural resources not renewable. For space reasons, only we will worry about making an analysis of some of the crimes against the biodiversity.

The first four environmental crimes that are picked up in the articles 245 (invasion of areas of ecological importance), 246 (crime of forest fires and of vegetation), 247 (crimes against the flora and wild fauna) and 248 (crimes against the resources of the national genetic patrimony) they are grouped in the denominated crimes against the biodiversity group to study if they are correctly and framed the legal definition of the general concept is required.

The Agreement has more than enough Biological Diversity, approved in the call Summit of the Earth, carried out in Río de Janeiro, Brazil, in June 1992, and published in Ecuador in the Registration Official Number 647 of March 1995. It defines the biodiversity like the group of alive organisms included in the terrestrial ecosystems, aquatic and of the air and understands the diversity inside each species, among several species and among the ecosystems.

Then, the penal types that constitute infractions against the biodiversity guarantee the survival and existence of the alive organisms that reproduce and they develop in the different ecosystems identified by the Convention it has more than enough Biological Diversity and for the Ecuadorian environmental law.

With relationship to the purpose of executing protection measures for the environment, the sustainable use and the conservation of the biodiversity, of the resources, as well as the equal, balanced participation and it jousts in benefit of the use of the genetic resources, just as it stands out in the mentioned Agreement whose main line follows the Ecuadorian environmental legislation.

This first doctrinal aspect, already in the study of the environmental penal norm indicated in the Art. 245, of invasion of areas of ecological importance that sanctions to The person that invades the areas of the National System of protected Areas or fragile ecosystems, will be sanctioned with exclusive pain of freedom from one to three years and does it fine from thirty to the worker's fifty unified basic wages in general, that we consider that, on one hand, the invasion of a protected area or a fragile ecosystem cannot necessarily constitute a threat to the existent biodiversity in the place, unless product of that invasion loses temper to the flora or fauna that it is protected, or that the precept is completed indicated in the numeral 1 of that norm, does that make worthy to the active fellow of the crime to the maximum of the pain, consequence of the invasion, are irreversible damages caused to the biodiversity and natural resources.

At the present time, inside many areas that form the National System of Protected Areas people is living, roads have been built or private property even exists. In several of these cases a coexistence exists in harmony with the nature, without the human beings cause damage to the existent biodiversity in the place.

Reason why, the penal type would be not well located inside the Organic Penal Integral Code, since we are in front of an objective type of crime of pure activity, because the invasion of the protected area is sanctioned, that which in no way it means that it has been affected to the biodiversity by that behavior.

In general, of the list of crimes against the biodiversity sanctioned by the Organic Penal Integral Code it is evidenced that the legislators were in debt with the Ecuadorian population, because the important thing is to protect the flora group and fauna that it is already in the different suitable ecosystems, to guarantee the diversity inside each species in connection with the other ones that share oneself ecological ecosystem.

In such a virtue, it lacked the tipification of crimes that attempt against the balance of the ecosystems like, for example, the one deviated of rivers, the filler of marine beds (the Salted Tideland, in Guayaquil, it was stuffed in eight or nine places, fact that altered the cycle of tides and, consequently, it caused the alteration and fauna and flora disappearance of that sea), the construction of roads without environmental studies for places that constitute places of fauna traffic, among others.

The biodiversity is a technical matter, many concepts are without being defined by the penal law, How fragile ecosystems or national genetic patrimony is?, reason why we are in front of white crimes, like they are known by the doctrine.

The Spanish commentator Enrique Bacigalupo in its Penal Right work Leaves General 2nd. Edition published in 1999, picks up the approach of the Supreme Tribunal of Spain, collegiate body that expressed that they are penal laws in white those whose supposed in fact it should be completed by another norm taken place by a legitimate artificial source.

This approach is concordant with that affirmed by other specialists of the penal right, as the Chilean Alfredo Etcheberry in his work titled Right Penal Third edition, volume I, published in 1999, the Ecuadorian Jorge Zavala Egas in the juridical repositorio of the Andean University Simón Bolivar Ecuador, published in 2015, or the Argentinean Sebastián in the work Argentinean Penal Right II, published in 1992, they make stress that the non defined concept should be completed by another legal norm, even for a regulation one.

On this, the task of defining these white crimes in the case that occupies us was given by the legislator for each crime to the National Environmental Authority, according to the Art. 250 of the proposed Organic Penal Integral Code.

CONCLUSIONS

The proposal elaborated in this investigation work is to propitiate the creation of a government department that knows, control and solve all the cases they are administrative or judicial in environmental matter; for it should be pointed out how at the present time they are developed or this processes are known.

Of the administrative steps that has in knowledge the Ministry of the Atmosphere like entity regulator and protective of the environment begins through an administrative process which has knowledge in a direct way in the Provincial Direction of environment, being able to the resolution to be susceptible of appeal before the environment Ministry; that which not carries single economic expenses and of time but also lack of velocity in this procedures; later on; in the event of thinking about a demand for damages to the environment, first this, it is known by judges non specialists in environmental matter, many times the demanded part can allege that when having existed an administrative agreement among the parts on the same topic, would be paying or trying to charge double fines for the same act, which is illegal.

Now then; when adapting the carried out proposal so much the administrative processes as judicial they would be in charge of oneself entity which will enjoy autonomy whose resolutions in the administrative environment will provide effect of prevention with pecuniary ticket and with commitment to improve and to observe good practical in favor of the environment with the pursuit and control of the environmental Inspectors who will should in unit with the producer (natural or artificial person) to address, to control and to observe the execution of this disposition; that is to say in this stage an in agreement ticket would be generating with the purpose that the producer could complete that requested by the environmental Inspectors in resolution. As we can observe, it would solve and it would protect the environment in an immediate way. But, if the same producing that pointed out in resolution do not want to adapt necessary measures for the protection of the environment; previous report elaborated by the environmental Inspectors will proceed to open the way to the judicial road so that in sentence, the Judge can damage caused by the nonfulfillment of the producer to not sanction it depending only in a pecuniary way, but also with the definitive closing of the activities of the producer.

If we observe it from the point of view of the principle Indubio Pro-nature; initially it would be protecting the nature as to the economic activity of the producer; however, in the event of existing irresponsibility and nonfulfillment and deterioration of the nature, the direct protection would

be perfecting to the environment and not to that of the producer; just as the apparent thing, the Environmental Right that The one that contaminates pay.

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